

(a) No. To enable him to do this the council should pass a by-law pursuant to section 60 of the Assessment Act as enacted by section 4 of chapter 27 of the Ontario statutes, 1899.

(b) Yes. See section 53 of chapter 225, R. S. O., 1897, and sub-section 1 of section 169 of the Assessment Act.

(c) By section 53 of chapter 225, R. S. O., 1897, it is provided that arrears of taxes due to any municipality in any of the districts mentioned in this Act, shall be collected and managed in the same way as like arrears due to municipalities in counties, and that the treasurer and reeve of the municipality shall perform the like duties as in counties are performed by the treasurers and wardens. These duties will be found in section 173 and following sections of the Assessment Act.

Resignation of High School Trustee.

172.—F. J. C.—In case a High School trustee who is appointed by the town council desires to retire, to whom must he tender his resignation?

The High Schools Act, 1901, contains no provision authorizing the resignation of a High School Trustee similar to that contained in section 16 of the Public Schools Act, 1901, as regards members of Public School Boards, and we are therefore of opinion that a High School Trustee has no power to resign his office. He can render his seat vacant, however, by absents himself from the meetings of the board for three consecutive months without being authorized so to do, by resolution of the board, entered upon its minutes, in which event the remaining trustees shall direct the secretary of the board to notify the clerk of the county or municipality or Board of Trustees having authority to appoint such trustee accordingly. (See section 48 of the High Schools Act, 1901.)

A New Election Necessary.

173.—J. D.—At the nomination meeting held here seven electors were nominated for councillors. The four receiving the highest number of votes were duly elected and attended the first council meeting, when only three were qualified to fill the office of councillors, one being a school trustee, he, the said councillor, at once handed his resignation to the Clerk. This left one councillor short. Now, there is a difference of opinion amongst the electors. Some claim that a fresh election should be held. I claim not and have warned the next individual who obtained the next highest number of votes duly elected to the office of councillor for the year 1903. Am I right? See C. R. W. Biggar, M. A., 11th Edition Municipal Manual 1900, page 111, note J. also page 112 note F.

The notes in Biggar's Municipal Manual pointed out, have no reference to such a case as this. They apply only to cases where candidates were disqualified at the time of nomination, and notwithstanding the fact that notice of the disqualification was given at the nomination and made as public as possible thereafter and before polling day the electors persisted in voting for and electing the disqualified candi-

dates. If the disqualified councillor resigned as provided by section 210 of the Municipal Act, that is with the consent of the majority of the members present, which consent was duly entered on the minutes, or if he refuses to accept the office to which he was elected, a new election to fill the vacancy should be held pursuant to the authority of section 212 of the Act. If the councillor filed a disclaimer in the form prescribed by section 240 of the Act, then, the candidate having the next highest number of votes shall become the councillor elected as provided by section 241 of the Act.

Council's Power to Sell Timber on Road Allowance.

174.—J. W. C.—1. Have a municipal council a right to sell timber on road allowance that is enclosed in the adjoining farm without first opening the said allowance by by-law?

2. If the road is not required by the public, have the council a right to open the road to sell the timber providing the allowance was never given in lieu of another road?

3. If the man having the road allowance enclosed cuts the timber on said road and the said road is not required by the public for use how should the council proceed to get their pay for the timber or sell what remained?

1. Yes. Subject to the provisions of the Act respecting Timber on Public Lands, R. S. O., 1897, chapter 32, and subject also to the provisions of section 642 of the Municipal Act.

2. If this road allowance is enclosed with the land of the adjoining owner, by a lawful fence, and has not been opened by reason of another road having been used in lieu thereof, the council should pass a by-law providing for opening it in accordance with sections 642 and 643 of the Municipal Act, before the timber is sold. If the road remained unopened simply because it was not required for the use of the public, no by-law for its opening is necessary before the timber is disposed of.

3. The council can recover the value of the timber cut on this road allowance from the party who cut it by an ordinary action at law and can sell the remainder as above stated.

Statute Labor of Farmers' Sons Assessed Jointly.

175.—A. C.—This municipality has a by-law regulating the number of days statute labor to be performed as follows:—

\$ 500 assessment requires 2 days Statute Labor.				
1000	"	3	"	"
1500	"	4	"	"
2000	"	5	"	"
2500	"	6	"	"

B has an assessment of \$2500. B has four sons who are joint owners with him. B performs six days' statute labor for the property. Each of his sons performs one day making a total of ten days' statute labor.

(a) Can B and his sons be compelled to do this amount of statute labor?

(b) How many days statute labor should be done by B and his four sons?

(a) This statute labor is chargeable against the premises assessed, and is not a personal tax chargeable against and payable by the persons assessed. If the sons are assessed as joint owners with B,

as they have a right to be, under the authority of section 14 of the Assessment Act, they are not individually liable for the performance of any statute labor, and, according to the scale of statute labor in vogue in your municipality, six days' statute labor is all that can be charged against these premises. If B's sons were rated and entered on the assessment roll as "Farmers' Sons" pursuant to section 106 of the Act they would each be liable to perform one day's statute labor in addition to the six days properly chargeable in respect of the premises, making 10 days altogether.

(b) Four, if assessed JOINTLY as stated.

Status of Councillor who has left the Municipality.

176.—Subscriber.—One of our councillors elected in January last left our village on the 12th of January without taking his declaration of office and so far has not returned. Is he now disqualified and what steps should the council take to fill the vacancy?

This seat has not yet become vacant. Section 207 of the Municipal Act provides that if, after the election of a person as a member of a council, he absents himself from the meetings of the council for three months without being authorized so to do by a resolution of the council entered on the minutes, his seat in the council shall thereby become vacant and the council shall forthwith declare his seat vacant and order a new election. Section 319 provides that every qualified person duly elected to the office of councillor, who refuses such office, or neglects within 20 days to make the declarations of office and qualification, shall, on conviction thereof before two or more Justices of the Peace, forfeit not more than \$80 nor less than \$8, at the discretion of the Justices, to the use of the municipality, together with the costs of prosecution.

Closing a Dedicated Road—Registration of Road By-Law Passed Prior to 29th March 1873.

177.—W. D.—A by-law passed Dec. 2nd, 1862 established a road which has been used as such up till now. The road is said to have been a free gift from the person then owning the land. No deed was made conveying the land. The by-law was not registered.

1. Is the road a legal road under the above conditions or does it belong to the original owner?

2. Does section 633, Municipal Act, R. S. O., make all by-laws legal and binding passed previous to the 29th day of March 1873 whether registered or not?

3. Will it be necessary to go through the procedure indicated in the Statute if the municipal council desire to close the road?

1. In *Mytton v. Duck et al* (26 Q. B., 61,) it was held that the user of a road by the general public as a highway for thirty years after the patent issued would be conclusive evidence of a dedication as against the owner, and such dedication was equivalent to a laying out by him, so that the road, under C. S. U. C., chapter 54, section 336, was vested in the municipality. In the case of *Frank v. Township of Harwich* (chapter 18, O. R. 344, Chy. D,) seventy years user was held to be