

Question Drawer.

Subscribers are entitled to answers to all Questions submitted, if they pertain to Municipal Matters. It is particularly requested that all facts and circumstances of each case submitted for an opinion should be stated as clearly and explicitly as possible. Unless this request is complied with it is impossible to give adequate advice.

Questions, to insure insertion in the following issue of paper, should be received at office of publication on or before the 20th of the month.

Non-Repair of Highway—Liability for Accident.

367.—**RATEPAYER.**—The overseers on the town line between the townships opened a gravel pit on the roadside to within three feet of line fence and about eight or ten feet deep. A ratepayer had his cattle running at large and while driving them home two of his cows went on bank between fence and pit and fell in and one was killed. Are the townships liable since they were in his charge at time of accident, both townships having by-laws prohibiting cattle running at large?

At the time the accident occurred the road was in a dangerous condition and the cattle were lawfully on the highway, being driven home in the charge of their owner. We are of the opinion, therefore, that the adjoining municipalities are liable, if they have been served with the notice mentioned in subsection 4 of section 606 of the Municipal Act (62 Vic., Ont. sta's., chap. 26, sec. 39) and if the action be brought within three months from the happening of the accident. (See sec. 606 of the Municipal Act, subsection 1)

Entry of Statute Labor Defaulters on Collector's Roll.

368.—**C. H. S.**—In our township it has been the rule to ask the overseers of highways to make their returns of statute labor unperformed by the first of August of each year and the clerk who preceded me always entered it on the roll the same year. Now I find that is not according as the statute directs as the overseers have until the 15th November to make returns, and the unperformed labor must be entered on the roll the next year. Would you advise me to adhere to that? If I do there will be no statute labor entered on the roll this year.

The law at present is that all statute labor lists shall be returned to the clerk of the municipality prior to the 15th day of August in each year, (see sec. 10, subsec. 1 of the Assessment Act, as amended by sec. 9 of chap. 27 of the Ont. sta's. 1899, 62 Vic.), and that the clerk shall enter the commutation for statute labor against the names of the defaulters in the collector's roll for the year following that in which they were returned. (See subsec. 1 of section 110 of the Assessment Act, latter part). As the law now is, the commutation cannot lawfully be entered on the collector's roll until the year following the return of unperformed statute labor.

Cellar Drainage in Village.

369.—**G. H. B.**—The village council are putting down a new drain on William street to replace one that has filled up and become too small. Have the council power to assess the residents on the said street for draining their cellars into the new drain? The old drain was put down partly by subscription and partly by the municipality.

Parties using and benefited by the construction of this drain can be assessed

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for a portion of the cost of the construction, equal, in the opinion of the engineer having the work in charge, to the amount of benefit derived by each of them respectively, provided the council passes a by-law for the doing of the work and assessment of the cost pursuant to section 664 and following sections of the Municipal Act.

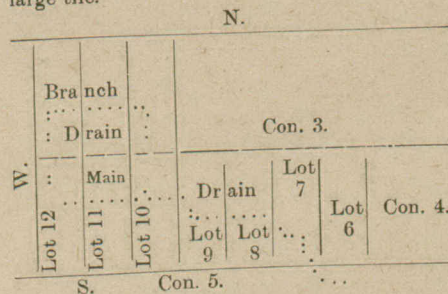
Council Should Not Buy Road for Private Individuals.

370.—**W. J.**—There are three families who have bought lands in a backward place where land can be bought for \$1 per acre, and all the land in that place is only assessed for \$800 or \$100. They have come to the council asking them to build them a road. It is impossible for us to follow the concession only part of the way. They have brought in a petition asking us to buy the right of way across certain lands which would cost the township about \$2,500 or \$3,000 to buy and build the road. Are we obliged to give them a road?

Unless the necessities of the locality or public convenience requires the purchase and opening up of the road (which your question does not indicate) the council should not provide a road for these parties, but should leave them to provide one at their own expense. (See question No. 342, 1900, September, page 145)

Parties to Drainage Petition.

371.—**F. G. J.**—Below you will find a diagram of a proposed drain in our township. Those at the lower end of the drain do not care about having it put through, while most of those at the upper end are anxious to have the whole drainage work performed. The drain below the forks will be open and probably part of that on the main drain above the forks. Where the branch drain now is there is an open ditch and those on the branch wish the whole constructed as it will give them an outlet which they are in need of. Have those on the branch an equal right to sign the petition with those on the main drain? The branch will be tiled with large tile.



We assume that the drainage works you describe are to be constructed under the provisions of the Drainage Act (R. S. O., 1897, chap. 226). If the engineer, upon making an examination and survey of the territory proposed to be drained, finds that some of the persons assessable are liable

for outlet liability only, such persons cannot be counted for or against the petition. See subsection 4 of section 3 of the Drainage Act.

Height of Legal Fence.

372.—**W. S.**—What is the height of a legal fence? I mean how high must a fence be between lots? Two farmers are not agreeing about line fence between them, so they have called on the fence-viewers and they need light on the case.

Unless the council of your municipality has passed a by-law pursuant to subsection 3 of section 543 of the Municipal Act, the fixing of the height of the fence is the duty of the Fenceviewers. Subsection 1 of section 7 of the Line Fences Act (R. S. O., 1897, chapter 284) provides that their award "shall specify the locality, quantity, description, and lowest price of the fence it orders to be made" and subsection 2 enacts that "In making the award, the fenceviewers shall regard the nature of the fences in use in the locality, the pecuniary circumstances of the persons between whom they arbitrate, and generally the suitability of the fence ordered to the wants of each party." If the council has passed a by-law pursuant to subsection 3 of section 543 of the Municipal Act, the fenceviewers should be guided by its provisions in regulating the height of the fence.

Money By-Laws.

373.—There are in the town of Thorold several quarries. The owners of same are desirous of getting railway connections by the means of a siding so as to save long teaming of their stone. They offer to sell to the town of Thorold 1000 cords of stone for \$2500 (twenty-five hundred dollars), said stone to be used for street purposes, said money to be paid to the railroad by the town on completion of said siding and stone delivered.

1. Can a by-law be legally submitted to the ratepayers to raise said money for said purpose in the way described?

2. If so, under what head must said by-law be submitted?

3. What numbers of votes will be required to carry said by-law, the number of freehold voters on roll being 454?

If we understand the purpose of the proposed scheme the question is whether the town council has power to purchase 1,000 cords of stone for \$2,500 for the purpose of repairing its streets. As the corporation is bound to keep the street in repair, it must impliedly have power to purchase material to enable it to do so. Section 384 of the Municipal Act gives the council power to pass by-laws for contracting debts for any purpose within the jurisdiction of the council. The assent of the electors must, however, be first obtained in the manner provided by section 338. See also section 389 of the Municipal Act. For the persons entitled to vote on such a by-law, see sections 353 and 354 of the Municipal Act. If the by-law receive the assent of a majority of the votes polled that will be sufficient.

Drainage Act Amendments, 1900.

374.—**O. J. W.**—I noticed in the July number of THE MUNICIPAL WORLD the amendments which have been made in the Drainage Act and