

entered into prior to 1st April, 1899, that the municipal corporation may proceed to construct its own plant or works for street lighting as if sub-section 4 of section 566 had never been passed?

5. Can the town now construct its own gas plant for street lighting without consulting the firm?

When we are asked to give an opinion upon a contract, which is in writing, we ought to have the whole writing. You did not send us the agreement between the parties, and in giving our opinion we shall assume that clause 10 of the agreement sent us is the only one bearing upon the point in respect of which we are asked to give an opinion. Sub-section 5 of section 35 of the Act of 1899, now article (g) of sub-section 4 of section 566 of the Consolidated Municipal Act of the Municipal Amendment Act, 1903, does not, in our opinion, contain anything which disentitles the firm which has been supplying electric light to your town to the compensation provided by sub-section A of section 4 of section 35, 1899, because the agreement does not expressly provide that no compensation should be made to the firm on the termination of the agreement. If it had expressly provided that the firm should not be entitled to any compensation, then sub-section 5 would have exempted the town from any liability to make any compensation. The fact that the firm continued to supply light to the town after the expiry of the agreement, and that the town paid for such light for some time is not of any consequence because it was not a binding contract between the firm and the town by reason of the absence of a by-law, and even if there had been a by-law there is nothing in the arrangement to exempt the town from making compensation for the plant belonging to the firm, and if there had been a provision of that kind in it, sub-section 5 would not apply, because that section only applies to by-laws or contracts in force at the time of the passing of section 35. Having thus expressed our opinion generally, we answer your question as follows:

1. The council must proceed in the manner provided by section 35 of the Municipal Amendment Act, 1899.

2. Clause 10 does not excuse the council from proceeding as provided by section 35.

3. The supplying of electric light after the expiry of the agreement does not affect the question one way or the other.

4. No.

5. No.

Release of Surety of Treasurer—His Qualification as Councillor.

489—RATEPAYER—1. The treasurer of our township has been re-appointed for several years. The bond for security is a continuous one so long as said treasurer shall continue to act as treasurer. The bondsmen have been notified each year of treasurer's re-appointment. In July one of the bondsmen sends in his resignation. Is the council compelled to accept same until a substitute is appointed?

2. Will the fact of said bondsman acting during 1903, disqualify him from being a member of municipal council for 1904?

3. Is the council compelled to accept resignation before end of year?

1. No.

2. If the council accepts the withdrawal of the surety, and by resolution absolves him from further liability for the acts of the treasurer, and all accounts and matters in dispute, if any, have been finally settled between the treasurer and the municipality prior to the next nomination day, this surety will, in this particular, be qualified for election as a member of the municipal council for the year 1904.

3. No.

Township's Liability For Accident.

490—C. B.—Your opinion is desired with reference to the following: An accident occurred on one of the travelled roads in the municipality in which the horse, buggy and driver were injured. The injured party was driving down a hill, and meeting a person driving in an opposite direction at a point where the road crosses a gully, between two small hills, when both vehicles collided, forcing the person injured against the railing, smashing same, and over the embankment. The party injured claims the cause of the accident was narrowness of the travelled part of the highway, and the defective and imperfect condition and character of railing or guard. The council is informed that the party injured did not keep on the right side of the road (taking the left hand side) otherwise the accident would not have occurred. Is the municipality liable?

As to whether this road, at the point where the accident happened, was in a reasonable condition of safety, is a question of fact, to be decided by the judge who tries the action, on the evidence adduced before him, at the trial. It is not stated whether the accident happened in daylight or whether darkness was a contributing cause to its occurrence, nor have we any information as to the width of the roadway at the point between the railings. If, however, the roadway at this point was in a proper state of repair, and is of reasonable width, considering the nature and circumstances of the locality, and the railing was high and strong enough to prevent horses and vehicles going over the embankment under ordinary circumstances, we are of opinion that the council, did all that the law required it to do, in the way of keeping the highway in repair, and cannot be held responsible in damages to the party who sustained injury by the happening of this accident, especially if it occurred in daylight, and the party injured was driving on the wrong side of the road at the time. Notice of the intended bringing of the action must be given to the municipality within the time mentioned in sub-section 3 of section 606 of the Municipal Act, and must be brought within three months after the damages have been sustained. (See sub-section 1 of section 606.)

What Property Immediately Benefited by Construction of Silex Walks.

491—S. L. M.—Although your reply to question No. 477 in this issue is clear enough to me, I am requested to ask you "Is not the

south side of the street immediately benefited by the walk on the north side of the street, and are they not compelled to pay an equal share of the 60%?"

No.

Proceedings For Borrowing Money Not Payable Within Year in Which Borrowed.

492—S. P. W.—I see by your answer to question No. 429 that steel bridge contracts are not legal.

1. If by-law is carried by majority of rate-payers, will the by-law be legal?

2. If not legal, in what time would proceedings require to be taken to quash the by-law?

3. What would be the cost? The contracts were let and part of the work done before the by-law was voted on.

1, 2 and 3. It is not stated in our answer to question No. 429, 1903, that these bridge contracts are illegal, nor can the language used convey any such impression. Our answer is confined chiefly to the proper method of raising the money required by the municipality to pay the cost of a bridge of this kind. Since it is not part of the ordinary expenditure of the municipality, unless the amount is to be paid within the municipal year in which the debt is incurred, a by-law providing for the raising of the money will have to be submitted to and receive the assent of the duly qualified electors before it can be finally passed. (See sub-section 1 of section 389 of the Municipal Act.) We do not know what by-law is referred to, and therefore we can say nothing as to its validity without seeing a copy and having complete information as to the circumstances under which it was passed.

Town Can Pass By-Law For Compelling Use of Public Weigh Scales.

493—W. C. M.—Will you please let me know if a town with a population of seven or eight thousand can pass a by-law compelling every person selling and delivering within the town limits, coal, hay, straw and other produce (that is when it has got to be paid) to be weighed on the town scales?

Section 582 of the Municipal Act provides that the councils of towns, etc., may pass by-laws "for erecting and maintaining machines in villages or other convenient places, and charging fees for the use thereof, not being contrary to the limitations provided by sub-section 8 of section 579 of this Act." The council of the town can compel the use of these public scales by persons selling and delivering the articles mentioned within the limits of the town, subject to the conditions and limitations prescribed by the Act. See sub-sections 5, 10 and 17 of section 579 and sub-sections 2, 5 and 9 of section 580.

Removal of Fence From Road Allowance—Building of Bridge Thereon—Locating Proper Line of Road—Payment of Expenses of.

494—T. P. N.—1. A has his road fence built on the road allowance; this fence has been built thirty-five years. Does this fact of the fence being built such a number of years give A any claim on the road allowance?

2. The government has this year given a grant of money to erect a bridge on this same road (this road is also a town line.) The road inspector gives orders for the bridge to be built