

The Municipal World

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K. W. MCKAY, EDITOR,

A. W. CAMPBELL, C. E. } Associate
J. M. GLENN, K. C., LL.B. } Editors

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OFFICES—334 Talbot St., St. Thomas. Telephone 101

Address all communications to

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Box 1321, St. Thomas, Ont.

ST. THOMAS, OCTOBER 1, 1902.

By-laws were recently submitted to the electors of the town of Lindsay to raise \$20,000 for the improvement of roads, \$14,000 for a public school building, and \$2,000 to purchase a site for the Carnegie library building, respectively. A large adverse vote was cast against each by-law, and they were all defeated.

* * *

In *Brown v. city of Hamilton* it was decided that the passing by a municipal corporation, under the powers conferred by the municipal act, of a by-law prohibiting the setting off of fireworks, fire crackers, etc., on the public streets does not cast any duty on the municipality to see to its enforcement.

* * *

How many municipal clerks sent out the voter's list of their respective municipalities, without having first had printed thereon the date of the first posting up of the list in the clerk's office, as required by section three of the Statute Law Amendment Act, 1902? Some cases have come under our notice where this duty was not performed.

* * *

The Electrical Supply and Maintenance Co. has entered suit against the Town of Orillia for over \$220,000. The basis of the claim is the fact that the company constructed and developed the water power service which Orillia now obtains from Ragged Rapids on the Severn River. The work was completed about a year ago and the cost was considerably in excess of what the town was authorized to

pay under the by-law voted on by the electors. The question came before the Private Bills Committee last session, and the question was raised whether the company's claim should be left to the precarious fate of another popular vote. The compromise reached was that the company should be entitled to collect whatever it could prove in the courts without depending on another by-law. This is the origin of the writ.

* * *

In answering question number 389 in our September issue, we overlooked the fact that the municipality concerned was located in the District of Algoma. This being the case, the general law on the subject, as embodied in sub-section 1 of section 8 of the Municipal Amendment Act, 1900 is qualified by the provisions of sub-section 4 of this section. From further information we have received it appears that there are 500 *ratepayers* in the municipality entitled to vote on the by-law, that some of these ratepayers are entitled to more than one vote, being qualified to vote in more than one ward in the municipality, and that in consequence of this, there are 600 VOTES that may be legally polled. This is very different from the statement of the facts in question 389 which was that the total number of ratepayers in the municipality is 500 and the total number of *voters entitled to vote* is 600. The latter two allegations seem inconsistent and hard to reconcile. The question raised is one upon which the courts have not, so far as we are aware, yet passed. Section 355, of the Municipal Act, entitles a ratepayer to vote in each ward in which he has the qualification necessary to entitle him to vote and by the section quoted the by-law shall be carried if two-thirds of the ratepayers who actually vote (and being a majority of all the ratepayers entitled to vote) shall vote in favor of the by-law. The words all the "ratepayers" mean all the ratepayers of the municipality, and in ascertaining the whole number, a ratepayer cannot be counted more than once, though he has two or more votes in the municipality. The clerk, under section 364, is required to cast up the votes for and against the by-law, and if he finds that there is a majority of votes for or against the by-law, he must so certify, and we have no doubt but that if there is a majority of the votes cast for the by-law, such majority is sufficient, provided that the other requirements of the section you quote are not lacking. This view is confirmed by reference to the clause in the last mentioned section, which provides that "In addition to the certificate required by section 364, of the Act, the clerk, in case the *majority of votes* being in favor of the by-law, shall further certify, etc." From this it will be observed that the clerk is required to give a further certificate in case of the *majority of votes* being in favor of the by-law. The legislature does not say a majority of the *ratepayers*, but a majority of the *votes*.

Where the legislature speaks of two-thirds or three-fifths of the ratepayers, we are perfectly satisfied that the clerk has no right to multiply a ratepayer who is a voter in each of three wards, by three, and thereby make three ratepayers out of him. We are not concerned with *what* was really in the mind of the legislature who had this enactment placed upon the statute books, nor with the question as to whether it is fair to count individuals only in one case, and votes in the other case or not, we have simply to ascertain what the legislature meant by what it has actually said. In view of the above and of the provision of sub-section 4 we are of opinion that the by-law under discussion was carried. Since a majority of the ratepayers entitled to vote, namely 305 actually voted, and two thirds of those who actually voted, namely 275 voted in favor of the by-law. The following is the full text of the question referred to:

389—A. Mc. N.—Complying with the Municipal Amendment Act, 1900, page 110 sub-section 4, of section 8, is a by-law to grant a bonus to a manufacturing industry carried, when the conditions are as follows:

Total number of ratepayers in municipality	600
Total number of voters entitled to vote....	600
Total number of votes polled for the by-law	275
Total number of votes polled against the by-law.....	30

Ontario Municipal Association.

This association met at the Town of Brockville, on the 10th September last. There was a fair attendance of delegates from the several municipalities in the Province. The following, amongst others formed the subjects of resolutions passed by the association:—The assessment of all property at its full value.

Abolition of the exemption of personal property from taxation to the extent of the debts owing thereon.

The assessment of the personality of incorporated companies in the same manner as that of private individuals.

Curing the invalidity of sales for taxes when there were goods on the premises that might and should have been sold to realize the amount of the taxes.

The giving to the municipality powers to lease, at the opinion of the treasurer, improved property in arrears for taxes, instead of selling the same.

Bonus Legislation.

The appointment of a Board of Registrars to define polling sub-divisions for Ontario elections.

The registration of all voters and the payment of the expenses of such registration and of elections by the Province.

The power to appeal from a magistrate's decision dismissing a complaint for the breach of a by-law.

Government ownership and control of telephone systems.

The next meeting of the Association will be held at the City of Guelph.