

costs of distress, and if no sufficient distress can be found then upon conviction before a justice of the peace or police magistrate of the county of . . . of his refusal or neglect to pay said sum and of there being no sufficient distress he shall incur a penalty of \$5.00 with costs and in default of payment at such time as the convicting justice shall order, shall be committed to the common goal of the county of . . . and be there put to hard labor for any time not exceeding ten days unless such penalty and costs and the costs of the warrant of commitment and of the conveying of said person to the jail be sooner paid.

3. And the said collector shall be allowed and paid ten per cent, on the amount so collected and paid over to the treasurer of this municipality.

4. And the said collector shall make a return of the amount so collected to the treasurer of this municipality monthly.

5. And the constable shall be and is hereby authorized to collect said poll-tax.

Done and passed in open council this . . . day of . . . A. D. 1 . . .

Clerk

Mayor

1. The by-law is objectionable in this, that it is made to apply to every inhabitant, whereas the statute is confined to *male* inhabitants.

1. We would suggest the addition of the word "male" in order to confine the by-law to male inhabitants, and the striking out of the words "police magistrate" for the reason that if they do not do any harm they do no good.

3. Stroud, in his legal dictionary, defines an Inhabitant of a place, as one, who, speaking generally, has his home there; but, he says, the word has no definite legal meaning, its signification varying according to the subject matter or sometimes to usage, and Wharton, in his Legal Lexicon, as a householder in a place.

4. Stroud, in his work above-mentioned, says that a person is a resident of a place where he eats, drinks and sleeps, or where his family eat, drink and sleep. It is an "ambiguous word" and may receive a different meaning according to the position in which it is found.

5. By notice we presume you mean the demand mentioned in clause 2 of the by-law. A verbal demand will be sufficient under the by-law and the statute, but a written demand is preferable. A copy of the demand should be kept by the collector, on which he should endorse the date of service on the defaulter. In this way, in the event of subsequent proceedings against the defaulter, becoming necessary, evidence of the notice or demand served and the date of service will be easily obtainable.

6. By the collector.

7. No.

A Ditches and Watercourses Drain.—Statute Labor.

315.—S. M.—1. There is an award ditch about to start at the eleventh concession line, about eighty rods of my farm. It angles across until it is about half way down the lot, then it runs within thirty rods of my lot all the way down to the tenth line; it is swamp land on both sides. I have cleared nearly half way back on my lot, and have a ditch along the sideline, which catches the water from getting in this ditch until it gets to the tenth line, and then it strikes this award ditch. Now the question is, can they make me dig on this concession? I have no outlet until it goes to the tenth line?

2. Can I force them to dig me an out-let any where across my land?

3. Now I have another farm on the eleventh concession, cornering this ditch, about sixty rods from the starting point. There is a good deal of water comes off this place, but it has a fall of four or five feet before it reaches the ditch. Can they make me dig for this farm?

4. This ditch runs across the C. P. R. Are they liable? Can they be made to put a culvert in opposite this ditch? They have a culvert not far from this place.

5. I have been appointed to locate a culvert on the road opposite C's farm. There are two runways about thirty rods apart. The east runway is where most of the water crosses. I took the level of the road and found that the west runway is over a foot the lowest, a little hill of about fifteen inches keeps them apart. The council purposed to grade off this hill, and the east water will all come down to the west runway, and we would put in a culvert and let it all across in one place. Young, across the road, objects because the east runway is where nearly all the water has always crossed. The question is, can any man stop the council from putting in a culvert where they think fit, and if we grade off that hill will council be liable?

6. Can the council, by a motion, give a man the privilege of doing all his statute labor in certain place for more than one year? Would it hold good when the next council would come in if they felt disposed to change it?

7. Can the pathmaster force a man to do his statute labor on the townline? That has been a disputed question here for some time.

1. If the engineer who makes the award, or the county judge, in the event of an appeal from the award, considers that your land is benefited by the construction of the ditch therein described, you will have to construct such portion of it as the engineer, or judge on appeal, allots.

2. You cannot compel any person to do any diggi g to enable you to drain your lands unless you obtain an award for that purpose under the Ditches and Watercourses Act.

3. If proceedings are taken under the Ditches and Watercourses Act, and an award is made allotting part of the work to you, you must do the work.

4. No, unless there is an agreement between the railway company and the municipal council made pursuant to section 21 of the Ditches and Watercourses Act. (R. S. O., 1897, chap. 285.)

5. If, in constructing the culvert, the municipality brings down an extra quantity of water, and discharges it on lands below the culvert, to their damage, the municipality will be liable to the owners of these lands to the extent of the damage occasioned to them. This is a case where the provision of the Ditches and Watercourses Act should be invoked, and proceedings taken thereunder. By this means the rights and interests of all parties concerned can be properly adjusted.

6. The performance of statute labor must be regulated by by-law and a by-law passed for that purpose will remain in effect until repealed. An incoming council may repeal such a by-law if it sees proper. See sub-sec. 5, of sec. 561, of the Mun. Act.

7. The pathmaster derives his authority in a matter of this kind from the council regulating the performance of statute labor, so that he cannot compel any man to do statute labor anywhere except in the division regulated by the by-law.

The latter part of s. s. 2 of s. 109 provides that "Every resident shall have the right to perform his whole statute labor in the statute labor division in which his residence is situate, unless otherwise ordered by the municipal council.

Unfair Equalization of Union School Assessment.

316.—T. I.—In our municipality we have part of a Union School Section. The whole section is composed of parts of four municipalities. Last year, 1899, the assessors of municipalities met for the purpose of equalizing the assessment, and the result was very unfair, some of the municipalities paying a great deal more than their just share, and others a great deal less. Owing to this fact the assessors were prevailed upon to meet this year again, and to reconsider the equalization. They changed the assessment in such a way that all parties interested now admit is just and fair.

1. Can municipality or municipalities recover from the others the amount their part of said section was overcharged last year, according to present equalization.

2. If so, how?

1. No.

2. Our answer to question No. 1 makes it unnecessary to answer this question.

One Person Clerk and Treasurer.

317.—C. H. W.—I have been township clerk for years, and have lately been appointed township treasurer also. Please tell me, can I legally hold both offices, referring me to chap. and sec.

Prior to the amendment to the law in 1897, we expressed the opinion that these two offices could not be held by the same person. One of the reasons why we held this opinion was that the form of declaration of office provided by section 271, of the Consolidated Municipal Act, 1892, indicated that it was not intended that the same person should hold the two offices. The legislature, in 1897, changed the declarations, and added the following subsection to section 271: "(2) Any person who has been elected or appointed to two or more municipal offices which he may lawfully hold at the same time, may make one declaration of office as to all the offices to which he has been elected or appointed, but the same shall be made and subscribed before he enters upon the duties of the said offices." This amendment was, no doubt, made to meet this particular case, and therefore, as the law now stands, these two offices can be held by same person.

Limited Restraint to Cattle Running at Large.

318.—T. P. C.—Some years ago a by-law was passed in our township prohibiting cattle from running at large in one-half of the township, while the cattle in the other half were not restricted at all in the by-law. This was satisfactory to all concerned for some years, until a party who lived in restricted part of township had his stock impounded, when he took legal steps for redress. Council got legal advice that it was not legal to have such a by-law, not operating equally all through the township, and that if let go to a legal decision, council would have to pay costs. The people in half the township are anxious to have their cattle run at large, the other half are willing to let them do so if it does not interfere with legality of by-law. Your opinion would confer a favor on many ratepayers.

We do not think the by-law in this case is good. No reason is given why the by-law is confined to a certain part of the