

THE MUNICIPAL WORLD.

Opening of Part of Road Allowance.

350—D. J. S.—Can a council open 33 feet of a side road that has never been open, they having some time ago previously leased the other 33 feet to a railroad company for a track?

If the the 33 feet proposed to be opened is part of an original road allowance, there is no reason why the council should not open it, if they deem it in the public interest to do so.

Constructing Drain Over Lands of Railway Company.

351—W. W.—About two years ago a municipal drain was dug up to a G. T. R. track. The engineer in charge assessed lands above the track for the outlet. J. H., one of the owners of lands so assessed threatens an action against the township to compel the council to refund the amount already paid for outlet and agree not to collect any more of the ditch assessment against his land until a proper outlet has been provided across the railroad property, there being no outlet for this water across the track up to the present time.

1. Was the engineer justified in so assessing the lands above the track, there being no outlet for the water provided by the scheme?

2. Can the council compel the company to provide an outlet across its property for the water off the lands assessed?

3. If the company can be compelled or is willing to put in a culvert across the track, who should bear the expense?

4. What would you advise the council to do under the circumstances?

1. The engineer should have continued these drainage works to a sufficient outlet, that is to a point where no injury would be done to either lands or roads, if such a course was possible; or, if in his opinion, it was the better course, he should have proceeded as authorized by section 1 of chapter 32 of the Ontario Statutes, 1901. Before instructing the engineer to make his report and examination of the proposed drainage works, the council should have arranged with the railway company for crossing their property as provided in section 85 of chapter 226, R. S. O., 1897.

2. No.

3. The only way the drainage works can be carried across the railway lands is under an agreement with the company entered into pursuant to section 85 of chapter 227, R. S. O., 1897, and the company is not compelled to enter into such an agreement.

4. The council should endeavor to enter into an agreement with the railway company under the above section, and, in the meantime, refrain from collecting any further assessments until the drainage works are properly completed.

By-law Prohibiting Cattle From Running at Large.

352—SUBSCRIBER 1. At present in our township we have a by-law in regard to cattle running at large which allows only two cows to run at large in our township on our roads. Can a person turn out all his cattle on road if he has a man to herd with them. Some say according to the British herd law he can.

2. We are about passing a by-law that all cattle must be herded (that is on our highways). Can we frame the by-law so as two cows per family could be allowed and then, of course, these to be herded?

3. Is a person compelled to keep up a road fence?

4. If a person has no fence along the road and some cattle get on his crop and do damage, is the owner of the cattle responsible?

1. We assume you mean that the by-law allows two cows for *each owner* in your township, to run at large. If cattle are being "herded," that is are in charge of some person on the highway, they are not "running at large."

2. If the by-law proposed to be passed, provides that ALL cattle on the highway shall be "herded," that is in charge or under the control of some person, it will mean that no cattle shall be allowed to run at large in the township.

4. Yes. The owner of the cattle should take care of them, so that they occasion no injury or damage to any other person.

Preliminaries to Passing By-law Granting Bonus to Manufacturing Industry.

353—W. L.—1. A company applies to a municipal corporation for a bonus towards the establishment of some industry. Before the municipal council can introduce such a by-law must they not have a petition presented representing a certain percentage of voters and of the assessed value of the property owners concerned? If so, what number?

2. Also in order to have valid a by-law of this nature has it to be approved of by the Legislative Assembly?

3. Also say where it gives the law regarding the petitioning. I notice several times in the Act relating to granting bonuses, the matter of petition is referred to.

1. We assume that the industry referred to is a MANUFACTURING industry. If so, a petition from the voters or rate-payers of the municipality is not a necessary preliminary to the passing of a by-law of this kind. But it must be passed in accordance with the provisions of sections 8, 9 and 10 of chapter 36 of the Ontario Statutes, 1900.

2. No.

3. There is no such law. The petition you saw mentioned was probably a request by a council that had passed a by-law of the kind, which by reason of non-compliance with the existing law was defective in some particulars, to legalize the by-law, which would otherwise be irregular and inoperative.

Assessment of Goods in Store of Fish Company.

354 COMMUNICATION—A certain fish company carries on a store business during the fishing season, and as the store is not started till after the assessor has returned the roll, the goods are not assessed at all. There is no by-law in force imposing a tax on goods.

1. Can the goods be assessed any time before Court of Revision?

2. If not, what proceedings should the council take in the matter?

1 and 2. By saying that "there is no by-law in force imposing a tax on goods, we assume that it is meant that the council of the municipality has not passed a by-law pursuant to section 36 of the Assessment Act. These goods cannot be assessed between the term of the return of the assessment roll by the assessor, in accordance with the provisions of the Assessment Act, and the sittings of the

Court of Revision. No alteration or addition can be made in or to the assessment roll after it has been duly returned by the assessor, except under the authority of the Court of Revision, or Judge, or Stipendiary Magistrate on appeal to him from such court.

Assessment of Uncompleted Buildings.

355—INQUIRER—Has an assessor in an incorporated village any authority to exempt from assessment a property upon which is erected a dwelling house and stable but not quite finished ready for occupation? Does the fact of the buildings not being finished exempt them from any taxation.

No.

By-law Establishing New Road.

356—J. D.—1. Is it necessary for a township council to pass a by-law to open up and establish a new road apart from the regular highway if none of it has to be forced?

2. If so, would the previous notice be required?

3. Should the by-law be passed before money is expended on making the road?

1. Yes. See section 637 of the Municipal Act.

2. Yes. See section 632 of the Act.

3. Yes.

Formation of Union School Section.

357—W. D. M.—A union school section was formed four years ago from portions of existing sections in two municipalities. A movement is now on foot to establish another union section in which some of the sections will be affected that were affected by the former union. Can any of the sections whose boundaries were changed by a former union be altered for a period of five years, as mentioned in sub-section 11 of section 43, chapter 292, R. S. O., 1897, or does this section not apply to this case?

The law governing the matter is now to be found in sub-section 11 of section 46 of chapter 39 of the Ontario Statutes, 1901. As we understand it the formation of the proposed new union school section will in no way alter or interfere with the boundaries of the union school section formed four years ago, but that the new union school section will be partly composed of portions of the sections, out of which the existing union school section was formed. There is nothing in the School Act to prevent the including of portions of these school sections, other than those included in the existing union school section, in the union school section proposed to be now formed.

Collection of Claims Against Owner of Buildings on Highway.

358—I. A.—A certain party called A, purchased lumber and shingles and building material to erect a photograph gallery, and had the gallery erected on the public highway. A, the party who bought the lumber and built the gallery, left the country without paying any of his creditors for the material used in the building. Another party called B, and who had a small claim against A, after A had left, removed the building, which was set on blocks, from the highway on to his own premises, adjoining the public highway, without taking any legal steps in the matter. What I wish to know is, can B hold this