

Qualification of Councillors.

165—SUBSCRIBER.—There is some doubt as to the validity of the election of the four councillors of the township. Proceedings to contest the validity of an election must be commenced within six weeks after an election or within one month after acceptance of office by the persons elected. Now suppose no person takes proceedings to contest the validity of the election within the specified time, after the month has passed would they (the councillors) be held to be properly elected and in a position to go on and do business?

The law is that business transacted by municipal councillors who have taken their seats in the council is valid, although one or more of them is or are disqualified.

Duties of Auditors—Municipal Business Done by Disqualified Councillor, Legal.

166—COUNCILLOR.—1. In your issue of Feb. 2nd, 1902, No. 92, "Time within which an audit should be made," you mention a penalty of \$20. Who should impose that penalty, the council or a magistrate before whom information is laid?

2. On Dec. 2nd, 1902, our council appointed two auditors at a salary of \$20 each, at the time stipulating that the report should be in within the time set by law (sub-section 3 of section 304 Municipal Act.) The report was not completed until Feb. 2nd, 1903. May the council deduct \$20 from the salary due auditors, or must an information be laid before a magistrate? The report was accepted by council.

3. If a councillor is elected and takes the oath who is not qualified by reason of not having a high enough assessment, are the acts of the entire council illegal?

1. The council has no authority to impose this penalty. If recoverable, its payment should be enforced by summary proceedings taken in accordance with the provisions of section 704 of the Municipal Act.

2. If the council has passed a by-law pursuant to sub-section 1 of section 301 of the Municipal Act, providing for the appointment of auditors in the month of December in each year, that such by-law came into effect prior to the year 1902, and that these auditors were appointed pursuant to its provisions, the auditors were properly appointed by the council and should be paid the salary agreed upon without any deduction, by reason of their not having filed the report within the statutory period, or otherwise. The council accepted the auditors' report and the latter can successfully enforce payment of their respective salaries. In any event the council has no authority to deduct \$20 from the amount of the salary of each auditor (presumably the penalty imposed by sub-section 2 of section 304). Section 704 provides the means for enforcing its payment, if recoverable.

3. No.

Power to Pass Through Adjoining Lands When Roads Blocked With Snow.

167—J. R.—A public highway is blocked with snow by reason of high rail fences on each side of the highway so that it is impossible to travel. Can a person who takes down the road fence and enters into the fields adjoining with his team be liable to be prosecuted for trespass?

The law in a case of this kind is stated as follows: "When the highway is

blocked, by reason of some sudden or unexpected obstruction, the public have the right to pass over adjoining property, to get around the obstruction, without being deemed guilty of a trespass."

Collection of Separate School Taxes.

168—SUBSCRIBER.—1. Two years ago we changed our public school into R. C. separate school, and the trustees of the public school only lease to the trustees of R. C. separate school the school house and furniture. Have I the right to act under R. C. Separate School Act regarding the limit of the section?

2. A supporter of the public school has always assessed a lot in our section to have the right to send his children and he won't assess his farm. Have I the right to collect the tax of his farm for last year and the year before, 1902-1901?

3. We had a Protestant in our section, and when we made the change of our school his tax was sent to the nearest public school, and he never claimed a share in the school house furniture. Can he claim it now? The change was made Jan. 12th, 1901.

1. A separate school has no territorial limits similar to those assigned to public schools under the provisions of the Public Schools Act, 1901. The supporters of a separate school are those who are such under the provisions of the Assessment and Separate Schools Act, and those who file notices with the clerk of the municipality under the provisions of section 42 of the latter Act. You have therefore nothing to do with the limits of the separate school.

2. No.

3. If this man's lands are located within the territorial limits of the public school section, to which the school house and furniture leased by the R. C. separate school trustees belongs, he has an interest in the school furniture the same as any other ratepayer in the public school section and that only, but such interest is not one for which he can recover any money.

Power of Councils to Grant Rebates of Taxes.

169—F.—In 1902 the first assessment roll that was made was set aside by the Judge at his Court of Revision of same. The council then proceeded to have a new assessment made, which of course left the return of the roll later than usual. The Court of Revision of the new roll was duly held, and there being no appeals to the Judge, the roll was finally confirmed and the collector's roll made, and in December some people came to council for a rebate or remission of part of their taxes owing to the fact that the buildings assessed were not erected or completed until after June or July last year.

1. Has the council any legal right to grant rebates of taxes, the parties not having made any appeal to Court of Revision?

2. If so, under what section of the Act are they justified?

3. If the council had not the right by law, are they personally responsible for such rebate or refund of taxes?

1. No. Section 74 (sub-section 1) empowers the COURT OF REVISION to grant rebates of taxes in certain cases, but this is not one of them.

2. Our answer to question No. 1 renders it unnecessary to reply to this.

3. The granting of these rebates would

be a misapplication of the funds of the municipality, for which the members of the council would be responsible.

Duties of Councils and Treasurers as to Issuing and Cashing Orders or Cheques.

170—SUBSCRIBER.—In the beginning of any year, that is if the collector has made his returns to the treasurer, there is or should be in the hands of the treasurer the interest on debentures, school funds and whatever unexpended moneys raised by debentures or special levies for the disposition of which the treasurer and his sureties are responsible, and as treasurers are required to give bonds for the faithful performance of their duties, according to law, the remuneration for such services as a rule is very small considering the responsibility they assume. Such funds on hand are in many towns drawn upon to enable a council to meet their obligations without resorting to borrowing from the bank.

1. Can a council legally draw on such funds for current expenditure?

2. What is the treasurer's position regarding such funds?

3. What is the proper procedure for a council to adopt so as to secure the treasurer and his sureties from any personal liability, if any, in making use of such funds for current expenditures?

1. No. If the council requires any money for this purpose, it should borrow the amount under the authority of section 435 of the Municipal Act.

2. The duty of a municipal treasurer, as prescribed by section 290 of the Municipal Act, is to pay out any moneys in his hands belonging to the municipality to such persons, and in such manner as the laws of the Province and the LAWFUL by-laws or resolutions of the council of the municipal corporation whose officer he is, direct. He should therefore refuse to honor a cheque or order drawn on the account for current expenditure, if there are no funds in his hands to the credit of that account when it is presented. This section further provides that "the treasurer shall not be liable to an action for any moneys paid by him in accordance with any by-law or resolution passed by the council of the municipality of which he is treasurer, unless where another disposition of such moneys is expressly made by statute."

3. The council should not issue an order on the treasurer payable out of and chargeable to an account to the credit of which the treasurer has no moneys in his hands, and, if the council does this, the treasurer should refuse to honor or cash the order or cheque.

Collection of Taxes in Districts.

171—A READER.—Three townships in a district in New Ontario are united as a municipality. There is no county organization. I am asked: "(a) In the absence of a by-law, can the tax collector of this municipality add five per cent. to taxes that are unpaid at a certain date? (b) Can the treasurer of this municipality on the first of each month of May add ten per cent. to taxes returned to him and unpaid at those dates, as is done by county treasurers? (c) What provisions exist, if any, for collecting taxes in arrears for three years by the sale of the lands in the case of said municipality?"