

proclaim.....day, the.....day of  
....., A. D. 1...., a public holiday  
in the said..... of .....

Dated at.....this.....day of  
.....A. D. 1.....

Mayor of the.....  
of.....

#### Impounding Cattle.

435.—A. B. A.—Can cattle legally be impounded on the Sabbath?

Yes.

#### Taxes—Mineral Lands—Leased.

436.—A. J. M.—The greater portion of the land in this municipality is held as mineral land, some of it being patented, and some of it merely being leased.

The taxes, in most cases, have not been paid on these lands, since the municipality was formed, which is about four years ago, and now stands against the land as arrears. These properties being undeveloped, there are no chattels, etc., that could be distrained.

1. What steps if any, can be taken to secure the taxes against these lands?

2. Who is the proper person to sell these lands if they can be sold?

1. Subsection 1 of section 7 of the Assessment Act provides that all property vested in or held by Her Majesty shall be exempt from taxation. The fee in the lands you mention *leased* seems to be still in the Crown. Subsection 2 provides that "where any property mentioned in the preceding clause is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable." Section 188 provides that, "If the treasurer sells any interest in land of which the fee is in the Crown, he shall only sell the interest therein of the lessee, etc." The lands that have been patented and the interest of the lessees, in the lands leased, can be sold to realize the amount of the arrears of taxes payable in respect of the same.

2. Section 53 of chapter 225, R. S. O., 1897, provides that "subject to the provisions of sections 56 to 59 (which apply to Muskoka and Parry Sound only) arrears of taxes due to any municipality in any of the said districts, shall be collected and managed in the same way as like arrears due to municipalities in counties; and the treasurer and reeve of such municipality shall perform the like duties in the collection and management of arrears of taxes as in counties are performed by the treasurers and wardens thereof; and the various provisions of law relating to sales of land for arrears of taxes and to deeds given therefor, shall, unless otherwise provided by this Act, apply to the said municipalities and to sales of land therein for arrears of taxes due thereon and to deeds given therefor."

#### Unopened Streets in Survey.

437.—CLERK.—In the survey of a town a street was laid out but never was opened; all the cross streets leading to this one were never opened further than the street immediately to the east of the above mentioned street. Now a party owning lots partly on opened streets and on the unopened street, wants the council to

open up this unused street although he has access to his lots from the streets already open.

1. Can he compel the council to open this unused street, and if so what steps are necessary to be taken? The unused street has been enclosed by those holding lots adjacent thereto

2. Will the council have to assume the responsibility in opening up said street.

3. Can they forcibly remove the fences, etc.?

1. No.

2. No.

3. If the street in question is a public highway the council has the right to remove the fences if they are in the street

#### Collector and Auctioneer—Fences and Roads.

438.—J. M.—1. Can a tax-collector legally act as auctioneer at a sale of goods seized to recover taxes, or will he have to employ a licensed auctioneer?

2. In our township the road allowance is 40 feet by law. Can the owners of land along a road given in lieu of the concession be made to remove their fences so as to allow of 40 feet clear of the fence? The owners of the land hold possession of the concession allowance.

3. If I can have the fences removed, what is the legal process to have them removed?

1. Yes. He is not required to employ a licensed auctioneer for the purpose or take out an auctioneer's license. The latter part of section 138 of the Assessment Act provides "that the collector or his agents shall sell at public auction, etc."

2. Yes. Assuming that the land given in lieu of the concession road was legally transferred to and assumed by the municipality, and dedicated to the public as a highway.

3. Notify all parties having fences on the road allowance to remove the same within a reasonable time, and in the event of their non-compliance with the notice an action may be brought to compel the removal. If the fences in question are worm fences and if only one half of the width thereof is upon the highway it will be necessary for you to comply with subsection 5 of section 557 of the Municipal Act.

#### Appointment and Dismissal of Committees and Municipal Officers.

439.—A. B. C.—1. At the first council meeting in the year, the committees are appointed with a chairman for each. If the chairman fails to carry out the wishes of the majority, can he be dismissed? If so, how?

2. The street inspector is also appointed at a yearly salary. If he fails to give satisfaction to the majority of the council, can he be dismissed before the year has expired, by paying him up to time of dismissal?

3. What steps are necessary to take in such a case?

1. Yes. If a chairman of a committee has been appointed by by-law his removal from the chairmanship should be by by-law, repealing the one by which he was appointed, or if he was appointed by resolution, then by the rescission of the resolution.

2 and 3. Assuming that the inspector was hired for a year, we do not think the council can dismiss him in the absence of sufficient cause without rendering the municipality liable for damages.

In *Broughton vs. Brantford*, 19 U. C. C. P., p. 434, a municipal officer was held entitled to damages for wrongful dismissal. He was dismissed in the month of September. Hagarty J. at p. 437 said "Assuming then that plaintiff, in 1867, continued an officer of the corporation appointed under their seal, and that his office was such as was usually the subject of a yearly hiring, could he be dismissed during the year at the defendants' pleasure?"

My impression is, that unless he held the appointment at the yearly salary under the corporation seal, he could be so dismissed, and that his claims would be limited to compensation for services actually rendered. As I consider that plaintiff remained up to the date of his dismissal the defendant's officer, under their corporate seal, I think he is entitled to compensation for a wrong dismissal, in like manner as if employed by an individual.

Again in the case of *Davis vs. Montreal*, 27 S. C. R., p. 539, it was held, under a statute substantially the same as the above provision, that when the engagement has been made indefinitely as to duration, the council has power to dismiss summarily and without previous notice, upon payment only of the amount of salary accrued to such officer up to the date of such dismissal. The language used indicates that such power does not exist in the case of a definite engagement, and we think that a contract with a collector is a definite engagement.

#### Floating Debt Consolidation—Tax Seizure—Debenture Interest—Transient Trader—Dog-Tax—Collection of Taxes.

440.—SUBSCRIBER.—When do we pass by-law for act to consolidate floating debt? Is it not voted on?

2. John Jones did not pay his tax in 1898, can we seize for it in October, 1899.

3. What is the highest rate of interest which can be put in a debenture?

4. John Jones comes here after tax-roll is out and rents a place to start a store. He pays no tax. Can we charge him a license fee as transient trader? If he remains to pay tax in 1900, must we remit it?

5. A by-law says dog-tax \$1, but after a certain date if not paid is \$2. Is this by-law legal? Can \$2 be collected? Is it better to collect it before a J. P., or in Division Court? Should they pay this dog-tax into treasurer or to collector and without demand made or notice given by either officer?

6. There seems to be a doubt as to how taxes should be collected, both in municipalities and law courts. Please give the simple, clear way for all officers to proceed. Collector starts out October first. He cannot get in all tax collectable in this year, some he gets in early part of next year. He does not like to seize on all as they will pay. In February 1900 he finally returns the roll, but still there are some he does not seize, that he could. We appoint a special collector to collect, then when we make new roll we put all these old taxes on it for the new collector, and so it goes from year to year. No seizure, but at the end of three years we put up the lands for sale. Is all this legal? What is proper way? We are not in county formation. We try to collect all we can each year in money as each collector goes out. Is land sale legal when no seizure made or attempted?

7. Can a collector break open a door to seize for taxes?

8. Is it advisable to get a lecture by the Good Roads Inspector?