

QUESTION DRAWER.

Subscribers are entitled to answers to all questions submitted, if they pertain to Municipal matters. It is particularly requested that all facts and circumstances of each case submitted for an opinion should be stated as clearly and explicitly as possible. Unless this request is complied with it is impossible to give adequate advice.

Questions to insure insertion in the following issue of paper should be received at office of publication on or before the 20th of the month.

Communications requiring immediate attention will be answered free by post, on receipt of a stamped addressed envelope. All questions answered will be published, unless \$1 is enclosed with request for private reply.

Electric Lighting—Unincorporated Village.

183.—J. H. C.—In this municipality is an unincorporated village which had a by-law passed some years ago giving it power to be taxed for electric lighting. One of the rate-payers of said village, who was instrumental in having the by-law passed, now claims total exemption from bearing any share of the cost of such lighting, on the ground that his lots are farm lands. These lots have always been under the electric light by-law. If these lots are farm lots, is his contention right?

BY-LAW NO. 4 A. D. 1891.

TO ENABLE THAT PORTION OF THE VILLAGE OF HANOVER SITUATE IN THE TOWNSHIP OF BRANT TO BE ASSESSED FOR ELECTRIC LIGHTING.

Whereas a majority of the freeholders and householders in the village of Hanover situate in the township of Brant, also lot number seventy-two in the first concession, south of the Durham Road, and parts of lot number seventy-two in the first concession north of the Durham Road have petitioned the Municipal Council of the Township of Brant to enter into negotiations with the Reliance Electric Light Co., their successors and assigns to erect and maintain not less than two arc lights of not less than 1,500 candle power each (the number of said lights not to exceed five) for a period of two years.

Be it therefore enacted, etc., etc., 1st that Andrew Waechter, Hugh Wilson and James Lockie be a Committee to make a contract with the Reliance Electric Light Company for the above purpose.

The by-law in question was passed when section 627, cap. 184, R. S. O., 1887, was in force. It is now section 686 of cap. 223, R. S. O., 1897. The only power given under this by-law was to authorize the committee therein named to make a contract with the Reliance Electric Light Company. The by-law does not at all profess to provide for any assessment. Another by-law ought to have been passed after the contract had been let for assessing the cost in the manner provided by this section, and the streets or parts of streets which were to bear the cost ought to have been designated in the by-law. If this course had been taken, the cost of lighting for each year could have been raised and the principle of "pay as you go," could have been carried out. The only course now for you is to have a by-law prepared and passed, reciting the petition and that the lighting has been done and the cost of it, etc., according to the facts, and provide for an assessment

either according to frontage or the assessed value of the property, and it ought to provide for the holding of a Court of Revision, though it does not appear very clearly that that is required.

Drainage.

184.—M. G. P.—I own a lot, my neighbor on my left his ground is lower than mine. There is considerable water on his land just now; my neighbor on my right has no drain. There was a swamp in a large field by his fence. The Board of Health made the owner of the field lay a drain. My neighbor on the left claims that is the natural way for the water to drain through my lot in front of my barn into my neighbors lot. Last spring not wishing to have any trouble with him, I let him dig a drain through my lot; he would not tile it, I filled it up. Has he any right to go through my lot? Can he compel me to keep that ditch open?

No, unless there was some agreement between you, founded upon a sufficient consideration and enforceable, but it does not appear that there was such an agreement as we understand the facts. The only way he can obtain the right of drainage across your lands is by proceedings under the Ditches and Watercourses Act.

Pathmaster's Non-Acceptance of Office—Liability.

185.—COUNCILOR.—Is it entirely optional with a person duly appointed Pathmaster by a township council to act or not to act? If it is not optional, are there any conditions whereby he may be free from said position?

Section 702 of the Municipal Act authorizes councils to pass by-laws:

"1. For inflicting reasonable fines and penalties not exceeding \$50 exclusive of costs. (a) Upon any person for the non-performance of his duties, who has been elected or appointed to any office in the corporation, and who neglects or refuses to accept such office, unless good cause is shown therefor, or to take the declaration of office and afterwards neglect the duties thereof." The council may appoint another pathmaster in his place.

How Village Corporation may be Discontinued.

186.—J. A. R.—The village of Casselman was incorporated in the year 1888 with a population of about 1,600. It has decreased to about 400 or 500. We have an existing debt as follows, bridge debt about \$1,600 and floating debt of \$950. We would like to go back into the township. Can we? and what proceedings will we take to gain this point?

A resolution of the village council by a two-thirds vote approved by the electors in the manner required for by-laws creating debts, the approval of the council of the adjoining municipality and the proclamation of the Lieutenant-Governor in Council will enable you to get back into the township. See section 19, cap 223, R. S. O., 1897.

Assessor's Resignation and Appointment—Dog Taxes.

187.—E. W.—This is an incorporated village. At the last meeting of the Council the assessor for 1898 tendered his resignation and was accepted. The vacancy was filled by resolution amending the by-law for appointing the official.

1. Was that the legal method? Now the new appointed will not act.

2. Will there need to be a new By-law or can the old By-law be still further amended without giving the usual notice?

3. Can the proceeds of the dog-tax be used for current expenses?

4. Or such part as may be deemed necessary for the collection of the same?

1. The proper way was to have passed a by-law appointing the new assessor in place of the one who resigned. Section 325 of the Municipal Act provides that the power of the council shall be exercised by by-law, when not otherwise authorized or provided for.

2. Pass a new by-law recinding the other by-law and resolution and appointing another assessor for the year, stating that the first assessor had resigned and that the second one refused to act.

3. Yes, but when it becomes necessary in any year for the purpose of paying charges on the same, the fund shall be supplemented to the extent of the amount which has been applied to the general purposes of the municipality. See section 7, cap. 271, R. S. O., 1897.

4. Yes to be afterwards supplemented if necessary as provided by said section 7.

Treasurer's Office Burned—Liability of Council or Auditors.

188.—W. R. K.—Municipal treasurer's office was burned on the first Monday of March, 1897. The treasurer claims that the township funds, amounting to \$344.95, were consumed in the fire. The house belonged to another party. The treasurer's wife, who usually transacted the business in his absence, refused to cash a trustee's order on the preceding Saturday evening, stating to the order-holder that there was not five cents in the treasury.

On the 26th February, 1897, the secretary-treasurer of one of the school sections in the municipality, demanded \$50.00. The treasurer paid him \$25.00, with the remark, "hope to have more for your section shortly, and stating that \$25.00 is balance of rates for 1895. Other orders were treated in a similar manner immediately before the fire. Council 1897 had not taken any security from the above-referred-to treasurer. The auditors of 1897 neglected to report on the treasurer's securities.

1. Can the treasurer be indicted as guilty of embezzlement, who, when having funds in his custody of the municipality, refuses to cash an order of the reeve's or trustee's.

2. Can the individual members of the council of 1897 be compelled to make good the loss?

3. Can the auditors be held liable in the above described case?

1. If the treasurer had moneys belonging to the municipality in his hands and such moneys were converted to his own use or that of some other person than the corporation, with the intent of defrauding the corporation, he could be indicted for embezzlement, but we cannot say whether such a case as this can be made out against him. His refusal to cash the order, even if he had sufficient funds, would not make it a case of embezzlement. When the whole facts of the case are known it may be a case of breach of trust rather than a case of embezzlement.

2. We have not been able to find any case where such a point as this has been considered by the courts, but we do not see why the members of the council should not be personally liable for the loss assuming that the treasurer himself