

Can Non-Resident Councillor Sit and Vote in Council?
Wrongful Act of Assessor.

348—NEW SUBSCRIBER.—1. A is a township councillor in 1906 and when elected last January was a resident of township. In the spring he rented his farm and moved into adjoining township about five or six miles from boundary. If he sits in council for remainder of year will it cause any business passed by council to be illegal?

2. If other members of council passed any by-laws or resolutions without his vote, would they be legal?

3. If no steps are taken to unseat him, can he still hold his seat and vote as formerly without affecting the legality of business done? A is still on the roll as resident.

4. D is assessor. At court of revision one ratepayer, C, was lowered \$50 by court. He refused to accept his schedule and D privately lowered him \$50 more without the knowledge of the court. Can council change figures to their own valuation at court without notifying C or D?

5. What could be done to D?

1. No. As long as the man was a resident of the municipality or within two miles thereof at the time of his election, he is quite competent to take part in the proceedings of the council for the balance of the year, no matter where he resides now.

2. Yes, provided a quorum of the council (that is a majority of the members) was present when the by-law or resolutions were voted upon, and since your municipality is a township, and the council consists of five members, if at least three members voted in favor of the by-laws or resolutions (see sections 268 and 269 of the Municipal Act).

3. Yes.

4. Assuming that C had previously filed an appeal to the township court of revision, pursuant to the provisions of the Assessment Act, and the court, after hearing the evidence, reduced his assessment by \$50, his assessment should now be the amount as it appeared on the assessment roll before the sittings of the court, reduced by \$50, and should remain at this figure, unless altered by the county judge on appeal to him. Neither the assessor nor any person other than the county judge on appeal, has any right to make any alteration whatever in the roll after it has been revised by the court of revision. No notice is required to be given C or D, that the amount of the assessment on the roll is that fixed by the court of revision.

5. Nothing. What the assessor did in this case had no legal effect. It did not hurt any person and therefore no proceeding can be taken against him for the purpose of punishing him.

Councillor Resigns His Seat—Election of Successor.

349—REEVE.—1. One of the members of our council has resigned his seat on account of a proposed loan being given him by corporation to enable him to re-establish his business, which was recently destroyed by fire. How should we proceed to nominate and elect another member? in the usual way?

2. Should the candidate who at the last municipal election had the next highest number of votes be entitled to the seat?

3. If such candidate is the proper person to

take the seat, in what way should we proceed to declare him elected?

1. A warrant for a new election to fill the vacancy should be issued by the person and in the manner mentioned in section 212 of the Municipal Act. The election must be held by the returning officer and his deputies, within fifteen days from the receipt by them of the warrant, and the clerk must appoint a day and place for the nomination of candidates, and the election must, in respect to notices and other matters, be conducted in the same manner as the annual elections. (See section 214 of the Act.)

2. No.

3. Our answer to question No. 2 renders it unnecessary to answer this question.

Resignation of Councillor—Election of Successor.

350—T. W. S.—Jno. Brown, a member of a village council, tenders his resignation on the ground that he is about to enter into a contract with the council. The council accepts the resignation and orders a new election. Some say that the defeated candidate, who obtained the highest number of votes at last election, is the one who is entitled to the seat. I differ. What is your opinion?

We agree with you. This vacancy can be filled only by the holding of a new election, in the manner provided by sec. 212 and following sections of the Municipal Act.

Council has no Power over Private Walks.

351—A. C. W.—In building granolithic sidewalk along a street, where the work has been commenced by petition and the buildings being back from the street line, can the council (if the private owners wish it) assess the part on the private property along with the other and extend the payment over the same period?

No. The council has nothing to do with portions of work constructed on private property.

Pathmaster's Right to Take Gravel.

352—T. C.—Please inform me whether a pathmaster who owns a gravel bed and who is drawing gravel from that pit on his division, can forbid the pathmaster in the adjoining division, from taking gravel from the same pit. There is a road into the pit so no damage would be done to the crop, and the municipal council has always paid for all the gravel used on the roads, whether for statute labor or for road jobs, and also for any damage done to crop by driving over it. What would be the proper course to pursue to compel the said owner of pit to allow the gravel to be taken? There is no other pit near.

The pathmaster who owns the gravel pit has a perfect right to prevent other pathmasters or officials of the municipality from taking or removing gravel from his pit without his consent, so long as the property in the pit is vested in him. In order to compel the owner to allow gravel to be taken from the pit for road purposes, if the municipality cannot make an amicable arrangement with him for the purchase of the pit, or a sufficient part of it or the gravel, the council may take proceedings to expropriate such portion of the pit as is deemed necessary, pursuant to the provisions of sub-section 10 of section 640 of the Municipal Act.

Duties of Pathmasters.

353 W. S.—On a road which is the town line between two townships about one mile from an incorporated town and leading market, there is a high fence on both sides of the road, which caused road to drift badly with snow in the winter. Then pitch-holes form one after another two or three feet deep. Pathmasters on both sides of the townline claim they repaired those holes to amount of seven dollars each, when one township has paid their pathmaster and the other refused on the ground that he should turn it on his statute labor. Can he collect his pay, there being no by-law of township council for keeping the roads open in the winter? We claim the road was out of repair. Please give your opinion.

Unless the council had passed a by-law pursuant to sub-section 3 of section 537 of the Municipal Act, appointing this man a pathmaster to make and keep open this road during the sleighing season, he had no authority to do work of this kind, nor could he call out persons liable to perform statute labor to do it. The work cannot be turned on this year's statute labor, nor can pathmaster compel council to pay him or others acting under his instructions for doing it. However, if the work was really necessary, and the pathmaster did no more than was sufficient to put the road in a proper state of repair, the council would be doing no thing wrong in paying him such a sum as it may deem fair and reasonable for doing the work.

Mortgaged Lands Can be Sold for Unpaid Local Improvement Rates.

354—E. C.—Please inform me if unpaid rates for local improvement cement sidewalk can be legally returned to the county treasurer "and lands sold for same" against land previously mortgaged for all it is worth. My own opinion is that lands can be so returned to the county treasurer notwithstanding their being mortgaged. Others think not, it being unfair to those who hold mortgage.

We quite agree with you. These lands can be returned and sold for arrears of local improvement rates in the same manner as for arrears of ordinary taxes.

Payment of Assessors for Equalizing Union School Section Assessments.

355—M. F. A.—I think I saw in the WORLD some time ago, that union school sections now pay the assessors fees for equalizing said sections. How is this done? Do the assessors collect direct from the sections concerned, or do the councils pay their assessors and levy the amounts afterwards upon the union sections?

This question can be answered best by quoting the contents of a letter on the subject written by the Deputy-Minister of Education to a school inspector in Chatham. They are as follows:

DEAR SIR,—I am directed by the Minister of Education to state in reply to your letter of the 17th inst. that the work of the assessors becomes that of referees or arbitrators when engaged in equalizing the union school sections' proportions, and their payment should be from the funds of the union section.

Your obedient servant,

JOHN MILLER,

Deputy-Minister.

Toronto, 20th February, 1896.