

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 stamp addressed envelope. All Questions answered will be published unless \$1 is enclosed with request for private reply.

Duties of Clerk as to Separate School Supporters.

230—TOWNSHIP CLERK.—A Roman Catholic Separate School has been established in a municipality adjoining ours. Twenty-three R. C. ratepayers of our township wish to become supporters of said school and to be exempted from public school rates. To enjoy that privilege you are aware they must make a declaration as required by section 42 Separate Schools Act and file same with the clerk of municipality on or before March 1st. Now these ratepayers made the required declaration and entrusted Rev. Mr. C. to file it with me, who instead of delivering it personally at my office, registered it to my address, taking a certificate of registration from his postmaster, dated February 28th, 1902, and according to postmark on envelope it arrived at my post-office on same date but it did not reach me until March 18th, although I had been in the office several times while it was there.

1. What position shall I, as clerk, take, that I may do justice in a legal sense to all concerned?

2. Some of the ratepayers live further than three miles in a direct line from the school. Is it my duty to take no notice of that fact but just place them on the separate school list and leave that point to be fought out by those interested?

1. Subsection 1 of section 42 of the Separate School Act provides that "every person paying rates, whether as owner or tenant, who, by himself or *his agent*, gives to the clerk of the municipality notice in writing that he is a Roman Catholic, etc., shall be exempted, etc." There is no provision made for sending this notice to the clerk *through the post office*, and, as it did not reach you on or before the first of March, we are of the opinion that the notice was insufficient. You should, therefore, take no action at all.

2. If ratepayers voluntarily give the notice mentioned in subsection 2 of section 42, and are willing to contribute toward the support of a separate school, located more than three miles from their respective places of residence, there is nothing in the Act to prevent their so doing. Section 43 does not affect such a case as this, and it is no concern of the clerk's as to whether the persons giving the notice reside within the three mile limit or not, but as the notice was insufficient you will not be concerned about the point.

Compulsory Vaccination.

231—J. M. D.—In the event of a small-pox case in a municipality, has the local board of health power to and must they enforce compulsory vaccination in the municipality?

It is not the duty of the local board of health to enforce vaccination. Section 15 of chapter 249, R. S. O., 1897, provides that the COUNCIL of any municipality, where small pox exists, MAY order the

vaccination or re-vaccination of all persons resident in the municipality, etc.

Duties of Town Treasurer and Collector.

232—E. D.—1. According to section 295, chapter 223, R. S. O., 1897, a municipal treasurer cannot be a collector. Does that prevent a treasurer receiving taxes at his office or does it prevent him from calling on persons in arrear and demanding payment? Or can a treasurer, where no collector has been appointed—taxes being payable at treasurer's office—collect taxes in arrear by distress? If not, what would be the proper course to pursue?

2. Can a treasurer, in any sense, when taxes are payable at his office, be considered a collector? If so, would his sureties be liable for any act done by him which might be construed to mean that he was acting as collector and not as treasurer if the bonds did not specify liability for acts other than that of treasurer?

1. If the council has passed a by-law pursuant to the provisions of section 60 of the Assessment Act (as enacted by section 4 of the Assessment Amendment Act, 1899), the treasurer will have authority thereunder to RECEIVE payment of taxes, and it will be his duty to do so. The treasurer has nothing to do with calling on persons in default and demanding payment of their taxes. This is the duty of the collector. No provision is made for the collection of taxes from parties in default by distress by the treasurer. A collector should be appointed by the council of the municipality to do this work. The only instance in which a town treasurer is authorized to distrain for taxes in arrears is that mentioned in section 171 of the Act. See also section 224.

2. A treasurer cannot in any sense be considered a collector of a municipality so far as the official capacity of the latter and the discharge of his duties are concerned. The sureties of the treasurer are responsible for the proper and faithful performance of such duties as the statute requires him to perform as TREASURER only.

"Herding" of Cattle on Highway.

233—J. H. W.—We have just passed a by-law prohibiting cattle or other animals from running at large or being herded on the public highway, before the 24th of May or after the 1st of October. What is the law regarding cattle being herded? Can parties owning land along the public highway prevent herders from herding cattle in front of their land or have they the right to herd any place as long as they are doing no damage?

Subsection 2, of section 546, of the Municipal Act, authorizes the council of every township, etc., to pass by-laws for restraining and regulating the running at

large and trespassing, etc." of animals. No authority is given to such councils to preclude these animals from being on the highway, when being driven from place to place or being "herded" as you term it, under the charge of some person or persons, any portion of the by-law which relates to cattle *not running at large* on the highway, or trespassing, is beyond the power of the council to enact and cannot therefore be enforced.

Opening of Road in Unincorporated Village.

234—T. C. What is the legal way or proceeding for a township council to open a new road in an unincorporated village?

The council should pass a by-law pursuant to section 637, of the Municipal Act, after the preliminary proceedings, prescribed by section 632 of the Act, have been strictly followed and observed. If lands have to be expropriated in opening and establishing the road, compensation must be made to the owners of the lands taken, pursuant to section 437 of the Act.

Assessment of Personality When Owner Does Business in Two Municipalities.

235—SUBSCRIBER.—A resides, owns property and has business interests on one side of township dividing townships; also owns property and has business interests with office, keeping notes, etc., on other side of townline.

1. Which township has the legal right to assess him for income?

2. Are notes assessable for face value or the income derived from them?

1. Subsection 2 of section 41, of the Assessment Act, provides, that "if a person has two or more such places of business (as those mentioned in subsection 1) in different municipalities (or wards) he shall be assessed at each for that portion of his personal property connected with the business carried on thereat; or, if this cannot be done, he shall be assessed for part of his personal property at one place of business and for part at another; but he shall, in all such cases, produce a certificate at each place of business of the amount of personal property assessed against him elsewhere." By subsection 10 of section 2 of the Act the words "personal property" are made to include "income." This person appears to have places of business or business interests in both municipalities, therefore the income assessment should be divided between them in accordance with the provisions of subsection 2 of section 41.

2. Notes are personal property and are assessable to the owner as such at their ACTUAL VALUE. See subsection 10 of section 2.

Closing Road—Appointment of Non-Resident Postmaster.

236—SUBSCRIBER.—In the enclosed draft the roads are marked. Lot marked "A" belongs to Agricultural Society. Lot marked "B" belongs to a merchant. Each lot contains about an acre. Lot B has frontage on concession also on government road. Sideline is not used for travel, government road takes its place. Sideline is not opened north of government road nor south of concession.