

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.

Notice to Owners of Filing Engineer's Report Not Necessary in This Case.—Powers of Council Under Section Seventy-Five.

449—G. I.—I. A and B present a petition to the council requesting that a drain be cleaned out under the Ontario Drainage Act. The engineer reports on said work, on the filing of said report is it necessary to notify the several parties interested of the consideration of said report?

2. C, one of the parties interested urges the council not to adopt said report as the other ten owners benefited by said drain do not know of the consideration of said report on it being filed, would it not be proper to let the several parties interested know the date of the meeting when said report will come up for consideration?

3. C gets up a petition to the council signed by all the owners interested in said work including B, requesting the council to change the course of part of said work and to alter the depth of said drain from the engineer's plan of said work. Can the council legally instruct said engineer to amend said report to comply with their wishes?

4. Has not the council power under section seventy-five of Ontario Drainage Act on the report of an engineer to deepen or widen or otherwise improve a drain, as well as to clean out the original depth of said drain?

1 and 2. We are of opinion that it is not necessary for the clerk to give to all parties interested in these drainage works, notice of the meeting at which the engineer's report is to be considered. Section 75 of the Act, (the Municipal Drainage Act), does not require it, and the language of section 16 is inapplicable to cases under section 75. By section 16 the notice is to be served on all parties assessed within the area described in the petition, and no petition is filed or required where proceedings are instituted under section 75. The By-law should, however, be published or printed and copies thereof served upon all parties interested as required by sections 21 and 22 of the Act, and the parties interested have the same rights of appeal as are provided with regard to any drainage work constructed under the provisions of the Act.

3. The council, if it is desirous of meeting the wishes of the owners interested to change the course and alter the depth of the drain, should not adopt and act on the first report, but should instruct their engineer to examine the drain, and make a new report with a view to changing its course and deepening it. The latter report may then be adopted by the council and a by-law passed accordingly.

4. Yes.

Voting Qualification of Postmaster in a Town.

450—ENQUIRING CLERK.—A ratepayer is assessed high enough to vote at both municipal elections and elections for Legislative Assembly. He is a merchant and is designated as such on the assessment roll, and is also postmaster of the town. On which part of the voters list should his name be placed?

Your municipality being a TOWN the postmaster thereof is by sub-section 1 of section 4 of the Ontario Election Act, (R. S. O., 1897, chapter 9), disqualified from voting at any Parliamentary or Legislative election. By sub-section 2 of section 2 of the Act the word "election" when used in the Act means an election of a member to serve in the Legislative Assembly. A postmaster in a town is not disqualified from voting at municipal elections. His name should therefore be placed in part II of your list, which contains the names of all persons entitled to vote at "municipal" elections only.

Responsibility of Treasurer and His Sureties.

451 J. W.—Our municipality engaged a treasurer who has furnished the necessary sureties. For some time the Township moneys were placed in the bank. Neither the treasurer nor municipality received any interest. Our council decided to get interest for the money and so made arrangements with the banker in the presence of the treasurer, whereby we now receive interest for our money. Does this in any way relieve the treasurer or his sureties? The money is deposited to the credit of the treasurer.

The depositing of the money as stated, will in no way affect the responsibility of the treasurer or his sureties, to make good any default of the former.

The Ditches and Watercourses Act Provides a Remedy.

452—A. C.—If A digs a ditch across his farm, there is no other way of getting the water away without crossing B's farm. Can A force B to take the water off?

If, in order to obtain a proper outlet for water on A's farm, it is necessary to construct a ditch through B's land, A should file a requisition pursuant to section 13 of the Ditches and Watercourses Act (R. S. O., chap. 285), and otherwise take proceedings to have a drain constructed under the provisions of this Act, so that the rights and liabilities of all parties interested can be properly adjusted. If the parties interested agree, as mentioned in section 8 of the Act, of course no further proceedings will be necessary.

Township Nominations in Incorporated Village.

453—J. J.—There is a dispute amongst the ratepayers of this township about the Town

Hall, whether it is legal to have nominations in it as two years ago the village it was in was incorporated. A great many say that as it is incorporated it is not legal. I hold it is, as it is in the municipality. Please let us know.

Section 119 of the Municipal Act provides that a meeting of the electors shall take place for the nomination of candidates for the office of reeve and councillors in townships at the hall of the municipality, or at such place therein, as may from time to time be fixed by by-law, subject in the case of townships to the provisions of section 123. The latter section provides that "where a township is so situated that the territory of such township adjoins the limits of any city, town or village, such city, town or village may be designated BY BY-LAW as the place of meeting for the nomination of candidates for the office of reeve and councillors as the case may be," therefore unless the council of the township passes a by-law pursuant to the provisions of section 123 of the Act, the nomination meeting must be held in the hall of the municipality or at such place *therein* (and outside of the village), as may from time to time be fixed by by-law of the township council. The incorporated village cannot for municipal purposes, be considered as being *within* the township, since it is a separate and independent municipality.

Rights of Private Owner in Dedicated Highway.

454—T. R. K. S.—On the townline of O and N a deviation road has been in use for about forty years; improvements have been made upon it by both townships ever since and no objections have been made to the title of such land used for road until about one year ago when the owner of the lot through which the road runs claims pay for the use of the land and threatens to close up the road if a settlement is not made with him. The present owner has only been in possession for five or six years. Can he close up said road if payment is not made for use of the land?

2. Can he enforce payment now?

1. If the land through and over which this road runs belongs to private individuals as appear to be the case, and was so owned during the whole period of forty years, a right of way can be acquired by a person claiming right thereto by uninterrupted user for the full period of twenty years, (see section 35 of chapter 133, R. S. O., 1897), and although uninterrupted user by the public for that period, of the right of way, does not, of itself, confer on the public the absolute right to use it as a public highway, it amounts to strong evidence of its dedication to the public as such. In the case of *Mytton v. Duck et al*, (26, A. R., 61), it was held that the use of a road over certain private lands for thirty years after the patent issued, was conclusive evidence of its dedication to the public as a highway and in *Frank vs. Township of Harwich*, (18 O. R. 344), it was similarly held where the use was for seventy (70) years. In *Johnson v. Boyle*, (8 Q. B., 142), it was held that the placing of a gate across a travelled road after the public have enjoyed it for upwards of twenty years, cannot destroy