

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.

Exemption from Poll-Tax.

311.—J. B.—Is a resident of this town whose name appears on the assessment roll, (is of legal age) as M. F. exempt from paying poll-tax because he is assessed as tenant, and performs statute labor in another municipality?

Yes, if he produces a certificate that he has performed the statute labor, or paid the tax elsewhere. See section 99, of The Assessment Act.

Opening of Government Road Allowance.

312.—A. M.—A man of our municipality, living in it about eighteen years, he lived on the shore of Lake Huron about three or four miles from the government road. He had a little shingle mill, and he was making shingles and timbering. The fire went through some of his land, and a few years ago he began to clear up some of it. Two years ago he built a barn on it, and last fall built a shanty and moved to it. His mill burned down a few years ago, the premises are about two miles from the government road. About three years ago he came to the council to get some money on the road. Council granted him \$13.00, arrears of taxes on one of his lots. This is a timber road, small portion of sideroad, balance through lots 15 concessions, 5, 4, 3. He wanted council to repair that road or open the sideroad to his place. He asked me to go and see it. I did go with him, he agreed to open sideroad for ten years taxes, or \$15.00 or \$20.00 on by-road, but he thought he should get something for work repairing road last summer. I reported to council that it would take \$300 to open sideroad. Council said they were not able for it, but allowed me to go \$15 or \$20 on his road in the spring. I went in to see about the road, but he was not satisfied without council paid his taxes for 1899 for the work he did last summer on the road. I told him all I could do was to spend \$20 on the road. He said he would go to law with the council to make him a road, and for damages for his wife getting hurt on the by-road. Shortly after I got a lawyer's letter threatening to sue us if we did not build this man a road. I told him that it was impossible for us to build him a road, for everybody in the municipality that had as bad a road, and as good a right as this man A. No one living nearer than two miles from A. There is a young man working for him, got married last winter, B. He has a lot near A's lot. A is assessed this year for eight lots, at \$25 per lot. As far as we know no one else will use this road unless B will move on his farm, he may or may not. If he does he will also call upon us to let him out. Another young man, C, is trying to get a lot alongside A's, and corners the front of B's lot. (See diagram.) This part of the country is rocky, and not likely to be any more settlers in. Then the sideroad north is open. We are thinking of opening the concession from north corner of lot 16 to twentieth sideroad, more convenient to the post-office, but not to go to market. To open concession from lot 16 to twentieth sideroad would cost \$100; from 15 to lot 18, with bridge, \$150. A says the concession is no use to him, it's too much of a round to go to the store, yet he demanded the road, but to open the near road is too much, others want road, too.

1. Can A. compel council to make him a road under the circumstances?

2. If council opens either, can they stop when they reach corner of A's lot?

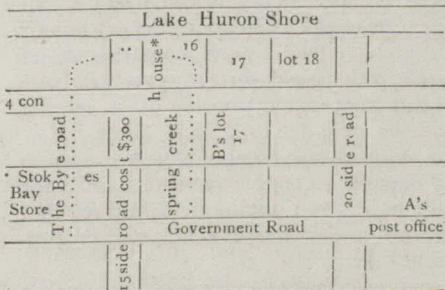
3. Can A. compel council to open road to the road he has to get on sideroad?

4. If council opens concession 4 from 20th sideroad can they stop at corner of A's lot 16. He lives on a timber road from his house crossing concession on lot 17, owned by A, or could he compel us to open around to his road on the 15th sideroad?

5. Can any ratepayer compel us to open the nearest road if council do not wish to do it?

6. In our municipality there are a great many obstructions on the surveyed road, and therefore we have to make many deviations, will cost the township large amounts of money if we will have to put a surveyor on, and pass a by-law before we can register same. Can the council register an agreement without such expense?

7. Or if council would lease the road for a term of years could they register a lease without surveying it, or can you suggest any other way?



We think it best to answer your questions in a general way, as they all bear on the one point. The case of Hislop vs. Township of McGillivray, was an action brought by the plaintiff to compel the defendant township to open up for him an original road allowance, under circumstances very similar to those you state, and was finally decided on appeal to the Supreme Court of Canada. It was held in this case that it is discretionary with a municipal council as to whether they open an original allowance for road or not, and that the courts of Ontario have no jurisdiction to compel a municipality, at the suit of a private individual, to open an original road allowance, and make it fit for public travel. If, by reason of natural physical obstructions, or otherwise, it would be very expensive to open the road allowance, the council would exercise this discretion wisely in refusing to do the work. In the course of his judgment in the above case Mr. Justice Patterson said, "It must not be forgotten that they (the council) are the representatives of the ratepayers, exercising on their behalf the discretion vested in them, which discretion extends to (among other things) the opening and stopping up of government allowances for road." And Mr. Justice Osler says, "It is, in my opinion, a matter which

rests on the discretion of the council, as representing the whole municipality, to determine whether they will open for travel a road over any particular road allowance within their jurisdiction." The one or two settlers concerned cannot compel the council to acquire, by purchase or otherwise, open and establish a road in lieu of an original road allowance which it is physically impossible, or too expensive, to build. The settlers will have to accept such a road as the council, considering the nature of the locality and the expense of the work, deem it advisable to construct for them.

Voting on Money By-Law.

313.—CLERK.—In 1899 a portion of town was attached to adjoining township taking effect 1st of January, 1900. The voters' list for town for 1899 included names of those resident in portions so attached to township. Electors of town are called on to vote on 10th July, on by-law for issue of debentures for the improvement of streets, voting on '99 list.

1. Should names of those in portion now attached to township who are freeholders, and otherwise qualified, be included in the voters' list to be furnished to the deputy-returning officers?

2. Does it require any certain proportion of whole vote to carry such a by-law, or would a majority of those who do actually vote carry it?

1. No. Since the 1st January, 1900, the electors in those portions of the town then attached to the adjoining township have ceased to be electors of the town municipality, and are therefore not entitled to vote on the by-law. See section 1, of section 389, of The Municipal Act.

2. A majority of those who are qualified, and who actually vote, is sufficient to carry a by-law of this kind.

Poll-Tax By-Laws

314.—J. M.—Re poll-tax. I beg to submit copy of by-law re poll-tax in municipality of town of....

1. Is it sufficient?
2. Do you suggest alterations to make it sufficient?
3. What constitutes an inhabitant?
4. What constitutes a resident?
5. Should notice be verbal, printed or written?
6. If written or printed should it be signed by collector or clerk?
7. Should it be stamped with corporation seal?

BY-LAW NO. ...

To levy a poll-tax and appoint a collector of the same and to fix the remuneration.

Whereas by the provisions of the Consolidated Assessment Act a poll-tax of \$1.00 can be collected from certain persons.

Therefore be it enacted by the municipal council of the corporation of the....of....as follows:

1. That every inhabitant of the said....of....of the age of 21 years and upwards and under sixty years of age and not otherwise exempted by by-law from statute labor who has not been assessed on the assessment roll of the said....of....or whose taxes do not amount to \$2.00 shall instead of such labor be taxed at \$1.00 yearly therefor to be levied and collected by the constable or other person appointed by this council for that purpose.

2. Any person liable to pay the same to the collector appointed in this behalf within two days after demand thereof by the said collector and in case of neglect or refusal to pay the same the collector may levy the same by distress of goods and chattels of the defaulter with