

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.

Statute Labor and Expenditure of Commutation Money on Sidewalks in Townships.

280.—J. C. C.—For a number of years the statute labor upon two of our 98 road divisions has been commuted as per section 103 of the Assessment Act, and the commutation moneys thus received applied by commissioners appointed by the council not only toward the repair and maintenance of the roads and streets therein, but also in laying and maintaining plank sidewalks in these two divisions which are thickly populated.

1. Did the council exceed its powers in permitting statute labor moneys to be applied to these sidewalks? In other words does the Municipal Act provide for the construction and repair of sidewalks in township municipalities except as improvements to be paid for by local rate under sections 664-693? In answer please quote page and section.

2. Under a general by-law passed this spring the 98 road divisions have been abolished and all the statute labor of the whole township is to be commuted at a fixed rate per day and applied by two road commissioners upon the highways and bridges of the township, but this new by-law makes no provision for applying any portion of the statute labor money towards the sidewalks in any part of the township. Under this new state of affairs how can the walks in these two neighborhoods be kept up and extended, and who should bear the cost?

3. Is the corporation liable for accidents resulting from these walks being out of repair?

4. If so, how can the corporation be relieved of this liability?

5. Can the township use ordinary township funds or commuted statute labor moneys (our present by-law not applying to walks) for this purpose? Please point me to any section of the statutes whose provisions will enable us to keep these walks in order?

We are of opinion that the council did not exceed its powers in this matter. The commissioners had the authority to expend the commutation money in such place on the highway, and in such manner as the necessities of the locality required. Sub-section 3, of section 637, of The Municipal Act, authorizes townships to set apart portions of highways for sidewalk purposes. In any event a road commissioner or pathmaster would have the right to expend the commutation money under his contract in making or repairing such sidewalks, or otherwise on the highway as he might deem necessary, under the direction of the council of his municipality.

2. The sidewalk should be kept in repair, and extended, if necessary, by the statute labor commissioners, if so directed by the council, or by the council, and the expense thereof should be paid either out of the commutation fund, or general funds of the municipality as the council may direct.

3. Yes.

4. Either by seeing that the sidewalks are kept in a proper state of repair, or by removing them altogether.

5. Section 606, of The Municipal Act, provides that "Every public road, etc., shall be kept in repair by the corporation, etc." The sidewalk is legally on, and is part of the public highway, and must be kept in repair and a condition of safety by the corporation. The duty to keep the road in repair extends as much to sidewalks for the use of pedestrians as to the travelled way for the use of carriages. See *Copeland vs. Blenheim*, 9 O. R., 19.

Appeal from Court of Revision.

281.—A. J. S.—If a ratepayer duly serves a notice of appeal to Court of Revision on the clerk of a township municipality against his assessment and fails to appear at said court, is he in a position to appeal to the county judge against the decision of said Court of Revision?

If a person who has given notice of appeal from the assessment roll does not appear in support of his appeal, either in person or by his solicitor, or agent, the court is not bound to consider it. It may strike the case off the list of appeals, and if it does that we do not think an appeal will then lie to the county judge under section 6, of The Assessment Amendment Act of 1899. The court may, however, hear evidence on an appeal in the absence of the appellant, and if it does so and disposes of the appeal after hearing evidence, an appeal will then lie to the judge from the decision of the Court of Revision.

Compulsory Use of Water and Light in Towns.

282.—SUBSCRIBER.—How can we compel houses and stores to take water and light from the town? Please give particulars of the Act etc.

There is no provision in the statutes to compel persons to take water and light from a municipal corporation. If a person has a well on his premises, however, he can be required, under the provisions of The Public Health Act, to keep it in a sanitary condition.

Opening up and Removing Obstructions from Original Road Allowance.

283.—J. J.—Part of concession 11 in this municipality has never been opened for public use. A has built a house upon and fenced in part of this concession line about a quarter of an acre in extent. For the last ten years he has been assessed as a freeholder, and has paid taxes for this quarter acre. The remaining portion of the unopened concession has been fenced in and cultivated by the neighboring farmers. The council were petitioned to have the obstructions removed off the line. They notified each of the farmers to remove the obstructions, but did not notify A as he had fenced in only half the width of the road.

1. On receiving the petition should the council not pass a by-law opening the concession

line or part of it for public use, and then notify the parties to remove all obstructions?

2. If the posts cannot be found must the council have the line surveyed, paying the costs?

3. Must the council notify A to remove his house?

4. A objects, demanding damages, he being assessed for the land; how must the council proceed?

1. Unless the circumstances of this case bring it within the provisions of section 642, it is not necessary that the council pass a by-law requiring the removal of obstructions. A notice to all parties, whose duty it is to remove such obstructions, giving them a reasonable time to do so, is all that is required. If the case comes within the provisions of section 642, the by-law should not be passed until the notice required by section 643 has been given.

2. Unless the survey is made under sections 14 or 25, of The Surveys Act, the council must bear the costs of a survey itself. The council is not, however, bound to have a survey made of its own motion.

3. Yes, if they wish him to do so.

4. A cannot successfully object or resist the council, nor can he claim or recover any damages if required to move his house and fences off the public highway. He can acquire no title to the township property through his possessing and occupying the same, and must give it up when the demand to do so is made.

Formation of New School Section.

284. Q. U. E. D.—A petition has been presented to council to appoint an arbitrator for the purpose of forming a new school section wholly in the township. The new section is intended to be formed out of union school section No. 4, townships of Tay, Flos, Tiny and Medonte, and S. S. Nos. 9 and 11, in this township. The township council have appointed an arbitrator. Now what I want to know is, what power will the arbitrators have over dealing with school sections 9 and 11, which are non-union sections, or will they have any power, and will the council have to take any further steps in the matter, and if so, what steps?

We assume that all preliminary proceedings laid down in the Public Schools Act, leading up to the appointment of the arbitrator have been taken. This being the case the arbitrators have the same power to deal with the lands in school section numbers 9 and 11 as with those in union school section number 4, provided sections 9 and 11 have not been formed within 5 years prior to the proposal to take lands from them to form the new school section. The fact that sections 9 and 11 are non-union sections makes no difference. There is nothing further the council can do in the matter.

Voter's Qualification.

285.—M. L.—If an owner of a farm dies, leaving his farm by will to his wife as long as she lives, and then to a son A. B., who has to pay a legacy to a brother R. B. Has R. B. a right to vote as owner of the above property while his mother is still living, or has he any claim as owner any more than the holder of a mortgage?

The mere fact that R. B. is entitled to be paid a legacy, which is charged on land devised to other persons gives R. B. no qualification as a voter, nor has he any claim to ownership of the land devised.