

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.

Council Can Make Grant to Repair Road in Adjoining Municipality.

377—E. A.—The ratepayers of the township of A without exception, in order to reach their nearest town and only convenient market must travel over a road situated in the township of B which is an adjoining municipality. This road is very little used by the residents of B and had been sadly neglected and consequently is in a very bad state of repair. The council of B have made a grant for the improvement of this road providing the council of A grant an equal amount. Can the council of the township of A legally make this grant? Can they legally spend money of the municipality for this kind?

Yes. Section 644 of the Municipal Act provides that "the council of ANY municipality may pass by-laws for granting aid to any adjoining municipality in making, opening, maintaining, widening, raising, lowering and otherwise improving any highway, road, street, bridge or communication, passing from or through an adjoining municipality.

Clerk Should Not be Appointed Arbitrator Under the Public Schools Act.

378—W. D. M.—Is it lawful for a township council to appoint its clerk as one of the arbitrators to act on the petition for the formation of a Union School Section between their municipality and adjoining Municipalities? Section 46 Public Schools Act in which appointment is made forbids the council to appoint one of themselves as arbitrator: it makes no mention of the clerk. The question has arisen in our municipality and your opinion would be appreciated.

Though the Public Schools Act, 1901, does not, in express terms, prohibit a council from appointing its clerk to act as an arbitrator under section 46 of the Act, we would not advise any council to appoint its clerk as arbitrator because his appointment might invite litigation.

School Arbitrators Not Required to Take Oath of Office.

379—D. C.—Should school arbitrators take an oath of office?
No.

Remedy Against Negligent Collector.—Township Council Cannot Pass By-Law Regulating Width of Tires.

380—J. A. G.—1. Be kind enough to let me know if we can charge something to a collector who does not perform his duty? There are about \$1,200 of taxes unpaid, and of that amount there is about \$600, that is very easy to collect, only some one will have to seize for some of it and others are ready to pay, only they are waiting for the collector to go to their places and collect it, as he did not leave the slip at home, but at a neighbor's.

2. Can we pass a by-law to compel people to have wide tires on their vehicles carrying loads and what would be the best way to frame such by-law? How long have we to pass it before it comes into force.

1. If the collector neglects or refuses to perform his duties, the council should dismiss him and appoint some other competent person to continue and complete the collection of the taxes. If the municipality has sustained or sustains any loss by reason of the default of the collector, he and his sureties can be compelled to make it good. Assuming, of course, that the council obtained from the collector the bond that the statute requires prior to his entering upon the discharge of the duties of his office.

2. There is no statutory provision at present in force enabling a township council to pass a by-law of this kind, but a bill having this object in view is now before the Provincial Legislature, and if it is passed at its present session, we will reproduce it in these columns.

Liability of Railway to Construct Crossing.

381—T. D. R.—About 20 years ago the G. T. R. Co. put in a railway crossing on what was supposed then to be a highway. This crossing was afterwards found, by a later survey to be the width of the highway to one side of the proper line of road, and is still being used at considerable inconvenience to the public. The said Company refuse to put a crossing on the proper road allowance without being paid for same by the township. Can Council compel Company to put in crossing without expense to the municipality?

Section 1 of the Railway Act provides: "The railway committee shall have power to enquire into, hear and determine any application, complaint or dispute respecting: (h) the construction of railways upon, along and across highways—but it is doubtful whether any relief would be granted under the circumstances of this case and, if the cost of making the crossing sufficient for public travel will not be large, it will be cheaper to pay the company for doing the work than to incur the expense of going before the railway committee for relief.

Separate School Supporter Should Pay Taxes to Nearest School—Effect of Removal of School Trustee—Election to Fill Vacancy.

382—P. S.—1. John is situated within three miles of two Separate Schools. To which one should he be forced to pay his taxes, to the one closest to his place of residence by calculating the distance in a straight line, or to the closest one by following the road?

2. James who is one of the school trustees of a section is leaving the said section. (a) How will his successor be appointed? (b) but James has property in the section on which he pays taxes. Can he remain in the trusteeship though leaving the section? (c) Can he appoint his successor? (d) Can the two other trustees appoint his successor?

1. Section 44 of the Separate Schools Act (R. S. O., 1897, chap. 294) provides that "any supporter of a separate school whose residence is within three miles of two or more separate schools, shall, after the first day of January, 1897, be *ipso facto* a supporter of the separate school NEAREST to his place of residence." "Nearest" means in a direct line, 2nd not by the usually travelled road. (Since the above was written the Separate School School Amendment Act, 1903, has come to hand Section 4 of this Act adds after the word "nearest" in section 44 of the Separate Schools Act the words "by road.")

2. (a) His successor should be elected by the ratepayers of the section qualified to vote at election of trustees at a special meeting of such ratepayers called for the purpose by the secretary of the board of trustees pursuant to subsection 4 of section 19 of the Public Schools Act, 1901. It will be necessary, however, for the remaining trustees to first declare the seat vacant and to then order a new election as provided by section 104 of the Public Schools Act, 1901.

(b) No.

(c) No.

(d) No.

No Exemption From School Taxes or of Private Residence

383—A. B. C.—The council of 1899 passed a by-law, granting exemption of taxes on factory and dwelling which is a mile away from factory in March. In June, 1899, they amended by-law to read all taxes and school-tax over and above \$50. The school tax would amount to about \$150. Can the above stand the courts, that is can a council exempt from school tax partially and can they exempt from general tax a dwelling a mile away from factory, which was prior to purchase by present owner, paying taxes? What course would you advise?

The council had no authority whatever to exempt from assessment and taxation, wholly or partially this dwelling-house. Whether it is situated a mile away from the factory or in its immediate vicinity. Nor had it any power to exempt the factory (which we assume is a manufacturing institution) from school taxes or any part thereof. The law on this subject is now to be found in sections 8, 9, 10 and 11 of chapter 33 of the Ont. Stats., 1900.

Railway Co. Not Liable for Construction of Portion of a Ditch Under D. & W. Award.

384—C. R. W.—An award dated Dec. 11th, 1902, was made under the provisions of the Ditches and Watercourses Act by the engineer. After each of the persons affected thereby had been notified, by the township clerk as required by section 18 of the said Act, it was found that the owner of one parcel of land affected was the C. P. R. Company and not the private owner stated in the requisition.

As the company is not liable under the Act, it will now be necessary to divide the work and fees awarded to the owner of the said parcel amongst the other owners. What steps will it be necessary to take to do this?

Unless the parties to the award other than the railway company voluntarily agree to pay for the portion of the drain awarded to be constructed by the railway