

Sub-section 1 of section 74 of The Assessment Act authorizes the *Court of Revision* for a municipality, and not the COUNCIL to receive and decide upon a petition of this nature. We are of opinion that this means the Court of Revision for the year in which the assessment under review was made. The council for the present year has no authority to entertain a petition of this kind, and the Court of Revision for 1903 ceased to exist at the time the term of office of the councillors composing it expired, so that there is now no Court of Revision to which the petition can be presented.

#### Trustees Cannot Close School for Lack of Attendance.

69—J. H.—1. Can the trustees of a school close a school where there are only five or six going, without the consent of the ratepayers?

2. What would be the first step to take if they cannot?

3. If the trustees have not the power to close it, who has the power to close it?

4. Or can they divide up the section and put it into other school sections?

1. The trustees have no authority to close a school under the circumstances stated either with or without the consent of the ratepayers in the section.

2. Our answer to question number one renders it unnecessary to reply to this.

3 and 4. The steps to be taken in a case of this kind will be found fully set forth in section 32 of The Public Schools Act, 1901.

#### An Irregular Proceeding at an Election.

70—J. K.—A ratepayer appointed by by-law to act as deputy-returning officer at the municipal election refuses to act. The clerk of the township, who has the appointment, after making efforts to get ratepayers in the division to act and failed, acted as deputy-returning officer in the division himself. Was it legal to do so on the clerk's part?

The clerk had no legal authority to act as deputy-returning officer, under the circumstances stated. The electors present at the place for holding the poll should have chosen from amongst themselves a deputy-returning officer, in accordance with the provisions of sub-section 2 of section 108 of The Consolidated Municipal Act, 1903. We are of opinion, however, that the action of the clerk in this regard was not such an irregularity as would affect the result of the election, and would be so regarded by any Judge before whom proceedings to render the election void might be taken. (See section 204 of the Act.)

#### Village Council May Appoint Constable—Justice of the Peace May be Compelled to Act—Appointment of J. P.

71—RATEPAYER.—1. Has the council of an incorporated village power to appoint a constable?

2. Can a Justice of the Peace be compelled to act in his capacity?

3. What steps should be taken in order to have a Justice of the Peace appointed?

1. Yes. See section 493 of The Consolidated Municipal Act, 1903.

2. Yes. (See Seager's Magistrates' Manual, pages 62 and 251, and the cases therein cited.) Each case, however, depends to a very great extent on its own particular circumstances. Where the Justice is required by law to exercise his judicial discretion, he is not at liberty to arbitrarily refuse to perform the act in question, or to refuse to consider the matter; and if he does so, or if he by wrongly deciding a preliminary point of law, or upon extraneous considerations or otherwise (upon a mistaken view of the law) improperly refuses to hear a case, or to do what the law provides that it is his duty to do, the court will order a mandamus. But if he really and *bona fide* considers the matter, and exercises his

discretion, his decision, however erroneous, will not be interfered with by mandamus; but it is a ground of appeal from his judgment.

3. It should be brought to the attention of the Lieutenant-Governor by petition or otherwise, that the appointment of a Justice of the Peace, is necessary in the locality, and he will probably appoint a suitable and proper person to act in this capacity, pursuant to the authority conferred on him by section 3 of chapter 86, R. S. O., 1897.

#### Same Person May be Constable, Assessor, Collector and Sanitary Inspector in Village.

72—SUBSCRIBER.—Is it legal for village council to appoint a constable whose duties shall be to fill the office of assessor, collector, constable and sanitary inspector, the object being to employ a man at a yearly salary to devote all his time to looking after all the duties possible?

The council of a village may appoint a constable under the authority of section 493 of The Consolidated Municipal Act, 1903. The same person may be appointed to act as assessor, collector and sanitary inspector for the village, as these offices are not in any way incompatible.

#### Procedure to Unseat Disqualified Trustee—Proceedings at Nomination Meeting.

73—J. D.—1. A school trustee sold a stove to the board and was paid by the treasurer. Should the proceedings to vacate his seat be by *quo warranto* or by complaint to the County Judge and order calling the parties before him in a summary manner on notice to parties?

2. Is it necessary that the electors who propose and second a nomination for reeve and councillor should actually be present at the nomination meeting when the written nomination is handed to the clerk or person presiding at the nomination meeting?

1. Proceedings to have the seat of this trustee declared vacant should be begun by the complaint of two ratepayers of the section or of the remaining trustee or trustees to the County Judge. (See section 105 of The Public Schools Act, 1901.)

2. The nominator and seconder of a candidate should both be present at the nomination meeting.

#### Qualification of Auditor.

74—A. G. S.—Is a public school teacher who is and has been for years teaching in one of the schools in a township disqualified from acting as one of the auditors of the same township by reason of his being engaged as teacher in the school section?

No.

#### Assent of Electors Not Required to By-Law Commuting Statute Labor.

75—D. J. S.—Is a by-law legal enforcing commutation of statute labor passed by a council without vote of ratepayers?

Yes. Prior to the enactment of sub-section 1a of section 533 of The Consolidated Municipal Act, 1903, (by section 105 of The Municipal Amendment Act, 1903,) a township council had no authority to submit a question of this kind to the electors of the municipality, and it was improper to do so. The council had power to pass a by-law of this nature of its own motion either pursuant to section 103 of The Assessment Act or sub-section 2 of section 561 of The Municipal Act. Since the enactment of sub-section 1a of section 533 of The Consolidated Municipal Act, 1903, it is optional with a township council as to whether it submits a question of this kind to the vote of the electors of the municipality or not.

#### Assessor Not Required to Have Property Qualification.

76—J. B. M.—What is the property qualification of an assessor for a township municipality, and can assessor qualify on wife's leasehold?

It is not necessary that the assessor of a township municipality should possess any property qualification.