

2. We adhere to the answer quoted. In *Lewis v. Brady* (17 O. R. 377) it was held that the effect of a collector not having made and subscribed the declaration required by section 271 of the Municipal Act, R. S. O. chapter 184 (now section 312 of chapter 223, R. S. O. 1897) was not to make his acts void. Additional authorities to this effect are, *Margate Pier Co. v. Hannan*, 3 B and Ald. 266. *Rex v. Justices of Hertfordshire*, 1 Chitty, 700, and *Town of Peterborough v. Hatton*, 30 C. P. 455. The officers named in section 319 of the Act may, however, be liable to the penalties prescribed by that section for neglecting or refusing to make and subscribe the declaration of office within the prescribed time. We have no particular fault to find with the decision of the judge who held that a re-appointment to an office required the making of a new declaration. Although in *Township of Adjala v. McElroy* (9 O. R. 580) it was held that where a Treasurer was re-appointed annually for several years, the re-appointments were not equivalent to removals and re-appointments, but were rather a retention in office of the same treasurer.

**Public Library Existing on Establishment of Police Village to be Continued.**

**246—J. I. P.**—We established a public library in this place, a police village, in 1897 under section 23 of the Public Libraries Act, and elected our Board of Management under the law as it then stood and have elected them in the same way ever since, that is by vote of the members of the public library. Now in 1898 sub-section (1a) section 9 of the Act was passed making the police trustees and others selected by the school board in the police village the Board of Management of Libraries in police villages. Does this last named sub-section apply to our case, or in other words is our present Board of Management illegally constituted, having regard to this later legislation?

We are of opinion that section 4 a of the Public Libraries Act as enacted by section 1 of chapter 27 of the Ontario Statistics, 1898, and the other provisions of the latter Act have no application to the existing public library in your village. The Act of 1898 was passed in order to enable the inhabitants of police villages to establish public libraries therein under the provisions of part 1 of the Public Libraries Act, in cases where public libraries had not been already established under part III. of the Act. We therefore think your present Board of Management is legally constituted.

**Village Can be Divided into Sections for Commissioner's Purposes.**

**247—F. W. L.**—Can our council pass a by-law dividing our village into four divisions, a councillor as commissioner for each division?

If the council thinks it necessary, in order to more efficiently transact the business of the municipality, to divide the village into four divisions and appoint a councillor, a commissioner to oversee the work in each, it can do so. Sub-section 1 of section 537 of the Municipal Act empowers councils of villages to pass by-

laws appointing such road commissioners as are necessary in the affairs of the corporation.

**Rectification of Mistake in Drainage Payment.**

**248—X.**—The adjoining township of M. served the head of our municipality with a copy of plans, report, etc., in connection with a drainage scheme in which the engineer assessed a few hundred acres of land in our township for outlet liability. The parties interested wished to avail themselves of the drain and the council promptly adopted the report. The clerk then proceeded to prepare the by-law and found that the amounts assessed against lands and roads in this municipality was not as much as stated in the report and paid over to the treasurer of M., the engineer's addition being wrong.

1. Which obtains, the amount asked for, or the amount provided for by assessment?

2. In the latter case how are we to get our money back?

1. We gather from your statement of this case that the initiating municipality (the township of M) was paid the amount shown by the engineer's report, to be payable by the servient municipality, before the latter had finally passed its by-law providing for the levy of the amount against the lands and roads against which it was charged. This was somewhat premature. The sum that the servient municipality should pay to the initiating municipality (M) is the correct amount charged against the lands and roads in the former municipality, not the erroneous total.

2. This amount having been paid by one municipality to the other under a mistake as to the facts can be recovered by the servient municipality from the initiating municipality, if the latter refuse to pay on demand, by ordinary action at law.

**Effect of Defective Declaration of Property Qualification—Hour of Holding Nomination to Fill Vacancy.**

**249—REX MANITOBA.**—1. In the declarations of property qualifications made by the councillors, the word "Her" preceding the word "Majesty" in the blank form used was not changed to "His". Does this invalidate the municipal business transacted by these councillors?

2. One of the councillors has resigned. A meeting for the nomination of candidates to fill the vacancy thus created, has been called for 7.30 p. m., on the day appointed. Is this a legal hour for holding this nominating meeting, or should it be twelve o'clock noon?

1. This objection to the declaration of office is a very frivolous one. The omission to make the change mentioned does NOT invalidate any of the business transacted by the council and under the authority of *Lewis v. Brady*, (17 O. R., 377.) Even the failure or omission of the councillors to make these declarations at all would not invalidate the municipal business done by them.

2. Section 214 of the Municipal Act provides that an election to fill a vacancy "shall in respect to notices and other matters be conducted in the same manner as the annual elections," but though it would have been better as a matter of precaution to have fixed the same hour as the hour fixed by the Legislature for

the general annual elections, we do not think it illegal to fix a different hour in the case of a bye-election.

**Auditors Should be Appointed by By-law No By-law Necessary to Confirm Engineer's Award.**

**250—REEVE**—1. Is it necessary to pass a by-law to confirm the appointment of auditors?

2. Is it necessary to pass a by-law to confirm engineer's award under the Ditches and Water-courses Act? If so, please state section.

1. Sub-section 1 of section 299 of the Municipal Act as amended by section 8 of chapter 23 of the Ontario Statutes, 1898, requires every council, at its first meeting in every year, to appoint two auditors, and this appointment should be made by by-law of the council.

2. No. Such a by-law would be a mere nullity.

**Qualification of Reeve.**

**251—T. J. C.**—Previous to the nominations for the office of reeve, councillors and school trustee in our township, which is in an unorganized district, the reeve held the dual office of reeve and trustee of public school, but his term as trustee having expired or would have expired on the 31st day of December, 1902, he was again nominated for reeve and trustee, and there being no opposition was declared elected reeve and trustee, but on learning that he could not legally hold both offices he declined to act as trustee and tendered his resignation, which was duly accepted by the board and the secretary notified the council to have the vacancy filled as provided by law. Now what I want to know is this, as there have been no proceedings taken to have the reeve disqualified and the seat declared vacant under the circumstances can the reeve legally hold office without first resigning and being re-elected? I cannot find anything in the statutes covering this case.

The fact that the reeve was a public school trustee operated as a disqualification from holding a seat in the council and it became his duty to resign his seat in the council as provided by section 208 of the Municipal Act. Instead of doing so he ignored that section and resigned his position as trustee and retained his seat in the council. We may say, however, that so long as no complaint is made the acts of the council will be valid and the municipality will not suffer by reason of the reeve continuing in the council.

**Disposition of Fines by Police Magistrate.**

**252—C. W.**—Is the police magistrate allowed to pay the accumulation from fines into the town treasury in which he resides? His district is not confined to the town, but also a part of the said county, but his office is in our town.

Fines and penalties received by justices or magistrates, are to be paid over by them as specially directed by the particular statute under which the conviction is made. Formerly if no such provision was made the justice or magistrate was required to pay over the fines in the manner provided by section 806 of the Criminal Code but by the Dominion Statute, 1900, C 46 section 806 is repealed and a new section, 927, is substituted for that section of the original code, under the provisions of which all fines and penalties imposed and recovered by justices and magistrates and