

altered by a subsequent by-law until the expiration of five years from the day it came into force. See the latter part of the sub-section quoted.

2. Yes. This subsection governs the case.

3. A by-law of this kind requires no publication.

4. The by-law being invalid, the ratepayer is still in the section to which he originally belonged. Section 11 of the School Act prohibits a council from forming a section which will include any territory distant more than three miles in a direct line from the school house.

5. Notwithstanding the fact that portions of the trustees' levy may be returned by the collector as uncollectable, the whole of the amount of the trustees' levy should be paid over by the council to the school board. The taxes should be returned against the lands of the defaulter, and should be realized by sale of such lands, as is provided in the Assessment Act.

6. We do not know the reason for this difference, but the statute so provides. See sections 109 and 110 of the Assessment Act.

#### Audit of Accounts of Board of Education.

429.—T. D.—1. In an incorporated village, where there is a high and public school, embracing said village and part of surrounding township, having one board of trustees for both, should this board appoint their auditors and submit their financial statement to the ratepayers?

2. The school-books have been handed to the auditors, who audited the books of the incorporated village, and have been audited by them the village paying for the audit. Who should audit the books?

3. Who should pay for the audit? The trustee board is made up of representatives from the incorporated village, the surrounding township and one from the county.

1. Sub-section 2 of section 37 of the High Schools Act, chapter 293, R. S. O., 1897, provides that, "The treasurer of every High School Board, etc., shall submit his accounts to the auditors of the municipality in which the High School is situated, whose duty it shall be to audit such accounts in the same way as the municipal treasurer's accounts are audited." Sub-section 11 of section 62 of the Public Schools Act, chapter 292, R. S. O., 1897, makes it the duty of public school trustees in urban municipalities to submit their accounts, to be audited by the municipal auditors, "whose duty it shall be to audit the same and to publish at the end of every year, in one or more of the public newspapers, or otherwise, an abstract of the annual report of the auditors, with such finding and recommendations as the auditors deem expedient." Section 10 of the Public Schools Act, and section 4 sub-section 3 of the High Schools Act, provide that Boards of Education shall have the powers of both Public and High School Trustees. We are therefore of the

opinion that the auditors appointed by your village council are the proper officials to audit the accounts of the Board of Education, and that their report should be published with and at the same time as the municipal audit.

2. The village municipal auditors.

3. The village council, as it is part of their auditors' duty to perform this work.

#### Opening New and Closing Old Road.

430.—A COUNCILLOR.—1. Can a council, by by-law, put a road by force around a hill which will take in part of two ratepayers, about seven acres in length, one of them being willing and the other not? It will save two hills, one coming and the other going, bad ones, too. This road is right on a concession, and it will be a benefit to the whole township, and it is a milk route.

2. Also, have the council got to keep the line open.

3. Has any other ratepayer any right to interfere other than the ones which the road crosses?

1. Sub-section 2 of section 637 of the Municipal Act empowers a township council to enter upon, break-up, take or use any land in any way necessary or convenient for road purposes. The preliminary notices mentioned in section 632 of the Act, must first be posted up and published and the provisions of this section must be strictly observed. Section 437 of the Act makes provision for the payment by the council of compensation to the person or persons whose lands are expropriated for road purposes, etc.

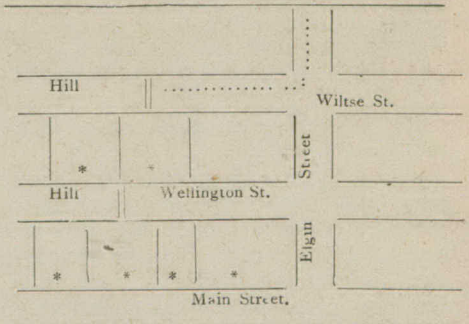
2. No. Sub-section 1 of section 637 gives the council power to stop up roads, but the notices provided for by section 632 must be given and published before doing so. We assume that you refer to the portion of road between the termini of the new piece of road proposed to be opened and established.

3. The council is bound to hear only these who might be prejudicially affected by the closing of the old piece of road or opening of the new portion, or both. (See clause (c) of section 632 of the Act,) and then act in this matter, in the manner that seems in their judgment and discretion, best for the convenience and necessities of the community.

#### Drain Should be Carried to Sufficient Outlet—Removal of Street Crossings.

431.—M. G.—The council of this municipality has put in a drain as indicated by dotted line in accompanying diagram. From the sluice, way on Wiltse street, where the drain finds a free outlet to Main street, the land falls rapidly, and during spring freshets the cellars and yards on Wellington and Main streets are flooded. Can citizens, whose property is thus injured, compel the council to extend drain across their land so as to prevent the overflow? Drain was put in on petition of property owners benefited, and the cost was defrayed by them and the council jointly, on award of engineer.

2. In process of grading streets, several stone and wooden crossings, put down by private individuals, were removed. Is it the duty of the council to replace such crossings?



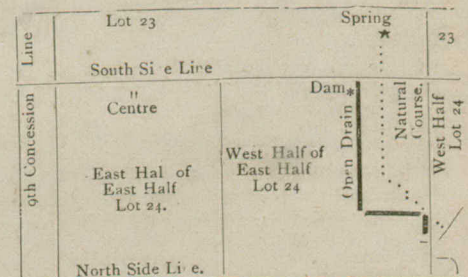
1. We assume that this drain was constructed after proceedings taken either under the Drainage or Ditches and Watercourses' Act, and in either case the statute makes it the duty of the engineer to carry the drain to a sufficient outlet. This does not appear to have been done, and the owners of lands and cellars that are, in consequence, injured by flooding, have rights of action against the person or persons occasioning the injury. Steps should be taken to construct a proper and sufficient outlet for the water flowing through the drain.

2. No.

#### Take Proceedings Under the Ditches and Watercourses Act.

432. F. B. P.—I live on the east half of the east half of a fifty acre farm. A lives on the west half of the east half. B on lot No. 23. Some four years ago last spring A tried to make B and I dig a drain on the said line between us out to the concession line. We would not. He then dammed the drain as shown. The water runs to the line between him (A) and I, and it does me a great amount of damage. Will I have to bring on an engineer, or can I sue for damages?

2. If I can sue for damages, please tell me how to proceed.



1 & 2. The drain stopped up by A does not appear to be a natural watercourse, (that is, a stream having well defined natural banks,) and he is, therefore, not liable to an action for damages for having placed a dam in it. You should take proceedings under the provisions of the Ditches and Watercourses' Act, and have the interests of all parties concerned properly adjusted by an award of your township engineer.

#### Defective Bridge—Liability of Township.

433.—W. B. S.—A resident of Binbrook, driving along the highway, breaking a colt, was crossing a bridge eight feet across and three feet deep, with no railing. Just as the horse was on the bridge another horse, in a field close by, rushed out from under a little thorn tree, frightening the horse on the bridge, who reared up, (and his driver, fearing the horse would fall on him, struck him with the whip,) and sprang off the bridge into the ditch, injuring himself some, and doing some damage to