

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.

Lowering Railway Culvert—Mistake in School Assessment.

245.—CLERK.—1. Some time ago the council instructed me to notify the M. C. R. R. Co. to lower a culvert under their track in the 4th concession of this township. Said culvert when put in was on a level with the bottom of the ditch but since then the ditch has been dug out and made deeper thereby leaving the culvert about 10 inches above the present level of the bottom of the ditch. The company is willing to lower the culvert providing the township pays the expenses of lowering said culvert. Can the company compel the township to pay the expenses of lowering said culvert?

2. Through some mistake or other there was a portion of territory belonging to school section number 4 assessed to school section number 11 in 1898 and 1899. Now the trustees of school section number 4 come to the council and make a demand for the amount of taxes which they claim is due to them from those lots which were wrongly assessed, they having received the full amount of their demand for their school money in December last. Can the trustees get this money from the township now? If they can, could the council collect the amount from school section number 11 this year?

1. You cannot compel the company to lower the culvert, so that if it is necessary to have it lowered to allow the water to pass through it, the township must either accept the company's offer, or leave it as it is. If the drain is constructed under the Drainage Act, or The Ditches and Water-courses' Act, we refer you to section 85, the former Act, and section 21, the latter.

2. School section No. 4 is entitled to receive the whole of the taxes which were levied upon the property in the section, and as the taxes levied upon part of the territory within section 4 was by mistake paid over to the trustees of School Section No. 11, the amount must be paid to the trustees of Section 4. These taxes having by mistake been paid to the trustees of School Section No. 11, the latter must pay the amount to the council. See sec. 67, subsec. 3, Public Schools Act.

Assessment of Personal Earnings.

246.—W. W.—Is a ratepayer whose annual earnings amount to \$750 liable to be assessed for the full amount of such earnings? Party assessed claims that he is only assessable for the excess of \$700.00, viz., say for \$50.

This person's earnings are exempt from assessment to the amount of \$700. (See sub-section 26 of section 7 of the Assessment Act.) He is therefore assessable for only \$50.00.

Assessor's Default.

247.—C. W. K.—1. What steps should a council take when an assessor fails to complete and return his roll on the 30th day of April?

2. Can the council extend his time for another month?

1 and 2. The council should instruct the assessor to complete and return his roll as soon as possible, or dismiss him and appoint some other competent person to proceed with and complete the assessment. If, for any reason, an assessment roll is not completed and returned to the clerk within the time mentioned in section 56, of The Assessment Act, the work should be done as soon as possible thereafter. For neglect of duty the assessor is liable to a penalty of \$100. See section 249 of the Act. And for wilful default to a penalty of \$200 and imprisonment in the common gaol for a period not exceeding six months, until the fine is paid, or in the discretion of the Court to fine and imprisonment. See section 251.

Assessment of Fishermen's Earnings.

248.—BILLINGS.—1. Assessor's Guide says the income of fish tug over and above \$700.00 is assessable. Does wages of hired men make any difference?

2. Suppose four partners work a fish tug on shares, does this \$700 cover all in way of income or will there be any extra allowance on account of four shareholders? They maintain they should be allowed wages besides.

1. The wages of men hired to operate the tug should be deducted from the gross income, and only the net income assessed.

2. If the fishermen form a partnership, as appears to be the case in the instance you mention, then the firm should be assessed for the amount of the income over and above \$400. At the request of any member of the partnership, the assessor is to assess such member for his individual share or interest in the partnership. See subsection 2, of section 25, of The Assessment Act. In case neither member of the firm makes such a request, the income in excess of \$400 should be assessed against the firm. Only wages paid to men outside of the firm can be deducted.

Taxation of University Lands.

249.—J. W. Q.—A question has arisen in reference to vacant university lands becoming liable to sale for taxes. The law requires that taxes shall be paid for these lands in case they are rented or utilized for other than school purposes, but the university claims the municipality has only recourse against the tenant and that the lands are not liable for the taxes. Can the town sell for said arrears of taxes?

Subsection 4, of section 7, of The Assessment Act, provides: "The buildings and grounds of and attached to every University, College, high school, or other incorporated seminary of learning, whether vested in a trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, or

if unoccupied, but not if otherwise occupied." If the University lands are occupied for other purposes within the meaning of the latter part of this subsection, they are assessable, and are liable to be sold to realize the taxes. The taxes must, however, be made out of the chattels of the persons assessed, if possible, before they can be returned against the lands. We cannot see how the University authorities can successfully contend that the only remedy of the municipality is against the tenant, because the legislature has expressly said that such lands shall not be exempt if otherwise occupied, by which we understand, an occupation for purposes or objects other than in connection with and for the purposes of the University. If the legislature intended to confine this remedy for the recovery of taxes to the tenant, it would, we think, have said so, as it has done in the case of the property mentioned in subsection 1, of section 7, in which case it declares, (subsection 2) "Where any property mentioned in the preceding clause is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable."

Assessment of Orange Hall.

250.—C. K.—Can an assessor legally assess an Orange Hall, or is it a customary thing for them to be assessed?

Yes. The assessor should perform his duty as provided in The Assessment Act, and Orange Halls are not therein exempted from taxation.

Disposal of Dog Fund—Poundkeepers' Returns.

251.—O. B.—There is some difference of opinion as to balance of dog tax not used to pay for sheep that have been killed by dogs.

1. Is it legal to turn the balance into the general funds?

2. Can the council pay full value for sheep killed by dogs? At present we pay two-thirds.

3. Is it necessary for poundkeepers to make returns to treasurer, the keeper only taking in enough to pay his fees?

4. Is it legal for a village council to pass a by-law not to pay for sheep killed by dogs of their village, when it is impossible to collect it from the owners of the dogs?

1. So much of the dog tax collected and not required to pay damages for sheep killed by dogs, etc., "forms part of the assets of the municipality for the general purposes thereof," but when it becomes necessary in any year for the purpose of paying charges on the same, the fund is to be supplemented to the extent of the amount which has been applied to the general purposes of the municipality." See section 7, R. S. O., 1897, c. 271.

2. No. Two-thirds is the statutory limit. See section 18, of above Act.

3. If the pound-keeper receives only sufficient to pay lawful fees he is entitled to retain this sum for his own use; but such fees must be set forth in his statement to the clerk required by section 27, of chap. 272, R. S. O., 1897, to be filed on or before the 15th day of January in each year.