

We cannot express any opinion as to whether the by-law is legal or not because we have not seen it nor do we know whether the preliminary steps provided by law leading up to the passing of it were taken. If the by-law is valid the land set apart by it is a public highway and if any person refuses to move his fence off it the council may direct the pathmaster to do so.

Sale of Minerals on Township Boundary Line.

315.—CLERK.—1. There is a dispute of over \$200 between the treasurer and collector. The collector appointed the clerk to take taxes. On the 15th of December the clerk paid the collector nearly \$300 of taxes collected, of which amount \$200 was in school orders and township orders, which the collector paid over to the treasurer with other taxes collected by himself. The treasurer gave him a receipt, which the collector took, thinking it was all right. In comparing his roll and payments a few days later he found there was over \$200 for which the treasurer failed to give him credit, that being the orders as paid by the clerk to the collector. The treasurer maintains that he gave him credit for all the collector paid him. The collector, by his solicitor, served a notice on the council that the collector would claim the said sum of over \$200 as money paid to the treasurer. What steps will the council have to take in the matter?

2. In 1897 the council of Marmora sold the minerals on the Marmora portion of the boundary line between Belmont and Marmora across three lots (it being also the boundary lines between the counties of Peterboro and Hastings) without consulting or notifying the council of Belmont. At the session of the Belmont Council on the 11th of June application was made to the council to purchase the minerals on the Belmont portion of said boundary across two of the lots as sold by the council of Marmora. The council of Belmont intend on the 15th of July to pass a by-law to sell minerals on the above lots.

(a) Have the counties any claim on said boundaries, the counties never having assumed them by by-law?

(b) Was it legal for the council of Marmora to sell the minerals without consulting or notifying the council of Belmont?

(c) Would the by-law to be passed by the council of Belmont on the 15th of July be legal?

(d) Or would there have to be joint action and sale?

1. The difficulty which has arisen is one between the collector and the treasurer. If the treasurer can prove that he has paid the amount of money in dispute the treasurer must account to the municipality. All that the council can do at present is to notify both the collector and the treasurer that they must settle the matter between them. If they do not do so the council will then have to determine which one to proceed against. The collector appears to have got the money and the onus rests with him to show that he has paid it over to the treasurer and if the treasurer denies that he ever received it the collector must fail or at all events ought to fail unless he has some evidence to corroborate his contention sufficiently to turn the scale against the treasurer.

2. (a) No.
- (b) No.
- (c) No.
- (d) Yes.

Township Drains in New Village Corporations.

316.—GRAND VALLEY.—Before we were incorporated as a village on 1st January last we formed part of a township against which there is yearly assessments under drain by-laws for the benefits derived to the roads by said drains within three or four miles of the village, and we derive no benefits from the drains.

1. Are we still liable for assessments made against the township under the by-laws until the debentures run out?

2. What is the law governing such a case?

1. Yes.

2. See sections 13, 32 and 57 of the Municipal Act, R. S. O., 1897.

Councillor's License to Sell Cigars.

317.—J. B. B.—We have a by-law charging a license fee for selling cigars and cigarettes. Would it be legal for a councillor to take out such license?

We do not think it is illegal, but it is improper. A member of the council should not place himself in such a position that his own personal interests may clash with his duties toward the public.

Arrears of Taxes—Collection—New Tenant.

318.—W. G.—In 1893 A was assessed for east half lot 3, concession 2, township. After the assessor went around A moved to Manitoba, leaving nothing on the land to pay the taxes, which were returned to the county treasurer unpaid. In 1897 the land became liable to be sold for arrears of taxes; the said lot was returned to the clerk by the assessor as occupied by A, he having returned. The county treasurer furnished a list of arrears and interest to be placed on the collector's roll against said land, which was done. The collector, when going around, found B on the said lot as tenant and collected arrears from him. Now B has applied to the council for a refund of the arrears or he will take action against them.

1. Can B compel the council to return the arrears?

2. Who could B take action against, collector or corporation?

3. Can the arrears be placed on the collector's roll this year and be collected from A, he now residing on the property, or how can they be collected?

4. If the council should return said arrears to B can they hold the collector for the amount, he having returned his roll and received his salary, but bond still in the corporation?

1. If B can show that he paid the taxes under protest to prevent a seizure of his goods and that he was not liable to pay the taxes he can recover them back.

2. The collector having paid the taxes over to the corporation the action would be properly brought against the corporation.

3. No.

4. We do not think so. The council should leave B to bring his action and if he succeed let the corporation sue A under section 142. As A is the party who ought to have paid the taxes it would be wise for him to pay B and save trouble and expense.

Councillor or Bondsman—Change in Town Hall Site. See No. 243.

319.—SUBSCRIBER.—1. Can a member of municipal council lawfully act as bondsman for a collector of rates and taxes, both holding respective offices in the municipality?

2. Can a municipal council, in case of loss of town hall by fire, exchange old site for a new one in the same village without submitting by-law to the ratepayers, providing that there is

no additional expense incurred in procuring said new site?

3. Can the council rebuild on the same site without so submitting by-law?

1. Such a contract if not contrary to the strict letter of the law is certainly contrary to the spirit of the Municipal Act. It has been held that a surety to the corporation is disqualified from being elected a member of the council. See sections 80 and 83 of the Municipal Act, cap. 223, R. S. O., 1897.

2. Yes. See sub-section 1 of section 534 of the Municipal Act.

3. Yes, but if money has to be borrowed for building a new hall you must observe section 389.

Assessment House on Road Allowance—Poll or Statute Labor Tax.

320.—W. D. M.—1. I have the names of two parties on my assessment roll who live in a house on the road allowance. They are assessed as M. F. In putting them on the Voters' List how am I to designate their residence, as they do not reside on any township lot?

2. Should the assessor have assessed the house for its value on the roll?

3. In calling out men over 21 and under 60 years not on the township assessment roll for statute labor is the pathmaster justified by law to accept a certificate from another pathmaster that he has performed his work in another beat from the one he lives in?

1. All that you need do is to state the polling division in which they are entitled to vote under the circumstances.

2. Yes.

3. There does not appear to be any provision for the production of a certificate in a case of this kind, but we think that the pathmaster should accept it as evidence of the fact unless he has reason to suspect that it is not *bona fide*.

Cellar Drains to Street Ditch—Duty of Council —Sewers.

321.—W. F.—1. Can the property owners in a town drain their cellars into the street ditch and leave the water there to soak away?

2. Can the council compel them to carry it in a properly covered drain or sewer to a proper outlet?

3. If not, should the sewer be put down on the frontage tax system or paid out of the general funds of the corporation? On some of our streets there are sewers that were paid for by frontage tax, and it seems unfair to call upon these people to help pay for the sewers of the rest of the town.

1. No.

2. No, but the council can prevent them from casting water upon the highways to their injury or so as to cause a nuisance. The parties will then have to find some means for conducting water from their cellars to a proper outlet.

3. Those parties who have paid for their own sewers on the frontage plan cannot be called upon to contribute towards the cost of other sewers. If further sewers are required and it is proposed to have the work done under the frontage system it must be done under some of provisions contained in sections 668 and 669. See also section 680.

Statute Labor Lists—Date of Delivery.

322.—X. L.—1. By-law passed by council in May appointing pathmasters. Clerk notified