

Gravel Pit—Highway—Undermining Property.

219.—J. T. E.—Where there is a gravel pit on the public road, can the municipal corporation go square up to the line, and then let the gravel cave in, or can the corporation go no further than where the gravel will cave in back to the line?

The corporation must leave sufficient soil to support the surface of the land belonging to the adjoining owner. If the corporation, by digging and removing gravel, cause the surface of adjoining lands to subside or give way, it renders itself liable in damages to the owner of the lands.

Town Halls an Asset—Maintenance Drainage Works.

220.—F. M.—1. Define the meaning of asset. We have a township hall on which we have an insurance policy for \$750.00. Did the auditors do right when they included it in their report as an asset to that amount?

2. Ditch constructed under the Drainage Act, twelve years ago, requires cleaning out. Five properties interested. What steps will have to be taken to get it done? Will it need a majority to act, or will one do? We have a ditch inspector in township appointed by by-law. Will it do to call him on or will it need the township engineer? The inspector is a good, practical man. A neighboring township, with over thirty different drains has an inspector (not their engineer) to look after all the repairs and apportion their cost. Is it legal?

1. Yes, town halls are a permanent asset, but they should be valued at their actual value, and not according to the amount of insurance.

2. Section 68 of the Drainage Act, chapter 226, R. S. O., 1897, provides that drains shall be maintained according to the original assessment. The statute does not require that the work of repairing shall be done under the superintendence of an engineer or land surveyor, but when a change in the assessment is necessitated or the drain requires extension or enlargement a competent engineer or land surveyor ought to be employed.

Jurisdiction—Road—Military Reserve.

221.—SUBSCRIBER.—Adjoining the Town of Niagara, but within that municipality, lies a military reserve, across which runs a continuation of one of the town streets connecting with a township road, one mile distant. Has the corporation of the town of Niagara jurisdiction to pass a by-law for a bicycle path along side of said road, in accordance with 60 V., c. 57, s. 1?

Unless this is a road or land of the kind referred to in section 627 or 628 of the Municipal Act, R. S. O., 1897, the council has power to pass such a by-law, confined of course to so much of the road as lies within the municipality. See section 640 of the same Act. We cannot, from the mere statement that the road runs across a military reserve, say whether it is within sections 627 and 628. Section 598 shows what constitutes a public highway.

Bonus Extension—Treasurer's Bonds—Clerk and Treasurer.

222.—R. B. W.—A part of our township voted upon and carried a by-law submitted to them in 1892, granting the Cobourg, Northumberland & Pacific Railway Company a bonus of

\$3,000, on certain conditions that a certain amount of work should be done in a specified time. The company failed to carry out the contract; the contractors came back to the council for an extension of time, which was granted them twice.

1. Has the council power to extend the time and renew the bonus without going back to the people?

2. Does a treasurer's bonds remain good if the security is satisfactory for time unlimited, or should they be renewed annually, the same as collector?

3. Is it necessary to appoint the treasurer and clerk annually when there is no change?

4. Can one person hold both offices legally?

1. We cannot express an opinion upon this question without a copy of the by-law. The by-law may give the council power to extend the time.

2. Section 321 of the Municipal Act provides that all officers appointed by the council shall hold office until removed by the council. If the treasurer was appointed to the office, nothing being stated about time, he would hold the office without any renewal of his appointment, and if the bond was not limited in time we do not think it needs renewal. Section 288 requires the council to appoint a treasurer, but the council is not required to appoint a treasurer annually. Section 295 requires assessors and collectors to be appointed annually, and in the case of a collector a new bond should be required each year, even though the same man is re-appointed year after year. In the case of the township of Adjala vs. McElroy, 9, O. R. 580, the facts were: A treasurer was appointed by the township, and he furnished a bond dated Nov. 1st, 1880, conditioned that if he should "well and truly discharge the duties of township treasurer so long as he shall remain in the said office and shall render just and true accounts of all moneys, etc., as shall come and have come into his hands during his continuance in said office, and hand the same promptly into the hands of his successor in office, then this obligation to be void, otherwise to remain in full force, virtue and effect." He was reappointed annually for several years. The chancellor held that the reappointments were not equivalent to removals and reappointments but were rather a retention in office of the same treasurer, and that the sureties were not, in consequence thereof, discharged. In *Waterford School Trustees vs. Clarkson*, the school trustees of Waterford, by resolution, appointed a secretary-treasurer by his giving the necessary security, as per law, and he furnished a bond on Feb. 13, 1890, with sureties, and in 1892, 1893 and 1894 similar resolutions were passed, each of which purported to appoint him for a year only, and to require him to enter into the usual bond, but no bond was ever given excepting the one above-mentioned on Feb. 13th, 1890. The treasurer failed to account for moneys received in 1894, and the trustees brought an action against the sureties, and the court of appeal held that his appointment was for one year in the first instance, and that the sureties were not liable. Mr. Justice Osler

said: "The appointment was expressly made for a year, and the bond, in my opinion, must have relation to that appointment, and not to subsequent ones." He also said: "The trustees who neglected their duty are, it is to be hoped, sufficiently substantial to assure the board against loss. See section 107 of the Public Schools Act. In the case of a municipal treasurer, councils cannot be too careful, notwithstanding that a treasurer need not be re-appointed annually, because it may be discovered after there has been a loss that his original appointment was for a year or some other limited time, and if his bond was given then it would, in our opinion, be limited to that time, unless the bond was, by apt words, made to continue in force, notwithstanding a re-appointment. If, however, his term of office is not limited, and the sureties bind themselves so long as he holds the office, the bond need not be renewed.

3. No.

4. As the law now is, the one person can hold both offices.

Damages from Highway being Flooded—Insurance on School Houses.

223.—SUBSCRIBER.—1. Is a municipality liable for damages through the sudden rising of water overflowing the highway? The claimant drove over this portion of the road some time in the afternoon when it was all right, returning after dark found it flooded, and in trying to get through, got off the road into the ditch and had one horse drowned. He claims the road was not properly guarded.

2. The trustees of S. S. No. — have an insurance on the school house. They allow the school house to be used for entertainments, meetings, etc. If the building should burn immediately after such entertainments or meetings, could they recover the insurance, being insured only as a school house?

1. We cannot express a positive opinion upon this question because you do not furnish us with more than the general statement that there is a ditch on the highway and that there was a flood. Whether the municipality is liable depends upon what was the proximate cause of the accident. If the accident was due to the flood the municipality would not be liable, but the claimant will no doubt endeavor to show that it was a dangerous place, apart altogether from the existence of the flood. The question to be considered is whether the road was, under all the circumstances, reasonably fit for public travel. You will find an article in the April number and another in the May number of THE MUNICIPAL WORLD, where this question is discussed.

2. The question of liability, under the circumstances stated, depends upon the terms of the policy. Insurance policies usually contain provisions for avoiding the policy if the premises are used for other purposes which may increase the risk. You had better examine the policy.

"In seeking a man," remarked the observer of men and things, "an office is more successful than an officer."