

# QUESTION DRAWER

Subscribers are entitled to answers to all Questions submitted if they pertain to Municipal Matters. It is 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 stamped-addressed envelope. All Questions will be published unless One Dollar is enclosed with request for private reply.

## Liability of Municipal Officer for Mistake.

220—SUBSCRIBER—Is a municipal officer liable for a mistake he makes which is a loss to the municipality, and can the municipality collect the same from him, and what course will have to be taken to collect it, and what section of the R. S. O. regulates it?

Mr. Dillon, in his work on "Municipal Corporations," thus states the law on this question: "Public officers are not the agents or servants of the corporation in such a sense as will enable the corporation, in the absence of a statute giving the remedy, to maintain actions against such officers for negligence in the discharge of their official duty. This principle does not, it is believed, apply where the corporation is injured by the negligence of its own officers, but even in such case the recovery in the absence of statute can only be for want of fidelity and integrity, not for honest mistakes." Mr. Dillon also says that "they (municipal officers) are also liable on common law principles to individuals who sustain special damage from the failure to perform imperative and ministerial duties."

## The Law of the Road.

221—A. W.—1. A man is driving along the road; another man drives up behind and wishes to go by. Which side should he pass?

2. If the first man drives to the right and gives half the road, and the second man attempts to pass to the left trotting and in passing causes damage to be done to both, who is responsible for such damage?

1. Sub-section 2 of section 2 of chapter 236, R. S. O., 1897, provides that in case a person travelling or being on a highway in charge of a vehicle overtakes another vehicle, he shall turn out to the left so far as may be necessary to avoid a collision with the vehicle so overtaken, and the person overtaken shall not be required to leave *more than one-half of the road free*.

2. The first man appears to have done all that the law requires him to do. The second man did not evidently turn out to the left in passing as far as was necessary to avoid a collision with the vehicle ahead of him, and is therefore liable for any damage he thereby occasioned this vehicle or its owner.

## Collection of Poll-Tax.

222—J. B.—Can a village council collect poll-tax from persons who pay no other tax? If so, must a by-law be passed for that purpose, and when may it be collected? Please state where we can find authority for it in the statutes.

Section 97 of The Assessment Act provides that "every other male inhabitant of a city, town or VILLAGE of the age of twenty-one years and upwards, and under sixty years of age, (and not otherwise exempted by law from performing statute labor), *who has not been assessed upon the assessment roll of the city, town or village*, or whose taxes do not amount to \$2, shall, instead of such labor, be taxed at \$1 yearly therefor, to be levied and collected at such time, by such person and in such manner as the council of the municipality may by by-law direct, and such inhabitant shall not be required to have any property qualification." This section makes provision for

the imposition of this tax, but the council of the municipality should pass a by-law in accordance with its provisions, providing when, by whom, and in what manner it is to be collected.

## Proceedings to Close Road Allowance.

223—D. D.—A. is getting signatures for petition to the township council to close up and sell a certain road allowance. He owns the land on both sides of the road allowance its entire distance, which is about half a mile, where it ends at a navigable stream.

1. How many signatures will it be necessary for him to obtain, or would it have to be a certain proportion of all qualified voters?

2. How many signatures should a counter-petition have in order to stop the sale of said road allowance?

3. Suppose there is only one "kicker" against A.'s petition, will the council be obliged to stop the sale?

4. Would the fact of the road allowance having its terminus at a navigable stream affect the validity of by-law passed for the closing up and sale of the said road?

1, 2, 3 and 4. It is wholly in the discretion of the municipal council as to whether it passes a by-law pursuant to section 637 of The Consolidated Municipal Act, 1903, (after the preliminary proceedings prescribed by section 632 have been strictly observed) for the closing and sale of this road allowance. The presentation of a petition to the council is not a necessary preliminary condition to the passing of a by-law of this kind. If the council is of opinion that this road is not required by the general public, it may pass the necessary by-law for its closing and sale; but if the convenience of the public renders this road a necessity the council should not take any action. The fact that the road terminates at a navigable stream does not affect the powers of the council in this regard.

## Where Personalty Should be Assessed.

224—D. J. S.—Mr. A. is a merchant residing in the township of X. and has a general store in the township of Z., just across the road, which is the townline. We understand that cash on hand as well as cash in bank, together with the face value of the notes, and the interest on mortgages over \$1,000.00 is assessable as personal property. In which township is A. to be assessed for that part of his personal property?

In the township of Z. sub-section 1 of section 41 of The Assessment Act provides that "every person having a farm, shop, factory, office or other place of business where he carries on a trade, profession or calling, shall, *for all personal property* owned by him, wheresoever situate, be assessed in the municipality or ward where he has such place of business, at the time when the assessment is made."

## Assessment of Government Buildings and Buildings on Government Lands.

225—J. W.—1. Are Government buildings rented to tenants who are employed by the Government liable for taxes?

2. A grand stand is built on Government land, partly extending over the water. Would this building be liable for taxes?

1. If these are GOVERNMENT buildings, as stated, they are exempted from assessment and taxation by sub-