

required to retire the tile drain debentures, as any sums they have so paid were handed over to the municipality under a mistake as to the facts. The council has power, by resolution, to refund these sums to the several ratepayers who paid them, and should do so.

#### Payment of Debentures for Building New School House.

554—J. B.—When the debentures were issued to build a public school in our village a certain property was owned by a separate school supporter (we have a separate school in the village). Since then it has been purchased by a public school supporter who now owns it. Is that property liable to pay said debenture tax? If so, please state where we can find the authority to collect.

The exemption from the payment of a proportionate part of the rate levied to meet the payment of the debentures issued to raise money to build the new school in this municipality applies only so long as the owner of the property is a supporter of the separate school. The amount required to meet the annual payment on the debentures should be levied against ALL the taxable property in the municipality belonging to ratepayers who are supporters of public schools therein.

#### Appointment and Tenure of Office of Municipal Officials.

555—X.—Section 321 of the Consolidated Municipal Act, 1903, says: "All officers appointed by the council shall hold office until removed by the council." Does "council" mean the body elected for one year? or does it mean the permanent institution? And do all officers require to be appointed each year, where it is a new appointment or a reappointment.

The word "council" in the section quoted means the continuing governing body of a municipal corporation. Some officers must be appointed each year, for example, assessors, collectors and auditors. Others may be appointed and hold office until removed by the council. They need not be appointed each year, for example, treasurers and clerks.

#### Mode of Issuing School Debentures.

556—J. H.—Our council are about to issue debentures to the amount of \$5,000 for the purpose of building a new school house, the debentures to run for 30 years with equal annual payments of principal and interest of \$289.15. Now in drawing the by-law we find that three of the said debentures amount to something less than \$100 each, which is not in accordance with the statute in that behalf, but said difficulty can be avoided by adding the interest and principal together and making the debenture to include both interest and principal. See Consolidated Municipal Act, 1903, chapter 19, section 436. We wish to know how this by-law is to be worded so as to have coupons attached for the payment of interest half-yearly?

We are of opinion that section 436 of the Consolidated Municipal Act, 1903, has no application to this case. The by-law under the authority of

which these debentures are issued was not passed pursuant to the provisions of sections 384 and 386 of the Act, but pursuant to the provisions of either section 74 or section 76 (as amended by section 5 of chapter 32 of the Ontario Statutes, 1903,) of the Public Schools Act, 1901, according as the municipality is rural or urban. Therefore sub-section 2 of section 76 of the latter Act regulates the time for which the debentures can legally run and the amounts for which they can be respectively given. This sub-section provides that these debentures must be given for a term not exceeding thirty years and *for such amount as the council sees fit*. If three of the debentures amount to less than \$100 and the council sees fit to issue them in this way, they are authorized to so issue them by sub-section 2 of section 76. If the council is desirous of paying the interest half-yearly instead of yearly, it should express it in so many words in the by-law. We cannot give the proper words to be used to accomplish this, unless we have before us a copy of the by-law.

#### Time for Coming into Force of By-Law Increasing Ratio of Statute Labor.

557—E. W.—Our council passed a by-law increasing statute labor at the first Court of Revision. Some parties question the by-law because it was not passed before our assessment was made, as they then could have appealed to the Judge. Who is right?

We assume that it is meant that the council passed a by-law increasing the ratio of statute labor at a meeting held on the same day as the Court of Revision pursuant to sub-section 1 of section 102 of the Assessment Act. If this is the case, we are of opinion that this by-law was passed too late to have any force or affect so far as the assessment of the present year is concerned. In order to effect this object, the by-law should be passed previous to the entering on his duties by the assessor. Sub-section 4 of section 13 of the Act requires the assessor to enter in his roll in column No. 18 the number of days' statute labor chargeable against or in respect of each lot or part of lot therein. These entries had presumably been made by the assessor of this municipality prior to his return of the roll on or before the 30th day of April last, and they could not subsequently be altered so as to conform to the provisions of a by-law increasing the ratio of statute labor passed at a meeting of the council held on the same day as the court for the revision of the roll.

#### Status of Road Granted Through Crown Lands.

558—J. B.—1. On or about ten years ago the municipality got bonds of road from a farmer, had surveyed and passed a by-law, but never got by-law registered. Can muni-

cipality hold road? It has been fenced and travelled for ten years or more. Since getting bond, farmer got deed of farm from the Crown.

2. There was a special meeting of council called on May 18th, 1903, for the purpose of forming school section. The Act is to come into force in December. Can the trustees of said section demand and compel the council to grant general and trustee levy for the present year?

1. In the case of *Rae vs. Trim*, 27 Grant, 374, Blake, V. C., says: "The land could not be actually dedicated by the defendants while it was in the Crown; but although this is so, yet still parties may so far bind themselves by their acts as that when a patent issues to them the land granted would be bound in their hands by the right or easement which had obtained their sanction." Without the bond, or a copy of it, we cannot express any opinion as to its effect. If it clearly provides that a certain strip of land shall be used as a public road, and if upon the strength of it the road was opened up and used as a public highway we do not think that the owner of the land who gave the bond can now repudiate it, he having himself obtained a patent for the land from the Crown. If the Crown, however, issued a patent to a stranger, such stranger could obtain a good title free from the easement.

2. We presume that a by-law, passed pursuant to section 41 of the Public Schools Act, 1901, providing for the formation of a new school section out of existing sections in the municipality is referred to, and that this by-law is not to come into force until the 25th December next, as provided in sub-section 3. If this is so, the council has no authority to raise any moneys for the new school section thus formed until next year (1904).

#### Liability for Repair of Covered Drain.

559—G. C. B.—Where sewer pipe has been placed in ditches and covered, and have since filled with earth, who should bear the expense of repair, the municipality or the individual benefited by the covered ditch?

No information is given as to the proceedings taken preliminary to the construction of these drains. If they are ordinary township drains, constructed by and at the expense of the municipality, the council should keep them in repair. If they were constructed under the provisions of the Ditches and Watercourses Act (R. S. O., 1897, Chap. 285,) they should be kept in repair by the several parties interested as directed in the award, and if the work was done under the provisions of the Municipal Drainage Act (R. S. O., 1896, Chap. 226,) they should be maintained and kept in repair at the expense of the parties