

tions received for councillors, two of these were nominated for reeve as well. These two resigned from the councillorship and ran for reeve thus leaving three councillors elected by acclamation. The reeve and three councillors took the oath of office. This council passed a resolution instructing the clerk to post notices for nomination to be held to fill vacancy on the 16th inst. On the 15th the council called a special meeting and passed a resolution rescinding motion passed on the 6th for holding nomination. They then passed a resolution appointing a man to fill the vacancy. The council claim that section 218 covers our case while I claim 130 as I did before and after receiving your reply sent me recently. Were the steps of the council legal? If not wherein were they illegal?

Section 130 of the act governs your case. See question number 31 in the issue of this paper in January and number 51 in the issue for February 1900.

#### Dog Tax in Village.

59.—E. S.—What is the best procedure to have the dogs taxed, that is in a village, that come in during the year in order to do it legally?

A by-law may be passed under section 540 sub-section 3, of the Municipal Act imposing a tax, of the same amount as that which the assessor is authorized to enter upon the assessment roll (stating the amount), upon the owners, possessors or harborers of dogs, who are not assessed upon the assessment roll and fixing a penalty to the extent of the tax and for the non-payment thereof under section 702 of the Municipal Act.

#### Councillors' Oath of Office.

60.—J. B. B.—Is it necessary for the council, when re-elected by acclamation, to take the oath of office again? There is a difference of opinion here about councillors having to qualify when elected by acclamation for the second term.

The Municipal Act provides that elections shall be held annually in each municipality, in the manner provided in the Act. See section 118 and following sections of the Act. The members of the new council must take the oath or declaration of office and qualification mentioned in the Act.

#### Vote of Mayor.

61.—J. B.—When has a mayor a right to vote twice?

A mayor has no such right. Section 274, of the Municipal Act, provides that "The head of the council, or the presiding officer or chairman of any meeting of any council, may vote with the other members on all questions, and any question on which there is an equality of votes shall be deemed to be negatived."

#### Medical Health Officers—Vote of Mayor—Town Auditor.

62.—SUBSCRIBER.—1. Can a member of the town council who is a physician act also as medical health officer of the town at a salary? (I think not).

2. Can the mayor vote on all motions coming up at the council meetings, or has he only a vote when the council has resolved itself into a committee of the whole? (I think he has a vote on all occasions, see R. S. O. 1897, chap. 223, section 279).

3. Does the fact of a town auditor being the book keeper only (but who has no pecuniary interest in the firm whatever beyond his salary)

of a firm that supplies goods to the town, render his appointment invalid within the provisions of R. S. O., 1897, chap. 223, section 229? (I do not think so)

1. No. See section 83 of the Municipal Act.

2. Yes, the mayor can vote on all motions submitted to the council, at any of its meetings, under the authority of the section you quote.

3. No.

#### Requisites of By-law Creating Debt.

63.—W. V.—Is the enclosed by-law invalid because the by-law contains no notices of a time or place when the clerk will attend and sum up the result of the voting for and against as required by the latter part of section 341 of the Municipal Act?

In this case the voting was by wards and the vote on the by-law was taken at the same time as the vote for councillors, consequently persons interested in the by-law, have had no opportunity to personally witness the final summing up of the votes. The clerk now says he went to the town hall and declared the result to empty benches.

The debenture debt as stated in by-law (69,260) is as per audit of 1898 accounts but is considerably more at time of publication of this by-law.

Section 341 of the Municipal Act, provides that, "The council shall by the by-law, fix a time when and a place where, the clerk of the council which proposed the by-law is to sum up the number of votes given for and against the by-law, and a time and place for the appointment of persons to attend at the various polling places and at the final summing up of the votes by the clerk respectively, on behalf of the persons interested in and promoting or opposing the passing of the by-law respectively. Section 342 requires the head of the council to appoint agents to represent those promoting and those opposing the passage of the by-law, and section 343 requires such agents to make declarations in form provided by this act. The requirements of these sections do not appear to have been complied with, but if satisfactory evidence should be given that the election was conducted honestly it is doubtful if the court would quash the by-law. The quashing of a by-law is very often discretionary, and if the election was conducted honestly the objection that the above sections were not complied with would be so technical that we do not think the court would quash the by-law.

Section 384, sub-section 10, clause (d) provides that the by-law shall recite "the amount of the existing debenture debt of the municipality and how much (if any) of the principal or interest is in arrear." This means the actual existing debenture debt of the municipality at the time the by-law was taken into consideration by the council; an erroneous statement of the amount is fatal to the by-law. The reason for this is that section 384 declares "no such by-law shall be valid which is not in accordance with the following restrictions and provisions" and one of the restrictions referred to is that contained in sub-sec. 10 of the same section.

A by-law passed by the council of the city of St. Thomas last year, granting a bonus of

\$20,000 to the L. E. & D. R. Ry. Co., was quashed by the courts on this ground.

#### Formation of New School Section.

64.—J. R.—There is a small settlement of seven families, with about ten pupils of school age, lying between two large school sections, but distant seven miles from either school.

One of these sections was organized about twenty years ago, and at that time the settlement was included in the school section, but latterly the section formed a union with another section, and the school-house was built seven miles from this settlement, and no school taxes have even been collected by direct levy from the settlement. About two years ago the settlement made application to the municipal council to be formed into a public school section, but the council refused on the ground that it still formed part of the adjacent school section. Now this settlement has procured a building suitable for a school-house, and posted notices preliminary to holding a meeting on the regular annual meeting date of the election of trustees.

1. Can the settlement compel the municipal council to form it into a separate public school section, and what would be the proper steps for the settlement to take to secure the school?

Section 38 of the Public Schools Act empowers a township to pass by-laws to alter the boundaries of a school section or divide an existing section into two or more sections and section 39 as amended by section 42, chapter 36 of the act of 1899, gives a right of appeal to a majority of the trustees or any five of the ratepayers to the county council against the neglect or refusal of the township council, on application being made to it by the trustees or any five ratepayers concerned, to form, unite, divide or alter the boundaries of a school section or school sections within the township. Under these sections we think you may obtain relief, though the amendment of the law is not very artistic. It reads, in effect, "to form the boundaries," "to unite the boundaries," "to divide the boundaries," "or to alter the boundaries, etc." It ought to have been worded in this way, "to alter the boundaries of, or to form, unite or divide a school section or school sections within the township." We are of the opinion, however, that the courts would construe the latter part of this section in the same way as if it was worded as we suggest, because the amendment was made in consequence of a decision of the Chancellor on the section before its amendment, in the case of *in re School Section No. 16, township of Hamilton, 29 Ont. R., p. 390*, in which he held that there was no longer any appeal to the county council from the refusal of a township council to "divide" a school section. If the settlement is in a township in a district without county organization, there appears to be no provision for an appeal from the decision of the township council.

#### Duties of Treasurer.

65.—A. D. C.—1. Can a municipal council legally pass a by-law making taxes payable to treasurer?

2. Could treasurer serve tax bills and make first demand?

3. Would treasurer have power to issue warrants for seizure?

1. Section 4 of the Assessment Amendment Act, 1899, authorizes the councils of