

## LEGAL DEPARTMENT.

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## HIGHWAYS.

## Opening or Stopping up Roads.

Section 637, chapter 223, R. S. O., 1897, empowers the council of every county, township, city, town and village to pass by-laws for opening, selling or stopping up roads, etc., within the jurisdiction of the council; but by reason of section 632 of the same act these powers cannot be exercised until the conditions provided by section 632 are complied with. These conditions are: (a) The posting up for one month in six of the most public places in the immediate neighborhood of the road, of written or printed notices of the intended by-law; (b) the publication of such notice weekly for at least four weeks in some newspaper in the municipality, and where no newspaper is published in the municipality or in a neighboring municipality, then in the county town if any such there be; (c) the council is to hear in person, or by counsel or solicitor, any one whose land might be prejudicially affected thereby and who petitions to be so heard. In *Wannemaker vs. Green*, 10 O. R., 457, the court held that the notices required to be given were conditions precedent the due performance of which was essential to the validity of the by-law. At p. 467 *Armour J.* says: "It was proved that six notices were posted up in connection with this by-law in the most public places in the locality, but it was not shown when they were posted up nor what they contained. It was also proved that a notice was published weekly, but not for at least four successive weeks, but only for three successive weeks in the *Weekly Intelligencer*, a newspaper published in Belleville, the county town, but it was not shown what that notice contained. It is clear, therefore, that the provisions of this section as to the posting up and publishing of the notices were not proved to have been complied with, etc. I think they must be held to be conditions precedent to the right of the council to pass such a by-law, and that they have not been sufficiently complied with to enable the council to pass this by-law." The statute does not provide any form of notice. If it is intended to establish a new road the notice should show on its face where it is proposed to lay out the road so that persons whose lands or interests may be affected may know what the council is about to do. Though it may not be necessary in the notice to describe the proposed new road by metes and bounds, yet we think that that should always be done as a matter of precaution. In the case of closing an existing road there must not be uncertainty as to the road or part of road it is proposed to close. In the case cited *Armour, J.*, says: "I think by-law No.

277 is void also for uncertainty, for the fact is that the road in question is not the only road running across lot 15, in the 7th concession of Sydney, and there is nothing in the by-law to show which road is meant." The notice should also state the day on which the council intend considering the by-law. In *re Birdsall vs. Township of Asphodel*, 45 U. C. Q. B., 149, a by-law closing a road in use for forty or fifty years was quashed because the notice did not disclose the day on which the council intended to consider the by-law. The notices must all be posted up one month previous to the time for considering the by-law. This means a calendar month. See sub-section 15 of section 8 of chapter 1, R. S. O., 1897. In *re Laplante vs. Peterborough*, 5 O. R., 634, a notice given on 28th March for the 28th April was held too soon, because there could not be two 28ths in the same month. In *re Ostrom vs. Township of Sidney*, 15 O. R., 43, *Street, J.*, refused to quash a by-law where the notices were posted up on the 29th of July and the by-law was passed on the 29th of August, but the Court of Appeal reversed his decision and quashed the by-law. See 15 A. R., 372, at page 374, *Osler, J.*, says: "It is essential to the validity of a by-law establishing or stopping up a road by which the property of private persons may be compulsorily taken or the rights of the public extinguished that the provisions of the statutes under which it is passed shall be strictly observed." Care must also be taken that the by-law is published for at least four consecutive weeks. In *re Coe vs. Township of Pickering*, 24 U. C. Q. B., 439, it was held that a notice first published on Thursday, 12th of January, appointing Tuesday, 7th of February, under a statute containing similar language was insufficient. The first publication having been on Thursday, the 12th of January, the first week would end Wednesday, the 19th of January, the second on Wednesday, the 26th of January, the third on Wednesday, the 2nd of February, and the fourth week on Wednesday, the 9th of February, and therefore the earliest day which could have been fixed was Thursday, the 10th of February. The council must also before passing such a by-law hear any person whose land may be prejudicially affected thereby, and who petitions to be so heard. As to the by-law itself, the course, boundary and width of the road must appear upon its face or from some document or description referred to by it which may be treated as incorporated with it. In *St. Vincent vs. Greenfield*, 15 A. R., 567, *Osler, J.*, at page 569, says: "According to all the cases which have been decided in our courts on the subject, from the earliest to the present time, it is essential to the validity of a by-law by which a corporation professes to expropriate land for and to establish and lay out a highway, that the course, boundary and width of such highway should be capable of being ascertained either from the by-law itself or

from some document or description referred to by it which may be treated as incorporated therewith." The description of the road in this case was as follows: "A road on the boundary line between the 11th and 12th concessions in the said township, from the line between lot No. 30 and lot No. 31 to the line between lot No. 35 and lot No. 36." It will be observed that the width of the road was not given. In *McIntyre vs. Bosanquet*, 11 U. C. R., 460, the following description was held defective: "That the new survey made by Mr. A. M. Holmes, commencing at the Pine Hill road in lot 37, Lake road east, running southwesterly, south of the old lake road until it strikes the old lake road on lot 52, be and it is hereby established and constituted a public road; and be it further enacted that the said road shall be four rods in width." When this description is examined closely it does not amount to more than this, that Mr. Holmes laid out a road four rods wide somewhere upon the ground. In *re Brown vs. The County of York*, 8 U. C. R., 596, *Robinson, C. J.*, says: "This by-law is so far deficient in certainty that it does not show on the face of it how wide this road is to be which is to be laid out between lots 4 and 5, nor how it is to be laid out, any further than that it is directed to be laid out between those two lots, and as it is admitted that these lots touch each other, there cannot be space for a road between them, which is what the by-law professes to establish. The road could only be made by authorizing a tract of some specific width to be taken off one or other of the lots or partly from each. How this is to be done or how wide the road shall be the by-law does not inform us otherwise than by saying that it confirms the road laid out by John Embleton, the road surveyor, and described in his report of such a date. It does not refer to that report as annexed, and does not therefore establish the identity of the report nor give any security for its being forthcoming when required." In the same case, 12 O. R., at page 304, *Cameron, C. J.*, says: "This by-law provides for the opening of a road on the boundary line between the 11th and 12th concessions. What does 'on the boundary line' mean? It can hardly be said to mean on each side of it, and a road cannot be opened exactly on the line, for a line has no breadth and could not contain a road. Then it might have been the intention of this council to make the road entirely on one side of the line or partly on one side or partly on the other, and there is nothing in the writing to give the slightest indication of the intention, unless the petition for the road can be taken as evidencing the legislative intention of the council." In *Adams vs. East Whitby*, 2 O. R., 673, *Osler, J.*, says: "The power of a municipal council to close up a road under section 504, R. S. O., 1877, whereby any one is excluded from access to his lands is a conditional one only, and if another con-