

3. No.

4 and 5. The answer to 3 disposes of these two questions.

Councillor and Member of Local Board of Health.

28.—F. J. C.—Section 48 Public Health Act points out who may be members of the board of health. Sub-sections numbers 1, 2 and 3 makes the head of the council to be one member. Can any other member be appointed a member of the local board? Can a councillor hold the position of councillor and a member of the local board of health at the same time? Your reply to question No. 471, December WORLD would imply such could be the case. Upon what authority do you base this reply?

We do not think our answer to question number 471, 1899, will warrant the implication you attribute to it. The enquirer wished to know whether one, who had been a member of the local Board of Health, say for 1899, could qualify as a councillor in the same municipality for 1900. Although the Municipal Act does not in specific terms disqualify a person under the above circumstances, still, in order to avoid possible difficulties, we advised a resignation of his membership of the Board of Health before nomination day as a matter of precaution. As a general rule a council should not appoint one of themselves to a position, but we think the Board of Health Act contemplates that such an appointment may be made for the following reasons: There is no legal reason why a council should not appoint one or more of its members other than the head thereof to memberships of the Board of Health, and, if so section 48 of the Public Health Act provides "There shall be a local Board of Health in every township and incorporated village to be composed of the reeve, clerk and three ratepayers to be appointed by the municipal council." If this section stood alone it might very well be contended that the general rule applied but section 51 of the same act seems to imply that a member of the council may be appointed under section 48 because it expressly provides that the ratepayer to be appointed in the case of district Boards of Health is not to be a member of the council.

Local Improvement By-law—Debenture Issue.

29.—B. F. C.—1. If a local Improvement By-law is approved of by electors and finally passed by council, is it necessary to promulgate same by publishing in local paper three times after finally passing same by council, as in the case of a money by-law?

2. On petition our council constructed a granolithic sidewalk and cobble-stone gutter at a cost of \$1320.00. \$430.69 of this amount is to be provided out of the general funds of the municipality, being cost of curbstone and cobble-stone gutter. Can we issue debentures for the entire amount, extending payment over say ten years (without submitting to vote of ratepayers), or can we only issue debentures for the \$889.31 to be paid by special rate? (I enclose notice of Court of Revision).

3. Can we issue local improvement debentures for less sums than \$100, as in the case of drainage debentures?

1. Yes. In order that objections to its validity may be cured if any complaint be made within the time limited by statute.

2. Before expressing an opinion upon

this question we would like to know the section of the Municipal Act which you think gives you the right to charge part of the cost of this work to the whole municipality.

3. No

Township not Liable—Breach of Contract—Roadway and Bridge to be Guarded.

30.—A SUBSCRIBER—The council of the township of N— are erecting a bridge across a river. The company having the contract for the iron superstructure, owing to not being able to get material, have not commenced their work as soon as expected; the abutments being completed about six weeks, they agreeing when taking the contract to begin two weeks after the abutments were finished.

1. Is the township liable to any individual for damages, for not having the bridge completed?

2. Is the company liable to the township for damages, there being no written agreement as to time only verbal?

3. The roadway now is through the river, how can the municipality be made free from responsibility in case of an accident happening there?

1. No.

2. If the contract is a binding one, the company is liable for damages for a breach of it, but what damages can you prove? We doubt very much if the township can prove that it has sustained any damage in law.

3. The roadway and unfinished bridge should be guarded by day and night, by the municipality in such a manner as to prevent the happening of accidents to persons using the roadway, or a fence should be built to keep the public from using the road while it is in a dangerous condition.

New Election to be Ordered,

31.—C. T.—At our nominations four men were nominated for councillor. One withdrew. The three were elected by acclamation. What proceedings will we take to elect the fourth man?

Sec. 130 of the Municipal Act (R. S. O., 1897, c 223) provides, that in case, at an annual or other municipal election, the candidate, or any of them who are nominated, retire, and by reason of such retirement the requisite number of persons is not elected, then the members elected, if they equal or exceed the half of the council when complete, or a majority of such members shall order a new election to be held in the manner provided by this act to fill the vacancies so caused. As to who should issue the warrant for the new election, see sec. 213 of the act, and as to the general provisions for holding the election see sec. 212 of the act and following sections, in so far as they are applicable to your municipality and the circumstances of the case.

Council Responsible for Road.

32.—POSTMASTER—The municipal council some years ago surveyed a road from one concession to the other principally through government land. The local government made a grant to build a road on survey, which was done and now the road is almost impassable. Should the council or the government keep road in repair, and who will be liable for damages should there be any accidents happen?

The council of the municipality having surveyed and laid out the road, and the government having made a grant to aid the municipality in building it, the road is under the jurisdiction of the former. The council should keep the road in such a condition of repair and safety as the nature and circumstances of the locality require. In default of which the municipality will be liable for any injuries or damages occasioned by the road being out of repair.

Ratepayers Must Pay School Rates.

33.—C. W.—If school trustees engage a teacher not qualified under the latest regulations but approved by a majority of ratepayers at the annual school meeting, would any ratepayer be justified in refusing to pay school rates?

No.

Nominees May Resign—Clerk to Issue Writ.

34.—CITIZEN.—We held our regular "or annual" nomination meeting on 22nd inst. There were nominated for reeve 4, for councillors 10. They all resigned in writing before 9 p. m. on 23rd. On the 26th the clerk "by authority of writ from the reeve for '99" issued proclamation calling for more nominations on January 3rd, 1900.

1. Did clerk act legally in letting all resign?

2. Under our circumstances who should issue writ, reeve of '99 or clerk?

1. Yes. Any person nominated has the right to resign if he does so within the time and in the manner provided in the Municipal Act.

2. Section 131 of the act provides that the clerk (as returning officer), shall cause a new election to be held in the manner provided by the act.

Declaration and Oath of Office.

35.—J. I. C.—Can a councillor-elect take the declaration and oath of office before or after the first meeting of the new council. Supposing one of the members is sick or otherwise absent could we take the declaration and oath in the clerk's office or at a special meeting?

2. I would like a reply as soon as convenient. One of our councillors expects to go away on Jan. 1st to be gone a month and he wants to take the declaration before he goes, can he legally do so?

1. Yes, provided he makes the declaration required by the Municipal Act before entering on the duties of his office. He can make the declaration in the clerk's office before the clerk, and file them with him. No special meeting of the council is necessary.

2. Yes.

Culverts on Townline.

36.—E. S. D.—Your answer to question No. 386, in September number does not agree with the opinions of some old municipal officers, in this section.

1. Upon what statute do you base your opinion?

2. Has a case of this kind ever been tested?

3. Suppose an accident should happen at one of these culverts, which have been constructed jointly, who is responsible for damages?

4. Would you advise B. Tp. to resist a claim for repairs on one of these culverts?

It is understood that these culverts span the ditch on side of boundary line.

The whole of the road between the two townships is under their joint jurisdiction