

Question Drawer.

Subscribers are entitled to answers to all Questions submitted, if they pertain to Municipal Matters. It is particularly 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 stamp addressed envelope. All Questions answered will be published unless \$1 is enclosed with request for private reply.

Compelling Removal of Obstruction in Watercourse.

429—H. E.—A creek runs through this township O. It runs through the back part of it and is mostly bush on both sides of it, but some settlers have settled in north of the creek, and the council have built roads over it on the first five concessions. The creek is about eighteen feet wide, and runs through an elm flat. It has very little current, and the timber men in taking out this elm for staves have felled a lot of tree tops into the creek, and they dam the water back and flood the land and roads near the creek. The men settled along the creek came to the council and want the tops taken out. Can the council compel the men who threw them in to take them out or not, or what is the course for them to take? It is a natural watercourse.

By subsection 12 of section 562 of the Municipal Act, township councils may pass by-laws for preventing the obstruction of streams, creeks and watercourses, by trees, brushwood, timber and other materials, and for clearing away and removing such obstruction at the expense of the offenders or otherwise. We assume, however, that the council of your township has not yet passed any by-law under this subsection, and if not, we would not advise the council to take any steps to compel the removal of the obstructions in the creek in question, because as there is no by-law, the persons who put the tree tops in the creek cannot be said to be offenders within the provisions or meaning of this subsection. In other words we doubt if a by-law passed under this subsection will be retroactive. If the creek is a natural watercourse no person has any right as against riparian owners, that is, persons who own lands along the banks of the creek, to obstruct the natural flow of the water to their prejudice.

Damages Caused by Diversion of Course of Creek.

430—J. C.—1. A has a farm and B has a farm across sideroad opposite it. Creek comes out of A, crosses road into B, takes quarter acre off B, crosses back into A. Pathmaster takes some earth off A's side to put on road without council's permission, and when high water comes creek washes out a course, and now runs down on A's side of road, which deprives B of water. Remaining so for eight or nine years. Can B come on council for damages.

2. Creek runs into C, taking off one-eighth of an acre, comes back on D. C gave his consent to one councillor to lower ditch on D side of road which caused creek to leave C. Can C make council put creek back? or can he claim damages after giving permission?

1. Assuming that the creek in question is a natural watercourse, that is, a creek having a channel with defined banks, we are of the opinion that both the municipality and A are liable for diverting the water.

2. The principle involved in this question is the same as in the first one but it is said that C, who now complains, gave his consent to the ditch along the side of the road being deepened, and if that is true the work having been done with his consent he is now estopped from complaining.

Payment of Account of Local Board of Health.

431.—C. N. M.—1. Can a medical health officer of a township charge the municipality for the vaccine he uses when the individual pays him for the vaccination? Where does he get the authority for charging the municipality with the vaccine?

2. Can a member of the township Board of Health act as constable in connection with an outbreak of small-pox, and legally charge the township council for his services?

3. Is it legal for a medical health officer to bill the township council with his account without giving a detailed statement of his account?

4. Has Board of Health a legal right to audit up all accounts before they are presented to the township council for payment?

1. We do not think the medical health officer is entitled to anything from the township for his services in the case. See section 4 (1) and section 12 of the Act respecting vaccination and inoculation. Chapter 249, R. S. O., 1897.

2. No.

3. We are of the opinion that the township council is entitled to receive a detailed statement from the medical health officer of his account so that it may judge of its reasonableness.

4. It is the duty of the Board of Health to examine all accounts for services under the Public Health Act, and it is the duty of the treasurer of the municipality upon demand to pay them out of any monies of the municipality in his hands upon an order from the Board of health for that payment. See section 57 of the Public Health Act.

Liability of Police Villages and Townships to Construct Bridges and Culverts.

432.—W. B.—In the township of W. G. there is the village of B, and on January 1st it was turned into a police village by the county. Now, what we want to know is this: There is a small creek running through the village, and it is dry in the summer unless there is a big rain, we had one lately, and there was a culvert on one street which was washed out. The former size of it was four feet wide, five feet high, and eighteen feet long, and now it would need a culvert eight feet wide, and the police trustees refuse to build it on account of it being a large culvert, and they claim it is a bridge and the township has to build it. Please let us know whose duty it is to build it; also define the difference between a culvert and a bridge.

Section 741 of the Municipal Act empowers the trustees of every police village to pass by-laws for letting contracts for building sidewalks, culverts, etc. Where the structure is a bridge as distinguished from a mere culvert, the trustees have no jurisdiction over it. This question involves the point as to whether the structure required is a bridge or a culvert. We think it is a bridge and if so, the township must build it. But even if it is not a bridge, it is doubtful whether the trustees of the police village are bound to build it, because the power given by section 741 is permissive. We do not think that the township council can compel the police trustees to build the culvert, and if the trustees neglect or refuse to build it, the council cannot safely leave it unbuilt, because if it does, and an accident happen, the municipality would be liable in damages. It is not easy to define the difference between a bridge and a culvert. The opinion of an engineer would be of more value than ours. The question is pretty fully discussed by Mr. Justice Ferguson in the case of North Dorchester vs. Middlesex, 16, O. R. At page 666 he says: "As to the Caddy creek bridge, the span is said to be nine feet only. The witness said that a culvert would be sufficient in this place. It is true that a culvert may mean a larger or a smaller watway but the line must be drawn somewhere. I apprehend that Mr. Justice Patterson used the word and intended to use it according to its ordinary signification, and with reference to culverts as commonly used in the construction of roads, etc." Mr. Justice Ferguson in this case held that the structure referred to was a culvert and that the county was not bound to maintain it. In the same case Mr. Justice Ferguson held that a structure over Daly's creek, having a span of 67 feet, and one over Kettle creek, having a span of 31 feet 9 inches, were bridges.

Liability of Police Villages and Township to Construct Culverts and Bridges.

433.—J. S.—In our township is situated a police village, the trustees of which were elected for the first time last municipal election. There has been no agreement between trustees and council as to their liability for the maintenance of bridges and culverts. There are two bridges that both parties claim the township are liable for, but there are others which the trustees claim are bridges, and the council say they are culverts, and hold that they are not liable for their repairs.

1. Should there have been an agreement between police village and township, and when and how long would it be binding?

2. In connection with bridges and highways, what rates are the police village liable for?

3. Define what is a bridge and what is a culvert, and what is the difference between them?

1. There is no authority by virtue of which an agreement can be made between the trustees of a police village and the council of the township in which it is situate, respecting bridges. Section 740 of the Municipal Act, authorizes the making of an agreement in regard to the