

## Qualification of School Trustee.

**146—J. N. M.**—Can a school trustee legally hold a seat in a township council?

At our township nomination there were seven men nominated for councillors and they all went to the poll and two of the men that were elected were public school trustees. Can these two men legally hold their seats in the council? If not, would the next two men securing the largest number of votes polled be entitled to the seat in the council or would there have to be another election?

Although a member of a School Board for which rates are levied is disqualified as a candidate for membership of a township council by section 5 of chapter 29 of the Ontario statutes, 1902, still, until his seat becomes vacant, by disclaimer, resignation, judicial decision or otherwise, a candidate in this position, who has been elected, can legally hold his seat in the council. If the councillors elect, who were disqualified in this way at the time of election file disclaimers as provided in sections 238 or 240 of the Municipal Act, the candidates having the next highest number of votes shall then become the members elected, as provided in section 241 of the Act.

## Separate School Supporters Should Pay Taxes in Support of Nearest Separate School.

**147—P. E. G.**—Last year a number of Roman Catholic Separate School Supporters withdrew from R. C. S. School No. 8 and joined R. C. S. School No. 14. Those supporters live closer to the section No. 8 than they do to the 14. Trustees of school No. 8, who have erected a new school house last year, now claim that they have a right to collect those gone supporters' school taxes.

1. Can the whole school tax be collected or only an amount as would cover only those "gone supporters" portion of debt incurred for building?

2. What steps should trustees of school No. 8 take to recover moneys i. e. would such taxes be recoverable directly from school No. 14 or through the medium of the council?

(a) A Protestant public school supporter refused last year to join in when his school was turned into a R. C. Separate School and was not assessed to that school. There is a public school within three miles from that man's property but the assessor neglected to put him down for any school assessment. Can now some school sections claim his school taxes for last year, the Collector's Roll being now returned?

1. Assuming that these separate school supporters reside within three miles of two or more separate schools (two of which are numbers 8 and 14) that fact itself constitutes them supporters of the separate school nearest to their respective places of residence, (see section 44 of the Separate Schools Act), and school No. 8 being nearest to them, they must support and pay their school rates towards the maintenance of this school. ALL their school taxes, so long as they remain supporters of a separate school, must be paid and devoted to the support and maintenance of school No. 8.

2. We do not see how the Trustees of school No. 8 can recover the taxes payable LAST year by these people, but future school taxes can be collected from them by such Trustees, either by a collector appointed by them under the authority of

section 55 of the Act, or through the medium of the council pursuant to the provisions of section 58.

3. No.

## Qualification of Councillor.

**148—B. B.**—1. A gentleman who owned ample property was elected to be a member of the town council, at the last election. He has since disposed of his property but will continue living here as a tenant of another property. Will he have to resign his seat in the council?

2. (a) A gentleman qualifying on his assessment as a tenant was elected to the town council. His lease expires on Feb. 21st. In the event of his not being able to release the said property before Feb. 1st. Will he have to resign?

(b) If he is able to release it, eventually, but the negotiations extend through the month of February will he have to resign his seat in the council because the negotiations were not completed prior to Feb. 1st?

1. No. Section 76 of the Municipal Act requires a candidate for the office of councillor of a town to possess the qualification in that section mentioned, "at the time of the election"—and the time of the election commences on nomination day. At this time he appears to have been fully qualified under this section. The cases in which a member of a council may become disqualified after his election will be found in section 207 of the Act.

2. (a) No, for the reason given above. (b) This will make no difference to our answer to (a).

## Powers of Councils to Transact Business After 15th Dec.—Duties of Engineer in Assessment of Lands for Drainage Works.

**149—O. J. W.**—1. I wish you to outline the law in respect to the powers of municipal councils to hold meetings after the 15th of December. Would it be proper for a council to hold a court of revision on a drain which is being enlarged under the provisions of the Drainage Act after the 15th of December and would it be legal to (after taking the evidence) adjourn the Court till after the election and before the new council organizes? The result of the election defeated the reeve and one other member of the Court and one of the members of the Court who was returned had land appealed against leaving two members of the Court who were re-elected and free to give an independent judgment on the appeals. Would judgment from such a Court be regular? Would it be legal for a reeve, who was defeated on the 1st of January to sign checks at a meeting held on the 9th? What would be your opinion as to such a procedure?

2. In section 3 sub-section 3 of the Drainage Act of 1894 in describing lands assessable for injuring liability there appears in the 6th line the words (except the petition) what petition does this mean? The same words appear in the beginning of the 7th line in sub-section 4.

3. Section 12 of the Act authorizes the engineer to assess under three heads. Has the court handed down any judgments, which have changed the construction of the law so that an assessment for injuring liability would be held to be authorized upon lands benefited by as well as those lands not benefited by a drainage work and that holds that lands should not be assessed for outlet liability as described in section 2 sub-section 4 and that holds to the principal of assessing all lands high and low for injuring liability and second for direct benefit? I enclose you a part of a schedule of an assessment where the engineer had adopted such a principal. Is it legal?

4. Four persons namely S, F, R and W are the owners of lands that are low and flat and every freshet they are flooded from 6 in. to 2 feet with water, dependent upon the amount of rainfall in the freshet. How would section 3 sub-section 4 apply to such lands? (There are no lands assessed in the whole assessment assessed under the head of outlet liability.)

1. Section 328 of the Municipal Act provides that "no council of any local municipality shall, after the 31st day of December in the year for which its members were elected, pass any by-law or resolution for the payment of money, or which involves directly or indirectly the payment of money, nor shall they enter into any contract or obligation on the part of the municipality, nor shall they appoint to or dismiss from office any officer under the control of the council or do any other corporate act after said day, *except in case of extreme urgency.*" From what is stated we cannot gather whether the transaction of this drain business and issuing and signing of township cheques or orders by the moribund council after the 31st December was so urgent and necessary that the members of the old council were justified in getting them off their hands. We do not see, however, how the transaction of drainage business, at this time of the year is so urgent that its completion could not have been postponed until the council for 1903 had duly organized.

2. This section is now section 3 of chapter 226, R. S. O., 1897. The petition referred to is that mentioned in sub-section 1 of the section.

3. Section 12 of the Drainage Act does not mean that an engineer must in all instances assess each parcel of land, under all three heads mentioned in the section. He is to exercise his judgment as to whether the circumstances are such that the statute requires him to assess any particular parcel of land, under one or more of these heads. We are aware of no case in the published reports holding as you suggest, and we can understand how the lands contributing towards the construction of a drainage scheme might be so situated, as to be assessed for direct benefit and injuring liability only.

4. Under the circumstances stated, we are of opinion that these lands, if the drain to be constructed will pass through them, should be assessed both for the benefit they will directly derive from the construction of the drain, and their proportionate share of the cost of the construction of such drainage work as will be required for relieving the lands below from the water off the lands in question which the construction of the drain causes to flow through them.

## Calculation of Statute Labor on Resident and Non-Resident Lands.

**150—P. M.**—In our municipality we allow each 200 acres for a parcel and charge two days labor for each parcel. The C. C. has always paid our demand until this year. I enclose you a list of their lands as they stand on the Resident roll for the year 1902. We charge every one \$1.00 a day for all labor performed. Are we right in demanding 36 days from the C. company?