

Illegal Payments by Township Councillors.

The following opinion of Messrs. Bull & Werritt, solicitors for the township of York, was read at a recent meeting of the council of the said township, and was laid over for future action. As the matters in controversy seems to be of considerable importance, generally, we think it worthy of publication in these columns for the benefit of those interested in municipal work. We give the opinion as printed in the columns of the *Recorder*:

"We are asked if any of the payments made to the members of the municipal council of the corporation of the township of York for the years 1891, 1892 and 1893, as set forth in pages 71 to 79, both inclusive, of Mr. Neff's report are illegal, section 231, consolidated municipal act 1892, which is word for word the same as sec. 231, cap. 184, R. S. O. 1887, provides for payment of members of a municipal council as follows: 'The council of every township . . . may pass by-laws for paying the members of the council for their attendance in council, or any member, while attending a committee of the council, at a rate not exceeding \$3 per diem, and 5 cents per mile necessarily traveled (to and from) for such attendance, while section 479, sub. sec. 2, of said consolidated municipal act, 1892, provides that the council of every township may pass by-laws (appointing certain officers) for appointing such pound-keepers, fence viewers, overseers of highways, road surveyors, road commissioners, valuers, game inspectors and other officers as are necessary in the affairs of the corporation, . . . but nothing in this act shall prevent any member of a corporation from acting as commissioner, superintendent, or overseer over any road or work undertaken and carried on, in part or in whole, at the expense of the municipality, and it shall be lawful for the municipality to pay such member of the corporation acting as such commissioner, superintendent or overseer.' Under the old acts respecting municipal institutions payments to members of municipal councils for such services were illegal. By 12 Vic. municipal councils were empowered to pass by-laws for the payment of members with certain restrictions. By sec. 262, cap 99, 22 vic., municipal councils were empowered to pass by-laws for paying members of the council for their attendance in council at a rate not exceeding \$1.50 per diem and by sec. 25, cap. 30, 31 vic., members of the council were empowered to act as overseers, etc., and to receive payment for same. We are of the opinion that strictly legally speaking, without legislative authority or a by-law authorizing same, the payments set out on pages 71, 73 and 75 are prima facie illegal and that any rate-payer of the township of York can bring an action on behalf of all the rate-payers of the township (save the members of the municipal council against whom the action may be brought) as well

as on his own behalf; or the corporation as represented by the present municipal council may bring the same to recover the amount of such illegal payment. The council of one year is separate and distinct from the council of another year, notwithstanding that the members of such councils are the same in each case there might be different causes of action. "We gather from the authorities that the principle is that members of a municipal council may be paid reasonable remuneration for their services as such members, but that such remuneration shall not exceed a certain sum per diem, and that they may act as overseers of works and that a member of a municipal council shall not use his position as a means of profit to himself. It has been held in cases where a debt has been incurred by a council, and the work performed, that the corporation are liable although no by-law has been passed. This principle has been applied, so far as we are able to learn from the authorities, to a case of the kind before us, but it would no doubt be raised and would have to be met; therefore each item in the report would probably stand upon a separate footing. In the township of York, in many cases, payments were authorized by resolution, by general purpose by-laws and by a statement in local improvement matters adopted by the court of revision or the council. Consequently, in each case it will be necessary for you to ascertain whether any resolution, with or without the seal attached, has been passed authorizing the payment to be made, or the payment has been authorized by any general purpose by-law sufficiently designating the purpose for which the payment was to be made, or whether any evidence exists of the adoption of the payment after the payment of same. We are inclined to the opinion that any item for work actually performed in good faith where the same was authorized or adopted by the council, if such work were not caused by irregularity, neglect or fraud on the part of the council or its officials, and there was reason that such work should be done in the interests of the corporation, then that the court would be loathe to order payment back from the member receiving the same. In 1891 we know that the reeve attended on arbitration between North Toronto and East Toronto, and in the suit of Tabor v. the Township of York. The result in the North Toronto arbitration was considered very favorable to the township, and in the Tabor suit the stand taken by the reeve saved the township some hundreds of dollars, and no doubt the reeve was at expense in connection with these matters, which expense should be paid by the township.

"Re Local Improvements. We do not see that a member of a municipal corporation can be entitled to any greater sum as compensation for attendance at a meeting to consider a local improvement than for an attendance at an ordinary council meeting. An attendance in council would

mean, in our opinion, an attendance for the entire sitting of the council, no matter whether it might be an hour or twenty-four hours, so long as the sitting was held on any one day, so that each reeve and deputy-reeve would be entitled to receive \$3.00 per day, and 5 cents per mile each way (to and from) place of meeting and place of residence, for such attendance. The extra charges are, therefore, if for attendance on the same day, illegal. As to the charges for inspection, it is not so clearly laid down that a by-law is necessary, and a reasonable sum might be allowed under section 479 of the consolidated municipal act of 1892 for services of this kind. No tariff appears to be laid down, but the charges should be reasonable. The sum to which members of the council would be entitled under heading, 'Salaries of Council,' would be \$3.00 per day and mileage each way for attendance in council or committee. In 1892, the items 'S. S. No. 28, negotiating debentures, \$20,' 'S. S. No. 4, ditto \$25,' would, unless the reeve was authorized and acting in committee, be entirely illegal; if so authorized, the usual fee only would be allowable. (The funds to meet these payments, as we understand the matter, were not township funds but the funds of the respective school sections which would be entitled to same). And 1893, the items 'Revising debentures Woodbine avenue, \$25; ditto, Eglington avenue, \$25; ditto, Beaumont road, \$25, are in exactly the same positions as the items for 1892 above mentioned, and the funds paid were, we presume, paid out of the funds of the districts. The item of \$90 paid deputy-reeve MacDonald in 1893 for services rendered in committee in 1892 we would consider illegal. A councillor is not an officer within the meaning of the Municipal Act, and should be voted his compensation by the council of the year in which the services are rendered, as they only have a knowledge of the necessity for the work, and the amount of work done by such councillor. By section 17, chap. 52, R.S.O., 1887, the reeve, clerk and assessors are ex-officio selectors of jurors for a township, and by section 157, such selectors are entitled to such sums of money as is authorized to be awarded them by the council of the municipality. As these payments are prima facie illegal, your council should ask the members of the councils for the years 1891, 1892 and 1893 to explain the charges they made and the payment received therefor, as a first step."

Publications Received.

Financial Statement and Departmental Reports of the city of New Westminster, B. C., 1893.

Auditors' Reports, Receipts and Expenditures, Township of Moore, 1893.

Minutes and By-laws of the Council of the Township of Beverly, 1893.

Financial Statement of the Village of Streetsville for 1893, and Voters' List for 1894.

Financial Statement, City of Brantford, 1893.