

# The Municipal World.

Published monthly in the interests of every department of our Municipal System—the best in the world.

**\$1.00 PER ANNUM. SINGLE COPY 10c.**

Six copies, \$5.00. Additional copies, 75 cents each. All subscriptions to be paid in advance. The paper will be discontinued at expiration of term paid for, of which subscribers will receive notice. Prices for advertising on application.

Communications and advertisements for next issue should reach the office of publication on or before the 20th of this month.

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Address all communications to

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ST. THOMAS, MARCH 1, 1893.

We notice that with the advent of a rival company the question of telephone franchise is being considered by the councils of many of the towns in the province. In the city of London one company has offered \$1000.00 per year for a five years' franchise, and the rival company offers 5 per cent. of gross receipts. Councils should consider that there is an important objection to granting the franchise to more than one telephone company in town. The larger the number of telephones the greater the benefit derived by subscribers, and where two companies are doing business, subscribers, unless they patronise both companies, will only be able to use the phones of one company. This would, in our opinion, restrict the benefits very materially, and that instead of asking these companies to pay larger amounts for the privilege of doing business in a town, it would be better to consider the rates to be charged by the company to whom they propose to give the franchise, and in that way very materially decrease the cost and increase the benefit to be derived from the use of this now very necessary institution.

Of course it may be argued that the franchise belongs to the municipality as a whole, and while this is no doubt right, the interests of the subscriber should be considered. The business of telephone companies will continue to increase, and while in many cases at present, the Companies may be unable to pay a very large sum annually for the privilege of doing business, still we think the rate to subscribers might be agreed upon, and after the gross receipts exceed a certain amount a percentage should be paid to the municipality granting the franchise. We understand it is the intention of the Bell Company only to enter into an agreement with such towns as are necessary to secure to them the control of the telephone business of the province. The agreements will be limited to five years, in most cases.

## QUESTION DRAWER

SUBSCRIBERS only are entitled to opinions through the paper on all questions submitted if they pertain to municipal matters. Write each question on a separate paper on one side only. When submitting questions state as briefly as possible all the facts, as many received do not contain sufficient information to enable us to give a satisfactory answer.—Ed.

It will no doubt, be a surprise to some to read answer to question from "New Subscriber." At the last session of the legislature the declaration of office required to be made by clerks and treasurers, was amended by adding the words, "save and except that arising out of my office or position as clerk, etc." Until this question was sent in, we had no occasion to look into the effect of the amendment, and after referring the matter to the solicitor, a prominent member of the municipal committee of the local house, was consulted, who stated "that he had pointed out the members of the municipal committee present when it was considered what its effect would be. The opinion was general, that it would be well to require a severance of the two offices, and that his own impression was that a strict compliance with amendment would prohibit the holding of both offices by one individual." This opinion is concurred in, as will be seen by reading the answer to the question. We think that while it is not always as convenient, the interests of municipalities would be better served by keeping the offices separate.—Ed.

NEW SUBSCRIBER.—Can a council appoint one person clerk and treasurer at the same time? By answering you will greatly oblige.

We have given this matter our careful attention, and have to come to the conclusion that these offices are incompatible and that one person should not be appointed to fill them both. Although there appears to be no statutory provision expressly prohibiting the holding of the offices by the same person, yet, wherever they are mentioned in the statutes, the language used leads to the inference that the legislators intended that different individuals should fill these offices, as, for example, in making provision for the appointment of these officials, division II of part V of the Consolidated Municipal Act, 1892, relates to the appointment and duties of the clerk, and division III of the same part of said act, to the appointment and duties of the treasurer, implying, we think, that these officials should be different persons, otherwise one division might have answered the above purpose. There is one statutory provision which we are wholly at a loss to reconcile with the idea of these being held by one person, and that is the form of declaration of office laid down in section 271 of the Consolidated Municipal Act, 1892, and required by said section to be made and subscribed by every clerk, treasurer, etc., before entering the duties of their respective offices, etc. In the case of a clerk he must declare that he has no contract with, or on behalf of the said corporation, "save and except that arising out of my office or position as clerk," and *visa versa* in the case of a treasurer. If the same person were appointed to both offices it seems to us that he could legally and conscientiously make neither declaration, and could not, in consequence, enter upon the performance of the duties of either office. See also note (a) to sec. 245 of the Municipal Act, on

page 181 of Mr. Harrison's Manual, edition of 1889.

BAILLIEBORO.—By-Law.—Whereas the Provincial Statutes 53, Victoria, chapter 62, section 8, by amending section 8 of chapter 214 R. S. O., provides that any township may pass by-laws repealing section 7, chap. 214, R. S. O., so that any moneys received for the assessment of dogs or bitches shall not go to paying damages to sheep, but may form part of the general funds of the township. Therefore, the municipal corporation of the Township of South Monaghan by the council thereof enacts as follows: That any moneys received for the assessment of dogs or bitches shall go to and form part of the general funds of the township for the year 1893. Passed January 16, 1893.

The question is, sheep have been killed by dogs and they are trying to prove that the by-law is void so as to get compensation.

Although the by-law submitted is not, in terms, as formal as it might be, still we think it should be sufficient for the purposes for which it was intended.

W. A. H.—Would you let me know through your columns if it is necessary to get up a petition of twenty-five rate-payers each and every year in order to do away with the dog tax in a municipality, or when one has been presented to the council, and the council has passed a by-law doing away with the tax. Will the said by-law stand good until rescinded by the said council?

We assume that our correspondent refers to a by-law passed pursuant to sec. 2, of chap. 62, Ont. stats., 1890. If so, it is not necessary that the council re-enact such by-law every year, but it should remain in force and be a valid by-law until repealed by the council.

ENQUIRER.—At the municipal elections held on the 2nd inst, quite a number were nominated for municipal honors, and among the number a gentleman who happened to be security on a bond for our collector, and this man was elected councillor. Can he legally hold his seat or if his election is not legal and that there are no objections for some time, but before the expiration of the year some parties may find fault with the action of the council. What would be the result for the council work already gone over? And, if his act disqualifies him, would another election be necessary or would the man next to him in numbers at the close of the poll take his seat?

We are of opinion that the gentleman referred to was disqualified for election as councillor, particularly if the collector was engaged in the discharge of his duties at the time of the election, as we presume was the case. In this connection we would draw our correspondent's attention to the case of the Queen ex. rel. Taggart v. Hollingshead, reported on page 99 of vol. 2 of the WORLD (1892.) The gentleman elected can hold his seat as councillor unless the proceedings laid down in the Con. Mun. Act. 1892, are taken within the time mentioned in sec. 188 of the said Act, and we consider that he would have a legal right to take part in the deliberations of the council, until as a result of the taking of the proceedings against him above referred to, he has been declared disqualified to fill a seat at the council board. If no objection to the gentleman's qualification was taken at the nomination, or such notice of his disqualification given,

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