

the duties you enumerate should be performed by the auditors. You will find the duties of auditors defined by section 304 of the Municipal Act, and we also refer you to an article on "Auditor's Duties" on page 2 of the issue of the MUNICIPAL WORLD for 1900 and also one in this issue.

Township Clerk should not be Trustee of Public School.

**83—P. A.**—Can a Municipal Clerk in a Township act as member of a Public School Board and of which Board he is also Sec-Treasurer? the ratepayers having at the annual meeting allowed him a stated salary for for said office? Is he disqualified from acting as Clerk or School Trustee?

The statutes do not in TERMS prohibit a municipal clerk from acting as a member of a school board in a school section in his township, but in view of the fact that his duties as clerk are likely to clash with his duties as member of the school board, (especially as secretary-treasurer), the two offices are incompatible, and should not be held by the same person.

Sums properly chargeable to Drainage Account—Relief of Indigent owning Property—This Line Fence cannot be Legally Moved.

**84—J. E. H.**—Drainage contract let at \$3000 clerk's fees and expenses allowed by engineer 10 % of estimate \$450. By-law estimate was \$4500, council's by-law for drain meetings \$2 each a day.

1. Should the expenses of these drain meetings come off the drain funds or out of the township funds?

2. Does council need to pass by-law to grant more money for expenses if over the \$450 allowed by engineer in by-law already passed when there is such a surplus over the amount of the contract let which was \$1500?

3. Can this surplus be applied to any part of the work connected with drain whether excavating, paying clerk's fees, lawyer's fees, council's fees or anything else therewith connected if so required without a by-law?

4. A person has property but neither money or provisions. Will not sell property and council supplied her for a couple of months then stopped. What can council do? Can council supply her and charge it against property against her will? What can be done.

5. Where a lot is divided by a fence which has been there twenty years and one part is sold, supposed to be half, can the buyer measure said part and remove fence to suit himself encroaching on other part?

1. The expenses of all meetings of council rendered necessary by the construction of these drainage works are properly chargeable to and payable out of the drainage account and should not be charged to or paid out of the general funds of the municipality.

2. We presume that the council has passed a by-law pursuant to the provisions of the Drainage Act, (R. S. O., 1897, chapter 226), providing for the construction of these drainage works and for the raising by the issue of debentures of the corporation the sum of \$4,500 to defray the cost of the work. If this is so, all LEGITIMATE costs and expenses of and incidental to the carrying out of this drainage scheme up to the amount of \$4,500 are properly chargeable against and payable out of this drainage account

and the passing of a supplementary by-law for the purpose is unnecessary.

3. Yes. Provided the charges, fees and expenses are legitimate and necessary under the circumstances. If, after the drainage works have been completed, any surplus of the \$4,500 remains, after all the costs and expenses of and incidental to the construction of the drain have been paid, provision should be made by by-law of the council for the repayment of such surplus to the several persons assessed in the manner provided by sub-section 3 of section 66 of the Drainage Act.

4. It is optional with the council as to whether it continues to grant relief to this person, and if it decides to do so, it should be by by-law passed pursuant to sub-section 2 of section 588 of the Municipal Act.

County Judge's Circular to Assessors—Liability for Accident on Highway.

**85—X. Y. Z.**—1. Where does a county judge get his authority for sending printed circulars directing and calling attention to assessor's duties, etc.? We always thought it was the duty of the council to appoint competent men as assessors and furnish them with statutes and instructions and that, we thought, was as far as councils or anyone else was allowed to go. Has a county judge any special rights or in other words has he a right to say anything about the assessment until it comes before him as the law directs in the matter of appeals?

In an unincorporated village, a leading road passes over a ravine and the road-bed is about twenty-eight feet wide and in good shape but in some way an old man slipped with his sleigh and horse down one side of said road into the ravine 6 feet below. He now seeks to hold the township council responsible because there was no protection along the side.

2. What say you as to the liability of the township?

3. Could it be shown that council was guilty of neglect of duty because it did not place railing on the sides of this and hundreds of similar places in the township?

1. There is no legal objection to the county judge sending a circular to assessors in his county, calling their attention to, and particularizing the duties the statutes require them to perform. Neither the county judge, council, nor any other person nor persons has any right or power, to instruct assessors, as to what persons shall be assessed for any particular property, or as to the values they shall place on any property in the municipality. These are matters that must be left to the research and judgment of each assessor. It is, of course, the duty of every council to appoint a competent man to the office of assessor, but, if any suggestion voluntarily offered by the county judge as a result of his experience would be of any assistance to the assessor to enable him to more expeditiously and satisfactorily carry out his work, we do not see that any objection should reasonably be raised to the sending of them by the county judge.

2 and 3. From the facts and circumstances furnished us, it is difficult to give a definite opinion as to the liability of the township in this case. In the determination of a question of this kind, it is neces-

sary for the judge or court before whom the case is tried to take into account, the nature of the country, the character of its roads, the care usually exercised by municipalities in reference to such roads, the season of the year, the nature and extent of travel, the place of the accident and the manner and nature of the accident. (Mr. Chief Justice Harrison in *Castor vs. Township of Uxbridge*, 39 U. C. R. 122.) Mr. Chief Justice Armour in the case of *Foley vs. Township of East Flamborough*. (29 O. R., 141), states as follows: "I think that if the particular road is kept in such a reasonable state of repair that those requiring to use the road may, using ordinary care, pass to and fro upon it in safety, the requirement of the law is satisfied." The courts have repeatedly held that the absence of a railing alongside of a deep ditch or precipice is negligence on the part of a municipality.

Maintenance of Township Boundary Lines.

**86—J. E. S.**—There are two townlines between townships leading to the town of E—. The ratepayers on or near these roads complain that the roads are not kept in proper repair and that these roads are not kept up by the township adjoining like the leading roads through the centre of the townships. Is there any law whereby the township councils could be compelled to spend sufficient money on the townline to put it in similar repair as other roads? If the ratepayers on townlines have any remedy, let me know where and how.

The ratepayers resident on the lots bordering on either or both sides of these town lines have a remedy for the grievance complained of under section 649 of the Municipal Act which provides that they can petition the COUNTY council to enforce the repair of the township boundary lines by the township councils interested, in cases where such councils neglect or refuse to repair such lines of road in a manner similar to the other local roads.

Payment of Rent of Polling-Booths Used for Referendum Vote—Prescriptive Right to Flood Highway.

**87—CLERK.** In your January issue, page 16 question No. 35, you state that city, town, village or township treasurers must pay on the order of the D. R. O. the rent for polling booths used in taking the referendum vote on December 4th. last, and quote part of schedule B referred to in section 92 of the Liquor Act 1902 as your authority. Why quote any schedule to any section or Act when the Act itself distinctly states how said booths are to be paid for. Section 92 of said Act says "The fees in schedule B to this Act mentioned in respect to the several matters therein contained etc. "Section 93 says" the said fees, allowances and disbursements with the reasonable expenses incurred by the R. O. and by the other officers and clerks for printing, providing polling compartments etc., shall be paid over to the R. O. by warrant of the Lieutenant Governor directed to the treasurer of the Province out of the Consolidated Revenue Fund of the Province." The council of this township are up against a very knotty question. About 27 years ago a mill dam was built across a stream thereby raising the water so that where the stream crosses the highway about one mile above owing to the flat nature of the ground, it is about 32 rods wide and some four or five feet deep, except the channel which is about four rods