

that his brother-in-law has paid the dog tax in another municipality does not absolve him from liability for the dog tax or price of the dog tag (as the case may be) in this municipality.

#### Closing Old Road and Opening New.

537—A. A. Y.—A ratepayer in this municipality has asked the council to grant the reservation on lake shore for building upon, offering in lieu therefor a road somewhat inland.

Would such a course be within the powers of a township council?

If this reservation is a public highway under the jurisdiction of the municipality, the council may enter into the arrangement suggested, if it considers such a course in the interest of the general public. Before doing this, however, the council must pass a by-law under the authority of section 637 of The Consolidated Municipal Act, 1903, after having strictly observed the provisions of section 632, providing for the closing of that portion of the road along the lake proposed to be turned over to the ratepayer, and for opening and establishing a new road in its place. In closing the road along the lake shore, the provisions of section 629 of the Act should also be considered.

#### Rights of Parties When Stream Wrongfully Diverted.

538—J. H.—There is a ditch in the Township of U. that runs along concessions 4 and 5 that is not in its right course, but has been there for some twenty years. It is not giving good results to the ones up on lots 8, 9, 10, 11, 12, 13, on concession 4 and 5, and is also a danger to the road, as it is washing out the road so that the council has to put a fence alongside of road to keep people from falling in.

1. Can the council get it removed?
2. The parties that own lots 3, 4, 5 and 6 dug the creek into the ditch on the road themselves instead of running it through lots 3, 4, 5, 6. Have they power to leave it there?

1 and 2. The owners of these lots should not have been allowed to change the course of the creek, and divert its waters into a ditch along the road, but if the drain along the highway has been in its present position for twenty years or more, adjoining owners have acquired a right to have the water run therein, and the council cannot now stop it up or change its course. If, on the contrary, the drain has not been in existence for twenty years, the council may fill it up, and leave the parties interested to their rights under The Municipal Drainage Act (R. S. O., 1897, chapter 226) or The Ditches and Watercourses Act (R. S. O., 1897, chapter 285.)

#### Status of Roadway Across Dam.

539—E.—E. owns a mill in the village of H. When the dam was first built I presume it was built at E.'s expense. Has always been used as a public road and largely kept up by the corporation. On the side of the dam next the water a sidewalk has been built and maintained by the corporation and been in use for the last fifty years. E. wants the corporation to move the sidewalk to the other side of the dam. Can he be compelled to do so? If moved a guard would have to be placed on the side next the water to make it safe for public travel. The walk is now so constructed as to form a guard. Whose duty would it be to build the guards in case the walk is moved?

We are of opinion that E. cannot compel the council to move the sidewalk to the other side of this dam. As to whether E. can remove the sidewalk altogether and close the covering of the dam to public travel, involves the question as to whether the dam is private property and exclusively under private control, or whether its surface has been dedicated to the public for use as a highway. As to this we cannot say, not having sufficient particulars before us.

#### General School Levy Should Not be Made in Union Section Composed of Urban and Part of Rural Municipality.

540—A. S. MacD.—Union school section No. 3 consists of a

portion of our township, the township of C. and the incorporated village of L.

Under sub-section 2, section 70, chapter 1, Edw. VII., I take it that this union will not participate in the levy provided by S. S. 1 of section 70.

Do you think the ratepayers of this section should be rated for the levy provided for under sub-section 1, section 70?

Since the latter part of sub-section 1 of section 70 of The Public Schools Act, 1901, provides that this section shall not apply to union sections formed between townships and urban municipalities, the council should not make the levy provided by sub-section 1.

#### Councillor Should Not Perform Work for His Council.

541—S. R.—Our township has commuted statute labor on the road. Is it legal for the members of the council to work on the road to the extent of the amount of their statute labor?

No, unless they can justify their so doing under clause (a) of sub-section 1 of section 537 of The Consolidated Municipal Act, 1903.

#### Appointment of Agents on By-Law Vote—Grant for Closing Mill Race—Maintenance of Approach to County Bridge.

542—G. A. A.—1. We are submitting a by-law for the electors to vote upon. Section 342 states that the head of the municipality shall appoint, etc. If nobody appears at the place named, would you consider the reeve obliged to make the appointment?

2. A mill race crosses one of our roads, and it has been running there over 20 years. Now the mill owner proposes to the council: "Give me a sum of money and you may close the race-way and thus save the expense of maintaining a bridge." Has the council power to grant the sum, or is there any other way the council can evade maintaining this bridge? The mill is old, small, and is offered for sale.

3. The county is keeping up 100 feet of the approach to a certain county bridge, but last year it was carried away, also 16 feet that township kept up. Now the county council is rebuilding their 100 feet, but are diverting the said approach so as to leave the township's portion, also their grade, a lot out of line with the new approach, which means a lot of unnecessary expense for the township. Has the county council a right to do this without compensating the township?

1. Yes.
2. We do not see that any legal objection can be raised to the making of a grant to the owner of the mill race for this purpose, if the council deems it in the public interest to do so. The council cannot close the mill race without compensating its owner, and if it considers it to the advantage of the public, and the owner's demand is reasonable, it can make the grant required.

3. If the county council, or its engineer, in replacing this approach deems it advantageous to change its location, we are of opinion that it can do so, without first consulting the township council. Of course the new location should be in the line of the road allowance.

#### Change in Composition of County Councils.

543—T. F. B.—1. What change is made in The County Council Act by the legislation of 1904?

2. When will we require to pass the resolution and forward same to county clerk?

3. If a majority are in favor of the change to the new system, when will it take effect?

1. By section 3 of The Municipal Amendment Act, 1904, sub-sections 1 and 2 of section 68a of The Consolidated Municipal Act, 1903, are repealed and two new sub-sections are substituted therefor. These new sub-sections will be found in full on page 152 of THE MUNICIPAL WORLD for June, 1904. They provide that in case the councils of a majority of the local municipalities within a county by resolution to be passed and filed with the county clerk on or before the 1st day of October in any year preceding a year in which a general election of county councillors would take place under the Act requir-