

portion of the same; parties so in possession, however, may so far bind themselves by their acts as that when a patent shall issue to them the lands granted would be bound by any right or easement to which their sanction has been obtained.

2. The council not having power to pass the by-law in question, the owner of the land is not bound to accept compensation as he would have been in the case of a valid expropriation. If the council deem it necessary in the public interest to establish a road along the line of the present road, a by-law must be passed for that purpose and then if the council and the owner cannot agree the compensation will have to be settled by arbitration.

3 and 4. We are of the opinion that the property in question is liable to assessment but where it should be assessed we cannot say. In order to determine where it should be assessed we refer you to sections 38, 40, 41, 42 and following sections of the Assessment Act.

5. The local improvement sections of the Municipal Act, are complicated and very difficult to work out. In the case you put, we think that the council should act under either section 668 or section 669, and the by-law should either be published, with a notice appended to it, stating the time and place of holding a court of revision; or notice should be given in the manner provided by section 671. If the council desire to advance 40 per cent. from the general funds of the municipality under section 678, the by-law should be aptly worded for that purpose. Instead of using the short form of by-law provided by the Act we would advise you to prepare a long by-law.

Alteration of School Section Boundaries in Districts.

118—JUSTICE.—In the year 1888 the inhabitants of Blair called a public meeting for the purpose of forming a school section; said inhabitants were in an unorganized territory. It was decided by a vote of said meeting that a union school section should be formed of part of the following townships: A, B, C and D, said boundaries were defined as follows: All land situated between E and F, Indian reserves on the east and west side, the Conestoga River on south side, and extending north three miles. Said petition was forwarded to school inspector. He replied to said petition advising them to enlarge said section. This was voted down, and school boundaries were defined as above stated by the inspector. Now the township is formed into a municipality, and council are desirous of enlarging said boundaries of Blair Public school one mile north. The inhabitants in said territory object on the following grounds:

They were willing to go into said section when formed at first, if the school-house was placed in centre of section. This was rejected. It was claimed that the school-house should be placed where there were the most children to attend. To gain this object this one mile in dispute was struck off. Now when they have school-house built, and are in debt, they claim they have a right to enlarge their boundaries.

By leaving the boundaries of Blair public school section as formed, there is ample territory to form a school section within the boundaries of said municipality, viz., three and a-half miles north and south, by four miles east and west. Said inhabitants are desirous of forming said section.

1. May council legally alter said boundaries of Blair school section?

2. When school section boundaries are altered have they not to remain in force for five years?

3. Is there any redress if said question, (viz., school boundaries,) is carried to a higher court?

4. If the law compels us to join Blair school section, have we to share the responsibility of its debt?

5. May we compel the school-house to be placed in the centre of the section?

1. Sub-section 2 of section 38 of the Public Schools Act gives every township council the power to alter the boundaries of a school section, etc., in case it clearly appears that all persons to be affected by the proposed alteration, etc., have been duly notified, in such manner as the council may deem expedient, of the proceeding for this purpose or of any application made to the council to do so. This sub-section applies to your township (an organized township in Rainy River District) and if the notice referred to in the above sub-section has been given, the council may, if they deem it to the advantage of all parties concerned, pass a by-law altering the boundaries of the existing school section by adding thereto additional territory you mention, or such portion of it as they deem best, provided they do not transgress the provisions of sub-sections 1 and 3 of sec. 11 of the Act.

2. Yes. See sub-section 2 of sec. 38.

3. There being no county organization in your district the provisions of section 39 and following sections of the Act providing for an appeal to the county council from the decision of the township council in the matter, do not apply. The council, in passing a by-law pursuant to the provisions of section 38, would be simply exercising the discretion thereby conferred on them, and we are of the opinion that no court would interfere with their decision.

4. This point is not clear, but, after the best consideration, we have been able to give it, we are of the opinion that your property will not be liable to taxation for the cost of the school house, or that part of it remaining unpaid, if a part of it has already been paid, for these reasons. Section 70 of the Public Schools Act requires the sanction of the ratepayers before the trustees can make an application to the municipal council for money to build a school-house, and it seems to us that it follows, that ratepayers brought into a section after a school has been built cannot be taxed for a share of its cost because it would be imposing a liability upon them in a matter in which they have had no voice.

5. A change in the school site can only be effected under the authority of section 31 of the Public Schools Act.

Highway Crossing Over Railway.

119—M. E.—A R. R. Co. proposes to repair or grade up the approaches to the crossings by covering up the gravel, which forms the present road bed, with clay and sand. Can the township hinder them in so doing and compel them to continue the use of gravel? About thirteen years has elapsed since the R. R. and approaches were built and a considerable part of this time the company have not kept the grade up to the requirements of the law, and now it is proposed to extend the grade beyond

the requirements of law, but to do it with earth. As that kind of road-bed cuts up deeply in the wet season, we believe it will be very objectionable to the public.

You do not say whether the railway is under the jurisdiction of the Dominion or Provincial Parliament. Assuming that it is under the former, (as most of the railways in Ontario are,) section 186 of the Dominion Railways Act (C. S. C., chap. 109) requires the grade of highway approaches to railway tracks to be not less than one foot in twenty, but the Act is silent as to the material of which such grade is to be constructed. We are of opinion that the only redress the council has, in case the railway Co., after having been requested to do so, refuse to gravel the new grade is to apply to the Railway Committee of the Privy Council for the settlement of the difference between it and the Railway Company.

Election to Fill Vacancy in Council.

120—CLERK.—After the last municipal election two members resigned and I was thereupon directed to hold an election to fill the two vacancies. At the nomination meeting five persons were nominated. Within the time allowed by law, four persons sent in their resignations. Should I receive the four resignations, or should I refuse to receive the last resignation sent in, and declare the person who did not send in his resignation and the last one who tendered his resignation, elected?

You should have received all four resignations, and the remaining members of the council, (including the one newly elected) since they exceed in number, half of the full council, or a majority of them, should order the holding of a new election, to be held in the manner provided by the Municipal Act for the purpose of electing a person to fill the vacancy still remaining in your council. See section 130 of the Municipal Act. We might further draw attention to the fact that this section, in terms, applies to an annual or other municipal election.

Is Clerk, of Town of Less than 4000 Inhabitants, Member of Board of Health.—Salary as Secretary.

121—A. J. F.—Is a clerk of a town containing more than four thousand inhabitants a member of the Board of Health? Sub-section 3, section 48, Public Health Act. I contend that he is an officer of the board as provided by section 53. Can the board fix his salary and ask council to pay it, or is clerk obliged to do the work and claim no remuneration for his services? The Municipal Act is silent on it.

The members of the local Board of Health in a town containing more than 4000 inhabitants are those named in sub-section 3 of section 48, of the Public Health Act, that is, the mayor of the town and six ratepayers, appointed as in the sub-section directed. The clerk is not a member of the board, but by section 53 of the Act he is constituted the secretary of such a board. Section 56 authorizes the council of the town to vote such sums as are deemed necessary by the local board for carrying on its work and section 57 directs the treasurer to forthwith pay on demand, "out of any moneys of the municipality in his hands," the amount of any order given by the members of the local board or any two of them.