

municipality for the amount of such damages.

**Payment of Cost of Excavating and Filling in When Building Granolithic Walks.**

**379—TOWN CLERK.**—Our corporation is building a block of granolithic sidewalks. The town is to pay 75 per cent. of the cost and the properties to be benefitted are to pay 25 per cent. The natural bed of the sidewalk is very uneven, some of it must be excavated, and other portions of it must be filled in to a depth of from two to ten feet, to bring it to a level.

1. Should the cost of excavating and filling in, *within the block*, be paid for (the 25%) by the owner according to the frontage proportion, or

2. Should each owner pay for the work which was necessary in front of his own property?

1. The excavating and filling in necessary in building these sidewalks is part of the whole work, and should not be separated, for the purpose of collecting the cost, from the remaining portion of the work. The cost of ALL the work, including the excavating and filling, should be paid for by the town and the private parties, in the relative proportions mentioned.

2. No. The whole portion of the cost of the work payable by the property owners must be apportioned among them according to their frontage.

**Cleaning Out River—Gift of Gravel—Payment of Assessor for Attending Court of Revision.**

**380—J. M. K.**—1. In reference to questions in June number concerning drainage by-law No. 296, clauses No. 2 and 5, I herewith enclose you answer which cover them.

2. Can a council, from township funds, upon a motion expend \$1,000 or \$10,000 in clearing brush and rubbish from the bed of a river, which drains principal lands?

3. Can a council give gravel to a school to be placed in school yard?

4. Is it lawful for an assessor to get pay for attending court of revision?

1. We will publish your enclosure in a future issue. We gather from Mr. Wilson's letter that he had full information as to the facts, and all papers relating to the matter before him, when he gave his opinion. We entirely agree with it, and have several times expressed ourselves in similar terms under like circumstances in these columns.

2. No. If these obstructions have been occasioned by the intentional or wilful act of riparian proprietors, sub-sections 12, 13 and 14, of section 562, of the Municipal Act, empower councils of townships to pass BY-LAWS for preventing the obstruction of streams, etc., by trees (tc.), and for clearing away and removing such obstructions at the expense of the offenders or otherwise, for levying the amount of such expense in the same manner as taxes are levied and for imposing penalties upon parties causing such obstructions. If, however, the obstructions are the result of processes of natural decay causing dead trees, limbs and leaves to fall into the stream and impede the flow of the water therein, the council may in its discretion pass a by-law providing for the clearing of such obstructions from the stream, pursuant to the provisions of section 3 of the

Drainage Act, on the presentation of the petition required by subsection 1 of this section.

3. It is not stated whether this gravel is on a road allowance or not, if it is, the council may pass a by-law under the authority of subsection 7 of section 640 of the Municipal Act providing the SELLING of gravel to the school section, but whether it be on a road allowance, or in a gravel pit belonging to the municipality, the council is not authorized by the statutes to GIVE it away to a school section or any other persons or person.

4. The statutes make no provision for the payment to the clerk of extra fees for attending the court for the revision of the assessment roll of his municipality (which, we presume, is the court of revision you refer to) nor is he entitled to any unless some agreement for payment of such was made with him by the council at the time of his hiring or at some other time. The performance of this duty devolves upon him as clerk of the municipality.

**Maintenance of Bridge—Constructing Boulevards—Distribution of Cost.**

**381—X. Y. Z.** 1. A bridge is built on a township boundry line, both townships lying wholly within the county. The bridge is one that is built and maintained by the county. The said bridge is built over a winding stream, that is gradually shifting its course during heavy freshets. The concession roads of one of the townships crosses this stream or river in several instances. The ditches as they are deepened and made more marked are leading large quantities of water into the stream and thus causing greater and more violent rushes of water and, as is always the case, has the effect of making the banks of a winding stream more crooked or winding. One of these curves happens to be so close to the boundary line that the rush of the water against the bank is undermining the abutment of the bridge on that bank and in time if something is not done to prevent the cutting away of the bank, in the adjoining farm, the site of the bridge will have to be changed to suit the changed conditions, as it is impossible for the county to protect their bridge or its abutment from damage, on account of the trouble being caused through the river's course being changed as aforesaid and is being changed more rapidly now than in former years. What I want to know is who is responsible for the damage to the county bridge? (There is not room on the road allowance to build anything to save the abutment.) That is to say:

1. Is the township or the private owner responsible for the damage done to the county's property?

2. What course should the county pursue to protect their property as well as the travelling public?

3. What is the proper routine to observe, where property owners desire the corporation to construct boulevards as a local improvement?

4. Please state whether any proportion of such work can legally be paid out of the general funds of the municipality.

This clause applies to the method adopted by this municipality for all local improvement work. The corporation undertakes all local improvements under the initiative plan, section 669, and have and are operating under this section with subsequent amendments observed.

5. The case that I wish you to give your opinion on is this:

The Engineer's estimates were open for inspection in the office of the Clerk for certain

local improvements. Said improvements were advertised in two newspapers the prescribed time. Personal notice was also served under the 1901 amendment, adding section 1 a. A Court of Revision advertised for and held, no appeals being made. Tenders were then called for and the lowest tenders were recommended by the committee to the council to be accepted and were accepted by a resolution to adopt the report. It was found that the tenders of the contractor were more than twice as much as the figures given by the engineer as the probable cost of the work and it is held by some that the council cannot go on legally with this work as the property owners have had no opportunity of appealing against a frontage tax that will be twice as much as they were led to believe it would be.

Can the council proceed with this work under the circumstances.

1. No.

2. The county is responsible for the maintenance of this bridge and should construct and maintain at this point such a bridge as will insure the safety of the travelling public. What steps the county should take with this object in view it is impossible for us to say. The services of a competent engineer should be obtained, and he will, no doubt, advise the council as to the proper course to pursue. See subsection 3 of section 640 of the Municipal Act.

3. The preliminary steps to be taken to accomplish the boulevarding of any street in a municipality are the same as those the statute requires to be taken in the case of instituting and carrying out any other local improvement under the local improvement clauses of the Municipal Act. (Sec. 664 and following sections.)

4. By subsection 7 of section 673 of the Act, "Real property adjoining and fronting on any park, square, public drive or BOULEVARD, shall be specially assessable for and in respect of the improvements, etc., made, etc., upon or in such drive or boulevard in like manner as real property fronting on a public street, etc., and where the lanes on one side of such drive or boulevard are a public park or square, or for other reasons are exempt from taxation, at least one-half of the cost of such improvements, etc., shall be borne by the municipality generally." We do not, however, suppose that this section applies to the case in hand.

5. We do not think the council can legally proceed with this work without again taking the preliminary steps proscribed by the Municipal Act. The parties interested who are to be assessed for the cost of the work, have the right to know, with a reasonable degree of certainty, what that cost is to be. This knowledge is material in enabling them to determine whether they will exercise their rights under the Act to appeal to the court of revision or not.

**Sale of Land for Arrears of Taxes.**

**382—S. A. R.**—In 1898 A agreed to buy from B four adjoining village lots, being assessed for same in 1899, but left village before taxes were due, only part of said taxes have been paid to date as I will explain. The arrears for