

Question Drawer

Subscribers are entitled to answers to all Questions submitted if they pertain to Municipal Matters. It is particularly requested that all facts and circumstances of each case submitted for an opinion should be stated as clearly and explicitly as possible. Unless this request is complied with it is impossible to give adequate advice.

Questions, to insure insertion in the following issue of paper, should be received at office of publication on or before the 20th of the month.

Communications requiring immediate attention will be answered free by post, on receipt of a stamp-addressed envelope. All Questions answered will be published unless \$1 is enclosed with request for private reply.

Village Can Acquire Land for Park Purposes.

335—J. B.—Have village councils the power to acquire lands for park purposes by purchase or expropriation?

Yes. Sub-section 1 of section 576 of the Municipal Act provides that councils of counties, cities, townships, towns and VILLAGES may pass by-laws, "for entering upon, taking and using and acquiring so much real property as may be required for the use of the corporation for public parks, etc., in the municipality and adjoining local municipalities, without the consent of the owners of such real property, making due compensation therefor to the persons entitled thereto, to be determined under the provisions of this Act, by arbitration where the parties do not agree."

Assessment of and Collection of Taxes From Railway Co.—Notice to Tax Defaulters by Clerk—Collection of Commuted Statute Labor—Fees of Township Constable.

336—I. F. C. T.—The municipality of A is a district comprised of three townships B, C, D. The E. F. railway runs across the municipality, occupying 65 acres. The right of way runs across two school sections. The assessment in revised roll takes up two lines, thus, E. E. Ry. Co., S. S. 1, township B, lots 1 to 20, 48.12 acrs; S. S. 2, township C, D., 14.95 acres; 65 acres. The clerk made up collector's roll the same way. Collector billed company several times, getting answer that they do not consider the statement correctly covers the company's property and to consult with the clerk with a view to getting property correctly entered on the rolls. The company have been asked to point out the deficiency but do not give a satisfactory reply. Collector has returned roll to treasurer, swearing not sufficient property to seize, though some claim that if proper diligence had been used there was property to cover taxes. I enclose bill as made out.

1. How should the assessment have been entered in roll? Each lot separate with amount of right of way on each?

2. Should treasurer register as so many fractions of lots the right of way across? Understand that right of way cannot be sold after the lapse of three years.

3. If registered as one item against right of way across municipality (each fraction of lots not being specified) and entered on collector's roll three years hence, could the company raise objections to paying other than that there was sufficient distress at time the collector had this roll?

4. What is the latest date that the clerk may send out notices of uncollected taxes on return of roll? We have great difficulty in inducing collector to return roll by April. They will not seize if they can get out of it.

5. The statutes direct that statute labor commuted in taxes shall be paid out to the order of the pathmaster in the road division it was derived from. What is the right disposition of commutation money paid in as arrears, it often being necessary to hunt back on three years' rolls to find what amount is for statute labor if any?

6. A township constable is engaged under bylaw at \$1.75 per day or fraction thereof when his services are required. What other additional fees can he collect, none other being mentioned in bylaw? He wants 25 cents for each summons, 10 cents per mile and board.

1. We are of opinion that this property was not properly entered on the assessment roll. The quantity of land owned by the railway company in each lot and concession in the municipality should have been entered on the assessment roll and valued in separate parcels. The same procedure should be followed by the clerk in preparing his collector's roll, and the taxes should be calculated upon and entered therein against each separate parcel. The company might pay the taxes on a part of their lands in the municipality and if it became necessary to sell the lands of the company to realize the balance, the treasurer could not ascertain what lands were to be sold, unless they were entered on the assessment roll as above, and returned to him in separate parcels. The company should have transmitted to the clerk on or before the 1st day of February, the statement mentioned in section 31 of the Assessment Act, and the assessor should have delivered to the company, the notice mentioned in the latter part of sub-section 3 of this section. However, the omission to observe these requirements of the law would not invalidate the assessment. They would only be subjects of complaint to the Court of Revision. (Great Western Ry. Co. vs. Rogers, 27 U. C. Q. B., 245). Section 72 of the Act makes the roll as finally passed by the Court of Revision binding, notwithstanding any defect or error committed in or with regard to such roll. The company could not have escaped payment of their taxes by reason of these irregularities, but since the collector has now returned his roll, he has no further authority to take the necessary steps to enforce payment. If, as a matter of fact, the company had goods and chattels out of which the taxes could have been made, while the roll was in the collector's possession, and the collector neglected to seize, the taxes cannot now be collected, either by distress and sale of the goods of the company, sale of the lands, action against the company or otherwise. Even if the collector's return is correct, we do not see how the lands of the company or a sufficient part thereof, can be sold to realize the amount of these taxes—as we do not see how the treasurer can make such entries in his books, as will enable

him to identify the lands intended to be sold.

2. The treasurer should enter arrears of taxes in his books against each lot or part of lot in respect of which they are payable. The lands of railway companies can be sold for taxes under the same conditions, and at the same time after the taxes have become payable, as any other lands in the municipality. (See section 173 of the Assessment Act.)

3. We do not see how the treasurer could make an entry of this kind in his books, and if he succeeded in doing so, the company could successfully resist payment of the taxes, as it would be almost impossible to identify the lands, in respect of which the taxes are alleged to be payable.

4. This depends upon the length of time the collector has been given, within which to return his roll, by resolution passed pursuant to section 145 of the Assessment Act. The latter part of section 147 requires the clerk, upon receiving a duplicate of the collector's account to the treasurer, to mail a notice to each person appearing on the roll with respect to whose land any taxes appear to be in arrear for the year.

5. The statutory direction to which attention is drawn, applies only to the commutation money paid by RESIDENT defaulters. If the provisions of sub-section 2 of section 110 of the Assessment Act are observed, there can be no necessity for looking over the collector's rolls for three previous years as the overseer of highways for the division for the year following that in which default has been made, is the proper official to expend the money, and give his order on the treasurer for the amount. As to the expenditure of the commutation moneys paid in by NON-residents, see section 108 of the Act.

6. We assume that this constable was appointed pursuant to section 37 of chapter 225, R. S. O., 1897, which empowers councils of townships in districts to appoint constables, and to regulate the fees to be paid to them. If this is the case, this constable is entitled to be paid such fee only as the council has provided should be paid to him, namely \$1.75 per day or fraction thereof when actually performing his duties.

By-Law Regulating Hawkers and Peddlers.

337—T. C.—A by-law is in force in this town relating to hawkers, Pedlars and petty chapmen. The first section reads as follows: "that no person shall within the town of — act as a hawker, pedlar or petty chapman and carry on petty trades and go from place to place or to other men's houses on foot or with an animal or animals bearing or drawing or otherwise carrying any goods, wares or merchandise for sale, or being an agent for any person or persons not resident within the said town, shall sell or offer for sale tea, dry goods, watches, platedware, silverware, furniture, carpets, upholstery and millinery or jewellery or carry and expose samples or patterns of any such goods to be afterwards delivered within the said town, to any person not being a wholesale