

Construction by Municipality of Drain Under The Ditches and Watercourses Act.

323—F. B.—A B on concession 12 is an open road ditch. BC, concession 12, is a covered ditch, covering being done by owners of shops, stores, etc. for their own convenience, the township municipality assisting, no award having been made or by-laws passed affecting ditch. Covered drain is now out of order and water is destroying the highway and making it dangerous for traffic. Township council wants drain repaired; owners object to assist.

1. Can we proceed under The Ditches and Watercourses Act; if so, how?
2. Can the township municipality compel adjacent owners to assist to make or renew or repair covered drain?
3. Can owners on west side of street hinder township from crossing highway by culvert and bringing water down on west side?
4. Is there a special act that covers the above case in township?
5. The ordinary open road ditch would be sufficient to carry off all water safely if not obstructed by covered drain. Can council grade and remove covered drain, it being there twenty years?

1. The municipality has authority to institute proceedings under The Ditches and Watercourses Act (R. S. O., 1897, chapter 285) to have a drain constructed in the locality, provided the limit of the work prescribed by section 5 of the Act is not exceeded. By the third paragraph of section 3 of the Act, the word "owner" whenever used therein, is made to mean and include "a municipal corporation as regards any highways or other lands under its jurisdiction."

2. The award of the engineer should require each owner of lands benefited by the construction of the drain, to make and maintain such portion of it, as the engineer considers the proportion of benefit to his lands warrants.

3. The engineer will have to be guided by the provisions of the statute in locating the drain, and if he acts within his statutory authority, no owner can prevent the drain following the course laid down in his award.

4. The provisions of the above Act will, we think, meet all the requirements of the township and other owners interested in this case.

5. The council must leave the location and nature of the drain to the engineer who makes the award, and he will see that the rights and liabilities of all owners interested are properly adjusted.

Erecting and Renting of Town Hall by Municipality.

324—A. T. C.—Can a municipality erect a town hall and rent part of it for retail business purposes?

Sub-section 1 of section 534 of The Consolidated Municipal Act, 1903, empowers councils of towns to acquire lands and erect such a town hall thereon as may be required for its purposes. The statute confers no authority on councils of towns to lease any portion of such a building to private persons for business or other purposes.

Procedure for Raising Money to Build Fire Hall and Instal Fire Alarm System.

325—D. D.—Our town council has passed a resolution to build a fire station and install a fire alarm system involving an expenditure of some \$5,000 and proposes to contract a loan for this amount without appealing to the ratepayers.

Will you kindly advise me at the earliest possible date if this can be done?

If the object of this by-law was to instal a fire alarm system only, it would be a by-law for the purchase of "appliance for the purpose of fire protection," and under the authority of section 544a of The Consolidated Municipal Act, 1903, (as enacted by section 18 of chapter 34 of The Ontario Statutes, 1906), it would not be necessary to submit it to a vote of the electors. But one of the objects of the by-law is to raise money for the erection of a fire hall or station. There is no provision

for passing a by-law providing for the issue of debentures to raise money for this purpose until after it has received the assent of the electors.

Selection of Fenceviewers—Power to Sell Road Allowance—Power to Remit Taxes—Voting Rights of Non-Resident Tenant.

326—H. T. P.—1. Has the party complained against in a line fence dispute the right to select any of the fenceviewers?

2. Has township council the power to sell road allowance under any circumstances? If so, how should it proceed to do so?

3. I notice you are often asked if the council could remit taxes where a schedule left by an assessor is less than the sum on the assessment roll. You invariably answer no. Admitting that to be true, has the aggrieved party a case in law against the assessor to recover the difference between schedule and roll? That is, the amount of taxes due to the discrepancy?

4. Has a non-resident tenant a municipal vote?

1. No, but sub-section 4 of section 4 of The Line Fences Act (R. S. O., 1897, chapter 284) provides that "the owner notified may, within the week, object to any or all of the fenceviewers notified, and in case of disagreement, the Judge hereinafter mentioned shall name the fenceviewers who are to arbitrate."

2. Section 637 of The Consolidated Municipal Act, 1903, empowers the council of a township to pass by-laws for the sale of road allowances in the municipality. This by-law should not be passed until the preliminary proceedings prescribed by section 632 of the Act have been strictly observed.

3. We do not think the owner complaining has any action against the assessor, under the circumstances mentioned. It is the duty and privilege of the ratepayer to examine the assessment roll after it has been returned to the clerk, and if he considers himself wrongly assessed, to appeal to the Court of Revision to have the assessment rectified. If he fails to do this, he has no ground for complaint.

4. Tenants who have a right to vote at municipal elections in a township, are those who are rated on the last revised assessment roll of the municipality for the amount mentioned in section 87 of The Consolidated Municipal Act, 1903, and who possess the other qualifications mentioned in sub-section 1 of section 84 of the Act, and, under the authority of clause "secondly" of this sub-section, are "residents of the municipality, who have resided therein for one month, next before the election, and who are, or whose wives are, at the date of the election, residents in the municipality."

Drainage in Townships.

327—W. H. W.—We have a great many drains under The Ditches and Watercourses' Act in our township and a portion of the ratepayers are taxed very high on that account, and now when we cut ditches or when a ratepayer asks for a ditch we make him pay a portion for outlet to his drains on his farm. Now we have a case of this kind, a ratepayer wants a ditch cut and he agrees to pay half the cost. The water runs west past the next farm and it is equally benefited by the drain, but the owner refuses to pay his share or anything toward the expense. Now, what I want to know is can the council of the township make him pay his portion of the work without putting it under The Ditches and Watercourses' Act? Could the council collect his portion in his taxes or not? If the council cuts the drain and the parties agree to pay a portion can the council collect their portion with their taxes if they have not paid by that time, or is it best to have them do their own portion of the drain. Can the council compel them to cut their portion if they have agreed to and then do not do it after the township has done their portion?

The council has no authority whatever to provide for the construction of drains in the manner suggested, or to enter into any such arrangement with any ratepayer for the drainage of his lands. The Municipal Drainage Act (R. S. O., 1897, chapter 226) and the Ditches and Watercourses Act (R. S. O., 1897, chapter 285) provide machinery for the construction of drains, and the pro-