

the by-laws of the corporation. Without a copy of your by-law we cannot express any opinion as to its sufficiency in point and fines.

Mayor's Vote.

206.—P. R. McM.—The 31st section of a by-law to regulate the proceedings of the corporation of the town of Prescott, passed September 5th, 1898, reads as follows:

(31.) "No standing rule or order of council shall be suspended except by a vote of two-thirds of the members present; nor shall any rule or order be repealed or amended without notice of such motion therefor being given at the previous meeting, unless a majority of the whole council shall concur therein."

1. Does the mayor, or in his absence his substitute, the chairman, count as to the making up of the two-thirds necessary?

2. And can the mayor or his substitute, the chairman, vote on any resolution that grows out of the section (31) referred to?

1. Yes.

2. Yes. Section 274 of the Municipal Act provides, that "The head of the council, or the presiding officer or chairman of any meeting of any council, may vote with the other members on ALL questions.

Appointment of Assessors—Councillor's Qualification.

207.—P. R. McM.—Prescott is a town. Our board of aldermen consist of six councillors and a mayor. At the time and place of our annual nomination, a surplus of Candidates for these seven officials, was nominated. Several resignations before 9 p. m. the next day left only five councillors and a mayor, who were declared elected by acclamation. In the attempts to appoint assessors (three or four) several times there resulted a dead-lock or failure. A special meeting convened by the mayor on February 13th, for the purpose of appointing assessors resulted in a dead-lock. Two assessors are appointed annually here by by-law. The last by-law reading "assessors for 1899." The two assessors appointed for 1899 neither died, resigned, withdrew, or refused to act. An election on March 12th, resulted in a sixth councillor being elected. By the clerk he was declared elected at 12 o'clock, noon, on March 13th, executed the oath of office at 2 p. m., and at 3 p. m. of the same day took his seat at the council board and two new assessors were appointed for 1900.

1. In consideration of February 15th being the last day for assessors to begin to fill up the roll, do the assessors for 1899 hold over and should they have been directed to proceed with the duties of assessment in 1900?

2. Is it competent for the council to elect other assessors on March 13th, and are their acts for 1900 legal?

3. Inasmuch as the town's business was harmfully injured by the long delay in filling the vacancy does such long delay invalidate the seat of the sixth councillor?

1. No.

2. Yes.

3. No.

Removal of Fences From Highways.

208.—J. F. H.—The municipal council of the municipality of M posted notices throughout the municipality on June 30th, 1899, warning all persons whose fences were on the road allowance to remove the same within six months from date of notice.

1. Is such notice legal, or must each party be notified individually whose fence is on the road allowance?

2. If such notice is legal have the pathmasters power after the expiration of the six months notice, to put on men and remove the fences and have the work charged to the offending parties in their taxes?

1 and 2. Section 557 of the Municipal Act, subsection 3, gives the councils of townships power to pass *by-laws* "for the removal of any fence, etc, placed upon any highway under the control of the council, excepting material that is to be used for road or bridge purposes." Subsection 4 "for providing that the person placing any such obstructions or materials upon any highway shall, after notice to remove the same, and upon default for five days after such notice, be liable for the expense of the removal of the same." Subsection 5 makes provision for the enforcing of the enactments of such by-law by the pathmasters. The council should pass a by-law for this purpose, and specific notice should be given to each person offending against its provisions. Subsection 4 appears to be confined to the persons placing an obstruction upon the highway.

Signatures Necessary to Township Orders.

209.—A. B.—At different times I have seen it stated, in your answers to questions, that the clerk should sign orders made by the head of council for the payment of accounts. I am free to confess that I do not yet see the necessity that is in the absence of any rule, resolution, or by-law requiring such. With a view to getting the correct idea, I beg to submit the following question: I have asked advice from fellow clerks, but so far have failed to get a satisfactory answer, consequently I have concluded that there are others in the same boat with myself. Some clerks make a practise of signing the orders, others do not, but it seems to me there must be some stronger reason than custom.

Is it necessary that orders issued by head of council in payment of accounts should be signed by the clerk? If so, why?

The method of paying accounts by municipal councils and their officers given in our answers to questions No. 33 and 191 (1900) is, in our opinion, safe, legal, and business-like, a failure to adhere to ordinary business rules, is the frequent occasion of landing councils and their officers in difficult situations and heavy expenditures. There is no section or statute which in terms lays down any particular method or rule to be followed. But the exigencies and necessities of the case, and the fact that a corporation must act through its officers, renders the course we suggest necessary. The clerk and treasurer are seldom the same person, often have their offices some distance apart, and the treasurer could not tell whether the council had authorized payment to a party applying to him for his money, unless the latter also produced a certified copy of the resolution. If he did not the treasurer would have no authority to pay, or if he did pay, no voucher for the payment.

Powers of Bailiff—Of Finance Committee as to Collection of Taxes.

210.—TAXPAYER.—1. Has a bailiff power to collect all arrears of taxes—water, light, etc?

2. If so, must he be appointed by the council, or can he be appointed by the Finance Committee?

3. Has the Finance Committee power to instruct a bailiff to distrain for arrears of taxes and ground rents?

1. A bailiff, simply because he happens to be such an officer, has no right attaching to this office to collect ordinary taxes. The taxes must be placed by the clerk on the collector's roll for the municipality, and such roll is to be delivered by the clerk to the collector on or before the 1st day of October in each year. As to the duty of the council to appoint a collector each year see section 295 of the Municipal Act. Section 133 of the Assessment Act provides that "The collector upon receiving his collection roll, shall proceed to collect the taxes therein mentioned." If a ratepayer neglects to pay his taxes within the time mentioned in section 135 of the latter act, the collector may employ a bailiff or agent to enforce payment by seizure. See section 135. In case the collector fails to collect the taxes or any portion thereof by the day appointed by statute (1st February) then the council may, by resolution, authorize the collector, or some other person in his stead, to continue the levy and collection, etc. See section 145.

2. If the person enforcing payment by seizure is acting as bailiff or agent, under section 135, he should be appointed by the collector, or if continuing the collection under section 145, by resolution of the council.

3. The Finance Committee has nothing to do with instructing a bailiff to distrain for arrears of taxes.

What we have stated above has reference to ordinary taxes only. For the procedure provided for the collection of rates, charges or rents in respect of lighting, we refer you to section 10 of chapter 234, R. S. O., 1897. The council should appoint a bailiff for the purpose of collecting such rates. For the procedure provided for the collection of water rates. We refer you to sections 20, 21, 22 and 23 of chapter 235, R. S. O., 1897. The council should in this case also appoint a bailiff to collect their rates in the manner provided.

Commutation of Statute Labor in Part.

211.—D. M.—Has a municipal council power to commute statute labor in one portion of a township at say 35c. or 40c. per diem, and leave the remaining part to either perform the labor or pay 75c per day?

Yes. Section 103 of the Assessment Act provides, that "the council of any township may, by by-law, direct that a sum, not exceeding \$1.00 a day, shall be paid as commutation of statute labor for the whole or any part of such township, in which case the commutation tax shall be added in a separate column in the collector's roll, and shall be collected and accounted for like other taxes.

Qualification for County Councillor—Wire Fences—Opening of Original Road Allowance.

212.—J. B. S.—1. Can a reeve, acting actually as reeve in a township and till the end of the year, be nominated and hold election, elected or not by acclamation for county councillor without resigning his seat at the end of the year?