

School Secretary Should Deliver up Papers—Clerk Should Record Yeas and Nays—Dog Tax—Qualification of Councillor—Right to Cut Shade Trees.

217—J. G. A.—1. A was the retiring trustee in 1899 and also secretary-treasurer during his term of office. In 1900, he was appointed secretary-treasurer for the new board of school trustees. In 1901, his services were dispensed with; he was dismissed. He refuses to hand over to his successor all books, papers and correspondence he received as school trustee or as secretary and treasurer for the board. What proceedings can be taken to compel him to hand over all the books, papers and correspondence?

2. Was it lawful for the trustees to pay him for handing over books, papers and correspondence of the school section?

3. Should a clerk of a township record the yeas and nays when a vote is taken on a motion, some voting for and some against it.

4. Is dog-tax in force by statute or does it require a by-law to put it in force.

5. Can a council by motion repeal a by-law or any portion of it?

6. A was assessor and B was collector for the year 1900, having been appointed by by-law. At the last meeting of the council their resignations were accepted by resolution of the council. Could they be lawful candidates for the position of councillors for the year 1901, nomination being held in 1900?

7. Can an owner of land cut timber and shade trees on the public highway opposite his own land? If not, what is the penalty for doing so?

Section 108 of the Public Schools Act provides that "No secretary-treasurer appointed by the school trustees of any school section, and no person having been such secretary-treasurer, and no trustee or other person, who may have in his possession, any books, papers, chattels, or monies, which come into his possession as such secretary-treasurer, trustee, or otherwise, shall wrongfully withhold or neglect or refuse to deliver up, or account for and pay over the same or any part thereof to the person, and in the manner directed by the school corporation then in office, or by other competent authority." A secretary-treasurer, or former secretary-treasurer, is punishable in manner mentioned in section 109 if he transgresses the provisions of section 108.

2. No. It is his duty to do so.

3. Yes. Sub-section 2 of section 19 of the Municipal Amendment Act, 1899.

4. Dog-tax is in force by statute. See section 1 of chapter 271, R. S. O., 1897.

5. No. It must be done by by-law.

6. If A and B had fully completed their duties as assessor and collector respectively for the year 1900, and had been paid their salaries in full by the council, and the council had received and accepted their resignations prior to nomination day, they were legally qualified as councillors for 1901.

7. No. See sub section 2 (b) of section 574 of the Municipal Act. In the absence of a by-law fixing a penalty it is not clear that there is any remedy except by action for damages. Section 6 of chapter 243, R. S. O., 1897, provides a penalty for destroying trees, *planted and growing* on the highway, but it is doubtful whether that section applies to trees of natural growth.

Assessment of Hotel Property.

218—RATEPAYER.—I am writing you for information regarding the assessment of hotel property. Our local assessor and myself have not the same views on the subject. Should the property be assessed for what it would sell for to-day or what it would sell for if the license were taken away? The difference in these two views amounts to considerable in our local hotel property. I claim that the assessor has nothing to do with the license whatever. We have four hotels in the village. A few weeks ago one of them sold for \$8,500. It is assessed this year for \$4,500. Were it in the market this same hotel would be sought for by a dozen applicants in twenty-four hours, at a rental of \$800 to \$1,000, paying all license and taxes. The rental of the smallest hotel here is \$400, paying license, taxes and improvements, and the assessment on it is less than \$2,500. We have private residences in the villages assessed for about the same that would not rent for \$150 per year, and a farm in the corporation assessed for \$4,500 that would not rent for more than \$200. I think hotel-keepers receive more benefits from a village than any other business firm or private individual, as they are allowed the privilege of leaving their rigs on streets near their stables. I think their property should be assessed for its selling value, irrespective of license, as it is time enough for the assessor to change the assessed value when the license is taken away. Would you kindly give a ruling in your next issue, which of these two systems of assessment is correct?

Sub section 1 of section 28 of the Assessment Act provides, that "real and personal property shall be estimated at their actual cash value, as they would be appraised, in payment of a just debt from a solvent debtor." The assessor should proceed in accordance with the provisions of this sub section, and exercise his best judgment in placing a value on the property for assessment purposes. In case any ratepayer considers such value too low he can appeal against the assessment to the court of revision and afterwards to the county judge, pursuant to the provisions of section 71 and following sections of the Act. We may say that the selling value of hotel property is a good test of what it should be assessed for, and we do not agree with the assessor's view that it should be valued at such an amount as he thinks it would be worth without a license.

Prohibiting of Cattle Running at Large in Unincorporated Village.

219—ENQUIRER.—Has a township council power to pass a by-law prohibiting cattle from running at large in an unincorporated village plot only and at same time allowing cattle to run at large all around said village from farmers? If said farmers' cattle strayed into said village during prohibitory hours, could they be impounded legally?

There may be special circumstances warranting the passing, by your township council, of a by-law, confined to that portion of the municipality comprising the unincorporated village, but, as a rule, the powers vested in municipal corporations should, as far as possible, be exercised by by-laws, general in their nature and impartial in their operation. If these special circumstances exist in the case you put, the council can pass the by-law, and when it is passed, cattle found running at large within the limits defined in the by-law may be impounded.

Dog-Tax By-Law—Councillor Can be Secretary of Board of School Trustees.

220—R. B. W.—In 1899, our council abolished the dog-tax complying with a largely signed petition to that effect. This year a new council in power gave instructions for their assessor to assess all dogs. They purpose to pass a by-law and levy a rate of \$1 and \$2 on the same, in the future. People are objecting on the grounds that had they known a dog-tax was to be imposed, they would not have had a dog or dogs.

1. Is it legal to assess a dog when there is no by-law in force at the time?

2. Has the council power to levy a rate less than \$1.00 when about 40% would cover all damages?

3. If a council passes a by-law contrary to the Municipal Act, is it binding?

4. Can a councillor hold the office of secretary of Board of School Trustees?

By virtue of sections 1 and 3 of chapter 271, R. S. O., 1897, it is the duty of the assessors to assess dogs if no by-law has been passed pursuant to section 2 of the Act. If your council passed a by-law in 1899, dispensing with the levy of this dog-tax, the assessor would have no right to assess dogs while that by-law remained in force and instructions from the council to the assessors to do so would have no weight.

1. If there is no by-law in force at all, the assessor must assess dogs under the above act, but you state that a by-law was passed in 1899 dispensing with the levy of a dog-tax, and you don't say that that by-law has been repealed, and if it has not been repealed there is no authority to levy a dog tax under chapter 271.

2. The tax under chapter 271 is fixed and the council has no power to reduce it though it may dispense with it altogether.

3. No.

4. Yes.

A Drain Contract—Opening a New Road—Non-Resident Tenants.

221—R. M.—1. A, township commissioner, let a drain contract to B, a lady contractor in another county, who instructs A that she appoints C, her husband, her agent, and for A to pay all money coming to her on said contract to C. The contract was drawn up to B, her heirs, executors and administrators. Before the contract is finished, B dies. To whom will A pay the money, part of the work being still undone?

2. Whose duty is it to find out the heirs, etc., of B? Does it rest with A or have the heirs to notify him who has to complete said work?

3. As B has a family of children, some under age, and very likely left no will, would A be safe in paying C if he goes on and completes the work?

4. Has a municipal council power to expropriate land for a road in this case? In a gone in the township, one of the concession roads, just before it strikes the township, crosses a creek, over which at present is a bridge. The road has been travelled for years. Said bridge is now out of repair and will have to be rebuilt this summer. By crossing forty rods of land this expensive bridge could be done away with. The owner of said land will sell but wants \$400 for the acre required for the road and wants the council to pay him that amount and bind them to furnish him an underground covered concrete crossing so that his cattle can get to water, said new road cutting off the water supply on his farm.

5. Can the council force the owner to sell said land required for the new road, if they cannot agree otherwise?