

of the corporation of the village of W., had a special Act of the Ontario legislature passed to permit them to submit a by-law to the people of said village for the purpose of raising \$10,000 as a bonus for the erection and maintenance of a pork packing industry in said village of W. The by-law was passed, the debentures issued, but not sold. The council have not been successful in getting the industry located in W., but in the meantime, and since the passing of the by-law, three yearly assessments of \$768.80 have been levied against the rateable property of the municipality to meet the instalments due each year.

1. Is it legal for the council to raise the annual amount of \$768.80 when the debentures have not been sold? Please give your reasons also stating cases decided on this matter.

2. To whom must the money so collected be paid back?

3. Provided parties owning real estate in the year 1900, and have paid the assessments for 1899 and 1900, and have since then sold the said real estate, and in the event of the moneys collected being paid back, who are the proper persons to receive the assessments refunded?

4. If any freeholder refused to pay the assessment for the pork packing debentures, could the council enforce the collecting of the same?

5. If so, how?

6. What process is the legal one to pay the money back to the property holders?

7. Can the council legally do so?

1. We do not think so. The debentures in question were never *issued*, in the sense of sub section 3, of section 384, of the Municipal Act, and therefore no debt has arisen. In *Folks vs. Yost*, 54 Mo., App. 55, it was held that to *issue* tax bills is ordinarily understood to imply a delivery to some one, and in *State vs. Pierce*, 52 Kan. 528, it was said: "To *issue* county warrants or orders means to send out; to deliver; to put forth; to put into circulation; to emit; as to issue bank notes, bonds, scrip, etc. A county warrant or order is *issued* when made out, and placed in the hands of a person authorized to receive it, or actually delivered or taken away. So long as a county warrant or order is not delivered or put into circulation, it is not *issued*." See also *Levy vs. Abercorris State, etc, Co.*, 37 ch. D., 264. Although we have not the by-law in this case before us, we believe there is sufficient information to satisfy us that it does not comply with section 384, (3) above referred to, and that it is too late to dispose of the debentures now. The council should not have collected any rates until the debentures had been sold, and a debt or obligation had been created.

2. The money having been illegally collected, it should be paid back to the parties who paid it.

3. The persons who paid the assessments. The purchasers of the lands can have no claim upon these moneys which never formed any charge upon the lands.

4. No.

5. The answer to 4 disposes of this question.

6. The council should pass a by-law setting forth the facts, and directing the treasurer to pay the moneys back. A schedule can be attached to the by-law containing the names of the persons entitled to a return of their assessment,

and the amount to which each is entitled.

7. Yes.

See, in addition to the above authorities, *Bogart vs. King*, 32, O. R., 135, and same case in 1, O. R., 496, (1901.)

No Legislative Provision for Enlargement of Police Villages.

505—H. W.—H. is a police village, and comprises certain defined territory. We are desirous of increasing its boundaries and taking in additional territory. In petitioning the county council do we have to advertise the procedure or give notice to that effect?

Section 50, of the Municipal Amendment Act, 1900, authorizes county councils to pass by-laws erecting an unincorporated village into a police village, on the petition of a majority of the ratepayers resident therein, but there is no provision for extending the limits of a police village once established. In the case of incorporated villages, express provision is made for extending their boundaries. See sections 11 and 16, of the Municipal Act. The legislature having considered it necessary to authorize the extension of an incorporated village, as it has done by s. 11 and 16 of Act, it follows, we think, that a police village cannot be enlarged in absence of express legislative authority for so doing. If county councils have such power a petition signed by a majority of the ratepayers resident in the whole area, that is, the area combining the present police village, and that part proposed to be added, is all that is required by section 50, of the Municipal Amendment Act, 1900; but as we have stated, we do not think they have such power. If it is important that the police village in question should be enlarged, your course is to ask the legislature at its next session to amend the present law, so as to enable your county council to pass a by-law for the purpose.

Police Commissioners Legally Control Expenditure of Moneys in Police Village.—Statute Labor—Fencing of Railway Switches.

506—J. C.—1. Re township and police villages. Our township raises a rate of five mills on the dollar. About one-half of said rate is spent on roads, etc. The township allows police villages an equal proportion of said expenditure according to proportionate assessment for streets and sidewalks. But council claims said moneys are to be spent under the supervision of the township commissioner, and not by the trustees, and that township treasurer has no right to pay orders passed by trustees for said moneys. The trustees claim that the township commissioner has no right to handle police village share of said moneys, and that the trustees have the sole right to spend their share in streets and sidewalks under their own supervision, and that the township council must deposit police village's share in township treasurer's hands, and said treasurer to pay trustees' orders issued by them. Which are right, council or trustees?

2. Mr. A. has property assessed at \$700, which would be four days' road work, but \$650 was in police village, and \$50 outside of police village. The clerk, in making our road lists, charged Mr. A. as two separate parties full amount of road work. Was that right? or should Mr. A. be four days, and divided according to assessment?

3. Can chartered companies who run railway switches off main line be compelled to fence said switches for the first half mile from main line for safety of cattle?

1. We quite agree with the contention of the trustees of the police village. The council of the township in which the police village is located, or its road commissioner have nothing to do with the expenditure, in the police village, of moneys levied under secs. 738 and 740 of the Municipal Act, or any other moneys to which the trustees are entitled—this is exclusively the duty of the police trustees. As to the payment of the order of the trustees by the township treasurer, sec. 742 of the Act is quite clear. It provides that, "The township treasurer shall from time to time, if he has moneys of the municipality in his hands not otherwise appropriated, pay any order given in favor of any person by the inspecting trustee or by any two of the trustees, to the extent of the amount required to be levied as aforesaid, although the same may not have been collected, and he shall in like manner pay any such order to the extent of the moneys received by him for licenses under any by-law passed by the police trustees of the police village, and for breaches of any such by-law, and for penalties under sec. 747 of the Municipal Act."

2. We do not think that the clerk made a correct calculation of this statute labor. It should be estimated on the valuation of \$700 as a whole, according to the schedule in vogue in your municipality—this, from what you say, would be four days. This statute labor should be apportioned between the police village and the township municipality, in such manner as may be agreed upon by the police trustees and council of the municipality.

3. The Dominion Railway Act requires railway companies to construct sufficient cattle guards at all highway crossings and to erect good and sufficient fences along both sides of their land. (Sec. 194.) Until they do this they are liable in damages for the death of or injury to cattle, etc., straying on the railway lands.

Medical Health Officers' Account—Clerk Cannot Act as Deputy-Returning Officer in Townships Divided into Wards or Polling Subdivisions.

507—C. B. A.—We have had several cases of small-pox in our township during the past summer. The chairman of the local Board of Health sent the medical health officer appointed by by-law of the township council at a salary of so much per year, to investigate and report on some of the cases. He, the M. H. O., now sends in an account to the local Board of Health for those visits, also for attending meeting of the local Board of Health, called in connection with said small-pox epidemic. The local B. of H. refers it to the council for settlement.

1. Has the township council a right to pay said account?

2. Has medical health officer a right to investigate and report on infectious and contagious diseases in the municipality, when requested to do so by the local Board of Health, without any remuneration over and above his salary?