

seems just "and sub-Section 2 provides that" a drainage work shall not be deemed to be continued into a municipality other than the initiating municipality merely by reason of such drainage work or some part thereof being constructed on a road allowance forming the boundary line between two or more municipalities."

2. This section being located in an organized township, the council has no authority to remit this ratepayer's school taxes. The council was not bound to open this road in the first instance, but having done so, it must put and keep the road allowance, so long as it remains open as a public highway, in such a condition for public travel, as the nature of the locality, amount of traffic over it, and other attendant circumstances would render sufficient,—but we do not think the municipality is liable in an action for damages. The person aggrieved by reason of the road being out of repair might have indicted the township but he did not take that course which was his only remedy.

#### Not Entitled to Vote for Public School Trustee.

**224—J. C.**—A rents a property from B at annual rental of \$50. A agrees to perform statute labor and B to pay all other taxes. A took possession on the 15th day of April last, but was not entered on the assessment roll for 1902. A is a public school supporter and claims under section 13 Public Schools Act, 1901, the right to vote. Can A vote for trustee?

A is not under the circumstances a ratepayer and is not entitled to vote for a public school trustee.

#### Duty of Deputy-Returning Officer to Furnish Compartments.

**225—F. M. F.**—With respect to the liability or otherwise of a township to pay for polling booths for the referendum, let me direct your attention to the fact that in the statute three expressions are used as relating to the locality where the voting takes place, namely, "polling place" (sections 10 and 11), "polling compartments," section 93, and "polling booth" in item 11 of schedule "B," referred to in section 92. I find these definitions in the Standard Dictionary:

"Polling place"—A place where, at elections, votes are received and registered.

"Polling booth"—A closet-like structure erected at the polls for the convenience of voters at an election.

"Compartment"—One of the parts into which an enclosed space is sub-divided by lines or partitions.

I confess I think the Act uses the expression "polling compartments" and "polling booths" as meaning one and the same thing, that is, a division of a polling place, and unless you attach no meaning to the words "polling compartments" in section 93, 2 Edward VII., chapter 33, that must prevail rather than the words of a mere schedule, and the Province (not the municipality) should pay the sum of four dollars per polling place for taking the referendum vote.

We fully expressed our opinion and our reasons for it on these sections of the Liquor Act, 1902, in our answer to question No. 87 (clause 1) in our issue for February of the present year and see no reason for changing it in any way. Tak-

ing the definitions given from the standard dictionary, we can easily see, in view of the prevailing nature of the place at which the votes of electors are now taken, how the words "polling-place" and "polling-booth" might be taken as meaning the same thing. As the polling-booths generally used at elections are in most instances anything but "closet-like structures." In this polling-booth or polling-place it is the duty of the deputy-returning officer to furnish as many "compartments" (parts into which the polling booth or polling place is sub-divided) as the circumstances of the case may require, into which the electors are to retire to mark their ballots. (See sections 11 and 38 of the Act). It is the cost of furnishing the latter in the polling booth or polling place, which is to be included in the bill of the Deputy Return-Officer, rendered to the Returning Officer as a disbursement. This sum together with the other lawful items in the bill, is to be paid by the Province to the returning officer, to be by the latter paid and allowed to the deputy-returning officer, as provided in section 93 of the Act. Section 92 and schedule B (which is by section 92 expressly made part of that section) provide for payment of the rent of the polling booths, by which, in our judgment, is meant the polling places mentioned in section 10 of the Act. If the construction you suggest in this particular were placed on section 93 of the Act, section 92, embodying schedule B, would provide that the cost of the polling compartments is to be paid by the municipal treasurer on the order of the deputy-returning officer, and section 93 that the same item of expenditure should be paid by the Treasurer of the Province, which would be inconsistent and absurd. We may also say that we have no doubt whatever but that the Provincial Treasurer's department interprets the Act just as we do, and we venture to say that the Provincial Treasurer will not pay the expenses of furnishing polling booths in any case.

#### Person Elected to Office to Disclaim Before His Election is Complained of.

**226—H. G. T.**—In the question (No. 120, February,) submitted, six candidates were nominated and contested the election, of whom four of course were elected. The election of one of the four declared elected was complained of, he being a school trustee. He disclaimed (sections 240 and 241 of the Municipal Act) and the candidate having the next highest number of votes became the member (section 241) I submit that a qualified councillor whose election is not complained of, has no right under the statute to disclaim, consequently the last elected councillor who disclaimed and whose election was not complained of acted illegally and his disclaimer is a nullity. A qualified councillor legally elected is bound to accept the position or he leaves himself liable to a fine if he refuses to accept it. (See section 319.) His only way out is by resignation accepted by a majority of the members present, to be entered upon the minutes of the council (section 21), and had Mr. E. done so, Mr. A. could not claim the seat nor should he be declared elected. The case you cite as proof of your contention is not at all a similar case. If Mr. E. was disqualified then your answer would be correct.

Should you still think that Mr. A. was legally elected I will be very glad if you will point out where I am wrong.

We adhere to our former opinion, because section 240 of the Municipal Act expressly authorizes a person elected to disclaim at any time before his election is complained of. This section reads as follows: "When there has been a contested election, the person elected may at any time after the election, and before his election is complained of, deliver to the clerk of the municipality a disclaimer signed by him as follows, etc." Section 319 does not prevent any person who has been elected from disclaiming the office and as soon as he disclaims the candidate having the next highest number of votes becomes entitled to the seat, and he is not personally concerned in the penalty which the person disclaiming may have incurred under section 319.

#### By-Law to Loan Money—Deduct From List, Voters Who Have Died—Others not to be Deducted—By-Law to Weigh on Village Scales

**227—E. E. D.**—A bonus by-law was voted on and the clerk has to report whether the number of votes in favor of the by-law is three-fifths of total vote shewn by the roll and voters' list, section 366 (a). The by-law was to loan money to a partnership firm, five of whom are shewn by the roll and list as voters. Can he deduct them from the total?

2. A number of those shewn to be voters have died since the roll and list were made. Has he any authority to deduct them from the total?

3. A number of those who apparently have votes, are not really entitled to be assessed as owners. Can he deduct these?

4. Has the village power to pass a by-law compelling every person to weigh on the village scales, and if they do so, can anyone else weigh and charge a fee?

1. The proportion required is three-fifths of all the ratepayers *entitled to vote on the by-law*. These parties were not qualified under sections 353 or 354 of the Act to vote on the by-law, as they expected to receive some reward or gift for the votes tendered, but as there is possibly a question as to whether these persons are all partners, and by reason thereof interested in the by-law, it seems to us that it is a matter for the county judge on a scrutiny to determine whether the by-law received a sufficient number of good votes to carry it, and that it is not a matter for the clerk to deal with.

2. Yes.

3. No.

4. The village council has power, under subsection 5 of section 580 of the Municipal Act, to pass a by-law requiring every person to weigh everything mentioned in that subsection on the village scales and to impose penalties upon every person who weighs any of these things anywhere else in the village.

#### Council Has No Right to Disturb the Purchaser.

**228—G. P.**—Last summer the clerk of the council of S. W. wrote you about a road allowance belonging to the township of S. W. whether they owned it all or the village owned