

Question Drawer.

Subscribers are entitled to answers to all Questions submitted, if they pertain to Municipal Matters. It is particularly requested that all facts and circumstances of each case submitted for an opinion should be stated as clearly and explicitly as possible. Unless this request is complied with it is impossible to give adequate advice.

Questions, to insure insertion in the following issue of paper, should be received at office of publication on or before the 20th of the month.

Communications requiring immediate attention will be answered free by post, on receipt of a stamp addressed envelope. All Questions answered will be published unless \$1 is enclosed with request for private reply.

Justice of the Peace Qualified as Councillor.

38—M.—Our village council was all elected by acclamation for 1902, and one of the councillors is a Justice of the Peace. Can he qualify?

In section 77, of Consolidated Municipal Act, 1892, it says, no police magistrate can qualify. Now, is a police magistrate and a Justice of the Peace one and the same thing, and if he cannot qualify how will I proceed to disqualify him, and who will bear the costs of the same?

A Justice of the Peace, if he possesses, at the time of his election, the qualification mentioned in section 76, of the Municipal Act, is qualified to be elected to, and occupy a seat in a municipal council. A Justice of the Peace and a police magistrate are not identical, and section 80 of the Act, specifically disqualifies the latter from being a member of the council of any municipal corporation. The foregoing renders it unnecessary to answer the latter part of your question.

Non-Resident's Claim to Damages for Sheep Killed by Dogs.

39—J. D. S.—I would like to have your opinion on a claim sent in to the council of the township of —, by a resident of the town of —, for six sheep killed by dogs in said township. Can he claim compensation, not being a resident of the township, nor paying taxes, but sending them out to pasture for a while?

Section 18, of chap. 271, R. S. O., 1897, applies to the owner of any sheep or lamb killed or injured by any dog, the owner or keeper of which is not known, who may apply to the council of the municipality in which the sheep or lamb was killed within the time, and in the manner mentioned in the section. The fact that the owner of the sheep or lamb killed or injured is not a resident of the municipality in which such sheep or lamb was, when killed or injured, does not deprive him of his right to compensation by the council for his loss, under this section.

Members of New Council Should Take Oath of Office.—Nominator and Seconder Should be Present at Nomination Meeting—Councillor Cannot be also Member of Local Board of Health.

40—J. B. B.—1. Is it necessary that men who were councillors for 1901, and re-elected by acclamation for 1902, should take the oath of office again for this year?

2. Should the nominator and seconder of a candidate be present at nomination or not?

3. When a member of the Board of Health is elected councillor, can he hold both offices at the same time?

1. Yes. As soon as the new council is elected, whether it is composed of the members of the former council or not, the old council, as a corporate body, ceases to exist, and they must take the usual oaths.

2. Yes. See our article on "Nomination Proceedings," on pages 183 and 184, of THE WORLD for December, 1901.

3. Your municipality being a township, a person elected a councillor cannot also hold the position of member of the Local Board of Health. Sub-section 1, of section 48, of chap. 248, R. S. O., 1897, provides that the Local Board of Health in a township should be composed of the *reeve, clerk and three ratepayers*, to be appointed by the municipal council in the manner mentioned in this sub-section.

Apportionment of School Moneys.

41—J. M.—In the Municipal Amendment Act, 63 Vic., 1900, page 113, (434a) says to be divided according to the salaries paid teachers, attendance of pupils, assessed value of property or by an equal division. 1 Ed. 7, 1901, page 141, (4) School Act, says to be divided according to the salaries paid teachers, or to the average attendance of pupils. Kindly say if council can divide according to assessed value as per Municipal Act.

Section 29, of chap. 11, of the Ontario Statutes, 1899, was repealed by sub-section 2, of section 16, of chap. 23, of the Ontario Statutes, 1900, and was re-enacted (probably through inadvertence) by sub-section 4, of section 71, of the Public Schools' Act, 1901, (Ontario Statutes for that year, chap. 39.) Section 424, of the Municipal Act, (enacted by sub-section 1, of section 16, of chap. 33, Ontario Statutes, 1901,) makes the same provisions, with the additional power of apportioning these moneys among the public school sections in the township according to the assessed value of the property in the section, or by an equal division among the several sections. A municipal council can, therefore, legally apportion these moneys according to the assessed value of the public school sections in the township under section 16, of the Municipal Amendment Act, 1901.

By-Law Commuting Statute Labor Need Not be Submitted to Electors.

42—R. M.—1. A motion was passed through our council in October last to bring the matter of commuting statute labor before the people for discussion, and to be voted upon at the municipal election for 1902. The matter was brought before the people and discussed, but the old council board was elected by acclamation. There were about three hundred present. We decided to take the voice of the people present and act accordingly. Five-sixths of the vote taken was in favor of commuting tax. Can we legally proceed to pass a by-law to commute statute labor?

2. By law, would we have to take a plebiscite of the ratepayers before proceeding. 1 and 2. Sec. 103 of the Assessment

Act provides that "the council of any township may, *by by-law*, direct that a sum not exceeding \$1 a day shall be paid as commutation of statute labor, for the whole or any part of such township", and sub-section 2 of section 561 of the Municipal Act empowers councils of townships to pass by-laws "for providing that a sum of money, not exceeding \$1 for each day's labor" may or shall be paid in commutation of such statute labor." The council of a township is not required, nor is it legal or proper to submit a by-law of this kind to the vote of the electors of the municipality.

Qualification of Unassessed Party.

43—J. F. C. We had an election to-day for township councillors. Our reeve was elected by acclamation, and we had six candidates running for the office of councillors and, of course, only four could be elected. The one of the four elected, who polled the lowest number of votes, has not been assessed for any property on the assessment roll for 1901, but has bought a farm since the final revision of the roll of sufficient value to qualify him for the office if he was assessed.

1. Can he qualify and hold his seat? As I do not see anything in the declaration of qualification to prevent him from making it, but I see by section 76, of the Municipal Act, R. S. O., that it is necessary for a councillor to be an assessed ratepayer on last revised assessment roll.

2. If he makes his declaration of office and qualification, and one of the defeated candidates or anyone else, were to take legal proceedings to try and unseat him, could they do so, and if they could, what course should then be taken to fill the vacancy; could the candidate having the next highest number of votes legally take the seat, or should there be a new election, or what steps should be taken re the matter?

1. No. Under the provisions of sub-section 1 or 2 of section 76 of the Municipal Act, a candidate must be rated on the *last revised assessment roll*, as required by these sections.

2. If this person takes the declaration of office and qualification, he can be unseated, if proceedings be instituted for that purpose pursuant to section 219 and following sections of the Municipal Act. If he disclaims his right to the seat in accordance with section 241 of the Municipal Act, the candidate having the next highest number of votes shall then become elected.

Submission of Commutation of Statute Labor to Electors not Necessary.

44—F. F.—Can the statute labor of a township be commuted without a vote from the people? Let me know how it works in townships where it has been commuted, as we expect to commute it at our next meeting.

Yes. See our answer to Question No. 42 in this issue. Wherever a by-law of this kind has been passed, it has given the best of satisfaction. The township of Pelham passed such a by-law some years ago and its council and officials have devoted a great deal of time and attention to perfecting the system. The clerk Mr. J. C. Crow, sets forth the results in a communication published on page 74 of THE WORLD for 1901, and a copy of the by-law passed in this township will be found on pages 68 and 69 of THE WORLD for 1900.