

QUESTION DRAWER

Subscribers are entitled to answers to all Questions submitted if they pertain to Municipal Matters. It is 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 stamped-addressed envelope. All Questions will be published unless One Dollar is enclosed with request for private reply.

Same Person May be Assessor and Collector.

524—D. D.—Can the same person be appointed assessor and collector?

Yes.

Lévy for Building Second School House in Union Section.

525—I. C.—A union school section was formed by arbitration in 1900 of parts of Townships H. and G. In 1901 a new school house was erected on the old site, and this year another new school house is being erected a mile and a quarter south of the first in the same section. Now the trustee board is asking the council to raise by one rate a sufficient sum to pay for school house No. 2 and its site this year. I may here state that although the section is a fairly large one there is ample accommodation in school house No. 1 for all the pupils in the section and all within a reasonable distance.

Is the council lawfully compelled to raise the very large sum of money asked for while yet the ratepayers are taxed (and will be for several years) for the building of No. 1 school house?

Sub-section 1 of section 34 of The Public Schools Act, 1901, provides that the trustees of every rural school section shall have power to select a site for a new school house, etc., and that they shall forthwith call a special meeting of the ratepayers of the section to consider the site selected by them, and that no site shall be adopted, except in the manner provided in the section, without the consent of the majority of such special meeting. Sub-section 3 of section 65 requires the trustees to provide adequate accommodation for all the children therein mentioned. If this school site has not been adopted in the manner required by sub-section 1 of section 34, or if there is already sufficient school accommodation in this union section, the trustees and council can be restrained from levying and collecting the sum necessary to pay for the new school site and erection of the new school house. If the proceedings leading up to the request for the levy and collection of the money are regular and in accordance with the provisions of the statute, the council may, under the authority of sub-section 1 of section 75 of the Act, raise the sum required by one yearly rate without submitting the proposal for the loan to a meeting of the ratepayers and obtaining the sanction of such meeting as is required in the case of the issue of debentures under sub-section 1 of section 74.

Time Within Which Damages May be Claimed from Municipalities.

526—J. E. E.—Is there a limited time for making a claim for damages against the municipality? Where is the law bearing on it to be found?

Sub-section 1 of section 606 of The Consolidated Municipal Act, 1903, provides that an action for damages sustained by any person by reason of the default of the corporation to keep in repair any public road, street, bridge or highway must be brought within three months after the damages have been sustained. As to a municipal corporation's liability for accidents caused by accumulations of snow and ice, see sub-section 2 of this section. Sub-section 3 requires that notice in writing of the accident and the cause thereof be served upon or mailed through the post office to the mayor, reeve, or

other head of the corporation or to the clerk of the municipality within thirty days after the happening of the accident, where the action is brought against a township, and within seven days where the action is against a city, town or village. See also sections 437 and 438.

Appointment of Constable in Towns.

527—R. H.—1. Can a town appoint a constable, and can he act as constable without the County Judge's sanction (that is for town purposes)?

2. Would he have to be sworn in before he could act as constable, and if so, by whom?

1. Yes. Section 493 of The Consolidated Municipal Act, 1903, provides that "the council of every town not having a Board of Commissioners of Police shall, and the council of every village may appoint one chief constable and one or more constables for the municipality, and the persons so appointed shall hold office during the pleasure of the council." As to the appointment of constables in towns having Boards of Commissioners of Police, and their oath of office, see section 489 of the Act.

2. Yes. He will have to make and subscribe the solemn declaration mentioned in section 313 of the Act.

Height of Railway Fence—Damages by Cattle Trespassing on Railway.

528—A. McD.—A short time ago a railway line was extended through a town lot. The fence on said railway line is a wire fence. The posts are 23 or 24 feet apart. There are only seven strands of wire, each about $\frac{1}{8}$ inch in diameter, and only two perpendicular bars between each pair of posts. The strands of wire are on the inside of the fence and fastened to the posts by means of small shafles.

The cattle get on the railway track and make their way through the fence owing to the posts and perpendicular bars being so far apart and owing also to the shafles pulling out of the posts. The height of the fence is only about three feet nine inches or four feet at the highest places.

What I would like to know is what a railway fence should be in height and other respects, and if the party into whose garden the cattle are breaking can recover damages for the injury done by the cattle?

If this railway is one under the jurisdiction of the Dominion Parliament, as is probably the case, section 197 (2) of The Dominion Railway Act requires the company to erect and maintain fences of a minimum height of four feet six inches, and provides that such fences and gates shall be suitable and sufficient to prevent cattle and other animals from getting on the railway. If there is any question as to the sufficiency of these fences for the purposes of keeping cattle in and preventing their straying upon the railway lands, the matter should be referred to the Board of Railway Commissioners for Canada, who have authority under sub-section 2 of section 198 to deal with the matter. In this case, however, the trouble seems to be caused by cattle trespassing on the railway lands, and we are of opinion that the company is not bound to build fences to keep them out of lands adjoining the railway, nor is the railway company liable to the owners of the lands for any damage done by them. The land owners will have to look to the owners of the cattle trespassing and doing damage.