

kind of work to be done as part of the statute labor imposed upon the inhabitants of his district or beat under the provisions of section 8 of chap. 279.

#### Audit of Police Magistrate's Books.

356.—A. B. C.—1. There is a town in this county of about 4,000 inhabitants, and the books of the police magistrate have not been audited for years. Please inform me as to how to obtain an audit. Should the municipal council appoint auditors, one or two, to do the auditing, or how?

2. Should it, the audit, be asked for by a member of the council, or how?

3. If an audit should be refused upon request then how should the matter be consummated?

Section 299, chap. 223, R. S. O., 1897, makes it the duty of councils to appoint two auditors whose duty it is to audit all accounts affecting the corporation. There is no provision enabling the council to appoint special auditors to audit the police magistrate's books. An audit may be had under the provisions of chap. 228, R. S. O., 1897, of the financial affairs of a municipal corporation, and section 10 empowers the auditors to examine officers and other persons and in the case of such an audit the police magistrate might be subpoenaed to produce his books and give evidence on the audit.

#### Election of Town Councils—Polling Sub-divisions.

357.—W. M. L.—The council of every town having a population of not more than 5,000, by the last Canadian census, shall consist of a mayor who shall be the head thereof, and of six councillors to be elected by a general vote. 61, Vict. chap. 23, sec. 2.

1. Does this mean that no reeve is to be elected?

2. And shall the general vote be taken at one polling place or shall it be taken in the wards with a deputy-returning officer in each?

1. Yes.

2. The town should be divided into polling sub-divisions for conveniently taking the vote of the electors under the authority of sections 535 and 536 of chap. 223, R. S. O., 1897. The number of polling sub-divisions, until arranged by by-law of the council, would be the same as formerly.

#### Industrial Tax Exemption—Use of Sidewalks by Merchants.

358.—J. W. J.—1. Has a township council the power to promise and to refund taxes for any term of years to any industry without taking a vote of the ratepayers? The industry in question is a steam saw mill.

2. When sidewalks have been built on the road allowance in a village, have the occupants, merchants, or hotel-keepers any right to blockade them with goods, chairs, benches and such things as will require parties passing to leave the sidewalks and walk out on the roads. If it is termed a public nuisance what steps should be taken to put a stop to it?

1. Section 411, chap. 223, R. S. O., 1897, empowers every municipal council, by a two-thirds vote of the members thereof, to exempt any manufacturing establishment in whole or in part from taxation except school taxes, for a period not longer than ten years. This ought to be done by by-law.

2. The owners of lands bordering upon streets have the right to make a reason-

able and proper use of such streets, for example the placing of material upon the street temporarily for building, the throwing down of wood preparatory to its being taken in upon the landowners premises, etc., but in these cases these acts must be done so as to occasion as little inconvenience as possible to the public. The material should be placed so as to interfere with public travel as little as possible and must not be left an unreasonable time in the street. There may be some excuse for encumbering the streets with goods, temporarily, but cannot see what necessity there can be for encumbering them with chairs and benches, except where a person is moving his furniture and requires to put it down temporarily on the street. If a person is doing anything of this kind, beyond what is reasonable, he is committing a public nuisance and is liable to be indicted.

#### Village By-Laws Waterworks Franchise.

359.—CARLETON.—The council of an incorporated village in the county of Carleton, has passed a by-law granting an exclusive franchise to a waterworks company for a term of thirty years on condition that the company supply the village with water at a fixed rate. The council agrees to pay annually the sum of \$25 for each hydrant, not fewer than five, or a minimum sum of \$125 yearly for the same length of time. It also agrees, so far as it has power, to exempt the company from municipal taxation. Has a council this power without asking or receiving the consent of the electors?

This by-law creates a debt and, therefore, in the absence of assent from the ratepayers it is in contravention of section 384, chap. 223, R. S. O., 1897. It also appears to be in contravention of section 411 of the same act which empowers the council to exempt such a company as this by a two-thirds vote for a period not longer than ten years, and further it appears to be objectionable in granting an exclusive franchise to the company. See sections 330, 331 and 332 of the same act and also sub-section 13 of section 8 of the Interpretation Act, chap. 1, R. S. O., 1897.

#### By-law to Remove Fences.

(See No. 314.)

360.—CLERK.—I send you a copy of by-law passed in December 15th, 1897, referred to in my question last month asking how to proceed to make owners of lots move their fences who refuse to do so. All the statutory preliminaries in connection with the by-law were complied with. No protest put in at the time of hearing before the final passing of the by-law.

1. Is the by-law legal?

2. Can the council proceed to move the fences?

3. Must the council settle with owners for land taken for road before fences are changed?

Copy.

BY-LAW No. 15.

Entitled a by-law establishing as a public road the line between lots K and L in the township of Johnson in line of the road built by the Government of the Province of Ontario, partly on lot K and partly on lot L from the C. P. R. crossing to the Portlock River.

Whereas power is given to municipal councils according to section 550 chapter 184

R. S. O., 1887, to alter or direct roads within the jurisdiction of the council and for entering upon, taking or using any land in any way necessary for said purposes, subject to the restrictions in the Act contained.

Therefore the municipal council of the corporation of Johnson Tarbutt and Tarbutt Addl., in the District of Algoma, in council assembled enacts that the road now running and being on an irregular and undefined line from the C. P. R. crossing north to the Portlock River, be and is hereby altered and diverting to the surveyed line between lots K and L in the township of Johnson from the said C. P. R. crossing to where said surveyed line crosses the Portlock River, and that the said road as altered by this by-law shall be and is hereby established as a public road, and shall be the uniform width of sixty-six feet unless the provisions of by-law number 8, 1893, relating to the width of roads within this municipality be complied with.

This by-law shall take effect and become law on the day of the passing thereof.

Passed in council this 15th day of December, 1897.

Signed, JOHN L. McDONALD, Reeve.  
THOMAS F. WILLIAMS, Clerk.

1. We do not think so because the by-law does not on its face show the boundaries of the proposed road, nor does it refer to any document which does show the boundaries. You should have set forth the boundaries of the road just as a piece of land is described by metes and bounds in a deed. The preliminary proceedings are important. You say they were all complied with, perhaps so, but you do not state what they were and therefore we do not know, but they should comply with section 632, chap. 223, R. S. O., 1897.

2. No, because we do not consider the by-law on its face legal.

3. If the by-law were valid the council might at once compel the removal of fences and proceed to make the road fit for public travel. The compensation is a separate matter to be settled by arbitration if the landowners and the council cannot agree.

#### An Assessor's Pay for Special Services.

361.—R. J.—Our assessor, when he started assessing, received blank forms from the Bureau of Industries with instructions to submit a census of the municipality for which he was to receive ten per cent. Now the question is, ten per cent of what? of his salary as assessor or ten per cent of the names submitted?

We have not been able to find any statute making any provisions of this kind, and without the blank form referred to we cannot express any opinion as to the meaning of it. We would advise you to communicate with the department.

#### Repair of a Mill Bridge.

362.—R. F.—Below a saw mill there are two bridges, one say twenty-five years ago, took only the water which drove the mill. The present proprietor many years ago was told when he bought the property, that he would have to maintain said bridge at his expense. He has done so ever since, excepting a very small grant given to him by the council. For several years on account of a change in the bed of the creek, this said bridge has taken all the water that flowed down excepting in case of floods. Said bridges are on a road used for public travel. The bridge which many years ago took only the water from the mill wants repairing.