

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.

By-Laws Allowing Erection of Wire Fences on Roads.

538—T. G. M.—Did township councils in years past have the power to enact a by-law allowing wire fences to be extended six feet on road allowance? What I want to know is, if any council had the right years ago, say ten or twelve, to pass such a by-law as above mentioned.

Councils of townships never had legal authority to enact a by-law of this kind.

Collection of Charges Under the Ditches and Watercourses Act.

539—J. J.—When a special tax is levied upon a ratepayer under powers conferred by the Ditches and Watercourses Act, about which said ratepayer may be inclined to dispute payment, should the collector accept that part of the taxes of said ratepayer not in dispute, if same is offered, and seize goods for the unpaid tax in dispute? or should he hold out for all taxes to be paid him and accept no part thereof, but seize for the whole tax, if whole be not paid?

Unless he has been instructed by a resolution of the council not to collect the fees charged under the provisions of the Ditches and Watercourses Act, and to accept the balance in full of this ratepayer's taxes, the collector cannot legally accept payment of part of the taxes, but must proceed to collect the whole amount, by distress of the goods and chattels of the person liable, if he refuses or neglects to pay it.

Closing Old Road and Opening New—Gates Should Not be Erected on.

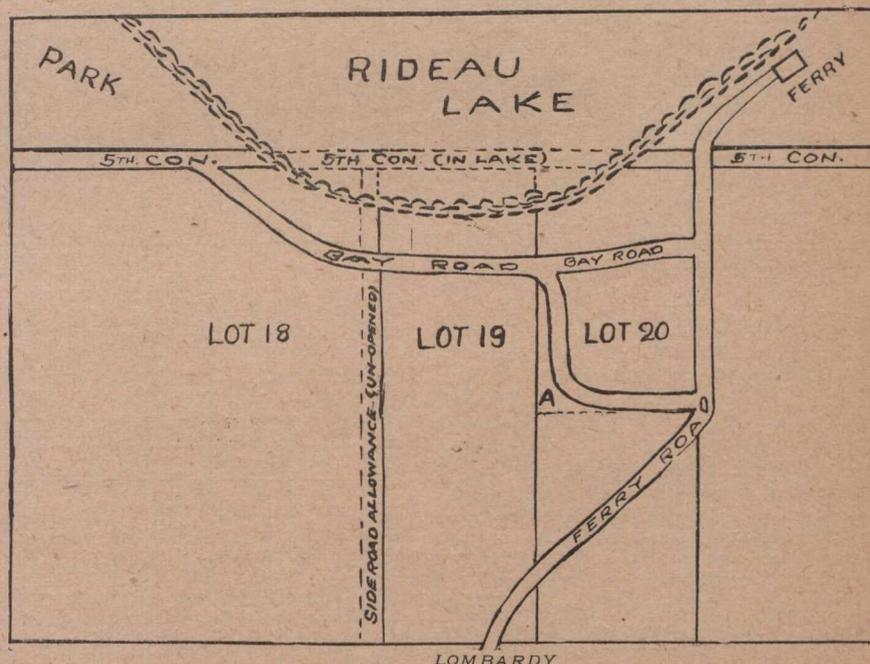
540—E. J. O.—In our township we have a road running from fifth concession near where said concession joins waters of Rideau Lake, thence across lots 18, 19 and 20 to Ferry Road. Said road, which is commonly called Bay Road, was opened by by-law of council and surveyed by surveyor over fifty years ago. It was then used considerably, but later had almost fallen into disuse until some parties purchased that piece of land marked as Park. J. H., the owner of lot 19, has had gates or bars across road for last twenty years or so. Now owners of park and some others want bars and all obstructions removed, which would necessitate him fencing the sides of road, thereby shutting him off from water for his stock, which would be considerable loss to him, also M., owner of north half of 20, would be cut off from that piece of land marked A. Now a majority of our council are in favor of closing Bay Road and opening in lieu thereof the sideroad between lots 18 and 19, and in addition to sideroad the owners of lot 19 and north half of 20 are willing to give a by-road, using Bay Road as far as line between 19 and 20, thence running northward, running along lake a distance, thence north-westerly until it joins Ferry

Road, they reserving right to put gates on said road, one at each side of lot 19, also one on lot 20.

1. Can council legally close Bay Road under circumstances, owners of park contending it would be a damage to their property, as they could not get to ferry without going farther around or opening gates on by-road. They would, however, be nearer Lombardy.

2. Would council be entitled to compensation from interested parties?

3. Can council legally accept by-road as described? If so, would it be same as compensation?



4. Would the fact of J. H. having gates or bars on road for so long give him any claim on road? The council, I believe, told him he might put gates on, and if public was satisfied, they were. That was about twenty years ago; they are there yet; sometimes they were left open.

5. If council close Bay Road, will parties owning park have any chance of an action for damages?

6. Can council legally close all of Bay Road except that which connects 5th concession with sideroad?

7. Part of Bay Road running from Ferry Road to near lake shore never had any gates on it. It was used formerly as winter road. Does that make any difference?

8. Does Government reserve any land along lake shore on north end of lot 19, 5th concession of S. Elmsley? Some parties claim it does, and as the Bay Road runs near water's edge, they claim the reservation would let them into Rideau Lake, but they can just as well and better go down sideroad when it is open.

Outside of all these roads parties owning

park have another from town of Smith's Falls running along 5th concession.

1. The council may pass a by-law pursuant to the provisions of section 637 of the Consolidated Municipal Act, 1903, providing for the closing of the road, if it considers it in the general interest of the public to do so. The preliminary proceedings mentioned in section 632 should first, however, be strictly observed.

2. No.

3. The council cannot accept conveyance of the land necessary for the purposes of the new highway and establish it as a public highway, allowing certain interested parties to erect and maintain gates across it at the point mentioned. The land acquired could not be dedicated to the public as a highway, as it should be, if the public is prevented from using it freely, by reason of the existence thereon of these gates.

4. No. The soil on a public highway is vested in the Crown, and the Statute of Limitations does not run against the Crown.

5. No.

6. Yes, if the council thinks it is in the general public interest to do so and passes a by-law for the purpose, pursuant to section 637 of the Consolidated Municipal Act, 1903, after it has strictly complied with the preliminary steps mentioned in section 632.

7. No.

8. We cannot say as to this, unless we have the opportunity of examining the plan of the original survey of this locality. This is probably on file in the office of the Crown Lands Department in Toronto, and we would suggest corresponding with the commissioner with a view to obtaining the desired information.