

THE MUNICIPAL WORLD

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Calendar for February and March, 1903.

- FEB. 1. Last day for Railway Companies to transmit to Clerks of Municipalities statement of Railway Property.—Assessment Act, Section 31.
Last day for Collectors to return their Rolls and pay over proceeds.—Assessment Act, Section 144, (1).
Last day for County Treasurers to furnish Clerks of Local Municipalities with List of Lands in arrears for Taxes for three years.—Assessment Act, Sec. 152.
4. First meeting of Board of Education, at seven p. m., or such other hour as may be fixed by resolution of former Board at the usual place of meeting of such Board. High Schools Act, Section 15 (1).
5. Make return of deaths by Contagious Diseases registered during January.—R. S. O., Chapter 44, Section 11.
15. Last day for Assessors to begin to make their rolls.—Assessment Act, Section 55.
28. Last day for Councils to pass By-laws, for imposing a larger duty for Tavern and Shop Licenses.—Liquor License Act, Section 42.
Last day for City and Town Councils to pass By-laws to prescribe further requirement in Taverns.—Liquor License Act, Section 29.
- MAR. 1. Auditors' reports on the accounts of High School Boards, and the Boards of cities, towns and villages should be mailed to Education Department.
Separate School supporters to notify municipal Clerk.—S. S. Act, Section 42.
Inspector's Annual Reports to the Department due.—P. S. Act, Sec. 87, (5).
Financial Statement of Teachers' Association to the Department due.
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The Municipal World

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ST. THOMAS, FEBRUARY 2, 1903.

Mr. Geo. F. Downie has been appointed clerk of the town of Palmerston, in the place of Mr. S. Caswell.

* * *

We understand that a consolidation of the Municipal Act will be presented for consideration by the Legislature this year. This Act has not been consolidated for five years, and during that time it has become confused owing to the large number of amendments.

Statutes Wanted.

A Village Clerk writes: I would like to make one little suggestion i. e. that you endeavor to have the municipal clerks supplied with the Ontario Statutes. Every magistrate is furnished with the statutes as they are issued, while a municipal clerk who has daily need for referring to the Act must buy his copy or go without. An instance of the need of this is the muddle in the township of Melancthon, where through ignorance of the changes in the Act, some three members of the School Boards were elected to the Township Council and a new election will have to be held. In Amaranth one or two newly elected councillors are in the same predicament.

NOTE.—The order to the King's Printer, under which the Statutes are distributed, is dated 16th of August 1873 and includes "one copy for every municipal council for office use." These are forwarded, as issued, to the Clerks of the Peace, who will deliver them on application. In some counties, the County Clerk secures the Statutes from the Clerk of the Peace and forwards them to the local Clerks.—[Ed.]

Auditors Duties.

A most important duty of municipal auditors is the examination and audit of collector's rolls. This is usually neglected, and as a result there is no check on the clerks work or any assurance that special or other rates have been properly entered on the roll or that amount paid to treasurer is correct. For the information of auditors who may have this duty to perform for the first time, the following mode of procedure is suggested.

I. Compare the assessment roll with the collector's roll to see that the assessed values on which the rates are levied, are correctly entered.

II. In townships compare school section entries with the school section map, and in all municipalities with separate school supporters notice-book and prepare statement of valuations on which school rates should be levied.

III. Check all entries and additions on the roll.

IV. Verify the correctness of all rates and taxes levied by by-laws, proceedings of council, engineers drainage awards and certificates, statute labor lists, fenceviewers' awards, county treasurer's returns, treasurer's accounts, school board requisitions or other authority.

V. Prepare a statement, showing each general and special rate for which the collector is responsible.

VI. The collector's account with treasurer should be examined, and also settlement of roll which should be verified under oath and in accordance with sections 147 and 148 of the Assessment Act.

VII. Check the return to treasurer of unpaid taxes required by section 157 of the Assessment Act.

Unless there is evidence that the auditors for 1902 did their work properly, the auditors for this year will, in most cases, have to check the collector's roll and settlement for 1901. Very few collectors made their returns previous to the 1st of January last year.

It will also be necessary to check the roll for 1902, to make proper statement of assets, showing amount due from collector's roll, and for this purpose the roll should be procured from the collector if it is still in his hands.

* * * *

Every stub of the treasurer's receipt-book, and every document or roll audited should be properly stamped as required by the act of 1898. The treasurer should produce all vouchers, stubs, letters and letter-books, and it is the auditor's duty to verify all receipts from every source and see that they are entered in the cash-book.

* * * *

If any source of revenue has ceased to exist, or if the last payment has been

made on any special assessment, the auditors should make a statement to that effect in their report.

The treasurer's vouchers should be carefully examined to see that each payment was properly authorized and that a receipt is attached. When satisfactory and proper entries are found in the cash-book, the voucher should be stamped with the words audited and initialed. All checks, debentures and coupons should be similarly stamped.

The auditors should use their judgment in passing accounts.

* * * *

If auditors start with a correct balance at the first of the year; if they check properly all sources of revenue and also all payments, the balance they find must be a true one.

* * * *

When all entries in treasurer's books have been checked, each page should be stamped and initialed, and the page showing balance on hand signed by the auditors.

The report should refer to the condition of the treasurer's security, and also to insurance on corporation property.

The bank account, if practicable, should be kept in a chartered bank, and once a year at least, the auditors should check the balance with the manager or accountant of the bank.

It is very important that the auditors should make themselves familiar with the by-laws of the municipality, and it is incumbent upon them to make a special report of any payment made contrary to law.

The auditors should also see that the treasurer keeps the corporation funds separate from his own, and when possible makes his payments by cheque.

If the auditors think that improvement might be made in the system of passing accounts, the treasurer's books, or any other matters connected with the business of the municipality, they should so report. If the council declines to follow the recommendation, the auditors have done their duty and have no further responsibility.

There have been a good many enquiries in reference to the presence at the nomination meeting of both the mover and seconder of a nomination. When nominations were made verbally both had to be present. The only change was to have the nominations made in writing.

* * *

Mr. R. G. Penson, late clerk of Port Carling, has been succeeded by Mr. Fred D. Stubbs, the treasurer.

* * *

Mr. C. J. Mattice, counties treasurer of Stormont, Dundas and Glengarry, died last month.

Voting Machines in Orangeville.

At the Municipal Elections held in the Town of Orangeville, on the 5th of January the "Imperial Automatic Voting Machine," an invention of Dr. Farwell, of Toronto, was used and worked without a hitch. At 5 o'clock on election day, the Town Clerk, Mr. A. A. Hughson, attended at the Town Hall, and five and one-half minutes past five o'clock the result of the poll in the four wards of the town was in his hands, added up and the result known. The electors were very much pleased with the working of the machines and regard this method of voting as in every way superior to voting by ballot. By using the machines the vote can be taken much quicker, mistakes in voting for too many candidates are avoided, no votes are spoiled and in every respect the advantage is with the machines as against voting by ballot.

The machine in its entirety is a composite one and consists essentially of a case having three rows of push bars projecting from its face, one for the election of mayor and voting on by-laws, one for the election of councillors and one for the election of school trustees, there being one push bar for each candidate, and the name of the candidate is printed above the push bar. At the back of the machine, and concealed within it, are a number of registers corresponding to the number of push bars. Mechanism is interposed between these which determines the operation of the machine. There is also on the face and fully in sight of the elector when voting a sum total or verifying register. The machine is so constructed that the elector can vote for only the number of candidates to be elected. By a simple device the machine can be changed from allowing the elector to vote for any given number of candidates to any other given number. The change can be made in a very few minutes and an understanding of the mechanism of the machine can be readily acquired. The back of the machine is locked while voting is going on and is unlocked at the close of the poll, when the total votes given for each candidate is immediately seen.

When the elector wishes to vote he presents himself to the Deputy-Returning Officer as usual. The Poll Clerk having ascertained his right to vote he passes behind the customary screen, and standing in front of the machine, places his thumb on the push bar opposite the candidate's name for whom he wishes to vote and presses it in, when it becomes locked, and after he has repeated this for the number of candidates for whom he is entitled to vote, the remaining push bars become locked, and the voter is prevented from doing any further voting. The vote is recorded on the individual registers

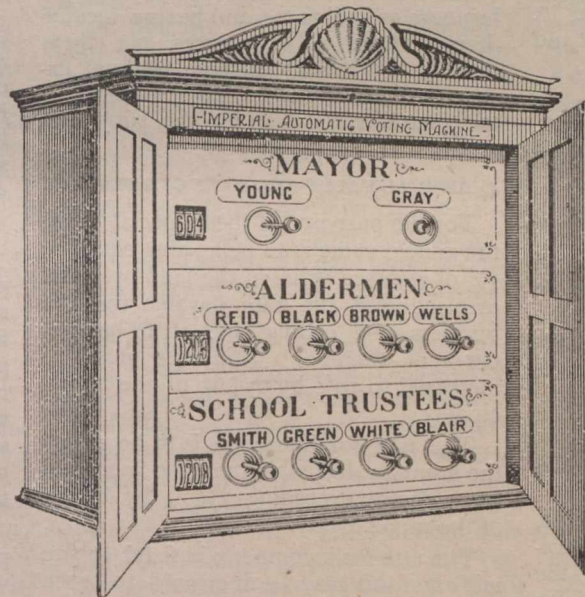
within the machine and also on the verifying register.

On leaving the polling booth the voter passes through a turnstile, which completes the registering of the vote, unlocks the push bars, when they resume their original position and the machine is ready for the next one.

The machines are made out of hardened steel, which makes them practically indestructible, and nickel plate, which insures them against destruction by rust.

Four machines were used during the election, one for each ward, and in every case worked with complete satisfaction. The candidates are perfectly satisfied with the accuracy of the vote recorded.

The election for County Councillors was held at the same time by ballot. While the electors voted on the machine without an error there were twelve ballots spoiled by the same electors in voting for County Councillors, and as the difference between the lower successful and the highest defeated candidate is only ten



VOTING MACHINE—FRONT VIEW.

votes, the way is here open for a recount with its necessary expense.

The February issue of the Canadian Magazine contains an able article by H. J. Pettypiece, M. P. P. of Forest in which he refers to assessment of railways in Canada, the United States and other countries. The railways in Ontario are assessed very much lower than elsewhere, owing to Section 31 of the Assessment Act under which railway property is assessed according to the average value of land in the locality. Mr. Pettypiece, with the vast amount of information at his disposal, will be an able advocate of the assessment of railways at their actual value.

Mr. J. J. Donnelly has been appointed clerk of the Township of Greenock in the place of Mr. J. W. McNab.

Municipal Telephone System.

Referring to the municipal telephones which are being installed in Fort William and Port Arthur, the Times-Journal says:—There are now about one hundred telephones installed of the municipal telephone system, and men are at work installing as fast as possible. Up to the present time there have been two places that have agreed to take municipal telephones that the men have been refused permission to install them. The business men and wives of business men are waiting anxiously for the town system to be installed so that they can get the service they have been waiting for. There are many stories afloat as to the intentions of the Bell company, but there need be no alarm, as the people are a unit in standing by their own. As an instance of what capitalists consider the most value in these places it is known that constant enquiries are being made as to the probable chance of purchasing the street railway and water and light systems. There is now a gentleman in the town who is the representative of large capitalists in Michigan, and his special object in coming here was to endeavor to purchase the street railway. He soon found out that it is not for sale. When these men are told that the towns both own the public franchises, and are now putting in a telephone system, they admit that we are pursuing the proper course. The telephone franchise will be worth thousands in less than five years, and who are the proper persons to own it—the people who live in the towns or foreign capitalists?

Practical Effect of Municipal Ownership of Water Power.

The Orillia Board of Trade has issued a statement, the chief point of which is this query, "Do you know that the town of Orillia sells electric energy at \$16 a horse-power per annum, 24 hours to the day?"

By the newspaper report of the proceedings of the council of a western township, at its first meeting, we are informed that "the reeve appointed A. B. auditor for 1903." The reeve has had no authority to nominate or appoint an auditor since the enactment of section 8 of chapter 23 of the Ontario statutes, 1898. The council should appoint BOTH the auditors annually by by-law.

The reeve of Alexandria, Mr. Angus McDonald, has received an official notice that the village has been erected into a town. The town is to be divided into three wards, the north, the centre, and the south.

Mr. C. E. Willox has succeeded Mr. J. H. Garner as clerk of the village of Niagara Falls South.

Proposed New Municipal Legislation.

At the coming Session of the Legislature many questions of municipal interest will be introduced. These should be discussed without reference to party considerations. Local government questions are of greatest importance and ample time should be allowed for their investigation and discussion in Committee and the House itself.

ASSESSMENT ACT.

The Assessment Act, as reported by the Provincial Commission, will be the most important matter to be disposed of by the Legislature this year. It is a complete revision and consolidation of the present law together with many amendments of a most important character. The principal recommendations are :

I. ASSESSMENT OF LAND.

That real property be assessed at its actual value, including mineral lands and the real property of all corporations.

That the right of use by any person of highways or other public places, in addition to the structures thereon, be assessed at actual value.

2. PERSONAL PROPERTY.

That the assessment and taxation of personal property *other than income* be abolished in all municipalities, and that in lieu of this, the following method of taxation be adopted in cities, towns, villages and police villages :

(A) BUSINESS TAX.

(In lieu of tax on personal property and income derived from business.)

Where a person is engaged in a trade, manufacture, financial or commercial business, tax the person by reference to the rental value of the premises occupied for the purpose of his business.

(B) CALLING TAX.

(In lieu of personal property and income derived from callings up to \$4,000.)

In the case of persons having or practicing or carrying on any office or profession, tax the person by reference to the rental value of the premises occupied for the purpose of his business or occupation.

Where the income of such person is more than \$4,000, tax him first, by reference to the rental value of the premises occupied, and tax him directly upon any income in excess of \$4,000 derived from his profession or calling.

(C) HOUSE TAX.

A supplementary tax is imposed on all owners and occupiers of houses (meaning by that term, buildings used as dwelling-places) by assessing them for the rental value of the house, subject to exemptions, graded according to the population of the municipality. The following are the

exemptions to be allowed in fixing the house-tax :

Where the population is \$4,000 or less, the assessed value of all houses up to \$1,000.

Where the population is more than 4,000, but not more than 10,000, the assessed value of all houses up to \$1,500.

Where the population is more than 10,000, but not more than 20,000, the assessed value of all houses up to \$2,000.

Where the population is more than 20,000, but not more than 75,000, the assessed value of all houses up to \$2,500.

Where the population is more than 75,000, the assessed value of all houses up to \$3,500.

3. INCOME TAX.

In the case of persons paying the business or calling tax and having income derived from other sources, tax them directly upon such income, without exemption. In the case of all other persons, tax them directly upon income, subject to an exemption of \$1,000.

4. ANNUAL VALUE AND RATE OF TAXATION.

For the purposes of these special taxes, the annual value is to be a sum equal to 7% of assessed value of the land occupied or used and the rate payable for the business and calling tax, is to be 7½ per cent. thereon. This rate may be increased to 10% by by-law of the municipality.

The rate for house tax is to be 5% on the annual value, which may be increased to a rate not exceeding 7½%, by by-law of the municipality.

The rate for income tax is fixed at five mills and this may be increased to seven mills by by-law of the municipality.

The special taxes referred to, including income tax, are not to be a lien upon land.

5. EXEMPTION OF MACHINERY.

One outcome of the abolition of the tax on personal property is a recommendation to exempt machinery used in any trade or manufacture. This was necessary to preserve equality as between merchants and manufacturers.

6. PROVINCIAL BOARD.

That a Provincial Board be appointed for the assessment of the lands of railway companies, income of express companies and the special franchises (which is the term applied to the right of use of highways or other public places) of other persons, together with the land used in connection with the special franchises.

7. ASSESSMENT OF RAILWAYS.

The land of steam railroads is at present assessed at the same value as other land in the neighborhood. The report

recommends that these assessments by, made by the provincial board and raised gradually for ten years, when the actual value of land and improvements is to be the assessed value.

8. DISTRESS.

Every person interested in the land, at the time of its assessment, as owner or tenant and every future owner is made liable to pay the taxes on the land. The owners' goods are made liable for distress to enforce payment and also the goods of the tenant, who is assessed for the land, but only to enforce payment of the tax, for the years in which he is assessed. The goods of a tenant are not to be liable to be distrained unless his name is on the collector's roll and all tenants are relieved of liability for arrears of taxes that accrued before their tenancy. It is also provided that any neglect, omission or error of officers and agents of the municipality, shall not affect the right of the municipality to collect the taxes.

9. ARREARS OF TAXES.

All of the municipalities are to handle their own arrears of taxes, but tax sales are to be conducted by the sheriff of the county or district, in which the municipality is situated, such counties or districts to be divided into tax-sale divisions, the sales for municipalities situated in each division to be held at the same place.

EFFECT OF RECOMMENDATIONS.

If there were no other ground upon which a rental value tax could be justified so far as merchants are concerned, justification is found in the fact that, in the province in which their competitors mainly are, that tax has been adopted with results most beneficial and encouraging to merchants, and without any counter-complaint on the part of other taxpayers.

The personal property tax, which it is proposed to abolish, is not large and it would be a hopeless task to attempt to perfect it by further legislation. The amount of tax paid on this class of property in 1898 was as follows :

	PERSONAL PROPERTY.		INCOME.	
	TAX PAID.	PERCENTAGE OF TOTAL TAXES.	TAX PAID.	PERCENTAGE OF TOTAL TAXES.
498 Townships ...	\$ 29,888	.67	\$ 2,364	.053
100 Towns.....	132,513	6.8	35,628	1.7
136 Villages....	34,825	6.1	5,309	.93
13 Cities.....	356,635	7.	1,931,06	3.8

The following necessary changes in the present law have been brought to our notice :

DRAINAGE ACT.

1. Provision should be made for appeal to Court of Revision against allowances

for damages, made by Engineer under section 8a, as in section 1 of chapter 32, Ontario Statutes, 1902.

2. Section 3 of the amendments of last session should be amended by inserting after the figure "9" in the first line thereof the words "as enacted by section 5 of chapter 28—62 Victoria."

LINE FENCES ACT.

The time should be fixed for sending out notice of filing fence-viewers awards by Clerk and for filing notice of appeal with Division Court Clerk.

ELECTION ACT.

Provision should be made in Schedule B, Section 18, for paying for polling booths in *villages*. The Liquor Act, 1902, Schedule B, Section 11, made provision for this:

UNION SCHOOL SECTION IN UNORGANIZED DISTRICT.

There is now no provision for the equalization of assessments in union school sections composed of portions of said sections in organized and unorganized municipalities respectively.

Sections 54 and 70 of the Public Schools Act should be amended by providing that the portion of the section in the unorganized district shall form part of the organized township for school purposes, the assessor to make a special roll therefor and that the provisions of the present law in reference to appeal against the assessment roll as to the collection of school rates in organized municipalities shall apply.

A Municipal Commission Wanted.

During the past ten years an intelligent interest in municipal government questions has developed. The Political Science Departments of Universities have been active and Municipal Leagues for the discussion of practical questions have been formed. This has resulted in the publication of much useful information relating to municipal government throughout the world, and has directed attention to many reforms which should be adopted in the Province of Ontario. In our last issue we referred to three of these:

1st. The necessity for a better system of central supervision and control over the municipal administration of the Province, and the appointment of a Municipal Government Board.

2nd. A system of free voting, which if introduced would result in a more equitable representation in municipal councils.

3rd. The appointment of a municipal auditor for each county, or for a union of counties, to act with or without an auditor to be selected yearly by each municipal council. A uniform system of book-keeping and efficient audits in every municipality could then be introduced.

ELECTION OF COUNCILLORS FOR A TERM OF YEARS.

Another change that all who were not

elected by acclamation at the recent elections will approve of, is the election of municipal councils for a longer term than one year. The length of time for which municipal councillors are chosen should be determined mainly by two considerations, the desire to maintain an active popular control and the desire to have an experienced and capable council.

In the Province of Quebec the councils of parishes, townships, towns and villages are composed of seven members who remain in office for three years, subject to the condition that two councillors must be elected or appointed two years consecutively and three every three years. The mayor or head of the council is elected by a majority of the council and holds office for one year. In Nova Scotia, New Brunswick, Manitoba and British Columbia county councillors are elected yearly. In Nova Scotian towns the mayor is elected annually and a councillor every two years.

In certain Canadian cities aldermen are already elected for two or three year terms.

In England the term of office for a councillor is three years, members retiring in rotation every year.

The number of re-elections of municipal councillors in rural Ontario is very noticeable. At the annual elections in January, 1902, two thirds of all councillors in office during the previous year were re-elected; in the townships alone 80%. This indicates that a longer term of office is in place and that legislation providing for a term of at least two years would meet with popular support. Retirement of half the council every twelve-month would secure at once that measure of continuity of municipal government, which is essential, and remove a great obstacle, the turmoil of annual elections, now preventing many able men from entering the council. The County Councils Act of 1896 introduced a full two-year term for all councils. A slight amendment is all that is now necessary.

ACTIONS FOR DAMAGES CAUSED BY ACCIDENTS ON PUBLIC HIGHWAYS.

The growing demand for good roads has directed attention to the fact that no matter what condition a road is in a municipal corporation is liable to be made the defendant in actions for damages caused by accidents. A township official of experience has suggested that an Act should be passed to enable municipalities to determine when a road is *in repair* and that they be not liable for damages while it is so maintained. This would involve the fixing of a standard for roads by a competent authority, after all local conditions and requirements had been considered and a reconsideration of the matter every few years.

The present Highway Law of Ontario practically insures against accident every one travelling on the highways. The section of the Act making the municipalities liable was introduced in 1850 with

reference to roads in cities and towns, and in 1859 was included in the Municipal Act. A new sub-section relating to accidents arising from persons falling owing to snow or ice upon sidewalks was, however, added. The explanation of this enactment is that the control over the highways of the Province was then in a transitory state. Municipal Institutions were in their infancy and it was thought that the councils would not be able to maintain the roads. This resulted in the formation of a great many toll-road companies to take charge of the main highways, which had been or were still in some cases under the control of the Minister of Public Works, and relieve municipalities of liability for non-repair. The road mileage throughout Ontario has gradually increased, and during recent years the municipal authorities have taken over most of the toll roads. In some localities actions for damages have become so numerous that public attention has been directed to the misapplication of corporation funds for law costs and damages. There appears to have been some misunderstanding in reference to precedents for the sections making municipalities liable. It was no doubt copied from one of the laws of the United States and afterwards looked upon as being in accordance with English law. Mr. Biggar, editor of the *Municipal Manual*, remarks in this connection that the common law obligation of parishes in England to repair their highways did not involve the existence of a civil liability to any one sustaining injury owing to the non-repair of such highways, and that a person injured by mere non-repair of a road can sue the municipality only if the Legislature gives the right of action.

It has been suggested that persons travelling on the highway should do so at their own risk, the same as in England and the other Provinces, and that the present law should be amended so that a person injured by the mere non-repair of a road will not have a right to claim damages.

A MUNICIPAL COMMISSION.

The reforms above referred to are important and far-reaching.

The Legislature should consider the advisability of appointing a Commission or Special Committee to report:

1st. On the establishment of a Local Government Board.

2nd. On the Municipal Laws and their administration generally.

The County Council of Grey will petition the Legislature for an extension of the term of office of members of municipal councils to two years. The County Council of Leeds and Grenville will petition for power to assess the roadbed of railways at its value.

Mr. H. L. Pratt is the new clerk of the Township of Crowland, succeeding Mr. W. D. Misener.

Engineering Department

A. W. CAMPBELL,
O.L.S., C.E., M.C.S., C.E.

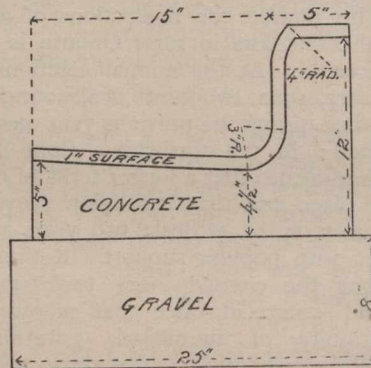
Concrete Curb and Gutter.

A curb defines the roadway, giving the street a more finished appearance, as well as protecting the boulevard from careless drivers, and from horses standing or tied at the side of the street. It also forms the gutter and aids in keeping it clean and without obstruction to the flow of water from the roadway. The accompanying cross-section shows one of the many uses to which concrete is being generally applied in street work. Consisting of a gutter or water-table combined with a curb, its stability is greater than a curb alone, its appearance is improved and its usefulness is much increased. A curb, or curb and gutter, should be constructed after the street has been excavated, graded and under-drained, preparatory to laying the first course of the roadway or pavement. Rolling can then be more perfectly performed, as the curb keeps the road-metal in place, preventing it from being crowded outward by the weight of the roller. Being carefully laid to grade, it is then used as the line from which to form the finished surface of the pavement. The process of constructing the gutter is to first excavate to sub-grade and lay the foundation of gravel or other material, which is pounded or rammed until firm and compact. Planks are then put in place to form the core of the curb and the side of the gutter next the roadway. The coarser grade of concrete is then placed and tamped between the planks, ready, after rounding the corners with suitable tools, to apply the surface coat. To do this the inside plank forming the core of the curb is moved outward the required distance, usually one inch, and the cement-mortar or finishing coat is then run behind it, in contact with the core; and the remainder of the surface face coat is set, the plank retaining the face of the curb in place is removed, and the whole is shaded with float and trowel. A damp brush is used last, and in the hands of an expert, the completed work is given the appearance of natural stone. By means of flat metal plates, which are used as well to keep the plank a proper distance apart, the curb is separated into desired lengths, usually eight feet, the separation providing for expansion. The specifications for curb and gutter, are usually a part of, or modelled from sidewalk specifications, the requirements for excavation, foundation, composition and mixing being in all respects similar. The cost will vary with local conditions, cost of cement, etc., but if laid under a street overseer, experienced in laying concrete walks, it would be expected to average 30 cents a lineal foot.

Municipal Undertakings in St. Catharines.

Mayor W. B. Burgoyne, in his inaugural address said:

"It has long been admitted that some of our principle thoroughfares such as Church street and Welland avenue, have been anything but creditable to our city, through the lack of even a macadam pavement, while the portion of St. Paul street between James and William streets, paved many years ago with granite blocks, was equally in need of a modern pavement. Eighteen months ago the property owners on that section of our principle business street petitioned the council for a better pavement, intimating their willingness to be assessed directly for the difference in cost between a macadam roadway and a pavement of vitrified brick or asphalt. It is possible that the property owners on Church street and Welland avenue may likewise be willing to assume the extra



CONCRETE CURB AND GUTTER.

cost of an asphalt pavement, should the council propose the permanent improvement of those roadways. Both should be narrowed considerably, as is done on the residential streets of most cities, providing wider boulevards, pleasant to look upon, and making the cost of construction much less.

"It is conceded that sewers should precede the construction of permanent pavements. A sewer has already been laid on Welland avenue, but would have to be laid on Church and St. Paul streets, before the work of pavement.

"It goes without saying that one of the up-to-date necessities of large towns and cities is an adequate sewer system. The demand is to day for houses containing all modern improvements, and the rapid building up with fine residences of those portions of the city already served with sewers is ample proof of this requirement. The value of property so benefited is materially enhanced in value, both for selling and rental purposes. The property increased in value by the possession of sewer conveniences, at the expense of the general funds of the city, should pay a

sewer rental fully equal to the payment of interest and sinking fund for the extinguishment of the debt created by their construction. This would tend to lower the general rate of taxation, and provide funds for the extension of the sewer system.

"Some means should be adopted to convert the drains in the northern and eastern sections of the city into sewers, either by the construction of a trunk sewer or other methods of sewage disposal used in many cities. Enquiry should be made into the best way of accomplishing this end. It would not be satisfactory to the ratepayers to enter upon any large works of the nature I have referred to without first obtaining competent engineering advice, and one of our first duties should be the employment of a city engineer.

"I have dealt at some length upon these subjects, for they are fraught with much importance to the sanitation, health and beauty of our city."

County Road Systems.

That the people of Ontario are preparing for advanced methods in road building is evidenced by the result of recent voting in favor of comprehensive schemes. The Legislation providing for the abolition of toll roads, to aid in their purchase, and the granting of \$1,000,000 to assist municipalities in making better roads is producing good results. Simcoe, one of the largest counties in the Province, submitted a by-law at the recent municipal election for establishing a system of 450 miles of leading roads, to be under the jurisdiction of the county council, the by-law carrying by 1,457 majority. The Government grant towards this work will be \$50,000, and the total expenditure at least \$150,000. Wentworth recently submitted a by-law to raise \$98,000 to purchase all the toll roads within the county, and to commence a system of county roads. This by-law carried by a majority of 950, and application is now made by the county council for their portion of the Government grant, about \$20,000. The county of Lanark has adopted a by-law for building 100 miles of county roads, their portion of the Government grant to be about \$35,000.

Notable By-laws.

A by-law to purchase the local gas and electric plant was submitted to the ratepayers of Guelph at the last municipal elections, and carried. In Listowel a by-law was carried, providing for municipal electric light and waterworks, the majorities being a strong endorsement of municipal ownership. In Belleville a by-law was carried, removing the management of the waterworks from the Board of Commissioners and vesting it in the council. Fort William carried a by-law providing for the extension of the electric light plant, at a cost of \$40,000. The ratepayers of Renfrew voted in favor of the purchase of a waterpower.

Special Charters for Cities.

It has been frequently suggested that the city of Toronto should obtain a special charter from the Legislature, owing to the existence of special conditions caused by the concentration of a large population. This is purely a local matter, but in granting it a precedent would be established which all cities might desire to follow.

The January issue of "The Municipality," devoted to the interests of local government in the State of Wisconsin, points out the advantage to lawyers of having a general law applicable to all cities, and some of the disadvantages of special charters different in different cities. The article is as follows :

The charter is an act of the Legislature creating the corporation. This charter constitutes the city with a double character ; the one is governmental or public ; the other is private and more in the nature of any business corporation. In their public capacity cities are merely a part of the machinery of the state. Their private capacity is given for the private advantage of the particular corporation as a distinct legal person.

All the powers and duties of the city must be found in the charter either granted in express words, or necessarily or fairly implied from the powers expressly granted ; or they must be indispensable to the objects and purposes of the corporation as set out in the charter.

The lawyer, then, to determine the powers and duties of the city in its relations to the state or to the individual person must of necessity go to the charter of the city, for the law by which to form his judgment.

But if the lawyer wishes to settle a question in municipal law for a city outside of his home town he can gain no aid from the charter with which he is familiar. The provisions of the Madison charter do not give any light on the law which controls in Janesville or Ashland. A knowledge once acquired of the charter of one city is of no use when a question arises under the charter of another city and the lawyer is forced at great disadvantage to work out in detail the history and development of the charter of this other city which now for the first time confronts him. Without considering the confusion in governmental matters which must result from this lack of uniformity of the powers and duties of the officers and agents of the state, operating under different grants of powers in numerous varying charters, it is apparent that difficulty, delay and much unnecessary expense to the clients, whether city or individual, must inevitably result from this lack of one uniform charter law applicable to all cities in the state.

Then too, having ascertained the provisions of the charter, he must next seek to learn the construction which the Supreme Court has placed upon the charter provision. If he gives his client sound advice he must ascertain if possible, what view the Supreme Court will take of the case if settlement out of court is not possible ; equally important is the definiteness of the law in avoiding litigation. The source of such information is the former decision of that court.

Here is another great disadvantage of the lawyer under any but a system of uniform charters, and the disadvantage of the lawyer is at the same time his client's, whether that client be private citizen or the city itself.

To illustrate : The city wants to know the requirements imposed by law in proceedings to change the grade of a street, to issue bonds, for improvements or refunding ; it wants to know the limits of its taxing power, the extent of its power to grant franchises and the method of its exercise or the right under the charter to build a city light, heat or water plant. Or the

citizen bidding for an issue of city bonds would learn whether those bonds are void or valid ; he would learn his rights against the city on any one of the many instances which might occur in his dealings or experiences.

The attorney for the city or for the citizen is consulted and he finds a charter provision in that particular city which has no duplicate in any charter in the entire state of Wisconsin. The charter of every other city, in that particular, is more or less different. The attorney goes to his Wisconsin reports to find some decision of the Supreme Court which will indicate to him how that court will construe the charter provision which concerns him. He finds that the charters of some or all the other cities of the state have been passed on by the court, but, by reason of the miscellaneous and variant charters of those cities, in all those cases he finds no law to help him in settling the question before him. There are no general principles to aid him because there is no general charter law making common provisions and fixing the same rights and powers and duties for all cities in the state. There are no precedents to serve as guide boards to sound judgment of the condition of the law ; by reason of the lack of a general charter law no similar case can be found to meet the case on which he must advise.

For him the orderly, scientific, uniform system of charters and municipal laws has become the lawless science of our laws, the codeless myriad of precedents, the wilderness of single instances which bewildered the layman.

For the sake of his client then, the lawyer looks for a general charter law to be enacted by a wise legislature, making uniform the powers and duties of our cities so that a decision by our supreme court will apply, not to a single city with a peculiar charter provision of its own, but to all cities, all municipal corporations within his state equally and alike. Then it will not be necessary for each and every city to carry to the supreme court for construction each provision of its charter as questions arise thereunder but it can profit by the construction given to the general charter in a case carried to that court by any other city in the state. Then the condition of the law of municipal corporation will be as progressive, as well perfected, and as easily available all over the state as is the law of private corporations which once special, has long since been made uniform.

Cost of Manufacturing Cement.

The prospectus of a new Canadian cement manufacturing company gives an estimate of the cost of manufacturing one barrel of finished cement, for a plant of 1,000 barrels daily capacity and for a plant of 500 barrels daily capacity, as follows :

	1,000 barrels daily.	500 barrels daily.
Marl, delivered ..	5 cents	7 cents
Clay, " ..	1 "	2 "
Common labor ..	5 "	7 "
Chemist, foreman } and skilled labor. }	5 "	7 "
Repairs ..	7 "	10 "
Fuel, total ..	12 "	12 "
Packing ..	3 "	4 "
Sundry ..	10 "	12 "
Total manufacturing cost ..	48 "	61 "
Superintendent and sales ..	15 "	15 "
10% interest on plant ..	10 "	15 "
	73 cents	96 cents

A Suburban Avenue.

The president of the Local Horticultural Society at Woodstock, Mr. G. R. Pattullo, in his annual address, said :

"The citizens of Woodstock frequently boast—and not without cause—that they have a beautiful city. Nature has done much for it and the hand of man something. But though a beautiful little city it is not yet the city beautiful. To make it so should be the aim of our society and all its members. Much remains to be done. The streets are not yet all tree lined, nor have they all well kept boulevards. There are not yet enough of park for the convenience and pleasure of our people and their children, and those that we have are inadequately, indeed badly cared for ; our church and hospital grounds are not yet fully equipped with trees, shrubs, climbers and flowers. Only two of our school grounds have been improved in the same direction and our cemeteries are still capable of improvement and beautifying. Then I should like to see a suburban avenue, which when graded, drained and tree-lined, would afford a delightful drive or wheel all about our beautiful and picturesquely located little city. This should be begun at once. It need not necessarily be an expensive undertaking. Existing streets could be utilized and I am satisfied that the active interests of citizens who reside in the outlying districts of the city could be enlisted in a project, the completion of which would improve their properties and provide for them and for their children much pleasure. I venture to commend these matters to the favorable attention of my successor and his colleagues in office and for whom I solicit an even more kindly and general support than has been extended to me as president.

An Advertising Committee.

Mayor Boys, of Barrie, in the course of his inaugural address outlining a progressive policy for 1903 made the suggestion that a standing committee be appointed to be known as the Press, Reception and Advertising Committee. A committee of this kind was, he believed, in demand in Barrie. The town was very seldom mentioned in the Toronto papers, while anything happening in other towns was given every notice possible. If it were necessary to remunerate any person for doing the work, so far as he was concerned he would be willing to do it.

St. Mary's Streets.

The St. Mary's Board of Trade, at the first session of the town council in January asked that a by-law for \$30,000 be submitted to the ratepayers, to build eight miles of permanent roadway in the town, the work to be extended over three years.

Sewage Disposal.

Dr. Amyot, Provincial Bacteriologist, in a recent address before the Canadian Institute at Toronto, stated that after a careful study of the subject, an examination of the sewage disposal works of the Eastern States and Europe, and a summer of experimental work at Berlin, Ontario, under the direction of the Ontario Government, his conclusion is that the most effective and most easily managed method of disposal yet found is that of intermittent sand filtration. Regarding the septic tank and bacteria bed system that has been recommended for Toronto he said it was a compromise method, not as efficient and far more expensive and more difficult to handle. The bacteria or contact beds, he said, were delicate, living pieces of machinery, with a lifetime of two years, after which they had to be reconstructed.

Sewage disposal, Dr. Amyot pointed out, had become a problem of biology, a question of the operation of bacteria. Under certain conditions the microbes in the sewage created ferments, which digested organic matter, and when the work was properly done, the effluent passed off non-putrescent. The object of modern sewage disposal methods was to obtain an effluent as nearly fit for drinking water as possible.

Dr. Amyot explained intermittents and filtration by describing the works at Brockton, Miss., where a population of 30,000 disposes of 950,000 gallons of sewage a day on nineteen acres of sandy land. It is divided into acre lots, and drained by ordinary garden tiles four feet below the surface. About 200,000 gallons of crude sewage is turned into each of five beds daily, the nineteen beds being used in rotation. The effluent contains large quantities of nitrates, but no organic matter, and as pure as such a plant could produce. After fifteen years the beds are in better shape than when first used. The plant requires little attention, the chief cost being the pumping, and it operates effectively in zero weather. At Clinton, Mass., the effluent from such a plant, has formed a spring which is popular with cyclists, and very nice houses are built and being built round the plant. City Engineer Rust in his report on sewage disposal estimates the cost of a system of septic tanks and filter in Toronto at \$2,385,000, and an annual cost of \$76,000.

Problems in Ottawa.

The telephone question; the construction of underground conduits for street wiring, and the removal of poles and overhead wires; the municipal ownership of an electric lighting plant; the fuel situation; the generation of electricity for heat; education facilities and a national art gallery, were among the matters referred to by Mayor Cook, of Ottawa, in his inaugural address.

Road Drainage.

The chief object in the maintenance of an earth road is to get rid of the water as quickly and as completely as possible. In maintenance, as in construction, water is the great enemy of good roads. The secret of success in maintenance is to keep the surface smooth and the side ditches open.

If the surface of the roadway is properly formed and kept smooth, the water will be shed into the side ditches and do comparatively little harm; but if it remains upon the surface, it will be absorbed, and convert the road into mud. If all ruts, depressions and mud holes are not filled as soon as they appear, they will retain the water upon the surface, to be removed only by gradually soaking into the road-bed. A hard road cannot be made out of soft mud, and no amount of labor and machinery will make an earth road that will stay good, unless an adequate plan is adopted to get rid of the water. Water is hard to confine and easy to let loose. It is always seeking a chance to run down hill. The chief duty of the road overseer is to give it a chance to get away.

Proposed Work in Woodstock.

Mayor White, of Woodstock, in his inaugural address said:

"In 1888 the question of municipal ownership of public franchises was a lively and burning question. Since then the citizens have settled that principle at the polls, and have acquired the waterworks and electric light plants. The cheering reports submitted by the chairman of the water and light commissioners prove the wisdom of that step, and I trust the electorate will in due time see their way to acquire the gas plant, as so as I am convinced we would find it most profitable for the ratepayers and reduce our taxes by several thousand dollars per annum." Among other matters to be dealt with by this year's council will be the construction of a new pavement on the main business street, a main sewer for the southern part of the city, and a new city hall.

Electric Lighting and Gas Plants in Owen Sound.

The progress which belief in the policy of municipal ownership of certain utilities is making was exemplified in Owen Sound last month, when a vote of the rate-payers was taken on the purchase from private companies of gas and electric light plants by the town. The electric light by-law was carried by a vote of 875 for, and 23 against; the gas by-law being carried by 876 for, and 23 against. Street lighting, which is not considered adequate, has been costing the town \$2,700.

The sum of \$33,000 has been agreed upon with the Company as the purchase price for the electric light plant, and \$38,000 has been agreed upon for the

purchase of the gas plant, these amounts being provided for in the by-laws by the issue of 20 year debentures.

By-Laws Voted On.

Many important by-laws were voted on throughout the Province, Monday. At Collingwood the county good roads by-law was carried by 748 majority; bonus of \$25,000 to wire and nail factory carried by 672; by-law for \$25,000 to purchase Tonner and Gregory mill property, to improve the harbor and build public wharf was carried by 94.

Belleville carried a by-law granting \$30,000 to T. M. Kirkwood, of the rolling mills, and also decided to remove the management of the waterworks from the Board of Commissioners and vest it in the city council.

Goderich carried three by-laws, for public library, mill exemption, and knitting factory exemption.

At Galt a Parks Commission by-law was defeated by a small majority.

Lindsay negated a \$40,000 good roads by-law, but voted in favor of a \$2,000 grant for a Carnegie library site.

Listowel decided to take over the electric light plant and waterworks.

Orillia carried a good roads by-law.

Dunnville decided to grant a loan of \$15,000 to J. D. Pennington, of Dundas, to start a wood-working factory.

Waterloo will loan Shierholtz and Co. \$5,000 and grant the firm a free site and tax exemption. They will build an upholstering factory.

Markham will exempt the Lount brush handle factory from taxation.

Beaverton decided to build a new town hall.

Port Hope voted \$10,000 for the establishment of the Standard Ideal Sanitary Company's works.

Brussels will loan Lotteridge Bros. \$5,000 to operate the woollen mills.

Grimsby freeholders decided they did not require granolithic walks.

New Hamburg will raise \$2,500 to build Shade street bridge.

Smith's Falls defeated a by-law to commute the taxes of the Gould Manufacturing Co., and close up a portion of Water street.

Peterboro declined to grant exemption to Turner & Sons, and voted down the proposal to establish a civic wood yard, and raise \$20,000 for improvements.

Windsor refused exemption from taxation to the Erie Tobacco Co.

Sandwich voted to abolish the office of water commissioners.

Berlin Gas and Electric Lighting.

The town council of Berlin has appointed a committee to complete the purchase of the local electric light and gas plant, which will hereafter be conducted by the municipality. The price \$90,000, is substantially the amount offered by the council in 1902, and was fixed by agreement. A by-law will shortly be submitted to the ratepayers.

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.

Grant by Township to Aid in Road Reform in Another Township.

47—H. H.—Has a township council the power to make a grant of money for a road wholly within another township and not used as a boundary road?

The general rule is that one township cannot grant money to another municipality to aid it in repairing its roads, but under section 644 of the Municipal Act such a grant may be made where a road passes from or through an adjoining municipality. We do not know the position of the road in question, but it need not be a boundary road. If it is a road which passes from the municipality, granting the aid through the adjoining municipality, a grant to the adjoining municipality for the purpose stated will be lawful.

Repeal of Statute Labor Commutation By-Law.

48—W. M.—The council of our township submitted a by-law to the ratepayers in January 1902 to commute statute labor to money payment. After one year's trial have the council of 1903 the power to return to the statute labor system without again submitting the question to the ratepayers or can they only amend the by-law as passed in 1902?

The council of a township has no authority to submit a by-law of this kind to the votes of the electors, and every time it is done the municipality runs the risk of being saddled with the costs of injunction proceedings instituted against it to restrain the submission of such a by-law. Mr. Justice Brtton thus decided in the recent case of King vs. City of Toronto. The council has power to pass such a by-law of its own motion under the provisions of section 103 of the Assessment Act, and may in the same way repeal it at any time it may feel so inclined.

Member of Council Cannot Contract With His Council.

49.—C. E. N.—1. Can a hardware merchant serve at the council board of a corporated village and sell to the corporation nails for sidewalks and any general hardware providing the price is as low as any other merchant sells the goods at?

2. Can a reeve hold the office, he owning a gravel pit. The council advertises for tenders for gravel to be delivered on the streets and the lowest tender accepted the gravel coming out of the reeve's pit? The parties tendering buy the gravel from the reeve at say 10 cents a yard.

1. No. And he cannot collect from the council the amount of his account of goods so supplied if it refuses to pay him. (See sections 80, 83 and 208 of the Municipal Act.)

2. No. And he cannot collect the price of the gravel so indirectly furnished his council, for the same reason as above.

Collection of Drainage Assessment When Ditch Not Completed.

50. F. G. J.—In the year 1901 a ditch was petitioned for under the Municipal Drainage Act. The same year the contract was let and partially completed and an assessment made on all the parties interested. In 1902 owing to the extremely wet season the ditch was not completed. Another assessment was made in 1902 to meet the debentures which have been sold. Would it be legal to pay back the interest on the assessments made to the parties who as yet have received no benefit and not to pay back the interest to those through whose lands the ditch has been completed?

No.

Election Fees of Township Clerk.

51.—L. S. B.—Will you please inform me what fees a township clerk is entitled to when the council of which he is clerk, is elected by acclamation and there is a contest for county council?

In the absence of a special provision to the contrary in his contract he is not entitled to anything extra for his own services but he is entitled to be recouped for his disbursements.

Qualification of Councillor.

52—A. B. C. D.—A with others signs petition to council of which he is a member, to establish a road as a public highway running through his property. He offers the land occupied by the road free, but stipulating that all expenses incurred shall be borne by the municipality. Introduces and seconds motions dealing with the establishment of the road. The council took preliminary action and incurred considerable expense in 1902 in re-establishment. The matter was not finally disposed of at meeting December 15th, but laid over until "next meeting" January 1903. On December 29th. A was nominated and declared elected by acclamation councillor for 1903.

1. Is A disqualified for councillor for 1903 under section 80 Municipal Act or any other Act?

At annual meeting of ratepayers December 1900, B was elected trustee of rural school section for a term of three years, term expires December 1903. December 29th B was nominated and declared elected by acclamation councillor for the year 1903.

2. Should he resign trusteeship would the disqualification be removed? Resignation would take place after the 29th. of December. C contracted with council to repair bridge, work done and contract finished in 1902. C lives with D his father. C and D jointly purchased engine and saw mill and sawed the lumber required for repairing the bridge. At Court of Revision, D and C were entered on the Assessment roll, joint owners of farm and engine. At meeting December 29th. D was nominated and declared elected by acclamation councillor for 1903?

3. Is D disqualified for councillor for 1903?

4. If a disqualified person signs the declaration of office as councillor and acts as such (a) would it void the acts of the council? (b)

What proceedings could be taken against him? (c) By whom? (d) What would be the probable cost to enter action or other proceedings against him?

1. You have not furnished us with sufficient information to enable us to say whether there is a contract between A and the municipality in which he had an interest on nomination day. If there was such a contract and the matter was not settled before nomination day A would be disqualified.

2. B in order to qualify as a candidate for councillor for 1903, should have resigned his office as trustee in the rural school section and his resignation should have been accepted by his colleagues on the Board of Public School Trustees prior to nomination day, (29th December last.) He is therefore disqualified.

3. You do not say whether the contract price was paid by the council to C, and the whole transaction between C and the council finally closed PRIOR to nomination day, (29th December last.) If such was the case D was not disqualified as a candidate for councillor for 1903 on nomination day, or at the time of the election. But if the transaction between C and the council had not been finally closed prior to nomination day, it would be a question as to whether he was not disqualified on nomination day as a person having a contract to supply goods or materials to a contractor with the corporation.

4. (a) No. (b) Quo warranto proceedings pursuant to section 219 and following sections of the Municipal Act. (c) Any candidate at the election, or any elector who gave or tendered his vote thereat, or in case of an election by acclamation, any elector entitled to vote at a municipal election for the municipality. See sub-section 1 of section 219. (d) In the event of the election being set aside, the costs will probably be payable by the candidate, and in that event the costs over and above what he pays should not be much, not more than a few dollars.

Public School Trustee Disqualified as Member of Township Council.

53—P. D.—A peculiar state of affairs exists regarding the municipal election in the township of W. Please advise. The reeve was elected by acclamation, five councillors were nominated, four to be elected. The fifth man put in his resignation, thus leaving the other four elected. It now turns out that one of the councillors elect is a public school trustee and held that office at the time of his nomination. Under the new law I believe he cannot hold the two offices.

1. Could he by now resigning the trusteeship, qualify for councillor at the meeting next Monday 12th. inst?

2. If he cannot, then is it my place to call for a new election or should it be ordered by the reeve?

3. Should I, knowing that he cannot qualify, take proceedings for new election at once, or should I leave it until next Monday for council to deal with?

1. No. He should have resigned his office as public school trustee and such resignation should have been accepted by

his colleagues on the board, PRIOR to nomination day. Since he did not do this he was disqualified under section 5 of chapter 29 of the Ontario statutes, 1902, "at the time of election."

2. Neither the clerk nor the reeve has any authority to take the proceedings suggested.

3. Neither the clerk nor the council has any power to interfere officially in this matter. A candidate is assumed to be qualified until proceedings have been successfully taken under section 219 of the Municipal Act to invalidate the election by the latter part of sub-section 1 of this section, "any candidate at the election, or any elector who gave or tendered his vote thereat, or, in case of an election by acclamation, any elector entitled to vote at a municipal election for the municipality, may be the relator for the purpose." If this party takes the declaration of office prescribed by section 312 of the Act, and the declaration of qualification required by section 311 (and the fact of his having been liable to disqualification as a member of a Public School Board at the time of his election will not preclude him from making these declarations), and no proceedings are taken to invalidate his election pursuant to section 219 and following sections of the Act, within six weeks after an election or within one month after acceptance of the office he can take and occupy his seat at the council board and transact his part of the business of the municipality the same as any other member of the council.

Qualification of School Trustee for Councillor.

54—J. M.—In the December issue your answer to question 509, can a trustee qualify as councillor, will you kindly state the section. I have failed to find it although I understood that a ratepayer could not sit for both offices.

Section 5 of chapter 29 of the Ontario Statutes, 1902, provides that "section 80 of the Municipal Act is amended by inserting therein after the word "trustee" in the eighth line the words, "and no member of a school board for which rates are levied," but this amendment shall not apply so as to disqualify any person elected, (that is to a municipal council), prior to the passing of this Act."

Qualification of School Trustee for County Councillor.

55—J. D. K.—Can public school trustee qualify for county councillor or how long would he have to resign before election day?

Section 80 of the Municipal Act as amended by section 5 of chapter 29 of the Ontario Statutes, 1902, provides that no member of a school board for which rates are levied shall be qualified to be a member of the council of any municipal corporation. "A county council is a "council of a municipal corporation," and a public school trustee is a "member of a school board for which rates are levied," and the latter cannot qualify as a member of the former. His resignation should

have been accepted before nomination day.

Penalty for Refusing to Act as Mayor or Councillor.

56—SUBSCRIBER.—Is there a penalty for refusing to serve as mayor or councillor, and what is the section of Municipal Act providing for it?

Section 319 of the Municipal Act provides that "Every qualified person duly elected to be mayor, councillor, etc., who REFUSES such office, or does not within TWENTY days after knowing of his election make the declaration of office and qualification where a property qualification is required, etc., shall, on summary conviction thereof before two or more justices of the peace, forfeit not more than \$80 nor less than \$8 at the discretion of the justices to the use of the municipality, together with the costs of prosecution."

Mover and Seconder of Candidate Should be Present at Nomination Meeting.

57—H. M.—Would you kindly let me know where you got your authority for stating (I think in your January and August Nos. 1900) that the mover and seconder of a nomination must be present at the nomination meeting? We have a case in point.

The first part of sub section 1 of section 128 of the Municipal Act provides that AT SUCH MEETING, (that is, the nomination meeting), the person or persons to fill each office, shall be proposed and seconded seriatim." It is to be observed that this proposing and seconding is to be done at the nomination meeting. The latter part of the sub-section prescribes the particular manner in which a candidate should be proposed and seconded at such nomination meeting, that is the nomination shall be in writing, stating the full name, place of residence and occupation of the candidate, and must be signed by the proposer and seconder. Following the express language of the sub-section under discussion all these things must be done at the nomination meeting and it seems superfluous to add that the proposer and seconder of any candidate must be present, to enable them to sign his nomination paper. *Persons who are not present at the nomination meeting cannot be regarded as forming part of the meeting and we cannot see how they can participate in its proceedings."

Auditor May be Appointed Deputy-Returning Officer.

58—A. R.—At the first meeting of the township council in 1902 they appointed auditors. At a meeting of the council in November one of the auditors was appointed D. R. O. Is it legal for the one appointed to act as such?

Yes.

Procedure at Council Meeting.—Adjournment of Annual School Meeting.

59—1. In appointing the officers for the township is it proper just to take one motion at a time for any one office and dispose of the motion, and if the parties that made the motion lose the motion can they make a second motion or vote on a second or third motion for that one

office? In case two councillors vote for one motion and the other two councillors vote for another motion and the reeve is not satisfied with either motion, what is the proper course to take?

2. The secretary treasurer of School Board put the legal notices up and the meeting was legally called. The ratepayers met and appointed chairman and secretary. But the secretary treasurer did not have the books properly filled out by the teacher and one of the ratepayers objected to the meeting being held, and they held no meeting. Was it necessary to put up notices to call another meeting or could they pass a resolution to adjourn the meeting to another date until the Secretary treasurer got the books properly signed?

1. Only one motion at a time can be considered and disposed of by a municipal council. If a motion is voted upon and declared lost, the same members who moved and seconded it, can move and second, and vote at the same meeting upon a second or any subsequent motion, having the same object unless there is a rule of order preventing it. If the reeve is not favorably disposed to either of two motions before the council, he can and should vote against them both.

2. A motion to adjourn the meeting to some future date put to and carried by the ratepayers present is all that is required. The posting up of additional notices, announcing the date to which the meeting has been adjourned is not necessary.

Public School Trustee Disqualified as Member of County Council

60—M. O' D.—At the municipal election for county councillor, county of O, division No. 7, W. B. and M. O. were candidates, O receiving the least number of votes. B is a trustee of the public school for a number of years and county councillor also for six years. I notified J. E. F., head returning officer not to declare him elected as he cannot qualify on account of his being a trustee of the public school, he cannot take the oath of office, and the trustees of the public school will not accept his resignation now. I ought to have objected to him at the nomination.

There is nothing in the declaration of office to be taken by a county councillor elect that would preclude this person from taking it under the circumstances mentioned nor has the returning officer any authority to refuse to declare him elected a member of the county council if he received a majority of the votes cast in his county council division and the nominating officer could not have refused to have accepted his nomination on nomination day notwithstanding the fact that an objection was raised to his qualification. This is a matter for the decision of the judge before whom proceedings to invalidate the election are heard. This person can legally take and occupy his seat as a member of the county council on taking the necessary declarations of office and property qualification, unless and until proceedings have been successfully taken against him pursuant to section 219 and following sections of the Municipal Act. Under the circumstances stated he is disqualified and his election may be voided

Members of Public and High School Boards Disqualified as Members of Council.

61.—SUBSCRIBER.—Does section 5 of chapter 29 of Ont. Stats., 1902, refer to a member of a public or High School board resigning? If his resignation was not in before the 29th of December (Nomination day) can he be disqualified from sitting in the council for 1903? His term as public school trustee expired December 31st, 1902. Give authority.

Section 5 of chapter 29 of the Ontario statutes refers to "any School Board for which rates are levied." A member of a HIGH SCHOOL Board is disqualified from membership in a municipal council by sub-section 1 of section 80 of the Municipal Act, and section 5 of chapter 29 Ontario statutes, 1902, practically disqualifies all members of Public School Boards. A candidate for election to any municipal office must possess the necessary statutory qualifications "at the time of election." (See sub-section 1 of section 76 of the Act.) The "time of election" begins on NOMINATION DAY (this year the 29th December.) Assuming that a candidate possesses all the other necessary qualifications, in order to qualify as a candidate for Councillor for 1903, he should have resigned his membership of the Public School Board and had such resignation accepted by his colleagues on the Board, at some time PRIOR to NOMINATION DAY. There is no provision in the High School Act for resigning with the consent of the other Trustees as there is in the Public Schools Act.

Powers of Township Council.—Law as to Transient Traders in Districts.

62.—S. D. B.—Send me a list of what by-laws should be brought up at the different meetings of council and what is the proper time to meet, and everything re tavern licenses, what amount can the council put on for the township and show how same is put through. What can council do in the matter as follows. We are somewhat out of the world in this way, being so far away from any railroad, some 70 miles and each party putting in supplies must put in enough for six months and as this is a timber section the supplies are nearly gone by the time we assess in the spring, therefore we receive little or nothing out of their stock, can we get at them some other way or time of year? There is a wholesale provision store just started up this fall and laid in a large stock. They only purchased a lot and placed a shed for storing stuff but all their buildings are rented by them. They are of course, not on assessment roll as yet and as I said before, put in a very large stock, but by spring mostly everything will be sold out and nothing that assessor can assess and perhaps may not remain here as they only sell to the lumbermen and jobbers in that branch of business. Of course to some extent they hurt the general merchants and it seems not fair that they get off scot free and others are trying to make their living and carry a general stock and have to pay school and township rates. Would you call the above Company "Transient Traders"?

The number of by-laws authorized by the statutes to be enacted by a municipal council is almost illimitable, and they vary so much in their requirements that it would be impossible for us to give you any adequate list of them in the space and time at our command. If you let us know for what purposes the council requires and intends to pass by-laws, we

will advise you, as to whether they are authorized by statute or not, and if so, where the authority is to be found. Section 259 of the Municipal Act provides that this first meeting of the council shall be held at 11 o'clock in the forenoon on the SECOND Monday of the same January in which they are elected, or on some day thereafter. Subsequent meetings should be held on such dates as may be selected by the council at its previous meeting, or fixed by by-law of the council. The provisions of the statute relating to township municipalities and tavern licenses issued therein will be found in section 41 and following sections of the Liquor License Act. (R. S. O., 1897, chapter 245.)

Your municipality being a township in a district having no county organization, neither sections 58, 59 or 61 of the Assessment Act have any application and sections 40 and 41 of chapter 225, R. S. O., 1897, prescribe the time when the assessment is to be made each year. It is doubtful whether the section relating to transient traders, (section 583 of the Municipal Act), applies to the municipality in question for these reasons. Section 31 of chapter 225, R. S. O., 1897, which relates to unorganized districts gives power to councils of every municipality in any unorganized district to pass by-laws for such purposes as are from time to time authorized by the councils of townships, etc., but section 32 of the same Act expressly declares that the council of every such municipality shall also have powers to pass by-laws in respect of the several matters named in certain sections of the Municipal Act among which sections is section 583, clauses 17 to 21 and as the Legislature considered it necessary to give this express power, the inference to be drawn is that such a municipality was not intended to have power to pass by laws in respect of the other matters provided by section 583.

Levy of Part of General Public School Assessment.

63.—P. C.—One of the schools in our municipality was closed for at least one month after midsummer holidays for want of a teacher. Can the treasurer of the municipality deduct a proportion of the \$150 general school rate?

This is not a matter which is left in the discretion of the treasurer. The council should pass upon it and the treasurer should be guided by the order of the council.

Fifth Form in Rural Schools.

64 E. W.—Our public school has 58 scholars on the register. Three ratepayers have each one child who has passed the public school leaving examinations. They insist on compelling the teacher to take up fifth class work for these scholars against the wishes of a large majority of the ratepayers and a majority of the Board of Trustees. The inspector has notified the trustees that unless high school work or in other words, fifth class work be taken up, he will withdraw the Government grant. Can he do so? Where he gets law for this I have been unable to find. No high school in the place.

Regulation No. 17 of the Education Department provides as follows: "The course of study for public schools shall be taken up in FIVE forms as herein after set forth, and pupils shall be classified by the teacher with respect to their attainments in all the subjects of the form to which they are assigned or from which they are to be promoted. Pupils who have passed the high school entrance examination and such other pupils as are considered qualified by the teacher and inspector shall be entitled in both RURAL and urban schools to receive instruction in the subject of the FIFTH form, provided that in a municipality having a high school if resident pupils of the first form of the high school are not charged fees it will not be deemed obligatory for the Public School Board to have a fifth class. The amount of time to be given to any class is to be determined by the teacher who shall be guided in this matter by the inspector." Since there is no high school in your municipality it is obligatory that your public school should have a FIFTH form.

Clause (c) of sub-section 3 of section 87 of the Public Schools Act, 1901, provides that it shall be the duty of the inspector "to withhold his order for the amount apportioned from the legislative or municipal grant, where the trustees fail to comply with this Act or the REGULATIONS OF THE EDUCATION DEPARTMENT."

Nominator and Seconder Should be Present at Nomination Meeting.

65.—M. J.—Give your authority for your affirmative answer to question number 38 (2) in the issue of THE WORLD for January, 1903, re presence of nominator and seconder of a candidate at the Nomination meeting.

See our answer to question No. 57 in this issue.

This Man is Not a "Transient Trader."

66.—W. M.—1. This village passed a by-law in accordance with the Transient Traders Act some years ago. We have no public market under the control of the corporation, but have two places where farm produce is being bought and sold every Thursday. Our town butchers pay no license, and they are trying to prevent an outside butcher from retailing beef on one of the private markets. The question which I would like to ask is this: Is a butcher so retailing beef on a private market a *Transient Trader*?

2. Does farm produce of any kind come within the scope of the Transient Traders Act? and is not beef a farm product and not goods or merchandise?

1. No. To constitute a person a "transient trader" he must occupy premises in the municipality, if only for a temporary period. (See sub-sections 30 and 31 of section 583 of the Municipal Act.)

2. In view of our answer to question number one, it is hardly necessary to answer this one. We do not see, however, why BEEF handled in the way you mention should not be held to be "merchandise" within the meaning of the sections of the Municipal Act relating to "transient traders." Worcester defines

"merchandise" as : The objects of commerce ; whatever is usually bought or sold in trade or market, or by merchants, etc.

Treasurer Should Not be Member of School Board—
Proceedings for Holding New Election.

67.—D. D.—1. Can a member of any Public School Board legally hold the office of Township Treasurer or any other municipal office to which he may be appointed by the Council ?

2. When the Reeve issues his writ for a new election to be held, who shall preside at the nomination, the Reeve or the Clerk ?

1. Although the Municipal Act does not in *terms* preclude the appointment of a member of a Public School Board therein to the office of Township Treasurer, still we are of opinion that the appointment should not be made, as in view of the respective duties of these officials, it is incompatible for one person to hold and discharge the duties of both offices at the same time.

2. Section 212 directs the head of the Council, etc., to "require the Returning Officers and Deputy-Returning Officers appointed to hold the last election, etc., or such other persons as may be duly appointed to such offices to hold a new election, etc." If no other person have been duly appointed to fill the office of Returning Officer, and the Clerk was Returning Officer at the last municipal election, the writ for the holding of the new election should be directed to him (and the Deputy-Returning Officers) and the Clerk is the proper person to preside at the nomination meeting.

Law as to Stray Fowl.

68.—H. W.—Where fowl are kept in great abundance and allowed to run all over their neighbors' farms, can they be stopped. If so, how is it to be done ?

These fowl can be impounded, if straying and doing damage on neighboring premises pursuant to the authority of section 3 of the Act Respecting Pounds, (R. S. O., 1897, chapter 272), unless there is a pound by-law of the municipality varying the provisions of this Act, and damages recovered from the owner in this way, for the injury committed ; or the owner of the premises upon which the poultry stray can recover the amount of the damage he has sustained from the owner of the poultry, by an ordinary civil action at law. If there is a by-law varying the provisions of the above Act we would require to see a copy of it before we could express an opinion upon the subject.

Poll Tax in Villages.

69.—M. T.—A young man not assessed for property in this municipality, refused to pay poll tax (\$1) in lieu of statute labor on the ground that he "pays taxes elsewhere" (where he came from.) He resides here and is likely to remain, as he is following his occupation in this municipality. As I understand section 97 of the Assessment Act, I am under the impression he should be compelled to comply with our by-law requiring the payment of poll tax. I would like you to say whether or not such a person is liable under the circumstances above stated ?

If this young man produces a bona fide certificate that he has performed statute labor, or paid the commutation tax therefor, in some municipality other than the village of which he is now a resident, he cannot be compelled to pay the tax mentioned in section 97 of the Assessment Act. Section 97 should be read subject to the provisions of sections 98 and 99.

Deputy Returning Officer for 1902 Should not be Auditor for 1903.

70.—J. S. Is a deputy returning officer for the municipal elections held in January 1903 disqualified for auditor to audit the municipal accounts of 1902, he having no contract or employment with the municipality in 1902 save his being appointed as deputy-returning officer for the municipal elections of 1902 which went by acclamation ?

Sub-section 1 of section 299 of the Municipal Act provides that no one, who at the time of his appointment, or *during the preceding year*, had a share or interest in any contract or employment with or on behalf the corporation, except as auditor, shall be appointed an auditor. The appointment of the person to the office of deputy-returning officer was an employment of him by the municipal corporation, whether the election was by acclamation or not, and, we are of the opinion that he cannot now be appointed auditor of the accounts for 1902 of the municipal corporation whose council appointed him a deputy-returning officer at the last municipal elections.

Treasurer's Surety Disqualified as Councillor.

71.—T. S.—Is it legal for a town councillor to be one of the town treasurer's sureties ?

If, on nomination day, a candidate for councillor was a surety for the treasurer of his town, he was ineligible and his election can be voided. (See Reg. Ex. rel. Coleman v. O'Hare, 2 P. R. 18, Reg. Ex. rel. McLean vs. Watson, 1, U. C. L. J. N. S. 71 and Reg. Ex. rel. Hauer v. Roberts 7 P. R., 315)

Township Treasurer Should Pay for Booths Used at Referendum Vote.

72.—J. R. Who are to pay for the polling booths for the vote taken on December 4th. last ? This vote was taken on the referendum and there is a dispute here as to who should pay these expenses, the municipality or the Legislature.

The charges for rent of polling booths in your municipality, (other than the township or other public hall), if any, used on the occasion of the taking of the referendum vote on the 4th December last, must be paid by the treasurer of your municipality, on the order of the Deputy-returning officer. Section 92 of the Liquor Act, 1902, (chapter 33, Ontario Statutes, 1902), provides that "the fees in schedule B to this Act mentioned, in respect of the several matters therein contained, shall be allowed to the several officers therein mentioned respectively, for the services and disbursements in the said schedule specified." Item No. 11

of this schedule is as follows : "For each polling booth, actual cost not exceeding four dollars, to be paid by the city, town, village or TOWNSHIP treasurer (as the case may be), on the order of the deputy-returning officer, unless the municipal council provides suitable polling places at their own expense."

Return and Collection of Arrears of Taxes.

73. J. C. M.—1. Do you return all the unpaid taxes to the County Treasurer by the 5th of April from the previous year whether the property is occupied or not ?

2. If after three years the arrears of taxes have been returned to the Collector of a municipality from the County Treasurer and the property has become occupied and there is nothing to be found on the property but what is exempt from seizure, how may the amount of arrears be obtained by the municipality ?

3. Can the property be sold for taxes at any time while occupied ? If so, how soon ?

1. Sub-section 1 of section 157 of the Assessment Act provides that "the Treasurer of every Township, etc., shall, within fourteen days after the time appointed for the return and final settlement of the Collector's Roll, and before the 8th day of April in every year, furnish the County Treasurer with a statement of ALL unpaid taxes and school rates directed in the said Collector's Roll, or by School Trustees to be collected." All taxes on the Collector's Roll for the preceding year remaining unpaid, whether the lands in respect of which they are payable are occupied or not, should be returned to the County Treasurer before the 8th April in each year, by the treasurer of every township.

2. We assume that you refer to the return to be made by the county treasurer to the township clerk mentioned in section 152 of the Assessment Act. If so, under the circumstances mentioned the lands are liable to be sold to realize the amount of these taxes.

3. Occupancy of lands does not prevent their being sold for taxes, at the proper time, provided all the preliminary steps prescribed by the statutes have been previously observed and complied with. The lands can be sold to realize the amount of the taxes, "where a portion of the tax thereon has been due for and in the third year, or for more than three years preceding the current year." (Section 173 of the Assessment Act.)

Power of Councillor Elect, not qualified, to Transact Business of Municipality.

74.—W. D. M.—Section five of the Municipal Amendment Act of 1902 provides, "that a school trustee cannot be legally elected as a member of the township council". In event of a councillor being elected who still holds office as trustee and who has taken his seat at the council, would any business transacted at meetings at which he was present and took part in be illegal, although no protest was made against him holding his seat ? If such business is illegal what steps should be taken to remedy matters ? Also in case said member does not resign of his own accord should the council take action to have him unseated ? Also what steps should be taken for a new election ?

Until proceedings have been SUCCESSFULLY taken against the councillor to void

his election pursuant to section 219 and following sections of the Municipal Act, he has a perfect right to take and occupy his seat at the council board and take part in the meetings of the council the same as any other member and his doing so will not render the business done by the council illegal. The council has no authority to take proceedings to have this councillor's seat vacated. The persons who have the right to take these proceedings will be found enumerated in the latter part of sub-section 1 of section 219 above referred to. It will be time enough to take proceedings for a new election under the provisions of section 212 of the Act, when his seat has been declared vacant.

Protection of Railway Crossing.

75—VILLAGE CLERK.—When there is a dangerous railway crossing in a village, can the council compel the railway company to have a man watch the crossing so as to warn the public of approaching trains?

The only redress the council has in this case is to report the circumstances to the Railway Committee of the Privy Council of Canada, who, alone, have the authority to compel a railway company to place a watchman at, or otherwise protect a dangerous railway crossing.

Amount and Collection of Fees From Non-Resident Pupils.

76—J. B. B.—Please give full particulars of the amount to be paid by income scholars and how to collect the same.

We presume you have reference to pupils attending the school in a school section of which they are not residents. If such is the case section 95 of the Public Schools Act, 1901, will give you the information you desire. If the non-resident pupils or their parents or guardians will not pay the fees imposed by the trustees of the school section to which the school they attend belongs, the latter can refuse them permission to attend such school.

Public School Supporter Must Support School in his Own Section.

77—Can a public school supporter, who is a freeholder in a school section having a debenture debt unmatured, withdraw his support from such school section and become supporter of adjoining section and evade payment of his rateable share of such running debenture debt?

A public school supporter cannot of his own motion, withdraw his support from one public school section in his municipality and give it to another. He must support and pay his school taxes for the maintenance of the public school in the section in which his lands are for the time being situated. The council of the township may, pursuant to the authority of sub-section 2 of section 41 of the Public Schools Act, 1901, unite portions of an existing section with another section, but, even if this is done, sub-section 3 of section 74 of the Act provides that "Notwithstanding any alteration which may be made in the boundaries of any school section, the taxable property situated in

the school section at the time when such loan was effected, shall continue to be liable for the rate which may be levied by the township council for the repayment of the loan."

Collection of Taxes From Absent Tenant.

78—CLERK.—In 1899 there was a certain party assessed as tenant, on a farm in this township, but before the collector had been able to collect the taxes from said tenant, he (the tenant) moved off the place into an adjoining township but within the county, consequently the land was returned to the county treasurer so the arrears of taxes on said farm were placed on the collectors roll for 1902 for collection. Now the present tenant refuses to pay said arrears, so also does the owner as he claims that the collector for 1899 had neglected his duty by not collecting the taxes from the tenant, as he was able to pay them and should have paid them according to the terms of the lease. Now the present collector wants to know if he can collect said arrears from the present tenant, or shall he be obliged to collect from the tenant of 1899, or return the land again?

The tenant in 1899 was the person evidently who was actually assessed for the premises in respect of which these taxes were due, for that year, and whose name appeared upon the collector's roll for that year as liable therefore, and the amount of the taxes with costs should have been levied by the collector upon the goods and chattels of this tenant, (not exempt under the statutes from seizure), wherever they were to be found *within the county in which the local municipality lies*. (See sub-section 1 of section 135 of the Assessment Act.) The goods of the tenant not exempt from seizure might have been followed by the collector into any municipality in the county to which they had been removed. If the tenant had goods not exempt from seizure in 1899, the collector should have seized them to realize the amount of the taxes, and should not have returned them as unpaid or uncollectible. If there were such goods and he so returned the taxes they cannot now be collected from the owner, nor can they be collected from the present tenant, and the lands cannot be sold to realize the amount.

Remuneration of Head of Council.

79 C. T.—At the last meeting of the council of 1902 the following resolution was passed: Moved by Seconded by That a cheque be issued in favor of D for fifty dollars for services as reeve for the year 1902.

Carried.

Was this a legal act of the council? If not legal, what steps can new council take to recover the money? Our municipality is a village.

Section 280 of the Municipal Act provides that "the HEAD of the council of any county, city, town or VILLAGE may be paid such annual sum or other remuneration as the council of the municipality may determine." The latter part of section 325 of the Act provides that "the powers of the council shall be exercised by by-law when not otherwise authorized or provided for." We are therefore of opinion, since section 280 does not auth-

orize the fixing of this annual remuneration otherwise than by by-law, it cannot be legally fixed and granted to the reeve of the village by RESOLUTION of the council, but that it can be so granted by BY-LAW of the council. The money having been paid over to the reeve, however, we do not see that it can now be recovered from him.

Scrutineers When Vote is on Money By-Law Not Entitled to be Paid.

80—P. P.—The municipal council of our township wish to know through your paper, if persons appointed by the reeve to act as scrutineers for and against a by-law for a bridge voted on 5th of January last have a right to be paid by the township or not for that day, and also attending the summing up of the votes on the following day by the clerk. The parties themselves and others think after being ordered out by the head of the council that they should be paid, but we can see nothing in the statutes to bear out this contention.

There is nothing in the statutes authorizing the council to pay for the services of scrutineers under the circumstances mentioned. No person is BOUND to act in this capacity if he does not desire to do so. It is presumed, however, that there is a sufficient number of persons in the municipality interested in the vote for and against a by-law to attend at their own expense.

Arrears of Taxes in Muskoka Towns.

81—W. T. K.—Our village became a town on January 1st, 1901, to legally sell land for arrears of taxes.

1. Should the arrears of 1900 taxes have been sent to the sheriff in 1901?

2. Must the arrears of taxes be placed upon the collectors roll (i. e. the arrears for 1902 on 1903 roll) and year after year until paid or land sold?

N. B. The arrears for 1900 were not placed upon the 1901 roll, neither were those of 1901 upon the 1902 roll. Would this make the sale of the land legal for 1900 and 1901 arrears?

3. Is 1903 the year to sell the land for arrears of 1900 taxes?

1. No.

2. No. It is only such taxes that have been in arrear for three years preceding the first day of January in any year and which have been returned by the treasurer to the clerk pursuant to sub-section 2 of section 155 of the Assessment Act, that can be placed by the clerk on the collector's roll, under the authority of sub-section 3 of section 155. (See also sections 152 and 153 of the Act.)

3. Yes. See section 173 of the Act.)

What Constitutes an Audit.

82—COUNCILLOR.—What do you consider a proper audit of a municipality's accounts? Should everything be verified? The cash counted, the balance in bank verified, the actual liabilities ascertained from the debenture holders, if possible also should the receipted accounts be used as vouchers or the cheques given in payment of the accounts, etc?

This subject is too extensive and important to be satisfactorily dealt with in the time and space at present at our disposal, but we are of opinion that all

the duties you enumerate should be performed by the auditors. You will find the duties of auditors defined by section 304 of the Municipal Act, and we also refer you to an article on "Auditor's Duties" on page 2 of the issue of the MUNICIPAL WORLD for 1900 and also one in this issue.

Township Clerk should not be Trustee of Public School.

83—P. A.—Can a Municipal Clerk in a Township act as member of a Public School Board and of which Board he is also Sec-Treasurer? the ratepayers having at the annual meeting allowed him a stated salary for for said office? Is he disqualified from acting as Clerk or School Trustee?

The statutes do not in TERMS prohibit a municipal clerk from acting as a member of a school board in a school section in his township, but in view of the fact that his duties as clerk are likely to clash with his duties as member of the school board, (especially as secretary-treasurer), the two offices are incompatible, and should not be held by the same person.

Sums properly chargeable to Drainage Account—Relief of Indigent owing Property—This Line Fence cannot be Legally Moved.

84—J. E. H.—Drainage contract let at \$3000 clerk's fees and expenses allowed by engineer 10 % of estimate \$450. By-law estimate was \$4500, council's by-law for drain meetings \$2 each a day.

1. Should the expenses of these drain meetings come off the drain funds or out of the township funds?

2. Does council need to pass by-law to grant more money for expenses if over the \$450 allowed by engineer in by-law already passed when there is such a surplus over the amount of the contract let which was \$150?

3. Can this surplus be applied to any part of the work connected with drain whether excavating, paying clerk's fees, lawyer's fees, council's fees or anything else therewith connected if so required without a by-law?

4. A person has property but neither money or provisions. Will not sell property and council supplied her for a couple of months then stopped. What can council do? Can council supply her and charge it against property against her will? What can be done.

5. Where a lot is divided by a fence which has been there twenty years and one part is sold, supposed to be half, can the buyer measure said part and remove fence to suit himself encroaching on other part?

1. The expenses of all meetings of council rendered necessary by the construction of these drainage works are properly chargeable to and payable out of the drainage account and should not be charged to or paid out of the general funds of the municipality.

2. We presume that the council has passed a by-law pursuant to the provisions of the Drainage Act, (R. S. O., 1897, chapter 226), providing for the construction of these drainage works and for the raising by the issue of debentures of the corporation the sum of \$4,500 to defray the cost of the work. If this is so, all LEGITIMATE costs and expenses of and incidental to the carrying out of this drainage scheme up to the amount of \$4,500 are properly chargeable against and payable out of this drainage account

and the passing of a supplementary by-law for the purpose is unnecessary.

3. Yes. Provided the charges, fees and expenses are legitimate and necessary under the circumstances. If, after the drainage works have been completed, any surplus of the \$4,500 remains, after all the costs and expenses of and incidental to the construction of the drain have been paid, provision should be made by by-law of the council for the repayment of such surplus to the several persons assessed in the manner provided by sub-section 3 of section 66 of the Drainage Act.

4. It is optional with the council as to whether it continues to grant relief to this person, and if it decides to do so, it should be by by-law passed pursuant to sub-section 2 of section 588 of the Municipal Act.

County Judge's Circular to Assessors—Liability for Accident on Highway.

85—X. Y. Z.—1. Where does a county judge get his authority for sending printed circulars directing and calling attention to assessor's duties, etc.? We always thought it was the duty of the council to appoint competent men as assessors and furnish them with statutes and instructions and that, we thought, was as far as councils or anyone else was allowed to go. Has a county judge any special rights or in other words has he a right to say anything about the assessment until it comes before him as the law directs in the matter of appeals?

In an unincorporated village, a leading road passes over a ravine and the road-bed is about twenty-eight feet wide and in good shape but in some way an old man slipped with his sleigh and horse down one side of said road into the ravine 6 feet below. He now seeks to hold the township council responsible because there was no protection along the side.

2. What say you as to the liability of the township?

3. Could it be shown that council was guilty of neglect of duty because it did not place railing on the sides of this and hundreds of similar places in the township?

1. There is no legal objection to the county judge sending a circular to assessors in his county, calling their attention to, and particularizing the duties the statutes require them to perform. Neither the county judge, council, nor any other person nor persons has any right or power, to instruct assessors, as to what persons shall be assessed for any particular property, or as to the values they shall place on any property in the municipality. These are matters that must be left to the research and judgment of each assessor. It is, of course, the duty of every council to appoint a competent man to the office of assessor, but, if any suggestion voluntarily offered by the county judge as a result of his experience would be of any assistance to the assessor to enable him to more expeditiously and satisfactorily carry out his work, we do not see that any objection should reasonably be raised to the sending of them by the county judge.

2 and 3. From the facts and circumstances furnished us, it is difficult to give a definite opinion as to the liability of the township in this case. In the determination of a question of this kind, it is neces-

sary for the judge or court before whom the case is tried to take into account, the nature of the country, the character of its roads, the care usually exercised by municipalities in reference to such roads, the season of the year, the nature and extent of travel, the place of the accident and the manner and nature of the accident. (Mr. Chief Justice Harrison in *Castor vs. Township of Uxbridge*, 39 U. C. R. 122.) Mr. Chief Justice Armour in the case of *Foley vs. Township of East Flamborough*. (29 O. R., 141), states as follows: "I think that if the particular road is kept in such a reasonable state of repair that those requiring to use the road may, using ordinary care, pass to and fro upon it in safety, the requirement of the law is satisfied." The courts have repeatedly held that the absence of a railing alongside of a deep ditch or precipice is negligence on the part of a municipality.

Maintenance of Township Boundary Lines.

86—J. E. S.—There are two townlines between townships leading to the town of E—. The ratepayers on or near these roads complain that the roads are not kept in proper repair and that these roads are not kept up by the township adjoining like the leading roads through the centre of the townships. Is there any law whereby the township councils could be compelled to spend sufficient money on the townline to put it in similar repair as other roads? If the ratepayers on townlines have any remedy, let me know where and how.

The ratepayers resident on the lots bordering on either or both sides of these town lines have a remedy for the grievance complained of under section 649 of the Municipal Act which provides that they can petition the COUNTY council to enforce the repair of the township boundary lines by the township councils interested, in cases where such councils neglect or refuse to repair such lines of road in a manner similar to the other local roads.

Payment of Rent of Polling-Booths Used for Referendum Vote—Prescriptive Right to Flood Highway.

87—CLERK. In your January issue, page 16 question No. 35, you state that city, town, village or township treasurers must pay on the order of the D. R. O. the rent for polling booths used in taking the referendum vote on December 4th. last, and quote part of schedule B referred to in section 92 of the Liquor Act 1902 as your authority. Why quote any schedule to any section or Act when the Act itself distinctly states how said booths are to be paid for. Section 92 of said Act says "The fees in schedule B to this Act mentioned in respect to the several matters therein contained etc. "Section 93 says" the said fees, allowances and disbursements with the reasonable expenses incurred by the R. O. and by the other officers and clerks for printing, providing polling compartments etc., shall be paid over to the R. O. by warrant of the Lieutenant Governor directed to the treasurer of the Province out of the Consolidated Revenue Fund of the Province." The council of this township are up against a very knotty question. About 27 years ago a mill dam was built across a stream thereby raising the water so that where the stream crosses the highway about one mile above owing to the flat nature of the ground, it is about 32 rods wide and some four or five feet deep, except the channel which is about four rods

wide and some 18 or 20 feet deep. The owner of the dam has bought the right to flood all the land along side of stream except the highway. He never got any privilege to flood that.

1. Are you still of the opinion that local municipalities have to pay for those referendum polling booths? If so explain Section 93, The Liquor Act 1902.

2. Can council compel owner of dam to lower water and not flood highway?

3. If not can he be compelled to assist municipality to build bridge over the stream at point referred to?

4. If council builds the bridge which will cost about \$2500, have they the power to borrow the money to do so and extend the payment thereof over a period of four or five years without submitting a by-law to the ratepayers, as they consider it would be a hardship to raise this amount in one year, the amount raised last year for township purposes being about \$1260.00?

1. There is no question as to the correctness of our answer to question No. 35 in our issue for January of the present year, as to the liability of municipal corporations for the payment of the rent of polling BOOTHS used for the purpose of taking the referendum vote on the 4th December last. We quoted section 92 of the Liquor Act, 1902, and item 11 of schedule B. therein mentioned as our authority for the reason that this section and item, and they alone, point out by whom this particular item of expense should be paid. Although section 93 provided for the payment of the cost of providing polling COMPARTMENTS for use on that occasion, its provisions are in no way inconsistent with those of section 92. A polling COMPARTMENT is very different from a polling BOOTH. The former is a small space screened off inside of the polling BOOTH, into which the voter retires to mark his ballot. It is for providing this COMPARTMENT that section 93 requires the treasurer of the Province to pay out of the consolidated revenue fund, and without the shadow of a doubt section 92 and item 11 of schedule B to the Act fix the liability for payment of the rent of polling BOOTHS used on the occasion on the local municipalities.

2. This highway being located in a township duly surveyed and laid out by proper authority, if the owner of the dam has enjoyed the privilege of flooding this road uninterruptedly for twenty years or over, he has acquired a prescriptive right to do so, which cannot now be interfered with. (See sections 35 and 42 of chapter 133, R. S. O., 1897.) If, on the contrary he has not so enjoyed this privilege, he can be indicted and punished for causing this water to flow over the road. (See Regina v. Lees, 29 Q. B., 221), and can be restrained by injunction.

3. In any event the owner of the dam cannot be compelled to contribute towards the cost of building and maintaining this bridge.

4. Since the sum proposed to be raised is not required for the ORDINARY expenditure of the municipality and is not to be repayable within the same municipal year, the by-law, providing for the borrowing of

this amount must, before its final passing, be submitted to and receive the assent of the duly qualified electors of the municipality. (See sub section 1 of section 389 of the Municipal Act.)

Payment of Accounts for Disinfecting Houses of Diphtheria Patients.

88.—J. H.—We had in our township two cases of diphtheria. The owners of the houses had them disinfected by their own doctor and paid for it, and one of the Board of Health ordered the doctor of the Board of Health to disinfect the houses without notifying the parties. Who are liable to pay, the owners of the houses or the Board of Health?

2. In case where diphtheria was in a house, and the doctor who was attending them ordered the doctor of Board of Health to disinfect the house without notifying the Board of Health, who has a right to pay for it, the owners or the Board of Health?

3. Is there any statute stating how a house ought to be disinfected by the Board of Health?

1 and 2. The proceedings in both these cases were irregular and unauthorized by the provisions of the Public Health Act (R. S. O., 1897, chapter 248). The Local Board of Health should have given notice in writing to the owner or occupier of the infected premises, requiring him to disinfect to the satisfaction of the Medical Health Officer such house, within a time specified in such notice. If the person notified fails to comply with this notice he is liable to a penalty of not less than .25c. nor more than \$2 for every day during which he continues to make default, and the Local Board of Health shall cause the disinfection of the premises at the expense of the owner or occupier if he is able to pay it, and, if from poverty or otherwise, he is unable to pay this expense, the Local Board of Health must do so. The Medical Health Officer is entitled to no pay for performing any of the above services other than the salary fixed by the Municipal Council appointing him pursuant to section 31 of the Public Health Act.

3. The law governing this matter will be found in sections 81, 82, and 83 of the Public Health Act.

Qualification of Public School Trustee—and of Secretary not a member of the Board.—Result of Disclaimers. Proceedings for holding new Election.

89.—B. A. V.—1. Is a Trustee of a rural public school eligible for the position of reeve or councillor in a township council having held the office of trustee prior to the act of 1902? If not can he become eligible after being elected to the council by resigning the trusteeship before he has taken the oath of office as reeve or councillor?

2. In case the reeve and two or three councillors are disqualified would the next highest at the poll take the office or would there have to be a fresh election in which event would the disqualified councillors by resigning their office of trustee become eligible?

3. Is a paid secretary of a rural public school eligible for the position of reeve or councillor in a township council?

4. Is there any stipulated time in which to

enter a protest? What steps should be taken in case he or they refuse to vacate their office?

1. Any person who on nomination day, (29th December last), was a member of a school board for which rates are levied, (which definition includes a rural public school), was disqualified as a candidate for reeve or councillor of the municipality. (See section 5 of chapter 29 of the Ontario Statutes, (1902.)) He cannot get rid of this disqualification by resigning his office of public school trustee between nomination day and the time of his taking the necessary declarations of office and qualification. In order to enable him to qualify in this particular he should have resigned his office of public school trustee, and such resignation should have been accepted by his colleagues in office PRIOR to nomination day.

2. If the reeve and councillors elect who are disqualified file disclaimers in pursuance of the provisions of either section 238 or 240 of the Municipal Act the candidates having the next highest number of votes shall then become the members of the council elected, as provided by section 241 of the Act. If proceedings are instituted under section 219 and following sections of the Act to void the election of the candidates alleged to be disqualified, and as a result of these proceedings, their respective seats are judicially declared vacant and a new election is ordered, if the intending candidate resigns his office of member of a school board, and such resignation has been accepted, as above mentioned, prior to the day fixed for the new nomination, he will be qualified, in this particular, as a candidate for the office of reeve or councillor of his municipality.

3. If he is not a MEMBER of the school board, which employs him he is not disqualified as a candidate for the offices mentioned by the provisions of section 5 of chapter 29 of the Ontario Statutes, 1902.

4. The time fixed by statute within which proceedings are to be taken to void a municipal election is six weeks after the election, or one month after acceptance of office by the person elected. (See sub-section 1 of section 220 of the Municipal Act.) The proceedings to be taken to void an election will be found in section 219 and following sections of the Municipal Act.)

An Improper Assessment.

90.—T. D. R.—A owns lots Nos. 1, 2 and 3 and occupies No. 1. B and C are tenants on lots 2 and 3 respectively, each lot is assessed at \$200 and the three lots are assessed to A as owner and B and C tenants, making the total assessment to A, B & C \$600, and there are four days statute labor entered opposite the property. Is this the correct way to assess these lots or should each lot be assessed separately and two days statute labor charged against each lot? These lots have been grouped together apparently with a view of escaping statute labor.

These lots are improperly assessed. They should be assessed as follows:

A—F	lot	1	\$ 200
A—F	}	"	2 200
B—T				
A—F	}	"	3 200
C—T				

And statute labor should be calculated on each assessment separately according to the ratio in vogue in the municipality.

Proceedings at Nomination Meeting.—Time for filing Resignations.—Qualification of Auditor.—Disqualified Councillors' Capacity to do Business.—Qualification of Public School Trustee.

91.—D.C.M.—1. In the January No. of the WORLD for this year on page 17, Ques. 46, re-nomination for municipal councillor for 1903, I find you define the duration of the nomination meeting to be one hour, which I believe is the true construction of the Statute. This may suit alright in towns and villages but in municipalities it will not as the ratepayers, many of whom travel ten or more miles to the meeting would not as the saying is, be content to buy a pig in a bag or in other words would not come to another meeting as they want the business done in the one day as they consider this day their own and they demand an account of their stewardship of the old board and if they do not render a good account of the manner in which the business of the township was conducted they may as well step down and out. At our nomination meeting from one to two o'clock is fixed by by-law, I received no less than sixteen nominations of candidates for municipal honors. None of the parties nominated resigned within the hour. As soon as the hour of two o'clock came, I closed the nominations but the meeting did not adjourn as I was moved and seconded to the chair immediately after I announced to the electors the names of the candidates nominated. The speaking by the candidates continued without interruption and they resigned all but six candidates for councillors. Three parties were nominated for reeve and two of them resigned consequently I declared the remaining candidate elected by acclamation. One of the councillors nominated is now moving to set aside the proceedings as irregular for the reason as he claims that I did not put his name on the ballot. The situation was as follows. This man came to me and asked to resign his nomination and I announced from the chair that he had resigned. In about twenty minutes after his resigning he came back and said that his friends were pressing him to run and he declared his intention of being a candidate again. He is going back on his resignation simply because it was not in writing. Now I announced to the electors that I would accept resignations of candidates at that meeting without the consent of the mover and seconder verbally by the candidates but if not made at the meeting they would have to be in writing and attested by a witness and delivered to me by the time prescribed by law. The amendment to Sub-Sec. 1 of Sec. 128 fixes the hour but our nominations heretofore were always conducted as I acted in this one and there was no other irregularity complained of in the taking of the vote or otherwise.

2. The party complaining was appointed auditor at the first meeting 1902 and audited the books of the treasurer for 1901 and did not resign before his nomination. Would that disqualify? Or would his resignation now enable him to be a candidate if the election were voided?

3. At our meeting yesterday the new council organized and made the declaration of office, etc., and appointed their officers and also appointed commissioners under the commutation of statute labor by-law. I was also appointed clerk. Can these officers hold office during this year or can they be changed by a council if election voided?

4. Sec. 80 Chap. 223 R. S. O. (1897) is amended by Sec. 5 Chap. 29, Ont. Stats., 1902, as fol-

lows and no member of a school board for which rates are levied but this amendment shall not apply so as to disqualify any person elected prior to the passing of this Act. A trustee is elected for three years and being elected last year prior to the passing of the Act would a councillor be disqualified if again elected this year or in other words would a councillor be disqualified this year or would he have to resign his trustee office?

Section eight of the Municipal Amendment Act, 1902, requires all nomination papers to be filed with the returning officer or other chairman of the meeting within one hour from the time of its opening. Therefore when the hour has elapsed the meeting is at an end as an official nomination meeting, and appears to have been so declared in this instance by the returning officer. The meeting subsequently held with the person who had acted to receive nominations at the official nomination meeting in the chair, was simply an ordinary public meeting of the ratepayers of the municipality for the discussion of municipal affairs. All resignations therefore filed after the lapse of one hour from the opening of the nomination meeting, must be in writing, signed and attested in the manner required by sub-section 3 of section 129 of the Municipal Act. Therefore any candidate nominated who does not resign until after the lapse of the hour, must do so in writing as required by sub-section 3 of section 129, and if he does not so resign his name must go on the ballot. The question to be considered is not what the law was that governed previous nomination meetings, but what it is now in view of the enactment of section 8 of the Municipal Amendment Act, 1902.

2. If a new election becomes necessary by reason of the voiding of that held on the 5th. of January last, and this person resigns his office of auditor of the municipality, and such resignation is accepted by the council prior to the day fixed for holding the nomination of candidates for the new election, he is eligible as a candidate for election, so far as this particular qualification is concerned. We may say however that if he has completed his work as auditor and has been paid for his services as such auditor, the disqualification which might otherwise exist has been removed.

3. Until the election of the new council has been voided as the result of proceedings successfully taken against its members with this end in view, they are legally competent to discharge the business of the municipality such as appointing officers, etc. The officers appointed at the first meeting of the new council are in the same position as to the tenure of their respective offices, as would have been the case had no objection been taken to the election of its individual members. This depends on the terms on which the officers were appointed, whether for a time certain or indefinitely.

4. The "person elected prior to the passing of this Act" referred to in this section is a person who was elected a

member of a municipal council in January, 1902, and was a member of a school board for which rates are levied, at the time this section was enacted. But, in order to render himself eligible as a candidate for membership in a municipal council at the elections held in January last, the intending candidate should have resigned his office as a member of such a public School Board and had his resignation accepted by his colleagues on the Board, prior to NOMINATION day.

This Township Clerk Can be a High School Trustee.

92.—J. K.—Am I as clerk of the township of N. G. eligible for the office of high school trustee? The high school in question is in our county, it is in the village of G., the township of N. G. of which I am clerk is not in the high school district.

We are of opinion that you can legally fill the office of high school trustee under these circumstances.

More Than One Assessor Can be Appointed in Village.—Collector Can be Assessor.

93.—W. D. W.—1 Can more than one assessor be legally appointed to assess an incorporated village not divided into wards to act as a unit in making the assessment?

2. If so, can the collector of rates for the year be one of the assessors?

1. Yes. Sub-section 1 of section 295 of the Municipal Act provides that the council of every city, town, township and VILLAGE shall, as soon as may be convenient, after the annual election, appoint as many ASSESSORS and collectors for the municipality as they may think necessary, etc.

2. The offices of assessor and collector are compatible, and the same person can hold and perform the duties of both offices at the same time. The language of the form of declaration of office to be taken by assessors and collectors, contained in section 312 of the Municipal Act, confirms this opinion.

Dismissal and Payment of Negligent Engineer.

94.—A petition was presented to the council about two years ago, and signed by a majority of the interested parties, praying to have Creek widened, deepened and improved under the Municipal Drainage Act so the council appointed A. B. to carry out the work. He had six months to finish the work and file his report, but he failed to file his report within the time and asked for an extension of time, but the time had expired two or three weeks before the council met to extend the time and they have granted several extensions since and still the work is not done. The time expired on the 19th of October last and the council refused to extend the time again.

Is the council acting legally in extending the time after it had expired and can the engineer collect his fees for the work he has done when the council refused to grant another extension, the work being all done except adjusting the assessment on the land. The engineer's fees and expenses up to the present are about \$1,300 and would it be legal for the council to grant another extension so that he could complete the work and make the assessment and if the council will not grant another extension, can he make the council pay for what he has done?

If the engineer has been negligent in not completing this work within the time allowed him by the council, the latter is justified in dismissing him and employing some other engineer to do the work and the engineer cannot recover from the council his fees for his services in connection with this matter. The council can legally further extend the time allowed the engineer for the completion of the work, if it sees fit to do so.

Correction of Mistake in Collector's Roll.

95—CLERK.—In making out collector's roll for 1902, a special charge for drainage work happened to be placed opposite the wrong lot, and was added in with T's taxes when it should have been placed opposite W's lot and added in with his taxes. W paid the taxes charged to him before error was discovered, and T having no right to pay them, I have corrected the mistake as far as he is concerned by deducting the overcharge from the total of his taxes. I have notified W of the error and asked him to pay the additional amount. Kindly let me know what steps could and should be taken to make matters right.

We do not see how the drainage tax omitted from the Roll in 1902 can now be collected, unless W sees fit to voluntarily pay the amount. It cannot now be placed on the Roll for 1902 against the lands chargeable therewith. Nor can it legally be placed on the Roll for 1903 against these lands, as this would mean an attempt to collect two assessments in one year from these lands, and in the meantime they might have changed ownership. The amount cannot be collected in a civil action against W, as it is not a personal debt due from W to the municipality, but is a charge upon the lands.

Qualification of Mayor and Councillors of Towns.

96—S. L. M.—Kindly advise me as to the new qualification of mayor and councillors for town.

The qualification for mayor and councillors of towns is to be found in section 76 of the Municipal Act, 1897

Principal of Public School Qualified as Reeve.

97—J. F. O.—Can the principal of our public school if elected qualify as reeve (property qualification all O. K.) or in other words will principalship of the school disqualify him?

By section 84 of the Municipal Act, he is EXEMPTED from being elected a member of the Council, but this does not disqualify him if he desires to have a seat in the Council.

Liability for Costs of School Arbitration.

98—P. S.—The county council a little over a year ago appointed three arbitrators to decide the matter of a proposed new union school section situated on the boundary line between two townships. They sat, heard evidence and gave a decision. The costs were divided equally between the two townships.

1. Were the townships obliged to pay for the arbitration?

2. Could said costs having been paid be collected back from the county council they (the county council), having granted the arbitration and appointed the arbitrators?

1. We assume that this award was made by arbitrators appointed under the

authority of section 47 of the Public Schools Act, 1901, the latter part of which provides that "the decision of a majority of them shall be final and conclusive." Section 88 of the Act provides that "arbitrators, in making their award, shall, among other things, determine the liabilities of the parties concerned for the COSTS of the arbitration, and such determination shall be final and conclusive." If the arbitrators in their award determined that the two townships interested should pay the costs of these arbitration proceedings in equal portions, they were obliged to pay them and the COUNTY Council is in no way responsible for their reimburseme t.

2. In view of our answer to question No 1 it becomes unnecessary to reply to this.

Assessment of Joint Tenants.

99—F. G. S.—Are the following properly assessed?

No.	Name.	Occupation.	Freehold or Tenant.	Value of Property.
44	Mrs. B.	W.	F.	
45	G. C.	Laborer.	T.	\$300
46	G. C. jr.	Laborer.	T.	

As assessed both father and son have a vote at municipal elections. I would like to know if the son can be assessed as joint tenant with the father.

This is a question of fact for the consideration of the assessor when preparing his Assessment Roll, and, if from the fullest information he could obtain, he came to the conclusion that the father and son were actually joint tenants of this property, he was fully justified in assessing them as such, bracketed together with the owner, as provided in sub-section 1 of section 24 of the Assessment Act. Any person not satisfied with this assessment, could have appealed to the Municipal Court of Revision, and to the County Judge at the court held by him for the revision of the Voters' List of the municipality. (See also section 89 of the Municipal Act as to the finality of voters' lists used at municipal elections.)

Mode of Assessing Toll Roads.

100—J. S.—I want advice as to the best method of assessing company road and if they can be assessed at about their full value, as we have six passing through our township and all paying good dividends and assessed at almost nothing from \$800 up to \$2,000 when they are worth six times as much or more.

Toll roads should be assessed, so far as their value is concerned, in the same way as all other real and personal property liable to assessment, that is, "at their ACTUAL cash value, as they would be appraised in payment of a just debt from a solvent debtor." (See sub-section 1 of section 28 of the Assessment Act). As to what constitutes the assessable property of toll-road companies, and the place where it is to be assessed, see sections 32 and 33 of the Assessment Act.

Council Not Obligated to Open Streets.

101.—S. J. S.—Our village is not incorporated, but it is surveyed out in streets. Several of the streets have not been in use much and the parties owning the land have been

allowed to fence in same and have had possession for several years. Another resident comes to council meeting and demands the council to have said streets opened up. Is the council obliged to open these streets if there is no particular use for them, that is if one or more of the villagers request it?

No. It is optional with the council as to whether it passes a by-law providing for the opening of these streets or not. These streets have most likely been laid out at the instance of private parties, and have not been assumed by by-law of the council. If this is so, the council is not now liable for their maintenance and repair (see section 607 of the Municipal Act), and it would be unwise for the council to pass any by-law relating to them, unless it intends to assume them as public highways with all accompanying legal responsibilities.

General School Levy for Sections Having Two School Houses.

102—G. H. H.—If a school section have two school houses and employ two teachers, but have only one set of trustees what amount should be levied as general rate?

\$300. Sub-section 1 of section 70 of the Public Schools Act, 1901, provides that "the municipal council of every township SHALL levy and collect by assessment, etc., the sum of \$150 at least for EVERY public school, which has been kept open the whole year exclusive of vacations."

Levy of General School Rate Only Disqualifies Members of Public School Boards—Qualification on Equitable Interest.

103—GREENY. Four of our council are members of School Board. There are no special rates levied in school sections. Council levy a rate sufficient to raise \$150.00 for each section.

1. Would they be justified in taken the declaration of qualification and their seats at council board, no special rate being levied in the section they live in and are members of local board?

2. One member elect has located a lot, done the improvements required by the Government but has no deed for the lot. Was he justified in taking the declaration of qualification? He claimed he had an equitable right in the lot as he had done the improvements required, but had not applied for his deed.

1. The rate levied by municipal councils under the authority of section 70 of the Public Schools Act, 1901, is a rate levied for School Boards in the municipality and members of these School Boards are disqualified under section 5 of chapter 29 of the Ontario Statutes, 1902, from membership of the council of the municipality. The fact that the council is not required to make a levy under the authority of section 71 of the Act, does not remove the disqualification. There is nothing to prevent these parties making the prescribed declarations of office and qualification, taking their seats as members of the council, and transacting the business of the municipality.

2. The mere fact that no patent has been issued does not prevent a person, who has a sufficient equitable interest in land, qualifying upon it.

Non-Resident Pupils.—Exemption of Manufacturing Co. from Taxation.

101—H. L. B.—1. Are children whose parents live in another county and who own no property in S section but children board in S. S. either with relatives or pay board, non-resident?

2. How long can a township municipal council (with the assent of ratepayers), grant any manufacturing company exemption from taxes?

3. If only for ten years can they in any way or by any means guarantee a company a further renewal of exemption? For example say a company should ask for a twenty-five year's exemption.

1. If these children are residing temporarily in the school section, in which they attend school, while they attend and for the purpose of attending this school, and still retain their permanent place of abode at the residence of their parents, they are non-resident pupils, and their parents or guardians can be required by the trustees of the school section in which they attend school to pay fees under the authority of sub-section 2 of section 95 of the Public Schools Act, 1901. If, on the contrary, these children have become permanently domiciled with any relative or other person in the school section, visiting the home of their parents, occasionally, they are resident pupils, and the fees mentioned cannot be exacted.

2. Ten years, with the power at its expiration to renew the exemption for a further period of ten years. (See clause (g) of section 10 of chapter 33 of the Ontario Statutes, 1900.)

3. A township council has no power or authority to give any company such a guarantee as that mentioned.

Responsibility for Repair of Sidewalk in Incorporated Village.

105—S. N.—About twenty years ago there was built in our village, (which is unincorporated) a sidewalk which is now pretty dilapidated.

1. Would the council be responsible for any damage arising from its unsafe condition?

2. Could they be compelled to build new or repair and if so could they replace it with whatever kind of a walk they saw fit to put down or would it have to be with plank the same as the old one?

3. Would time make any difference? Does not the council assume all responsibility as soon as they allow the walk to be put down?

4. Could they remove it?

1. By section 606 of the Municipal Act, the councils of municipalities are bound to keep in a reasonable state of repair all highways under their respective jurisdictions. The term "highway" includes the portion of a road allowance used by pedestrians as well as that travelled by horses and vehicles. So long, therefore, as this sidewalk is allowed to remain on this road allowance, it must be kept in a reasonable condition of safety by the council of the township municipality, and, if through its lack of repair, any person meets with an accident, and is injured, the township corporation will be liable for the damages thus sustained.

2. The council cannot be COMPELLED to build a new sidewalk, but, as long as it is allowed to remain there, it should be

kept in a condition of safety. If the council deems it advisable to rebuild this sidewalk they can use such material in its construction as they see fit.

3. The lapse of time does not affect the liability of the council to keep this walk in repair so long as it is allowed to remain on the highway, and the municipality's responsibility for keeping it in repair begins as soon as the walk is first laid.

4. Yes.

Sale of Timber on Unopened Road Allowance.

106—J. R.—Council wishes to sell timber off unopened road allowance as allowed by section 649 (7) of the Municipal Act. Can it legally sell timber without first passing a by-law for opening such allowance for road? The road is not required for public use but the line on one side was run by an O. L. S. sometime ago. No other road is used in lieu of this one.

Sub-section 7 of section 640 of the Municipal Act empowers the councils of townships to pass by-laws for preserving and SELLING timber, etc., subject to the Act Respecting Timber on Public Lands. In this instance, subject to the provisions of sections 7 to 13 inclusive of chapter 32, R. S. O., 1897, the council can pass a by-law for selling the timber on this road allowance, without first passing a by-law to open the road allowance. Care must be taken, however, that the road allowance is properly located, so that there will be no encroachment upon the lands of adjoining owners.

Municipal Business Transacted by Disqualified Councillor Legal Until Election Voided.

107—POSTMASTER—The council of this township has had its first meeting. Members have taken oath of qualification and declaration of office. There are two of the members school trustees. Would the business transactions be legal with two school trustees as members of the council? If not, what steps should be taken to have new ones put in their places and whose duty to look after same?

The two members of the council who were at the time of the election school trustees, can legally transact the business of the municipality until their seats become vacant. No proceedings can be taken for the election of other persons to fill these offices until the seats held by those already elected become vacant. They may be vacated voluntarily by disclaimers, or by the courts. (See section 238 and following sections of the Municipal Act.)

Qualification of Member of Local Board of Health.—Of Clerk of Division Court.—Imposition of Tavern Licenses.

108—J. L. L.—1. Can a ratepayer who has been appointed a member of the board of health by a previous council at a salary of \$3.00 a year be elected or hold a seat on the council board without first resigning his seat on the board of health, he of course having acted on the board of health and his time unexpired?

2. If not, can he resign both and be re-elected or should the defeated candidate polling the highest number of votes be declared elected?

3. Can the clerk of a division court be a member of a municipal council?

4. Does the \$200 to which a village council can raise hotel licenses include the government's share of license fees?

1. Although the Municipal Act does not in specific terms disqualify a person under the circumstances set forth in your enquiry, still, in order to avoid all difficulties and complications, we have hitherto expressed the opinion and now adhere to it, that a member of a Local Board of Health intending to be a candidate for membership in the municipal council should resign his membership of the Local Board of Health, and have it accepted prior to Nomination Day.

2. If the candidate elected files a disclaimer under the authority of section 238 or 240 of the Municipal Act, the candidate having the next highest number of votes shall then become the member elected, as provided by section 241 of the Act.

3. Yes, if he possesses the other necessary qualifications and obtains a sufficient number of votes to elect him.

4. The amount required by a by-law of the village council passed pursuant to sub-section 1 of section 42 of the Liquor License Act to be paid for tavern or shop license, does not include the sum payable for the use of the Province under the authority of sub-section 1 of section 44 of the Act, "unless the municipality by by-law otherwise provides." (See sub-section 1 of section 44.)

Corporation Tax for Electric Lights.—Private Banker Cannot Act as Reeve.

109—G. P.—Can a corporate village tax the farmers, who live inside of the corporation, for electric lights?

2. Can a private banker act as reeve and handle the money for the village?

1. We cannot answer this question with the information we have at hand. We must at least know whether the farmers own or occupy any taxable property within the limits of the village, and the process by which the electric lighting plant was originally installed.

2. No, he would then be a person having an interest in a contract with the corporation, of whose council he is a member, and sub-section 1 of section 80 of the Municipal Act says that no such person shall be qualified to be a member of the council of any municipal corporation.

Equalization of Union School Section Assessment in Unorganized Territory.

110. E. G.—A union school section is formed partly in an organized and partly in an unorganized township. The school house is in the unorganized township. Chapter 292 section 51, S. S. I, states that the assessors are to meet and determine what proportion, etc. Sub-section 4 states that the meeting of the assessors shall be called by the assessor of the municipality in which the school house of the union section is situated. This has not been done for years. In the event of the assessor refusing to call this meeting, who can compel him to do so and how can it be done? Can the council of the organized township do anything in the matter?

The section you quote (now sub-section 1 of section 54 of the Public Schools Act 1901), does not appear to fit this case

because it requires the assessors of the two municipalities to make the equalization between the different parts of the union school section, but there is no assessor for the unorganized municipality. Sub-section 4 requires that "the meeting of the assessors for the purposes herein set forth, shall be called by the assessor of the municipality in which the school house of the union section is situated." In this case the school house of the union section is situated in the UNORGANIZED municipality, which has no assessor, so there is no person competent to call the meeting of assessors for the purpose of equalizing the assessments of the different parts of the union section under the Act. We do not see therefore that under the law as it stands at present, the organized township can do anything in the matter, or how the equalization can be made.

Mode of Assessment of Lots in Surveys.

111—J. A. L. M.—I have recently been appointed clerk of our township and later have been appointed Assessment Commissioner under Special Act with the object of causing a more perfect assessment of our municipality. During the "boom time" 10 or twelve years ago, portions of our township near the city of T. were divided into lots under Reg. Plan, a large portion of this property is vacant and unoccupied and owned by non-residents and a number of persons hold large blocks of this property. Formerly the property of each individual was assessed by giving the township lot and con., the numbers of the sub-lots and plan and the total valuation, but not the separate value of each lot. The Statute I think is plain on the matter that the value of each lot must be shown on the roll. We follow the alphabetical system of assessment by polling divisions. The property under Reg. Plan being sandwiched between farm property and in different school sections, making the assessment under the consecutive system almost impracticable. To enable us to check the assessment of lots, we make a tabulated consecutive statement of all of all lots assessed under regular plan, after the assessors have finished their work. Now I think you will understand our situation.

1. Would the assessor be complying with the statute by making the assessment in this way, lots 3, 4, 5, 6, 7, plan 1015, value per lot, \$40; value of each parcel, \$200; aggregate value, (supposing there were other parcels in the same assessment), \$800?

2. Would we be complying with the statute if we got out a special assessment roll and notice and transposed the columns so as to make it more convenient to give the value of each lot, something after this manner: The columns up to No. 6 to remain as now. Put No. 7, (S section), after dogs and make it No. 19. Then follow No. 6 with township lot and concession, total acres, number of acres cleared, built upon or vacant. Then street, lot, block, plan. Then by special column "value per lot" followed by value of each parcel, total value of real. Then three columns for personal and income, then aggregate value of all property followed by statute labor, dogs, school section and statistics?

1. We see no objection to the assessment being made in this way, provided the lots all belong to the same person. In assessing lands each lot should be assessed separately so that there may be no difficulty in ascertaining the exact amount of taxes payable in respect of each particular lot. In cases within section 29 of the Assessment Act, the mode of

assessment laid down in that section must be followed.

2. We are of the opinion that the transposition of, or alteration in the columns of the Assessment Roll suggested cannot be made, unless some special legislation is obtained enabling this municipality to do so. Sub-section 4 of section 13 of the Assessment Act provides for no latitude in the matter, but enacts that "the assessor SHALL set down in separate columns AS FOLLOWS": (giving the columns and particulars to be inserted in each) and sub-section 7 provides that "it shall be the duty of the Mayor and of the Assessment Commissioner to see that the assessors DULY perform the duties mentioned in this section." (See also section 2 of chapter 48, Ontario Statutes, 1902.)

Appointment of New Clerk—Fees of Clerk for Services at Election—Qualification of Member of Free Library Board.

112—J. H. B.—1. After the clerk has sworn in the council elect for 1903 it was moved and seconded that applications be received for the position of Clerk until the next meeting of council. Can this be legally done before the old clerk is discharged or has resigned?

2. Acting under your answer to Question No. 518 in your issue of Dec. 1902, is a clerk legally entitled to fees for services as returning officer (he not acting as D. R. O.) holding nomination meeting, posting nomination notices, swearing in D. R. O.'s and receiving returns of election?

3. Is a member of the Free Library Board disqualified from acting as auditor, the library being assisted with funds from the village treasury.

1. Yes.

2. The clerk is entitled to no extra pay for services performed in conducting the municipal elections over and above his annual salary as clerk, unless it was so stipulated at the time of the engagement of the clerk by the council.

3. We are of opinion that a member of the Free Library Board should not be appointed an auditor of the accounts of the municipality.

Qualification of Public School Trustees.

113—I. L. B.—On the 12 inst. the council elect met, took the declaration of office and took their seats. Contrary to the amended Municipal Act two of the council hold the office of school trustee. Will the business transacted by the council be legal? If not, what course would you advise me to pursue?

The business transacted by the council under the circumstances stated will be legal. The two members of the council who, at the time of their election were school trustees, can legally take part in the deliberations of the council until their seats become vacant by reason of resignations, judicial decision or otherwise. (See our answer to question No. 107 in this issue.)

Right of Persons Assessed for Church Property to Vote at School Meetings.

114—W. W.—1. Mr. A is a trustee of a church property and his name appears on the

assessment roll as such for the property. Rev. C's name also appears on the assessment roll as tenant of said property, the parsonage. Are both or either ratepayers in the same sense as intended by the school law?

2. Would either or both have the right to vote at a school meeting on any question or for the election of trustee?

3. In investigations re school disputes is the list of school voters furnished by township clerk, section 15 of the Public Schools Act, 1901, to be regarded by the inspector as a finality as to whether a voter has the right to vote or not?

1 and 2. Section 13 of the Public Schools Act, 1901, provides that "every RATEPAYER of the full age of twenty-one years, who is a public school supporter of the section for which such person is a ratepayer, etc., shall be entitled to vote at any election for school trustee or on any school question whatsoever." Sub-section 3 of section 7 of the Assessment Act exempts from taxation "every place of worship and land used in connection therewith, church yard, or burying ground." The property in this case, however, appears to be the parsonage or minister's residence, which is not exempted from assessment and taxation and should be placed on the Assessment Roll in the same manner as any other real estate in the municipality. If this property is assessed as it should be, to Mr. A. as trustee and the Rev. C. as tenant, they are liable for the taxes payable in respect of the premises; are ratepayers within the meaning of section 13 of the Public Schools Act; and as such are entitled to vote at elections of trustees and on any school question whatsoever. If, however, the assessor has erroneously omitted to place any value on these premises and no taxes are payable in respect thereof, and Mr. A. and the Rev. C. pay or are liable for no other taxes in the school section, they are not ratepayers within the meaning of section 13, and are not entitled to vote at elections of trustees or on school questions of any kind.

3. No.

Three Year Assessment in Districts—Responsibility for Non-Repair of Bridge.

115—G. F.—1. Is there any legal way in which an assessment made in a township this year can be fixed for a period longer than one year? I mean the whole assessment.

2. In case of damage resulting to any one through a defective township bridge, are the council liable if they did not know that the said bridge was in a dangerous condition?

1. Yes. The municipality being in one of the territorial districts, sub-section 2 of section 42 of chapter 225, R. S. O., 1897, is applicable. This sub-section provides that "the council may by by-law alter and fix the time for making the assessment in the municipality, and may by by-law adopt the assessment of the preceding year, as finally revised as the assessment (subject to revision, as herein provided for in the case of the first assessment) on which the rate of taxation for the year shall be levied: provided always that a new assessment shall be made within a

period of not more than three years from the date upon which the last Assessment Roll was finally revised."

2. Yes, unless the want of repair was caused by the act of some third party, in which case the municipality will not be held responsible in damages unless (1) the corporation has had express notice of the existence of the defect, or (2) it has been there so long as to warrant a jury in finding that they were aware of it, and might have remedied it. (See *McGregor vs. Township of Harwich*, 29, S. C. R., 443.)

Law as to Enlargement of Boundaries of Village.

116—S. L. M.—The village of K desires to enlarge its boundaries under section 16 of the Municipal Act. Will you kindly advise me what preliminary steps it will be necessary to take in order to obtain the order in council. The reason for the move is that the present boundary is irregular in shape and does not include valuable improved property immediately adjoining it. This property is residential and the owners enjoy all the privileges of the improvements of the town without having to bear its expenses. The present limit includes at least 100 acres less than the town is allowed by law, and the proposed addition will not add 50 acres to the area. The owners of the added property while not consenting thereto, will not actively oppose the application as the justice of it is apparent.

The village council should instruct their solicitor to frame a petition to be executed in due form by the council and forwarded to the Lieutenant-Governor, praying him to add the territory therein described to the village. The present area and population of the village should be explicitly stated in the petition and it should also fully set forth the nature and extent of the territory proposed to be added, and the reason for requesting its addition, care should be taken that the provisions of sub-sections 2 and 3 of section 12 of the Act are not transgressed in any way.

Collection of Arrears of Taxes.

117—A. C. M.—Can the tax collector appointed for 1902 collect the arrears of taxes mentioned in question No. 78 in this issue from the tenant of 1899, if he can, how should he proceed?

The collector for 1903 has no authority to enforce payment of these arrears by the tenant for 1899. The law is that taxes cannot be recovered by action except where it can be shown that they could not be recovered in any other way. See section 142 of the Assessment Act.

Opening of Road Allowance.

118—J. M.—In our township about thirty-five years ago, the council opened the blind line. It never was surveyed. About four years ago the people interested in the road wanted it surveyed, so the council made out a short agreement that all parties who had land joining blind line would move back their fences to the right place without any recompense. So they all signed the agreement, and when it was surveyed, there were two who would not move their fences. I don't think there ever was a by-law establishing the road. The road is now not more than twenty-eight feet between fences. One man planted shade trees about middle of where the centre of road ought to be.

1. Can council compel these parties to move their fences to the right place without any recompense?

2. Is it legal to establish a road three rods wide, this being all that was asked by the people that owned the land?

3. Is it legal for the surveyor to run line when two men show him the stake on sideroad No. 3 and another on No. 6 sideroad, dividing lots between those sideroads where the blind line is, or should the surveyor find the line himself or what is the legal way?

1. Assuming that the "blind line" is an original road allowance and subject to the provisions of section 642 of the Municipal Act, the council can compel all owners of land adjoining this road allowance to move their fences to the proper line. The council should first, however, be satisfied that it has located the road allowance in the proper place.

2. Section 620 of the Municipal Act provides that "no municipal council, except the council of a city or town, shall lay out any road or street more than 100 or less than 66 feet in width, except where an existing road or street is widened, or unless with the permission of the council of the county in which the municipality is situated, but any road, when altered, may be of the same width as formerly."

3. Sub-section 1 of section 39 of The Surveys Act (R. S. O., 1897, Chap. 181), provides that "all land surveyors employed in establishing or re-establishing the boundaries of any road, etc., shown on the plans or surveys mentioned in this section, shall follow the method adopted in making the original survey of the same, etc." Section 41 provides that for better ascertaining the original limits of any township, concession, etc., every land surveyor, etc., shall and may administer an oath to any person concerning any boundary, post, or monument, or any original land mark, etc., and section 42 prescribes the method in which this evidence is to be taken and preserved. If the surveyor in this case deems the evidence of the three men as to the location of the stakes on sideroads Nos. 3 and 6 sufficient to enable him to define the limits of this road allowance, he has a legal right to act on it in making his survey, but his survey is not binding and conclusive upon the parties interested.

Liability for Payment of School Debenture.

119—J. B.—Some years ago our village built a new public school house to pay for which debentures were issued. A certain property was at that time owned by a separate school supporter. As we have a separate school in the village, said property was not liable for the debenture tax. The property is now owned by a public school supporter. Is he liable now for said debenture tax?

Yes. The land is liable now for its proportionate share of the levy annually made to meet the debentures as they fall due. It is exempt from payment of this and other public school rates only so long as the owner or tenant is paying his school taxes towards the support of a Separate school under the provisions of the statutes in that behalf.

Election by Resignations.

120—H. G. T.—At the municipal elections held on the 5th of January, 1903, six candidates which for convenience we will call A. B. C. D. E. F. ran for councillors, four only being required as this is an incorporated village. Of the six Mr. A. and Mr. F. secured the smallest number of votes and of course the remaining four were declared elected by the Returning Officer. Next day it was learned that one of them Mr. B. was a member of the Public School Board and therefore disqualified. He (Mr. B.) then disclaimed his right to the seat and Mr. F. having the next highest number of votes was declared elected, but Mr. F. did not like to accept the seat because the electors did not elect him and refused to accept the seat and disclaimed his right thereto without having made the declaration of office or qualification. Under the circumstances is Mr. A. entitled to the seat and should the Returning Officer declare him elected or should there be a new election to fill the place vacated by Mr. F.?

Under these circumstances Mr. A. is entitled to the seat and should be declared elected thereto by the returning officer. In the case of *Regina ex Rel Percy v. Worth* (23 O. R. 688), it was held that what took place constituted an election of the respondent and entitled him to the seat, the circumstances were as follows: At an election under the Municipal Act, (then 55 Vic., Chap. 42), for a deputy reeve of a town, there were three candidates, and after the election and before the first meeting of the council, the two who had received the highest number of votes SUCCESSIVELY disclaimed, whereupon the remaining candidate who had received the lowest number of votes, made the declaration of office and took his seat. The candidate who had received the highest number of votes made a motion in the nature of a *quo warranto* to have it declared that there was no election and that the seat was vacant, with the above result.

Control of Pathmasters.

121—J. B.—Has a council power to compel pathmasters by by-law to keep the roads open during the winter season? If so, must the council furnish him with money to do so or can they compel the ratepayers to do so by statute labor?

Sub-section 3 of section 537 of the Municipal Act empowers the councils of townships to pass by-laws "for appointing overseers of highways or pathmasters to perform the duty of making and keeping open township roads during the season of sleighing in each year. Such overseers and pathmasters shall have full power to call out persons liable to perform statute labor within their respective municipalities, to assist in keeping open such roads, and they may give to persons so employed certificates of having performed statute labor to the amount of the day's work done; and such persons shall be allowed for such work in their next season's statute labor."

Owing to the large number of questions received this month 29 have to be held for insertion in our next issue.