

THE MUNICIPAL WORLD

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Contents:

	PAGE
Editorial Notes.....	18
Ottawa's Road Convention.....	18
Actions for Damages.....	19
Nobility of Municipal Work.....	20
Sewage Disposal.....	20
Question Drawer—	
38 Justice of the Peace Qualified as Councillor.....	
39 Non-Resident's Claim to Damages for Sheep Killed by Dogs.....	
40 Members of New Council Should Take Oath of Office—Nominator and Seconder Should be Present at Nomination Meeting.—Councillor Cannot be also Member of Local Board of Health.....	
41 Apportionment of School Moneys.....	
42 By-Law Commuting Statute Labor Need not be Submitted to Electors.....	
43 Qualification of Unassessed Party.....	
44 Submission of Commutation of Statute Labor to Electors not Necessary.....	
45 Collection of Taxes when Property Sold after Court of Revision.....	
46 Closing Old Road and Opening New.....	
47 Election of Public School Trustee.—Married Woman's Right to Vote for Public School Trustee.....	
48 Nomination Proceedings.....	
49 A Drain on Government Lands.....	
50 Trustees Must Furnish School Accommodation for Barnardo Boy.—Rights of Non-Resident Children.....	
51 Candidate who has Filed Written Resignation Cannot Withdraw.....	
52 Liability for School Taxes.—For Statute Labor.—Contents of Tax Notices.....	
53 Proceeding at Nomination Meeting.....	
54 Position of Council when Expenditure Exceeds Estimates.....	
55 Amount of Fees.....	
56 Proceedings at Nomination Meeting—Qualification of Nominee.....	
57 Collector's Duties — Meaning of "Execution".....	
58 Township Council in Organized Territory has no Power to Pass By-Laws Imposing Pedlars' Licenses.....	
59 Voter Can Select Oath—Deputy-Returning Officer's Duties—Council Cannot Pass the By-Law.....	
60 Municipality Not Liable.....	
61 Collector Not Bound to Send Receipt—By-Law Regulating Time for Payment of taxes—Councils Duties in Employment of Engineer.....	
62 Council Cannot Let Municipal Offices by Tender.....	
63 Law as to Application of Tenants' Taxes for Separate School Purposes.....	
64 Collector's Authority to Distrain.....	
65 Error in Treasurer's Report to Bureau of Industries.....	
66 Auditor's Qualifications.....	
67 Alteration of Polling Sub-Division—Not Exempt from Payment of School Taxes.....	
68 Casting Vote of Secretary of School Board—Duties of Chairman—Casting Vote when Trustees Elected by Ballot.....	
69 Person Appointed Clerk Should not be Under any Other Contract with the Corporation—Liability of Agricultural Society Under Line Fences Act.....	
70 Must Support the Nearest Separate School.....	
71 Sheriff Can Qualify as Water Commis-	

Calendar for February and March, 1902.

Legal, Educational, Municipal and Other Appointments.

- 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 Roll 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, Section 152.
5. Make return of deaths by Contagious Diseases registered during January.—R. S. O., Chapter 45, Section 11.
First meeting of Board of Education, at seven p. m., or such other hour as may have been fixed by resolution of former Board at the usual place of meeting of such Board.—High Schools Act, Section 15 (1).
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.—Separate School Act, Section 42.
Inspector's Annual Reports to the Department due.—Public School Act, Section 87, (5).
Financial Statement of Teachers' Association to the Department due.

72 Restraint of Cattle Running at Large	73 One Person Can Legally Hold These Offices.....	74 Business Partner of Councillor Can be Appointed Collector—Acts of Council When Some Members Disqualified.....	75 Reeve of Village Can Move and Second Motions.....	76 Detaching Farm Lands From Incorporated Village.....	77 Remuneration of Village Councillors.....	78 Powers of Municipal Councils as to Ferries.....	79 Can Doctor, Member of Council, be Appointed Medical Health Officer?.....	80 Manager of Local Branch of Bank Can be Municipal Auditor.....	81 Powers of Township Councils to Pass By-Laws for Removal of Snow from Sidewalks.....	82 Form of By-Law Appointing Members of Local Board of Health.....	83 Tenders for New School-House.....	84 Maintenance of Town Line by Adjoining Municipalities.....	85 Tenure of Office of Township Officials—Deed of Road to Railway Company.....	86 Salaries of Medical Health Officers—Ex-Officio Members—Medical Health Association.....	87 Enforcement of Performance of Statute Labor in Districts—Duties of Statute Labor Commissioners.....	88 Payment, for Necessaries Supplied Persons Quarantined—Placarding Infected Houses—Enforcement of Vaccination—Chairman of Board has Casting	Vote—Doctor's Fees—Oath of member of L. B. of H.—Peculiar Conduct.....	89 A By-Law Allowing Discount and Charging Percentage on Payment of Taxes	90 Sale of Free Grant Lands for Taxes.....	91 Township Council Can Exempt Electric Railways from Taxation.....	92 Time Within Which Village Audit Should be Made.....	93 Appointment and Dismissal of Engineer Under the Ditches and Watercourses Act.....	94 This Man Should Pay His Taxes.....	95 Remission of School Taxes to Parents of Children Attending School in Adjoining Section.....	96 Remedy for Trustees' Failure to Keep School Open the Whole Year.....	97 Township Grants to Sick Children's Hospital Legal.....	98 Assessment of Co. for Support of Protestant Separate School.....	99 Taxes of Telephone Co.....	100 A County By Law for the Improvement of Highways.....	101 A Council Contract for More Than a Rear—Cost of Crushing Stone.....	102 Abolition of Municipal Toll-Gate.....	103 Tavern License.....	104 Payment of Constable at Election.....	105 Voter Misnamed or Whose Property is Wrongly described Can Vote.....	106 A Partner or Contractor with the Council Disqualified as Councillor.....	107 Township Council Cannot Pay These Costs.....	108 County Councils' Borrowing Powers .. Township of Sidney.....	32
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The Municipal World

PUBLISHED MONTHLY

In the Interests of every department of the Municipal Institutions of Ontario.

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ST. THOMAS, FEBRUARY 1, 1902.

Mr. Jones I. Jenkins has been appointed clerk of the township of King, in succession to Mr. Chas. W. Patterson, deceased.

* * *

Mr. H. W. Lawlor, barrister, has resigned the office of town clerk of Hawkesbury and Mr. Denis Doyle has been appointed to the office in his stead.

* * *

Mr. T. J. Ryan, who, for the past three years, has very acceptably filled the office of mayor of the town of Sudbury, decided, this year, to retire from office.

* * *

The voting machines are being strangled at their birth. The Syracuse common council, last week, voted to abolish the sixty voting machines which have been in use there some years, alleging that they were the cause of disfranchising one thousand voters at the late city elections.

* * *

Mr. A. W. Trewin, who, for the past fifteen years, has faithfully and efficiently filled the office of clerk of the township of Tehkummah, in the District of Manitoulin, has resigned, consequent on his intended removal to the Slate River Valley, in the neighborhood of Fort William and Port Arthur.

* * *

At a banquet, recently given by Mayor Hamill, to the council, clerk, treasurer and press of the town of Meaford, town clerk Albery was presented, by his worship, with "Seager's Magistrates' Manual" as a mark of the appreciation of the mayor and council of his past services as town clerk. Mr. Albery made a feeling and suitable reply.

Ottawa's Next Road Convention.

The Eastern Ontario Good Roads Association has issued an invitation to those interested in the question of road improvement to attend a convention to be held at Ottawa, on the 14th and 15th of March. This association was formed about a year ago, and is composed largely of representative municipal men, from the eastern counties of the province. When the association was formed the agitation for improved methods in roadmaking had gained some ground, and when the call for a conference was issued it was most heartily received, and the liberal response was shown by a splendid meeting of the best municipal men of the section.

Those who accepted office in the new organization were all men willing to sacrifice the necessary time, labor and means, to make the work of the association as effective as possible, with the result that possibly no organization of its kind had accomplished so much in the first year of its existence. Mr. H. B. Cowan, editor of the *Ottawa Valley Journal* was largely instrumental, through the columns of his paper, in awakening the general interest that secured so large a convention for organization. He assumed the duties of secretary, and much of the successful work of the organization is due to the careful planning, zeal and enterprise. The large amount of work involved in organizing and managing the good roads train, which was conducted by the association, the large amount of detail arrangement in securing funds, labor and material, necessarily involved a great amount of work, which was cheerfully undertaken and successfully carried out.

This train traversing the eastern part of the province, building sample roads as it passed along, was a revelation to many people, in not only demonstrating the correct principles of road construction, but clearly showing on their own ground how easily, quickly and cheaply perfectly good roads can be made by employing the necessary implements and properly managing them. Graders, crushers and rollers were used under varying conditions, in different soils, and handling different materials, showing in actual practice, work, which to the average mind, would otherwise appear almost impossible.

This work of illustration has done a wonderful amount towards advancing the agitation for better methods, better system, more care and skill in doing the work, and the employment of better implements and their more careful management. A very important part of the work of the association was, after deciding upon the wisdom of using concrete for sluices, culverts, etc., to engage an experienced man to go about among the townships, making samples of concrete pipe and concrete arches, practically showing the local men how to do this work. The great benefit resulting from this one move can be appreciated by other sections which

have gained their experience at the cost of many failures, defective work and large outlay.

In fact the attention of the eastern public has been called to the many economic phases of the road question by this association during the last year as never before, and now they are beginning to realize what a big problem remains to be solved and how much every ratepayer is financially and otherwise interested. If other parts of the province were to copy the example of the eastern counties and form district associations comprising eight or ten counties benefits would result which cannot be otherwise obtained.

The marvellous good done by the dairy livestock and kindred associations is felt by the country as a whole, and appreciated by every individual directly affected. The laying down of proper plans, purchasing of necessary implements, the proper management, providing of a just system for levying road-tax, preparing of necessary specifications for doing work, and employing competent men to direct operations, will all work economies not now dreamed of by the average tax-payer.

The Eastern Good Roads Association while designed to serve a certain district only, have expressed a desire to have people from all over the province join them at this meeting, and there can be no disputing the fact that the small amount required to send a live delegate from each municipality will be returned to them many fold, and it is to be hoped that every municipal council in the eastern district, and as many more as can possibly do so, will be represented.

The time for stereotyped speeches and papers on the benefits of good roads has gone by and these will form no part of the programme. But the whole time of the convention, it is understood, will be devoted to a discussion of how best to manage our roads and improve them with the means at our disposal. How can we manage our roads so that their condition will be improved to the extent of every dollar and every cent spent upon them?

A by-law to commute statute labor in the township of Cumberland, similar to that passed by the council of the township of Pelham, except that there are only two divisions, north and south, at 50 cents per day, was submitted to the ratepayers at the election January 6th and was carried by 110 on a two-third vote of the municipality but has not been finally adopted yet.

* * *

When public interest requires that party government shall be excluded from municipal councils and that appointments be made from among the most meritorious, irrespective of their political or religious opinions, it is the duty of every member in making appointments, promotions or removals to conform to these interests.

Actions Against Municipal Corporations for Damages Caused by Accidents on Highways.

The frequent decisions of the courts awarding damages for accidents caused by the non-repair of highways is always a subject for consideration by representatives of the people in our municipal councils and local legislatures. A few years ago the trial of such actions by jury was thought to be the result of prejudice against municipal corporations and their representatives. The law was changed and for a few years past actions against municipalities have been tried by the judge without a jury. The cause for complaint still remains, and councils are wondering whether they should ask for a return to the jury system or not. Under the present state of the law municipalities are practically insuring against accident, everyone travelling on the highways.

ORIGIN OF LIABILITY.

This view of the question has led us to investigate the origin of the section in the Municipal Act imposing the liability. In the year 1850 Sir Francis Hincks introduced in the legislature a bill "to make better provision with regard to the repairing of roads within the limits of incorporated cities and towns and of roads and bridges which, having been under control of the Minister of Public Works may hereafter be released from such control."

This became law on the tenth of August of the same year. Civil liability for failure to keep the road in repair is introduced in the following words: "That such corporation shall be also civilly responsible for all damages which may be sustained by any party by reason of such default, provided the action for the recovery of the damages be brought within three months after the same shall have been sustained but not otherwise." This was first applied to townships in the Municipal Act, 1859. It is difficult at this late date to give reasons for the enactment as the debates in the house were not published. The "Globe" editorial of first of October, 1850, throws some light on the state of public opinion which appears to have been very strongly in favor of toll roads. The following extract from the editorial will be interesting in view of present day opinions of road maintenance and control.

"And still further, we are well satisfied that the public will be much better served as regards the goodness of the roads, by private companies than by public bodies. There is no good reason that we know of, to believe that the road management of municipal councils would be any better than that of the general government and everyone knows what the fruit of that has been for the last eight years. The same absence of individual responsibility would exist, the same change of system as the tide of popularity changed the men in office, and the effort by both parties to extract political capital from the road policy of their opponents. As long as the roads are in the hands of political bodies, there will be one party to cover all this management, and another to picture everything connected with them as bad. The only clear way to have good roads, in our opinion, is to place them in the hands of private parties

under stringent regulations; there can be no favoritism, no party manœuvring, no shortness of funds pleaded. Private companies have no friends, and soon find the necessity of keeping well with the people. You may rave at Mr. Warden or at Mr. Mayor for six months at a stretch about a bad road, and make no more impression than if you spoke to the winds." "Only think of the flaming letters that would appear in the papers calling on the authorities to compel the contractor to fulfill his agreement. Who would think of attacking a warden or a mayor for neglecting the roads, unless, indeed, the annual election were close at hand? The warden and mayor are only public officers having no more interest in the roads than any other citizen; but a contractor's feelings could be touched at once—his pocket would be affected, and that, we fear, is a more sensitive locality with most men. There is another great hold over private companies—it is cheaper to keep up roads systematically good, than to let them fall into and remain in bad condition.

In expressing our opinion thus stongly in favor of private road companies, we assume that such companies are under the strictest surveillance, that an easy remedy is provided in case of the roads becoming dilapidated, and that the government have the power of "assuming them should the public interest hereafter demand it."

Very little attention was paid to the amendment making the municipalities liable for accidents. The rapid increase in the number of toll roads placed the main highways out of municipal control and relieved them to a large extent of liability for non-repair. During recent years when most of the old roads and many new ones are under the control of the councils, action for damages have become so numerous in some localities that public attention has been directed to the misapplication of corporation funds for law costs and damages.

THE PRESENT LAW.

There is no doubt about the liability of the municipality under the present law. The Privy Council in *Picton and Geldert (Appeal Cases, 1893)* decides "that public corporations to which an obligation to keep public roads and bridges in repair has been transferred are not liable to an action in respect of mere non-feasance unless the legislature has shown an intention to impose such liability upon them.

By the common law of England, which is also that of Nova Scotia public bodies charged with the duty of keeping roads and bridges in repair, and liable to indictment for a breach of this duty were nevertheless not liable to an action for damages at the suit of the person who had suffered injury from their failure to keep the roads and bridges in proper repair. It must now be taken as settled law that a transfer to a public corporation of the obligation to repair does not of itself render such corporation liable to an action in respect of mere non-feasance—in order to establish such liability it must be shown that the legislature has used such language indicating an intention "that this liability shall be imposed." There appears to have been some misunderstanding in reference to the section making municipalities liable for damages—it was no doubt copied from the laws of one of the United States and afterwards look-

ed upon as being in accordance with English law.

Mr. Biggar in his *Municipal Manual* at page 833 says:

"In former editions of the *Municipal Manual* the learned editors seem to have thought—apparently from some dicta of Adam Wilson in county of Wellington vs. Wilson, and other cases that the common law obligation of parishes in England to repair their highways—necessarily involved the existence of a civil liability to any one who might sustain injury owing to the non-repair of such highway. But this was never the case and it may now be regarded as settled law that a person injured by a mere non-repair of a road cannot sue the municipality unless a right of action is given by "the legislature."

The only relief municipalities have been granted since the enactment of 1850 is provided by subsection 2 of section 606 of the Municipal Act, which reads as follows:

(2) No municipal corporation shall be liable for accidents arising from persons falling, owing to snow or ice upon the walks, unless in case of gross negligence by the corporation."

PROPOSED AMENDMENT.

This section was passed in 1895 and is a precedent for the suggestion that section 606 of the Municipal Act, should be amended by striking out the words which make corporations civilly responsible for damages. Persons travelling on highways should do so at their own risk. If they do not wish to assume the risk, councillors should be elected who will improve the roads so that accidents owing to non-repair, will be reduced to a minimum—in no other way should the municipality be called upon to protect the users of the highways.

EFFECT OF PROPOSED AMENDMENT.

If the present Municipal Act, section 606, was amended as above proposed, the remedy by indictment for punishing municipal corporations for failure to keep their highways in repair, would still exist.

The Criminal Code, 1892, articles 191 and 192, which apply to all municipalities, provide that

"A common nuisance is an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all His Majesty's subjects, and

"Every one is guilty of an indictable offence, and liable to one year's imprisonment or a fine, who commits any common nuisance which endangers the lives, safety or health of the public, or which occasions injury to the person of any individual"

The Consolidated Statute of Canada, chapter 85, section 3, applies to cities and towns only, and declares that

"If the municipal council of any city or town shall fail to keep in repair any such road, street or highway, within the limits thereof, such default shall be a misdemeanor, for which such corporation shall be punished by fine, in the discretion of the court before whom the conviction shall be had."

In addition to the above, damages are (and would be, notwithstanding the enact-

ment of the suggested amendments) recoverable by any person injured through the *misfeasance* of the corporation, arising either from its having exceeded its statutory powers, or having executed them so negligently as to cause nuisance or unnecessary damage. *Misfeasance* is the doing something which is unlawful, or the doing in an unlawful (*i. e.*, a negligent or improper) manner, something which would be lawful, if properly done. It should not be confounded with *non-feasance*, which means leaving undone a substantive duty imposed by law.

Sewage Disposal.

A large deputation, representing several important cities and towns, waited on the government on Jan. 22nd, and asked that a station be established where experiments may be carried on in different methods of sewage disposal. The delegation came in response to a circular from the town of Berlin, and was introduced by Mr. L. J. Breithaupt, M. P. P. Mr. Brown, Mr. Fox and other members were present, as well as the following:—Mayor Eden, Ald. Kranz, Ald. Honsberger and Mr. George Lang, Berlin; Mayor Wood and Ald. Leitch, Brantford; Mayor Stamp and Ald. Savage, Stratford; Mayor Mearns, and Dr. Rice, Woodstock; Mayor Kennedy and Ald. Barber, Guelph; Mayor Watson, Listowel; Mayor Ingle and Ald. Burrows, Lindsay; Mayor Hawke and Ald. Jaffray, Galt.

It was pointed out by the speakers that the problem of sewage disposal was becoming more important and many towns found difficulty in preventing dangerous outbreaks of disease, and the creation of nuisances in their neighborhood. In this connection Stratford has achieved considerable success in the use of the septic tank method.

The various speakers cited instances of the pollution of streams by sewage. Some industries such as tanneries and pork factories, labored under great difficulties in disposing of their refuse.

Ald. Jaffray, of Galt, urged the appointment of a consulting engineer to advise inland towns in this matter.

The Premier, in reply, said the deputation had impressed him very favorably.

It was a very interesting and very important subject. It was not only interesting to inland towns, but to lakeside towns as well. He was of the opinion that the septic tank method was the cheaper. He could not say what they would do, but he would bring the matter before his colleagues and decide very shortly what could be done.

M. S. E. Mitchell has been clerk of the county of Renfrew for thirty four years, and has never missed a meeting of the council. He has been a Justice of the Peace for a quarter of a century, and police magistrate for thirty-nine years.

Nobility of Municipal Work.

In a recent speech delivered by Lord Roseberry, at Swansea, England, he declared that there was more satisfaction in municipal than parliamentary life and that all men should accept a share of the responsibility. He further states that municipal and elective institutions were of great value when properly appreciated. The first great question related to civic government was the rates. The popular cry was for low taxes, "but people," he said, "are apt to forget how very largely the wants of the community have developed, that everybody wants their town to be beautiful, the best laid out, the most convenient. We are all in favor of economy, except in regard to our own particular hobby. There are forty millions of people in this country, and there are about forty millions of hobbies. You will observe that everybody wanting his own hobby first writes to the local paper to ventilate it, to demand an immediate and large expenditure upon it, and, in the same breath, immediately afterwards complains bitterly of the expenditure already. Well, I think all that is natural enough, but I am also one of those who think that it ought to be possible for our municipal bodies to lay clearly before the community how they stand with regard to their accounts, and with regard to their projects. When a community wishes for some new toy or some new object of utility, it ought to be possible for the town council or the municipal body to lay before it exactly how the town financially stands, and how far able it is to afford it.

POPULAR VOTE.

"I think often with regard to a large question it would be a good thing, if, after affording information, they took a public vote of the community as to whether it wished to proceed with the expenditure or not. At any rate, I am sure of this: the governing body, the elected body, of the community are bound to make clear to their electors exactly what they are going to spend, for otherwise it is extremely obvious at the end of the term of office, the elected body finds itself in a position which it did not anticipate, and which it extremely regrets.

"I believe," continued Lord Roseberry, "that the municipal ratepayer is always straining at gnats and swallowing camels. How are we to prevent it? I think every town ought to have a ratepayer's association of a most efficient character. Every town in the United Kingdom, every community which has an elected body to govern it should have a ratepayer's association, it must not be a simply idle vacuous body paying a yearly subscription, and thinking that it has relieved itself of all responsibility by its own formation. It ought to be a body full of activity, full of inquisitiveness, and with an elected committee of vigilance at the head of it.

TWO PLAIN DUTIES.

"I think there are two plain and

obvious duties which are inherent in every British citizen and subject. The first is to take part, if necessary, in the defence of the country, and, in the second place, not to avoid or to shirk any public or municipal duty which may fall upon him. I believe it to be the plain and obvious duty of every man of capacity, education and public spirit to try and take part in the government of the place in which he lives. If he cannot claim a clear and obvious excuse for not taking that course, if it be merely want of time—and everybody wants time for what they do not want to do—if it be merely "want of time," I think he should stand self-condemned in the hall of his own conscience. I wish that my voice could reach far beyond Swansea; I wish it could extend to every municipality in the kingdom, and impress upon every man, however high his position, however great his wealth, however consummate his talents may be, the importance and nobility of municipal work. There is one observation I would like to make about this question of municipal government; it is a remark which always makes everybody extremely angry when they listen to it, particularly if they are connected with parliament, and therefore I venture to make it again. I hold most deliberately and conscientiously that, except in regard to one or two people in parliament—and they are chiefly ministers in high positions—that a man gets much more satisfaction out of municipal than out of parliamentary work."

Numerous By-Laws Carried in Ontario.

Many municipalities in Ontario were interested in by-laws submitted in January in connection with proposed industries or extensive improvements. Among those voted on the following carried: Hamilton, \$30,000 for sewers; Hamilton, \$25,000, for stock in the Hamilton and Caledonia electric railway; Ayr, \$3,000 for permanent sidewalks; Carleton Place, to reduce licenses of saloons and hotels; Chatham, \$25,000, a loan to a new industry; Collingwood, \$20,000, a loan to J. J. Zock Manufacturing Company; Collingwood, \$8,000, a loan to Stewart & Cameron, of Strathroy, to erect a grist mill; Galt, free site for sugar factory; Guelph, majority for municipal ownership; Kincardine, bonuses and exemptions for furniture and chair factories; Meaford, \$16,000 for cabinet factory; Milton, civic control of electric lighting; New Hamburg, felt works; Oakville, local option; Ottawa, a municipal system of telephones, taxation not to exceed one mill in the dollar to support the hospitals, and abolishing the parks board; Peterborough, \$230,000, to purchase Peterborough Waterworks Company; Petrolia, exemption of pork factory; Sandwich, exempting Saginaw Lumber and Salt Company and J. H. Bishop Company from taxation; Seaforth, \$8,000, for drainage; Walkerton, grant to beet sugar company; Wiarton, \$25,000, for beet sugar company.

Question Drawer.

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

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

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

Justice of the Peace Qualified as Councillor.

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

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

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

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

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

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

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

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

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

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

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

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

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

Apportionment of School Moneys.

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

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

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

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

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

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

Qualification of Unassessed Party.

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

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

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

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

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

Submission of Commutation of Statute Labor to Electors not Necessary.

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

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

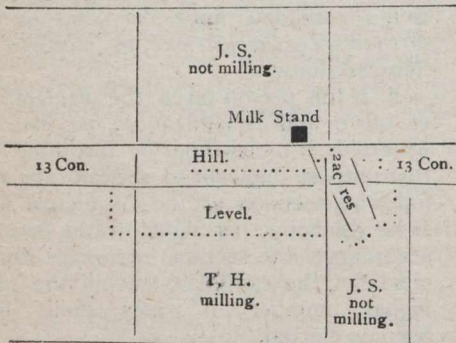
Collection of Taxes When Property Sold After Court of Revision.

45—C. H. M.—A tract of land was owned and assessed to Jones in 1901, who sold the same May 10, 1901, and gave possession, after court of revision, to Brown. Collector served demand on Brown, who claims Jones should pay a share. No agreement between them as to who shall pay taxes. Both have goods in township though none on land in question. Of whom should collector collect taxes?

The goods and chattels belonging to or in the possession of Jones wherever found within the county within which the local municipality lies, are liable to distress for these taxes, since he is the person who is actually assessed for the premises, and whose name appears upon the collector's roll for the year as liable therefor (see section 135 of the Assessment Act, subsection 1, clause 1). The goods and chattels of the present owner of the premises may also be distrained, if they are actually found on the premises, whether such owner is assessed in respect of the premises or not. See clause 3.

Closing Old Road and Opening New.

46 COUNCILLOR—If the council makes a road round a hill, can they also stop up the road over the hill or will they have to keep both roads open on account of it being a milk-road and a milk stand on the top of hill, or can the cheese company force J. S. to put his milk on the road, it being not more than two acres? The dispute is that the council will have to keep the hill open on account of it being on a concession line, and that J. S. can force the cheese company to go up the hill for this milk and he has land on both sides of the road, which you will see by map. You will also see that by going around it saves two bad hills, one going and one coming.



It is discretionary with the council whether they stop up the old road and open the new one or not. If the council considers that it is in the best interests of the community to do so, they may pass a by-law pursuant to section 637 of the Municipal Act, closing and stopping up the old road and opening the new one after having taken the preliminary steps set forth in section 632 of the Act. The provisions of the last mentioned section must be strictly followed.

Election of Public School Trustees.—Married Woman's Right to Vote for Public School Trustees.

47—T. W. S.—The municipal council in our village conducted the election for three public school trustees. Five candidates entered the election field. One of the three successful candidates is complained of on the ground that his nomination paper was seconded by a tenant whom he considers is not a ratepayer. As clerk

I did not consider this seconder as entitled to vote at a trustee election, and he did not present himself to vote. He is entered on the last revised assessment roll as a tenant to a certain property, and no value is assigned to same property opposite his name on said roll. The owner of the property is entered on the second line above the tenant, and it is opposite the owner's name that the extension of value is given to the property. The names, owner and tenant, are not coupled together on the roll, and consequently the tenant could not, in my mind, swear that "he is a ratepayer." "Ratepayer" shall mean any person entered on the last revised assessment roll of the school section (the municipality) for public school rates. This tenant in question is not entered on the roll for a single rate of any kind.

1. Is the nomination paper in question a legal or illegal one?
2. If it is illegal, can the candidate elected legally take his seat at the school board?
3. If the elected candidate cannot legally take his seat at the school board, can the candidate who obtained the next highest number of votes claim his seat, and if so, what would be his mode of procedure?
4. Can a man and wife, who are assessed, bracketed together, the wife as owner, the husband as tenant, both vote at a school trustee election?

1. Subsection 1 of section 60 of the Public Schools Act provides that a meeting of the ratepayers of an incorporated village for the nomination of candidates for the office of public school trustees shall take place at noon on the last Wednesday in December, etc. This is to be a meeting of the ratepayers as defined by subsection 7 of section 2 of the Act, and no one who does not come within that definition has any right to participate in its proceedings. The person who seconded the nomination paper you mention was not a ratepayer within the meaning of this subsection, and had no right to sign any nomination paper, consequently the candidate, whose election is complained of was not properly placed in nomination; but we think that section 204 of the Municipal Act may be invoked in support of the election and that the court will not set it aside.

2. The candidate can legally take his seat at the school board and retain it until the election is avoided; but, for the reasons stated, we do not think that the court will avoid it.

3. In case the election is contested, as provided by section 63 of the Act, it rests with the county judge, who hears the matter, to say whether the candidate having the next highest number of votes, or any other candidate, has a right to the seat when and if he declares it vacant. (See subsection 2 of section 63.)

4. By section 13 of the Public Schools Act, 1901, every ratepayer as mentioned in this section, is entitled to vote on any school question whatsoever. A married woman is not excepted, so if the married woman mentioned, and her husband are ratepayers as defined by subsection 7 of section 2 of the Public Schools Act, and respectively possess the qualifications set forth in section 13 of the Act, they are both entitled to vote at an election of school trustees.

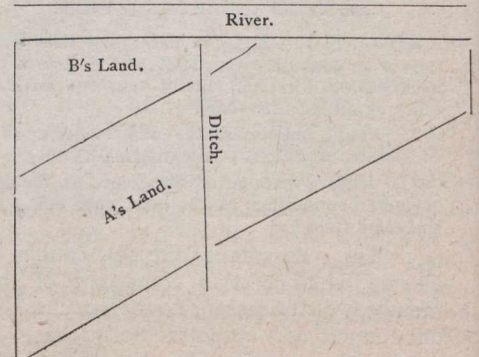
Nomination Proceedings.

48—J. H. T.—At our nominations the clerk received nominations, the hour was 7 o'clock and of course the law allows one hour for nomination. At about ten minutes past eight the clerk was open to receive resignations until all had resigned for council but one. One other was persuaded to stand and it was claimed as it was after the hour, his resignation was not in order only by writing and a witness. In the Revised Statutes, page 2,401, near the top of the page we find it says, immediately at close of nomination hour, it is the duty of the clerk, when only one for an office is nominated that he should declare that one elected. When the party in question resigned verbally after 8 o'clock, leaving the office open, then when it was pressed on him that it was not a resignation unless in writing, he allowed him to stand as one elected, then afterward on some others raising objections he considered him not elected. By allowing him to stand elected there would be a reeve by election and two by acclamation for council. Now by this last decision only one reeve and one councillor, therefore council cannot meet and do business, and clerk is calling another nomination. Was that resignation after the hour legal or not when not in writing?

In re E. J. Parke, Police Magistrate of the City of London (30 Ont. R. p., page 498), it was held by the divisional court that the provision in subsection 2 of section 128 of the Municipal Act, which provides for the closing of the meeting for the nomination of candidate for municipal offices after the lapse of one hour, only applies where not more than one candidate is proposed, subsection 3 applying where more than one candidate is proposed, in which case no time limit is prescribed. We infer, however, that in your case, the clerk or returning officer closed the nomination meeting at eight o'clock, p. m., this being the case, all resignations after that time should have been in writing, signed by the retiring candidates, respectively, in the presence of a witness and delivered to the clerk of the municipality within the time mentioned in the Act. If this was not done in the case of the candidates you mention, he never legally resigned his candidature, and should be declared elected by the returning officer, and another election held to complete the number of councillors, in the manner prescribed in the Municipal Act.

A Drain on Government Lands.

49—G. P.—There is a ditch running through A's and B's land. A cleaned it out through his land, wanted to clean it out through B's, which is the outlet. B refused to let him do it or to



do it himself. A came to council for an outlet. Please inform me of the legal proceedings.

Is it council's place to open ditch, and who pays for same? A's and B's land is government reserve, both pay taxes. B's share of ditch is about twelve rods. There is also other water emptying into this ditch which is not government reserve.

The facts of this case are not stated clearly enough to enable us to say whether A or B is entitled to initiate proceedings under the Ditches and Water-courses Act, (R. S. O., 1887, chapter 285). If they are, the remedy is, of course, under that Act. So far as the council is concerned, it should not do anything in the matter.

Trustees Must Furnish School Accommodation for Barnardo Boy.—Rights of Non-Resident Children.

50—F. A. E.—1. Must we provide schooling for a Barnardo boy free?

2. If they should pay, to whom shall we look for pay, and at what rate per month?

3. And for other non-residents, how should we act towards them?

1. In the case of Hall vs. the Board of Trustees for school section No. 2 of the township of Stisted, 28 O. R., 127, affirmed by 24 A. R., 476, the court held that the trustees were not bound to provide accommodation for a child, under the same circumstances as in this case, but that case was decided under the Act of 1891, which provided that the trustees should provide adequate accommodation for two-thirds of the children between the ages of five and sixteen years whose parents or guardians were residents of the section. In 1896, however, the legislature amended the Public Schools Act, making it the duty of trustees to provide adequate accommodation for all the children of the supporters of public schools between the ages of five and sixteen years, resident in the municipality (in the case of rural schools, for two-thirds of such children resident in the section) as ascertained by the census taken by the municipal council for the next preceding year. This amendment, we have no doubt, was made in consequence of the refusal of the trustees of the above school section to admit a Barnardo child into the school as a pupil. As the law now stands, trustees must admit all pupils who are resident within the section into the school free of charge subject, of course to the two thirds limitation above mentioned in the case of rural schools.

2. Our answer to No. 1 renders it unnecessary to answer this question.

3. Sec. 95 of the Public Schools Act, 1901, contains full and explicit information as to the course to be pursued in charging fees to and collecting them from non-resident pupils.

Candidate Who Has Filled Written Resignation Cannot Withdraw it.

51—J. M.—Can an aldermanic candidate, who resigns after being nominated, withdraw his written resignation before 9 p. m. of the next day and would such withdrawal be valid?

No. If a candidate nominated signs a written resignation of his candidature in accordance with the provisions of the Municipal Act, and files it with the clerk of the municipality (or other returning officer, as the case may be), it becomes a record of the municipality, is in the custody of the clerk, is irrevocable and cannot be withdrawn. If such were not the case, an avenue would be opened for an interminable amount of "juggling" on the part of candidates nominated for a place in the municipal contest.

Liability for School Taxes.—For Statute Labor.—Contents of Tax Notices.

52—G. S. A.—1. I have some lots of land in an unsettled part of — township, where lumbering is the only industry. My lots are eight miles from the nearest school. Does sub-section 3, of section 25, of the Public Schools' Act, exempt me from the township levy as well as trustees levy, so far as the school tax is concerned? I have no children attending any school, nor do I live in the municipality.

2. There are no roads opened from the settlement to my lots, a distance of about eight miles. The lumbermen have made roads of their own, just to suit the present use. No township money nor statute labor has been spent on any of the roads leading to this section nearer to it than seven or eight miles, yet we are charged statute labor according to assessment, and are forced to perform our days' work in another part of the municipality, ten miles from our lots. Can the council compel us to perform statute labor so far from our lots, or what is our proper course to pursue? The country is so barren except of forest that it will never be of any use for agriculture or pasture once the timber is taken off.

3. The tax-notice sent me from this corporation in question gives no rates whatever. It simply states the amount of tax levied in one sum. I don't know what I am paying for, nor whether I am paying too much or too little. Are collectors and councillors not compelled to furnish each ratepayer with a list of the rates for each purpose levied. The collector instructs me to "return the notice when I send my taxes to him." Why should he do so, or should he?

1. No. The subsection you mention applies only to persons in school sections in unorganized townships in any county or district, and your lands are situated in an organized township. (See section 32 and subsection 5 of section 95 of the Act.)

2. The latter part of subsection 2, of section 109, of the Assessment Act, provides that "every resident shall have the right to perform his whole statute labor in the statute labor division in which his residence is situate, unless otherwise ordered by the municipal council." Your land is properly charged with statute labor, according to the rates in vogue in your municipality, and the municipal council has the power to say where that statute labor should be performed.

3. Subsection 3, of section 134, of the Assessment Act, provides that the collector "in other places than cities and towns, shall CALL at least once on the person taxed, or at the place of his usual residence, or domicile, or place of business, if within the local municipality, in and for which such collector has been appointed, and shall demand payment of the taxes payable by such person, or if so empowered by by-law of the muni-

cipality, he shall leave with the person taxed, or at his residence, etc., a written or printed notice, specifying the amount of such taxes, and shall at the time of such demand or notice, as the case may be, or immediately thereafter, enter the date thereof on his collection roll, etc." Unless a by-law of the municipality empower the collector to deliver tax-notices, he must call, at least, once on the person taxed and demand payment of the taxes. The taxes need not be set forth in detail in the notices, but the notices should specify the taxes, and usually contains a statement thereof in detail. There is no authority for delivering tax notices through the post office. You are not bound to return the notice to the collector. When he receives from you the amount of your taxes, as shown on his roll, he should hand or send you a receipt for the amount.

Proceeding at Nomination Meeting.

53—T. M. C.—At the nomination meeting of this town there were eight candidates nominated for the municipal council, and five nominated for the public school board, there only being six and three required for the respective boards. At one o'clock the writer closed the nomination meeting, when a gentleman moved that the nomination meeting be adjourned until half-past seven o'clock on same date, and that the writer be chairman of the meeting. I advised the people that were present that, in my opinion the motion was out of order, as the public had no authority to dictate to the returning officer anything in reference to nomination meeting, as every detail regarding same was set forth in the Act: and I also said that they were certainly at liberty to announce or call a public meeting to discuss the municipal affairs that evening, or any other evening, but not to consider it any part of the nomination meeting, and that all resignations at the public or after meeting should be in writing, if not, all candidates who did not resign in writing would find their names on the ballot-paper notwithstanding their having verbally resigned at the after or public meeting. The question was also raised that, according to the ruling of Chief Justice Armour, (see December WORLD,) the returning-officer had no authority to close the nomination meeting in any case, there being no time mentioned in sub-section 3, of section 128, chap. 223, and that the R. O. should accept nominations any time before twelve noon, the following day, whereas, I held that the R. O. could legally close the nomination any time that there was enough of candidates nominated to demand a poll for both municipal and school boards, even though it be before the lapse of one hour, and in no case could it be held open for a longer period than one hour, and that the only circumstance under which the nomination had to be kept open for one hour was in case the number of candidates nominated was not sufficient to make a contest, and demand a poll for the position of councillors and school trustees.

1. Could a R. O. legally close a nomination meeting before the lapse of one hour, if more candidates were nominated than were required to fill the office?

2. Was the motion to adjourn the nomination at half-past seven, on same date, in order.

3. In any case may resignations not in writing be legally accepted by the R. O. after he has closed the nomination meeting.

1. We do not agree with you that a returning officer may, the moment, more than a sufficient number of candidates are nominated to fill the offices, adjourn the proceedings without allowing an hour to elapse. Suppose that within ten minutes

after the meeting is opened more than a sufficient number of candidates is nominated, and that the electors present at the meeting desire to make further nominations, but the returning officer refuses to receive them, insisting upon his right to adjourn the meeting. Under the circumstances we do not think that the returning officer would have any such right. The case before Mr. Chief Justice Armour did not turn upon this point at all. It decided simply that the returning officer was not bound to adjourn the meeting promptly at one o'clock, but that he might continue it, and receive nominations after one o'clock. If, however, the electors left the hall before one o'clock, having made all the nominations which they desired to make, the returning officer might be justified in adjourning the proceedings before the lapse of the hour; but the safe course is not to adjourn until after the lapse of one hour. In the case of *Reg. ex rel. Corbett vs. Jull*, 5 Pr. R. 41, Mr. Justice Wilson says: "A nomination is a resolution submitted to the electors, that the party named is a candidate for their suffrages for an office named; but the legislature, to prevent surprise, requires that not less than one hour shall elapse between the submission of the last nomination and the putting of the question with a view to its being passed by acclamation." Except upon this one point we entirely agree with you.

2. No. The clerk (or the returning officer, or chairman,) alone has the right to regulate the conduct of the nomination meeting.

3. No. See sub-section 3, of section 129, of the Act.

Position of Council when Expenditure Exceeds Estimates.

54—W. H. Y. — If a municipal council expends more money during their term of office in any one year (without any unforeseen demands) than they have struck the rate for, or borrow or become liable for three or four thousand dollars more, what would be the result, referring to section 402, Municipal Act, R. S. O., 1897?

Can they in any way be made accountable?

We presume that this sum was a part of the ordinary current expenditure of the council of your municipality required for the maintenance, construction and repair of roads, streets, walks and bridges, and other general public purposes of the municipality, and that the estimates of the year fell short of the total amount required for this purpose by this sum. You do not allege any intentional wrong-doing on the part of the council or its members, whereby this deficiency was occasioned, so we assume that it was due to an error in judgment. If this be the fact, the individual councillors have incurred no liability, and the council may, pursuant to section 405, of the Municipal Act, pass a by-law for the levying and collecting of the \$4,000 additional, provided that the aggregate rate for the year does not exceed two cents on the dollar, exclusive of school and local improvement rates. See section 402, of the Act.

Amount of Fees for Pedlars' Licenses

55—W. D.—Two of our county councillors will not be convinced in regard to section 583, Municipal Act, Rev. Statutes, as amended by chapter 2, statutes 1898, page 3, but that charge of pedlars' licenses is fixed. They cannot see the effect of the amendment, but say they will be satisfied if the *THE MUNICIPAL WORLD* says so. They say it has already given the opinion that county councillors are bound to keep within the figures named in the section before the amendment.

Sub-section 14, of section 583, of the Municipal Act, empowers councils of counties to pass by-laws licensing hawkers and pedlars, and sub-section 16 confers on them authority to pass by-laws fixing the sums to be paid for licenses required under the by-laws passed under sub-section 14. The amendment to sub-section 16, made by clause (14) of the schedule contained in chap. 2, of the Ontario Statutes, 1899, does not affect counties at all, but applies only to "cities having a population of 100,000 or more." These words being inserted in sub-section 16, after the word "but," in the second line thereof, it therefore follows, from reading these words into this sub-section, that county councils are not limited by the sub-section as to the amount of the license fee they may, by by-law, impose upon hawkers and pedlars. This license fee should, however, be reasonable under the circumstances, and should not be so large as to be practically prohibitory.

Proceedings at Nomination Meeting.—Qualification of Nominees.

56—A. M. The following circumstance occurred at our municipal nomination. Two nominations were put in both for candidates for council for the coming year, one by the treasurer whose resignation was handed in at the last moment's sitting of last council meeting. No action was taken by council. The other candidate was the assessor for 1901. His work was completed and he was paid, but his appointment had been made at the same time as the clerk and treasurer, and under the same by-law which contained these words "to continue in office till removed or dismissed by the council."

1. I, as returning-officer, first refused to accept these nomination papers, but under pressure from two magistrates present afterwards consented to let them stand. Did I do right or otherwise?

2. Can any action of the old council make these nominations legal?

3. In case either of these men are elected, or have rank in the four having the highest number of votes, what is the duty of the returning officer?

4. Suppose one or either of these men claims to be elected, has the clerk power to refrain from administering the oath?

1. A returning-officer has no authority to constitute himself a judge as to whether a person placed in nomination is legally qualified to fill the office for which he is nominated or not, nor can he refuse to accept any nomination paper handed to him, and prepared and executed in accordance with sub-section 1, of section 128, of the Municipal Act. This is a question for the proper court to decide on the hearing of proceedings taken in accordance with the provisions of the Municipal Act, to unseat a candidate after his election.

2. No. If a candidate does not possess the necessary qualification on nomination day, nothing that he or the old council, or any one else can do, can have the effect of removing the disqualification.

3. The returning officer must declare these persons elected as the Act requires. If they are not qualified the courts, if applied to, will settle the question, and it is one for them, and them alone, to consider and decide.

Collector's Duties—Meaning of "Execution"

57—W. H.—1. Can a collector seize any goods and chattels found on premises of and the property assessed, and who is the occupant?
2. Where the word "execution" is used, in the Collector's Guide, does it mean seizure by the collector or sheriff or both?

1. Unless the person liable pays his taxes within fourteen days after demand is made or notice served by the collector, pursuant to section 134 of the Assessment Act, the collector can seize upon the goods and chattels wherever found within the county in which the local municipality lies, belonging to or in the possession of the *person actually assessed for the premises* and whose name appears upon the collector's roll for the year as liable therefore, and upon the goods and chattels of the owner of the premises *found thereon*, whether such owner is assessed in respect of the premises or not. See section 135 of the Act, clauses 1 and 3 of subsection 1.

2. "Execution" is the conventional term given to process issued from a court of law, in which a judgment has been recovered by one party against another, to effect a seizure and sale of the goods of the party liable, not exempt by law from seizure, to realize the amount of the judgment. This is the meaning to be given to the word when used in the "Guide" generally speaking. The writ of execution is directed to the sheriff of a county or bailiff of a division court according as the judgment has been recovered in the high court, county or division court.

Township Council in Organized Territory has no Power To Pass By-Laws Imposing Pedlars' Licenses.

58—L. W. C.—Has a township council authority to pass a by-law imposing a tax as license against pedlars with wagons or otherwise, who reside in a town in the same county, and drive in the township and dispose of their goods to the inhabitants? If so, please state statute authority for so doing.

No. Your township being an organized territory, the council has no legal authority to pass such a by-law. Sub-section 13 of section 583 of the Municipal Act confers this power only upon the councils of counties, towns and villages and the board of commissioners of police in cities having more than 100,000 inhabitants.

Voter Can Select Oath.—Deputy-Returning Officer's Duties.—Council Cannot Pass this By-Law.

59—W. M.—A voter is on part 1, of the voters' list as M. F. and tenant, and two or three months previous to the election ceases to be a tenant and boards at a private residence. He presents himself at the election booth on date of election, and is objected to by one of

the scrutineers. He refers, however, to section 116, of chap. 223, Municipal Act, and selects the income voters' oath, which he took and voted, although only on assessment roll and voters' list as M. F. and T., (not being assessed for income.)

1. Did the D. R. O. do right in letting voter select income oath under the circumstances?

2. Had he the right to vote?

3. Can a village council pass a by-law to keep the corporation clear from any chances of an action for damages by persons who might sustain injuries on account of the slippery condition of cement walks, or in other words, can a by-law be passed that persons who walk on the cement walks do so at their own risk?

1. Yes. In the case of *Wilson vs. Manes* (280 R., p. 419, affirmed on appeal, 26 A. R., p. 398) the plaintiff's name was properly entered on the last revised assessment roll as a *tenant* of real property of the value entitling him to vote at a municipal election, and was entered on the voters' list; but, after the first revision thereof, he ceased to be a tenant and to occupy the property though he continued to reside in the municipality, and was the *owner* of real property as a freeholder of the value entitling him to vote and was such freeholder at the time of the election. At the election he demanded a ballot and was willing to take the oath for freeholders, but the defendant, the returning officer, refused to furnish him with a ballot or to permit him to vote unless he took the oath required for tenants. It was held that the defendant's duties were merely ministerial, and that an action for a breach thereof was maintainable without any proof of notice or negligence; *that the plaintiff was entitled to vote* at such election; and that the defendant's refusal to allow him to vote constituted a breach of his duty and rendered him liable to the penalty of \$400 given by section 168 (now 194) and also to damages at common law. The only difference between the case you mention and the above is that the tenant claimed to vote on income instead of as a freeholder, and the same principle applies.

2. Yes.

3. No. A by-law of this kind would be a mere nullity. See section 606 (2).

Municipality Not Liable

60—P. K.—Gravel fell down on a ratepayer of our township last summer, while performing his statue labor, and broke his arm. Is the municipality liable for damages?

No. Even if the municipality had been liable for this accident in the first instance, the right of the party to institute proceedings would now be barred by statute. Sec. 606 of the Municipal Act requires that a notice of the accident should be served or mailed to the head or clerk of the municipality within thirty days after the happening of the accident and that the action should be brought within three months after the damages have been sustained.

Collector not Bound to Send Receipt.—By-Law Regulating Time for Payment of Taxes.—Councils' Duties in Employment of Engineer.

61—J. E. H.—1. Is a collector bound to return a receipt to parties who send taxes by mail?

2. Can a council pass a by-law, making taxes payable last council meeting, without interest being added, Dec. 14th, 15th and 16th?

3. Can council hire a second engineer on a second drain before the services of the first one are completed? or could the first one be discharged and another brought on to complete the first contract?

4. Can a person hold council responsible for damages on property where an obstruction in a boundary river cuts off part of his property?

1. There is nothing in the statutes that makes it incumbent on the collector to return a receipt to a party paying taxes under these circumstances, but as a matter of courtesy it is usually done.

2. Yes. See section 60, of the Assessment Act, as enacted by section 4, of the Assessment Amendment Act, 1899.

3. It is hard to understand from your question whether you refer to one drain only, or to two different drains. If the latter, and the drains are being constructed under the Municipal Drainage Act, the council can legally employ one engineer to look after one of the drains, and some other engineer the other. An engineer appointed to do work under the Municipal Drainage Act is in a different position from one appointed under section 4, of the Ditches and Watercourses' Act. The latter is employed by by-law to do ALL the work, under the latter Act, in the municipality, and holds office until dismissed by a by-law of the municipality, of which he has had notice. If you refer to one drain only being constructed under the Municipal Drainage Act, the council may dismiss one engineer before the work is completed, paying him up to the date of his dismissal, and employ another to finish the work.

4. You do not give any particulars as to the nature of the obstruction, but if it is an accumulation of driftwood or fallen timber, the council of the county in which the local municipalities are situated or of the adjoining counties shall remove the obstruction and keep the river free from obstruction of a similar nature in the future. See section 619, of the Municipal Act.

Council Cannot Let Municipal Offices by Tender

62—J. M.—Is it lawful for our council to let, by tender, several minor offices in our village, such as caretaker of the hall, constable, sanitary inspector, truant officer, etc.?

No. Sub-section 2, of section 320, of the Municipal Act, provides that no municipal council shall assume to make ANY appointment to office, or ANY arrangement for the discharge of the duties thereof, by TENDER, or to applicants at the lowest remuneration.

Law as to Application of Tenant's Taxes for Separate School Purposes.

63—SUBSCRIBER.—A is assessed as non-resident tenant. He is a Roman Catholic, and

wants property assessed for the support of a separate school. B is assessed as owner, also non-resident, pays taxes and road-work, and wants property assessed for the support of a public school. How should it be assessed? Please quote section of law affecting it.

Section 53 of the Separate Schools Act, (R. S. O., 1897, chapter 294,) provides that, in any case where, under section 24 of the Assessment Act, land is assessed against both the owner and occupant, or owner and tenant, then the occupant or TENANT shall be deemed to be the person primarily liable for the payment of school rates and for determining whether such rates shall be applied to public or separate school purposes and no agreement between the owner and tenant as to the payment of taxes between themselves shall be allowed to alter or affect this provision otherwise. The latter part of the section applies to the case where the tenant agrees to pay taxes but vacates the premises without doing so. Therefore, if the tenant you mention gives the notice required by section 42 of the Act, these lands must be assessed and the school taxes applied for separate purposes.

Collector's Authority to Distrain.

64—A. M.—The tax collector, in the fall of 1900, made distraint on timber belonging to G. H., for taxes on a lot of land belonging to J. N., subsequently J. N. paid the taxes and costs, thus setting the timber under seizure free. G. H. has not yet removed the timber off said lot, and the collector is again unable to collect the taxes for 1901 from J. N., who is a non-resident. J. N. was assessed for the lands in both the years 1900 and 1901. Would it be legal to make distraint on the same timber as was seized for the taxes of 1900 and sell it for the taxes of 1901?

Since G. H. is not the person who is actually assessed for the premises, and his name does not appear upon the collector's roll for the year as liable for these taxes, the collector has no legal authority to distrain and sell the timber on the premises belonging to G. H., to realize the amount of taxes. Unless G. H. claims title to the timber by purchase, gift, transfer, or assignment from J. N., the owner of and person assessed for the land. If the latter is the case, the goods are seizable. See clause 4, (b) of sub-section 1, of section 135, of the Assessment Act, and that portion of the sub-section following clause (d.)

Error in Treasurer's Report to Bureau of Industries.

65—SUBSCRIBER.—Treasurer gave a statement of taxes to be collected for 1901 to Bureau of Industries, say \$4,000, that being the certified total in collector's roll by clerk. Now, the collector finds an overcharge in two cases, say fifty cents each, which reduces the first mentioned sum one dollar. Now, should the treasurer accept the full amount, and the collector get an order from the reeve for one dollar, being in error in collector's roll, or should the treasurer make the correction in the roll, so that the error would not be shown in the accounts, and accept \$3,999 as the full amount? By adopting the last plan it would show a mistake of one dollar in treasurer's statement to Bureau of Industries.

In this case, the council should either pass a resolution instructing the collector

not to collect the sum in error, (\$1.00,) or the collector can return the whole amount, (\$4,000,) to the treasurer, and the council can grant him an order or cheque for \$1, the amount in error. It frequently happens in municipalities that matters of this kind have to be adjusted after the treasurer has reported to the Bureau of Industries. The treasurer can notify the secretary of the Bureau of the error and its rectification, and this would remedy any apparent error in his report.

Auditors' Qualifications.

66—J. G. W. —Is it necessary by municipal law for auditors of township treasurers' accounts to be ratepayers in order to be qualified to act?

No. The persons who are disqualified to act as municipal auditors are mentioned in sub-section 1, of section 299, of the Municipal Act.

Alteration of Polling Sub-Division.—Not Exempt from Payment of School Taxes.

67—P. S.—1. There has been a polling subdivision established in this municipality which now only contains seven voters, only three of whom voted at the last municipal election. The council contemplates to have said polling-subdivision abolished, and unite it with the adjoining P. S. D. What steps ought the council to take to legally effect the union of the two divisions?

2. A ratepayer lives six miles from the school house of the public school section to which he belongs and cannot send his children to any school. He is, however, charged school-section rates every year, and thinks that it is unjust to have to pay section rates when he gets no benefit of the school. He is willing to pay the general municipal school rate. Is the levying of school section rates on his property legal and proper, or can he refuse to pay them?

1. The council should pass a by-law pursuant to sub-section 6, of section 536, of the Municipal Act, uniting the small polling subdivision to the adjoining one. See also, sub-section 10.

2. The levying of school rates on this property is legal, and the owner cannot refuse to pay them. Your municipality and school section being in organized territory, the owner of these lands is not exempted from the payment of school rates, levied under the Public Schools' Act, under the circumstances you mention. Section 25, sub-section 3, of the Act applies only to sections in unorganized territory. This person may find some relief either under section 32, or section 95, of the Act.

Casting Vote of Secretary of School Board.—Duties of Chairman.—Casting Vote when Trustees Elected by Ballot.

68—T. W. S.—1. I would refer you to chap. 39, sub-section 2, of section 64, of the Public School Act, 1901. In said sub-section 2, if the secretary is not a member of the board, and in case of a tie in electing a chairman, can he give casting vote?

2. If he is a member of the board, can he give a general vote, or is he confined to a casting vote in case of a tie?

3. After the organization of an urban public school board, what are the voting privileges of the chairman on all questions that may come before the board?

4. In case of a tie at an election for public school trustees in a village, said election having been conducted by the council by ballot whose clerk was returning officer, who should give the casting vote?

1. No.

2. When a member of the board is elected secretary, he has precisely the same right to vote as if he had not been so elected, and in the event of a tie, the member who is assessed as a ratepayer for the largest sum on the last revised assessment roll, has a casting vote, in addition to his vote as a member. See sub-section 3, of section 64, of the Public Schools' Act.

3. The chairman has just the same right of voting on all questions coming before the board, and moving and seconding resolutions as the rest of the board.

4. See answer to question 48, of the year 1900. Sub-section 9, of section 60 provides for the case of a tie. Section 61 gives a board of trustees the right to have trustees elected by ballot, and sub-section 3, of that section, provides the mode of conducting an election by ballot. If the result of an election by ballot should be that two or more candidates have received an equal number of votes, we do not see why section 9 should not apply, rather than the provision in the Municipal Act, which gives the clerk a casting vote when two candidates for a municipal office have an equal number of votes.

Person Appointed Clerk Should Not be Under any Other Contract with the Corporation.—Liability of Agricultural Society Under Line Fences Act.

69—J. H.—1. Can a person, who is a member of a firm that does printing for the municipality, be legally appointed clerk, or can a person who is appointed clerk by the village council legally enter into any other contract with the council to do work on the streets, be treasurer, or take a printing contract from the municipality, or do printing as ordered by the municipality while he holds the office of clerk?

2. When no agreement has been entered into in regard to a fence around agricultural grounds can the society be compelled to keep up all the fence? Is the owner of the adjacent property not liable to keep up one-half of the fence?

1. The clerk may be appointed treasurer of the municipality, but we do not think he can enter into the other contracts referred to in your question. The form of oath which he is required to take indicates that he cannot do that. See form of oath in section 312, of the Municipal Act.

2. An agricultural society is in the same position as any private owner of occupied lands as to line fences. The society and owners of adjoining lands should each construct and maintain a just proportion of the line fence between them as required by section 3, of the Line Fences Act. (R. S. O., 1897, chap. 284.)

Must Support the Nearest Separate School.

70 B. F. S.—Can a separate school supporter be assessed to another separate school if the separate school to which he has been assessed is nearer to him than the one in support of which

he wants to be assessed? As I understand the statutes he cannot.

You do not state how far each of the separate school houses is from this person's place of residence, but, if they are located within a distance of three miles therefrom, the party is a supporter of the separate school situated nearest to his place of residence (see section 44 of the Separate Schools Act, R. S. O. 1897, chapter 294), and section 43 provides that no person shall be deemed a supporter of a separate school unless he resides within three miles (in a direct line) of the site of the school-house.

Sheriff Can Qualify as Water Commissioner.—Deputy-Sheriff Can do Debt Collecting.

71—LABOR.—1. In view of the wording of R. S. O., 1897, chap. 223, section 80, the Municipal Act, and chap. 235, section 41, the Municipal Waterworks Act, can sheriff be elected to hold the office of, and act as a water commissioner, where the waterworks are owned, operated and controlled by one of the municipalities in the bailiwick of such sheriff in which he resides?

2. If such sheriff took the oath of office, and acted as such commissioner, would his acts be legal, and if illegal, what steps can be taken to prevent a repetition of it? Would there be any personal liability upon such sheriff for so continuing to act, if illegal?

3. Has a deputy-sheriff any right to act as a debt collector for merchants and others in the county for which he is such deputy?

1. Section 80 of the Municipal Act specifically names the persons who are ineligible to be elected and hold seats in a municipal council. Amongst these is a sheriff. Section 41 of the Municipal Waterworks Act defines the qualification of a water commissioner. Under this section any person can be elected to this office if during the whole period of his term of office he has the same property qualification as is required for a member of the council of the corporation. If the person elected possesses, and, during his whole term of office, continues to possess, this qualification, the fact of his being a sheriff does not disqualify him (see also section 43 of the Act as to contracts of commissioners in connection with the works).

2. Since we are of opinion that a sheriff can be legally elected to and hold the office of a water commissioner, it becomes unnecessary to answer this question.

3. There does not appear to be any law to prevent him from so doing.

Restraint of Cattle Running at Large.

72—T. M.—We are a new county. The municipal councils up here have not passed any by-laws forbidding cattle running at large, only bulls, sheep and hogs. Some farmers want to make their neighbors fence in their cattle, particularly during the summer months. I would like to know if this can be done? It is impossible for most farmers here to have pasture to keep their cattle in.

The council of each township in your county may pass by-laws restraining the running at large of all or any class or classes of cattle within the limits of the township pursuant to sub-section 2 of section 546 of the Municipal Act. All

animals not restrained by such a by-law can be by the common law legally run at large.

One Person Can Legally Hold These Offices.

73—J. G.—Can the council of an incorporated village appoint a man to assess, who is already hired by the year by the same council, to look after streets, sanitary duty, and collect taxes, and the collector's roll is still on his hands, two more tenders being in for the assessing, one of the two being much better posted in assessing than the man the council appointed.

The council of the village can legally appoint this man to the office of assessor. There is nothing in section 295 of the Municipal Act, or elsewhere, to disqualify him, and the language of the oath of office to be taken by an assessor and collector contained in section 312 of the Act, indicates that the offices of assessor and collector can be held by one and the same person.

Business Partner of Councillor Can be Appointed Collector.—Acts of Council When Some Members Disqualified.

74—T. M. C.—1. Is the appointment of a collector legal while his business partner is a member of the council who appointed him?

2. If the appointment of the collector is irregular, would it have the effect of disqualifying his partner as a member of the council, (he not voting on said appointment.)

3. Are not acts of the council valid notwithstanding that one or more of the council may be disqualified?

1. Yes. The latter part of subsection 1 of section 5 of the Municipal Act provides that the council shall not appoint as collector a member of the council, but this prohibition does not extend to the partner in business of a member of the council, and the fact that the person appointed collector is such partner does not prevent his taking the oath of office prescribed by section 312 of the Municipal Act.

2. No.

3. Yes.

Reeve of Village Can Move and Second Motions.

75—J. J. M.—Would you kindly give reasons for your answer to Question 15 in the January number of THE WORLD, headed "Reeve of village can move and second motion."

Section 274, of the Municipal Act, provides that the head of the council, or the presiding officer or chairman of any meeting of any council, may vote with the other members, on all questions; and he has the same powers as to moving or seconding resolutions and voting on all questions before them as any other member of the council.

Detaching Farm Lands From Incorporated Village.

76—J. F.—The council of the village of T— are to have an arbitration on February 4th. Some of the farmers owning lands within the corporation asked the county council to pass a by-law detaching their lands from the village, and they did, so we are to have an arbitration on the matter. Our acreage is 474 acres, population 930, according to the last census. Would you kindly let me know your opinion of chap. 26, section 2, sub-section 7, statutes of Ontario,

1 Edward 7th, as to what is meant by the proportionate limits referred to in the sub-section?

The proportionate limits referred to in the sub-section referred to are those mentioned in section 12, of the Municipal Act. See particularly sub-section 3, of this section.

Remuneration of Village Councillors.

77—W. W.—Is there a way for councillors in a village municipality to collect pay for their services? Things are coming to a crisis when you have to go begging for councillors to serve the village, and not be able, even then, to secure a full quota. Their plea is that they can get no pay, and will not, and cannot afford to give their time for nothing. I suggest that each councillor be given a certain section of the municipality to oversee, (which is the system at present adopted in this village,) and each councillor to be paid, say \$1.00 per month for such services. Do you think the law will sustain such an arrangement?

Section 280 of the Municipal Act makes provision for the payment of the HEAD of the council of any county, city, town or VILLAGE, section 538 for the payment of councillors in counties, townships and certain cities, but there is no provision for the payment of councillors in a village as such. Clause (a) of subsection 1 of section 537 provides that "Nothing in this Act shall prevent any member of a corporation from acting as commissioner, superintendent or overseer, over any road or work undertaken and carried on, in part or in whole, at the expense of the municipality, and it shall be lawful for the municipality to PAY such member of the corporation acting as such commissioner, superintendent or overseer."

Powers of Municipal Councils as to Ferries.

78—H. C. O.—There is a large island in this municipality on which a public road has been opened. The road is continued on the main land to the Colonization road. On the said island there are two resident ratepayers, farmers, and several non-resident ratepayers. The two farmers have petitioned the council to build a raft or scow to enable them to transport teams and produce to the road on the mainland. The distance across the water is about one hundred yards and is used by steamboats on the lake. The council are willing to advance, as a loan, \$90, to build the scow or raft and to collect the statute labor money each year, till loan is repaid. The non-resident ratepayers have been consulted in the matter.

1. Have the municipal council power to pass a by-law to make this loan and collect in manner specified?

2. Are council bound to provide some means to cross water, after legalizing road to the lake?

1. No.

2. No.

Can Doctor, Member of Council, be Appointed Medical Health Officer.

79—M. D.—1. Our doctor, the only one for a distance of twenty-four miles, has been elected one of the municipal council. In case of the outbreak of any contagious disease and our council neglect to appoint him medical health officer and the provincial board of health appoint him, can he retain his seat as a councillor without violating his obligations?

If the person you refer to is appointed medical health officer by the council, he cannot legally hold this office and his seat

in the council. If he accepts the office he should resign his seat as councillor. If he be appointed by the Provincial Board of Health, and is dealing with that body independent of his council and is paid by it for any services he renders, we see no objection to his holding both offices.

Manager of Local Branch of Bank Can be Municipal Auditor.

80—V. S.—A is the township, B is the treasurer thereof, C is the manager of a local bank. Now A has instructed B to deposit the township funds in the bank of which C is manager, and occasionally borrowed money from said bank, and now appointed C auditor, (along with another man,) of the township accounts for the year in which transactions have occurred. Can C lawfully act as such auditor?

The latter part of subsection 1 of section 299 of the Municipal Act provides that no one who has at the time of his appointment, or during the preceding year, had directly or indirectly, alone or in conjunction with any other person, a share or interest in any contract or employment with or on behalf of the corporation, can be appointed an auditor. The mere fact that the municipality keeps its account with the bank of which C is the manager does not prevent him from acting as an auditor of the municipality. His position, no doubt, will make him interested in the affairs of the bank, but it is necessary to show that he has a legal interest in the contract created between the bank and the municipality in order to disqualify him.

Powers of Township Councils to Pass By-Laws for Removal of Snow From Sidewalks.

81—A. E. N.—Has a township council power, without a petition, to pass a by-law for the purpose of having the snow removed from the sidewalks at the expense of owners of lands along said sidewalk in an unincorporated village, situated within the limits of a township? If so, kindly quote sections of the Act, granting such power to township councils?

Yes. Subsection 4 of section 686 of the Municipal Act provides that "the council may a so, by by-law, define certain areas or sections within the municipality in which all SNOW, ICE and dirt and other obstructions shall be removed from the SIDEWALKS, streets, lanes or alleys in such areas or sections, and may impose a special rate upon the real property therein, according to the frontage thereof, in order to pay any expenses incurred in removing such SNOW, ICE, dirt or other obstruction." The word "council" in this subsection means the same as in subsection 1, that is, the council of every TOWNSHIP, city, town and village.

Form of By-Law Appointing Members of Local Board of Health.

82—W. S. Will you kindly publish in your February issue, a proper form of by-law appointing a local board of health.

Your municipality being a township, and assuming that a local board of health is being appointed for the first time, the following is a proper form of a by-law making the appointments:

BY-LAW NO.

To appoint members of the Local Board of Health in the township of in the county of

Whereas subsection 1 of section 48 of the Public Health Act provides that there shall be a Local Board of Health in every township, to be composed of the reeve, clerk and three ratepayers, to be appointed by the municipal council in the following manner: One member to be appointed for three years, one member for two years and one member for one year.

Therefore the municipal council of the said township of enacts as follows:

1. That be and is hereby appointed a member of the Local Board of Health in the said township for three years, that be and he is hereby appointed a member of the said Local Board of Health for two years, and that be and he is hereby appointed a member of the said Local Board of Health for one year.

2. That this by-law shall come into and be in force on and after the day it is passed.

Dated and passed at a session of the council of the township of held on the day of A. D., 190. at

. CLERK. L.S. REEVE.

If the by-law is for the appointment of a member of the board pursuant to the latter part of the subsec., the recital and enacting part of the by-law will have to be altered accordingly.

Tenders for New School-House.

83—G. W. M.—1. Have the trustees of a rural school section (public) the power to build a new school-house, under authority from the ratepayers without asking for tenders for the work?

2. Or having twice advertised for tenders and in each instance and finding the tenders received to be unreasonably high and beyond the means at their disposal, have the trustees the power to go on and build the school-house by day labor, believing that the school can be built for several hundred dollars less? Kindly give full instructions as to course to be pursued under such circumstances?

1. Yes, if they deem this course best in the interests of the ratepayers of the section.

2. By subsection 3 of section 65 of the Public Schools Act, 1901, the trustees are required to provide adequate accommodation for the children therein mentioned and by subsection 4 to BUILD, repair, furnish and keep in order the school-house, furniture, fences and all other school property. The trustees having twice advertised for tenders appear to have put forth an extra effort to accomplish the erection of the school-house in an economical manner, and, if, in their opinion, it would be to the advantage of the ratepayers to build the school-house by day labor they have power to do so.

Maintenance of Town Line by Adjoining Municipalities.

84—A COUNCILLOR.—What steps should our council take to have the line between our municipality and an adjoining one divided? The two councils have had meetings but could not agree how much of said line each should take, and as we realize that we cannot work together satisfactorily, we would like to have your advice as to the best course to pursue in order to bring about a fair division.

Your council and that of the adjoining municipality should enter into an agreement under section 625 of the Municipal Act. If the councils cannot agree as to the portions of the town line between them to be maintained and kept in repair by each of them, the statutes afford no means whereby one township can compel the other to enter into such an agreement. In default of such an agreement the adjoining townships are jointly liable for the maintenance and repair of the road in question and for damages occasioned by accidents occurring thereon, in case they do not keep it in a reasonably good state of repair.

Tenure of Office of Township Officials—Deed of Road to Railway Company.

85—B. C. J.—1. Can the municipal council engage any of their officials by by-law or otherwise for a period longer than the current year for which they themselves have been elected?

2. Can a municipal council give a deed of a portion of the public street to a railway corporation?

1. The appointment of a clerk or other officer by a council for a longer term than the current year or term for which the council itself is elected is not binding upon the succeeding council. Section 321 of the Municipal Act provides that all officers appointed by the council shall hold office until removed by the council so that such officers hold office during the pleasure of the council.

2. Section 637 of the Municipal Act empowers councils among other things to sell a road but in doing so it is subject to the restrictions imposed by sections 629, 632, 640 (11), and 641.

Salaries of Medical Health Officers—Ex Officio Members—Medical Health Association

86—B. S. D.—1. How are medical health officers, as a general rule, paid for their services? or what is the usual salary they receive in towns between four and five thousand inhabitants?

2. Can you tell us the stated salary or amount they received in St. Thomas, Berlin, or any other town between four thousand and five thousand people?

3. In case no salary is stated and no agreement is made as to payment for services at the time of the appointment;

(a) Is the medical health officer entitled to payment for work done by instructions received from the local board of health?

(b) Or in professional work done in carrying out the regulations of the provincial board of health?

(c) Can the medical health officer recover at law reasonable pay for performing these services?

4. In sections 54 and 55 of the Ontario Public Health Act, appears the words, "ex-officio member of the board" (of health).

(a) Who are the ex-officio members of the local board in towns of over four thousand?

(b) What powers have they?

Have they a vote at meetings?

5. I believe there is a Medical Health Officers' Association in Ontario. Could you tell us anything about the association, or give name of president or secretary, cost of joining, objects, etc.?

Medical health officers are usually paid annual salaries by the municipal corporations employing them. There is no fixed scale for regulating the amount of this salary. It is entirely a matter of agreement between the physician and the council which appoints him to the office.

2. \$300 is the annual sum paid to the medical health officer in St. Thomas. We suggest that you correspond with the clerks of Berlin, Owen Sound, Collingwood, Goderich, Midland, Ridgeway, Orangeville and towns of a similar size in the province and they can give you the information you desire.

3. (a) Yes. (b) Yes. (c) Yes.

4. (a) The mayor of the town (see subsection 3 of section 48 of the Act.) (b) The ex-officio members (that is members who are constituted such by virtue of the offices they fill) have exactly the same powers as to voting at meetings of the board and otherwise as any other member of the Board.

5. Yes. There is such an association in the province. It meets annually at some place appointed at the previous meeting. The president is Dr. E. E. Kitchen, St. George, Ont., and the secretary-treasurer, Dr. P. H. Bryce, Toronto. The fee for membership is an annual one of \$1, and its objects are to promote the interests of the public health. Write the secretary and he will send you a constitution.

Enforcement of Performance of Statute Labor in Districts—Duties of Statute Labor Commissioners.

87—H. P.—In January, 1901, at a meeting of the ratepayers of the township of M, five road commissioners were elected under the Act relating to organization of statute labor in unorganized townships. They did not take their declaration of office before a justice of the peace but signed it before their secretary. In December, last, the commissioners attempted to force, by law, one of the ratepayers to do or pay for his statute labor. The defence, as evidence, stated they (the commissioners) were not qualified to act, having neglected to take their declarations of office, before a J. P. as stated in section 120 of the Act. The justice upheld the objection of the defence and dismissed the case. Still the road commissioners did not take any further declarations of office, but met and called the annual meeting for 1902, on January 14th. At this annual meeting of ratepayers, reports were adopted from the commissioners, new commissioners elected, etc. The commissioners for 1901 did not produce their minutes or books, and even though objection was taken as to their being qualified to call the meeting, the meeting went on.

1. Was the meeting and its proceedings legal?

2. Are the present commissioners legally elected?

3. Did the neglect of taking declaration of office before a justice of the peace, disqualify commissioners for 1901?

4. If disqualified, could they call the annual meeting for 1902 or did they lose their charter?

1. Yes. See section 126 of the Assessment Act. The commissioners elected should have made declaration before a justice of the peace instead of their secretary.

2. We are of the opinion that they were legally elected.

3. We are of the opinion that it did. Section 120 of the Assessment Act provides that the commissioners elected shall take before a justice of the peace, a declaration of office similar to that of a councillor in a municipal corporation, but it does not provide as section 312 of the Municipal Act does, that they must take this declaration, BEFORE entering on the duties of their office, and no penalty is imposed for their neglect or refusal to take this declaration. Section 128 of the Act imposes a penalty on the commissioners if they do not serve for the term for which they are elected, when duly elected, as these men apparently were.

4. We think these men were competent to call the meeting for the election of commissioners for 1902 pursuant to sec. 126.

Payments for Necessaries Supplied Persons Quarantined—
Placarding Infected Houses—Enforcement of Vaccination—Chairman of Board has Casting Vote—Doctor's Fees—Oath of Office of Member of L. B. of H.—Peccoliar Conduct

88—J. A. R.—1. Would you explain section 93, of the Public Health Act. When a home is quarantined, can the municipality collect expenses from occupant if worth the same?

2. Can the doctor and the Board of Health placard a house suspected of small-pox before really knowing that there is really a case of small-pox in the house? Some claim that the place can be quarantined but not placarded, our doctor having placarded several houses on suspicion of occupants having been exposed to small-pox.

3. Can the council enforce public vaccination, and collect costs from responsible parties by way of taxes?

4. Has the chairman of the Board of Health the casting vote, some claiming that it is the secretary's vote?

5. What is the highest fee a doctor can charge for sitting in a meeting of the Board of Health discussing small-pox when there is no fee fixed by the council?

6. At our first meeting of the council, one of the members elected was absent, and has not yet taken the oath of office. What is the latest date that he can do so?

7. This Board of Health called a neighboring doctor on small-pox cases, the said doctor made his report in writing. Our village doctor called at my office to see the report, and destroyed it by throwing it into the stove. What is your opinion of his conduct?

1. Under this section the person ill or infected and quarantined, his parents or other person or persons liable for his support, are liable for the cost of providing nursing and other assistance and necessities for him while in quarantine, if able to pay the same, otherwise the municipality must pay the amount.

2. We do not think that the Public Health Act authorizes the placarding a house with notice that small-pox or other dangerous disease exists in the house unless such disease actually exists therein. See section 85 and schedule B, section

17, rule 4. Section 85 also authorizes the isolation of any person who is infected with such a disease and section 93 also authorizes the isolation of a person who is infected or lately has been infected with or exposed to any of the diseases specified in the Act. But before placarding a house or isolating any person, care must be taken that the conditions justifying it exist.

3. Under chapter 249, R. S. O., 1897, the council can enforce general vaccination in the municipality, at the expense of the municipality of all poor persons; but they have no authority to pay for the vaccination of persons who are able to pay the charge themselves. See section 4 of the Act.

4. The chairman has the casting vote.

5. An arrangement should be made with the doctor as to his charge for services rendered the local board of health, and in the absence of such arrangement there is nothing to guide us in saying what his charge should be.

6. Every qualified person elected to the office of councillor of a municipality is required to make the declaration of office and qualification, within TWENTY days after knowing of his election or appointment, otherwise he is liable to forfeit and pay, to the use of the municipality, not more than \$80, nor less than \$8.00. See section 319, of the Municipal Act.

7. Unless your village doctor has some very good reason for thus destroying the report, which you have not told us, his conduct in doing so was very reprehensible.

A By-Law Allowing Discount and Charging Percentage on Payment of Taxes.

89—R. E. S.—1. I enclose herewith copy of by-law No. 203 and a section of by-law No. 202 of our township and ask your opinion as to its legality. Does the framing of the section of No. 202 clash with the collector's power to seize after fourteen days subsequent to demand of taxes? And does the amendment correct that?

2. Does section 143, chapter 224, R. S. O., 1897, empower a treasurer, who is a receiver of taxes, to collect the taxes of 1899 (due on a lot assessed to A, then the owner thereof) from a tenant of B in 1901 which have not been included in the Tax Bill of said lot for 1901 delivered to B and paid by B and of which no notice was given by the assessor. The lot changed hands in June 1899 subsequent to the assessment and no appeal was made to the court of revision of 1899 to change the name of the owner?

3. Can the treasurer, as receiver of taxes, claim same power of threatening seizure as the collector?

4. Can the collector or receiver threaten seizure for arrears on the roll?

5. Is the corporation liable for the (presumed) illegal action of the treasurer who signed the notice to the tenant of B as treasurer?

BY-LAW NO. 203,
TO AMEND BY-LAW NO. 202.

The municipal corporation of the township o hereby enacts:

That by-law No. 202 be amended by inserting after "paid, after January 31, 1902," "up to March 25, 1902," and inserting after "five cents on the dollar" "and these periods recited shall not affect the collector's power or duty under the Assessment Act to seize for taxes after fourteen days from demand of taxes."

SECTION OF BY-LAW AMENDED BY ABOVE.

And it is hereby enacted that on all taxes paid by December 7th, 1901, there shall be allowed a rebate of two cents on the dollar and on all taxes paid between Dec. 9, 1901, and Jan. 31st, 1902, there shall be an additional charge of two cents on the dollar and on any taxes paid after Jan. 31st, 1902, there shall be a total additional charge of five cents on the dollar.

1. Your council has authority to pass a by-law containing and making the provisions as to payment of taxes contained in section you quote, pursuant to section 60 of the Assessment Act as enacted by section 4 of the Assessment Amendment Act, 1899. A by-law of this kind in no way interferes with the authority conferred by section 135 of the Assessment Act, on collectors to make seizures for non-payment of taxes after the expiration of fourteen days, after making the demand or delivering the notice referred to in section 134 of the Act, unless the person liable for the taxes has taken advantage of the provisions of the by-law, pursuant to subsection 4 of section 60. The amending section is useless as regards persons who do not take advantage of the provisions of the by-law pursuant to this subsection, as it cannot override the statutory law as it now exists and unnecessary as regards those who do not take advantage of its provisions.

2. No.

3. The treasurer can "threaten" such seizure but has no authority to "make" it.

4. The collector (but not the treasurer) can seize for arrears of taxes entered on his roll in accordance with the provisions of the statutes in that behalf and in the manner therein prescribed.

5. No, the mere signing by the treasurer, or service on the tenant of a notice demanding these taxes, has occasioned no damages to him or anyone else.

Sale of Free Grant Lands for Taxes.

90 F. B.—Can land be sold for taxes in unorganized districts being free grant lands? If so, is there any certain times in the year for such a sale to take place? and what are the proceedings the council has to take before such a sale can be made?

2. Can the council sell free grant lands, which have not been located but have been improved and assessed, as well as lands which are located and having three years arrears of taxes?

1. Yes, but only the interest of the lessee, licensee, or locatee in the lands, can be disposed of. See sections 188 and 189 of the Assessment Act and section 53 of chapter 225, R. S. O., 1897. Your municipality being in the District of Nipissing, the sales can take place only during the months of July, August, September or October. See section 54, of chapter 225, R. S. O., 1897.

2. Yes, but it can sell only the interest of the lessee, licensee, or locatee in the lands as above stated.

Township Council can Exempt Electric Railways from Taxation.

91—C. H. G.—Is it legal for a township council to exempt from all municipal taxes other than school taxes, for a term of ten years, an electric railroad being constructed in the township, without first having received the consent of the ratepayers.

Yes. See section 77 of the Electric Railway Act, R. S. O., 1897, chapter 209.

Time Within Which Village Audit Should be Made.

92—SUBSCRIBER.—How long may auditors of a small village or town take in preparing their report for the council; and where the clerk is treasurer also, who is the proper official to hand the report to when completed?

Subsection 3, of section 304, of the Municipal Act (which applies to auditors appointed by a village council) provides that, "the auditors shall, under a penalty of \$20, in case of default, transmit, etc., and shall file the other abstract together with the other detailed statement and reports, in the office of CLERK of the council, within ONE MONTH after their appointment."

Appointment and Dismissal of Engineer Under the Ditches and Watercourses Act.

93—X. Y. Z.—I understand that Justice Meredith in *Turtle and Euphemia* said that to legally appoint a township engineer for the purposes of the Ditches and Watercourses Act, the council would have to first revoke the previous appointment by by-law. In our township an engineer was appointed in 1883 when the Act was first passed. The Act then said "he engineer shall be and continue an officer of such corporation until his appointment is repealed by by-law." Now, in our township the appointment was never repealed by by-law, and, if "repeal" means the same as "revoke," it must be that we never had any engineer outside of this first appointment so long as the first named engineer was living. The question is simply this: Who would be the properly appointed engineer, the one appointed in 1895 (first named still living), or the one appointed in 1898, the year after the first named engineer had died?

Section 42, of the Ditches and Watercourses Act, 1894, by which the provisions of section 4 of the present Act, were first enacted, provides that, "Nothing in this Act contained, shall be taken, or deemed to affect the validity of anything *heretofore done* or any liability incurred nor the disposal of the costs in any action or other proceeding now pending, under any former Act relating to ditches and watercourses." Until the by-law appointing him was repealed, which does not appear to have been done by the council, the engineer appointed in 1883 was the legally appointed engineer for the purposes of the Act. A simple repeal of the by-law prior to the Act of 1894 would have been sufficient, as no notice of its having been passed was required to be given the engineer previous to the Act of 1894. We are, therefore of the opinion that the engineer appointed in 1895 was not legally appointed, since the one appointed in 1883 was then still alive, and the by-law appointing him had not been repealed. The appointment of the engineer in 1898, was a legal appointment, since there was

then no one filling the position, the one appointed in 1883 being deceased and the one appointed in 1895 having been illegally appointed.

This Man Should Pay His Taxes.

94—J. R.—Mr. X. refused to pay taxes charged on house and lot on ground that notice required by section 51 of the Assessment Act was not furnished him notwithstanding the provisions of section 72 of the said Act. He claims he is taking this course on the advice of a lawyer. The collector claims nothing liable to seizure could be found on lot up to December 31st, 1901, the last day for returning his roll. Cordwood at this date (Jan. 24) may be found on lot. Can the collector now legally seize wood, he still having the roll in his possession? I hold that he must now make the return to the treasurer required by section 147 of the Assessment Act. In case this return is not made, can council sue for taxes?

X cannot legally refuse to pay his taxes, for the reason that he did not receive the notice required by section 51 of the Assessment Act, as section 72 of Act distinctly provides that the roll, as finally passed by the court of revision and certified by the clerk as passed, shall, except in so far as the same may be further amended on appeal to the judge of the county court be valid, and bind all parties concerned, notwithstanding any defect or error committed in or with regard to such roll, or any defect, error or misstatement in the notice required by section 51 of the Act, or the omission to deliver or transmit such notice. So long as collector has his roll in his possession he can legally seize the cordwood you mention, if it belongs to the owner of the premises, or belongs to or is in the possession of the person who is actually assessed for the premises, and whose name appears upon the collector's roll for the year, as liable for these taxes. Unless the time for returning his roll has been extended by the council pursuant to section 145 of the Act, he should at once return his roll, deliver the account mentioned in section 147 and pay over all moneys to the treasurer. A council has no power to sue for taxes until all other remedies prescribed by the statutes have been exhausted. See section 142 of the Assessment Act. The law is that the collector may distrain for taxes so long as the roll remains in his hands.

Remission of School Taxes to Parents of Children Attending School in Adjoining Section.

95—I. A.—I enclose herewith a petition of ratepayers, asking to pay their school tax into an adjoining county, which explains itself. Can these ratepayers demand this rightly, and has the school inspector of the adjoining township the right to arrange that this be done, and, if so, is our council liable for 1901 tax? This petition was presented for first time January 13th, 1902.

To the Councillors of the Township of Palmerston and North and South Canoto:

GENTLEMEN,—As we are over three miles from any of the schools in the township of Palmerston, we are compelled to send our children to school in Lavant township, and arrangements have been made with Mr. M., school inspector, that our school

taxes in the township of Palmerston be refunded to Samuel Jackson, treasurer of school in the Lavant township.

WM. BOYD,
THOMAS RICHARDSON,
ROBERT RICHARDSON,
WILLIAM W. ROCHE,
WILLIAM THOMAS,
JOHN WATT,
WILLIAM SHANNON,
SAMUEL DONALDSON,
JOSHUA PETERS.

Presented at first meeting of council, 1902, January 15th, by John Watt

We are of the opinion that the council has nothing to do with this matter. Subsection 1 of section 95 of the Public Schools Act, 1901, empowers the trustees of every public school to admit non-resident pupils to their school "providing always that the INSPECTOR reports the accommodation of the school-room sufficient for the admission of such pupils." Subsection 2 provides for the payment of monthly fees by the parents of non-resident pupils to the trustees of the school to which they have been admitted. Subsection 3 provides that any person residing in one school section shall be liable for the payment of all rates assessed on his taxable property for the *school purposes of the section in which he resides*, but it shall be lawful for the trustees to remit the fees paid to the trustees of the neighboring section. Sub-section 5 provides that when the children attending a neighboring section are three miles or more distant in a direct line from the school-house in the section to which they belong, the TRUSTEES of the section in which such children are resident shall remit as much of the taxes chargeable upon the parents or guardians of such children, for school purposes, as would be at least equal to the fees paid to such neighboring section."

These parents or guardians should apply to the trustees of the section in which they pay school taxes, for the remission to them of a sum equal to the fees they pay to the section where their children attend school and not to the council of the municipality.

Remedy for Trustees' Failure to Keep School Open the Whole Year.

96—E. M.—Can one ratepayer compel the trustees to keep school open a year?

We do not think so. It is not to be assumed that the trustees will keep the school shut when it ought to be kept open. If they neglect to do their duty, the inspector may refuse to pay them the school grant, and if the attention of the Minister of Education was drawn to the matter, and he was satisfied that the trustees were not doing their duty, he would probably withhold the grant.

Township Grant to Sick Children's Hospital Legal.

97—W. H. N.—At the last meeting of the township council one of the members moved that the sum of \$10 be granted to the "J. Ross Robertson Hospital for sick children" in Toronto, other members claimed that as the grant was a donation to an institution outside the municipality and not in payment for any direct privilege received by the ratepayers of the township, that such a grant could not be

legally made without the consent of the ratepayers.

1. Could a majority of the municipal council vote such a grant to the above named institution or a similar one without a vote of the ratepayers?

2. Would you please give section in Municipal Act governing such cases?

1. Yes.

2. Subsection 2 of section 588 of the Municipal Act authorizes township councils to pass by-laws for granting aid to ANY charitable institution, or out-door relief to the resident poor.

Assessment of Company for Support of Protestant Separate School.

98.—J. W.—In about the year 1870 there was a Protestant separate school started in R—township, at what was afterwards called L. At the time it, of course, took all its patrons or supporters out of said No. 1 P. S. section. The supporters of said separate school were all residents of the township and all went well, they having several mills and quarry properties, and all their men who worked them belonged to said section. They had an assessment of about \$45,000, while we had only about \$20,000. Last year there was quite a change made. The L. L. Co. ceased to exist, and there is now what they call the O. S. L. Co., with an office in L, but the company are all non-residents of R. township, and have an office in O. also, where the most of the company live. Last year there was what is the S. C. Co. of T. built at L. in R. township and was assessed \$6,000. The company are all non-residents. Both these companies are assessed to public school section No. 1, but as our reeve is a separate school supporter, he has put it off but we intend to make them share up the assessment if possible. We offered to take an even assessment. When both companies are non-residents we claim that they cannot belong to the separate schools. Let me have your opinion.

Section 8 of the Separate Schools Act, provides that in all township school sections in which separate schools exist every protestant sending children to such school, or supporting the same by SUBSCRIBING thereto annually an amount equal to the sum at which such person, if such separate school did not exist, must have been rated in order to obtain the annual legislative public school grant, *be exempt* from the payment of all rates imposed for the support of the public schools of such school sections respectively, and of all rates imposed for the purpose of obtaining the public school grant. Section 9 provides that this exemption shall not extend beyond the period during which such persons send children to or SUBSCRIBE as aforesaid for the support of such separate school, etc. We do not think the word "person" in this section includes an incorporated company and therefore the property of the company must be assessed for the support of the public school. We are led to this conclusion from the context of the sections of the Separate Schools Act relating to protestant separate schools and by reason of the absence of any provision in these sections similar to subsection (3) of section 25 of the Assessment Act which enables Roman Catholic separate school supporters to require the property of a company to be assessed for separate school purposes in the manner in said section provided. But, in the case of a

private individual (not being a colored person) owning property in a separate school section, we find nothing in the Act to prevent him from taking advantage of section 8 of the Separate Schools Act though he is a non-resident. The petitioners for the establishment of a Protestant separate school must be residents, but section 8 contains no such restriction.

Taxes of Telephone Company.

99.—CLERK.—The Bell Telephone Company erected poles, strung wires and put in their plant without asking the privilege of the village council, some five or six years ago. Last year the village assessor assessed their plant for \$250, and the company paid the taxes. This year they are assessed the same, and refuse to pay their taxes, on the ground that we do not assess the Telegraph Company doing business here. Can we compel them to pay? and what steps should our collector take to collect the taxes?

Since the telephone company did not appeal against their assessment of \$250, it is binding on them (see section 72 of the Assessment Act) and they have no ground for refusing to pay the taxes on same. If the company has any personal property, that is—loose, movable property, in the municipality, it can be seized by the collector in the ordinary way, and sold to realize the amount of these taxes. The poles and wires, being attached to land, are fixtures and cannot be seized and sold by the collector. If the company has no distrainable goods in the municipality, the collector should return the taxes to the county treasurer in the ordinary way. If the county treasurer cannot realize the amount by the sale of the realty of the company, it can be sued by the municipality for the amount, pursuant to section 142 of the Assessment Act.

A County By-Law for the Improvement of Highways.

100.—W. P.—The county council of H intends to take advantage of the Act to aid in the improvement of public highways, and I have been instructed to prepare the necessary by-law. The members of the council have not been able to give me any definite instructions as to the framing of the by-law. If you can give me any information in your correspondence columns, or otherwise, I shall be greatly obliged to you.

Can you give me any information to help me to frame a county by-law to take advantage of the Act to aid in the improvement of public highways?

The following form of by-law will be sufficient for the purpose:

BY LAW NO. . . .

To designate the highways to be improved in the county of

Whereas subsection 1 of section 2 of chapter 32 of the statutes of the province of Ontario, passed in the first year of the reign of His Majesty King Edward VII, provides that the highways to be improved in any county may, before the first day of January, 1903, be designated by by-law of the county council.

Now, therefore, the council of the county of enacts as follows:

1. That the following are the highways to be improved in the said county of (here insert minute descriptions of the highways and portions of highways to be improved.)

2. That this by-law shall come into and be in force on and after the day of the final passing thereof.

. CLERK. L. S. REEVE.

In case the county council decides to submit the by-law for the approval of a majority of the ratepayers of the county qualified to vote on money by-laws, as provided in section 3 of the Act, clauses providing for the taking of the vote will have to be added to the above form of by-law.

A Council's Contract for More Than a Year—Cost Crushing Stone.

101.—J. H. R.—The municipal council of this township wish to make a contract for crushing stone for three years. If they do so, will the next council be bound to carry out their contract? The party with whom the council wish to make the contract requires a certain amount of crushing for three years. If they cannot do it in this way, is there any way by which it may be done? What is the price per ton usually paid for crushing stone?

We do not think the council can lawfully enter into a contract of this kind, by which we assume the council would be creating a debt not payable within the year or term for which the council has been elected.

The breaking of stone is usually paid for by the cord or cubic yard, as the cost of doing the work does not vary directly with the weight. The ordinary stone crusher will break about ten cords a day at a cost of from \$7 to \$10 for the day's work. The difference in cost is usually caused by the varying facilities for handling the stone before and after it is crushed. With a fair allowance for profit, the price usually paid for breaking limestone is about \$1.25 per cord, or about 25 cents a cubic yard. With limestone averaging in weight 4,300 lbs. per cubic yard, the cost per ton is about twelve cents a ton. Granite weighs about 4,500 lbs. per cubic yard, so that the cost of crushing is about 11 cents per ton.

Abolition of Municipal Toll-Gate.

102.—J. R.—Kindly state steps necessary to abolish toll-gate in a township. The gate, I understand, is owned by the municipality.

Section 13 of chapter 33 of the Ontario Statutes, 1901, provides as follows: "Where a toll-road is owned by the township within which it is situated the council of the township shall, within three months after the receipt of a petition signed by fifty ratepayers, pass a by-law fixing a date when the collection of tolls shall cease, said date not to be more than ten years from the passing of such by-law. Such by-law may be submitted to the ratepayers for approval as the council may deem expedient." See also section 14 of the Act as to the application of the tolls collected in the meantime.

Tavern License.

103—W. L.—Under Liquor License Act, the clerk is to certify to petition asking to have tavern license issued to new tavern.

1. I find name Geo. S. Young on the petition; on the certified voters' list, I find name Geo. Young.

2. I find H. Munn on petition but on certified list I find name Henry W. Munn.

In first instance, should I certify Geo. S. Young as qualified to sign petition?

In second instance, should I allow H. Munn to remain as qualified to sign petition?

1 and 2. We presume that a dispute has arisen as to whether the petition has been signed by the number of electors entitled to vote at elections to the legislative assembly, required by subsection 14 of section 11 of the Liquor License Act, (R. S. O., 1897, chapter 245.) This being the case, the clerk is empowered by clause (a) of the subsection, to "take evidence upon oath or otherwise, and determine the question in dispute." If the clerk is satisfied that the persons who signed the petition are the same persons whose names are on the voters' list as "G. Young" and "Henry W. Munn" respectively, in the polling subdivision in which the premises sought to be licensed are situate, as duly qualified electors, or ascertains this to be the case, upon investigation, he should so certify to the board of license commissioners. Both these persons, if their votes were objected to at an election for the legislative assembly, could take the oath contained in form 16 appended to the Ontario Voters' List Act. (Chapter 9, R. S. O., 1897.) See particularly the language of clause 1 of this oath.

Payment of Constable at Election.

104.—TOWNSHIP CLERK.—At a municipal election for 1902, after the result of the election was declared, an altercation ensued between two of the opposing parties. I ordered the constable (who happened to be there, and who is paid by the county council) to stop it, which he did not do—friends of each side taking parties aside and quieting them. He then charges me, as returning officer, with \$1.50, which I refused to pay, on the ground that it was a full day's pay, that I did not call him there, etc. Can he collect the full charge or not? Give authorities when replying.

Under the circumstances stated we do not think you have incurred any liability to the constable.

Voter Misnamed or Whose Property is Wrongly Described Can Vote.

105—CLERK.—In describing a ratepayer's property in the voters' list, I inserted concession 2 instead of concession 3. All the other particulars are correct.

1. Will the above error deprive him of a vote at the election to the local legislature?

2. If sworn, what oath will he have to take?

3. Another voter, who is assessed jointly with his father in the voters' list as Alfred F. King when he should be Alfred T. King, all other particulars being correct, will that deprive him of a vote? There is no other person in the township of the same name.

1. No.

2. The oath set forth in form 16 appended to the Voters' Lists Act (chap. 9, R. S. O., 1897), clause 1 of which

requires him, if his vote is objected to, to swear that he is the person named, or *intended to be named*, by the name of (*inserting* his name as entered on the voters' list used at the election) in the list of voters then shown to him in the poll-book.

3. No, for the same reason we give in our answer to question No. 2.

A Partner of Contractor with the Council Disqualified as Councillor.

106.—T. A. C.—A and B, a firm, two brothers, own a hall. A was councillor in 1901. B rents the hall to the corporation for \$25.00 till the first meeting of the new council for 1902. A is elected reeve for 1902. B again rents the hall to the corporation for \$50.00. The order for rent has been made payable to B. Does this disqualify A from being either reeve or councillor, as A's partner has a contract with the corporation?

A is certainly "a person having by himself or his partner an interest in a contract with or on behalf of the corporation" of which he is reeve this year and was councillor last, and he was in that position at the time of his election this year. He is therefore, under section 80 of the Municipal Act, disqualified from being elected or sitting either as reeve or councillor of the municipality for the current year (1902).

Township Council Cannot Pay These Costs.

107—ENQUIRER—A of township No. 1 has B of township No. 2 indicted for obstructing the towline between townships Nos. 1 and 2. The case was tried as a criminal case and B was found guilty and directed to move his fence back to the line. Now can the council of township No. 2 legally pay the law costs of B?

No.

County Council's Borrowing Powers.

108—W. T. G.—Our county is making county improvements to the amount of \$25,000, which is the amount now proposed to expend for said improvements, but will easily reach \$30,000 when completed. They propose to float debentures for \$20,000 which the law permits, and the levying on the county for the payment of the remaining five or ten thousand dollars in the way of ordinary expenditure. Can they do so under the Act in that behalf?

2. If not, who is responsible, those opposed demanding the yeas and nays? Please set out the power of county councils as to floating debentures in your next issue.

1 and 2. The purpose for which your county council proposes to borrow this \$25,000 or \$30,000 does not appear to be "ordinary expenditure" within the meaning of section 388 of the Municipal Act. Unless the money is required for the purposes mentioned in subsection 2 of section 389 of the Municipal Act, the council cannot pass a by-law for the purpose of borrowing more than \$20,000 without submitting such by-law to the electors. If the council borrows \$20,000, for purposes other than "ordinary expenditure" it can do so only once during the term for which such council has been elected, and previous to passing its by-law for the purpose, the conditions prescribed by section 390 of the Act must be strictly observed. If the council pass a by-law for the purpose you mention, to borrow more than \$20,000 without submitting it to the electors of the county, it can be quashed. See sections 384, 386, 429 and following sections re debentures.

Township of Sidney.

Commutation of Statute Labor a Success.

The council of Sidney township, Hastings county, passed a by-law at their first meeting in 1900, commuting the statute labor at fifty cents per day and placed the roads and bridges of the township under the supervision of one competent man.

The township was divided into five divisions and the road surveyor went over the roads of each division in company with a councillor of that locality and divided the roads into minor divisions and made an estimate of the amount necessary to be expended on each minor division. The surveyor then proceeded to engage competent men to superintend the work of each minor division. These men proceed to employ men within the division if possible and proceed with such work as the road surveyor directs; each man being required to work ten hours and those engaged to haul gravel or stones to have suitable boxes to hold one cubic yard. All grading and repairs are performed with a view to good drainage and general permanency.

After two years of experience with this system of road maintenance it is generally considered a success, although improvements will probably be made on minor points as opportunities present themselves.

Under the old system the scale in use gave the township 4,008 days work and a commutation price of sixty cents per day was allowed, if paid to the pathmaster, or seventy-five cents per day if allowed to be collected with taxes.

To this the council usually added from \$700 to \$1,000 per year for special work, such as cutting down hills, building new roads and building and repairing bridges.

In 1901, the second year of the new system, the amount expended on roads and bridges exceeded the amount raised from statute labor and the usual grants of former years; but was less than an amount that would have been raised at the former commutation price, viz.: sixty cents.

Considerable dissatisfaction was expressed by numerous ratepayers at the time the change was proposed, due largely to an incorrect idea of the system of maintenance that would be adopted. All the members of the council that passed the by-law and with the assistance of a road surveyor framed the present system, have been elected twice since by acclamation which is rather conclusive evidence that the intelligent ratepayers of Sidney are not favorable to a return to the old system.

SIDNEY.

N. B.—We hope that the representatives of other townships in which commutation has been adopted will give our readers the benefit of their experience.—EDITOR.

On the 7th January last, the electors of Barrie passed a by-law providing for the return of the system of electing councillors by wards.