

The Municipal World

PUBLISHED MONTHLY IN THE INTERESTS OF EVERY DEPARTMENT OF THE MUNICIPAL INSTITUTIONS OF ONTARIO.

Volume XIV. Number III.

ST. THOMAS, ONTARIO, MARCH, 1904.

Whole Number CLIX.

CONTENTS

	PAGE
Editorial Notes	54
Municipal Government in Ontario—An Historical Sketch	58
Constitution of County Councils	55
ENGINEERING DEPARTMENT—	
Road Improvement and Maintenance on a Business Basis	59
Road Maintenance	60
Why Good Roads are Needed	61
The Road Surface	61
Common Earth Roads	62
QUESTION DRAWER—	
125 A Deficient Dog Tax By-Law	
126 Care of Destitute Insane—Defaulting Pathmasters	
127 Township Grant to Free Library	
128 Limit of Township School Levy	
129 Proceedings When Drainage Scheme Initiated Under Section 75 of the Act ...	
130 Time for Holding Meetings of County Councils	
131 Leasing of Streets in Village and Collec- tion of Rent	
132 Payment for Attendance on Parties Quarantined	
133 Qualification of Private Banker for Reeve- ship—Farmer Cannot Shoot Pigeons Trespassing	
134 Payment of Expenses of Parties Quar- antined	
135 Duties of Clerk—Municipal Officers Should Not be Appointed by Tender ...	
136 Responsibility for Accident on Town Line	
137 Authority of Local Board of Health to Close Churches and Schools	
138 Township Councils May Aid in Mainte- nance of Band of Music	
139 Appointment of Truancy Officer—School Trustee Cannot Contract with His School Board	
140 Time for Equalizing Union School Assessments—Township School Levy ...	
141 A Defective Nomination Resignation ...	
142 A Drainage Petition	
143 Opening New Road	
144 Assessment of Implements in Possession of Agent—Assessment of Plaster and Gypsum, and Natural Gas Wells	
145 Contract with Engineer—Drainage Courts of Revision—Levy of Drainage Rate Before Work Commenced	
146 Date of Holding Meeting of Agricultural Society—Married Woman May Vote for School Trustee	
147 Appointment of Officers by Tender— Snow Fences	
148 Non-Resident Cannot be School Trustee —Assessor Cannot be Trustee of Union Section	
149 Treasurer of One Township Cannot be Councillor of Another	
150 Customs Officer May be Mayor or Alderman of Town	
151 Town Solicitor Can be Member of School Board	
152 Collection of Taxes on Lands Not assessed	
153 Council of Village in Districts Cannot License Peddlars	
154 Powers of Police Trustee	
155 Powers of Police Trustees	
156 Assessment of Nursery Stock—Of In- come of School Teacher	
157 Form of Assessment Roll	
158 Payment of Damages for Sheep Killed ..	

Calendar for March, 1904.

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.	182 Liability of Municipality to Build Ap- proach to Farm
Separate School Supporters to notify municipal clerk.—Separate Schools Act, s. 42.	183 Payment and Collection of Expenses of Parties in Quarantine
Inspector's Annual Reports to the Department due.—Public Schools Act, s. 85, (5).	184 A Snow Fence By-Law
Financial Statement of Teachers' Association to the Department due.	185 Removing Obstructions from and Open- ing New Street
5. Make return of deaths by contagious diseases during February.—R. S. O., chapter 44, section 11.	186 Power to Clear Obstructions from Creek
31. Last day for councils of cities, towns, villages and townships to pass by- laws limiting number of shop licenses therein for ensuing year.—Liquor License Act, section 32.	187 Collection of Percentage on Taxes
Night Schools close (1903-1904).	188 Town Cannot Take Stock in Manufactur- ing Concern
High Schools, second term, and Public and Separate Schools close.—H. S. Act, sec. 45; Public Schools Act, sec. 96; Separate Schools Act, sec. 81.	189 The Assessment of Telephone, Telegraph and Electric Light Companies
159 Members of Council May be Road Com- missioners—Qualification for Councillor— Prohibition of Cattle Running at Large ..	190 Supplementary Estimate in Aid of Water- works Maintenance
160 Duties of Clerk on Filing Engineer's Report—Construction of Electric Rail- way Along Highway	191 Clerk's Salary and Allowances
161 Addition of Percentage to Unpaid Taxes —Dividing Township into Polling Sub- Divisions	192 Regulation as to Use of Books in Free Library
162 First Meeting of Council—Procedure to Fill Vacancy	193 Delivering Mails—Road to Station— Assessor's Fee—Right of School Board to Vote
163 Remuneration of Members of Local Boards of Health	194 Rural Mail Delivery
164 Assessment of Separate School Sup- porters—Salary of Truant Officer	195 Township May Pass Dog Tag By-Law ..
165 Closing Road Through Government Land	196 Drain to Outlet—Drain on R. R. Lands ..
166 County Clerk May be Assessor of Local Municipality—Candidate Should Not be Deputy Returning Officer	197 Cost of Building Stone Abutments
167 Equalization of Union School Assessment in Unorganized Territory	198 Costs of Enforced Collection of Taxes ..
168 Payment for Polling Booths at Refer- endum Vote—Vacating Seat in Council ..	199 Two Assessors—Qualification of—Should Not be Assessor and Auditor
169 Printing Contract with Council a Cause for Disqualification	200 Assessment of Standing Timber
170 Basis of Grant to Union Schools	201 Definition of Public Highways
171 Time for Sale of Lands for Taxes	202 Teacher re Punishment of Pupils
172 Payment of Less than Two-Thirds of Damages for Sheep Killed	203 Payment of Expense of Disinfection ...
173 Powers of Police Trustees	204 Qualification for Councillor of Township Treasurer—Of Livery Stable Keeper ...
174 Assessment of Exempted Property—Of Premises Leased to the Crown	205 Refusal of Declaration of Qualification ..
175 Surety to Municipality Cannot be its Treasurer—Liability to Restore Road Washed Away	206 Duties and Salary of Clerk
176 Surety to Municipality Cannot be its Treasurer	207 Assessor and Return of Roll
177 Liability for Neglect to Maintain D. and W. Drain—Obligation of Engineer— Appeal Under D. and W. Act Cannot be Withdrawn—Council Not Bound to En- tertain Drainage Petition—Limit of Time for Doing so	208 Taxes on Volunteer Grants—Councils Borrowing Powers
178 Compulsory Clearing of Obstructions from Streams	209 Councillor as to Declaration of Office ...
179 County Councillor Cannot be Local Treasurer—Qualification for County Councillor—Council Should Not Interfere in Private Road Dispute—Council Should Not Construct Drains for Private Parties —Disinfection of Premises	210 Right of Chairman of Council to Vote— Concurrent Vote of Three Necessary to Carry Resolution
180 Assessment for Repair of Drain	211 Rules for Business of Councils
181 Right of Non-Resident Elector to Partic- ipate in Nomination Meeting	212 Council May Charge Percentage on Unpaid Taxes—Collector May Appoint Bailiff
	213 Formation of Union School Section
	214 Removal of Snow from Street
	215 Assessment of Farmer's Son—Power of Council as to Assessment Roll
	216 Proceedings on Change of School Site ..
	217 Restraining Cutting Timber on Highway
	218 County Aid to Local Roads
	219 Proceedings for Construction of Drain ..



The Municipal World

Published Monthly in the Interests of Every Department
of the Municipal Institutions of Ontario

K. W. MCKAY, EDITOR.

A. W. CAMPBELL, C. E. J. M. GLENN, K.C., LL. B.
Associate Editors.

TERMS.—\$1.00 per annum. Single copy, 10c.; Six copies, \$5.00, payable in advance.

EXPIRATION OF SUBSCRIPTION.—This paper will be discontinued at the expiration of term paid for, of which subscribers will receive notice.

CHANGE OF ADDRESS.—Subscribers who may change their address, should give prompt notice of same, and in doing so, give both old and new address.

COMMUNICATIONS.—Contributions of interest to Municipal Officers are cordially invited.

HOW TO REMIT.—Cash should be sent by registered letter. Draft, express or money orders may be sent at our risk.

OFFICES—334 Talbot Street, St. Thomas. Phone 189.

ADDRESS all communications to THE MUNICIPAL WORLD, LIMITED,
Box 1321, St. Thomas, Ont.

ST. THOMAS, ONTARIO, MARCH 1, 1904.

The county councillors formed a most influential deputation. They had a just cause for united action. Their views were presented in an able manner.

It has been suggested as a remedy for any dissatisfaction that may exist, that the offices of reeve and county councillor should not be incompatible, and that township councils should be elected for two years, the elections for township and county councils to be held in alternate years.

The special committee of the Legislature in charge of the Assessment Bill is making good progress. The principal difficulty is with the classification for business tax purposes. This should not be graded to place any one in the highest class because he formerly paid a large tax on personalty—the same objections will apply to both. The industrial development of the Province favors the exemption of machinery engaged in manufacturing and the placing of such business in the lowest class. In Montreal, where the business tax is uniform, inequalities are removed by a system of special taxes, which are imposed to a limited extent in Ontario towns and cities in the form of licenses. Professional men, whose business tax will be in lieu of all income derived from business and will be based on the value of office premises, should be placed in the highest class. Present day opinions favor a tax that cannot be evaded, and one that is levied with uniformity upon tangible property.

PROVINCIAL BOARD NEEDED.

Attorney-General Gibson appreciates the necessity for some central supervision of municipal bodies. In the Legislature recently he stated :

“ I am strongly of the opinion that Ontario should have something akin to the Local Government Board in England or the State Commission in Massachusetts—a board composed of, say, three gentlemen of experience. There were questions cropping up frequently throughout the year that might with great advantage to the people be submitted to such a board. It might supervise and

investigate the provisions of all interested corporations, private and public, and the issue of stock and bonds, and examine into all agreements between municipal councils and corporations operating public utilities, so as to prevent their being unduly to the advantage of the companies concerned. It would be well worthy of the consideration of the House whether some such system should not be adopted in view of the great public advantages that might be gained.”

In an article on “Municipal Reform,” published in January, we directed attention to the necessity for a Local Government Board, the establishment of which would be a most progressive step towards better municipal government.

MUNICIPAL REPRESENTATIVES.

The essentials to the excellence of a representative system are :

1. That the representatives shall be chosen from among the best men.
2. That they shall be responsible to the people for their speeches and votes.
3. That they shall have courage enough to resist a momentary impulse of their constituents, which they think mischievous, *i. e.*, shall be representatives rather than mere delegates.
4. That they individually, and the council they form, shall have a reflex action on the people, *i. e.*, that while they derive authority from the people they shall also give the people the benefit of the experience they acquire in the council, as well as the superior knowledge they may be presumed to possess.

RELIGIOUS TAXES.

In a certain constituency in Ontario, not long ago, a new church was being built by a certain religious body. The member of Parliament was, of course, asked to contribute to the subscription list, although he was not a member of that religious body, nor did he reside within twenty miles of the parish limits. He gave \$25. Later it was intimated to him that \$50 was the amount required.

This is the sort of delicate blackmail which prevails all over Canada. Members of Parliament, mayors, Reeves, aldermen, councillors and those appointed by popular vote are blackmailed on every hand. Of course, it is delicately done. There is no compulsion. Yet the man who has the hardihood to refuse soon feels the scorn of those who expected his donation. The practice is reprehensible, and its hideousness is not lessened by the fact that religious bodies are the worst offenders. The main result is that honest members of Parliament and other publicists are crowded out by men who accept presents, “rake-offs” and “percentages” and then square their consciences by distributing the moneys so received to charitable and religious organizations.

The Toronto *News* does morality a service in pointing out that no less a personage than Lord Macaulay refused to make any presents to his constituents in the form of race-balls or subscriptions. He confined his giving to the same occasions as would have justified it if he were not the member for Edinburgh. Canada could bear an infusion of Lord Macaulay's principle. The politicians are blamed for perpetuating corruption, but the churches and the people are by no means guiltless. The keenness with which they hasten to rifle the pockets of the man who offers himself for election to any office is the most indelicate kind of highway robbery.—*Canadian Magazine.*

Constitution of County Councils

In accordance with arrangements completed by County Clerk Macnachten, of Cobourg, a meeting of county council representatives was held at the Rossin House, Toronto, on 23rd February, to consider the question of the constitution of county councils and organize a deputation to wait upon the Provincial Government in reference thereto. The following counties were among those represented: Oxford, Waterloo, Victoria, Ontario, Huron, Northumberland and Durham, Carleton, Lambton, Peterborough, Simcoe, Essex, Lennox and Addington, Haldimand, Wellington, York, Perth, Lincoln, Halton, Wentworth, Elgin, Hastings, Kent, Peel, Prince Edward, Welland.

Warden Miller of Northumberland was appointed chairman, and County Clerk McKay of Elgin, secretary.

The county council legislation of 1903, as enacted by section 68a of The Municipal Act, was fully considered, and a resolution passed favoring the repeal of the same. Arrangements for deputation were completed by the appointment of speakers. On the following day, county council representatives to the number of about two hundred attended at the Parliament buildings, where they were received by Premier Ross, who was accompanied by several members of his Cabinet. The views of the deputation were presented by Mr. M. T. Buchanan, of Oxford, who acted as chairman; County Clerk Aylsworth, of Hastings; County Solicitor Holland, of Northumberland; Warden Bruce, of Simcoe; Warden Kenrick, of Wentworth; Warden Boyce, of Carleton; County Clerk McNeillie, of Victoria; County Solicitor Farewell, of Ontario, and County Councillors Duncan, of Lambton, Evans and Lundy, of York.

The Premier, in his reply, complimented the deputation on the manner in which they had presented their case and referred to the loss the Province had sustained in an educational way in the separation of the local from the county councils by the Act of 1896. He recognized that there were defects in the legislation of last session, and said:

"We think of amending the Act of last year so as to change the manner in which it shall come into operation. We would allow the municipal councils to pass a by-law if they saw fit to do so asking that the Act come into force. These by-laws afterwards would be referred to the electors of each township so that instead of the municipal councils of each municipality governing in this matter there would be a vote taken on the day for the election of councillors, say, next year, and if a majority of the ratepayers of the whole county demand the change, the change will go into effect in that county. (Applause.) The old Act will remain in force for two years, and it may be possible that the county councillors who have done such excellent work will be able to so impress their usefulness upon the electors that the change will not be made. In the meantime, the act of last year will be very carefully revised and amended in one or two particulars."

The members of the deputation were very much pleased with their reception and with the premier's reply which was accepted as an indication that the present county council system would be continued.

In addition to the memorials which all of the councils represented had already forwarded to the Legislature, the following special papers prepared by the representatives of the counties of Northumberland, Victoria and Elgin were considered by the deputation in formulating their views and filed with the Government.

COUNTIES OF NORTHUMBERLAND AND DURHAM.

1. The Act of 1903, whereby the reeves of minor municipalities and mayors of towns have the power to vote themselves as county councillors, while at the same time they are municipal councillors, is a return to dual representation long since abolished in respect to the Provincial and Dominion Parliament.

2. It is not in the best interest of our municipal institutions that the Act of 1903 should come into operation and decidedly unfair if the proposed change was desirable that it should be left wholly in the hands of the reeves and mayors to vote themselves into office.

3. The work of the county council as established by statute and also by custom is of an entirely different character from that of the minor municipalities, and just as separate as the work of the Provincial Legislature is from the Dominion Parliament.

4. The county councils, as at present composed, is entirely along the line of representation by population, whilst the amendment of 1903 is directly the opposite. As villages with only 500 inhabitants have the same representation as towns with 10,000 inhabitants.

5. It is also unjust that small villages and rural municipalities, with an assessment of \$150,000 or less, should have the same representation and voice at the county councils as municipalities with ten times that amount, or even greater than ten times.

6. Taking the united Counties of Northumberland and Durham, under the present system there has been a saving in money paid to commissioners since the Act came in force in 1897 of \$17,000, as compared with the same time under the old system.

7. In so far as the united Counties of Northumberland and Durham are concerned, the representation at present is equal from each county, being twelve from each, and in case the amendment of 1903 is brought into operation the representation will be most unjust, as it will give 14 representatives in Northumberland and only 10 to Durham.

8. The present system is a stimulus to reeves of minor municipalities to fit themselves for the higher position of county commissioner when done in the municipal council.

9. Representation by division in the county council is the same as representation in Parliament by constituency.

10. The present system has had the effect of inducing a better and more capable class of men to enter into our municipal councils as a preparatory school for higher positions of public trust, such as county commissioners and members of Parliament.

11. It is an indisputable fact that since the present system came into operation in 1897 there has been a decided improvement in the "personnel" of both our county and municipal councils in respect to intellectual ability.

COUNTY OF VICTORIA.

The act under which the Constitution of County Councils, as it at present exists, was passed in the year 1896. It was entitled simply, "an Act to Reduce the Number of County Councillors," but it was in fact an important and even a radical measure, providing for the formation of county council divisions whereby equality of representation would be secured, for the election of

members by direct vote of the municipal electors, (embodying the idea of representation of minorities) and a two years term, besides greatly reducing the number of members.

The main reasons for the change, an agitation for which had been carried on many years, were the large and cumbersome number of members, and consequently large expense, and the inequality in the amount of assessment represented by each member.

It is a fact that the legislation was a surprise to the province. The changes were so great and every detail was so fully provided for, that the most experienced municipal councillors and officers had cause to wonder how such a measure could have been framed and introduced to the House with so little prior discussion. The strength and definiteness manifested in placing the proposal before the House, and the inclusive finality of the Act when passed, ensured ready submission to its terms and loyal efforts on the part of the people to carry out its provisions. The Act has stood the test of the working out of its provisions so admirably, and has proved so advantageous to the interests it was intended to serve, that the legislation must be pronounced a statesmanlike and successful solution of an acknowledged defect in the municipal government of the province.

A comparison of the conditions which existed under the system, the conditions under the present system, and the conditions it is proposed to call into existence by the provisions of section 68a of The Consolidated Municipal Act, 1903, shows in an incontrovertible manner that if the legislation of 1896 was wise and progressive, the legislation of 1903, notwithstanding the saving clauses, is retrogressive in a marked degree.

The facts as they affect the County of Victoria are presented as a concrete example.

In the year 1896, the last year under the old system, there were sixteen municipalities in the County of Victoria, represented by twenty-six reeves and deputy-reeves. The average equalized value per member was \$398,000.00, the highest value per member being \$867,582.00, and the lowest \$52,000.00, showing the relation of the highest to the lowest to be seventeen to one. The average population per member was 1,145, the highest population per member being 2,300, and the lowest 554. Four to one.

Under the present constitution there are twelve members. The average value per member is \$971,350, the highest value per member \$1,391,720, and the lowest \$618,270, the relation of the highest to the lowest being about as two to one. The average population per member is 2,435, the highest population per member being 3,975, and the lowest 2,285. One and three-quarters to one.

Under the constitution as proposed there would be seventeen members, a new municipality having been formed by a special Act of the legislature since the county was formed into county council divisions. The new municipality is the summer resort, Sturgeon Point, valued at \$14,325, and the reeve would have a seat in the county council, but its value is not used in the basis of comparison. There would be seventeen members. The average value per member would be \$685,660, the highest value per member being \$2,783,444, and the lowest (apart from the village of Sturgeon Point), \$62,375, the relation of the highest to the lowest being about forty-four to one. The average population per member would be 1,720, the highest population per member would 7,000, and the lowest 508. Fourteen to one.

This added proof of retrogression may be instanced. Under the old system, the township of Mariposa, then reasonably supposed to be under-represented in relation

to its value, had three members out of twenty-six; under the present system it has two members out of twelve, under the proposed new system it would have one member out of seventeen.

With regard to the permissive provisions of the section in question:

The powers granted to local councils by sub-section (1) are subversive of the principle of representation. One of the main purposes of The County Councils Act, 1896, was to give the larger and more highly valued municipalities a fair and equitable standing, but the effect of this sub-section is to place it in the power of a majority of the local municipalities, without reference to value, to force the larger municipalities into a worse position relatively than they held prior to the passing of the Act under which county councils are now constituted. This contention is illustrated by the fact that in the county of Victoria nine local councils, with an aggregate of one-eleventh of the value of the county, have it in their power to override the will of the other eight municipalities whose aggregate is ten-elevenths of the total value, and change the constitution of the county council.

Sub-section 8 is as follows: "In every question arising in a county council constituted under this section which involves the expenditure of money to an excess of \$1,000 for any purpose other than the current annual expenses of the municipality, the result shall be determined by adding together the equalized assessments of the municipalities whose representatives vote for such expenditure and against such expenditure respectively, instead of by a majority vote of the members as in other cases." This sub-section is intended to be the panacea. An examination of it shows it to be worthy only of being described as the palliative. The instance in which its provisions could be or would be enforced would likely be limited in number, because nearly all expenditures come properly enough within the term "current annual expenses." The practical result would be that the township municipalities in the first range and the Town of Lindsay, which is situated within the range, although the aggregate value is \$7,554,969.00, would have on almost all questions a voting power of four, whilst the remainder of the county, with a value of \$4,101,246.00, would have a voting power of thirteen. The regulative provision is there, however, and it could be applied. It is contrary to the genius of free representative institutions. Take the case of two members holding opposite views voting on a question. One might have the power of forty-four votes to the one vote of the other. To place members in such a relation to each other is to dishonor and demean them. What is needed is the maintenance of the present status, which is true and unassailable, the basis of representation first being right and members being equal in voting power on all questions.

The members of the county council, as at present constituted, being elected to perform specific duties, and being directly responsible to the people, the management of the affairs of the county receives undivided and thorough attention. Under the present system the views of the county council are undoubtedly broader than they were under the superseded system or would be in a county council constituted as proposed by the recent legislation. There is a county view-point from which county affairs should be seen and dealt with. Were the county council composed of the heads of the local municipalities a narrower view would prevail with corresponding results.

On all grounds that are worthy of consideration, one conclusion only seems possible of being reached, that it is the duty of the Legislature to repeal section 68a of The Consolidated Municipal Act, 1903.

COUNTY OF ELGIN.

In the agitation for a continuance of the present county council system some of the arguments used in the ten years' discussion which preceded the passing of the Act of 1896 should be considered.

The reeves and deputy-reeves of townships, towns and villages then formed the county council. The principal objections were :

1. *The size of the councils.* These varied greatly. In the County of Simcoe the number of members was 57. This county is now divided into nine districts, the membership being 18.

2. *The cost of the administration of county affairs.* During the ten years previous to 1897 the annual expenditure of County Councils had increased 12%, or about \$300,000. That this objection was a reasonable one is shown by the following county statistics for the Province, taken from the Annual Reports of the Bureau of Industries:

	Amount paid for attendance at meetings of council and committees.	Total county expenditure.	Assets.	Liabilities.
1891.....	\$67,920	\$3,324,417	\$4,914,692	\$3,353,879
1896.....	72,772	3,130,991	4,366,435	2,368,680
1897.....	43,443	2,578,023	4,355,901	2,309,071
1901.....	41,407	2,185,025	4,519,111	2,048,843

The amount paid for attendance at meetings of council and committees has been reduced about \$30,000 per year. The annual county expenditure is one million dollars less than formerly. In 1891 county assets exceeded the liabilities by \$1,560,000. In 1901 the net assets were \$2,450,268, an increase of nearly \$900,000.

County councils, as at present constituted, have proved to be economical in their management of county business. They are directly responsible to the people, who appreciate their services. In January, 1901, forty-two per cent. of the county councillors of the Province were re-elected and in thirty counties this percentage was increased to one-half or more. In 1903 fifty-five per cent. were re-elected.

3. *The third objection was the inequality of representation.* The reeves of small villages and towns were all members of the county councils irrespective of population, assessed value or number of voters. The election of county councillors by districts was the only way to overcome this and produce the necessary equality.

Legislation of 1903.

In 1903 the Legislature passed section 68a of The Consolidated Municipal Act providing that county councils may be composed of the reeves of townships and villages and mayors of towns, if a majority of the councils of the local municipalities of a county so decide on or before the first day of October in any year immediately preceding a year in which county councillors are to be elected.

The inequality of representation is recognized by the introduction of a new system whereby the vote of each member of the council on all questions involving the expenditure of \$1,000 and over will count in proportion to the equalized value of the municipality represented.

Objections.

The principal objections to the proposed change are :

1. That the present constitution of county councils was determined after years of agitation for a reform during which municipal authorities and members of the Legislature gave the question every consideration. The Act of 1896 provided for an equitable representation, and

has proved to be a complete solution of the unsatisfactory conditions that then appertained to the administration of county affairs.

2. That there has been no public agitation or demand for a change such as usually precedes the passing of important legislation relating to municipal government.

3. That the said section is objectionable because it may be brought into force by a majority of the local councils representing a small proportion of the equalized value of a county. The constitution of county councils should be uniform throughout the Province and changes therein determined by direct legislative enactment.

4. That the provision for voting on financial questions in proportion to equalized value will place too great a voting power in the control of a few. In Elgin one township reeve would represent 20% of the vote ; in Victoria, 25% ; in Brant, 30% ; in Peel, 33% ; in Essex, 12% ; in Wellington, 11%.

5. That in determining other questions, which may be of equal, if not greater, importance, the representatives of villages and towns would have a large voting power and little responsibility.

6. That the legislation of 1903 is opposed to the spirit of our municipal institutions—the members of a council should be on an equality. It was this principle that influenced the passing of The County Councils Act of 1896.

7. That no provision is made for minority representation, which is most desirable. The dual or free voting feature of the present county council system has exerted a beneficial influence in this respect.

8. That the election of county councillors for a two-year term provides a measure of continuity of municipal government. The election of members of municipal councils for a similar term would have a good effect and remove many of the so-called objections to the present county council system.

Other County Council Systems.

In England counties are divided into electoral districts for the election of county councillors. The Parish, the Poor Law or Highway districts are not recognized. In the United States three forms of county government are to be found :

1. In the Southern States, where the counties are not divided into townships, the county council is composed of a representative from each parish.

2. In the Eastern States, where conditions favored township development, the County Board is composed of three supervisors elected by the county at large for three years, one retiring each year.

3. In the Middle and Northern States, where the counties are divided into townships, the reeves or supervisors of townships and cities constitute the County Board and the councils are reported to be too large.

Towns and Villages.

In these States cities are represented on the County Board by one or more supervisors. Villages or towns are not separate municipal corporations, but are more like the police village of Ontario, in which the township retains its jurisdiction. They are represented on the County Board by the supervisor of the township of which they form a part. This system, which is said to be a perfect type of representative county government, is not applicable to this Province owing to the existence of villages and small towns as separate municipalities.

Municipal Government in Ontario—An Historical Sketch

BY ADAM SHORTT, M. A.

Reprinted from The University of Toronto Studies in History and Economics.

II.

We may now turn to trace the development of the various phases of municipal government made necessary by the growth of the Province, the rise of towns, and the emergence of new social problems. In 1794 the magistrates were given the power to regulate tavern licenses, by giving or withholding certificates upon which licenses were granted by the Provincial Secretary. In 1797 the Quarter Sessions were authorized to regulate ferries by ordering suitable rules and regulations and assessing the rates to be charged.

Up to 1801 the Quarter Sessions were not authorized to make any special provisions for towns or villages as distinct from the remainder of the district. Gaols and court-houses were naturally placed in the chief town or towns in the district, and in such towns special nuisances were abated, special attention paid to the roads, special grants made for the schools and for the relief of the poor. But all these were services which might have been discharged for any part of the district where need arose.

Markets and Fairs.

In 1801, however, by a special Act of the Legislature, the Court of Quarter Sessions of the Midland district was empowered to establish and regulate a market in the town of Kingston. This was as much for the convenience of the inhabitants of the district in general as for the benefit of the people of Kingston. The location of the market, and the various rules and regulations to be observed in connection with it, were left to the discretion of the magistrates. Copies of the market rules were to be posted in the most public places in every township in the district, and at the doors of the church and court-house in Kingston. Up to this time there had been an informal market in the town. By common consent certain streets were recognized as places where country produce was to be bought and sold. No rules, however, could be enforced; there were no market hours or days appointed, or any protection against forestalling, in those days much complained of. The magistrates acted upon the authority given them, the Kingston market was duly established, and by 1811 the published rules and regulations had become very extensive.

As early as 1792 an annual fair had been established at Newark (Niagara) by proclamation of Governor Simcoe under authority of his general commission from the Home Government. Evidently following this precedent the people of York (Toronto) in 1802, desiring to have a market established there, made direct application to Lieutenant-Governor Hunter and the Executive Council. The following year an Order-in-Council was passed granting to the Chief Justice and certain other councillors a plot of ground at York to be set aside for a market, and to be held by them as a trust for the public benefit. In 1814 authority to establish a regular market in York was given to the Quarter Sessions of the Home district, in terms practically identical with the Act to establish a market in Kingston. Another Act specially providing for the convenience of towns was that of 1803, prohibiting swine from being permitted to run at large in the towns of York, Niagara, Queenston, Amherstburgh, Sandwich, Kingston, and New Johnstown.

Apparently the meagre element of responsible government allowed to the town meetings was not always sufficient to maintain interest in them, for in 1806 it was

necessary to provide that in case in any township no town meeting should be held, or township officers appointed, the Quarter Sessions should appoint the necessary officers and duly fine them should they decline the honor.

Town Government.

Kingston being for many years the chief commercial town in Upper Canada, it was naturally there that the more important urban municipal problems first developed. While Simcoe was still Governor, the Hon. Richard Cartwright, chairman of the Court of Quarter Sessions of the Midland district, had submitted to him the outline of a plan for incorporating the town of Kingston. The proposed corporation was to consist of a certain number of persons who might either be appointed by the Governor, elected by the people, or partly one and partly the other. The function of the corporation should be to regulate the police of the town, under the following heads: Measures for preventing accidents by fire; the times and places for holding public markets; determining the price and weight of bread; regulations for improving the streets and keeping them clean; regulating the fares of carters within the limits. The corporation should also have power to administer and dispose of the public domain, and the area of their jurisdiction should be enlarged from time to time so as to include the suburbs of the town as it increased. This plan, which was in accordance with the best American experience, indicates the line along which municipal expansion in Canada was actually to move; but it was a very long time in overtaking even this simple outline. Simcoe evidently took up Cartwright's suggestion, though he enlarged on it somewhat, and gave it a more aristocratic turn. His proposal to the Home Government was to erect the towns of Kingston and Niagara into cities, each with a corporation consisting of a mayor and six aldermen, to be justices of the peace, and a suitable number of common councillors. This was a standard arrangement in Britain, as it was afterwards in the first chartered cities in Upper Canada. But the members of Simcoe's corporations were advised "to be originally appointed by the Crown, and that the succession to vacant seats might be made in such manner as to render the election as little popular as possible, meaning such corporations to tend to the support of the aristocracy of the country." However, the Duke of Portland, with more insight, discouraged the project, suspecting that it might foster a taste for self-government. It was evidently through Cartwright's influence and initiative that the Act authorizing the establishment of the market in Kingston was obtained, and as chairman of the Quarter Sessions he was instrumental in bringing the Act into operation and regulating the market.

(To be continued.)

In Strathroy the by-law to grant a \$5,000 bonus to the Cameron-Dunn Handle Co. carried.

Ottawa carried a \$50,000 by-law to establish a municipal electric light plant.

Petrolia carried a street railway by-law by 400 majority, and also voted \$10,000 for the purchase of a gravel pit.

Oshawa, by a large majority, voted in favor of pumping water from the lake, instead of being supplied from Raglan Springs.

Engineering Department

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

ROAD IMPROVEMENT AND MAINTENANCE ON A BUSINESS BASIS.

In considering the question of commutation or abolition of statute labor, the greatest difficulty is in reference to the plan of road improvement and maintenance to be substituted therefor.

The abolition of statute labor is an improvement only when accompanied by a well considered plan for future work adapted to the requirements of the municipality.

The statute labor system with all its faults, has been in force for many years, it is a relic of the pioneer days, when co-operative labor was both a private and public necessity. The introduction of labor-saving machinery has placed the farmer in an independent position. He is able to do most of his own work and pay for assistance.

The present day system of agriculture requires his constant attention if the best results are to be attained.

To appreciate the advantages of modern methods, it is only necessary to compare them with those in operation years ago in every department of private work.

A comparison of the present statute labor system with that inaugurated by our pioneer fathers, will show that it remains practically unchanged, and that year by year it becomes less adapted to present requirements. Land owners have not the time or assistance necessary to do effective work when it should be done.

Statute labor is reported to be inefficient. This however, should not be the cause of the wasteful expenditures complained of in many townships.

The adoption of a businesslike system of road improvement and maintenance will result in better work and decreased taxation. The commutation or regulation of statute labor may be considered in connection therewith.

In endeavoring to outline such a system, it is only possible to offer suggestions that may assist councils in dealing with defective conditions.

Those who have considered the question favor the appointment of an official to relieve the members of councils of the greater part of the work they now perform in looking after roads and bridges. This official would become experienced and more valuable each year, he would carry out directions and consult and advise the council in all matters connected with his office.

Township Commissioner.

The direction and oversight of municipal improvements should be placed in the hands of one commissioner, who should be specially adapted to the work, and whose tenure of office should be as secure as that of the average clerk or treasurer. He should have charge of all road and bridge improvement, and should be required to report to the council at each meeting.

No work of importance should be undertaken until it has been reported upon by him and approved by the council. He would not necessarily be actively engaged during the whole year. He should have charge of all township machinery and material required for work connected with this department. The many economies that would result will readily suggest themselves to councillors of experience.

In large townships it may be thought that one commissioner is not sufficient. In such cases the townships should be divided into not more than four divisions and the commissioner authorized to employ a working foreman for each.

Duties of Commissioner.

1. The commissioner should prepare a plan of his township, showing all roads, and the location of them, of all culverts, bridges and watercourses, classifying roads according to their requirements.

2. He should prepare a list of all culverts and bridges, showing dimensions, material used in construction, their condition, and the direction of the watercourses passing through them, with memoranda as to the source of the water and the location of the outlet.

3. The plans and records should show, as to roads, whether they are of gravel, stone or earth, graded or ungraded, the system of drainage, and nature and extent of traffic upon them. He should carefully study the present and future requirements of traffic on all roads, the class of roads best suited to such traffic, the width and depth of metal, width of graded portion, amount of crown and other details of construction.

4. He should possess full information as to location, extent and quality of material suitable for road construction and amount of plank and timber obtainable from ratepayers in the township or district suitable for repairs.

5. He should report to the council as early as possible in each year, showing the number and location of culverts and small bridges to be rebuilt or repaired, with a detailed statement of all material required for this work, and an estimate of the cost. It would also be advantageous to have a probable estimate of material required during the following year, presented each fall so that, if thought advisable, it may be purchased and delivered on the ground during winter months, or other most convenient season, so as to utilize as much as possible the labor of ratepayers during the slack season.

6. His report should specify the condition of all bridges, indicating those which require repairs or reconstruction, together with an estimate of cost and a statement dealing with such special protection work on streams as he may deem worth the council's consideration. There should also be a reference to any needed re-location or deviation of existing roads, with a view to doing away with bridges, culverts, expensive grades, cuts or other features which tend to prevent permanent work and economic maintenance.

7. He should take stock annually, and report to council on all machinery and implements, showing their condition and where kept.

8. He should carefully examine all parts of the township where gravel and stone exist, and should by borings and tests, determine the quality and extent, and report thereon to the council. All material, stone, plank, gravel, etc., should be purchased by the commissioner in large quantities, and under instructions from the council, the required amount to be determined by his estimates referred to above. As far as possible the material should be purchased by tender, and due consideration should be given to any ratepayer having material for sale. When

purchased it should be delivered and stored at convenient points and placed in charge of, and used subject to the order of the commissioner, and in emergency work.

9. He should prepare specifications of all work for which the council makes money appropriations. The work may be done by day labor or by contract awarded to lowest bidder, if proper security is given, the work to be subject to the approval of the commissioner, who should certify to all accounts before payment.

Commissioner and Statute Labor.

The maintenance of snow roads and emergency work at other seasons may appear to favor a continuance of the statute labor system in some form. The construction of snow fences of wire will do much towards preventing drifts in winter. The designation of pathmasters as formerly in townships where statute labor is abolished, with instructions to keep road open and attend to emergency work, and report same within a reasonable time to the working foreman or township commissioner is all that is necessary.

The commissioner system may be operated in connection with statute labor with good results.

The statute labor divisions are usually too small for effective work; they should not be less than three miles in length. Where statute labor is retained, a pathmaster should be a permanent officer, and his division should be such that the most of his travel will lead him over the greatest portion of it. He should not receive a salary, but should, as a slight recompense, be preferred in doing small jobs under the commissioner, where the work is not considered of sufficient importance to be let by contract. He should, in addition, give special attention to all emergency work, such as washouts, broken culverts and bridges. If the time required to oversee statute labor in his division is more than would be needed for his own statute labor, he should be paid for such excess under certificate of the commissioner, the object being to secure proper supervision of all work performed.

The commissioner should consult with all pathmasters and report to the council, showing the number of days' labor in each division, the work to be undertaken, and the amount of money which should be appropriated by the council to properly utilize the statute labor.

He should arrange with divisions desiring to compound statute labor for a term of years, with a view to construction of permanent and finished work.

[This is probably the most important question before township councils to-day. We will be pleased to receive suggestions and publish the experience of others so that all may benefit therefrom.—ED.]

ROAD MAINTENANCE.

Cheap roads are not those which have cost least for first construction, but those which cost least after a term of years. True economy in regard to roads requires that they should be kept in repair. Roads after being properly built should never get out of repair. They become so, only by neglect. A smooth road, one with an even surface, will last much longer than will a road that is rough. Everyone has observed the hollows and pitch-holes formed on both sides of a wooden culvert or bridge projecting above the surface of the road. These pitch-holes form because every vehicle crossing the bridge, drops down with a heavy jolt. Shallow at first, the deeper the holes become, the more rapidly they increase in size and depth because the pounding action of the wheels increases with the depth. Water collects and remains in these holes and assists the wearing action of the wheels.

The same process of wear is going on at many places in the road, other than at bridges and culverts. Wherever

there is a roughness of any kind, a projecting or loose stone, a soft or hollow spot in the road, there is the same pounding action of the wheels, assisted by the collecting of pools of water, which lie in every depression.

In the spring of the year on roads which have been drifted, and on which the snow lies unevenly, the shallow places melt first, leaving the gravel or stone road exposed in spots, with mounds of snow on each side. Here the same action goes on. Wheels drop into the depressions kept soft by the melting snow. Pitch-holes commence, and a few days of traffic breaks up the road and does a great amount of injury.

Roads should receive constant attention. This is the most economical and satisfactory system of making repairs. Repairs should be made not once a year, nor twice, but as soon as signs of wear appear. Special attention is needed in early spring and early fall, as at these two periods much can be done to prepare the roads for the ensuing seasons of particularly severe conditions.

Ruts should not be allowed to form in a gravel or stone road when once properly constructed, but the material should be kept in place by a constant use of the rake. This is especially necessary if gravel or stone is placed loosely on the road and left for traffic to consolidate. Settlements and hollows should not be allowed to hold water and create pitch-holes for want of a load of metal. Drains should not be allowed to become obstructed, thereby saturating and softening the whole roadbed. Culverts should not stand full of water to be burst by the expanding ice because of a neglected outlet. An almost inexhaustible list of these every day occurrences could be mentioned, which in themselves apparently trifling, become in the aggregate of very great importance. Roadmaking is made up of details, none of which can be overlooked, except at a loss.

The overseer should give immediate attention to all emergency work rendered necessary by washouts, etc., either by personal or hired labor. He should be able to send a man over the roads as often as necessary to repair the effect of ordinary wear. Better still, a man should be employed to devote his whole time to a certain mileage of roads, to make repairs as they become necessary. Every farmer, too, should appreciate the value of good roads sufficiently to voluntarily devote time to the roads passing his property, rather than to permit them to become bad or impassable because of neglect.

Where a council, as is commonly the case, provides materials, gravel, tile, etc., for road maintenance out of the general funds, one man with horse and cart and help when required can keep in repair ten miles of gravel or stone road at a cost not exceeding the statute labor along the road commuted at one dollar a day.

It is one of the great advantages of the new systems of road management being adopted by townships and counties, that men can be employed to work on the roads whenever and wherever needed. Neglect to keep the surface of a road smooth and in repair permits it to break up badly in the spring and fall, and the gravel or stone is largely wasted, being mixed with the mud from beneath. When this occurs a comparatively great expenditure is needed to make the road as good as before.

The regulations approved by order in Council for encouraging agriculture and horticulture by rural schools, state that any board providing a school garden shall be entitled to an initial grant not exceeding \$100, and a subsequent annual grant of \$10, provided the appropriation by the Legislature will warrant such payment. The area of the garden must be at least one acre. The trustees must provide the tools for gardening and a shed for a storehouse and working laboratory. The grant will be payable on the report of the inspector.

WHY GOOD ROADS ARE NEEDED.

The advantages of good roads seem almost endless. An enumeration of them alone would fill a volume. Some of them are :

They reduce the isolation of farm life.

They enable the farmer or his family to attend the church, the school, public meetings, social gatherings, with greater comfort and regularity.

They facilitate the distribution of mail.

They enable the farmer to get a daily paper.

They enable the farmer to keep in closer touch with market prices.

They reduce the cost of taking farm produce to market.

Farm produce reaches the market in better condition, particularly fruit, vegetables, and perishable stuff.

In dairying districts, the cost of hauling milk is much reduced, it can be hauled with much greater convenience, and reaches the cheese or butter factory in better condition.

Factories can be farther apart, the cost of making the cheese and butter reduced, and greater uniformity secured.

Wear and tear on horses, harness and vehicles is lessened.

A doctor can be summoned more quickly and human life, in cases, saved.

They do away with the profanity and bad-temper caused by bad roads.

A farm always looks better from a good road than a bad road. No farm ever looked well when viewed from a road axle-deep with mud.

A good road improves the general appearance of the country.

Some men are wasting half their lives driving over bad roads. Good roads effect a great saving in time.

Good roads attract a greater population to the country.

They enable the farmer to visit the store and provide himself with the comforts of life more readily.

Broken farm machinery can be repaired more readily and quickly.

They enable the farmer to use good carriages and to keep them in better condition.

A farm with a good road leading from it to the market is worth more money and will sell more readily than if the road is bad.

The retail merchant will sell more goods, for the farmer can visit his store more frequently.

The wholesale house will sell more goods to the retail store.

The manufacturer will sell more goods to the wholesale merchant.

The raw material for manufacture can be hauled more cheaply on its first journey over the country road, to the advantage of all.

The publishers will sell more newspapers and other literature.

The physician can extend his practice over a wider area of country and drive over the roads with greater comfort and safety.

The clergyman can visit the rural portions of his parish more readily, visiting the sick and holding divine service, having a more regular attendance at the latter.

The schoolmaster will secure a more regular attendance of pupils.

Freight will be received by the railways and steamships with greater regularity, tending to equalize the amount carried at all seasons of the year, cheapening the cost of transportation.

There is no class of people but will profit by the more prosperous condition that good roads create.

THE ROAD SURFACE.

The road surface of gravel or broken stone is, by many, regarded as the chief part of the road. As a result gravel and broken stone are frequently applied to the roads very lavishly, but only to be lost in the mud in a year or so. Townships which at one time had an abundance of gravel are now facing the fact that their supply is exhausted. The reason of this waste of road-metal is that the foundation of the road, the natural soil, has not been properly drained, graded and consolidated, to receive the surface covering; and also that this surface covering has not been cared for after being placed on the road.

To properly apply gravel or broken stone requires that, after providing for drainage, and grading and crowning the earth subsoil, this earth road shall be placed in a smooth and compact condition, and the best means of accomplishing this is by the use of a roller. Having thus prepared the foundation, the gravel or stone coating should in turn be consolidated with a roller. In the absence of a roller, and depending upon traffic to consolidate the road, both the earth road and the metal covering can readily and cheaply be kept in shape by the use of a rake until both are firm and compact.

A road surface of gravel or broken stone performs various services. The ordinary dirt road of clay or loam alone ruts readily, softens quickly after a rain, and has little supporting power. A well-compacted layer of gravel or broken stone over it distributes the concentrated wheel load over a greater area of subsoil; it does not rut readily, and affords good surface drainage; it gives a smooth, hard, wearing surface; water does not easily penetrate it so as to soften and reduce the supporting power of the subsoil.

The depth of gravel or stone to be used must vary with the quality of the material, the amount and nature of traffic on the road and the nature of the subsoil. A dry, compact and stony subsoil needs less metal than does a plastic clay, difficult of drainage. A definite rule cannot be laid down to accurately meet all conditions, but from six to twelve inches of well consolidated material will afford a sufficient range to accommodate most circumstances. Ordinarily ten inches of metal should accommodate the heaviest traffic to which a gravel or broken stone roadway can be economically subjected.

Wagons with a hopper-shaped opening between the front and rear axles, are now made expressly for drawing gravel, and distributing it over the road. The opening of the hopper is controlled by a lever beside the driver. The metal can be distributed to any required depth, after a little experience, by regulating the extent to which the hopper is opened.

For screenings especially, in distributing them evenly over the stone, these wagons are particularly useful. A number of these wagons coupled together and drawn by a traction engine affords one of the cheapest methods of hauling gravel or stone for a considerable distance, under certain conditions.

Teams and teamsters should be hired to haul gravel by the load or cord, not by the day, and the size of each load should be specified. Care should be taken at the pit to see that only suitable road metal is put in the wagons, and that clay, sod, large stone or very sandy material are excluded.

A notable defect of most country roads is the flat, or even concave surface. Others present the opposite extreme, and are so rounded up as to be dangerously high in the centre, making it difficult for vehicles to turn out in passing. Roads must be crowned sufficiently to shed water from the centre to the open drains at the side, otherwise water will stand in the roadway, soak into it,

soften and cause rapid wear, resulting in ruts and holes ; but a crown higher than is necessary to properly drain the surface is also objectionable. The smoother and harder the surface of the road, the less crown is needed.

The amount of crown should not be more than sufficient to provide for surface drainage. A sharp crown tends to confine traffic to the centre of the road ; and also, in turning out, the weight of the road is thrown on one pair of wheels in such a way as to rut the side of the road. The shape of the crown is a matter on which road experts differ, but with the class of material available for roads in Ontario, and the methods and plans of construction, a form as nearly circular as possible will be found serviceable and most easily obtained.

From the edge of the open drain the graded portion of the roadway should be crowned with a circular rise of one inch to the foot from side to center. That is, a driveway of twenty-four feet wide would be one foot higher at the centre than at the side. This amount of crown may at first appear excessive, but with gravel roads and roads metalled with the quality of stones commonly used, is not more than enough to provide for wear and settlement consistent with good surface drainage.

The weight of the road above the level of the adjacent land need not be greater than is sufficient to provide against the overflow of storm water, which should always be guarded against. The depth of the open drain must vary according to the amount of fall and the quantity of water to be provided for ; also according to the sub-drainage needed and provided. When tile sub-drains are used, the open drain can often be shallow, in which case the width of the graded roadway can be narrowed, there being no danger of accidents such as are caused by a deep trench at the roadside. The tile drains should be placed below severe frost, and usually a depth of three feet will answer.

COMMON EARTH ROADS.

Earth roads, having no surface covering of gravel or stone, but being merely a wagon track more or less graded and drained, are to be found in every township of the Province. Some townships (and the condition extends over a few counties) have not a local supply of gravel or stone, and in consequence they have practically nothing but earth roads. There are now few townships in the Province where this condition, in view of existing opportunities, need continue. The pioneers of this country, who toiled so strenuously to open and make dirt roads through the forest did not believe that their successors and descendants would rest content with so inferior a type of highway. If the people of to-day would put forth the effort made by the first settlers, the extent of earth roads would very quickly, in all the older parts of the Province, reach more reasonable proportions. Gravel and broken stone can everywhere be procured cheaply by rail, and by taking proper precautions in construction and maintenance, a great deal of waste in using these materials can be overcome.

Where earth roads are suitable, it is to be said that for six months of the year they are often as good a driveway as could be desired for light travel. In order to extend the usefulness of an earth road the greatest care must be taken to see that drains and culverts are placed wherever needed, and that they are always in good working order. It should be well crowned, or rounded up, so as to shed the water freely to the side ditches ; but in making this crown, sod and vegetable mould should be carefully excluded. A great deal of injury is done to this

kind of road by running a grading machine along the edges, bringing loose stones and sod to the centre. This material should be thrown outwards and across the open drain.

Under-drains should be used judiciously. While a complete system may not be used, tile drains should at least be placed where the water does not leave the side of the road early in the spring, or wherever the ground appears to be continually damp. If open drains are kept in good working order, and if the road is properly crowned, its condition in fall and spring will indicate the points at which tile drainage is most needed.

Earth roads can be materially improved for summer travel by passing a grader or planer lightly over them early in the spring before the ground has become hard and baked by the sun. It is much more satisfactory to make a road good by the use of machinery than to wear it down by travel. If a grader is not available for this work, a second-hand railroad rail, one weighing from 50 to 70 pounds per yard, can be dragged by a team of horses up one side of the road and down the other with excellent effect ; one round trip is usually sufficient. A steel I-beam is equally as good. The object of this treatment is to smooth down the ridges and fill the ruts and hollows. The blade of the grader, or the rail, should be kept nearly square across the road so as to carry a sufficient amount of earth before it to fill depressions. It is most important that this work should be done while the ground is slightly moist.

It is not advisable to repair holes in an earth road by filling them with gravel or broken stone. The latter materials do not wear down so rapidly as the earth around them, with the result that they become bumps or ridges, and the effect is to make two holes where there was originally only one.

Nearly all roads in Ontario have at one time been "dirt" roads. By a process of evolution some have become gravel or broken stone roads. A dirt road nicely crowned and well drained will make an excellent foundation on which to place a layer of gravel. A driveway which has passed through an apprenticeship as a dirt road, and has, during that time, had due attention given to its drainage requirements, will have indicated the points at which open drains, culverts and under-drains are most needed. With these provided, gravel can be applied to the best advantage.

Townships which feel compelled for the present, to use earth roads only, because of the absence of a local supply of gravel or stone, should not think that the more primitive means of making these roads, and the old-time systems of road management, are still suitable for them. If this class of road is to be maintained, there is all the more reason that they should be kept in good repair, and that the most efficient and economical system of doing this be adopted. To this end, road management should be placed in the hands of from one to four commissioners, who should have charge of all road machinery, and who should send the graders and planers over the roads as often as necessary to keep them smooth, to keep the ruts and wheel tracks filled up, and holes from forming. If pathmasters are retained, they should be required to act only in opening up snow roads, statute labor being devoted to this purpose, and if not required, it might be allowed to lapse for the year. For ordinary road maintenance and the care of the earth roads, a special rate should be levied with the regular taxes, to be expended by the council and the road commissioners. In all respects, the model system of road management being adopted in numerous townships, is fully as well adapted to common earth roads, as to the more permanent gravel and stone roads.

QUESTION DRAWER

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

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

Communications requiring immediate attention will be answered free by post, on receipt of a stamped-addressed envelope. All Questions will be published unless One Dollar is enclosed with request for private reply.

A Deficient Dog Tax By-Law.

125—M. T.—Our reeve is anxious to have your opinion on section 8 of our Dog Tax By-law, particularly to that part that is *underlined* in the accompanying extract from the by-law:

The Revised Statutes of Ontario, 1897, enact as follows: "There shall be levied annually in every municipality in Ontario upon the owner, possessor or harbinger of each dog therein, an annual tax of \$1.00 for a dog, and \$2.00 for a bitch."

The annual assessment by-law of this village provides for the collection of a tax on dogs as follows: Section 8—"that the village tax collector shall levy and collect the sum of one dollar from the owner, keeper or harbinger of each dog, and two dollars for each bitch within the Village of R—, *whether such are entered on the Assessment Roll or not.*" It frequently occurs that there are many dogs in the village that are not entered on the *Assessment Roll* and some that *come in after the roll is returned to the clerk* early in the year, hence that part of the foregoing section 8 in italics.

We are of the opinion that clause 8 of the by-law cannot be enforced under the circumstances. If the councils desire to pass a by-law for revenue purposes it should first pass a by-law declaring that chapter 271 shall no longer be in force.

Care of Destitute Insane—Defaulting Pathmasters.

126—C. C.—I. Some few months since a gentleman by name C. R. came to our township from Holland to visit friends here. He apparently became insane, and instead of notifying the municipality of N. they had a doctor from the adjoining township examine him who pronounced him insane and had him sent away to the asylum. Later we got a bill from somewhere, near sixty dollars, for expenses in the matter from Judge McC—, of P— S—. We have not paid it yet and want your advice on it. We never knew there was such a man in the township and were never notified in any way. We understand he was not one week in the township and it was reported he was insane when he arrived at New York. He is not resident here so we do not feel liable. We presume his relatives here paid the costs and now wish to recover the same. Tell us plainly what our course should be.

2. (a) What should be done with Pathmasters who do not order their men out to do road work on their beat. (b) And the pathmasters who do not return their lists?

1. We are of opinion that under the circumstances stated the municipality is not liable for payment of this account. In order to fix the responsibility for the amount on the municipality, application should have been made to the reeve, under sub-section 1 of section 11 of chapter 317, R. S. O., 1897, for an examination to be made and certificates given in accordance with sections 7, 8 and 9 of the Act, and if the reeve was satisfied the insane person was in destitute circumstances, it became his duty to notify two medical practitioners to make the required examination. If this had been done, the municipality would have been liable for the expenses, as provided by sub-section 2 of section 11.

2 (A and B). We do not see that anything can be done with these pathmasters, unless the municipal council has passed a by-law pursuant to section 702 of The Consolidated Municipal Act, 1903, and if it has passed such a by-law, its provisions will govern.

Township Grant to Free Library.

127—J. B. H.—What are the steps to be taken to get a grant from the council for a public library, if such a thing is possible?

Sub-section 4 of section 591 of The Consolidated Municipal Act, 1903, empowers the councils of townships to pass by-laws "for granting money or land in aid of any free library established under "The Public Libraries Act," or "The Act Respecting Mechanics' Institutes and Art Schools" within the municipality or within any adjoining municipality."

Limit of Township School Levy.

128—A. S.—Has the municipal council power to raise the general school levy higher than the \$150, as the words "at least" in each case are used (see section 66 Public School Act)? We would like to raise it to \$200.

It is doubtful whether a council can under section 70 of The Public Schools Act, 1901, levy more than \$150 for each school in the municipality which has been kept open the whole year, exclusive of vacation. In the case of Regina v. Smith (16 O. R. 454), the Queen's Bench Divisional Court held that the words "not less than \$50" and "not less than \$100" in The Canada Temperance Act should be construed as "\$50 and no less" and "\$100 and no less." In using the words "at least" in section 70 of The Public Schools Act, 1901, we are inclined to think that the Legislature intended to make it clear that \$150 must be raised in each year, rather than to fix the minimum amount.

Proceedings When Drainage Scheme Initiated Under Section 75 of the Act.

129—D. D.—1. When council is proceeding with Drainage work under section 75 (without petition) is it necessary for the clerk, in pursuance of section 16, to notify all parties assessed for the work?

2. There being no petition from which dissatisfied parties can withdraw, of what use or benefit will their presence be at the council meeting when the report of the engineer is being dealt with?

1 and 2. Section 16 of The Municipal Drainage Act (R. S. O., 1897, chapter 226), requires the clerk to notify all parties within the area described in the petition, etc. When the work is being done, pursuant to the provisions of section 75 of the Act, there is no petition required, and the provisions of section 16 are inapplicable. The clerk, should, however, as soon as the report of the engineer is filed send out the notices mentioned in sub-section 7 of section 9 of the Act (as enacted by section 5 of chapter 28 of The Ontario Statutes, 1899.)

Time for Holding Meetings of County Councils.

130—R. A. F.—I see some of the County Councils are holding their first meetings this week. Do you think that their action in so doing conflicts with section 259 of the Consolidated Municipal Act?

The section quoted provides that the members of every municipal council, except county councils, shall hold their first meeting at eleven o'clock in the forenoon, on the second Monday of the *same January in which they are*

elected, etc., and that the members of every county council shall hold their first meeting at two o'clock in the afternoon, or some hour thereafter, on the fourth Tuesday of the same month (that is the January in which they are elected) or on some day thereafter. Since the members of existing county councils were not elected last January, but in January, 1903, we do not think that the holding of their first meeting this year on some day prior to the fourth Tuesday in January last would contravene the above provisions of section 259 of the Act, provided, of course, that the date of meeting had been fixed by resolution of the council, as provided in section 265 of the Act.

Leasing of Streets in Village and Collection of Rent.

131—S. F. S.—There are several parties occupying unused streets in our village. Our council passed a resolution charging at the rate of \$5 an acre per annum rent for the use of said streets.

Can this be entered in the collector's roll and collected in the same way as taxes. If not, what would be the proper way to collect the same?

The council had no power to lease these streets (assuming that they were public highways) by mere resolution. If it deemed it desirable to do so, it should have passed a by-law for the purpose, pursuant to section 637 of The Consolidated Municipal Act, 1903, (or The Municipal Act then in force) after all the provisions of section 632 had been strictly observed. Even if this leasing of the streets had been legally effected, the annual rental could not be placed on the collector's roll against the lands of the parties liable therefor and collected at the same time and in the same manner as ordinary taxes.

Payment for Attendance on Parties Quarantined.

132—H. C. G.—Our medical health officer was appointed in 1903, but without salary. He was sent by the Board of Health to attend scarlet fever cases. The parties whom he attended are able to pay but refuse. He has sent his account in to the municipal council and says as he was employed by them must look to them for payment. Who should pay, and in what way should payment be enforced, if municipality pays the medical health officer?

The physician who was filling the office of medical health officer was engaged, it is stated, to attend these cases of scarlet fever. He therefore has the right to look to the local Board of Health for payment of his account. If the facts are as stated, the local Board of Health should issue an order in favor of the physician for the amount of his account on the treasurer of the municipality, and the latter is bound to honor it. (See section 57 of The Public Health Act, R. S. O., 1897, chapter 248). Since the local Board of Health employed the medical health officer to attend this patient, we are of opinion that neither the local board nor the council can RECOVER the amount from the parties afflicted.

Qualification of Private Banker for Reeveship—Farmer Cannot Shoot Pigeons Trespassing.

133—G. P.—1. Can a private banker act as reeve of a town if he does not handle the town's money, or if he does handle it?

2. Has a farmer a right to shoot pigeons if they are destroying his crops if the pigeons belong to his neighbor?

1. If a private banker is doing the banking business, or any portion of it, for the town, he is disqualified from filling the office of reeve under section 80 of The Consolidated Municipal Act, 1903. If he is not doing any banking business for the town, the mere fact that he is carrying on a private banking business therein, does not disqualify him.

2. No. If the pigeons occasion the farmer any damage, he can recover the amount from the owner by ordinary action at law.

Payment of Expenses of Parties Quarantined.

134—D. H. S.—A was quarantined by M. H. O. for scarlet fever. B engaged by same ministered to A's wants while under quarantine. B sent his account to the Board of Health. The

Board of Health ordered the council to pay his request, which was done. A refuses to pay the amount. His financial circumstances are O. K. Can the council collect the amount from A?

The council should not have paid this account, since A was financially able to do so. The council could have been held responsible only in the event of A's being unable, owing to his poverty, to pay it. (See the latter part of section 93 of The Public Health Act, R. S. O., 1897, chapter 248.) Having voluntarily paid the account, we do not think the council can now recover the amount from A.

Duties of Clerk—Municipal Officers Should Not be Appointed by Tender.

135—P. K.—1. What are the duties of a clerk?

2. Unable to get seconder to motion on a by-law instructing clerk to ask for applications for office. Can councillor demand them?

1. An enumeration of the multifarious duties of the clerk of a municipality would fill a large book. A knowledge of them can be gained only by constant reading, research and practice, and a careful perusal of the various statutes relating to a clerk's duties.

2. A council should appoint to the respective offices in the municipality such persons as it deems competent to discharge their duties. Tenders for any office cannot be legally asked for. Sub-section 2 of section 320 of The Consolidated Municipal Act, 1903, 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."

Responsibility for Accident on Town Line.

136—W. J. D.—There was a slight washout on a road just where the track of a township road adjoins the track of the town line. A thresher in moving his engine across it breaks a wheel. The accident occurred within the four rods used as a road allowance. Is the township alone responsible or is the adjoining township equally responsible?

The statement of the facts is not very clear, but we assume that the accident happened where a road leading from one of the townships intersects or crosses the boundary line between them. If this is so, and the circumstances are such as to render the municipality or municipalities liable, if no agreement has been entered into between the adjoining townships pursuant to section 625 of The Consolidated Municipal Act, 1903, fixing the responsibility for the keeping in repair of the particular part of the townline on which the accident happened on either of the townships concerned, they would be jointly liable. (See sections 621 and 622 of the Act). We cannot, however, express any opinion as to whether either of the municipalities is liable at all, because that depends upon whether the accident happened by reason of the negligence of the municipalities.

Authority of Local Board of Health to Close Churches and Schools.

137—I. J.—The Board of Health of this township passes a resolution ordering all schools and churches to be closed and forbidding any public or social meeting to be held in this municipality for two weeks in consequence of the existence of a number of cases of scarlet fever in the township.

1. Has the Board authority to issue such an order, or power to enforce it?

2. If the Board has such authority from what source is it derived?

1 and 2. We are of opinion that a local Board of Health has no authority, of its own motion, to issue and enforce an order of this kind. The extent of the authority of the local board, under The Public Health Act, is to take all necessary precautions for the isolation of persons afflicted with the contagious disease, and to supply them with necessaries while under quarantine. In cases of

extreme urgency the Provincial Board of Health should be applied to. If, on investigation, it deems such a course necessary, the Provincial Board may issue and enforce an order closing all churches and schools, etc., in the municipality. (See section 13 of The Public Health Act, R. S. O., 1897, chapter 248.)

Township Councils May Aid in Maintenance of Band of Music.

138—SUBSCRIBER—In our township there is a society brass band. Said band petitioned our council to grant them \$50 to help pay for their instruments, members of said band being only names on said petition.

1. Has our township council power in any way to grant said bonus to this band?

2. If our council grants this bonus can they be held personally responsible for same by the ratepayers?

1. Yes. Sub-section 2 of section number 591 of The Consolidated Municipal Act, 1903, empowers councils of townships to pass by-laws "for aiding in the establishment and maintenance of a band of music."

2. Our reply to question number one renders it unnecessary to answer this.

Appointment of Truancy Officer—School Trustee Cannot Contract with His School Board.

139—H. W. E.—At the first meeting of our council one of the duties they performed was to appoint a truant officer for the ensuing year. They appointed a public school trustee to act as truant officer, his salary to be \$5.00 for the year.

1. Is this appointment legal, and can a trustee act as truant officer and can he receive pay out of the corporation as said truant officer, he being a trustee also?

2. It has been the custom of some of our trustees whenever any work has to be done at the school house to perform that work themselves and receive pay out of the school money for said work. Is it legal for the trustees to do said work and take pay for the same out of the school funds?

1. We are of opinion that this appointment was not a proper one. The Truancy Act (R. S. O., 1897, chapter 296), does not state what particular class or classes of persons shall or shall not be appointed truancy officers by a village council, but the language of the Act is such that it is evident that it was not intended that a public school trustee could be appointed to the office. For instance, section 11 of the Act provides that "it shall be the duty of the trustees of EVERY school to report to the truant officer of the municipality in which their school is situated the name, age and residence of all pupils, etc." A person in his capacity as public school trustee could not make this report to himself in his capacity as truant officer.

2. No. Section 105 of The Public Schools Act, 1901, provides that "any trustee who has any pecuniary interest, profit or promise, or expected benefit in, or from any contract, agreement or engagement, either in his own name or in the name of another, with the corporation of which he is a member, or who receives or expects to receive any compensation for any work, engagement, employment or duty, on behalf of such corporation, shall, ipso facto, vacate his seat, etc."

Time for Equalizing Union School Assessments—Township School Levy.

140—W. H. J.—There are four union schools in the municipality, which were equalized by the assessors of the different municipalities in May, 1901.

1. Should they be equalized this coming May or should they extend for five years from date of last equalization?

The trustees of union school section asked the municipal council to have debentures issued to build a new school house. This school house is on the boundary line between two counties and was built in the fall of 1902. The school has two rooms and engages two teachers for the year.

2. Are these two rooms entitled to \$150 each collected out of the general school rate, or would one only be an assistant and only entitled to \$100.

The trustees of union S. S. No. 12 made application to the municipal council asking to have the north-east half of lot No. 20, and the south-east half of lot 21, in the second concession of B—— detached from S. S. No. 5 and to have the same attached to union S. S. No. 12, due notice having been given to the trustees of S. S. No. 5. Two of the trustees were present at the council meeting, one from each school section, when a by-law was passed on the 25th day of last April, 1903, detaching the north-east quarter of lot No. 20 in the second concession of B——, and the south-east quarter of lot 21 in the second concession of B—— from S. S. No. 5, and attached to union S. S. No. 12.

3. Should the union schools be equalized this coming May or should it continue for five years from the last equalization?

4. Is union S. S. entitled to the \$150 for each school room collected out of the general school rate from both municipalities, or should one of them be called an assistant and only entitled to \$100?

5. Was the by-law legal, it taking effect on the 25th day of December last?

1. The assessment of these union school sections should be equalized by the assessors of the several municipalities interested prior to the first day of June next, and the equalization then made will answer for the following five years, as provided in section 3 of chapter 32 of The Ontario Statutes, 1903.

2. Every public school in a township municipality is entitled to have levied and collected for it by the municipal council at least \$150 and \$100 for each assistant teacher employed in any such school, no matter how many rooms the school house may contain. This school is therefore entitled to receive \$150 out of the township school levy and \$100 additional for the assistant teacher.

3. Our answer to question number one is a sufficient reply to this.

4. Our answer to question number two is a sufficient reply to this..

5. We cannot express any opinion as to the validity of the by-law. Having been passed not later than the first day of June, it was passed in time, but under the school Act such a by-law does not take effect until the 25th day of December of the year in which it was passed.

A Defective Nomination Resignation.

141—SUBSCRIBER.—At a township nomination Mr. A. was nominated for councillor. He was afterwards, at the same meeting, nominated for Reeve. There was only one other candidate for the reeveship. Within the required time Mr. A. sent to the township clerk the following resignation.

I, Mr. (name in full) of the township of ——, hereby resign the nomination for reeveship for said township.

Witness, Mr. B.

Mr. A. did not sign this resignation at the bottom and for this reason it was declared by the clerk as void, and Mr. A's name went on the ballot for a councillor.

1. Was this a lawful resignation?

2. If so, can the other man nominated for reeve hold his seat by acclamation?

1. We are of opinion that this resignation was a mere nullity, as sub-section 3 of Section 129 of the Con. Municipal Act, 1903, provides that "the resignation after the nomination meeting of any person so proposed shall be in writing, SIGNED BY HIM, and attested by a witness, etc.," and that Mr. A. therefore remained in nomination for councillor. The latter part of sub-section 2 of this section provides that if a person nominated for more offices than one, does not elect for which office he is to remain nominated, he shall be taken as nominated for the office in respect of which he was first proposed and seconded. Therefore, since Mr. A. was first nominated for councillor, whether the resignation filed was sufficient or not, Mr. A.'s name was properly on the ballot for councillor.

2. Yes.

A Drainage Petition.

142—IGNORAMUS.—A petition under the drainage act is presented to the council for a drain to benefit lots 4 and 8 in the 17th and 18th concessions and lots 3 and 19 in the 16th concession. Engineer, goes on to make plan, etc., and reports, but work not gone on with. A new petition is presented for a drain to benefit lots 5 and 8 in the 17th and 18th concession, and lots 4 and 19 in the 19th concession. Another engineer is appointed who goes on and looks over the area to be benefited but makes no survey nor takes any levels, adopts the first engineer's plan and profile as his own, assesses the same lands for benefit, etc., and reports. Would a by-law under this last report be good?

If by examining the locality of the proposed drain, and utilizing the report, etc., of the engineer who made the former survey, the second engineer, in his judgment, gains sufficient information to make a proper report on the drainage scheme, there is nothing to prevent his doing the work in this way, and the council may, in its discretion, adopt his report and pass the necessary by-law for the construction of the drainage work.

Opening New Road.

143—H. P.—A certain side road was closed by the municipal council some thirty years ago. Compensation was paid by persons who owned the adjoining property and deed was given. No road was given in lieu thereof. Objections to closing was taken by certain individuals.

1. Can the road be opened up now?
2. What would be the necessary proceeding in order to do so?
1. This road may now be opened by the council if it deems it in the public interest to do so.
2. The council should pass a by-law, pursuant to the provisions of section 637 of The Consolidated Municipal Act, 1903, after it has strictly observed the formalities prescribed by section 632 of the Act. It is discretionary, however, with the council as to whether it passes the by-law for the opening of the road or not.

Assessment of Implements in Possession of Agent—Assessment of Plaster and Gypsum, and Natural Gas Wells.

144—J. B.—1. Are agricultural implements kept by an agent, such as binders, mowers, rakes, wagons, etc. as samples in a show room subject to assessment and taxation in the municipality in which the agent carries on business?

2. Plaster or gypsum is being mined and taken to the railway station with teams and shipped to Toronto in the rock. Is it subject to assessment at the mouth of the pit and how?
3. What is the proper way to assess a natural gas well owned by an incorporated company. Are the pipes, mains and meters assessable or is it the net or gross income derived therefrom?

1. Yes. The latter part of sub-section 1 of section 18 of The Assessment Act provides that "where any business is carried on by any person in a municipality in which he does not reside, or in two or more municipalities, the personal property belonging to such person shall be assessed in the municipality in which such personal property is situated and against the person in possession or charge thereof as well as against the owner."

2. Yes, assuming that it belongs to the owner or owners, or producer or producers thereof, and thus does not fall within the exemption mentioned in sub-section 15 of section 7 of The Assessment Act. It should be assessed at its actual cash value, as it would be appraised in payment of a just debt from a solvent debtor, as provided in sub-section 1 of section 28 of the Act.

3. The land on which the gas well is located should be assessed to the company, as provided in sub-section 1 of section 28 of the Act, and the pipes, mains, meters, etc., in the manner provided by sub-section 3 of section 18 of the Act, as enacted by section 1 of chapter 31 of The Ontario Statutes, 1902.

Contract with Engineer—Drainage Courts of Revision—Levy of Drainage Rate Before Work Commenced.

145—W. B. S.—1. If an engineer is hired by the council for \$5.00 per day and he attended two Courts of Revision on drains in one day, one at 10 o'clock, the other at 1 o'clock, can he collect \$10.00 for the same; he having put \$5.00 for each court of revision in his estimates?

2. Can the council hold Court of Revision on drains without the engineer where there are no appeals?

3. Is the council disqualified by voting large sums of drain money for current expenses without borrowing by by-law from the funds?

4. What can ratepayers do? Is there any law to protect them? These debentures for special drain were sold nearly two years ago and work not done and second payment collected?

1. If the engineer agrees to give the council his professional services for a salary of \$5.00 per day while actually engaged in doing its work, that sum is all he can collect, no matter how many different kinds of professional services he performs for them during the day.

2. The law does not require the attendance of engineers at Courts of Revision on drains. If the council thinks it can get along without them, it is at liberty to do so.

3. The facts are not clearly stated, but, assuming that in its by-law the council made provision for the levy of a special rate to create a sinking fund to meet the payment of the drainage debentures when they matured, and have used the moneys to the credit of this sinking fund for the payment of the ordinary current expenditure of the municipality, the members of the council who voted for this diversion of the sinking fund are personally liable for the amount, and are disqualified from holding any municipal office for two years. (See sub-section 3 of section 418 of The Consolidated Municipal Act, 1903.)

4. The council has no legal power to levy a rate to pay these debentures until the money has been paid out for the purpose for which it was borrowed, that is for constructing the drainage works, and the ratepayers interested cannot be compelled to pay it. The payments, however, that they have already voluntarily paid cannot be recovered from the municipality.

Date of Holding Meeting of Agricultural Society—Married Woman May Vote for School Trustee.

146—J. A. T.—In your calendar for January in THE MUNICIPAL WORLD you give Jan. 6th, annual meeting of agricultural societies. Should it not be Jan. 13th?

2. Can married women who are assessed in their own names vote for public school trustees?

1. Yes. See sub-section 1 of section 10 of The Agricultural and Arts Act (R. S. O., 1897, chapter 43). Through inadvertence the line was not dropped, in making up the form, to its proper place.

2. A married woman assessed for property and paying taxes thereon is a "ratepayer," and if she is of the full age of twenty-one years, and is a public school supporter of the section for which she is a ratepayer, she is entitled to vote for public school trustees in the section. (See section 13 of The Public Schools Act, 1903.)

Appointment of Officers by Tender—Snow Fences.

147—W. J. D.—At the first meeting of the council an applicant for the office of assessor puts in an application with the amount of salary he desires attached. The council refused to consider it, saying it was not a legal application, it being in contravention of section 320, S. S. 2, div. 8 of the Municipal Act.

1. Would above application be void owing to salary being attached?

2. Would a similar application for the office of clerk or treasurer be void?

3. Distinguish between "tender" and "application."

4. What is the meaning of S. S. 2, of section 320, division 8 of The Municipal Act?

5. Do you know of any cases where the councils have compelled the removal of fences in the manner provided by section 162 of the act respecting Snow Fences, R. S. O., chapter 240?

1. No, but in appointing the applicant or any other person to the office the council should consider the competency of the person to perform the duties, and pay him such salary as they consider their proper performance reasonably worth.

2. No.

3. The council may appoint to any office under its jurisdiction any person who makes application therefor, even if he states in his application the amount of the salary he expects to receive, but it should exercise its discretion both as to the competency of the person appointed and the salary to be paid him. Sub-section 2 of section 320 of The Consolidated Municipal Act, 1903, prohibits the council from calling for tenders or seeking applicants for any municipal office, with a view to appointing the applicant who offers to perform its duties for the smallest salary, regardless of his qualification.

5. We are not aware of any particular case where this has been done, but the Act clearly gives councils the right to do so under the circumstances, and upon the terms and conditions mentioned in section 2.

Non-Resident Cannot be School Trustee—Assessor Cannot be Trustee of Union Section.

148—P. A. C.—1. Is a ratepayer of a union school section, (not residing within the section) eligible for the position of public school trustee?

2. Can an assessor act as a trustee of a union school section?

1. No. Sub-section 2 of section 10 of The Public Schools Act, 1901, provides that "the persons qualified to be elected trustees shall be such persons as are British subjects and RESIDENT ratepayers or farmers' sons, being residents within the meaning of The Municipal Act, of the full age of twenty-one years, not disqualified under this Act."

2. The statute does not specifically prohibit an assessor of either of the municipalities in which the union school section is located from acting as a trustee thereof, but we are of opinion that he cannot legally fill the offices of trustee of the union school section and assessor at the same time, for the reason that the two offices are incompatible. As assessor, it may become his duty under section 54 of the Act to equalize the assessment of the union school section, and in doing so his duty as assessor would clash with his interest as a trustee of the section.

Treasurer of One Township Cannot be Councillor of Another

149—CLERK.—A, living in municipality B, is treasurer of municipality C. Does the law prevent A from being a councillor in municipality B?

Yes. Sub-section 1 of section 80 of The Consolidated Municipal Act, 1903, provides that "no assessor, collector, TREASURER or clerk of ANY municipality, etc., shall be qualified to be a member of the council of ANY municipal corporation."

Customs Officer May be Mayor or Alderman of Town.

150—R. B.—Is a customs officer disqualified from holding office of mayor or alderman of a town? I am told the Customs Act disqualifies him.

A customs officer is a "person in the civil service of the Crown," and is exempt from being elected a member of the council of any municipal corporation. But if he chooses to be a candidate for and is elected a member of a municipal corporation, there is no law which disqualifies him.

Town Solicitor Can be Member of School Board?

151—E. J. S.—1. Can the solicitor of the town legally hold seat on the public or high school board of the municipality?

Yes.

Collection of Taxes on Lands Nonassessed.

152—E. P. P.—What means would we have to collect taxes on property left off the assessment roll?

Section 166 of The Assessment Act provides that, "if, at the yearly settlement to be made on the first day of May, it appears to the treasurer that any land liable to assessment has not been assessed, he shall report the same to the clerk of the municipality. Thereupon, or if it comes to the knowledge of the clerk in any other manner that such land has not been assessed, the clerk shall, under the direction of the council, enter such land on the collector's roll next prepared by him thereafter, etc." The land is to be valued as in the latter part of this section mentioned.

Council of Village in Districts Cannot License Peddlars.

153—F. D. S.—Can the council of an incorporated village in Muskoka pass a by-law charging peddler's licenses?

No, unless provided by special Act. Sub-section 14 of section 583 of The Consolidated Municipal Act, 1903, applies only to counties, towns and cities, and section 32 of chapter 225, R. S. O., 1897, does not make the provisions of subsection 14 of section 583 of The Consolidated Municipal Act, 1903, applicable to incorporated villages in the territorial districts of Ontario.

Powers of Police Trustees.

154—J. A. C.—1. At police trustee meeting, the first one after election, and after declarations have been filled, can two trustees legally put themselves into office and transact other business, the other trustee being absent through sickness?

2. Have police trustees in police village power to pass a by-law to impose license on cigarette dealers?

1. The Act relating to police trustees is silent as to the number of trustees required to be present in order to transact business. The Common Law rule therefore applies, and it follows that two of the trustees may act in the absence of the third trustee, but all the trustees are entitled to notice of every meeting.

2. Yes. Sub-section 1 of section 746b of the Act provides that police trustees may pass by-laws applicable only in the police village for any of the purposes mentioned in paragraph 28 of section 583 of the Act. A reference to paragraph 28 of section 583 will show that it makes provision for the licensing and regulating of cigarette dealers.

Powers of Police Trustees.

155—W. C.—1. Have the police trustees power to pass by-law in the village to prohibit the sale of cigarettes?

2. Can we pass this by-law ourselves?

3. Can we grant license for the sale of those things?

4. Can we collect the license fee?

5. Have police trustees power to pass by-laws in the village?

6. How far does this power go?

7. At the first meeting of the board of trustees there were only two present. Can they go on with the business and elect each into office?

8. Can the council pass by-laws to compel each one to keep snow off the sidewalks?

9. If the trustees asked the township council to strike 1 per cent. levy can the council be petitioned by the ratepayers not to strike the rate. Can they stop it. The law gives us power to go as high as one per cent?

1, 2, 3 and 4. Yes. See sub-section 1 of section 746b of The Consolidated Municipal Act, 1903, and our answer to question number 154 in this issue.

5. Yes, to the extent of the authority conferred on them by the above Act.

6. See sections 741 and 746b of the above Act.
7. See our answer to question number 154 in this issue.
8. We presume that the Board of Police Trustees is here meant. If this is so, section 746 b of the Act confers on Boards of Police Trustees the power to pass by-laws conferred on councils of towns, villages and cities by sub-section 1 of section 559 of the Act, that is "to remove and clear away all snow, ice and dirt and other obstructions from the sidewalks, etc."
9. The ratepayers have nothing whatever to do with this matter, and cannot interfere with the powers of the trustees.

Assessment of Nursery Stock—Of Income of School Teacher.

156—A. E. C.—We have several nurseries in our township that are growing several hundred acres of nursery stock, and doing a large business in that line, but as yet they have never been assessed but for the land and buildings.

1. Can I assess them as personal property for their nursery stock, such as trees, plants, vines, shrubs, bulbs, etc.?
2. What is the difference between personal property and taxable income?
3. Is a school teacher liable to be assessed for his salary received when he teaches here and his family resides in another municipality, he boarding here school days and returning to his home for other days?

1. This nursery stock, since it is affixed to and growing on the land, cannot be assessed as PERSONAL estate. It should be assessed, however, as part of the real estate or land, in the manner mentioned in section 28 of The Assessment Act. (See also sub-section 9 of section 2 of the Act, for a definition of "land" and "real estate.")

2. "Personal property" for the purposes of The Assessment Act is defined by sub-section 10 of section 2 of the Act, and includes taxable income. All the income of every person is taxable except "the annual income of any person derived from his personal earnings to the amount of \$1,000 and the annual income of any person to the amount of \$400 derived from any source other than personal earnings." (See sub-section 26 of section 7 of The Assessment Act, as amended by section 3 of chapter 21 of The Ontario Statutes, 1903.)

3. This teacher should be assessed for income (subject, of course, to the provisions of sub-section 26 of section 7 of The Assessment Act) in the municipality in which he and his family reside, (see section 42 of the Act), and not in the municipality in which he teaches school. We do not suppose that the teacher referred to receives \$1,000 a year. The assessment, if any, must be upon last year's salary and not upon what he is receiving this year.

Form of Assessment Roll.

157—H. W. E.—Your assessment roll does not make room or place for the new act of business tax if it goes on this year. Is it your opinion that the personal property should be dropped and the business tax put on this year?

Our assessment rolls are prepared in accordance with the statute governing the assessment of property throughout the Province to be made this year. The assessment of all taxable property is to be made this year in the same manner and under the same statute as last year. It will be time enough to consider a change in the mode of assessment as soon as a statute is passed authorizing such change, which has not yet been done.

Payment of Damages for Sheep Killed.

158—J. B.—In our township we impose a tax on dogs, and pay damage or loss caused by dogs worrying or killing sheep or lambs. Our by-law says: (1) That there shall be paid out of the dog tax fund a sum not to exceed a two-third value of damages to sheep or

lambs killed by dog or dogs. (2). That no sheep shall be valued at more than \$6.00 and lambs \$3.00 each, except in case of imported thoroughbred, etc. Mr. A puts in a claim for three sheep killed outright and nine worried pretty badly, also for four lambs worried. He sends for the local butcher and said butcher finds upon examination that all are not worried so badly as to unfit them for human food. He dresses some of them and pays Mr. A \$20 for the amount so saved. Now according to by-law the damages are fixed at \$56, that being a two-third value.

Should the council deduct the \$20 paid by the butcher, or not? The twelve sheep were ewes, supposed to be in lamb, as they were killed in December.

The council has not apparently passed a by-law pursuant to section 2 of chapter 271, R. S. O., 1897, and so long as it continues to levy the dog tax mentioned in the Act, it must pay to aggrieved parties the damages provided for by section 18 of the Act, for sheep or lambs killed or injured by dogs. The clause in the by-law making provision for this is therefore superfluous. The clause fixing the value of sheep and lambs at \$6.00 and \$3.00 respectively is unauthorized. The council has no power to fix the valuation at a sum certain, but is required by section 18 of the Act to pay parties aggrieved a sum not exceeding two-thirds of the amount of the damage sustained by them, whatever that may be found to be on a careful investigation of the case by the council. In the case mentioned the council should first ascertain the amount of the loss Mr. A. has sustained; deduct from this amount the \$20 he has received from the butcher, by which sum his loss has been reduced, and pay him, out of the dog fund of the municipality two-thirds of the balance.

Members of Council May be Road Commissioners—Qualification for Councillor—Prohibition of Cattle from Running at Large.

159—COUNCILLOR.—1. Can members of a village council act as road commissioners or road inspector and receive pay for their service?

2. If they can would it be necessary to appoint any one not a member of the council?

3. (a) Would a member of a public library board, (b) a road commissioner not being a councillor, (c) a fence viewer not having received any payment for service from the council, be qualified candidates for office of councillor?

4. Do the Statutes anywhere prohibit the running at large of cattle and other animals except when allowed to do so by by-law or is it optional with the municipalities to prohibit them or not?

5. Could a village council pass a by-law prohibiting cattle, etc., from running at large on certain streets or parts of streets only?

1. Yes. Clause (a) of sub-section 1 of section 537 of The Consolidated Municipal Act, 1903, 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.

2. No.

3. (A) No, but if he is elected a councillor he can no longer be a member of the Public Library Board. (See sub-section 2 of section 9 of chapter 232, R. S. O., 1897). (B) Yes, if he had all accounts with the council of the municipality settled prior to nomination day. (C) Yes.

4. By the Common Law, domestic animals were allowed to run at large, and the statute law does not prohibit their doing so. It is optional with councils as to whether they pass by-laws, pursuant to section 546 of The Consolidated Municipal Act, 1903, regulating and restraining the running at large of cattle.

5. Yes.

Duties of Clerk on Filing Engineer's Report—Construction of Electric Railway Along Highway.

160—C. O. D.—1. When an adjoining municipality is served with an engineer's report on a municipal drain by the initiating municipality is it necessary to notify parties interested on the drain and to read the report the same as the initiating municipality has done?

2. When an electric railway is going to be built through a municipality is it necessary that the company should apply for the right of way from the township council?

1. The clerk of the servient municipality is not required to give the notice mentioned in section 16 of The Municipal Drainage Act (R. S. O., 1897, chapter 226). This is the duty of the clerk of the initiating municipality. But sub-section 7 of section 9 of the Act, as enacted by section 5 of chapter 28 of The Ontario Statutes, 1899, provides that "forthwith upon the filing of the engineer's report with the clerk of the municipality, the clerk shall, by letter or postal card, notify the parties assessed of such assessment and the amount thereof. In case more than one municipality is interested in the proposed work, the clerk of such other municipality or municipalities shall forthwith, upon the filing of a copy of the engineer's report in their office, notify the parties assessed of such assessment and the amount thereof."

2. Yes, otherwise the company may be indicted for placing unlawful obstructions on the highway. The latter part of section 697 of The Consolidated Municipal Act, 1903, authorizes township councils to pass by-laws to authorize companies or individuals to construct tramways and other railways along any highway on such terms and conditions as the council see fit.

Addition of Percentage to Unpaid Taxes—Dividing Township into Polling Sub-Divisions.

161—J. A. W.—1. In chapter 224, section 60 of Revised Statutes it states 5% may be added to all unpaid taxes after December 15th. Does this mean 5% per annum, or 5% of taxes to be added? To make it plain to you I give the following example: Suppose a man's taxes are \$20 and his taxes are one month overdue, does he have to pay \$21, or interest on \$20 for one month at 5% per annum?

2. Can a municipality be divided into polling sub-divisions (which has less than 200 voters) if the council think it more convenient for electors to do so?

1. This section, as it is now, was enacted by section 4 of chapter 27 of The Ontario Statutes, 1899. The five per cent. mentioned in sub-section 2 of this section means five per cent. of the amount of the taxes. Assuming that this council has passed a by-law in accordance with the provisions of section 60, in the case mentioned, the ratepayer should pay \$21.00.

2. Sub-section 1 of section 536 of The Consolidated Municipal Act, 1903, provides that "polling sub-divisions shall have well defined boundaries, such as streets, side-lines, concession lines or the like in the most convenient manner, and in such manner that the number of qualified electors in the several polling sub-divisions shall be as nearly equal as may be, etc., and shall be made and varied in such a manner that the number of electors in any polling sub-division shall not exceed at any time 300 (in a township municipality). Thus the number of electors in any polling sub-division cannot exceed 300, but if it better suits the convenience of the electors that the polling sub-divisions should contain less than 200 electors, there is nothing to prevent their arrangement in this way by the council.

First Meeting of Council—Procedure to Fill Vacancy.

162—H. L. B.—This township after nomination day, by reason of resignations, was left without a reeve, the four councillors being elected by acclamation on January 5th, 1904. Three of the new councillors (the fourth having gone to Manitoba for some weeks) met, having taken their official declarations, they ordered the clerk to announce a new nomination for the reeveship after six days'

notice, etc. They simply met, took declarations and gave instructions, re new nominations, nothing more as per sections 130 and 131 of Con. Municipal Act, 1903, as they interpreted it. This special meeting was on January 5th, or before the second Monday in January, section 259 of the Act, and is therefore denounced as illegal.

(a) Is it so?

(b) Can the absent councillor take declarations legally after the twenty days?

(c) If fined or not is he still a councillor?

(a) The council had no authority to hold this meeting prior to the second Monday in January (the 11th) as provided in section 259 of The Consolidated Municipal Act, 1903, and all business transacted at the meeting held on the 5th January last was a nullity.

(b) Yes.

(c) Yes, provided he was possessed of the qualification required by the Act at the time of his election.

Remuneration of Members of Local Boards of Health.

163—C. W.—To what remuneration are the members of the Board of Health entitled, or have they to work gratis, or has it to be regulated by by-law?

The Public Health Act (R. S. O., 1897, chapter 248), makes no provision for the payment of any remuneration to members of a local Board of Health.

Assessment of Separate School Supporters—Salary of Truant Officer.

164—N. C.—1. Having no public school in our municipality and being Catholics and not joining the Separate School by March 1st where shall the assessor assess them?

2. Shall he assess them to the nearest public school in the adjoining municipality? (they claim exemption from any school), or should they give notice to any public school they would wish to join by the first of March?

3. Is there any salary attached for truant officer when giving notice to parents neglecting to send those children to any school?

1. The assessor should assess these parties as separate school supporters pursuant to the provisions of sub-section 5 of section 13 of The Assessment Act.

2. The assessor has no authority to assess these persons as supporters of a public school in an adjoining municipality, nor is there any provision for the giving of notice by them as to the public school they wish to support.

3. Since these parties are Roman Catholics, the truant officer is entitled to the ordinary fee allowed him by the board for serving the notice mentioned in section 13 of chapter 296, R. S. O., 1897. (See also section 18 of the Act).

Closing Road Through Government Land.

165—CLERK.—About twenty-four or twenty-five years ago a road was opened in our municipality, part of said road being on concession and part being Government land, road running parallel to concession varying in distance from five to fifteen rods from concession. About twelve years ago land was bought for a ranch. The owner is now fencing ranch.

1. Can he close up road, statute labor having been performed every year and public money having been spent at various times on said road?

2. If so, what notice must he give the council?

1. We gather that the portion of the road that ran through the lands of the Government was never granted or established by the Crown for road purposes, and that the Crown has now granted the land through which the road runs to a private party who purposes using it for ranching purposes. If this is so, there is no legal reason why the grantee of the land from the Crown should not close up that portion of the road running through his land.

2. It is not necessary that he should notify the council in any way that he intends to close that portion of the road running through his land, which never was, apparently, a public highway.

County Clerk May be Assessor of Local Municipality—Candidate Should Not be Deputy Returning Officer.

166—E. D. B.—1. Can a county clerk legally act as assessor in a municipality forming part of the county of which he is clerk?

2.—Could a person legally act as deputy-returning officer and be a candidate for office of councillor or public school trustee providing he was not a candidate in the ward in which he would act as deputy returning officer?

1. There is no provision that disqualifies a clerk of a county from holding the office of assessor of any municipality in the county.

2. No. Although the deputy is not a candidate for office in the ward in which he is acting as a deputy-returning officer, he must be presumed to be interested in the composition of the body of which he expects to be elected a member. In Reg. ex rel. Corbett v. Jull, 5 P. R. 48, it was judicially remarked that "these officers should not be partisans. It is the duty of such an officer to stand indifferent between the contending parties; to have no interests to serve for EITHER, or for himself; to approach his duty with the simple desire to do strict justice, etc."

Equalization of Union School Assessment in Unorganized Territory.

167—T. S.—In a union school section consisting of a town in the District of N. and parts of an unorganized township in A., who are the proper parties to assess the persons in the unorganized township?

The Public Schools Act, 1901, makes no provision for a case of this kind. Section 54 of the Act requires the assessors of the several municipalities interested to equalize the assessment of the union school sections in the municipalities once in every five years. An unorganized township has no assessor, and the Act does not provide that any other person or official should take his place in performing this duty.

Payment for Polling Booths at Referendum Vote—Vacating Seat in Council.

168—W. B.—At the referendum vote taken here two years ago the polling booths for that election have not been paid for by the town of L.

1. Who has a right to pay them, the corporation or the Government?

At the municipal election held on January 4th, 1904, at the town of L., there is one councillor who was elected but he has never as yet taken his seat. He put in his resignation to the council shortly after he was elected, resigning his seat, but did not put in a disclaimer. The council then made the motion not to accept his resignation which was carried.

2. When is the seat vacant and what steps should be taken legally for a new election to fill his place?

1. The charges for the rent of polling booths in a town (other than the public or town hall) used on the occasion of the taking of the Referendum vote on the 4th December, 1902, must be paid by the treasurer of the town on the order of the deputy-returning officer. Section 92 of The Liquor Act, 1902, (chapter 33, Ontario Statutes, 1902), provides that "the fees in Schedule B to this Act mentioned, in respect of the several matters therein contained, shall be allowed to the several officers therein mentioned respectively for the services and disbursements in the said schedule specified." Item No. 11 of the Schedule is as follows: "For each polling booth, actual cost not exceeding four dollars to be paid by the city, town, village or township treasurer (as the case may be) on the order of the deputy-returning officer, unless the municipal council provides suitable polling places at their own expense.

2. Strictly speaking, a "resignation" implies that the person resigning has been elected to the office he resigns, and *has accepted the office*. This councillor has apparently never accepted the office to which he was

elected, and therefore cannot resign it. If he absents himself from the meetings of the council for three successive months without being authorized so to do by a resolution of the council entered on the minutes, his seat in the council shall thereby become vacant, and the council shall forthwith declare the seat vacant and order a new election. (See section 207 of The Consolidated Municipal Act, 1903). Section 219 of The Municipal Act renders a councillor liable to a fine, not exceeding \$80, for refusing to accept office.

Printing Contract with Council a Cause for Disqualification.

169—B. Mc.—Is there an amendment to the Municipal Act in reference to a newspaper publisher who is a member of a town council whereby he can legally do printing and advertising or make a contract for the same?

No, but see 62 Vic. Chap. 11, Sec. 22.

Basis of Grant to Union Schools.

170—T. W. T.—Where there is a union school between two townships should the council, when making their annual township grant to schools, which is done in the month of March, make grant to union school based on the equalization which is in force at the time, or should it be based on the new equalization which is not made until the month of June of the same year?

It is not clear to us what is meant by "the annual township grant to schools," whether it is the sum annually required by the trustees under the authority of sub-section 9 of section 65 of The Public Schools Act, 1901, or the general school levy authorized by section 70 of the Act. If the former, the estimate is to be submitted to the council before the 1st of August, or at such time as may be required by the council, and, if the latter, the levy should be made when providing for the levy of the general township rate. If the facts are such that the council can legally make the grant in March (as to which we cannot say) the basis for the apportionment of the grant between the different parts of the union school section should be the equalization in force at the time the apportionment is made. It could not be based on an equalization as to which the council has no information, and which has not been made.

Time for Sale of Lands for Taxes.

171—A CLERK.—At the end of three years no land sale was made for arrears of taxes, and at the end of the three years and each year thereafter no by-law was passed to prohibit a land sale. What action should the council take at the end of six years?

The fact that the treasurer has not performed his duty as to selling lands for arrears of taxes imposed on him by section 173 of The Assessment Act, within the time prescribed by that section, will not render a subsequent sale of the lands invalid, and this would be so, whether the council had passed a by-law pursuant to section 174 of the Act or not. The treasurer should proceed to sell the lands to realize the amount of the arrears of taxes in the manner prescribed, and if he neglects or refuses to take the necessary proceedings with this end in view, he can be compelled by mandamus to do so.

Payment of Less Than Two-Thirds of Damages for Sheep Killed

172—R. W.—In our municipality we appoint sheep valuers and have been paying two-thirds of the valuation of sheep worried. The last few years the dog tax has not been sufficient to pay the damages supposed to have been done by dogs. The council wishes to pay only one-half the value. Will it require a by-law or can the change be made by resolution of the council. There is no by-law of the township that I can find stating the amount to be paid?

If there is nothing to the credit of the fund created by the collection of the tax on dogs, pursuant to the provisions of chapter 271, R. S. O., 1897, the council of the municipality is not bound to pay any damages for sheep killed or injured by dogs. If there is any balance to the credit of this fund at the time an application for damages

is made, section 18 of the Act makes provision for the amount the council should pay, that is "a sum *not exceeding* two-thirds of the amount of the damages sustained." The council has no authority to pay a larger sum by way of compensation to the owner of the sheep killed or injured than two-thirds of the amount of the damage sustained, but, if it sees fit, it may, by resolution, award the aggrieved party any smaller proportion.

Powers of Police Trustees.

173—J. R.—1. In case of the police trustees of an incorporated village desiring to separate from the rest of the municipality in regard to management of sidewalks, etc., would it require a by-law to be passed by the council to enable the police trustees to take over sidewalks, etc., in the said village, or can it be done by resolution alone?

2. Has the assessor power to assess the village property separately where the owner lives in the village and owns property outside and owner wishes them assessed together?

3. The police trustees being desirous of having full benefit of all statute labor to which they are entitled, how can this joint assessment be arranged?

4. In case the police trustees take over the statute labor as above and in case of accident occurring through defective sidewalks, who would be responsible for damages, the police trustees, the village, or the council?

1. After a police village has been set apart as the statute provides, and trustees thereof elected, these trustees are authorized by section 741 of The Consolidated Municipal Act, 1903, to pass by-laws for letting contracts, or employing labor and purchasing material for building sidewalks, etc. The statute having made this provision, the council has nothing to do with the matter.

2. The assessor should assess lands inside and outside of the police village in the same manner as if no police village existed.

3. The council of the township may pass a by-law commuting statute labor within the limits of the police village pursuant to section 103 of The Assessment Act, and the amount of the commutation money to be collected may be taken into consideration when the council and police trustees are making the agreement mentioned in section 740 of the Act.

4. The township municipality in which the police village is located.

Assessment of Exempted Property—Of Premises Leased to the Crown.

174—G. G. A.—1. What is the duty of the assessor in the preparation of his assessment roll with respect to entering lands exempt from taxation under section 7 of The Assessment Act and section 591a of The Consolidated Municipal Act, 1903. Are such lands and property to be entered on the assessment roll by the assessor without regard to their being exempt, leaving it to the clerk or other officers to enter in the collector's roll the proper amount of taxes (if any) with which such lands or property are chargeable?

It is submitted that the assessor should enter and value in his assessment roll all real and personal property which would be but for section 7 of R. S. O., chapter 224, and other statutes providing for exemption, liable to taxation, as this is the only method consistent with the proper working out of the Act.

2. If exempt property should be omitted from the assessment roll, how could local improvement rates be charged against lands of churches and colleges under sections 683 and 684 of The Municipal Act, or how could the taxes chargeable on an exempt or partially exempt property under section 591a (clause g) of The Municipal Act be entered or charged in the collector's roll?

The Assessment Act is not very clear on this point. Generally speaking, sections 13 to 17 seem to hold municipal taxes and rates as a tax against the owner personally in respect of his property while other sections of this Act regard the taxes as a charge on the property without reference to the owner. There does not appear to be any principle consistently followed throughout the Act. Section 13 requires the names of taxable persons to be set down in the roll with the description and extent of property assessable against each. As the owner of exempt property is not taxable in respect of it, such

owner and property should not be set down in the roll. Section 7a, as enacted by section 4 of chapter 21, 3 Ed. 7th, also presupposes the omission of exempt lands from the assessment roll. A distinction may be drawn between property exempt under section 7 of The Assessment Act and property exempt under section 591 of The Consolidated Municipal Act, as the latter is chargeable with school taxes, but it is submitted the property in such cases should be entered in the assessment roll in the first instance.

3. To what extent is a building exempt from taxation, the lower stores or flat of which is occupied and used only as His Majesty's post office?

1 and 2. We are of the opinion that property that is absolutely exempt by law from taxation should not be entered by the assessor on the assessment roll. The first part of section 7 of The Assessment Act provides that "all property in this Province shall be liable to taxation, *subject to the following exemptions, etc.*": Clause (a) of sub-section 1 of section 13 provides that "every assessor shall prepare an assessment roll, in which, *after diligent inquiry*, he shall set down, according to the best information to be had (a) The names and surnames in full, if the same can be ascertained, of all taxable persons resident in the municipality, or in the district for which the assessor has been appointed, *who have taxable property therein.*" If a person has no *taxable property* in the municipality, that is, if his property is absolutely exempt from taxation neither his name nor his property should be entered by the assessor in the assessment roll, except for the purposes of sub-section 1 of section 15 of the Act. Property that is liable by law to taxation for local improvement purposes should be entered by the assessor in his roll, and also property wholly or partially exempted from taxation, by by-law of the municipality passed under the authority of sub-section 12 of section 591 and clause (g) of section 591a of The Consolidated Municipal Act, 1903, so as to enable the clerk to copy them into the collector's roll, and enter thereon the local improvement taxes in the one case, and partial general rate (if any) and the school taxes in the other.

3. Where premises owned by a private individual are occupied by the Crown for post office purposes, to entitle them to exemption from taxation it must appear that the Crown is entitled to occupancy. The assessor should assess all of the property except what is actually used for the purposes of the Crown. On page 89 of the WORLD for 1899 (May issue) will be found an article on "Post Offices—Taxation of," in which this question is fully discussed, and the cases bearing on the subject gathered together and commented upon.

Surety to Municipality Cannot be its Treasurer—Liability to Restore Road Washed Away.

175—PELEE.—Last year the council passed a by-law to borrow on the credit of the municipality the sum of \$7,000 to aid by way of loan A, B, C and D, to place in service a steamboat, etc., said loan to be repaid in seven annual instalments of \$1,000 each, the township paying the interest. Said A, B, C and D have given their joint notes as security for the loan.

1. C is the treasurer of the township. Would he be disqualified from acting as such treasurer?

2. If so, what would be the consequence of retaining him in said office, provided no objections were raised?

The roadway along the Lake shore has been washed away and persons owning lands along said front have personally applied to the council to build cribs for the protection of the banks.

3. Has the council the power to spend the funds of the municipality for this purpose?

(a) Without levying for the same?

(b) Without acquiring 66 feet necessary for a road?

1. C, being interested in a contract with the corporation, cannot make the declaration required by section 312 of The Consolidated Municipal Act, 1903. (See our answer to question No. 176 in this issue).

2. If the declaration referred to in our answer to question number one is not made within the period

prescribed by section 319 of the Act, C will be subject to the penalties imposed by that section, but failure to make the declaration does not *ipso facto* render void his official acts done in the meantime.

3. (A and B). The council has no power to build crib-work or an embankment along the Lake shore to protect the lands of private owners, nor can it be compelled to purchase and establish a highway in lieu of one which has been washed away. The council may, however, in its discretion, expropriate lands for and construct and establish a new road to take the place of that which has disappeared, if it is of opinion that the needs of the public require it, and erect such embankments as may be necessary to protect it from the encroachment of the waters of the Lake, and pay the cost of doing so out of the general funds of the municipality.

Surety to Municipality Cannot be its Treasurer.

176—ENQUIRER.—A township council borrows a sum of money and lends same to A, B and C, without interest, for the purchase of a steamboat to be used in the local trade of the municipality. The by-law authorizing this action had been duly submitted to and carried by the necessary majority of the ratepayers and legalized by Act of the Ontario Legislature. D, son of A, owns no interest in the steamboat, but joins A, B and C in a promissory note securing the repayment of the loan to the municipality. Is D. disqualified for the position of township treasurer in this municipality?

D cannot qualify for the office of treasurer of this municipality. A treasurer, before entering upon the discharge of the duties of his office is required to make the declaration mentioned in section 312 of The Consolidated Municipal Act, 1903. The latter part of this declaration is to the effect that he has not by himself or partner, either directly or indirectly, any interest in any contract with or on behalf of the corporation of which he has been appointed treasurer. A surety to the corporation cannot make this declaration.

Liability for Neglect to Maintain D. and W. Drain—Obligation of Engineer—Appeal Under D. and W. Act Cannot be Withdrawn—Council Not Bound to Entertain Drainage Petition—Limit of Time for Doing so.

177—J. S.—A certain award was made by an engineer under the Ditches and Watercourses Act whereby the maintenance of a ditch was assigned to several persons each of whom had a portion to maintain. One of said parties had totally neglected the maintenance of his portion.

1. If damage is caused who is liable, the man who neglected to maintain, or whom?

2. The engineer, being an official of the township, does it follow that the council are obliged to see that all ditches constructed under his instructions are maintained as he awards?

3. Can an appeal to the Judge against an award under The Ditches and Watercourses Act be withdrawn, and how?

4. A petition duly signed by a sufficient number of land owners is presented to the council asking that a certain drain be constructed under The Drainage Act. Is the council obliged to take action in the matter or can they use their own judgment?

5. If they are obliged to take action can they wait several months if it is found in the public interest so to do?

6. What is the limit of time for taking action under a drainage petition?

1. There is no provision for the recovery of damages in a case of this kind by action at law. A remedy for parties aggrieved by the failure of any party to an award, made pursuant to the provisions of The Ditches and Watercourses Act (R. S. O., 1897, chapter 285), to maintain his portion of the drain, is afforded by section 35 of the Act. Proceedings should be taken under this section to enforce the maintenance of his portion of the drain, by the defaulter.

2. No. The municipality is interested in a drain of this kind only to the extent of constructing and maintaining its portion of the drain (if any) in accordance with the terms of the award.

3. The Act does not make any provision for discontinuing an appeal by giving a notice to that effect, but the party who has given a notice of appeal is not bound to prosecute it.

4. No. It is optional with the council as to whether it entertains a petition for the construction of Drainage works or not. (See sub-section 1 of section 3 of The Municipal Drainage Act (R. S. O., 1897, chapter 226).)

5. Our answer to question number four renders it unnecessary to reply to this.

6. The statute does not limit the time within which a council should take action on a drainage petition, but if it purposes to entertain it, it should take action within a reasonable time after the filing, so as to avoid such changes in circumstances and conditions as would render the petition insufficient under the Act.

Compulsory Clearing of Obstructions from Streams.

178—T. F. B.—A stream or small river crosses our township, it or part of it has been put under The Drainage Act, and has been cleared of logs, trees and obstructions, etc. Now timbermen and others who are cutting timber on the adjacent lands are felling trees into said stream, and leaving therein the tops of trees and the useless parts thereof, thus causing new obstructions, etc., in said stream to the detriment of the municipality and a number of ratepayers whose property was drained when said stream was put under The Drainage Act.

1. Can the municipality hinder lumbermen and others from throwing and leaving in said stream tops and useless parts of trees, if so what course shall the municipality pursue?

2. Have private individuals whose lands are injuriously affected redress?

3. Can adjoining municipalities be compelled by us to hinder trees, etc., being thrown and left in said stream in their municipality?

4. Can we appoint an inspector whose duty it shall be to watch and report as to persons throwing trees, etc., into said stream?

1. We do not see that the municipality has any authority to take any action in the matter, since this stream is a municipal drain. Section 78 of The Municipal Drainage Act (R. S. O., 1897, chapter 226), is inapplicable, as the refuse is not being put in the drain by the owners of adjoining lands, and sub-section 11 of section 562 of The Consolidated Municipal Act, 1903, applies only to such obstructions as fences, water-gates, etc.

2. If owners of lands sustain injury by reason of the placing of these obstructions in the drain, they can recover the amount of the damage they have sustained from the guilty parties, and restrain them from further offending by mandamus.

3. No. Section 563 of The Consolidated Municipal Act, 1903, does not apply to this case.

4. No. The only provision for the appointment of a drainage inspector is that contained in section 78 of The Municipal Drainage Act, and as we have stated above, this section is inapplicable.

County Councillor Cannot be Local Treasurer—Qualification for County Councillor—Council Should Not Interfere in Private Road Dispute—Council Should Not Construct Drains for Private Parties—Disinfection of Premises.

179—J. P. Mc.—1. Can a county councillor act as treasurer for the municipality he is representing?

2. Can a reeve of a municipality resign at the end of the year before nomination and be elected for following year for county councillor, or will he have to be out of the township council a year?

3. When there is a road allowance left between two concessions and at one side of the township the road was never opened and we do not think it will ever be required for a road as there is a road through the concession. There are some parties who are disputing about the road allowance. Has the council a right to interfere or let the parties themselves?

4. When there is a good passable road, the most of it gravelled, running through between two concessions, and the water from those concessions flows towards the road and the ditches are partly filled up those parties want the council to have the ditches on both sides of the road dug deeper, so as to drain their lands. Now we maintain the council has no right to drain those lands at the township's expense. What steps should the council take in the matter?

5. Whose duty is it to have an infected house fumigated, the medical health officer or has the family itself to have it done?

1. No. Sub-section 1 of section 80 of The Consolidated Municipal Act, 1903, provides that no treasurer of ANY municipality shall be qualified to be a member of the council of ANY municipal corporation.

2. Section 81 of the above Act provides that "any person having the necessary qualification and not otherwise disqualified, who is a member of a local municipal council for the year in which nominations are held for the election of members of the county council shall be eligible for nomination and election as a member of the county council at such election; but no member of the council of a local municipality shall sit or vote as a county councillor." Therefore the reeve of a local municipality for the current year is not required to resign that office prior to his nomination for the office of county councillor for the years 1905-6, but he must refrain from becoming a candidate for membership in the council of the local municipality for the year 1905.

3. The council should not interfere in this matter.

4. A council has no authority to construct drains on the public highways of the municipality for the purpose of receiving and taking away the surface water from adjoining lands. In this case the council should remain passive, and leave the parties interested to the remedy that the provisions of The Ditches and Watercourses Act (R. S. O., 1897, chapter 285), afford them.

5. If this family is financially able to pay the expense of disinfecting its premises in which the contagious disease has existed, it should pay the expense of the disinfection carried out under the direction of the local Board of Health. (See sections 81 and 82 of The Public Health Act, R. S. O., 1897, chapter 248). But if, owing to their poverty, they are unable to pay this expense, the local Board of Health is required by section 83 of the Act to do the work and pay its cost.

Assessment for Repair of Drain.

180—C. H. L.—A drain constructed some six years ago under The Municipal Drainage Act and paid for is now repaired under section 74. The drain is about five miles long and only the upper portion or head of the drain is repaired about a mile. This is an open drain and the repairs do not benefit the lands in any way below the said repairs? In assessing for said repairs should all parties be assessed pro rata the same as per original construction, or only those who are benefited by the said repairs?

The only method of assessment authorized by this section for repairs initiated and carried out thereunder is a pro rata assessment on the lands and roads *as last assessed* for the construction or repair of the drainage work. This does not empower the council to assess the cost of repairing any particular portion of the drain against any lands other than all those assessed for the original construction or last repair of the drain (as the case may be).

Right of Non-Resident Elector to Participate in Nomination Meeting.

181—F. G. J.—A man living in a township sold his farm (possession to be given 1st March) and moved all his effects about six miles from the boundary of the township and went there himself on November 20. Is this man qualified to come to the nomination and move a candidate for councillor?

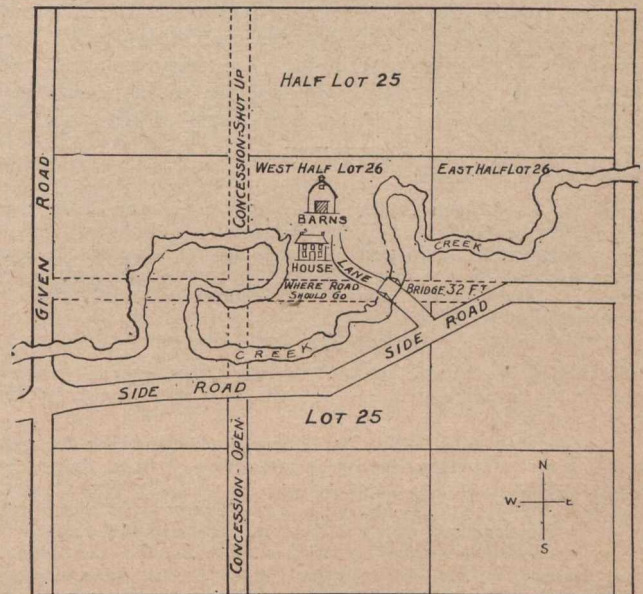
We assume that the nomination referred to is that held on the 28th December last. A nomination meeting

is a meeting of the ELECTORS of the municipality. (See sub-section 1 of section 118 of The Consolidated Municipal Act, 1903). If this man's name was on the list of voters used at the last election, as a voter entitled to vote at municipal elections, he was on nomination day an ELECTOR of the municipality and competent to participate in the nomination proceedings. The latter part of section 89 of the Act provides that "no question of qualification shall be raised at any election, except to ascertain whether the person tendering his vote is the person intended to be designated in the list of voters."

Liability of Municipality to Build Approach to Farm.

182—R. L. M.—A farmer has to build a large bridge, over thirty feet and costs about \$400, to cross a stream to get in to his place, whereas if the road went in its right place the township would have to build the bridges. Below is given a plan of the locality.

Can he collect anything from the township to help build it?



From the facts of this case so clearly shown by the plan accompanying this question we are of the opinion that the municipality is not liable to contribute anything towards the maintenance of the bridge in question.

Payment and Collection of Expenses of Parties in Quarantine.

183—J. M.—We had an out-break of small-pox in our township. The Board of Health quarantined the parties that had the disease along with other parties. They hired a doctor and a constable and a man to carry the necessities to the sick and paid all bills, which amounted to \$100.10, without asking the ones liable for the different amounts.

1. Can the Board of Health hire what doctor and other parties, such as constable and carrier it chooses, without the consent of the parties liable?
2. Had not the health officer a right to quarantine, and the parties who were able to pay choose their own attendance?
3. Is the township obliged to appoint a health officer, if so who has to pay him when there is no salary set by the council, and should he make a detailed statement, and what can he charge per mile?
4. The board wants to collect back those bills from the parties. Can they do so. They also want the council to work in conjunction with them. Would this be legal or have they to do the collecting themselves?
5. What is the proper steps for the Board of Health to take when they have to quarantine?

1 and 2. Section 93 of The Public Health Act (R. S. O., 1897, chapter 248), provides that the health officers or local Board of Health of the municipality may make effective provision in the manner which to them seems best for the public safety, by removing such person to a separate house, or by otherwise isolating him, etc. If the

local board in the case under review deemed the procedure followed the best that could be pursued for the public safety, we are of opinion that it acted within the powers conferred by the Act

3. A municipal council is not *compelled* to appoint a medical health officer, but it is left by section 31 of the Act to its discretion as to whether it appoints such an officer or not. If it appoints one, it may fix his salary, and if it does not, the physician appointed is entitled to be paid for such services as he actually performs, according to the tariff of fees allowed physicians by law.

4. The local board has assumed and voluntarily paid these accounts, and we are of opinion that it cannot now recover the amounts from the parties who were afflicted with the disease. The council should not interfere in the matter.

5. This is a matter for the discretion of the health officers and local Board of Health, who, under section 93 of the Act "may make effective provision in the manner which to them seems best for the public safety." The circumstances of each particular case vary to such an extent that it is practically impossible to lay down any fixed mode of procedure that would apply to all cases.

A Snow Fence By-Law.

184—D. A.—In this northern country the snow drifts are frightful. We have a by-law to aid wire fences on highways, but it did not discriminate cases and we could not enforce it. It was repealed, and I think this one comes up to my mind. Can it be enforced? The last section about tenants you will find in Assessment Act.

BY-LAW NO. 169.

To aid and encourage the construction of wire fences in certain localities in the township of E———, the municipal council hereby enact as follows:

1. That it shall be lawful for the municipal council of the said township to aid and encourage the construction of wire fences by money grants at so much per rod as may be mutually agreed upon by the said council, and the owners or occupiers of lands bordering upon any public highway whose fences are known to said council to cause an accumulation of snow or drift so as to impede or obstruct the travel on the public highway, or any part thereof; but no such grant shall be made without the following conditions having first been complied with:

1. That the existence of such fences creates blockades of snow.
2. The amount of fence to be so constructed.
3. The description of fence to be constructed.
4. The approval of the council after construction. Providing that no such agreement can be entered into by said council and the owners or occupiers of such lands as herein before mentioned, then it shall be lawful to enter into an agreement with such to take down and build up, alter or remove any such fence as hereinbefore mentioned, and it shall be lawful to make such compensation as may be mutually agreed upon by said council and the owners or occupiers of said lands, and if the said parties cannot agree in respect to the compensation then the same shall be settled by arbitration in the manner provided by The Municipal Act and the award so made shall be binding upon all parties.

2. Providing that no agreement can be entered into with the owners or occupiers of said lands for each, any or all of the works hereinbefore specified, then it shall be lawful for the aforesaid council to serve upon such owners or occupiers a personal notice requiring them within a reasonable specified time to take down and build up, alter or remove any fence known to said council to cause an accumulation of snow or drift upon the public highway as aforesaid mentioned or for the construction of some other description of fence approved of by the council in lieu of the one so taken down, altered or removed, and where such power is exercised as aforesaid mentioned the compensation to be paid by the council to the said owners or occupiers shall be settled by arbitration in the manner provided by The Municipal Act, and the award so made shall be binding upon all parties.

3. In case the owner or occupant refuses or neglects to take down and build up, alter or remove the fence, or to construct such other fence as required by the council, the council may, after the expiration of two months from the time the compensation to be paid by the council has been agreed upon or settled by arbitration, proceed to enter in upon said lands, their commissioners or employees, without being considered trespassers, and take down, build up, alter or remove the existing fence, and construct the other

description of fence which has been approved of by the council, and the amount of all costs and charges thereby incurred by the council over and above the amount of compensation agreed upon or settled by arbitration may immediately be recovered from such owner or occupier by action in any Division Court having jurisdiction in the locality and the amount of the judgment in favor of the municipality obtained in such court shall, if not sooner paid, be by the clerk of the municipality placed upon the next collector's roll as taxes against the lands, upon or along the boundaries, of which the fence is situated, and after being placed upon the collector's roll shall be collected and shall be treated in all respects as other taxes imposed by by-laws of the municipality. Where a tenant or occupant other than the owner is required to pay the aforesaid sum or any part thereof, the tenant or occupant may deduct the same and any costs paid by him from the rent payable by him, or may otherwise recover the same unless the tenant or occupier has agreed with the landlord to pay the same.

Provided always that in every case under this by-law the municipal council shall be liable only for its original share of costs of construction of such fence and the repairs and maintenance of such fence shall be borne from time to time by said owners or occupiers, their heirs or assigns.

That this by-law take effect and come into force from and after the passing thereof.

Passed in council this 11th day of February, A. D. 1904.

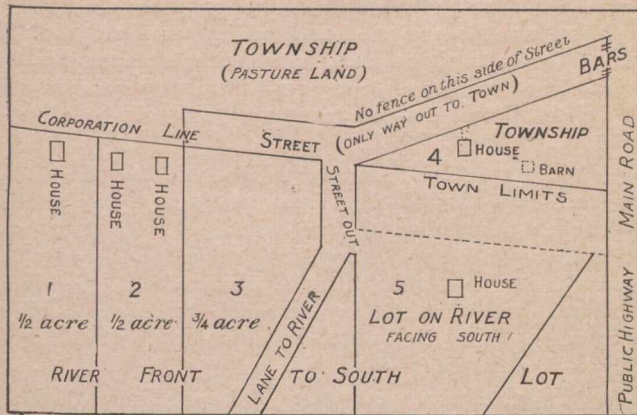
There is no provision for the granting by the council of a township of a BONUS for the construction of wire fences therein. Sub-section 2 of section 545 of The Consolidated Municipal Act, 1903, empowers these councils to pass by-laws "for regulating and settling the height, description and manner of maintaining, keeping up and laying down fences along highways or any part or parts thereof, and for making COMPENSATION for the increased expenses, if any, to persons required so to maintain, keep up, or lay down such last-mentioned fences or any part thereof." If the by-law were passed pursuant to this sub-section it should so state, and define the highway or highways or part or parts thereof in the municipality along which wire fences are required to be erected in the place of the existing fences, and should set forth the amount of the compensation to be allowed and paid to parties for erecting the more expensive fence, naming the owner or owners to whom such compensation is to be paid, and the sum to be paid to each. The same observations would apply to a by-law passed pursuant to sub-section 5 of this section, and in the latter case the by-law must be passed pursuant to the provisions of The Act Respecting Snow Fences." The by-law under review does not appear to have been passed pursuant to either of the above sub-sections, but appears to be in effect a re-enactment of the provisions of The Act Respecting Snow Fences (R. S. O., 1897, chapter 240). On the whole, we are of opinion that the by-law is not enforceable. Clause 1 is so indefinite that it is difficult to ascertain what is meant thereby, and what is evidently desired to be accomplished by clauses 2 and 3 can be effected by the councils taking the proceedings authorized by The Act Respecting Snow Fences. The method of collecting the cost of building the wire fences by the council, if it becomes necessary for them to do so, mentioned in clause 3 of the by-law, and section 2 of The Act Respecting Snow Fences could not be embodied in a by-law passed pursuant to sub-section 2 or 5 of The Consolidated Municipal Act, 1903, as it is a special mode of collection provided when proceedings are taken under The Act Respecting Snow Fences.

Removing Obstructions From and Opening New Street.

185—J. N. S.—1. Referring to a street, of which you will please find enclosed a description. What I would like to know is, can the street be obstructed by bars which have to be let down and put up every time a grocery man's rig comes in and out or any other vehicle? Below is the line and roads.

2. I bought the acre and sold the west half. Have I to give a road, or the party from whom I bought? There are other lots west. The township offered to do statute labor if the parties would.

3. Can I force a continuation of this street to the left or west side of lot 1, or will lot 2 have to give a road off his lot to the street?



1. It is not stated whether this road has been legally established and dedicated to the public as a public highway, or is a private way, used by the public by sufferance of the owner of the soil. If the former is the case no one has any authority to obstruct it by the erection of bars, or in any other manner, but, if the latter is so, the owner of the soil may do as he pleases with the road.

2. We assume that the acre referred to is that marked lots 1 and 2 on the subjoined plan. Unless a covenant or agreement to that effect is contained in the deeds mentioned, in neither case is the grantor bound to obtain a way out from the land purchased for the grantee.

3. No. It is optional as to whether the council of the municipality continues the road or not, and it should not do so unless the needs of the general public require it. A council has no right to open and establish a highway simply to accommodate a private individual. The owner of lot two is not bound to give any part of his lot for the purpose of making this road.

Power to Clear Obstructions From Creek.

186—I. H.—A, B, C and others have farms adjoining, across which a creek runs with very low banks, A's farm being next the lake into which the creek empties. The distance the creek runs across A's farm is about thirty rods, mostly all through drowned land. Between A's and B's farm there is a road made and kept up by the municipality. Owing to this aforesaid creek across A's farm becoming stopped up, the water cannot get away as fast as it comes. The road between A and B is much damaged, portions being sometimes entirely under water. Also B's farm is being damaged by the water being blocked up on it. A claims the water on his farm is no particular damage to him owing to it being mostly all drowned land, but he objects to water being on the road. Whose duty is it to open up this creek which would do away with the trouble?

We gather from the statement of the facts that the obstructions in this creek arise from natural causes, and are not occasioned by A, so that sub-sections 12, 13 and 14 of section 562 of The Consolidated Municipal Act, 1903, do not apply. If the requisite petition can be obtained proceedings may be instituted pursuant to section 3 of The Municipal Drainage Act (R. S. O., 1897, chapter 226), and we do not see that the doing of the necessary work can be enforced in any other way. It is the duty of the municipality to keep the road in a reasonably good state of repair for public travel, and if the existence of water upon the road makes it defective in point of repair the municipality is bound to adopt some means to remedy the defect.

Collection of Percentage on Taxes.

187—J. W. T.—While making his rounds through the township last fall, before December 14th, 1903, our collector met a man on the road and presented him with his tax bill. This man did not pay his taxes until after December 14th, when he refused to pay the 3%

which is added to taxes paid after that date, claiming he was not properly notified by the collector. Can the 3% be collected?

Yes. The ratepaysr must be presumed to know that unless his taxes are paid prior to the 14th December in any year, he will be required to pay the additional 3%. In this case he had no excuse for non-payment by that date, as he knew the roll was in the collector's hands, and had a bill of his taxes, having met the collector and received the bill from him. A question might arise, however, as to whether the demand for payment of the taxes was sufficient in law to justify a seizure to realize the amount after the fourteen days prescribed by the statute.

Town Cannot Take Stock in Manufacturing Concern.

188—A. C. S.—A town by vote of the ratepayers grants a concern a loan and takes a first mortgage on the plant as security therefor. It is now thought advisable to grant further aid by foregoing the mortgage and in place thereof taking 7% preference stock to the amount of the loan and releasing the mortgage.

1. Would this be a legal transaction?
 2. Can the municipality become shareholders and under what authority?
- 1 and 2. Assuming that the concern referred to is a manufacturing institution, the transaction suggested is unauthorized by law, as a municipal corporation has no power to subscribe for and take stock in an institution of this kind.

The Assessment of Telephone, Telegraph and Electric Light Companies.

189—G. W.—I would like to get some information as to assessment of property, that is, poles, wires, etc., belonging to telegraph, telephone and electric light plants. Is it known how such property is valued?

Yes. Sub-section 3 of section 18 of The Assessment Act, as enacted by section 1 of chapter 31 of The Ontario Statutes, 1902, and sub-section 3a of this section, enacted by sub-section 2 of section 7 of chapter 21 of The Ontario Statutes, 1903, provide a method of assessing property of this kind. The former sub-section provides that "the rails, poles, ties, wires, gas, and other pipes, mains, conduits, sub-structures and super-structures upon the streets, roads, highways, lanes and other public places of the municipality belonging to such companies (this includes electric light, telegraph and telephone companies, see sub-section 2 of section 18, as enacted by section 6 of The Ontario Statutes, 1903), shall be "land" within the meaning of The Assessment Act, and shall when and so long as in actual use be assessed at their actual cash value as the same would be appraised upon a sale to another company possessing similar powers, rights and franchises in and from the municipality and subject to similar conditions and burdens, regard being had to all circumstances adversely affecting their value, including the non-user of any such property." The latter sub-section provides that "land belonging to any of the companies mentioned in sub-section 2 of this section, and not situate upon any street, road, highway, lane, or other public place, shall likewise be assessed at its actual cash value, as the same would be appraised upon the sale to another company possessing similar powers, rights and franchises."

Supplementary Estimate in Aid of Waterworks Maintenance.

190—X. D. Q.—Last year's council of F. W. passed a by-law levying four-mill rate on the dollar on vacant lands along which water mains run. At the time this by-law was passed the waterworks were on a paying basis, it being the fifth year of their installation. As I understand the reading of the law the benefit is for assistance in case the revenue from the waterworks does not amount to enough to pay the interest and sinking fund, but in this case the interest and sinking fund are provided for, and a surplus, although not large, it is some, being about \$1,400 or over for 1903.

Is four mill rate on vacant lands, when the waterworks is self-sustaining, illegal?

We presume that reference is made to the levy authorized by section 37 of chapter 235, R. S. O., 1897. If this is so, the corporation is empowered by this section to levy a rate not exceeding four mills in the dollar upon the several properties, according to the assessed value thereof, fronting or abutting upon the street in, through and along which the waterworks mains are laid, as well as all other properties which may enjoy the advantage of use of water from the said main, distant not more than 300 feet therefrom for the purpose of protection against fire, etc., for the purpose of ASSISTING in the payment of any debentures issued for the purpose of waterworks constructed under the provisions of the Act. We do not see what power the council had, under this section, to levy the four-mill rate on vacant lands only, as it gives authority to make the levy, if needed, on ALL properties in the locality. This would not empower the council to discriminate in favor of occupied lands. Section 38 of the Act directs that subject to the provisions of section 36, all the revenue arising from the supplying of water, or from the real or personal property connected with the waterworks, shall form part of the general funds of the corporation. Section 36 makes the debentures for money borrowed for the purposes of the waterworks a charge on the property. We are therefore of opinion that if the revenues derived from the operation of the waterworks are sufficient to meet the cost of their maintenance, and the payments on debentures for money borrowed, and interest, as they accrue from time to time, and especially if these revenues produce a surplus, that the levy authorized by section 37 cannot legally be made by the council of the town.

Clerk's Salary and Allowances.

191—A. W.—Our clerk was appointed by the council for the year 1904 at a salary of \$90.

1. Can he charge extra for selecting jurors, drawing by-laws for closing road and posting up notices for the same and making a detailed statement for D. R. O.?
2. For postage and stationery, registration of births, marriages and deaths?
3. For holding municipal elections, calling Board of Health?
4. For holding Judge's Court re voters' list?

The council did not agree to pay him anything extra for doing these things at the time he was appointed, but he claims pay for doing them. Is he entitled to it?

1. If the by-law appointing officers for 1904, amongst others, appoints a clerk at a salary of \$90, without specifying the services he is to perform for that salary, it will be presumed that this sum is intended to pay him for such services as he is called upon to perform for the council, and not such other duties as are imposed upon him, by some statute other than The Consolidated Municipal Act, 1903, for the performance of which a fee is allowed him. If the council intends that the salary mentioned in the by-law appointing its clerk, should include pay for ALL the duties he is called upon to perform in his capacity of clerk of the municipality, this should be specifically stated in the by-law appointing him. Section 159 of chapter 61, R. S. O., 1897, provides that the selectors of jurors under section 17 of the Act shall for every selection and distribution of jurors, and the report thereof made by them, be entitled to such sum of money as is authorized to be awarded them by the councils of the municipalities of which they are respectively officers. If the by-law in this case does not specify that his salary is intended to cover the fee thus allowed him as a selector of jurors, the council should allow him a reasonable sum for doing this work in addition to the \$90. It is not part of a clerk's duties to prepare special

by-laws for his municipality such as this one. The council should employ a lawyer to do this work. It is part of the clerk's general duties to post up, or cause to be posted up, the notices mentioned in section 632 of The Consolidated Municipal Act, 1903, without extra pay, but he is entitled to any disbursements thereby necessitated. We do not know what is meant by "a detailed statement for D. R. O."

2. The clerk is entitled to be paid all his lawful disbursements for postage and stationery, and other necessities pertaining to the duties of his office, and unless the by-law appointing him provides otherwise, he is entitled to his fees for the registration of births, marriages and deaths, as provided by section 36 of chapter 44, R. S. O., 1897, in addition to the nominal salary stated in the by-law.

3. These services are part of the ordinary duties of the clerk, and are covered by his salary.

4. Unless the by-law appointing the clerk provides that the sum to be paid him by way of salary as clerk is intended expressly or impliedly to include payment for all duties as clerk and under The Voters' Lists Act (R. S. O., 1897, chapter 7,) to be performed by him, etc., he is entitled to be paid the fees mentioned in section 28 of the last mentioned Act, in addition to the salary fixed by the by-law.

Regulation as to Use of Books in Free Library.

192—G.—Our village corporation under part 2, Public Libraries Act, some years ago took over the old Mechanics Institute library. Quite a few non-residents are owners of property within the corporation, consequently are assessed and pay taxes toward the keeping up of the library. The library board refuse books to such taxpayers without a monthly or quarterly fee, while the residents get their books free. Are not all electors (part 2, section 18) entitled to equal rights to books from the library?

The provisions of The Public Libraries Act (R. S. O., 1897, chapter 232,) are somewhat obscure in this regard. Section 22 provides that "every public library established and every mechanics' institute transferred to a board of management, under Part II. of this Act, shall be open to the public free of charge." The Act places no restriction on the general meaning of the word "public." Section 17 of the Act provides that "every board of management so appointed shall discharge similar duties with respect to public libraries organized under Part II. of the Act, to those possessed or discharged by the boards of management of public libraries organized according to Part I. of the Act." Sub-section 1 of section 11 of the Act empowers the board to make regulations for the use of the library reading-rooms and museum, and for the admission of the public thereto. On the whole we are of opinion that the board may limit the right to take books out of the library to residents of the village.

Method of Delivering Mails — Liability to Build Road to Station— Assessor's Fee for Attending Court of Revision—Right of School Board to Vote at Meeting of Mutual Insurance Co.

193—C. O. D.—1. Can a railway company put a catching post for mail and a flag station anywhere along the line where there is no road or lane to the station. Is it compulsory to build a road to the aforesaid station by the municipal council of the township out of the township moneys?

2. If the owner of the land where the station is situated should give a road allowance and make it a public road will it be compulsory then for the council to build the road and maintain the same on account of the mail being taken on and off at that place, as well as passengers?

3. Can the assessor for the municipality charge for his attending the municipal court of revision on the assessment roll, and also for attending the judge's court on the voters list?

4. When a school house is insured in a mutual fire insurance company, has the secretary-treasurer of the school section a right to vote at the annual meeting of the company, has any of the trustees a right to a vote at the annual meeting?

1. If the Postal Department of Canada is aware of the existence of this method of delivering the mail by the railway company in this locality and approves of it, there is nothing to prevent the railway company handling the mail in this way. The municipality is not bound to procure and establish a highway to this station.

2. No.

3. The right of the township assessor to receive pay for attending the Court of Revision depends upon the arrangement made between him and the council at the time of his engagement. He is not bound to attend this court unless he so desires, or is compelled by subpoena to do so. Nor is this official bound to attend the court for the revision of the voters' list, unless compelled by subpoena or required by the Judge to do so. In the former case he would be entitled to witness fees on the Division Court scale. (See sub-section 1 of section 18 of chapter 7, R. S. O., 1897), and in the latter case his fees would be in the discretion of the presiding Judge. (See sub-section 4 of section 34.)

4. Assuming that the school premises are insured on the premium note plan, and the board has thus become a member of the company, within the meaning of section 107 of chapter 203, R. S. O., 1897, it is entitled to vote at the annual meeting of the company, according to the scale laid down in sub-section 1 of section 115 of the Act. The board should by resolution, entered on its minutes, appoint its secretary-treasurer or one of its members to represent it, and record its vote, or vote at the meeting.

Rural Mail Delivery.

194—J. J. W.—Could you give me any information on the rural mail delivery system. Has it been a success in the state where it has been tried? Could you outline the system they have adopted and the cost of the same. Kindly send all the information you can give me on the subject. Has it been tried in whole states or just in counties?

We can best answer this question, in view of the time and space at present at our disposal, by calling attention to an article on "Rural Mail Delivery and Good Roads" on page 8 (January issue) of THE MUNICIPAL WORLD for 1902, and an article on "Rural Mail Delivery and Road Improvement" on page 80, May issue, for the same year. If our correspondent requires any additional information on the subject, we would advise him to communicate with the Hon. A. W. Machen, General Superintendent, Free Delivery System, Post Office Department of the United States, Washington, D. C.

Township May Pass Dog Tag By-Law.

195—X.—Is there any reason why a township municipality should not pass a by-law to the effect that owners of dogs should, on paying the tax, receive a tag numbered, as in towns and cities?

No.

Drain Not Continued to Sufficient Outlet—Drainage on Railway Lands.

196—E. M.—1. The township of W——, by making a ditch, sends down a large quantity of water into our village, and there it remains until it soaks away, there being no natural outlet, and now we propose putting in an 18-inch tile drain to carry this away. Is there any way of compelling the township of W—— to help pay for the outlet?

2. I maintain that this should come under the Ditches and Watercourses Act, but our council says not. Who is right?

3. Then again, we have another place where the water forms in large quantities owing to the railway embankment damming it. Can we, under the Act of 1903, force the railway to give us an outlet, this would be the natural outlet for this water?

4. Which is the proper and legal way to proceed in the above two cases to get the desired work done?

1. The township of W—— in constructing these drainage works, should not have stopped them at the

limits of the village corporation, but should have continued them to a sufficient outlet. If the township corporation has conducted water to and deposited it on the lands of the village corporation, the former is liable to the latter for the damages occasioned, and may be restrained by injunction from further offending. If the water brought down by W—— does not injure the public roads in the village or lands belonging to the village, the latter can do nothing, but any private individual whose lands are injured may bring an action to restrain the township.

2. We do not see that the provisions of The Ditches and Watercourses Act (R. S. O., 1897, chapter 285), afford the aggrieved parties any remedy.

3. Sub-section 2 of section 196 of chapter 58 of The Dominion Statutes, 1903, makes provision for application to the Board of Railway Commissioners appointed under the Act, for relief in a case of this kind, and this is the mode of procedure to be followed to obtain relief from the grievance complained of.

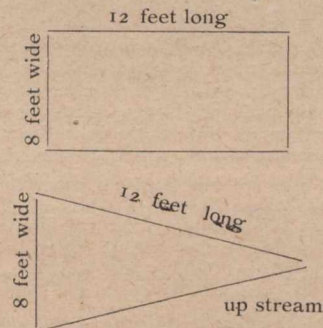
Cost of Building Stone Abutments.

197—T. H.—1. What will it cost to build four stone abutments as shown on the enclosed plan, there being lots of rough stone nearby, and the water very shallow; good roads on both sides of the river?

2. Do you think common rough stone would do?

Two abutments 8 x 12, 15 feet high.

Two abutments 8 x 11, 15 feet high.



1. Four stone abutments, as given on the plan, of rough stone near the work could be built for from \$5.00 to \$6.00 a cubic yard, or from \$800 to \$1,000 for the entire work.

2. Rough stone would do, but the abutments would have a better appearance and would be more durable if faced with good quarry stone. If rough stone is used the joints will be large and the durability would be much increased by using Portland cement mortar.

If a suitable quality of gravel could be obtained near the work, or if sand is convenient and a crusher could be had to break the stone, the abutments could be built of Portland cement concrete. Concrete, properly mixed and laid, would be more permanent than rough stone masonry, and would be, if anything, cheaper.

Payment of Costs of Enforced Collection of Taxes.

198—A. T. S.—In regard to collecting municipal taxes I went to a ratepayer's house and gave him his tax bill, and he told me that if I would wait until he would do his chores he would pay me. I had waited about half an hour there and I said I could not, it was getting too late. Then I wrote him to send his taxes or bring them to me and received no reply. Who has to pay the expenses?

If the collector at the time he presented his tax bill to this ratepayer demanded payment of the amount of these taxes, or, if so empowered by by-law of the municipality, he left with the ratepayer the written or printed notice mentioned in sub-section 3 of section 134 of The Assessment Act, after the expiration of 14 days after such

demand or service of such notice, as the case may be, this ratepayer has not paid his taxes, the collector has power to seize the goods of the delinquent to realize the amount of the taxes and the costs of the seizure and sale. (See sub-section 1 of section 135 of the Act.)

Appointment of Two Assessors—Qualification of Assessor—Same Person Should Not be Assessor and Auditor.

199—SUBSCRIBER.—1. Our council appointed two assessors, one to assess stock, the other to assess real estate at \$50 each, and a bonus of \$15 if work well done. Is this all legal?

2. What is the qualification of an assessor?
3. Can a man assess and audit in the same year?

1. We see no legal objection to the appointment of these assessors, since each is appointed to do a special part of the work, and there is no reason why the salary should not be paid them as stated.

2. The law does not require that an assessor should have any property qualification.

3. No. Before entering upon his duties as assessor he is required to make the declaration set forth in section 312 of The Consolidated Municipal Act, 1903, and before acting as auditor he would have to make the declaration prescribed by section 314. A man appointed to both offices in the municipality in the same year could make neither declaration.

Assessment of Standing Timber.

200—AN OLD SUBSCRIBER—A farm was recently sold by public auction in our township. A company having handle works in L— bought it for the sake of the timber on it. The company has now sold it to one of my neighbors, reserving the right of way to the bush, and three years time to remove the timber, I cannot conscientiously assess the farm to my neighbor as high as formerly, because he did not pay within fifteen hundred dollars of what the company paid.

1. Can I assess this company for the timber, lessening the value each year according to the amount left on the place?

2. If so, should I assess the timber as personal property or otherwise?

3. If the company refuse to pay the taxes what course would the collector have to pursue?

1. No. The standing timber is part of the land, and should be assessed with it to the owner of the soil for the time being. The purchaser should have made some arrangement with the company from which he purchased the land to indemnify himself against the payment of any extra taxes by reason of the company's timber being allowed to remain standing and growing on the land.

2. No. Clause 9 of section 2 of The Assessment Act provides that the term "land" shall include "all trees or underwood growing upon the land."

3. As we have intimated above, this timber cannot be legally assessed to the company.

Definition of Public Highway.

201—W. J. H.—In reference to your question 108, February issue, would state that the roads were first cut out by settlers from ten to fifteen years ago. They run along the original sidelines in some places while in others they deviate to avoid obstacles. At no time, however, has there been any dedication of any land by any person for a road allowance in the township. The only expenditure has been the statute labor.

1. Can these roads be legally termed public highways?

2. What does an "original road allowance" consist of in municipalities situated in unorganized districts?

1. No, except in so far as they followed the course of original road allowances.

2. A portion of the municipality set apart for the purposes of a public highway at the time the municipality was originally surveyed.

Duties of Teacher as to Punishment of Pupils.

202—D. S. B.—1. Is there a clause in the school law directing that school pupils shall not be kept in at intermission or detained after four o'clock (after school hours) as a punishment, or in order to learn unprepared lessons?

2. Can teachers compel children to prepare work at home, and if the children do not get home work up can a teacher lawfully punish the pupil?

3. Are there any regulations issued by the Department of Education of Ontario for the guidance of teachers, school inspectors or trustees, other than the School Act and name?

4. Is it lawful for teachers to whip children for unprepared lessons?

1. Sub-section 1 of section 80 of The Public Schools Act, 1901, provides that it shall be the duty of the teacher to maintain proper order and discipline in the school, and section 12 of The Regulations of the Education Department provides that every pupil shall submit to such discipline as would be exercised by a kind, firm, and judicious parent. If under the circumstances the teacher considers he is acting judiciously and in the interest of the pupil by keeping him in after school hours as a method of punishment or to enable him to prepare his lessons, we are of opinion that the law will justify him in pursuing this method.

2. The teacher can require the pupil to do such work at home or after school hours as may be necessary to prepare such lessons as the school curriculum prescribes, and punish him as he deems judicious if the pupil neglects his work. The teacher may also exercise the disciplinary powers conferred on him by sub-section 9 of section 80 of the Act.

3. Not that we are aware of.

4. Yes.

Payment of Expense of Disinfection.

203—J. McL.—Has a municipality power, or in other words is it legal, to pay medical health officer for disinfecting houses after being infected by contagious diseases?

If the owner of premises in which a case of infectious disease has existed is financially able, he should disinfect the premises on being notified by the local Board of Health to do so, pursuant to section 81 of The Public Health Act (R. S. O., 1897, chapter 248,) at his own expense. If the owner fails to comply with the notice he is liable to the penalty mentioned in section 82. If, owing to his poverty, the owner is unable to bear the expense of the disinfection, the local Board of Health must cause it to be done and pay the expense, as provided in section 83. If the medical health officer does this work by direction of the local Board of Health, and he is engaged at an annual salary, he is entitled to nothing in addition to his salary, but if the council has not arranged to pay him any salary, he is entitled to receive pay for the service actually performed, according to the tariff of fees by law allowed to physicians for performing similar services.

Qualification for Councillor, of Township Treasurer—Of Livery Stable Keeper.

204—J. N. D.—1. Is a township treasurer disqualified from being a member of a council of an incorporated village?

2. Is a person who holds a license to run a livery stable in an incorporated village disqualified from being a member of the council of the same village?

3. If disqualified and should get elected what steps should be taken to unseat him. Would work done during his term in council be illegal on his account?

1. Yes. Sub-section 1 of section 80 of The Consolidated Municipal Act, 1903, provides that "no treasurer of ANY municipality shall be qualified to be a member of the council of ANY municipal corporation."

2. No.

3. Our reply to question number two renders it unnecessary to answer this.

Refusal to Make Declaration of Qualification.

205—C. F. S.—1. Mr. H. was nominated on the 28th of December as councillor, and elected on the fourth day of January, 1904. At our first council meeting he subscribed the declaration of office, but not the declaration of qualification. Had the clerk a right to dismiss Mr. H. when he would not take the declaration of qualification?

2. If Mr. H. votes on a by-law will it be void?

3. What steps shall I take, as some of our ratepayers say that I had a right to dismiss him at our first meeting?

1. The clerk had no authority to interfere in this matter. If Mr. H. was disqualified, proceedings could have been taken to unseat him pursuant to the provisions of sections 219 and 220 of The Consolidated Municipal Act, 1903, and the question of Mr. H.'s disqualification could thus have been heard and decided by the proper tribunal.

2. No. So long as no proceedings are instituted against him to unseat him, he must be presumed to be qualified to hold his seat at the council board.

3. It is your duty to remain passive, and to, in no way, interfere in the matter.

Duties and Salary of Clerk.

206—W. P.—A clerk's appointment reads that he shall be paid such a yearly salary to do all the work required by statute, and no reserve was made by the council for the Court of Revision by the county judge, or for the returning officer at nomination and election.

1. Has the clerk the right to collect fee as clerk of said court?

2. Has the returning officer appointed, instead of the clerk, the right to collect fee for nomination and election?

3. When an account against a council as clerk of a Court of Revision has been certified by the County Judge holding said court, to whom shall it be presented for payment,—to the council or to the treasurer of the municipality?

The appointment of a clerk provides that he shall be paid a yearly salary as clerk of the council.

4. Has the clerk the right to collect fee as clerk of the Court of Revision held by the County Judge?

5. Has the clerk the right to collect fee as returning officer at nomination?

1. Assuming that the court for the revision of the voters' list for the municipality is referred to, where it is provided by a by-law or contract under which the clerk is appointed that the sum to be paid him by way of salary as clerk is intended impliedly or expressly to include payment for all services to be performed by him under The Voters' Lists Act (R. S. O., 1897, chapter 7,) he is not entitled to receive anything in addition to his salary for his services as clerk of this court. But, if the by-law does not provide as above, he is entitled to be paid the fee mentioned in sub-section 4 of section 28 of the Act.

2. Yes.

3. If the clerk is entitled to be paid this allowance in addition to his salary, it should be paid him by the treasurer of the municipality on the certificate of the Judge, as provided by section 30 of The Voters' Lists Act.

4. Our reply to question number one renders it unnecessary to answer this.

5. This depends on the arrangement entered into between the council and the clerk at the time of his employment. If the council then agreed to pay the clerk an extra allowance for the performance of this service, he can collect it, otherwise he cannot do so, as it is part of his ordinary duties as clerk to preside at and conduct the election in his municipality.

Effect of Delaying Appointment of Assessor and Return of Assessment Roll.

207—R. P.—Having regard to section 295 of The Municipal Act, and sections 55 and 56 of The Assessment Act, what would be the consequence and how would the municipality (an incorporated town) be effected if the council failed to appoint an assessor before the 15th of February, providing that the assessment was completed and roll returned before April 30th, and also if not returned by that date how is the roll affected?

The failure by the council to appoint an assessor or of the assessor to begin to make his roll not later than the 15th day of February in any year, or of the latter to return his roll on or before the 30th April, will not invalidate the assessment. If, for any reason, these duties are not performed by the dates named, they should be completed as soon as possible thereafter. In the case of *Nickle v. Douglas* (Q. B. E. T., 1874,) it was held that the omission of assessors in a city to make and complete the roll until after the first of May, does not avoid the assessment. For a wilful omission to return his roll an assessor is liable to a fine not exceeding \$200 and to imprisonment, as provided in section 251 of the Act. If the delay is not wilful, he is liable to forfeit such sum as the court shall order and adjudge, not exceeding \$100. Councils should, however, insist upon assessors completing their assessments within the time limited by The Assessment Act.

Taxes on Volunteer Grants—Council's Borrowing Powers.

208—W. J. T.—1. What taxes are soldier's claims liable to, and what exempt from?

2. Can a council pass a by-law to borrow a certain sum of money from a bank and then draw this in small amounts for their notes given as each amount is drawn until the full by-law amount is drawn?

1. Section 6 of chapter 6 of The Ontario Statutes, 1901, provides that "lands located under this Act shall be exempt from all settlement duties and provincial and municipal taxes (except for school purposes) for a period of ten years from the date of such location, provided that such lands are held by the original locatee, or his heirs, executors or administrators, but upon the transfer of such land to any other person such exemption shall cease, and such lands shall become subject to any Act or regulations then in force respecting settlement duties and provincial and municipal taxes, in the same manner as if the said lands had been located and sold at the date of the said transfer under the provisions of The Public Lands Act and the regulations made thereunder."

2. Yes, if the by-law for that purpose complies with section 435 of The Consolidated Municipal Act, 1903.

Duties of Councillor as to Making Declaration of Office.

209—X.—On Jan. 4th, four councillors were elected out of seven candidates. One of those elected did not take the oath of office on account of absence from the municipality. He returned about the 12th of February.

1. Can the councillor take his seat after taking the oath?

2. If the elected councillor cannot take his seat can the defeated candidate having the highest number of votes take the seat?

3. Is a new election necessary?

1. Yes, but he may be liable to the fine mentioned in section 319 of The Consolidated Municipal Act, 1903, for not having made the declarations of office and qualification within 20 days after KNOWING of his election.

2. Our reply to question number one renders it unnecessary to answer this.

3. No.

Right of Chairman of Council to Vote—Concurrent Vote of Three Necessary to Carry Resolution.

210—SUBSCRIBER—At the last meeting of our council only three members were present. The reeve and one councillor were

absent, probably owing to a heavy fall of snow. One of the three present acted as chairman. On motion by one of the councillors, seconded by the acting chairman, to do so, the name of a certain party was filled in the by-law appointing an assessor. The other councillors not concurring.

1. Had the acting chairman the right to second the resolution?
2. Is it a valid by-law appointing an assessor which secured only two votes?
3. Are taxes collectible which are based on an assessment roll made by an assessor appointed as above mentioned, if no action is taken to quash the by-law?

1. Yes.
2. No. This council is composed of five members, and section 269 of The Consolidated Municipal Act, 1903, provides that "where a council consists of only five members, the CONCURRENT votes of at least THREE, not disqualified to vote on the question, shall be necessary to carry any resolution or other measure."

3. It is doubtful if an assessment made by an assessor appointed by the votes of only two members would be valid, and for that reason it would be a dangerous experiment to allow him to go on. The council should be called together at once for the purpose of either confirming his appointment or appointing another assessor. If he has done any part of the work it would be wise to confirm his appointment, so that the work already done would not have to be done again.

Rules for Conduct of Business of Councils.

211—I. J.—Will you kindly insert in the next issue of THE MUNICIPAL WORLD a few simple rules for maintaining order and facilitating the despatch of business at council meetings.

It is impossible to answer a question of this kind without some knowledge of local conditions and circumstances and an acquaintance with the wishes of the councillors. The best collection of rules of order for the guidance of a council in the conduct of its business that has come under our observation is contained in by-law No. 3,523 (as amended by by-law No. 3,527) of the City of Toronto. This by-law is reproduced on page 278 and following pages of Biggar's "Municipal Manual." We would suggest a perusal of this by-law, and the embodying of such of its provisions as would be considered applicable to this particular municipality in a by-law to be passed by its council.

Council May Charge Percentage on Unpaid Taxes—Collector May Appoint Bailiff.

212—W. B. E.—1. Can the municipal council charge interest on taxes not paid by the first of January in each year?
2. Can the tax collector appoint any person for collector's bailiff to collect the balance of the taxes that he does not get on his first round?

1. Yes, if it passes a by-law to that effect pursuant to the provisions of section 60 of The Assessment Act, as enacted by section 4 of chapter 27 of The Ontario Statutes, 1899.

2. Yes, but the collector is liable for anything done by the Bailiff under his authority. (Corbett v. Johnston 11 U. C. C. P. 317).

Proceedings on Formation of Union School Section.

213—O. K.—The cut below represents four townships, one of which, C., is organized.

The circle represents the situation of the village and the X in it represents the place where a separate school house is desired to be built.

X, XX and XXX each represent public school houses, being known as number 1, 2 and 3 respectively.

In the above village a separate school house is wanted as soon as possible.

All the people in the village and around belong to the public schools X, XX or XXX.

On some of these public schools there is still debentures to be paid.

A large number of the people living around the village are in favor of the erection of a separate school in the village.

1. What is to be done so as to have the school erected?

2. Will an assembly of the ratepayers need to be called?

3. Should there be any notice placed to announce that future assembly or meeting of ratepayers?

4. Is it necessary to have notices placed in the four townships since that is a union school of the four townships which is to be built?

5. How many notices should there be placed in each township, and where should they be placed?

6. How long should they be placed before the date of the meeting?

7. State what should be written on the notices?

8. By whom should they be signed?

9. Where should the meeting take place?

10. How many ratepayers should at least be present?

11. Explain fully what should be done at the meeting and how done?

12. Will it be necessary to have trustees from each township, or can the three trustees be taken from one or more of the townships?

13. How should the meeting be closed, and should there be an appointment of a future meeting?

14. Now the meeting being over, what is to be done, and who should do it (explain fully.)

15. Should the separate school inspector be notified of their proceedings, etc. What has he to do in regard to this?

16. Who should choose the site of the school grounds?

17. Should there be decision of building, how should it be built, that is, will it have to be given by contract?

18. Should the application be given by seal tenders?

19. How and when should tenders be open?

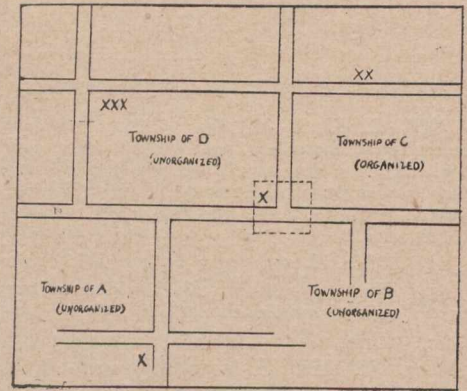
21. Will the want of tenders have to be published in some newspaper (no paper in this locality.)

1 to 11 (inclusive). The steps necessary to be taken to form a separate school in a township are fully set forth in sections 21, 22 and 23 of The Separate Schools Act (R. S. O., 1897, chapter 294). There is no provision for the formation of a separate school in an unorganized township. The section above quoted pre-supposes that the separate school is to be located in an organized township. A notice of its formation is required by section 23 of the Act to be given to the reeve, and an unorganized township has no such official. The Act makes no provision for the formation of a union separate school in the first instance, but a number of EXISTING separate schools may unite and form a union separate school in accordance with the provisions of section 29 of the Act. This separate school should be formed as provided in sections 21, 22 and 23 of the Act, in the organized municipality and ratepayers in the adjoining municipalities can become supporters of it by giving the clerk of the municipality in which it is located the notice mentioned in section 42 of the Act.

12. The first trustees elected should be supporters of the separate school in the township in which it is to be located, but trustees subsequently elected may be chosen from the supporters of the separate school generally.

13. There is no special mode prescribed for closing this meeting, and no appointment of a future meeting is necessary.

14. The trustees elected should give the notice mentioned in section 23 of the Act and organize and



proceed with the performance of their duties as prescribed in section 33 of the Act.

15. No.

16. The Board of Separate School Trustees. (See sub-section 3 of section 33 of the Act.)

17 to 21 (inclusive). These are all matters as to which the trustees have to exercise their judgment and discretion.

Removal of Snow from Street.

214—F. D. S.—1. Can a ratepayer in our village compel the council to open up a street (which has not been used all winter and is now covered with three or four feet of snow) so that he can draw in firewood, or should he have the snow shovelled himself?

2. Will the council be liable if they do not open it after being notified?

The ratepayer has used a trespass footpath all winter instead of using the street. His property also joins the main used street.

1 and 2. A ratepayer cannot compel the council to clear off a large quantity of snow upon a road at large expense to convenience such ratepayer, but it may by neglect to keep the road in a reasonable state of repair render itself liable in damages if an accident happens.

Assessment of Farmer's Son—Power of Council as to Assessment Roll.

215—J. D.—1. J. R. resides on his mother's farm occupying a house. Mrs. R. resides in B. and rents this farm to another son, F. R., but reserves the house for J. R. Now she does not want J. R. assessed on this farm. Mrs. R. has always been assessed as owner and J. R. as F. M. F. as her son. What form must he be assessed in?

2. What power has the council got in regard to the assessment roll? Can they refuse to accept it until it has been inspected by the clerk and found correct?

3. Can they refuse to accept it in any case?

1. If J. R. has *bona fide* resided on his mother's farm for twelve months prior to the preparation of the assessment roll, and is a British subject of the full age of 21 years, he is entitled to and should be assessed as a farmer's son, or he may be assessed as an occupant or tenant under his mother pursuant to the provisions of section 14 of The Assessment Act.

2 and 3. The council has no power to refuse to accept the assessment roll. Section 56 of The Assessment Act provides that it is to be filed with the clerk, completed and added up with the affidavits attached for the inspection of parties interested, and to be dealt with by the municipal Court of Revision and the County Judge on appeal from that court.

Proceedings on Change of School Site.

216—P. S.—Copy of the minutes of a special meeting held to ascertain the feeling of the ratepayers of school section number six in the municipality of _____, with regard to the moving of the school house.

_____, February 13th, 1904.

Moved by _____, seconded by _____, that _____ act as chairman of the meeting. Moved by _____, seconded by _____, that _____ act as secretary of this meeting. Carried.

Moved by _____, seconded by _____ that as the legality of this meeting is called in question, this meeting was adjourned until Saturday, the 27th inst., at 10 o'clock, a. m.

(Signed) _____, Chairman.

(Signed) _____, Secretary.

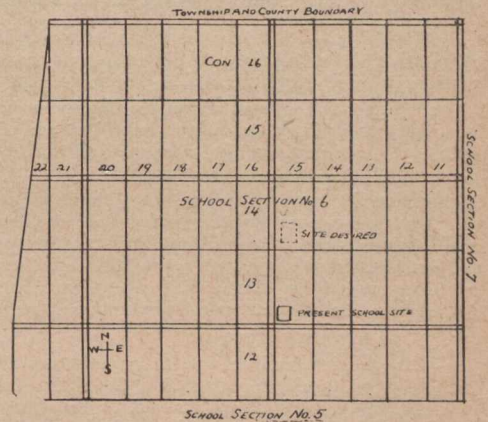
When school section number six of this municipality was organized and established only very few settlers were residing in the northern part of it while most of the ratepayers and nearly all children of school age were living on the south end. When the school site was selected and the school house built it was located near the south end as shown in the accompanying map in order to accommodate the majority of the existing population. Since then the northern end of the section has also been more occupied and contains now the majority of children of school age, as well as the majority of ratepayers, and for several years past efforts have been made by the latter to have the school site changed to a more central location also shown on the map, but up to this year the trustees

were opposed to a change. This year one trustee is anxious and determined to get the site changed, if possible, and one is decidedly opposed to it, and the third is willing to agree to a change on condition that the present school house can be sold at a certain price which probably will not be realized for it as the site reverts back to the original grantee or his assigns if no longer used or needed for school purposes.

In July, 1902, an informal special meeting of the ratepayers of said section was held at which no minutes in writing were taken, but at which it was unanimously verbally agreed to either move the present school house to the site indicated or to build a new one the following season, and to levy a special section rate of 23½ mills on the dollar, realizing \$96.58 but used the money afterwards for general school purposes, and took no steps whatever toward changing the site to a more central location.

At the request of the dissatisfied ratepayers the secretary-treasurer called a special meeting to be held at the school house on the 13th inst. He is working away from home all week and wrote the notice on Sunday the 7th inst., though they were dated and posted up by one of the trustees on Monday, the 8th inst. At the meeting objections were raised by ratepayers opposed to a change disputing the legality of the meeting, as only five clear days' notice had been given, and because as stated, the secretary-treasurer wrote the public notice calling the meeting on a Sunday. The meeting was therefore adjourned until Saturday, the 27th inst. New public notices were to be posted up by the trustees and the site definitely selected by them in the meantime.

1. Are the steps verbally but unanimously agreed upon at the meeting held July, 1902, regarding the changing of the school site, and the levying of a section rate for that particular purpose binding on the trustees, or if they had a right to use the money so raised for general school purposes, and to take no action toward changing the site?



2. If, under the circumstances stated, the writing on a Sunday of the notices which were posted up on the Monday following, would have affected the legality of any resolution made and carried by a majority of the ratepayers present at the meeting held on the 13th inst.?

3. Would the giving of only five clear days' notice have voided any action taken?

4. If the trustees should still refuse or neglect to act in the matter, what steps should the dissatisfied majority of the ratepayers take to effect the change of the present site to a more central one?

1, 2, 3 and 4. From the facts, as stated, it appears to us that the proceedings hitherto taken in this matter have been irregular and unauthorized by The Public Schools Act, 1901. Pursuant to sub-section 1 of section 34 of this Act the trustees of the school section should first agree upon a change of site for the existing school house, and then forthwith call a special meeting of the ratepayers of the section to consider the site selected by them. This sub-section further provides that no change of site shall be made, except in the manner in sub-section 2 of this section mentioned, without the consent of the majority of such special meeting. In this case the trustees have not apparently at any time agreed upon a change of site for the existing school house, therefore there has, as yet, been nothing to submit to a special meeting called to consider this question. The first step the ratepayers should take is to elect, at their annual meeting or meetings, a Board of Trustees, who will agree upon the change of site, and then take the other proceedings prescribed by this section to accomplish their object. In calling the special meeting of the ratepayers to consider the site agreed upon, when the time for doing so has arrived, the provisions of sub-section 4 of section 19 of the Act should be strictly followed.

Restraining Cutting of Timber on Highway.

217—J. S.—1. Parties are cutting timber, (without leave of the council) on side road. Is it necessary for the council to have a proper or new survey in order to forbid cutting of said timber? The road has been fenced and used as public road.

Is it the duty of any member of the township council to forbid such cutting of timber in case the pathmaster fails to do so?

Our township by-law states that all timber, etc., on road is in charge of pathmaster.

1. If the council is satisfied that the road is located in the right place, it should by resolution notify the parties who are cutting the timber without its consent to desist therefrom, and if they persist in continuing their operations they can be restrained by injunction. If, on the other hand, the council is uncertain as to the exact location of the line of road, it should, before taking any proceedings, have it definitely located by a surveyor.

2. The council should pass a resolution to notify these parties to desist from cutting the timber. No single member of the council can give an authoritative notice.

Grants by County to Aid Roads in Local Municipality.

218—M. L.—1. If a county cannot grant aid to a municipality to improve a road unless it be joined to a county road what does section 658, sub-section 2 of The Municipal Act mean?

2. What is the legal distinction between passing a by-law for improving any road in a municipality and granting aid to a municipality to improve the same road?

I quite agree with the opinion of the legal editor of THE MUNICIPAL WORLD as I understand that it would be illegal to grant aid to a township unless the grant was to be applied to a road running into a county road, but the county would be justified by section 658, sub-section two, in passing a by-law and then proceed with any work they deemed necessary assuming all responsibility of damages until the road was again assumed by the township.

3. Is this view correct?

We have just such a case in our county council. The council granted \$500 as aid to reduce a hill in the township of G. The township of G. did the work to suit themselves, the county council doing nothing but pay over the money which I contend was illegal, which is contrary to the opinion of our county solicitor, who declared they were justified by section 658, sub-section 2.

1. Sub-section 2 of section 658 does not appear to harmonize with other sections of The Municipal Act. We cannot do better than to quote the observations of Mr. Biggar in his "Municipal Manual" upon this sub-section, with which we agree. They are as follows:

"But even after the interpolated clause relating to bridges has been eliminated the interpretation of the section presents no little difficulty. Read literally, it gives a county council power, if, in the opinion of the council the interests of the county so require, to exercise as to every road not situate within the city, town or village, all the powers conferred by section 637 (1) upon the council of every municipality as to roads which are within their respective jurisdictions. Such an interpretation would render section 613 (1) quoad bridges in townships, and also section 614 wholly unnecessary; since, if a county council is intended to possess, under this sub-section, powers as extensive in regard to such roads as they could acquire by assuming them under one of the sections mentioned, there would be no reason for their taking the latter course and assuming with the road the burden of maintenance imposed by section 606. Section 615 would also become unnecessary, since larger powers would be conferred by this sub-section than by that section.

It is apprehended, therefore, that a county by-law for "opening, making, preserving, widening, altering, diverting or stopping up" any of the "public communications" to which this sub-section applies, is in effect, if not in form, a by-law for assuming the highway or bridge in question.

It may be that a county by-law passed under this sub-section merely for "improving or repairing" a township road or bridge would not *ipso facto* amount to an assumption thereof; but in view of the conflict of jurisdiction and the uncertainty as to the incidence of municipal liability which would result from such a construction, it can scarcely be adopted without the authority of a judicial decision."

2. The passing of a by-law for improving a road in a municipality would involve the defining of the improvements to be made, and their carrying out by the county council or its commissioner. The granting of aid to a local municipality under the authority of sub-sections 5 and 6 of section 658, would mean simply the granting of a sum of money to be expended by the local municipality in the making, etc., of such roads as are mentioned in these sub-sections, either under the direction of a commissioner appointed by the county council or otherwise.

3. We agree with your idea that the county council cannot legally make a money grant to a township under the authority of sub-section 2 of section 658, because there is not a word in it authorizing aid in money. Express authority is given to a county council to grant aid in money to a township by sub-sections 5 and 6 of section 658 in the particular cases mentioned in these sub-sections. Authority to make money grants is also found in sections 614, 615 and 644. In view of the fact that the Legislature has expressly authorized councils of counties to grant aid in money, by the above sections we are of the opinion that such grants can only be made under these sections.

Proceedings for Construction of Drain.

219—J. H. F.—We have an open ditch running across seventeen farms, which was made by mutual consent about twenty-five years ago. Nearly all the people want it cleaned, but one or two men at the outlet do not want to do the work. The majority of the people want the township council to take hold of the matter and put it through in a legal business-like manner and the cost be paid by the parties benefited. The trouble is all want the ditch cleaned. A cleans his part one year. B the next, and so on. We want to get at the thing right. If you can direct please state if it can be made compulsory for each to maintain and keep clean his portion in future?

If this drain does not pass through more than seven original township lots, exclusive of any part thereof, on or across any road allowance, any person interested may take proceedings under The Ditches and Watercourses Act for the construction of a drain, or if the drain required will pass through more than seven original township lots, the council, upon a petition of the majority of the owners of the lands to be affected by the ditch, may pass a resolution authorizing the extension thereof, provided the cost of the whole drain will not exceed \$1,000. Each party interested may be required, by an award made by the township engineer pursuant to the provisions of the above Act, to construct and maintain a definite portion of the drain. (See section 5 of the Act). Otherwise the council may pass a by-law for the construction of the drainage works pursuant to the provisions of The Municipal Drainage Act (R. S. O., 1897, chapter 226), on the presentation to it of the petition required by section 3 of the latter Act.

In Kingston the by-law to give effect to the election of aldermen by the entire city, instead of by the wards, was snowed under.

At Belleville a by-law authorizing the council to borrow \$50,000, with which to repair and run the gas works as a municipal concern, was carried by a vote of 353 to 337.*

Welland defeated the by-law to grant exemption to the Frost Manufacturing Co.