

THE MUNICIPAL WORLD

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Calendar for March and April, 1902.

MAR. 1. Auditors' reports on the accounts of High School Boards, and the Boards of cities, towns and villages should be mailed to Education Department. Separate School supporters to notify municipal Clerk—Separate School Act, s. 42. Inspector's Annual Reports to the Department due.—Public School Act, s. 87, (5). Financial Statement of Teachers' Association to the Department due.	
5. Make return of deaths by contagious diseases during February. R. S. O., chapter 45, section 11.	
27. High Schools, second term, and Public and Separate Schools close.—H. S. Act, section 45; P. S. Act, section 96, Sep. Sch. Act, section 81.	
28. GOOD FRIDAY.	
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. Night Schools close (1901-1902).	
APRIL 1. Clerks of counties, cities and towns, separated from counties, to make return of population to Education Department.—P. S. Act, section 73. Last day for Free Library Board to report estimates to the council.—Public Libraries Act, section 12. Last day for petitions for Tavern and Shop Licenses to be presented.—Liquor License Act, sections 11 and 31. Last day for removal of Snow Fences erected by councils of townships, cities, towns or villages.—Snow Fences Act, section 3. From this date no person compelled to remain on market to sell after nine a. m. —Municipal Act, section 579, (9) R. S. O., 1897. Last day for Boards of Park Management to report their estimates to the council. —Public Parks Act, section 17.	
7. Last day for Treasurers of Local Municipalities to furnish County Treasurers with statement of all unpaid taxes and school rates.—Assessment Act, sec. 157.	
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The Municipal World

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ST. THOMAS, MARCH 1, 1902.

Mr. F. R. Powell, barrister, of Parry Sound, has been appointed clerk and solicitor of that town, in the place of Mr. W. L. Haight, who recently resigned these offices.

* * *

Mr. S. C. Londry has been appointed clerk of the township of Prince, in the district of Algoma, in the place of Mr. Robt. Liddle.

A Municipal Government Board.

In the debate on the budget, Mr. Pattulo, M. L. A., for North Oxford, referred to the large amount of municipal legislation before the House and endorsed THE WORLD'S suggestion for the formation of a local government board, in the following words:

"As a practical suggestion, I should like to see a municipal committee something after the model of the local government of Great Britain, a committee in which we might have the services of some of the permanent officials of the House, for instance, the secretary of the board of health, the secretary of the bureau of industries, the good roads commissioner, and one or two others of the officials—whose names will suggest themselves to members of the government. To a committee of that kind, with the attorney-general as chairman, we might refer all municipal bills coming before the House, and in addition to proposed amendments, all projects and proposals regarding municipalities. For instance the government has before it now a suggestion in reference to sanitation, the disposal of sewage in a number of towns and cities, a question of the utmost importance. A matter of that sort could be referred to a committee composed as I have suggested. The findings of such a committee would be of very great assistance in perfecting legislation, and to members of the House in considering the same."

Report of Assessment Commission.

The final report of the Commission, appointed in 1900 to inquire into and report upon questions of municipal assessment and taxation, in the province of Ontario, was presented to the legislature on the 19th of February. The report occupies thirty-four pages and includes, in addition, an appendix, containing special information and the draft of a new Assessment Act, which is recommended for adoption.

The principal recommendations are:

1. ASSESSMENT OF LAND.

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

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

2. PERSONAL PROPERTY.

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

(A) BUSINESS TAX.

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

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

(B) CALLING TAX.

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

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

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

(C) HOUSE TAX.

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

Where the population is 4,000 or less,

the assessed value of all houses up to \$1,000.

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

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

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

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

3. INCOME TAX.

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

4. ANNUAL VALUE AND RATE OF TAXATION.

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

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

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

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

5. EXEMPTION OF MACHINERY.

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

6. PROVINCIAL BOARD.

That a Provincial Board be appointed for the assessment of the lands of railway companies, income of express companies and the special franchises (which is the term applied to the right of use of highways or other public places) of other persons, together with the land used in connection with the special franchises, the tax on the amounts assessed to be paid to the provincial treasurer and to be distributed, after deducting the expenses of the board, amongst the various municipalities concerned.

7. ASSESSMENT OF RAILWAYS.

The land of steam railroads is at present assessed at the same value as other land in the neighborhood. The report recommends that these assessments be made by the provincial board and raised gradually for ten years, when the actual value of land and improvements is to be the assessed value. This will be about six times the present assessed value throughout the province.

8. DISTRESS.

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

9. ARREARS OF TAXES.

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

10. SCRAP-IRON ASSESSMENT.

The report considers this question fully and states that in Ontario the special franchise or the right to use highways or public lands has not hitherto been assessed, and it may be said that such corporations have only been assessed in respect of the value of the structures placed on the land, although the value attached has generally been inadequate. The use, which the corporation makes of public land in pursuance of its right to use it, corresponds with the use which a private person makes of his land. The main difference is that the land used by the corporation is not assessable, while the land of a private person is assessable.

If legislation, as hitherto in Ontario, does not provide for the assessment of the special franchise, and does not allow the cost of reproduction to be the test of the value of the structures on the public land, then what has been popularly termed "scrap-iron" value — the value of the materials — may have to be the assessed value.

The same sort of thing is true in the case of land owned by a private person in a city. For instance, buildings suitable for the profitable use of land give it its chief value. As buildings alone, their value can be no more than what they cost, but, if appropriate, they may

add to the earning value of the land much more than their cost, and any added value, whether arising from the buildings or from other circumstances, attaches to the land, and is included in the valuation of the land.

As that added value is in the land, and is assessable in the case of private land, so, it seems, should be assessable, the corresponding added value which the right to use public lands has, when (combined with other circumstances) it has been adapted for use by appropriate structures placed thereon by the possessor of the special franchise.

In any case, the assessment of such corporations should be made by a central board. That is what the corporations suggest and the general tendency in the United States is towards assessment of railways, telegraph and telephone companies, express companies, and other like companies, whose operations are not confined to one municipality by such a board. The assessment of some companies is only by this means practicable at all, and by it assessments generally will be more uniformly made.

Such a board should be authorized to employ experts, and its valuations will be more intelligently and justly made than valuations by a number of ordinary municipal assessors acting without concert. The assessment by one board, of companies of the same kind in different municipalities, will necessarily be made upon the same principles and in the case of companies whose operations extend over a number of municipalities the expense to them of assessment at a single office will be much less than that attending separate assessments in each municipality.

The plan of assessment by a provincial board is recommended in the case of all companies or persons exercising special franchises, through their operations may not extend over the whole provinces, but may be confined to a single municipality, and that not merely the special franchise of such a company should be assessed by the board, but also the real estate used in connection with the special franchise, thus, in effect, removing the assessment of such companies and persons entirely from the jurisdiction of local assessors.

EFFECT OF RECOMMENDATIONS.

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

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

	PERSONAL PROPERTY.		INCOME.	
	TAX PAID.	PERCENTAGE OF TOTAL TAXES.	TAX PAID.	PERCENTAGE OF TOTAL TAXES.
498 Townships	\$ 29,888	.67	\$ 2,364	.053
100 Towns	132,513	6.8	35,628	1.7
136 Villages	34,825	6.1	5,309	.93
13 Cities	356,635	7.	193,601	3.8

Under the suggested scheme of taxation, above outlined, the business tax, tax on professions and callings, and house tax, at the minimum rates provided for, should produce in the aggregate a larger sum than is produced under the present law by the tax on personal property. It is therefore obvious that as high a rate on real estate as that now imposed will not be necessary. The reduction should be considerable, more especially in view of the new values in real estate, special franchises and railways which will become assessable.

The benefits arising from the discovery of new sources of taxation may be neutralized if not accompanied by economical administration of municipal affairs. The readjustment of taxation, however successful in making its burden fair and equal, may bring no perceptible relief to the taxpayer, if by increase of expenditure, the rate of taxation remains unchanged.

The report concludes by recommending that as soon as a practical application of the Act shows the extent of the reduction of the tax rate that the limit of two cents in the dollar required in the Municipal Act, should be reduced.

The new Assessment Act includes a great many changes in the present law which will recommend it to municipal officers.

It is the intention of the government to print a large number of copies of the report for distribution and it will be considered at the next session of the legislature.

* * *

A few of the provincial papers have already referred to the report as radical, revolutionary and by no means conventional. In view of the membership of the Commission, this fact is stated to be of great significance for it was composed of men, who would not advocate a change unless it was very much needed.

The commissioners were:

Mr. Justice MacLennan, of the Court of Appeal, chairman; Mr. Justice MacMahon, of the High Court; Mr. D. R. Wilkie, General Manager Imperial Bank; K. W. McKay, Editor THE MUNICIPAL WORLD; Mr. A. Pratt, Assessment Commissioner, Ottawa; M. J. Butler, C. E., Toronto, and T. H. McPherson, Wholesale Grocer, Hamilton.

Salaries of Municipal Officers in Towns.

By W. G. Owens, Barrister, Forest, Ont.

The average municipal councillor is seldom cognizant of the fact that the successful conduct of municipal business is due in a large measure to the careful, thoughtful work of the officials of the municipality, and, as a rule, he is not aware of how seriously the interests of the municipality may suffer through neglect or inefficient performance of any of the multifarious duties of the officers. Nor is he conversant with the great amount of skill, thought and special knowledge that is required to properly perform the duties pertaining to these offices.

Especially is this the case in the smaller towns, and rural municipalities.

Practical experience has shown that the injunction of the Municipal Act, forbidding the letting of offices by tender, while not perhaps disobeyed in the letter, is actually ineffective, for councils as a rule, will only pay an efficient and painstaking official the same salary as an incompetent or inefficient occupant of the same office with the result that either the municipality is poorly served, or the officer poorly paid.

In connection with the above subject, the writer recently obtained statistics from a number of the towns in the province, whose population is 2500 or less and the result is tabulated below. It may safely be presumed that the work of the officials in each of the municipalities is about equal

\$175.00, one pays \$180.00, one pays \$185.00, three pay \$200.00, three pay \$240.00, three pay \$250.00, one pays \$260.00, three pay \$300.00, four pay \$350.00, and one town, Walkerville, an exceptional case, pays \$575.00. A careful student of the annexed tables will see many anomalies. For instance, Durham, population 1,513, assessment \$299,245, pays its clerk, \$240.00, while Essex, population 1,450, assessment \$381,427, only pays \$120.00, and Forest, with population of 1,584, and assessment of \$330,000 only pays \$100.00. Similar variations will be found in the payment of treasurers, assessors and collectors of taxes, and the situation is still more complicated by the fact, that some municipalities supply their

TOWN.	POPULATION.	ASSESSMENT.	CLERK'S SALARY.	IS CLERK PAID EXTRA?	TREASURER'S SALARY.	ASSESSOR'S SALARY.	COLLECTOR'S SALARY.	REMARKS.
Alliston	1374	\$ 326,077 00	\$ 125 00	Yes.	\$ 80 00	\$ 40 00	\$ 30 00	
Amherstburg	2200	458,000 00	200 00	Yes.	200 00	(2) 40 00 each	180 00	Town supplies Clerk with office, etc.
Aurora	1800	237,864 00	125 00	Yes.	75 00	40 00		Officials supply their own offices, Constable collects taxes.
Aylmer	2300	709,860 00	300 00	Yes.	175 00	60 00	120 00	Town supplies Clerk with office, etc.
Dresden	1508	406,590 00	250 00	Yes.	50 00	60 00	40 00	Town supplies Clerk and Treasurer with offices, etc. —Collector is also Constable, hence low salary.
Durham	1513	299,245 00	240 00	Yes.	85 00	40 00		Town supplies Clerk's office, etc.—Treasurer collects taxes.
Essex	1450	381,427 00	120 00	Yes.	60 00	50 00	100 00	Town supplies all offices, etc.
Forest	1584	330,000 00	100 00	Yes.	40 00	40 00	50 00	Officials supply their own offices.
Harriston	1800	429,735 00	180 00	Yes.	65 00	65 00	70 00	
Kincardine	2172	606,838 00	175 00	Yes.	150 00	100 00	100 00	Town supplies Clerk's office, etc.
Meaford	2000	537,652 00	240 00	Yes.	150 00	65 00	85 00	
Milton	1321	417,685 00	300 00	Yes.	100 00	50 00	65 00	Town supplies Clerk's office, etc.
Mitchell	2000	672,344 00	350 00	Yes.	75 00	75 00	50 00	
Mt. Forest	2100	632,005 00	260 00	Yes.	100 00	80 00	112 00	Collector is paid three-quarters of one per cent. of roll, about \$112.00.
Niagara	1250	500,000 00	350 00	Yes.	250 00	35 00	50 00	Town supplies offices.—Clerk and Treasurer one person, paid \$600.00 in all.
North Toronto	1658	825,753 00	350 00	Yes.	250 00	200 00	400 00	Town supplies offices.—Clerk and Treasurer one person, paid \$600.00 in all.
Oakville	1800	449,450 00	200 00	Yes.	100 00	75 00		Taxes collected by Constable, salary \$475.00.
Palmerston	2000	450,550 00	250 00	Yes.	100 00	65 00	100 00	Officials supply offices, etc.
Parkhill	1346	247,000 00	100 00	Yes.	50 00	40 00	40 00	Town supplies offices, etc.
Parry Sound	2924	442,026 00	300 00	Yes.	225 00	100 00	100 00	Officials supply offices, etc.
Sandwich	1500	436,000 00	250 00	Yes.	150 00	(2) 75 00 each	100 00	
Sudbury	1800	343,000 00	350 00	Yes.	250 00	60 00	100 00	Offices of Clerk and Treasurer united in one person, salary, \$600.00, and allowance for office rent.
Vankleek Hill	1600	429,550 00	90 00	Yes.	30 00	35 00	20 00	Officials supply their own offices, etc.
Uxbridge	1700	501,300 00	200 00	Yes.	75 00	70 00	100 00	Officials supply their own offices, etc.
Walkerville	1592	2,105,516 00	575 00	Yes.	300 00	160 00	100 00	
Welland	1944	623,000 00	240 00	Yes.	400 00	75 00		Treasurer collects taxes.
Warton	2052	436,383 00	185 00	Yes.	135 00	70 00	100 00	

The extras paid the Clerk consist of Fees, for Vital Statistics, Revision of Voters' Lists, Selecting Jurors, etc., etc.

In the nine towns paying the lower salaries, under \$200, the average for the Clerk is \$133.32, while in 17 towns, excluding Walkerville, the average is \$271.76.

In many towns an endeavor is made to have the work performed as cheaply as possible, regardless of whether the officials are rendering efficient, careful service, or whether they are mere place-holders, intent upon giving the smallest return possible for the salaries received. If a municipality has efficient officials they should be paid for their services full compensation, just as every contractor or workman is paid for efficient work; but if, on the other hand, a municipality has inefficient or careless officials, they should be discharged and their places filled by men who are fitted both by their knowledge and industry, for such responsible positions even if larger salaries must be paid.

but a wide range of salaries is apparent. This should not be the case and would not be if there were any rule in the fixing of the salary, apart from "what can we get it done for?" Either some officials are paid insufficient salaries or some are paid too much. No one with experience in municipal matters will think that the latter conclusion is correct.

In the tabular statement the population and assessment of each town is set forth in order that a comparison may be made by the reader. It will be seen that one town, (Vankleek Hill) only pays its clerk \$90.00 per annum, two towns pay \$100.00, one pays \$120.00, two pay \$125.00, one pays

officials with offices, heat, light, telephone, etc., while in other cases and most often where the smallest salaries are paid the officials themselves have to supply these necessities.

No one, conversant with the duties of the different officials in towns of this class, will be inclined to dissent from the proposition that the services of the different officials in the towns indicated should be at least \$250.00 for the clerk, \$150.00 for the treasurer, \$100.00 for the assessor, and at least one per cent of the taxes for the collector. How then are salaries in the places paying the smaller amounts to be raised to the proper level?

It seems almost hopeless to expect

much improvement from within, so long as councillors, as a class, are influenced by the considerations outlined above. The true solution appears to be either the fixing of certain minimum salaries by the legislature, proportioned to population and assessment, or by the formation of a provincial local government board as outlined in a recent number of the MUNICIPAL WORLD and with power to report on the salaries to be paid, and providing for inspection of all offices. It would probably be found that the latter course would be the most practicable, as it would be difficult to pass the legislation fixing salaries directly by the legislature. Discussion of the subject may of course remedy the most glaring anomalies, but a permanent cure will never be effected, except by one of the above plans. Probably if some of the councillors were once compelled to make out a collector's roll with three or four special rates, and a few frontage taxes, they might realize some of the duties of a municipal clerk, just as the personal making up of an assessment roll, keeping of the town treasurer's books, or collecting some tax-rolls might enlighten them as to the duties of the other officials. It is hoped that the publication of the statistics in these tables may have the result of stimulating discussion of the subject, and thereby lead to an improvement of the conditions of municipal life in this regard.

The Temiscamingue and Northern Ontario Railway.

Exploration of the province has shown that in the district of Ontario, lying between Lake Nipissing and Lake Abitibi, and north-westerly from Lake Temiscamingue, there are large areas of arable land, well fitted for settlement extensive tracts of merchantable pine and other valuable timber and deposits of ore and mineral, which are likely, upon development, to add greatly to the wealth of the province. Although the district is now difficult of access from lack of railway communication, an increasing number of settlers are taking up lands. To bring this district into communication with existing lines of railroad is therefore most desirable in the public interest, and to this end a bill is before the present session of the legislature, providing the construction, by the Province, of a railway from North Bay on Lake Nipissing to the head of Lake Temiscamingue. The construction and management of the railway will be vested in a board of commissioners appointed by the Lieutenant-Governor in Council, to appoint an engineer and other necessary employees, to decide the location of the line and plans of all necessary works, to fix tariffs and rates to be charged, and to enter into agreements with other railway companies, to secure reciprocal running powers and the tariff arrangements.

To meet the cost of construction and equipment, the Lieutenant-Governor may, from time to time, set apart a tier of

unoccupied townships adjoining the railway to an extent not exceeding 20,000 acres for each mile of the line, and the proceeds of the sale of such land to be applied to the payment of debentures issued by the commission.

The Act further provides that the railway must be built of material purchased in Canada; that current rates of wages are to be paid to all employees and laborers; that no person shall be employed in contravention of the Alien Labor Act; and that the commission shall have powers conferred by the General Railway Act.

Suitable regulations are made for the guidance of the commission as to rates of interest to be paid on debentures; the application of proceeds of the debentures, the application of revenue, and other details.

The County Councils Act—Oxford Deputation Waits on Premier.

Among the delegations which waited upon the premier recently was one from the county of Oxford, being Mr. F. Vickert, reeve of Blenheim, and Mr. M. F. Ainslie, township clerk.

They asked for an amendment to the County Councils Act, in accordance with views presented to the legislature during the present session in numerous petitions that had been sent from township councils. These petitions originated in circulars sent from Blenheim to the various township councils throughout Ontario. Mr. Vickert claimed that the present County Councils Act had not worked satisfactorily for it had not decreased the number of official representatives of the people, and had created a feeling of mistrust between the county bodies and the townships. He thought this would be remedied if the representatives, the Reeves of the municipalities constituted the county council. Mr. Ainslie followed the same line, taking ground familiar to the public in the discussion of the subject.

In reply, Premier Ross made an important announcement. He declared that it was the intention of the government, if sustained in power, to make an amendment to the Act somewhat on the lines advocated by the delegation. He asked Mr. Vickert if the delegates favored every municipality being represented.

Mr. Vickert replied that they did. Mr. Ross further asked if the contention was that each reeve should have the same voting power—as he, the Premier, could not indorse the suggestion that the Reeves of the smaller municipalities should have the same influence, especially in relation to money matters, as the Reeves of the larger. Mr. Vickert assented to this proposition. The Premier, continuing, said that he thought in relation to expenditures, at least large expenditures, the county council should be regarded as a joint stock company, that the members of it should vote somewhat according to the assessment of their municipalities. On ordinary matters each member might have a single vote.—*Sentinel-Review*.

Mr. Pattullo suggested that in amending the law the optional principle might be adopted. While the present delegation represented a strong party of public opinion, perhaps a majority in Oxford and some other counties, the County Councils Act is said to be working satisfactorily in some parts of the province, where there might be no desire to change. He thought that if a by-law were submitted in each county, on petition, allowing the ratepayers to say whether they would adopt the new system, as outlined by the premier, or retain the present system, it would be just and fair to all. The principle of adoption in such matters, we already had in municipal law, in the case of voting by wards or the reverse, for instance. The premier was understood to assent to this suggestion—from which it may be inferred that when the law is amended, its adoption in each county will be optional.

Work for Children.

Good progress has been made during the past year by the Children's Aid Societies of the Province, and the report of the Superintendent, Mr. J. J. Kelso, now in the printer's hands, promises to be one of unusual interest. This work meets with the hearty approval of both sides of the House, as all are united as to the importance of caring for neglected and destitute little ones. During the past year the Societies secured improvement in the home life of several thousand children, and about three hundred who were actually homeless were provided with foster-homes. In addition to being better for the children, this plan is a very economical one and during the past ten years many thousands of dollars have been saved the municipalities by this system. There are now over sixteen hundred names on the books of the Provincial office of children who have gone to homes and who are now under supervision. The report, which covers one hundred pages, will be illustrated by some interesting half-tone engravings.

The Toronto Board of Trade recently reported in reference to the government of our larger urban municipalities as follows: "It is questionable," the report goes on to say, "whether under any elective system men with the necessary time and ability can be induced to offer themselves for these positions, and until a plan of appointment, of more permanency, with adequate remuneration, can be devised, the affairs of the city are not likely to be conducted with the efficiency desirable; still it is felt, that the larger constituency will tend towards the production of more desirable material and as the board has to do with the affairs of the whole city, it is important that its members should be removed from any possibility of ward or sectional influence, and, therefore, for this, if for no other reason, your committee would urge that your influence be used for the granting of the legislation."

Engineering Department

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

County Roads.

The county of Simcoe is the first to pass a by-law to assume a system of county roads, upon which to expend the aid appropriated for this purpose by the government. At its recent session the council appointed a committee to consider how best to apply Simcoe's share of the government fund. After much deliberation, this committee reported in favor of taking over and reconstructing the most heavily travelled highways of the county. A by-law enumerating these was introduced and passed through all its stages for dealing with 370 miles of road.

Under the provision of the Act, the township councils within the county have three months to consider the plan laid down. They may sanction the plan, oppose it as a whole, or the roads proposed to be taken over. If they wish other roads taken than those the county proposes, the matter may be submitted to arbitration. If more than a third of the municipality are opposed to the by-law as a whole, the question must be submitted to a vote of the people. If there should be no objections raised, the county council will be able to perfect plans for carrying out the work at the June session. Little difficulty is anticipated in the matter, as a number of conferences have already been held, and a very satisfactory understanding of the question has already been reached throughout the county. The question has been fully and carefully discussed, and there is, practically, unanimity as to the benefits to be derived. A good number of other counties are also moving in the matter, and by-laws are to be expected shortly. Unfortunately, in a number of particulars, there has been some misapprehension as to the meaning and intention of the Act.

ROADS TO BE ASSUMED.

Should a county council take advantage of the Act, the first step would be to arrange with the various township councils as to what roads shall be assumed. These roads should be such as the county and township councils consider would be the most useful in serving the requirements of the people in each section. These roads may consist of one road in each township, or several roads; or part of one road, or parts of several roads may be selected. As a general thing, they should consist of what are now the most heavily travelled roads in each township, leading to the market, town or village, of the district.

The roads should preferably connect, so as to form a continuous system—but they need not necessarily connect. In some counties the trend of travel is all in one direction, leading to one market

centre. In the other counties the trend of travel is cut up into a number of sections, each town-ship, it may be, having one or two market centres. Nor is the trend of travel marked by county or township boundaries, but divides according to local conditions, the most important factor in determining the line of travel, being as a rule, the nearest or best market. These circumstances must be all taken into consideration in framing a county system of roads, and the aim should not be so much a connected system as a most useful system.

The object, it should be plainly seen, is not the resurrection of the old county roads, many of which have become of but secondary importance, owing to the building of railways, and the growth of new local markets. Distinctly the object is not the resurrection of old county systems, unless these roads can make good their claim to being still the roads of greatest travel.

In designating the roads, unless there is some plain discrepancy, or a protest from some sections of the people interested, the plan of the county council as to roads to be improved, whether a connecting system or not, will be accepted by the government. The reason for this is the belief that the county council, with the advice of the township councils, will view the matter from a county standpoint, and that they are best able to frame the most serviceable system, and the one upon which the expenditure will be the greatest good to the people.

NATURE OF IMPROVEMENT REQUIRED.

The impression prevails, in some localities, that the Department of Public Works will require an expensive standard of road. On the other hand a fixed standard will not be laid down. That will be left to the county engineer or commissioner having charge of the work, and his report as the treatment of the road and character and cost of the work undertaken will, for the most part, govern. That report, however, it will be necessary to submit to the government, but so long as it embodies the elementary principles, observing proper drainage, crowning, and as far as possible, uniform grading, and a systematic application of material, it will meet the requirements.

According to the report of a special committee of the Pelee Island council appointed to investigate the matter, the collector for that municipality for the year 1898, has not accounted for and paid over to the treasurer the sum of \$406.15, balance of taxes collected in that year, and an effort is being made to collect this amount from the collector and his sureties.

Civic Ownership in Brockville.

It was just a year ago that Brockville people decided to give municipal ownership of lighting a trial. At that time there was a gas and an electric plant owned by one company. The town issued a debenture and acquired \$96,000 for both plants. The staff has slightly increased, incidental improvement were made and at the end of the first year after the payment of all operation expenses as well as the liquidation of the annual amount of interest and sinking fund on the purchase loan, the municipality came out about \$5,000 to the good. Now, the people are going in for improvements in the service. At present the power is taxed to its limit and a by-law submitted to the people a couple of weeks ago authorizing the expenditure of \$50,000 on the lighting service was carried by an overwhelming majority. The new plant which it is proposed to add consists in a water gas apparatus and two new dynamos for the electric lighting station. Coal gas will not be touched just yet. It is for getting pointers on the operation of gas and electrical outfits that a deputation visited Ottawa to inspect the works of the Ottawa companies. It is proposed to considerably increase the street lighting. The waterworks system in Brockville has been for several years owned and operated by the municipality and the successful results, financially and otherwise, which characterized civic ownership in that regard proved a great incentive for the people to acquire their lighting plant. Both systems are, or will soon be, thoroughly up-to-date in every particular, the best and most satisfactory service is furnished and yet the investments yield handsome surpluses.—*Smith's Falls News.*

Street Railways and the Massachusetts Highway Commission.

No single feature of the commission's duties is said to be more difficult than the location of tracks of street railway companies. There are at the present time street railways operating on state roads in seventy different cities and townships; in three of these municipalities there are two different companies.

It is interesting to note that in 1890 there were 612 miles of street railway in the commonwealth, carrying over 164,873,000 passengers. With the exception of a few miles built over land purchased for the purpose, the tracks are laid on the highways. In city and village streets the tracks are laid near the centre, and on other ways they are placed at the side of the location. It is safe to predict that street railway building will continue at a rapid rate, and that the problem will become more complicated year by year.

In by far the greater number of cases the tracks are laid before the State takes the road, and ordinarily placed in a position, both as to line and to grade, to

cause the minimum outlay by the railway company. When the State takes the road the commission often finds that the tracks must be moved, either horizontally or vertically, or both, in order to obtain the proper width and grade for the roadway. The difficult part of the problem is to make these movements in a way to give the best results without putting an unwarranted burden upon the street railway company. So far as it is practicable, the roadway is planned to fit the railway tracks; but, when this cannot be done, the tracks are ordered moved.

The two chief causes for moving the tracks of street railways are lack of width between the tracks and the location line, and imperfect grade. In granting franchises to street railway companies, boards of selectmen often permit their desire of having the railway built to have too great weight, and they do not insist on having a location of the tracks that will produce the best subsequent use of the highway. With proper forethought on the part of the municipal and railway officials at the time the tracks are located, no subsequent horizontal movement would be necessary. The grade problem is a more difficult one, as the railway tracks cannot be laid to a grade which more nearly satisfies the commission and the railways without grading the entire width of the roadway. The railway officials do not often choose to do the grading on the roadway without compensation, the towns are not in a financial condition to pay for such grading and the commission cannot. It is work that should be done, and probably will be done if the commission takes the road. It can be done when the railroad is built at a less cost to the state, municipality and railway company than at any other time, and if done at that time there will be no cause for any future movement on the street railway track due to the building of the highway.

The law which empowers the commission to move the tracks of street railway companies has been twice amended. The law which was passed in 1898, defining the powers of the commission to move street railway tracks, leaves some questions still in doubt.

The cost to the street railway companies, due to changes made by order of the commission, is often great; in many cases it is a burden which the companies can ill afford to bear.

The present system of granting locations to street railway companies by boards of selectmen is defective. Many of the railways are planned to pass through several towns, and it is impossible to obtain the best results with such a division of responsibility. It often happens that local influence will cause the tracks to be placed on opposite sides of the highway in different towns, or even in the same town, thus introducing dangerous grade crossings.

The commission is firmly impressed with the importance of having the power

to locate street railways, outside of the city or village streets, in the hands of one central authority. From what has been said already, it is clear that a proper grade is an important part of the location, and should be had when the tracks are laid; and, inasmuch as it affects the state, towns and railway companies, the cost of securing it should be borne by all three of the interested parties, in such proportion as may seem just.

Gravel.

Where gravel is used as the hardening material it should be chosen with care as to its quality. So great are the differences in the character of this material, and so indistinct the indications of value, that it is hardly possible to give any general directions as to the choice of sources of supply. It may be said that good gravel rarely contains more than one fourth part of sand that it never shows a trace of slipping after being frozen, and that it rarely has more than one half of its pebble composed of white quartz. Where the walls of the pit are so far consolidated that they remain steep after exposure for a winter, the material may be assumed as fit even without any other treatment, except that of removing the pebbles which are more than about two inches in diameter. It is rarely the case that gravel can be found so free from stones of large size that no treatment to remove them is required. Where this occurs the mass is almost certain to be either so sandy or clayey that is unfit for use. For the removal of the larger stones either of two ways may be adopted. The material may be placed at once upon the road, the over-large fragments being then removed by means of rakes, or it may be sifted by ordinary grating, or, better, by rotary screen-drums driven by power. It is much better to have the screening done before the gravel is placed upon the road.

The coarser stone which have been separated from the mass of the gravel may advantageously be used for various purposes in road construction; those of fit size for paving gutters, the rest either in covering the drain pipes, or as a bottom layer of the hardened part of the way. If convenient these stones may be used, as for such a layer, say six inches in thickness; on top of these stones the screened gravel should be placed to the depth of about six inches. If there is no bottom layer of course stone, the total thickness of the gravel should be from ten to twelve inches.

Water Meters.

The only proper way to supply water is as a rule through the medium of the meter; the water department will receive a much higher price, and still consumers will be satisfied; and for the simple reason that, the wastage being largely wiped out, a very considerable margin of operating

expense applying pro rata to gallons supplied would be saved, and the water actually and usefully furnished would represent a higher amount of money per gallon, the capacity now going to make up for the waste becoming applicable to a more extended consumption.

It is a great mistake to suppose that it is necessary to waste water in order to save plumbers' bills. The pipes should be laid deep in the ground and the plumbing in buildings should be so placed that there will be no danger of freezing. Water should be allowed in the pipes until the services and all the plumbing is thoroughly inspected and put in such shape as to be protected from frost. The depth to which pipes should be placed in the ground to avoid injury from traffic or frost is dependent on local conditions. Waterworks are now so numerous that the practice at several neighboring plants will usually serve as a guide. In different latitudes the depths adopted naturally vary, and are dependent, more or less, on the character of the ground, whether hard or soft; the extent to which it may become saturated by surface waters, and whether the location is much exposed to wind and weather.

Water expands in freezing about one-twelfth of its bulk, in the ratio of from 1,000 to 1,086, or 8.55 per cent., and when rigidly confined, it is estimated that the expansive force approximates 30,000 pounds per square inch. If the ice in forming is not free to expand longitudinally with the pipe, the resultant pressure would approximate 10,000 pounds per square inch. These figures will serve to emphasize the importance of laying water mains sufficiently deep, or otherwise protecting the pipe against the action of frost. Experience has demonstrated that a "dead air" space is one of the best preventives of frost, and hence it is that a water main laid in a rock-cut trench and covered with broken stone is less liable to freeze than when laid in compact soil. "Dead ends" should be avoided and circulation maintained for protection against frost, and to prevent the injurious influence of stagnation upon the water.

ENGINEERING QUESTIONS.

HYDRANT RENTAL.

F. M. G.—As a matter of bookkeeping, the council intends charging the town a nominal hydrant rental for the benefit of the waterworks. What is the usual custom in this respect?

Only a comparatively small percentage, say about one-fourth of the towns having municipal waterworks make a charge for hydrant rental. This, however, is a very great mistake, as fire protection is one of the most important services which a waterworks plant renders. It is of importance, not simply to the owners of property, but to the many employees in factories, stores, offices, etc., who might be thrown out of employment and subjected to consider

able loss in case of fire, so that there is a certain amount which should be charged against the general funds of the town each year in making up the annual cost of operation and maintenance; otherwise, there is a tendency to cover the entire annual expense in the water rates received from the actual consumers. To make a charge in this way is something more than a simple matter of bookkeeping.

As to what amount should be charged, it is difficult to suggest any which will cover it with exactness. In quite a few instances where this charge is made, the plants were originally constructed by a private company, and the old rate paid to the company is still levied against the municipality. Berlin charges the municipality \$45 each for 132 hydrants. Brockville charges \$50 each for 102 hydrants per year. Rat Portage charges \$40 each for 41 hydrants. Mount Forest charges a total of \$900 for 35 hydrants. Petrolia charges \$4,000 for 98 hydrants. Renfrew charges \$1,500 for 89 hydrants. Owen Sound charges \$25 each for 60 hydrants. In the last-mentioned case the system is operated by gravity, and the annual cost of maintaining the system is therefore, very light.

You state that it is proposed to have your engineer keep a record of time of pumping, to arrive at the approximate quantity of water used for fire purposes, and to charge in addition the interest on cost of hydrants. This, however, is not a sufficient basis for estimating the cost of fire protection. In your case we have no doubt the capacity of the plant throughout has been much greater than it would have been for a domestic supply alone. Four-inch pipes have been put on streets to secure fire protection, where two inch pipes would give a sufficient domestic supply. In the same way six-inch pipes have been used instead of four-inch, and so on. The capacity of the pumping plant and the water-tower have no doubt been increased for the purpose of fire protection. We would suppose that the requirements of fire protection have created an outlay of fully one-third the initial cost of the plant, so that to cover the cost of fire protection you would have to include the annual sinking fund and interest on this amount, together with a charge, say \$400, to cover the cost of operation.

In some instances waterworks systems, which are now used to provide a domestic supply, were first installed for fire protection only, and the annual cost for fire protection is based on the cost of this service alone as shown by the cost of operation.

STATUTE LABOR.

A correspondent asks for a list of townships in which statute labor is commuted, together with the name and address of the township clerk. Among the number which have made the change in whole or in part are:

TOWNSHIP.	CLERK.	POST OFFICE.
Ancaster,	Henry Pim,	Ancaster.

Assignack,	} A. J. McLean, Manitowaning.
Shegnandah,	
Bidwell,	
Blanshard, J. H. Jamieson,	Rannoch.
Barton, H. Bryant,	Hamilton.
Binbrook, W. B. Switzer,	Binbrook.
Burford, P. Kelly,	New Durham.
Bromley, Patrick Hart,	Osceola.
Brant, J. H. Cannon,	Chesley.
Bertie, A. H. Kilman,	Ridgeway.
Bastard and Burgess, W. Beatty,	M. P. P., Delta.
Clinton, G. W. Tinlin,	Beamsville.
Caledon, J. L. Meek,	Alton.
Carlow, P. Stronger,	Boulter.
Crosby, N., J. H. Whelan,	Westport.
Dumfries, S., W. Fleming,	Glenmorris.
Fullarton, Jno. Wilson,	Fullarton.
Gloucester, C. Billings,	Billings Bridge
Goulbourne, A. Abbott,	Stittsville.
Grimsby, N., W. H. Nelles,	Grimsby.
Grimsby, S., Ed. Irvine,	Smithville.
Louth, Clark Snure,	Jordan.
Malden, J. Honor,	Amherstburg.
Monaghan, N., G. W. Bennett,	Peterboro.
Monck, W. H. Spencer,	Bracebridge.
Nelson, D. McLarn,	Nelson.
Niagara, C. Fisher,	Queenston.
Nissouri, W., Wm. Lee,	Thorndale.
Norwich, S., A. McFarlane,	Otterville.
Orillia, J. C. Ross,	Orillia.
Oxford, E., F. G. Jackson,	Woodstock.
Pelham, J. C. Crow,	Ridgeville.
Pelee Island, W. Stewart,	Pelee Island.
Pickering, D. R. Beaton,	Whitevale.
Reach, Wm. Spence,	Manchester.
Saltfleet, F. M. Carpenter,	Fruitland.
Sarawak, J. McKenzie,	Presque Isle.
Stamford, F. A. Hutt,	South End.
Sidney, F. B. Prior,	Wallbridge.
Springer, O. LaFrance,	Sturgeon Falls.
Toronto Gore, N. Harrison,	Castlemore.
Tilbury North, J. A. Tremblay,	Tilbury.
Whitby, D. Holliday,	Brooklin.
Winchester, Geo. Quart,	Winchester.
Yonge & Escott Front, J. F. Kelly,	Mallorytown.
Zorra, E. J. Anderson,	South Zorra.

A board of appeal, under the Manhood Suffrage Registration Act, sitting in the city of Woodstock, recently gave a decision which is in accordance with the opinion, on the same question, on several occasions expressed in these columns. The board was composed of the county judge, the local registrar of the high court of justice, and the police magistrate of Woodstock. One of the registrars had refused to register a voter because he had been born while his parents resided in the United States. As a matter of fact the voter had been born in the United States and had never taken the naturalization oath in this country. The voters' parents had resided in the States about two years before the birth of their son. The majority of the board of appeal held that as he was of British parentage, both father and mother being British subjects, it did not matter where he was born. His Honor Judge Finkle, in giving his judgment made the following pertinent remarks:

"If a man was born in a barn, he wouldn't be a horse, would he?" asked the judge. "Or, if a man were born on the sea, of what nationality would he be? Go further; if a man were born of British parents in some outlandish place, such as Honolulu, and his people returned just after his birth, he would still be British? Why then should it be different when he was born in the United States? I think the appellant is a British subject."

Re Toronto P. S. Board and City of Toronto

Judgment on appeal by the school board and cross-appeal by the corporation from order of Street, J., in chambers, upon a motion for a mandamus directing the city corporation to levy a sufficient sum to pay in full the estimates sent in by the board in March, 1901, for that year, granting a mandamus as to some of the amounts in question. Street, J., held that \$41,000 addition to the salaries of teachers already under contract was properly struck out of the estimates by the city corporation, because the additions to salaries were voluntary and not authorized or made binding by contracts with the teachers. This was the principal item in question on the appeal, but there were numerous others such as repairs, furnishing of board-room, overdrafts, etc. Held, that the provisions of the statutes of 1901 are those applicable and not those of the corresponding sections of R. S. O., chapter 292; that under the agreement between the teacher and the board the former is to serve not simply during the year 1901 in the school and at the salary set opposite his or her name in the schedule to the agreement, but that he or she will serve in that school or at that salary, "or at such salary and in such school and division of the same as the board may from time to time appoint," and that the contract is to pay either the salary named in the schedule or that, whether higher or lower, which the board should from time to time fix as the salary, and therefore it was not a bonus that was given to the teachers, but that in any event it was the duty of the corporation to provide for the expenditure in the estimate submitted by the board unless such expenditure be clearly illegal or its purpose one *ultra vires* of the board in the sense that it is a purpose for which in no circumstances would it be lawful for the board, by its own authority, to apply the money of the ratepayers. The reasonable construction to give to the Act is to hold that all the corporation has a right to ask is that that which the legislature has termed an "estimate" shall show that the board has estimated the amounts required to meet the expenses of the schools for the current year, and the purposes for which the sums are required, in such a way as to indicate that they are purposes for which the board has the right to expend the money of the ratepayers, and that when that has been done, the duty is imposed upon the corporation of raising by taxation (except in cases under section 74) the sums required according to the estimate to meet the expenses of the schools for the current year. Appeal allowed and order below varied as to amount required for salaries by increasing to \$25,000, the sum asked for repairs and alterations; by allowing the \$6,000 for dias and railing in board-rooms and counters, partitions, screens, etc., in office, by allowing the item for medals and certificates. Cross-appeal dismissed. Costs of motion, appeal and cross-appeal to be paid by corporation.

Question Drawer.

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

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

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

These Counties Have Police Magistrates.

109—ENQUIRER.—Do you know if any of the counties of Ontario have appointed police magistrates, and, if so, would you please mention them?

COUNTY.	POLICE MAGISTRATE.	P. O. ADDRESS.
Addington, ..	J. Aylesworth,	Tamworth..
Algoma,	G. Burden,	S. St. Marie
Carleton,	Louis A. Smith
Essex, N. R., ..	A. Bartlett,	Windsor..
Grey, S. R., ..	W. H. Ryan,	Mt. Forest..
Huron, S. R., ..	J. Wanless.
Kent,	M. Houston,	Chatham ..
Lambton,	M. Campbell,	Wattford..
Lincoln,	A. Logan,	Niagara F'ls.
Middlesex, ..	E. S. Jarvis,	London E.
"	WR. E. B. Smith,	Ailsa Craig.
Muskoka and Parry Sound, }	W.H Spencer,	Bracebridge
Oxford,	H. Parker,	Woodstock.
Peterboro', ..	{D.W. Dumble,	Peterboro'..
	{G. Edmison,	Peterboro'..
Prescott,	Wm. Dunn.
Prince Edward,	G. C. Currey,	Picton.....
Simcoe,	O. H. Lyon,	Barrie.....
Stormont,	A.C. McIntyre.
Victoria,	J. Deacon,	Lindsay..
Welland,	A. Logan,	Niagara F'ls
Wellington	ER.A. Taylor,	Fergus....

Procedure at Meetings of County Councils.

110—CLERK.—“A,” the chairman of a standing committee of a county council, brings in a report and moves its adoption, seconded by another member of council. “B” moves that the report be not adopted but that it be amended in a certain way. B’s amendment is then voted on and defeated. B then moves a new amendment, that the report be not adopted as read but that certain changes be made in it. Was the warden right in ruling this second amendment out of order? Had not B or any other member a perfect right to move a new amendment if he thought fit to do so?

Taking as our guide, parliamentary usage under similar circumstances, we are of opinion that the warden was in error, in ruling B’s second amendment out of order. Sir J. G. Bourinot, in his work on “Procedue of Public Meetings,” on page 34, has the following to say on the subject: “When it is proposed to amend a motion, the question is put to the house (meeting) in this way: The speaker (or chairman) will first state the original motion, ‘Mr. A moves, seconded by Mr. B, that, etc.’ Then he will proceed to give the amendment: ‘To this, Mr. C moves in amendment, seconded by Mr. D, that, etc.’ The speaker (or chairman) will put the amendment directly in the first place to the house. ‘Is it the pleasure of the house to adopt the amend-

ment?’ If the amendment be negatived, the speaker (or chairman) will again propose the main question, and a debate (or discussion) may ensue thereon, or another amendment may then be submitted.”

Irregular Proceedings After Close of Polls.

111—RETURNING OFFICER.—On polling day after close of poll, I called off the votes for the different candidates. Six or seven of the electors kept tally. I called on the constable to keep tally for me. When all the ballots were gone through and the votes counted, all agreed except one. All had two of the candidates a tie and clamored for an immediate decision by myself. I gave my casting vote for one of the two. I placed all the ballot papers in the box and went home. After tea, not feeling satisfied, I by myself in my office counted the votes given to the two candidates and found that the one I had declared elected had one vote less than the other. I counted the ballots over four times and found the count the same every time so thought it correct and think so still. In fact I am positive as to its correctness. This was the first time I counted them. By the first mail, after I counted them, I notified both parties of the result of my count. On the day the council met to organize both parties were present and claimed the seat. The one I had declared elected took his seat and qualified before the other one returned from his dinner. The one with the majority vote applied to the judge for a recount. I have not been served with notice up to date. Yesterday he called on me and said the judge told him if I would administer the declaration of qualification and office and withdraw my declaration made under the belief that there was a tie, there would be no necessity for a recount and he could take his seat. Am I justified in doing so? What do you advise me to do under the circumstances?

You have no legal authority to withdraw or cancel your declaration as to the result of the election, or do anything else that would alter its effect, that is, the election of the candidate in whose favor you gave the casting vote. If the other candidate considers that there has been a mistake in the count, he should apply to the judge for a recount in the regular way, under the provisions of the Municipal Act, and thus have his right to the seat properly determined. After the counting of the ballots at the close of the poll, they should have been securely sealed up in the packets provided for the purpose by the returning officer, in the presence of parties lawfully assisting at the recount, as provided by sub-section 1 of section 177 of the Act, except under the circumstances mentioned in sub-section 6 of this section, (which do not appear to have arisen in this case). These packets cannot be legally reopened, only for the purposes of a recount or on the taking of *quo warranto* proceedings under the Act to test the

validity of the election. Trouble of this kind is always apt to arise, where the provisions of the statutes have not been strictly complied with. We can only advise you to simply do nothing. You have, in good faith, declared one of the candidates elected, and this candidate has a legal right to hold the seat, until, as a result of proceedings taken under the Act, he has been proved and declared by competent authority, disentitled to it.

Percentage Deducted or Added for Payment or Non-Payment of Taxes at Stated Time.

112—H. G.—1. The town council passed a by-law that all taxes not paid by the first of January, five per cent. to be added. Is it five per cent. a year, a day, a month, or how long?

2. Can they put on ten per cent. the first of May or is that struck off?

1. A provision of this kind means that 5% of the taxes payable by the party in default is to be added to the amount of his taxes, after the day named in the by-law. For example, if his taxes are \$10.00, and he does not pay the amount on or before the day named, he will have to pay \$10.50.

2. The law on this subject is embodied in section 60 of the Assessment Act, as enacted by section 4 of the Assessment Amendment Act, 1899. Five per cent. is the highest percentage that can be imposed by the council for non-payment on or before the day named. See sub-section 2 of the section. Under section 169 of the Assessment Act, it is the duty of the county treasurer, on the first day of May, to add 10% to arrears of taxes due upon any parcel of land, unless the council has already added 5% or a less percentage, in which case the county treasurer is to add a sufficient percentage to make up 10%.

Clerk's Duties as to Publication of Audit.

113—GREENY.—I wish to draw your attention to section 309, page 2,460, Revised Statutes Ontario, 1897, and request you to give your opinion between the reeve and clerk. The reeve contends that the clerk should not publish the detailed statement unless ordered by the council to do so. The clerk thinks when the statutes say “shall” he has no option in the matter. How shall he publish them in the paper, in sheet or in pamphlet, or write them and post them up in post office and other public places? For two years I had them printed in pamphlet with the reeve’s assent. Last year I got them printed in same form without consulting the reeve. This year I am forbidden by reeve to have them printed in any form. He wishes only an abstract printed. What say you in the matter? What is the meaning of the words “in such form as the council directs” in the above section?

This section makes it the plain duty of the clerk of the municipality to publish the auditors’ abstract and report (if any) and also the *detailed statement* in such form as the council directs. We agree with you that the clerk has no option in the matter. The legislature has imposed the performance of this statutory duty upon him, and neither the reeve nor council can alter the effect of the statutory provision. The object of an audit is to prove to the council and the ratepayers

for whom they are trustees, that the affairs of the municipality are being honestly and economically administered, and it is a wise provision of the legislature which requires that the auditors' abstract and a detailed statement of the accounts of the municipality be published for the information of the ratepayers. The words "in such form as the council directs," mean that the *council* (not the reeve or any individual member of the council) may say what form this publication is to take — whether in sheet form, as a poster, in a book or pamphlet, in a public newspaper, or in such other way as they may consider would best bring it to the notice of the ratepayers, in the most economical way.

Vote Necessary to Carry Electric Light By-Law.

114—J. S. B.—What vote is necessary to carry a by-law to issue debentures for an electric light plant in villages that are incorporated? We are intending to ask the ratepayers to vote on a by-law to issue debentures for electric light plant to be operated and owned by the town. Should you see fit to give us the information together with a list of villages in population from 500 to 800, that are operating their own electric plants, we shall be glad to have same by return mail.

Subsection 5 of section 569 (secondly) as amended by subsection 4 of section 35, of the Municipal Amendment Act, 1899, provided that no by-law, introduced under clause 4 of section 566, shall be passed, "Until at a poll held in the same manner and at the same places and continued for the same time as at elections for councillors, a MAJORITY of the electors voting at the poll vote in favor of the by-law."

The following is the list of villages you require:

Markham	population, 1,000
Teeswater	" 925
Thessalon	" 869
Beeton	" 707
Bothwell	" 924
Weston	" 893
Dundalk	" 642

The first four on the list have water-works systems as well.

Rate of School Taxes.

115—A ratepayer has had legal opinion re amount of taxes chargeable against his property. His land is unoccupied land on which there are no improvements but is rated as resident. His claim is that the municipality can only charge him two cents per acre for school taxes. The municipality is an organized municipality in the district of Algoma. Kindly answer.

The law makes no provision for discriminating as to school taxes in favor of any lands, resident or non-resident. The ratepayer you refer to should be charged with and pay school taxes at the same rate as the other ratepayers in the township and school section.

Grant to Public Libraries Legal.

116—A. F. B.—1. Our council at their December meeting passed a resolution granting \$10 to a public library in the township. Was the act of the council legal?

2. If they illegally pay the money, are they personally liable?

1. Yes, assuming that the public library is one established under the Public Library Act, or the Act respecting Mechanics Institutes and Art Schools. Subsection 4 of section 591 of the Municipal Act, gives township councils this authority.

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

Sale of Timber on Road Allowances.

117—J. J.—In this township there is a sideroad every five double lots, road allowance of a chain sixty-six feet, and the farmers are cutting the wood off the road. They say they have a right to as their land is up to the road on each side. I contend it belongs to the township, that the council should sell wood and put the price to improve the roads in the township.

Unless the road allowances are such as are referred to in section 7 and following sections of the Act respecting timber on public lands (R. S. O., 1897, chapter 32,) the timber thereon belongs to the municipality. No one has any right to cut this timber, unless authorized and empowered by the council to do so. Sub-section 7 of section 640 of the Municipal Act empowers councils of townships to sell timber and trees on any allowance or appropriation for a public road, subject to the provisions of chapter 32, R. S. O., 1897, above mentioned.

Preservation of Order at Council Meetings—Time for Levying Township County Rates

118—SUBSCRIBER.—1. Can the council pass and enforce by-law to preserve order in meetings and punish infraction of same by fine or imprisonment?

2. Must the passing of by-law levying township and county rates be deferred to any particular date, provided the necessary information is in the hands of the clerk and court of revision is over for current year?

1. A council has no authority to pass a by-law of this kind. Section 567 of the Municipal Act, provides that no person shall be excluded from meetings of council *except for improper conduct*, and empowers the head or other chairman of the council to expel and exclude from any meeting, any person who has been guilty of improper conduct at such meeting.

2. No. If the council is in possession of all the information it requires, and the valuation of the township has been settled by the completion of the work of the court of revision, it is in a position to make the estimates referred to in section 404 of the Municipal Act; strike the rate for the year and pass the by-law necessary for its levy. If the council should subsequently find that it was short in its estimates, it can pass a supplementary by-law for the levying of such deficiency, pursuant to section 405 of the Act.

Powers of Councils to License Store Keepers—Prohibition of Sales on Sunday.

119—J. F. C.—1. Can a municipal council put a license on a storekeeper or storekeepers

who keep a general store in the municipality? And if they can, what license fee can they charge, or is there a limit to the amount? and should there be a by-law passed to authorize the charge of such a license if the same can be charged?

2. Can a municipal council prohibit a storekeeper from selling goods on Sunday in the municipality? and if they can, how should the same be done?

1. If the storekeeper or storekeepers you refer to are residents of the municipality, and entered on the assessment roll as owners of realty, or in respect of income or personal property, the council has no power to impose a license on any of them. If they are "transient traders," within the meaning of sub-sections 30 and 31 of section 583 of the Municipal Act, the council may pass by-laws, pursuant to these sub-sections, imposing a license upon them, and fixing the amount within the limit prescribed by sub-section 33.

2. No, but a merchant may be prosecuted under the Lord's Day Act, chapter 246, R. S. O., 1897.

Collector Should not Accept Part Payment of Taxes.

120—R. S.—In a municipality, where the taxes are payable in instalments, can the collector accept part payment of a person's taxes on account? and if he does, and the party neglects to pay the balance or leaves the village, is the collector personally responsible for the unpaid portion of the taxes?

A collector ought not to accept payment of a portion of the taxes. He ought to insist upon payment in full. If, however, he cannot obtain payment in full, he ought to accept a part, if he can get a part. Whether the collector is responsible in a particular case for unpaid taxes depends upon circumstances, and, therefore, we can only state the law in a general way, and it is this: The collector and his sureties are liable for taxes which he might have collected by reasonable diligence, but which, by reason of his negligence, having been left uncollected, have been lost.

Owner not Liable for Defaulting Tenant's Dog-Tax.

121—H. B. P.—Is the property assessed liable for the dog-taxes charged against a tenant of the property on the collector's roll, the tenant having left the property?

The tenant's dog-tax cannot be collected from the owner of the land. If the collector cannot collect the tax from the tenant he should proceed as provided by section 6, of chapter 271, R. S. O., 1897, in case the circumstances are such as to enable him to do so.

Stock of Implements, Etc., Assessable.

122—R. G. B.—In the case of an agent or salesman in a municipality in province of Ontario having a stock of farm implements, vehicles and such like belonging to a manufacturing firm for sale, are such goods liable to be assessed for taxes? And if so, does it make any difference whether the manufacturer or owner resides in the province of Ontario or not? I cannot find that such stocks are in the list of exemptions from taxes?

Yes. The latter part of section 18 of the Assessment Act provides as follows: "And where any business is carried on by a 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."

One Person Can be Assessor and Collector—Duty of Auditor.

123—G. S. S.—One thing I would like to know is whether our collector, who has not returned the roll can act as assessor, that is, is it perfectly legal for one man to hold the two offices? The *Municipal Manual* appears to say not but as I haven't been in council for three or four years I thought possibly there may have been some changes in the Act in that time. I would like to be clear on this matter by the 15th inst. the date of our next meeting. Would also like to know if it is the duty of the auditors to enquire into the securities of the collector?

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

We do not think it is any part of the duty of the auditors to examine into and report upon the sufficiency of the bond of the collector. The council should attend to this. See section 247 and 248 of the Assessment Act. Subsection 3 of section 304 of the Municipal Act imposes upon auditors the duty of making a report upon the condition and value of the securities given by the TREASURER for the due performance of the duties of his office. No such duty is imposed upon them in regard to the collector's sureties.

By-Law Forming New School Section—Reeve's Salary—Duties of School Trustees—Adoption of Minutes of Council Meeting.

124—A. W.—1. The council of F formed by by-law one new school section and altered one. Have the council power to alter either after thirty days inside of five years, it being a township council? Neither one has been added to the village or town. I understand by the reading of the Act that they cannot legally.

2. Has the reeve the power to stop the passing of an illegal by-law? If so, how?

3. Have the council power to fix the reeve's salary, or can he fix his own if he does not exceed the limit?

4. Can a board of school trustees lawfully build a two-story school-house with the intentions of renting the upper story for public purposes for the present, claiming that they might need it sometime in the future for school purposes?

5. Would the council be justified in issuing debentures for the same?

6. If a council passes a motion and find they have done wrong by the next meeting should they adopt the minutes as read or should they adopt the minutes with the exception of the motion objected to?

1. Sub-section 3 of section 41 of the Public Schools Act, 1901, provides that a by-law of this kind "shall remain in force, unless set aside as hereinafter provided (that is, by arbitrators appointed by the county council pursuant to section 42 of the Act) for a period of five years," there-

fore a township council has no power to amend or alter in any way any such by-law within that period.

2. The utmost the reeve can do is to vote against the passing of such a by-law, as he has a right to do. See section 274 of the Municipal Act. But if a majority of the council vote in favor of the by-law, the reeve cannot prevent its passing.

3. Sub-section 1 of section 538 of the Municipal Act authorizes COUNCILS of townships to pass by-laws for paying the members of the council (and this includes the reeve) for their attendance in council; or for paying any member while attending on committee of the council, at a rate not exceeding \$3 00 per diem, and five cents per mile necessarily travelled (to and from) for such attendance. The reeve has no authority to fix his own salary or allowance, but his council can do so by by-law passed in accordance with the above sub-section.

4. By sub-section 3 of section 65 of the Public Schools Act, 1901, the trustees of a school section are required to provide adequate accommodation for the children therein mentioned, and by sub-section 4 to BUILD, repair, furnish and keep in order the school-house, furniture, fences and all other school property. The trustees should build a school-house of such a size as they consider is warranted by the present and future needs of the section, and of such material and in such manner as they may deem the most economical. The Public School Act does not contemplate the renting of the school-house or any part of it for other than school purposes.

5. Yes, provided that the council is satisfied that the trustees have submitted the proposal for the loan to and it has been sanctioned at a special meeting of the ratepayers of the section called for the purpose, as provided in sub-section 1 of section 74 of the Public Schools Act, 1901.

6. If a mistake has been made in transcribing the minutes of a council meeting, the necessary correction should be made before these minutes are adopted at the next meeting. If, on reading the minutes of a previous meeting, the council finds that it has passed a resolution which is illegal, or not what it was intended it should be, such a resolution can be rescinded by a resolution passed at the subsequent meeting.

Loan to Build Wharfs Must be Sanctioned by Vote of Ratepayers.

125—J. B.—Would it be legal for the municipal council of a township to use township money (without the voice of their ratepayers) for the purpose of building steamboat wharves to be used as public landing places on the shore of a lake adjoining said township?

No. Subsection 6 of section 591 of the Municipal Act empowers councils of townships to pass by-laws granting aid by way of bonus, for, or towards the construction of wharfs, and clause (a) of this sub-section provides that "No such by-law

shall be passed until the assent of the electors has been obtained in conformity with the provisions of this Act in respect of by-laws for creating debts." See also section 32 of chapter 225, R. S. O., 1897.

Regulation of Running at Large of Cattle on Town-Line.

126—CORINTH.—In township A a by-law providing that milch cows and young cattle pasturing on highway must wear a tag purchased from the township authorities in force.

In township B milch cows are allowed to run at large without a tag. Who has jurisdiction over cattle pasturing on the townline between townships A and B?

We do not think that either township council has power to pass a by-law regulating the running at large of cows upon a townline between two townships. Section 622 of the Municipal Act gives joint jurisdiction to the two councils over boundary lines, but we think this jurisdiction relates to the maintenance of the boundary lines only.

Councillor Cannot be Member of Local Board of Health

127—R. C.—I notice in your answer to questions, that the B of H shall be composed of mayor, clerk and three ratepayers.

1. Can a member of a town council be a member of board of health.

2. Can a person assessed in a township, also as a tenant of a pasture field within the corporation of the town, be a member of the local board of health for the town?

3. Can such ratepayer be placed on the board of health?

1. Your town being one having less than 4,000 inhabitants, the board of health should be composed of the mayor, clerk and three ratepayers, appointed as provided in subsection 2 of section 48 of the Public Health Act. The only member of the council who can be also a member of the local board of health is the mayor.

2. This person being assessed in your town as tenant of a parcel of land is a ratepayer of your municipality and eligible for appointment as a member of the local board of health.

3. Yes.

Owners of Traction Engines Should Strengthen Culverts.

128—D. B. D.—P. W. broke through a bridge in our township with his traction engine. Bridge was in a fair state for public traffic. He asked the council for damages. His damage was about \$100. Council refused to pay him because they think a man running a traction engine on a highway does so at his own risk. Now P. W. hands a petition of about eighty ratepayers in to council. Is it lawful for the council to pay him, or part of it?

Subsection 1 of section 10 of chapter 242, R. S. O., 1897, provides that, "Before it shall be lawful to run such engine over any highway whereon no tolls are levied, it shall be the duty of the person or persons proposing to run the same, to strengthen, at his or their own expense, all bridges and culverts to be crossed by such engines, and to keep the same in repair, so long as the highway is so used," and subsection 2 that "The

costs of such repairs shall be borne by the owners of different engines in proportion to the number of engines run over such bridges or culverts." P. W. cannot recover damages from the municipality and it would be improper for the council to pay anything.

**Compelling Railway Companies to Build Drainage Outlet
—Issue of Debentures for Granolithic Walk.**

129—D. G.—We are an incorporated village. The G. T. R., running through the village, crosses four of the principal streets. For over twenty years the R. R. Co. had and maintained large and deep culverts (built with timber) on both sides of each of the streets across the railroad and were used as cattle-guards as well. About three months since R. R. Co. hauled car loads of earth and filled all the culverts in. On the upper side of the railway there is great danger of the water in the spring being dammed back into the cellars of the houses on the upper side of the track, owing to the culverts having been filled in.

1. Can our corporation compel the R. R. Co. to open and keep open these culverts?

2. Can the council issue debentures for building granolithic sidewalks, say for twenty or thirty years, and charge the whole cost to general rate or has it to be paid by property owners abutting on side walk?

1. No. The Railway Act provides that a railway company shall construct and maintain sufficient cattle guards at all points where the railway intersects public highways, but these need not necessarily be culverts. Your council should enter into some agreement with the railway company as to this drainage. See section 21 of the Ditches and Water-courses Act, R. S. O., 1897, chapter 285, and section 85 of the Drainage Act, R. S. O., 1897, chapter 226.

2. We are of the opinion that part of the cost must be charged upon the abutting property and that the debt must be repayable within twenty years. See section 386 of the Municipal Act, and section 668 of the Municipal Act as amended by section 43 of the Municipal Amendment Act, 1899, and section 47 of the Municipal Amendment Act, 1900.

Assessment for Protestant Separate School.

130—J. W.—I notice in your answer re Protestant separate school, that either you or I have made a mistake. You have it that both these companies are assessed to public school section No. 1. It should be both these companies are assessed to Protestant separate school. What I want is to have them both assessed to public school section No. 1, if it is lawful. Kindly let me know if the above will make any difference in your opinion.

In setting up your question the printers appear to have dropped a line after the word "both" in the 20th line. It should read as follows: "Both these companies last year were assessed to the Separate school. We, trustees, have asked the council to have these two companies assessed to public school section No. 1." This was our understanding of the matter when we answered the question in our February issue (question No. 93), so no change is now necessary.

Payment of Agent at Polling Booths—Duties and Expenses of Fenceviewers—By-Law for Repairing Old Town Hall Should be Submitted to Ratepayers.

131—SUBSCRIBER.—1. Has township council any authority to pay agents acting at polling sub-division for and against a by-law where the assent of the electors is required for building township hall, or must they get pay (if any) from the parties they are representing for and against by-law?

2. Must they make the declaration before the reeve before he has power to appoint them? If appointed, without complying with that sub-section, could they get pay?

3. Have fenceviewers power to make a new wire fence for line fence where a crooked rail fence stands, without making any provision for old fence, or must they repair old fence?

4. Can township council legally pay fenceviewers' costs, specified on the award charged to P. F. and no lot mentioned, P. F. claiming to be neither owner or occupant? Must fenceviewers charge costs to some lot before council pays costs?

5. Is it necessary to submit to the electors a by-law for repairing old town hall at a cost not to exceed \$2,000, payable in the same year.

1. The statutes make no provision for the payment of such agents, and the council should not pay them anything for acting as such.

2. Section 343 of the Municipal Act provides that, "BEFORE any person is so appointed he shall make and subscribe, BEFORE the head of the municipality, a declaration, in the form of Schedule "K" to the Act, that he is interested in and desirous of promoting or opposing (as the case may be) the passing of the by-law."

3. This is within the scope of the powers conferred upon fenceviewers by the "Line Fences Act," (R. S. O., 1897, chapter 284). Sub-section 1 of section 7 provides that the "award shall specify the locality, quantity, DESCRIPTION, and lowest price of the fence it orders to be made," and sub-section 2 provides that "in making the award, the fenceviewers shall regard the nature of the fences in use in the locality, the pecuniary circumstances of the persons between whom they arbitrate, and, generally, the suitability of the fence ordered, to the wants of each party."

4. Sub-section 2 of section 12 of the Act provides that "the municipality shall, at the expiration of the time for appeal, or after appeal (as the case may be), pay to the fenceviewers their fees, and shall, unless the same be forthwith repaid by the PERSON awarded or adjudged to pay the same, place the amount on the collector's roll as a charge against the person awarded or adjudged to pay the same, and the same shall thereafter be placed upon the collector's roll, and may be collected in the same manner as ordinary municipal taxes." The fenceviewers are not required to charge their costs to some particular lot in their award. If P. F. is on the assessment roll, he should also be placed on the collector's roll of the municipality, and these costs should be placed on the latter roll, opposite his name, to be collected in the same manner as the municipal taxes placed on such roll opposite his name.

5. Unless the money to be borrowed is required for the ordinary expenditure of the municipality, and is also to be payable within the same municipal year in which it is borrowed, the by-law for raising the money must be submitted to the electors. See sub-section 1 of section 389 of the Municipal Act. In the case of McMaster vs. Town of Newmarket, 11, C.P., p. 398, it was held that the building of a town hall was not considered "ordinary expenditure," neither would be the expenditure of \$2,000 on repairs to a town hall. We are, therefore, of opinion that this by-law requires the assent of the electors before its final passing.

Goods Liable for Seizure for Taxes—Exemptions.

132—S. C.—A is assessed as tenant. Can he claim exemption of his goods from seizure? If so, what is exempt? Who is exempt? Is any person or goods exempt?

The goods and chattels liable to seizure for taxes are those, wherever found within the county in which the local municipality lies, belonging to or in the possession of the *person who is actually assessed* for the premises, and whose name appears upon the assessment roll for the year as liable therefor. See sub-section 1, clause 1, of section 135 of the Assessment Act. Subsection 2 of this section provides that the goods and chattels exempt by law from seizure under execution shall not be liable to seizure by distress unless they are the property of the person who is *actually assessed* for the premises, and whose name also appears upon the collector's roll for the year as liable therefor. A list of goods exempt from seizure under execution you will find in section 2 of chapter 77, R. S. O., 1897. You will find a list of the properties exempt from assessment and taxation in section 7 of the Assessment Act. The tenant in this case being assessed he cannot claim any exemption.

Bond of Treasurer on Re-Appointment.

133—J. D. We advertised for applications for village officers. The old treasurer was re-appointed. Will it be necessary for him to give a new bond and make a fresh declaration of office?

We do not think the council pursued a proper course in advertising for applications for village offices. It savors too much of appointing to such offices by tender, or applicants at the lowest remuneration, which are forbidden by subsection 2 of section 320 of the Municipal Act. The council should select a competent man to fill the office, appoint him, and pay him such fair salary for doing the work as may be agreed upon by him and the council. We are of opinion that, under the circumstances, it is necessary that the re-appointed treasurer should make a new declaration of office and give a new bond, as it might be held that the advertising for officers by the council operated as a dismissal of all those then in office, especially if a resolution to so advertise was first passed by the council. In the

case of the township of Adjala vs. McElroy (9 O. R., page 580) it was held that "Where a treasurer was re-appointed annually for several years, then the re-appointments were not equivalent to removals and re-appointments, but were rather a retention in office of the same treasurer, and that his sureties were not discharged in consequence thereof. The treasurer's former bond should be retained.

By-Laws Prohibiting Cattle of Certain Persons From Running at Large.

134—REEVE.—1. Can our municipality pass a cattle by-law, prohibiting other municipalities from herding cattle in our township?

2. Would a by-law fixing certain dates between which it will be unlawful to herd cattle in the township be legal?

1. The council of your municipality can pass a by-law pursuant to subsection 2 of section 546 of the Municipal Act, restraining and regulating the running at large of all animals within the limits of the municipality whether they belong to residents of other municipalities or otherwise, but we do not think the by-law can be limited to the cattle of residents of other municipalities.

2. Yes.

Mayor of Town Has no Casting Vote.

135—SUBSCRIBER.—At a meeting of council there were present the mayor and five councillors. A motion was made and supported by three councillors. An amendment was supported by two councillors. The mayor said he voted with the amendment and made the vote three to three. He then said "I have another vote," and declared the amendment carried. Is the vote rightly objected to as wrong, and what is the rule to upset law made in such a way? When can mayor vote twice? Where can one get a reliable guide on such matters, and at what price?

The mayor has the same right to vote on all questions as any other member of the council. In the event of an equality of votes on any question, the question is negated and the mayor has no further or casting vote. Section 274 of the Municipal Act, provides that, "The head of the council or the presiding officer, or chairman of any meeting of any council, may vote with the other members on all questions, and any question on which there is an equality of votes, shall be deemed to be negated."

What is a "Transient Trader"—Rights of Telephone Co. to Erect Poles, Etc. on Streets—Mayor of Town a Justice of the Peace—Renaming of Streets.

136—T.C.—1. Is a person that belongs to and carries on business in a neighboring town a transient trader, if he calls, gets orders and delivers the goods next day? If so, what is the highest tax a town can impose?

2. Has the Bell Telephone Company power whereby they can erect telephone poles in town without obtaining authority from the municipal council? Please give place in statutes giving power.

3. Is a mayor of a town in a district required to take any other oath to act as a justice of the peace, if he has taken the declaration of qualification and oath of office?

4. A few streets in this town are named by the parties owning the land but are not registered. Is there anything in the Municipal

Act to prevent the municipal council from defining and renaming same?

1. This person is not a transient trader, within the meaning of subsections 30 and 31 of section 583 of the Municipal Act. To be a transient trader, within the meaning of these subsections, a person must occupy premises temporarily in the municipality, while his name is not entered on its assessment roll, or he must occupy premises in the municipality, while his name is not entered on the assessment roll, or is entered for the first time upon such roll, in respect of income or personal property, and he must offer goods or merchandise of some description for sale by auction, or in any other manner, conducted by himself or by a licensed auctioneer, or by his agent or otherwise.

2. Yes. The Bell Telephone Company obtained its original charter under the Federal Act, 43 Vic., chapter 67. Section 92, subsection 10, of the British North-America Act, 1867, exempts from provincial jurisdiction, and places within the exclusive legislative authority of the parliament of Canada, telegraphs, etc., connecting the province with any other or others of the provinces, or extending beyond the limits of the province, and such works as though wholly situate within the province are declared by the parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces." It was held in the case of Regina vs. Mohr (7 Q. L. R., 183, 1881), that under its original charter, the Bell Telephone Company, although authorized to establish telephone lines in the several provinces of the Dominion, had no power to connect two or more provinces by such lines, and (the undertaking not having [then] been declared to be for the general advantage of Canada) that section 4 of the Act, conferring power upon the company to extend its lines across or under highways, etc., was invalid. This company accordingly obtained, in 1882, a further Act (45 Vic., chapter 95), by section 4 of which its works were declared to be for the general advantage of Canada. See also chapter 71, Ontario Statutes, 1882.

3. No. Section 4 of the Act, incorporating your town (chapter 51, Ontario Statutes, 1901), provides that all the provisions of the Municipal Act, except as therein otherwise provided, shall apply to the corporation of your town, etc. No different provisions in this particular than those contained in the Municipal Act, have been made by the Act of Incorporation of your town. Section 475 of the Municipal Act provides that "no warden, mayor, etc., after taking the oath, or making the declaration as such, shall be required to have any property qualification or take any further oath to enable him to act as a justice of the peace. The language of section 473 would seem to be somewhat inapplicable to towns in a district, such as yours, where there is no county organization, but section 479 of the

Act implies that the mayor is a justice of the peace for the town.

4. The council of your town can define and rename their streets by by-law passed pursuant to the provisions of subsection 2 of section 532 of the Municipal Act, strictly observing all the formalities prescribed by such subsection.

This Child Should be Allowed to Attend the Village School.

137—R. O. S.—C. S., a resident ratepayer and public school supporter in the unincorporated village of E has had his grand-daughter (twelve years old) residing with him and going to school in the village for the past two years. Her father resides in adjoining township, nine miles away from the village, owns property, pays school rates, etc. The child has not been home to her father, excepting for a few days at a time during the two years. During last autumn the trustees of the village public school claimed that she was a non-resident and demanded \$1.25 per month as fees for attending school, and, when payment was refused on the ground that she was a resident of the village, she was, by order of the trustees, sent home a few days previous to the close of the school for 1901. Since school opened in January the child was sent to school with a month's fee in hand, offered without prejudice until the matter could be settled but the fee was refused by the trustees and the child refused admission until the arrears, as the trustees claim, were paid?

1. Under the above statement of the case, is she a non-resident?

2. How long has a child to reside in the municipality in order to become a resident?

3. As C. S. is liable under sections 2, 3 and 8 of the Truancy Act for not sending her to school, are the trustees liable in any way for refusing admission to the school?

4. Who has the power to set aside a decision of the trustees?

1. We are of opinion that, under the circumstances you mention, this child is not a non-resident pupil within the meaning of the Public Schools Act, 1901, and that it is the duty of the trustees, under subsection 3 of section 65 of the Act, to provide her with adequate school accommodation to the same extent as any other child between the ages of five and sixteen years resident in the municipality.

2. Strouds Judicial Dictionary defines residence as being the place where an individual eats, drinks and sleeps, and the law does not require the person to remain in that particular place for any definite period, in order to constitute it his place of residence. The circumstances of each case have considerable to do with deciding the question. This child is certainly a resident of the village section both as a matter of fact and by intention, and should be allowed to attend the village school the same as any other resident pupil.

3. We do not think that C. S. is liable under these sections. He has done all he can, apparently, to "send her to school regularly" and "to cause her to attend some school," and if the trustees will not admit her to the school-house, he is not to blame, nor can he be held responsible.

4. A complaint should be made to the inspector having jurisdiction in your

district, whose duty it is under subsection 1 of section 87 of the Act, "to see that every school in his district is conducted according to this Act, and the regulations of the Department." By subsection 3 of this section, clause (c), the inspector is empowered to withhold his order for the amount apportioned from the legislative or municipal grant "where the trustees fail to comply with this Act or the regulations of the Education Department."

Assessment of Chopping Mill.

138—T. W. S.—I would refer you to August, 1901, Number of THE MUNICIPAL WORLD, question 372.

Suppose A, the owner of the flour mill, places therein a chopper, and that B, the owner of the "small chopping mill" institutes proceedings to prevent him from operating it;

1. Could the village assessor legally assess A for the chopper for all rates, although the flour mill is by law exempt from all taxes save school taxes?

2. If the chopper could be assessed for all rates, would not the assessor require to make two separate assessments, viz., flour mill plant valued at so much, subject to school rates, chopper at so much, subject to all rates?

3. If A's chopper could be assessed, and was assessed for all rates, would it not strengthen his case, providing B brought action against him?

1. If the chopper is so connected and incorporated with the mill as to form part of it, the chopper cannot be assessed separately from the mill property, but we cannot see why the assessor may not assess the whole property for its actual value, including the actual value of the chopper. If A is dissatisfied he will have to appeal to the court of revision against the assessment, and the court of revision can say that the by-law does not exempt his property to the full extent of its value including the increased value by reason of the addition of the chopper.

2. In order to levy the school rate upon the whole value of the property it would be necessary, of course, to assess the property as a whole, and in order to make A pay other rates upon the chopper, it will be necessary to show the amount for which the chopper is assessed.

3. We do not think that B can succeed in any action against A.

Extent of Reeve's Power to Bind Council.

139—O. N.—The reeve orders the constable to prosecute for infraction of a transient trader's by-law, and engages a solicitor to look after the case for the municipality. The municipality loses the case. Solicitor sends his account to council. The reeve was not authorized by council to act in the matter, but he relied upon section 279 of the Municipal Act. Is council obliged to pay the solicitor's bill, under these circumstances?

We are of opinion that section 279 of the Municipal Act does not authorize the reeve of a municipality to institute a prosecution of this kind on the responsibility of the municipality, without first submitting the matter to his council, and unless it can be shown that the council knew that the solicitor was acting for the cor-

poration, and acquiesced in the matter, the municipality is not liable.

Assessment and Collection of Arrears of Taxes of and from Locatees of Crown Lands—Impounding Cattle in Districts.

140—WALTER.—1. Where a lot is located, but no improvement thereon, may it be assessed?

2. A is located for a lot, and assessed therefor, though no improvement. He pays one year's taxes. The lot is again assessed. A relinquishes the lot to the crown, and B locates it, but will not pay the tax. May these taxes be charged against the lot?

3. C locates a lot, does a little improvement. The lot is assessed. C pays no taxes, and throws the lot up. D cancels C's location. There are two year's taxes against this lot, which is assessed in the resident roll. May these taxes be legally charged against this lot, D being located by C. L. Department, subsequent to the two years' taxes?

4. E and F live in an organized township, in an unorganized district. Township council have not passed a by-law under section 94 of chapter 109, R. S. O., 1897, making it unlawful for cattle to run at large. E's cattle run at large; F has no fence and has repeatedly impounded these cattle. May he do so lawfully? If not, how shall E proceed to make F stop impounding the cattle?

1. Yes. See section 172 of the Assessment Act.

2. We are of opinion that these taxes are not now properly chargeable against this lot, nor could the lot or any part of it, or any interest in it, be sold under the provisions of the Assessment Act, to realize the amount of the arrears. Section 188 of the Assessment Act provides that "if the treasurer sells any interest in any land, of which the fee is in the crown, he shall only sell the interest therein of the lessee, licensee, or locatee." B is not in default for any taxes on the land, nor does he claim interest therein through A, the original locatee. A, whose interest in the land could have been properly sold, now has none, as it became merged in that of the crown, in the surrender.

3. The municipality is in the same position, as regards the collection of these arrears of taxes, as in the case stated in Question No. 2, unless by saying that "D cancels C's location," you mean that D purchased and took over C's interest in the land. If this be the case, the interest of D in the land, which was formerly C's, can be sold, as provided in the Assessment Act, to realize the amount of these arrears.

4. The section quoted relates only to the payment and collection of damages for injuries occasioned by cattle trespassing, and does not affect the right of the party aggrieved to impound the cattle trespassing or doing the damage. F can legally impound any cattle he finds trespassing and doing damage on his premises, but, having no fence, section 94 of chapter 109, R. S. O., 1897, precludes him from recovering any damages for injury done.

Prescriptive Right of Way—Licensing Boarding-Houses.

141—H. C. G.—1. Does twenty years' continuous use give right of way over a road?

2. Can a township municipal council license boarding-house?

3. If so, can they charge a license fee?

1. If the lands over which this road runs are vested in the crown, the public can acquire no right to any part of them as a public highway, by uninterrupted user as such for any length of time. (See Regina vs. Plunkett, 21 Q. B., page 536.) If, on the other hand, the lands belonged during the whole period, to private persons, a right of way can be acquired by a person claiming right thereto by uninterrupted user for the full period of twenty years. (See section 35 of chapter 133, R. S. O., 1897.) And, although uninterrupted user by the public for that period, of the right of way, does not of itself confer on the public the absolute right to use it as a public highway, it amounts to strong evidence of its dedication to the public as such. In the case of Mytton vs. Duck, et. al., 26 Q. B., page 61, it was held that the use of a road over certain private lands for thirty years after the patent issued, was conclusive evidence of its dedication to the public as a highway, and in Frank vs. Township of Harwich, (18 O. R., page 344) it was similarly held where the use had been for seventy years. In Johnson vs. Boyle (8 Q. B., page 142) it was held that the placing of a gate across a travelled road after the public have enjoyed it for upwards of twenty years, can never abolish a highway.

2. No.

3. Our answer to Question No. 2 renders it unnecessary to answer this.

A Transient Trader Defined.

142—OXFORD.—A person commences business here who had not resided continuously in the municipality for at least three months previously. He bought out a going concern. Is he a transient trader, under the Municipal Act, section 583, subsections 30 and 31?

Whether a person is a transient trader or not, is a question of fact to be determined upon the evidence given in the case of a prosecution of a person for violating a by-law of a municipality, passed under the authority of subsection 30 of section 585 of the Municipal Act. We do not think the legislature intended to give municipal councils power to exact a fee from a person who purchases the stock of an established business and has the *bona fide* intention of carrying on the business permanently in the municipality, but that it intended to reach persons who purchased goods with the intention of disposing of them in a short time, and then quitting the municipality, and who, in the language of the Act, occupied premises in the municipality temporarily for that purpose. The facts you give us are not sufficient to enable us to say whether this person has bought the stock in question to be run off in a short time, or whether he intends to continue the business, and we cannot, therefore, express a definite opinion as to whether he can be regarded as a transient trader or not. We think, however, from what we have said, that you

will be able to determine the question yourself.

Duties of Assessor as to Voters.

143 ELECTOR.—1. A and B, father and son, rent livery stable in M for a term of five years. The father lives in another municipality. The son, whose wife is dead, sleeps at livery stable. The lease is made out in son's name, but both are interested—in fact, partners—and both work and manage the business. The assessor refuses to assess the father as tenant. Can father and son be assessed as owners, under 55 Vic., chapter 42, section 79, or can the father be assessed as tenant? How would I proceed to make assessor place the father on the list, if he has a right to be there?

2. The assessor is missing a number of farmers' sons. How can I get him to put them on list, so as to have municipal votes as well as M. F.?

3. S. M. is a tenant, has a son who makes his home with father, but works away quite a bit, but is always home on Saturdays and Sundays, and works at home at times. Can he be rated on roll as F. S., so as to have a municipal vote as well as parliamentary?

4. If tenant's son has right to franchise, how will I get assessor to put him on without trouble of going to court of revision?

1. The section quoted is now section 86 of the Municipal Act (R. S. O., 1897, chapter 223) and has nothing to do with the regulation of an assessor's duties. It simply defines the qualification necessary to enable an elector to vote at municipal elections. The assessor cannot legally assess A and B as owners of the livery stable, for, as a matter of fact, they are not owners. The father should not be assessed as a tenant because he is admittedly not a party to the lease. Since the father is a non-resident he cannot be placed upon the assessment roll as a manhood franchise voter, so we do not see that he has any right at all to be assessed and the assessor is therefore right.

2. If these parties are "farmers' sons" as defined by subsection 2 of section 86 of the Municipal Act, the assessor is required by subsection 4 of section 13 of the Assessment Act (R. S. O. 1897, chapter 224) to enter their names upon his assessment roll, or he may assess them in the manner mentioned in section 14 of the latter Act. If the assessor neglects or refuses to place the names of these parties on his roll after having been notified to do so, it will be necessary to appeal to the court of revision, and if this court neglects or refuses to add them to the roll, an appeal can be taken to the county judge. If the assessor willfully and improperly omits the names of these persons from the assessment roll, he is liable to the fine of \$200 mentioned in subsection 3 of section 57 of the Assessment Act.

3. If S. M. is a tenant and actual occupant of a farm composed of not less than twenty acres (see subsection 2 of section 26 of the Municipal Act) under a lease the term of which is not less than five years (see subsection 3 of section 86,) and the son has not been absent from the farm for more than six of the twelve months next prior to the return of the roll by the assessor (see clause (c) of subsec-

tion 2 of section 14 of the Assessment Act) he is entitled to be placed on the assessment roll as a farmer's son.

4. Your only redress is to appeal to the municipal court of revision, and, if you cannot obtain relief there, then to the county judge on the revision of the voters' list.

Public School Supporter—Prevalence of Anthrax Does Not Affect a Man's Assessment.

144—N. S.—1. Can a protestant, living in a separate school section, pay his taxes to the public school, or will he have to get his land detached from the separate school and attached to the public school section?

2. Would I be justified, in case a man has his farm quarantined on account of anthrax, in lowering his assessment \$400 or \$500 on 150-acre farm, or shall I assess it the same as usual, and let the owner appear before the council in regard to having taxes refunded?

Any other suggestions on the question will be very acceptable.

1. You do not state whether the separate school is a Protestant separate school or a Roman Catholic separate school. If the person referred to is a person sending his children to a Protestant separate school he is exempt from public school rates if he subscribes to the support of the separate school annually, an amount equal to the sum at which he must have been rated if no such separate school existed. If the separate school is a Roman Catholic separate school he must pay his taxes to the public school.

2. Notwithstanding the prevalence of anthrax amongst the cattle of the owner of this farm, the assessor should assess it at its "actual cash value, as it would be appraised in payment of a just debt from a solvent debtor" as provided in section 28 of the Assessment Act. The Act makes no provision for reducing the assessment of a farm for a reason of this kind.

Where Deaths Should be Registered.

145—F. L. T.—The town of P is a municipality of its own and has no connection whatever in the municipal affairs of the surrounding townships. The township of C has the funeral services of its dead celebrated in the town of P where they are also buried, and the clerk of the said town has the clergy send him the returns of deaths for registration. Now who has the right by law, to receive the returns of deaths, the clerk of the town of P or the clerk of the township of C?

The clerk of the township of C, since he is by statute the registrar of the division in which the deaths took place. See sections 9, 11 and 22 of chapter 44, R. S. O., 1897.

Payment of Costs of School Arbitration.

146—E. G. J.—Parties situated near the boundary of two adjoining townships (also two adjoining counties) desired a new school section formed. Petitions under Section 43 of Public Schools Act were sent to the township councils affected and arbitrators were appointed. These arbitrators, along with the inspectors of two counties, met in due time and made an award forming the new school section. In the award they stated that each of the township councils shall pay \$23.00 towards the expenses of this arbitration.

1. Are the townships councils legally bound to pay the above amount?

2. Provided the councils pay the amount, can they charge the amounts to the newly formed school section?

1. Section 88 of the Public School Act, 1901, provides that, "arbitrators, in making their award, shall, among other things, determine the liabilities of the parties concerned for the costs of the arbitration, and such determination shall be final and conclusive." The two township municipalities in your case are "parties concerned" and the arbitrators had power to say whether they should pay the whole or a part of the costs of the arbitration. Having provided in their award that the councils of these municipalities shall each pay \$23 towards the expenses of the arbitration, these councils are legally bound to do so.

2. No, this, in effect, would be a contravention of the award of the arbitrators. Had they considered that the newly formed school section should pay these costs, they would have so provided in their award.

Enforcing Local Option By-Law.

147—T. B. W.—Has the council of a township in which a local option measure for liquor has been passed, the authority to enforce the law? As no license is in force and the township pays nothing to the license fund, in case a trial is in operation and failed to convict, can the council collect the costs from the township? Or is the council the body to whom the people can and ought to look for help to enforce the law?

There is nothing in the Liquor License Act making it the duty of the council to enforce a local option by-law. Section 94 of the Act provides that any person may be prosecutor or complainant in prosecutions under the Act, and by section 95 all informations and complaints are to be made in writing but they need not be made under oath. Though a complaint may be laid by the corporation it would be better, we think, to leave the enforcement of the by-law to those who feel an interest in its enforcement. In the case put the council has no right to pay the costs when a complaint has failed and collect them from the rate-payers.

Duties of Tax-Collector in School Section in Unorganized Territory.

148—F. D.—I am a tax-collector for a part of this school section, which is in an unorganized township, and being a union section has paid taxes for four years, and this year three of the parties refuse to pay their taxes. Can I seize for these taxes and how will I proceed?

Subsection 2 of section 29 of the Public School Act, 1901, provides that, "Every collector (in an unorganized township) shall have the same powers in collecting the school-rate, rate-bill, or subscriptions, and shall be under the same liabilities, and obligations, and proceed in the same manner in the school section or township, as a township collector in collecting rates in his township, as provided in the Municipal and Assessment Acts, from time to

time in force." If these parties are liable for the taxes (as to which we cannot give an opinion, not having sufficient information) and neglect to pay them for fourteen days after they are demanded, the collector can proceed to enforce payment by the seizure and sale of their goods and chattels in the manner provided by section 135 of the Assessment Act, (R. S. O., 1897, chapter 224.)

Contents of December Statement

149—W. G. W.—Differences of opinion have arisen here as to the manner in which the financial statement should be prepared by the council on the 15th of December of each year, under subsection 6 of section 304 of the Municipal Act. Some maintain that though a "detailed statement" is called for, it does not necessarily mean that each item of expenditure and the party who received it should be mentioned, but that the expenditures under the different heads would be sufficient. Such as salaries, drains, bridges, schools, divisions, etc., etc. We have been publishing a statement each year, equal in size and work, if not in accuracy, to the regular auditors' report. The time necessary to prepare this statement is so short, that it is seldom or never ready before nomination day, so that its usefulness is of very short duration. If a statement that could be placed on an ordinary poster would do, it could be gotten out in time to give the elector some information and would cost far less. Kindly give a general reply.

We do not see that there is much room for differences of opinion in construing the language of subsection 6 of section 304 of the Municipal Act. It provides that the council shall prepare a DETAILED statement of the receipts and expenditure, together with a statement of the assets and liabilities and uncollected taxes. This must mean that the statement to be published must contain each item of receipts and expenditure, and this was undoubtedly the object of the legislature in framing this subsection, since the intention was to give the ratepayers of a municipality minute and definite information as to its finances; then again if the legislature had intended that only an abstract statement should be published they would have used language to express this intention. The time allowed for publication is somewhat short, but if the council has the statement all ready (as should be the case) except the entry therein of items of business transacted at the 15th December meeting, little difficulty would be experienced in this regard.

Ownership of Material in Road Covered by Water.

150—A. R.—A concession road runs across a lake; the lake is not bridged nor will it ever want to be. On this concession or allowance under the waters of the lake is some material which some persons want to buy. Who has the right to sell it?

2. What steps would have to be taken to get the right to use this material?

1 and 2. We do not think that the municipality, or any individual, has any property in the material under the water of this lake, or any authority to sell or dispose of same.

Appointment of Members of Local Board of Health.

151—S. K. 1. It has been the practice of our council to appoint members to the local board of health by resolution instead of by by-law. Could any person, if so disposed, give the council trouble in respect of this mode of appointment?

2. Do you think it necessary to call meeting of the council to make said appointment by by-law?

1. Section 325 of the Municipal Act, provides that, "The powers of the council shall be exercised by by-law, when not otherwise authorized or provided for." Subsection 1 of section 48 of the Public Health Act, (R. S. O., 1897, chapter 248) confers a power on the municipal councils of townships, namely, to appoint three ratepayers to membership of the local board of health, and does not authorize the making of such appointment otherwise than by by-law. The council should therefore pass a by-law making these appointments. It has been judicially remarked that, "A by-law should not be dispensed with except in a very clear case." There is very little danger that the council will be put to any trouble in the matter, but the local board of health might experience difficulty in enforcing its rules and regulations if the members have not been legally appointed.

2. Unless urgent matters of importance are likely to come before the local board of health for immediate attention, the calling of a special meeting is not necessary. The appointments can be made by by-law at the next regular meeting of the council.

Purchase of Private Electric Light Plant in Village.

152—G. P. H.—We are an incorporated village and have submitted a by-law to raise \$6,000 to instal an electric light plant to be owned by the town. Some years ago a private individual erected a plant a mile out of town, and ran it for a year or two by water. The water failed and he put in an engine. This did not work well and he moved into town and obtained power from a sash and door factory but could only run a little over 100 lights (we want 500 or more) and no light on the streets. It is not running at all now and likely won't. Do you think under these circumstances, the town can be compelled to buy him out as provided by statute?

The provisions of clause (a) of subsection 4 of section 526 of the Municipal Amendment Act, 1899, which relates to the buying out of the works of existing electric light companies, are made by clause (a8) to apply to cases where an electric light plant is the property of and operated by a private individual. Clause (a) applies only to a gas or electric light company or an individual who HAS supplied or shall supply gas or electric light for STREET lighting in the municipality. It is not stated whether the owner of the plant in question has supplied or has or had the intention of supplying electric light for lighting the STREETS of the municipality. If this be not the case, the council is not bound to buy out his plant, previous to installing a plant of its own. If he has furnished lights for the streets, or has the intention of doing so, (which intention would be evidenced by

his having the necessary apparatus and appliances in place, etc.) the council will have to buy out his plant in the manner provided by subsection 4 of section 566. The fact that the plant is not now running does not affect this part of the question, but would be a matter for consideration in estimating and fixing the value of the plant.

Rate of Statute Labor.

153—Q. W. E. D.—The statutory law for statute labor is:

Up to \$300, assessment 2 days.
\$300 up to 500, assessment 3 days.
500 up to 700, assessment 4 days
700 up to 900, assessment 5 days.

And for every \$300 an extra day or fraction over \$150. What I want to know is, does not this rule work the same on assessments up to \$900. That is to say, for \$400 it would be 3 days, but for \$375 it would be only 2 days and for \$725 only 4 days till you go to \$800 and for \$800 to \$900, 5 days, or should the assessor put on an extra day for say \$325, \$525, \$750, \$875, or not?

The provisions of section 102, subsection 1, of the Assessment Act, for the addition of one day's statute labor for every \$300 assessment over \$900, or any fractional part thereof over \$150, has no application until the \$900 assessment has been reached. The statute labor chargeable in respect of an assessment of \$300, or less, is two days. If the assessment is for any amount over \$300 and not more than \$500 the proper number of days' statute labor is three. For example, an assessment of \$301 is liable for the same number of days' statute labor as one of \$499. The same remarks apply to the other provisions of this subsection. The calculation of the statute labor in the manner you suggest is not authorized by this subsection.

Assessment of Standing Timber.

154—A. B.—A company owns a large quantity of land. That land is assessed at fifty cents an acre as wild lands. They sell the timber on a portion of the land to a lumber firm at \$2 per acre, the timber to be taken off. Can that timber be assessed for municipal taxation?

2. If so, must it be assessed to the purchaser of the timber or to the owners of the land?

3. Can timber be assessed separately from land?

1. Timber until severed is part of the realty, and its value should be taken into consideration for assessment purposes in valuing the land on which it stands. As long as it remains standing this timber is liable to and should be assessed with the land, "at its actual cash value, as it would be appraised in payment of a just debt from a solvent debtor." (See section 28 of the Assessment Act)

2. To the owners of the land.

3. Not until it has been severed from the land when it becomes assessable as personalty.

Treasurer's Bond.

155—J. S. E.—Our treasurer gives a bond to the corporation, signed by himself and two others, for the sum of two thousand dollars, and what I would like to know is:

1. Is it necessary to have a new bond issued every year or does the old bond hold good as long as the same person is treasurer? The Ontario Statute says that an officer (treasurer) holds office until dismissed or resigns.

2. Has bond, given by bondsmen, to be registered to make it legal?

1. This depends upon the form of the by-law by which the treasurer is appointed. If he is appointed for an indefinite period, or if formal by-laws are passed annually, reappointing him, it is not necessary that a new bond should be given by him each year, so long as the council is satisfied that the sureties on the old bond are sufficient. And it is the duty of the council to inquire into the sufficiency of the security given by its treasurer each and every year. (See section 288 of the Municipal Act.) In the case of *Adjala vs. McIlroy*, (9 O. R., page 580) it was held that the annual reappointments were not equivalent to removals and reappointments, but were rather a retention in office of the same treasurer, and that his sureties were not discharged in consequence thereof. On the other hand it has been held that the sureties for an officer whose term is limited to a year, are not liable beyond the year though the officer continue in office by law until his successor is appointed. (See *Reg. ex. rel. Ford vs. McRae*, 5 P. R., page 369.)

2. No.

Removal of Snow by Statute Labor.

156—J. S. B.—A has performed his statute labor for 1901 and has a certificate to that effect.

1. Has B, who is pathmaster, power to compel A to go out and shovel snow in December of the same year?

2. Has B power to call A out to open road in January following, he having performed his labor for 1901 and it is possible he may not be liable for labor in 1902?

1. It is not stated whether the council has passed a by-law pursuant to subsection 3 of section 537 of the Municipal Act. If such a by-law has been passed any overseer or pathmaster thereby appointed for the purpose shall have full power to call out all persons liable to perform statute labor in the municipality, to shovel snow or do such other work as he may deem necessary to keep open the roads in winter, and he may give to persons so employed certificates of having performed statute labor to the amount of the days' work done, and such persons shall be allowed for such work in their NEXT SEASON'S statute labor.

2. Yes, if the by-law mentioned in our answer to question No. 2 is in existence. The fact of his having performed his statute labor for 1901 makes no difference, as he is to receive credit for the work he does during the winter in the way of keeping roads clear of snow, credited on his NEXT SEASON'S statute labor.

Member of Council Cannot be Medical Health Officer

157—A. B. C.—Can a physician, who is a member of the municipal council, act as medical health officer of the same municipality, under appointment of the council of which he

is a member, where no other medical practitioner is available, without disqualifying himself as a councillor?

No. If he were appointed to this office by his council, he would be a contractor with his council, and could not legally hold his seat at the council board, unless he is willing to act gratuitously.

Fees of Selectors of Jurors.—Constitution of Local Board of Health.

158—J. B.—1. What are the fees that the selectors of jurors in a township municipality should get? Should the council pass a resolution awarding the amount they are to receive, or can they get the amount that they choose to charge from the treasurer without any direction from the council?

2. Is it legal for a council to appoint all the members of council a board of health? When all the council is a board of health will the business they do be legal?

3. Can they be disqualified from a seat on the council board?

1. The persons who are to be first selectors of jurors in cities, towns, villages and townships, are designated by section 17 of the Jurors' Act (chapter 61, R. S. O., 1897) and section 159 of the Act 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 to them by the council of the municipality of which they are officers." The treasurer should not pay any sum to the selectors of jurors, unless he is authorized by an order or cheque of his council to do so.

2. Your municipality being a township, the local board of health should consist of the reeve, clerk and *three ratepayers* to be appointed by the council in the manner provided by subsection 1 of section 48 of the Public Health Act (R. S. O., 1897, chapter 248). The only member of the council who can be legally also a member of the local board of health is the reeve. Unless the members of the local board of health are appointed as the statute authorizes, they have no authority to do business as a board; nor can they enforce any of their orders or resolutions.

3. We do not think the members of a council appointed also members of the local board of health would be disqualified as councillors, as their appointment to the local board of health is unauthorized and therefore a nullity.

Mistake in Assessment Roll.—Police Trustees Can Restrain Running at Large of Cattle.

159—W. E. H.—1. The assessor for our municipality for year 1901, assessed A for \$900 on schedule and \$1,200 on roll. Can A compel council to pay back to him the difference between roll and schedule?

2. Or has a municipal council the power to pay over the difference between roll and schedule?

3. We have a police village in our township. Have police trustees power to pass a by-law prohibiting cattle from running at large in said village?

4. Or will the council have to pass such by-law?

1. No. Section 72 of the Assessment Act, provides that, "The roll as finally passed by the court and certified by the clerk as passed, shall, except in so far as the same may be further amended on appeal to the judge of the county court, be valid, and BIND ALL parties concerned, notwithstanding any defect or error committed in or with regard to such roll, or any error, defect or misstatement in the notice required by section 51 of the Act, or the omission to deliver or transmit such notice."

2. If the council is satisfied that a mistake was made by the assessor in assessing him at \$1,200 instead of \$900 it can rectify the mistake but it may establish a bad precedent.

3. Yes. Section 52 of the Municipal Amendment Act, 1900, provides that, "The police trustees of any village may pass by-laws, applicable only in the police village, for any of the purposes mentioned in section 546 of the Municipal Act." Subsection 2 of section 546 provides "for restraining and regulating the running at large and trespassing of cattle and for impounding them."

4. Our answer to question No. 3 renders it unnecessary to reply to this.

Method of Keeping Treasurer's Cash-Book.

160—Would you please state what is the correct method of keeping a township treasurer's cash-book?

1. Our treasurer makes an abstract as illustrated in front page of treasurer's book at foot of each page and carries over only the balance as shown by that abstract, while the writer holds that not only the balance as shown by that abstract should be carried over but also the amounts received and paid out under the different heads as classified, so that a continual abstract would be exemplified throughout the year.

2. The auditors of this township find very few vouchers for cash received by treasurer. Should not treasurer have a proper receipt-book on stub of which is printed, "I have this day of deposited with the treasurer of township, the sum of for Signed depositor." The treasurer to fill out receipt and have depositor sign stub and thereby give and receive a voucher. Evidently the treasurer's book is intended for something of this kind? The town hall and the treasurer's office are seven miles from nearest bank and so far no bank account has been opened.

1. The best plan to adopt is to add up the totals for the month, and bring forward the grand totals for the previous month or months, in red ink, and add them to the totals for the month. The cash-book will then show the total receipts and expenditures for the month and to date. This saves carrying large amounts forward on each page and simplifies the additions.

2. Every treasurer should have a receipt-book, the stub of which should show amount and from whom received. He should also have on file all correspondence referring to the business of his office, and it is usual to keep all information relating to receipts with the other vouchers. The treasurer should have a bank account.

For particulars, see Question No. 10, in January WORLD.

Commutation of Statute Labor in Police Villages.

161—J. R.—In the past the statute labor in this village has been done by some paying 80c. per day, others, who did not pay, were allowed to perform their own statute labor. This plan has not been at all satisfactory.

1. Has any Act been passed recently, empowering police trustees in a police village, to take over the statute labor in said village after the township council have consented thereto?

2. Can said trustees levy a rate (say 50c. or 60c. per day) and compel residents in village to pay in order to maintain the sidewalks, etc.

3. Can commutation of statute labor be established by trustees in the village, even though the municipality outside have not yet adopted the system?

1. Section 103 of the Assessment Act, provides that, "The council of any township may, by by-law, direct that a sum not exceeding \$1 a day shall be paid as commutation of statute labor for the whole or ANY PART of such township, in which case the commutation tax shall be added in a separate column in the collector's roll, and shall be collected and accounted for like other taxes." The trustees of a police village have no power to commute statute labor within the precincts of the police village, or to collect and enforce payment thereof, when it has been commuted. This the township council of the township in which the police village is located, may do, and pay over the amount of the commuted statute labor when paid, to the trustees of the police village, to be by them expended therein as authorized by the statute.

2. No. The trustees of a police village have no legal authority to levy rates of any kind within the limits of the police village.

3. As stated above, the police trustees have no power to do this. If the statute labor be commuted within the limits of the police village, it must be accomplished by by-law of the township council.

Withdrawal of Resignation of Councillor.

162—F. J. C.—A gentleman who was elected to our council in January last, took the necessary qualification papers and took his seat at the council, has since tendered his resignation, but now he wishes to withdraw his resignation. This resignation has not yet been presented to the council as there has been no meeting of the council since he tendered his resignation. Can I return to him his resignation without first presenting it to the council?

Section 210 of the Municipal Act provides that "any mayor or other member of a council may, with the consent of the majority of the members present, to be entered upon the minutes of the council, resign his seat in the council." Until such consent has been given and recorded, the office is not vacant, and in the case of Reg vs. Lane (2 Ld. Rayd., p. 1304), it was held that up to that time the offer to resign may be recalled. If he chooses, the member who has tendered his resignation, may allow it to stand until the council meets, when, if a majority of the

members present do not accept it, the matter is at an end, but he is not bound to do that, but may recall it.

Assessor's Declaration of Office.—Application of Fines.—Qualification of Councillors.

163—J. M.—1. Is assessment legal where assessor goes on and does assessment without first taking oath of office, clerk being notified by council to appoint no officer without first having them take declaration of office?

2. If a man is fined for disturbing the peace what proportion of said fine is payable to the municipality? Two parties have been fined, one for \$5 and one for \$20. The \$5 was paid in full to township but nothing has been heard of the \$20 fine.

3. Our municipal elections have never been held under qualification. There are over ten now in our municipality who can qualify. What is the legal way to proceed at nomination under qualification?

1. Since the clerk has no authority to make any appointment to a municipal office, we presume that your council instructed him not to allow any of the other officials to enter on the discharge of the duties of their respective offices until they had made and filed with him the declarations of office required by law. An assessor should make the declaration of office set forth in section 312 of the Municipal Act before entering upon the duties of his office, and file it with the clerk. If he does not make the declaration within the time mentioned in section 319 of the Act (twenty days) he will be subject to the penalties imposed by that section; but failure to make the declaration does not of itself render void his official acts done in the meantime. (See Lewis vs. Brady, 17 O. R., pages 377 and 390.)

2. We cannot answer this question until we know the particular Act under which the fines were imposed.

3. Your municipality, being a township, the council is composed of a reeve and five councillors. Section 79 of the Municipal Act provides that "In case, in any municipality, there are not at least two persons qualified to be elected for each seat in the council, no qualification beyond the qualification of an elector shall be necessary in the persons to be elected." Since there are ten men who are qualified under section 76 of the Act to be elected, in the future, parties nominated and elected should be only those who can qualify under that section. It is a question whether the words "qualified to be elected" apply simply to qualification in respect of property, or to every other statutory qualification. In the case of Reg. ex. rel. Bender vs. Preston (7 U. C. L. J., page 100), it was judicially stated that the words must be construed in the larger sense, *i. e.*, for the benefit and advantage of the whole body of electors; for if it should happen that all those who might be qualified as respects property were disqualified as respects interest or otherwise, the municipality could have no council if the inhabitants could not resort to the general body of electors for councillors.

By-Law Commuting Statute Labor.—Expenses of Isolating and Attending Small-Pox Patient.

164—SUBSCRIBER.—1. On page 32 of your February number, you publish a report of commutation of statute labor. Please publish a form of by-law suitable in this case.

2. A child is turned out of school, the teacher supposing she is suffering from small-pox. The board of health send for medical practitioner to investigate the case, which he does, finding the report true. He proceeds to quarantine the house and vaccinate the inmates except the child suffering from disease. He called a second time, at time of release, and disinfected the house. I claim, that as the doctor vaccinated several members of the family and disinfected the house, he was attending them, and although he was called by the board of health of our municipality, the persons quarantined are obliged to pay said doctor's fees to us, although we will be forced to settle with the doctor. This is an unorganized district without a county council. Am I right?

1. On pages 68 and 69 of THE WORLD for 1900 (May issue) you will find a form of by-law commuting statute labor in a township.

2. It is not stated whether the medical practitioner was the medical health officer for the township, appointed pursuant to section 31 of the Public Health Act. If he was, his pay for services rendered in this case would be included in the salary the council agreed to pay him. If he was not, the board of health should pay him a reasonable sum for the investigation of the case which resulted in the isolation of the family afflicted. If the person afflicted, or his parents, or other person or persons liable for his support, are able to pay the account incurred for nursing and other assistance and necessities furnished, including the cost of medicine and medical attendance, and vaccinations, and for disinfecting the premises, they should pay the same. If they are unable to do so, the municipality will have to pay it. (See sections 82 and 93 of the Public Health Act, R. S. O. 1897, chapter 248, and subsection 1 of section 4 of chapter 249, R. S. O., 1897.)

Assessment of Non-Resident Tenant—Placing Him on Voters' List.

165—TOWNSHIP CLERK.—1. A person residing in one municipality and leasing or working, on shares, land in an adjoining municipality, would such tenant be entitled to be placed on the assessment roll by the assessor?

2. If such tenant was placed on roll and copied by the clerk on voter's list, would he have a right to vote at municipal elections?

3. If entitled to be on voters' list, what part?

1. This person should be placed on the assessment roll of the municipality in which the land of which he is tenant is situated as tenant thereof, and, if the name of the owner is known, he should be assessed for the land with the tenant, as provided by sec. 20 of the Assessment Act.

2. If this tenant is placed in part 1 of the voters' list by the clerk, as he should be, and can at the date of the election fulfill the requirements of subsection 1 of section 86 (secondly) of the Municipal Act, and, if his vote be objected to, he takes the oath prescribed by section 113

of the Act, he will have the right to vote at municipal elections.

3. In part 1.

Re-imposition of Dog-Tax.

166—J. H. M.—Some years ago we had a dog-tax imposed in this municipality, and some three or four years ago the council was petitioned by some twenty-five ratepayers to have the dog-tax abolished, and this year the council wants to levy the dog-tax again. How can they do it legally? Will they have to have a petition from the ratepayers, or can they levy it by by-law, as it is necessary to have the tax put on again?

You do not state whether the council passed a by-law in response to the petition, but we assume that it passed a by-law, doing away with the levy of a tax under chapter 271, R. S. O., 1897, and, if that is the fact, the council can repeal that by-law, and, when that is done, the provisions of chapter 271 shall thereupon take effect, or the council may pass a by-law under subsection 2 of section 546 of Municipal Act, imposing a tax on dogs for purposes of revenue. If the latter course is adopted the tax will not be available for the purpose of paying damages for sheep killed by dogs.

Cost of Preparing December Statement—Payment of Drainage Rebate—Auditor's Duties.

167—MIKE.—1. The council voted \$8.00 for preparing financial statement, which is illegal? (a) How may it be stopped? (b) If the members are liable, please explain.

2. A and B are adjoining townships. A constructs a drain under the Ditches and Water-courses Act, known as the Trent Valley Drain, which has its outlet in B. B was served with a copy of the engineer's report, estimating the cost of B's portion at \$370.00. B adopted the report and passed a by-law, authorizing the reeve to borrow the amount by issuing debentures, bearing interest at 5%, payable in two years. Said by-law was passed and debentures issued Feb. 10th, 1900. The debentures were sold August 1st, 1900, at 4% interest, and the money deposited in the treasury of B, and is claimed to be kept separate from the other township funds. The drain was completed in April, 1900. The reeve received \$1.50 for selling the debentures. At a joint meeting of A and B, held October 1st, 1901, to arrange a settlement regarding townline expenditures, etc., the drain account was settled. No rebate has been paid back yet. Can A charge B interest for not paying the money as required by the Act?

3. When should the rebate be paid back? and how may we determine that time in regard to any drain?

4. Can the ratepayers collect 5% on the rebate, if not paid at the proper time?

5. Can a ratepayer demand a detailed statement, showing amount collected, cost and expenses, rebate, etc., and if not, how may he find out whether he is receiving the correct amount of rebate?

6. Will the ratepayers be charged with all expenses, such as part of the cost of joint meeting, expense of auditing drain account, etc., or simply those included in the engineer's report?

7. Name the fees for executing the two debenture forms and coupons?

8. Why is it necessary to register a drainage by-law?

9. You might define the auditor's duty in regard to drainage matters?

1. We presume you refer to the statement to be prepared annually by the council and published subsequent to the

meeting to be held on the 15th day of December in each year. It is the duty of the officials of the municipality to give the council all reasonable assistance in the preparation of this statement, and they cannot insist on payment for such aid as a matter of right. If, however, the council is of opinion that these officials should receive remuneration for doing this work, in addition to their regular salaries, and that \$8 is a reasonable amount to pay them, or if the council employ other persons to do the work, we cannot see that they are acting illegally in ordering and directing the payment of the money.

2. We are answering these questions on the assumption that this drain was constructed under the provisions of the Drainage Act, (R. S. O., 1897, chapter 226) and not under those of the D. & W. Act, (R. S. O., 1897, chapter 285) because the line of procedure you describe is that laid down in the former Act. By section 62 of the Drainage Act, the amount due from B to A should be paid over within four months from the date of the service of the documents mentioned in section 61 of the Act, on the head of the municipality B, and if it be not then paid, A is entitled to collect from B interest on the amount at 5 per cent. for such time after the expiration of the four months as the money is retained by B. It appears, however, that a settlement was made in October, 1901, and assuming that to be so, the interest can be charged from that date only.

3. By the rebate in this case, we presume you mean the difference between the rate of interest charged in the by-law, namely, 5 per cent. to be levied thereunder and that which the township is required to pay on the debentures issued under the by-law as sold, namely, 4 per cent. The by-law providing for the original levy should be amended so to give the contributories to the cost of the drainage works described therein the benefit of it, pro rata, according to their original assessments respectively, and the sum to which each contributory is entitled, should be applied by the council towards the reduction of the rates imposed by the original by-law for the work in each and every year after the completion of the work. (See subsection 3 of section 66 of the Act.) This rebate should be provided for in the next annual levy, after the money has been received by B and should have been paid over to A.

4. There is no provision made in the statute for the allowance of the interest.

5. A ratepayer is entitled to examine the books, papers and accounts in possession of the clerk in order to obtain this information, at any reasonable time, free of charge. (See section 284 of the Municipal Act, subsection 1.)

6. This drainage account and all parties to be benefited by the construction of the drainage works, will be charged with all costs and expenses necessarily incurred

in carrying out the drainage works from the time the engineer's report is filed until the drainage work and all the business connected therewith, is completed.

7. Such a fee as the council deems necessary and reasonable in order to effect an advantageous sale of the debentures.

8. Sec. 396 of Mun. Act makes it the duty of clerk of municipality to register a drainage by-law in the case of a township drain, though under section 398 it is optional in the case of a city, town or village to register a drainage by-law.

9. A drainage account is one of the accounts of a municipality and the duties of the municipal auditors in regard to it are the same as those they are required to perform in regard to any other account or accounts of the municipality. You will find the duties of auditors laid down in section 304 of the Municipal Act.

By-Law Establishing Width and Level of Streets and Protecting Boulevards.

168—A. C. S.—Would you kindly give, in your next issue, a short form of by law for establishing widths and levels of streets and boulevards, with penalty clause for persons driving on or damaging the latter?

We cannot prepare a by-law that would answer this purpose or give any degree of satisfaction from the information at hand. Before the council passes a by-law of this kind it should obtain the services of some competent engineer to make a survey and take the levels and establish the grades of all the streets in the town and report thereon to the council. At the same time he could locate and determine the nature and extent of the boulevards, locate trees, etc. This report would form the basis of and be incorporated in the by-law which could then be properly prepared and passed by the council. A few years ago the town of Renfrew followed this course, and had Mr. G. A. McCubbin, C. E., of St. Thomas, make the survey and report for them. The experiment proved an eminently satisfactory one. We would suggest that you correspond with Mr. Rochester, the clerk of Renfrew, if you desire more complete information on this subject. A by-law could afterwards be passed providing for the protection of the boulevards, pursuant to subsection 5 of section 638 of the Municipal Act.

Collection of Drain Arrears and Costs.

169—I. J.—It has been the custom in this township in the past to charge all sums expended for minor repairs of drains to the account of the drains interested. The repairing and rebuilding of bridges over drains has also been charged to the drain accounts. In several cases costs have been incurred by appeals to the referee, either by ourselves or neighboring townships, against engineer's reports for the construction or repair of drains, and these accounts have been charged to the account of the drain to be constructed or repaired. It sometimes happens that the sums charged to a drain account in a given year are too small to be worth levying a special rate for. In other cases lawsuits have hung on from year to year and it has been almost impossible to ascertain the costs till more than

a year from the dates at which they were incurred. In one or two cases when a by-law was passed to raise funds for the repair of a drain and the cost of repairs and the sum for which the drain was in debt were both small, the amount of the debt was added to the cost of repairs and the whole was collected by a pro rata levy on the lands assessed for the drain, but in most cases no attempt has been made to collect and the indebtedness has run on from year to year until it now aggregates nearly six thousand dollars.

1. Can we, in your opinion, collect by a special tax all or part of the amounts for which the drains are indebted to the townships?

2. When costs are incurred by an appeal to the referee or by an appeal from the decision of the referees, and the referee or the court of appeal does not decide whether said costs shall be paid by the drainage area or out of the general funds of the township, can said costs be collected from the drainage area, or must the township as a whole foot the bill?

1. The course that your council has pursued in the past in this regard was irregular, and the cost of the repairs, etc., ought to have been raised out of the drainage area from year to year, or as soon as possible after the money was expended. Your by-law creating the assessment and the liability of the rate-payers ought to have been passed without delay, so that the rate for the expenditure would become an assessment and charge upon the respective lands assessed, and then any purchaser of these lands would take them subject to that charge.

2. We are of opinion that these costs are properly chargeable to and collectable from the lands within the drainage area, pursuant to the provisions of subsection 1 of section 95 of the Drainage Act (R. S. O., 1897, chapter 226).

Responsibility of Death of Horse in Snow Bank.

170—INCORPORATED VILLAGE.—On one of the side streets in a part little used, a team of horses being driven along with empty sleigh in the dark, one of the horses gets down in the snow bank softened by recent thaw. One of the horses dies right there in a few minutes. Two days before a team had gone along the same track without trouble. There was a good road around the other side of the block so as to allow him to get where he wanted to go. The bank had not been shovelled out, but several teams had driven over it and until the last day or two before the accident would bear horses up. Do you consider municipality responsible for the price of the horse?

The rule is that the public highway must be kept in a reasonably fit state for travel. If the municipal corporation can be shown to have had actual knowledge of the dangerous condition of the highway, or such condition had existed for such a length of time that the corporation was guilty of negligence in not having discovered it, the corporation will be held liable to pay the owner of the horse damages for the loss of his horse, provided he gives notice of action within the time and in the manner required by subsection 3 of section 606, of the Municipal Act. This man had a right to assume that the road he took was in a reasonably safe condition for travel. He was not bound to make particular enquiries as to this, before entering upon it, or to drive around the block instead to reach his destination.

Proceedings at Nomination—Assessment in Districts Opening a Highway—Right to Timber on Road Allowance.

171—W. T. G.—1. Nomination meeting was held, at which, through an oversight or neglect of ratepayers, reeve and three councillors only were nominated. (Five papers were put in but two of them were for the reeve and was not noticed until the meeting closed.) Two councillors and reeve held office last year, one new member, R. O., held that section 218, chapter 223, R. S. O., 1897, would cover the case, and at first meeting of council appointed one of the old councillors to the vacant seat. Is this appointment regular?

2. Council has adopted assessment of last year as assessment for this year, subject to revision, by by-law, under subsection 2, section 42, chapter 225, and Amendment, 1899, section 16. If any omissions or errors are discovered by any persons before or at the court of revision and is brought to the notice of the court, can the court, make the corrections or revisions?

3. Section 43, chapter 225, R. S. O., 1897, appears to provide that only the person assessed can complain of his assessment, and that subsection 3 of section 71, chap. 224, 1897, does not apply to these districts. Is this the correct view?

4. If a complaint is made this year, under section 43, would the assessor who made the roll last year have to be heard? or what steps should have to be taken if the assessor, who made the roll last year, would not attend the court as assessor, this year? Would the by-law adopting the assessment of the previous year, have to name the assessor, who made the roll, to act under section 44 of this Act?

5. Township in free grant district, with double fronts road allowances between concessions 2 and 3, 4 and 5, 6 and 7, etc. In the year 1886 or 1887, before the township was organized, the government made a grant to open up a road through the township, to induce settlement. One of the residents was appointed as foreman, by the government, to cut the road, as he says, where it would be of most benefit to the settlers. Part of the way he cut it through on the allowance between concession 4 and 5, then along an allowance on sideroad across one concession to the blind-line between concession 3 and 4, where no allowance is made, and cut the road on what he thought would be the line between these concessions, claiming he had power to take sufficient land of these lots on these concessions, and he run a line because he was a government employee, and was instructed to do so. Several grants have been made by the government to make and repair this road, as it was called the government road, but this employee claimed that it was not a colonization road. This man is not a licensed surveyor. Township was organized, and in 1898 the first statute labor was levied and part applied to this road. Statute labor has been done every year since on this road. A bridge was built across a stream on this road by a grant from government. I should say, in continuing this road through the township he cut it on this line run by him for two and a half miles to a sideroad allowance and along this across concession 4 to the allowance between 4 and 5, along this to the second lot and down through the centre of this lot on the 5th concession to the blind-line between concessions 5 and 6, no allowance, and he run this and cut the road out to the boundary of the township. Some of the settlers objected to the road being made in this place and wanted the road put on the regular allowance between concessions 4 and 5. Now all these concession road allowances are opened and there is not statute labor enough to go over all these roads. There are only about four people living along this road that object to its being closed although it would not affect them in travelling in regards to distance. This party who cut out the road, was a councillor for a number of years and any person who would object to any expenditure on this road or call it in question, was always assured by him that the road was properly constituted,

although no by-law has been passed by the council to expropriate the lands or to assume control of the road. The residents owning the land on the 3rd and 4th concessions are getting the lines run by a provincial land surveyor and in some places the road is away on to the 3rd concession, leaving a strip of land alongside of the road and the blind line. The question we would ask is, does the fact, of allowing statute labor to be performed and the expending of the government grant on this road, constitute it a public highway, under the control of the municipal council? The council has never, at any time, been consulted as to the spending of these government grants. (No special reserve for this road by the crown in the patents granted and no record of this road in the Crown Lands Department, Toronto.)

6. If so, must the council compensate the owners of the land for the land taken?

7. Would a deed have to be executed by each landowner concerned for the land taken? or would a by-law, mentioning the amount of land taken off each lot and registered, be sufficient?

8. In either event, would it not have to be surveyed by a duly qualified land surveyor?

9. In a case arising under section 642, Municipal Act, 1897, and the person in possession has cleared and improved the road allowance. If the council passes a by-law to open the road on that allowance, must the council allow him compensation or pay him for the improvements he has made on the road allowance?

1. We agree with the returning officer.

2. The court of revision can correct errors or supply omissions in the assessment roll, provided an appeal or complaint against the assessment has been filed with the clerk in the manner and within the time mentioned in section 43 of the Act.

3. No provision is made in the Act for the entry of an appeal by any person other than a person assessed, and since this Act makes special provisions for the conduct of courts of revision in districts, we are of opinion that subsection 3 of section 71 of the Assessment Act is not applicable.

4. Neither assessor is bound to attend the court of revision, nor does the Act make any provision for compelling their attendance. The naming of the assessor in the by-law adopting the assessment of the previous year would not make his attendance compulsory.

5, 6, 7 and 8. This road appears to have been constructed by the government through an agent acting under its directions, and to have been maintained with government monies. If this be the case, and the government has not abandoned the road by proclamation pursuant to sec. 627 of the Municipal Act, the council has no authority to interfere with it in any way. If, on the other hand, the road was constructed by the party who made it, on his own responsibility, it is not a public highway.

9. No. A person in possession of a road allowance shall be deemed to be legally possessed thereof, as against any private person (not against the municipality) until a by-law for opening such allowance for road has been passed by the council having jurisdiction over it. The timber on the road allowance belonged to the municipality, and the person in possession had no right to cut, remove or dispose of it in any way until given permission by the council to do so.