

# THE MUNICIPAL WORLD

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## Calendar for March and April, 1903.

- 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 Schools Act, s. 42.  
Inspector's Annual Reports to the Department due.—Public Schools 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 44, section 11.
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 (1902-1903).
- 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 to 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, (6) R. S. O., 1897, chapter 223.  
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, section 157.
8. Last day for Collector to return to the Treasurer the names of all persons in arrears for water rates in municipalities.—Municipal Water Works Act, section 22.
9. 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.
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# The Municipal World

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

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ST. THOMAS, MARCH 2, 1903.

Mr. J. C. Crow, who has been clerk of the Township of Pelham for the past sixteen years, has been appointed to the office of registrar of the County of Welland. Mr. D. J. Stone, the treasurer, has been appointed clerk of the township to succeed him.

\* \* \*

Judge McGibbon, of Brampton, recently handed out his decision in the case of Horan vs. Tp. of Albion. He allows the sum of \$6 and costs, \$26. This action was brought by Horan to recover damages for loss of crop, etc., his field having been used by travellers when the highway was blocked with snow.

\* \* \*

Mr. G. B. Lee, who for twenty-three years has been clerk of the Township of McKellar, resigned his office at a meeting of council held last month, and Mr. John Fletcher was appointed in his place. The council by a standing vote placed on record its appreciation of Mr. Lee's long and faithful services to the municipality.

\* \* \*

It will be seen from our answer to clause 2 of question No. 151 in this issue that some legislation is needed providing for the custody of the bond of the treasurer of a municipality, when the offices of clerk and treasurer are held by the same person. The statutes at present, constitute the clerk of a municipal corporation the legal custodian of its records and documents, including the treasurer's bond. But it is manifestly unwise, and subversive of the safe-guarding of the interests of the municipality, if a clerk who is also treasurer, continues to be allowed the possession and custody of his own bond.

## Assessment of Companies—"Scrap-Iron" Method of Valuation Abolished.

In almost every municipality in the Province, there is located some property belonging to some company for supplying water, light, heat and power to municipalities and the inhabitants thereof, telegraph and telephone companies, and companies operating street railways and electric railways. The greater part of this property is assessable, and it is therefore the duty of assessors to assess it in accordance with the law in force for the time being.

Previous to the enactment of section 1 of chapter 31 of the Ontario Statutes, 1902, the courts had repeatedly held that the poles, wires, etc., of these companies should be valued upon a "scrap-iron" basis, that is, as so much dead material and not as part of the business apparatus of a going concern. This section repeals section 18 of the Assessment Act, and sections 18a and 18b of the said Act as enacted by section 2 of chapter 29 of the Ontario statutes, 1901 and substitutes therefor the following section:

"Except as hereinafter provided for, land shall be assessed in the municipality in which the same lies and in case of cities and towns in the ward in which the property lies, 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.

(2) The land of companies for supplying water, heat, light and power to municipalities and the inhabitants thereof, telephone companies, telegraph companies, and companies operating street railways and electric railways shall in municipalities divided into wards be assessed in the ward where the head office of such company is situated in such municipality, but if the head office of such company is not in such municipality, then the assessment may be in any ward thereof.

(3) The rails, ties, poles, wires, gas and other pipes, mains, conduits, substructures and superstructures upon the streets, roads, highways, lanes and other public places, of the municipality belonging to such companies shall be "land" within the meaning of The Assessment Act, and shall when and so long as in actual use be assessed at their actual cash value as the same would be appraised upon a sale to another company possessing similar powers, rights and franchises in and from the municipality and subject to similar conditions and burdens, regard being had to all circumstances adversely affecting their value, including the non-user of any of such property, provided that the plant, poles and wires which are used exclusively in running trains or for

any other purposes of a steam railway, and not for commercial purposes, shall be as heretofore exempt from municipal assessment or taxation.

(4) Save as aforesaid rolling stock, plant and appliances of companies mentioned in sub-section 2 hereof shall not be "land" within the meaning of The Assessment Act, and shall not be assessable."

Since this Legislation became law, it has been, on several occasions judicially considered and construed. The latest decision, however, having the weight of authority, and which can safely be taken by assessors, as a guide, in placing a value upon this kind of property for purposes of assessment, is that recently delivered by a Board of County Judges composed of the late Judge McDougall, Judges McGibbon of Brampton and McCrimmon of Whitby, in the appeals of the Toronto Railway Company, Consumers' Gas Company, Bell Telephone Company and other companies against their respective assessments in the City of Toronto. After reviewing the history of and commenting upon this Legislation, the judgment concludes as follows:

"Therefore, looking to the whole history of the Legislation, it is reasonably plain that with the exception as to rolling stock it was intended to make the outside plant of the companies named, liable to assessment at its cash value, and to remove the alleged injustice of the scrap-iron method of valuation.

The conclusion of the matter then is, that the words "plant and appliances" used in sub-section 4 must be confined to any plant and appliances located upon the streets, roads and highways and other public places in the municipality, such words taking this limited meaning because they must be referred to the words "rolling stock," which immediately precede them in the same sub section, and because it is manifestly the intention of the Legislature in enacting a new section 18 of the Assessment Act to deal only with the method of assessing so much of the property of the companies named in sub-section 2 as was situated upon the public streets of the municipality."

This is the unanimous finding of the Board of Judges upon the construction of the statute of 1902.

Mr. Justice Meredith recently confirmed the election of a councillor of the united counties of Stormont, Dundas and Glengarry, who was unseated by Judge O'Reilly, of the county court, for lack of the proper assessment qualification. Judge Meredith thought that his being assessed jointly with his mother and sister for \$3,200 was a good qualification, overruling Judge O'Reilly's contrary decision.

\* \* \*

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



## Rotation in Office.

The Municipal World favors an extension of the term of councilmen. In the Province of Quebec the councils of parishes, townships, towns and villages are composed of seven members, who remain in office for three years, subject to the condition that two councillors must be elected or appointed two years consecutively and three every three years. In Nova Scotia the mayor is elected annually and a councillor every two years. In England the term of office for a councillor is three years, members retiring in rotation every year.

There is wisdom in any arrangement which provides that the council shall contain some men who are experienced in municipal affairs. When the council of Kingston was composed of aldermen and councilmen there was a change of only some of them annually. The election of one-third of the members at a time, guarded against the embarrassment which might follow the larger degree of change. The present system of submitting all the members of the council to re-election or defeat is not so good for the city. A business is not to be mastered in a year, and especially a business so complicated and so complex as that of the city.

It is true that the man who does his duty without fear, favor and affection, will probably find that public appreciation which will guarantee him a place in the council while he deserves it. But the mutability of municipal institutions is not in their favor, and the more the subject is considered the more fixed will become the conclusion that retirement from the council in rotation is the better plan in the public interest.—*The Kingston Whig*

## Guelph Railway By-Law.

The by-law for granting \$25,000 for the construction of a street railway from Guelph to Puslinch Lake and Hespeler was voted on last month. There was a small vote of the property owners. The by-law was carried by a vote of 696 for and 195 against.

The township of East Luther municipal fathers wants a change in municipal assessments. At the last meeting of the council it was carried unanimously that the municipal council of the township of East Luther memorialize the Provincial Legislature of Ontario to grant such legislation as will enable municipal councils to have their municipalities assessed for from one to three years, as the case may require, and that such assessment be done in the months of May and June.

\* \* \*

The House of Industry erected by the county council at Whitby, in the county of Ontario, was formally opened last month. The building is of red brick, completely equipped, and has accommodation for seventy-five inmates.

## Private Legislation for the Coming Session.

A considerable amount of private legislation is promised for the approaching session of the Provincial Legislature, which convenes on the 10th inst.

The Toronto and Mimico Electric Railway wants to change its name and extend its line to Hamilton. Work on an extension to Oakville has already been commuted.

The Toronto Suburban Railway will apply to extend its line from some point on its Davenport road branch, easterly to some point in East Toronto or Little York.

The North Lanark Railway Company wants to extend its line eastward to Ottawa, and westward to some point on the Madawaska River.

A company wants incorporation and power to build an electric railway from Stratford through Sebringville to Mitchell; from Stratford to St. Mary's, also to Embro on the C. P. R.

The city of St. Thomas asks for power to appoint a board of commissioners to manage the St. Thomas Street Railway, also authority to issue debentures to improve the system, and for its extension to Port Stanley.

The city of Ottawa requests authority to build, equip and operate a street railway through the city and the adjoining municipalities, and to acquire by purchase or expropriation existing lines, also permission to spend \$24,850 to purchase a site and furnish a free library.

Deseronto wants its debt, \$96,000, consolidated. This sum includes \$34,103 for a new public school building and the remodelling of the old building.

The county of Lanark asks confirmation of a by-law authorizing the issue of \$65,000 debentures for improvement of highways and purchase of toll roads.

The Huron, Bruce and Grey Electric Railway Company asks to have its original charter amended, so as to change the name to Ontario West Shore Electric Railway Company, and its route to be defined as follows: Dungannon to Lucknow, to Walkerton, also to Wingham to connect with the C. P. R., also to London, and from Parkhill to Sarnia.

The town of Lindsay will ask the Legislature that it be allowed to accept "the sum of \$16,000 from Andrew Carnegie, Esq., for the purpose of building a public library, also authorizing the dedication of market or Queen's square for a public library building.

Strathroy wants permission to purchase the waterworks and electric light plants, and to issue therefor \$50,000 in debentures.

Guelph asks the right to purchase the Guelph Light and Power Company for \$155,000.

Mr. F. H. Clergue, through his solicitor, asks power to build a railway from

Midland to Penetanguishene, and thence to Perkinsfield, on the Grand Trunk Railway. The purpose evidently is to make connection between Midland and Meaford, to which point his Manitoulin and North Shore Railway is projected, thereby affording a service between the smelter at Midland and the blast furnaces at Sault Ste. Marie.

## Civic Improvement.

The Canadian League of Civic Improvement was organized on Feb. 13th at a meeting held in the Board of Trade building, Toronto. The object of this association is the formation, in all villages, towns and cities of the province of municipal improvement associations, similar to many organizations of the kind which have done such excellent work in England and the United States, and following the line adopted by a number of the horticultural and fruit growers' societies in Ontario.

The principle movers in this matter are Messrs J. D. Hayden and Major Snelgrove of Coburg and among the other speakers were Messrs G. R. Pattullo, Woodstock; Mayor Urquhart, Toronto; A. Alexander, Hamilton; R. T. Steele, Hamilton; A. W. Campbell, Toronto; and E. G. Rantzahl, Dayton, Ohio. The efforts of the association and local societies formed, will be directed toward street improvement, tree planting, encouraging the beautifying of private lawns and residences, the sanitary requirements of municipalities, overcoming the billboard nuisance, and all other matters in connection with a well conducted town or village. These organizations have rendered excellent service in forming public opinion in regard to municipal matters, and are able to greatly assist progressive councils in carrying out needed reforms.

We have received a copy of the Renfrew Mercury containing an historical review of the county council of Renfrew by County Clerk S. E. Mitchell, who has entered upon his 35th year of office. The development of the county which was formerly in union with the County of Lanark, has been very great. The equalized value being over three times as great in 1902 as in 1869. During the same period the population has increased eighty-eight per cent. The efficiency of county councils under the new regime is referred to; the work is done in the same time as formerly, a saving of \$592 for members, wages, etc. or forty-three per cent effected annually.

In connection with his official duties, Mr. Mitchell has prepared a complete index of the proceedings of the council since 1869, and has included much historical matter in reference thereto. This is a unique and original idea which might well be followed by other clerks. The history of a county is closely associated with its municipal development.



## Engineering Department

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

### County Roads in Brant.

A conference of municipal councillors was held in Brantford on Feb. 18th, at which all township and town councils were represented, for the purpose of considering the action to be taken with regard to the Provincial Highway Improvement Act, and the portion of the grant due to the county of Brant.

The convention was most successful, and at its conclusion a resolution was adopted suggesting that the various municipal bodies of the county hold a conference in the near future for the purpose of further considering whether some method may not be adopted for improving the various roads throughout the county. There are a number of toll roads to be dealt with, which, it was suggested, would form a nucleus for a county road system, similar to that adopted by Wentworth.

### Municipal Statistics.

A report of the Bureau of Industries has just been issued, giving municipal statistics for the years 1899, 1900 and 1901.

The population of the townships in 1901 was 1,092,181; of the towns, 330,412; of the villages, 126,836; of the cities, 479,460; a total for the Province of 2,028,889. The assessed values in 1901 were: Townships, \$458,811,926; towns, \$99,921,377; villages, \$29,849,933; cities, \$247,114,371; total for the Province, \$835,697,607. The taxes imposed for all purposes in 1901 were: Townships, \$4862,630; towns, \$2,330,691; villages, \$589,798; cities, \$5,558,236; total for the Province, \$13,341,355.

The debenture debt outstanding in 1900 was: Townships, \$2,554,167; towns, \$11,690,536; villages, \$1,187,919; cities, \$40,022,189; counties \$1,717,991; total for the Province, \$57,172,802. The assessed areas in 1901 were: Townships, 23,636,178 acres; towns, 151,053 acres; villages, 97,424 acres; cities, 43,552 acres; total for the Province, 23,928,207 acres. As opposed to a Provincial population of 2,028,889, given by municipal officers, a table of population under the Dominion census included in this report shows a population of 2,182,947.

The usual statistics of each municipality are given in detail showing population, area, assessed values and taxation; receipts disbursements, assets and liabilities, with comparative aggregates for ten years. In addition to the table of population by Dominion censuses and municipal assessment, compared for three years 1881, 1891, 1901, is a statement showing, by municipalities, the exemptions by by-law from taxation. These reports, compiled under

the direction of Mr. C. C. James, Deputy Minister of Agriculture, are of service in many ways, and lead to important results, one of the chief being that they are at the basis of the system of issuing municipal debentures, enabling prospective purchasers of debentures to decide as to the security of their investment, thereby facilitating the sale of municipal debentures and tending to increase their value.

### Ottawa Road Convention.

An excellent programme has been prepared for the convention of the Eastern Ontario Good Roads Association to be held in Ottawa on the 12th and 13th of March. Thursday morning will be devoted to a discussion of the methods townships should adopt in maintaining their roads. Thursday afternoon, county roads will be considered. On Thursday evening it is expected that Sir Wilfrid Laurier, Mr. R. L. Borden, M. P., and other leading members of Parliament will attend, the general public are invited, and the programme will be of a popular nature. Friday forenoon will be devoted to a consideration of the cost of various types of bridges, and the afternoon to answering questions in the question drawer and a general discussion of matters raised during the convention.

Among those who will address the convention are, Hon. F. R. Latchford, Commissioner of Public Works; Professor J. A. Holmes, of North Carolina; Warden W. H. Kerr of Huron county; H. B. Cowan, editor of the *Ottawa Valley Journal*; A. W. Campbell, Commissioner of Highways; County Councillor, S. B. Morris of Elgin County, and others. Heretofore the conventions of this association have been extremely interesting and thoroughly practical, and the present prospects would indicate that the coming gathering will, in this respect, surpass those previously held.

All railway companies have granted reduced rates, every county and township council should be represented, and all interested in road improvement should not fail to attend.

Mr. Alex. Saunders, solicitor, who for some years past has been clerk of the village of Watford, has been appointed Deputy Clerk of the Crown, Clerk of the County Court and Registrar of the Surrogate Court, in and for the County of Lambton.

Mr. F. A. Hutt, clerk of Stamford township, died suddenly of heart failure on the 17th ult. He had been clerk for 21 years, and during that time he had been absent from only one meeting of the council

### Electric Power From Niagara.

An important convention was held at Berlin, Ontario, on the 17th of last month for the purpose of considering the best means of procuring cheap electric power from Niagara. The municipal councils represented were those of Toronto, Stratford, St. Thomas, Hamilton, Guelph, Ingersoll, London, St. Catharines, Galt, Dundas, Waterloo, Brantford, Berlin, Bridgeburg, Woodstock and St. Mary's; also representatives from several Boards of Trade, and the Canadian Manufacturers' Association. The convention was the outcome of a previous conference held in Berlin last July, at which a committee was appointed to prepare a report on the subject. The report of this committee stated that the prospects for proposed electrical transmission within a short time were very encouraging; that electric power would be obtainable at the Falls in large quantities for about \$7 or \$8 for continuous h. p. at the Falls; or from \$14 to \$15 delivered to the various municipalities. The report of this committee suggested that municipalities should co-operate as to the means of transmission only, procuring power from existing companies, two of which will within two years have ample power developed. The result of the deliberations was that a committee was appointed to wait on the Government to see if the Province will undertake the transmission of power. If the reply is in the negative they will prepare a plan for municipal co-operation, to be submitted to the Government, and should that fail will try to make the best terms possible with private corporations.

The committee appointed was as follows: Geo. McLogan, of Stratford; Ald. F. S. Spence, of Toronto; Mayor C. F. Maxwell, of St. Thomas; Mayor J. H. Hamilton, of Guelph, ex-Mayor W. Mills, of Ingersoll; Mayor Burgoyne, of St. Catharines; Mayor Beck, of London; Mayor Cant, of Galt; Henry Bertram, of Dundas; Wm. Snyder, of Waterloo; Mayor M. K. Halloran, of Brantford.

The by-law voted on in Berlin for the purchase of the local electric light and gas plant, at a cost of \$80,000, was carried by a large majority.

\* \* \*

The water commissioners of Brantford have decided to purchase their supply of soft coal direct from the mines hereafter. They find that they can effect a saving thereby of \$1.25 a ton.

\* \* \*

Mr. Geo. B. Anderson, of Medina, has been appointed clerk of the Township of East Nissouri, in the place of Mr. W. E. Andison, who recently resigned that office.

\* \* \*

Mr. W. S. Fuller has been appointed clerk of the village of Watford, to succeed Mr. Alex. Saunders, resigned.



## 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.

### Addresses of Guarantee Companies.

122.—R. J. B.—Will you kindly give me the addresses of some Guarantee Companies that will give bonds to Municipal Treasurers?

The London Guarantee & Accident Co.—D. W. Alexander, Toronto, General Manager for Canada.

Employers' Liability Co.—F. Stanliffe, Manager, 1722 Notre Dame St., Montreal.

W. J. Woodland—23 Toronto St., Toronto, Ont.

Guarantee Co. of North America—Y. M. C. A. Building, Dominion Square, Toronto.

American Surety Co.—56½ King St. E., Toronto.

### Maintenance of Bridge Between Township and Indian Reserve—Furnishing of List of Patented Lands by Crown Lands Department.

123.—J. H. M.—1. At the west boundary of our municipality is a river. The bridge on said river is in a dangerous condition. On the west side of said river is Indian land. Now what we want to know is if our municipality is liable for any damage which may happen on the bridge, or is the Dominion or Provincial Government liable, the adjoining lands being Indian territory? The Provincial Government has a Road Inspector at S——, but he doesn't seem to pay any attention to it.

2. How can we compel the Indian Land Agents, also Crown Land Agents, to make yearly reports to our clerk of lands sold in our municipality so that we can have same put on assessment roll? We have written to them time and again, but we cannot get them to report, consequently there are sales made and lands owned for maybe a couple of years before we know it.

1. We must have further information before we can give a definite answer to this question. We should know whether this bridge is one vested in His Majesty within the meaning of Section 627, of the Municipal Act, by whom it was originally constructed, and by whom it has been since maintained. We should also know how the municipality came to have any interest in or control over this bridge. We may say, however, that we do not know any statute which imposes any liability upon a municipality to maintain or assist in maintaining a bridge except when the bridge is either within the municipality or on the boundary line between itself and some other municipality in which latter case the duty would be a joint one.

2. We do not see how, under the authority of the present law, you can compel the Commissioner of Crown Lands to perform this duty. Sec. 150 of the Assessment Act, and Sec. 28 of Chap. 28 R. S. O., 1897, require the Commissioner of

Crown Lands in the month of February in each year to transmit to the Treasurer of every COUNTY a list of patented lands. Since your municipality is located in a district having no county organization these sections do not apply to your case, and nowhere in the Statutes is the Commissioner required to send a statement of this kind to the CLERKS of local municipalities.

### Chairman of School Meeting has Casting Vote Only.

124.—J. C.—At an election of a public school trustee a poll was demanded and one of the contestants elected by a majority of one. It turned out that one of the majority was found to have no right to vote and the Inspector declared the election void. Had he a right to do so? Should he not have permitted the chairman to exercise his franchise thus giving a majority to one of the two candidates? Or should a chairman have the right to vote where a poll has been demanded?

We think the ruling of the Inspector as to the right of the chairman of the school meeting to vote in this instance quite right. Sub-section 4 of section 14 of the Public Schools Act, 1901, provides that in case of an equality of votes (that is at an election of a school trustee, or on any school question coming before the ratepayers at their annual meeting,) the chairman shall give the casting vote, but no OTHER VOTE. This applies where a poll has been demanded for the election of a trustee or trustees as well as to an election held in the ordinary way. After the meeting was over the chairman's rights were exhausted and any complaints in regard to the validity of the election would have to be made to the Inspector.

### Duties of Sanitary Inspector as to Abatement of Nuisance—Payment of His Expenses.

125.—T.—Some rubbish was deposited or allowed to accumulate on the side of the road in an unincorporated village in a township. No complaint was made to the Board of Health. The Sanitary Inspector instituted proceedings against the party supposed to have deposited said rubbish, also engaged a man to remove the rubbish from the ditch and caused it to be piled up on the centre of the highway opposite. All was done without consulting the Board of Health. He now asks that his expenses re the same be defrayed.

1. Can a Sanitary Inspector of his own motion institute proceedings against persons he supposes violate the Health Act?

2. Should he not receive his instructions from the Board of Health?

3. If said rubbish was a menace to the public health (which is not admitted) was it proper for the Sanitary Inspector to have the same conveyed from the ditch and piled upon the centre of the highway opposite, where it would be stirred up by each passing vehicle?

4. Should accounts for such work be paid for? If so, by whom, Board of Health or Township Council?

Some suppose that a little ill-feeling between the Sanitary Inspector and the person was the cause of action, which causes the Board of Health or Council reluctance in establishing a precedent by paying cost of work, etc.

1. Yes, and it is his duty to do so under the authority of Sec. 5 of the By-law set forth in schedule B appended to the Public Health Act. This by-law is in force in every municipality.—(See Sec. 122 of the Act.)—except in so far as it may have been altered by a by-law of the municipality. Of course we are answering this question on the assumption that no by-law has been passed by the council of this municipality amending the by-law in schedule B in respect of the question under review. The Sanitary Inspector should, however, be careful to strictly observe and carry out the provisions of section 5.

2. Not necessarily. Section 5 of the by-law above mentioned makes it the personal duty of a Sanitary Inspector to attend to the prompt and effectual abatement of nuisances.

3. This is a question of fact, and we cannot say whether this rubbish would be a greater nuisance on the road than in the ditch, without a more accurate knowledge of the nature of the deposit, local conditions, and other surrounding circumstances.

### Township By-Law to Raise Money Under Act for Improvement of Highway Must Receive Assent of Electors.

126.—R. E. C.—Under Sec. 9 of the Act for Improvement of Public Highways is the council of a township required to have the assent of the ratepayers to raise by debentures the sum necessary to meet the expenditure incurred through taking advantage of the Act?

Yes. This section provides that the municipal council of any township, &c., may raise by debentures, &c., AS PROVIDED BY THE MUNICIPAL ACT such sums, &c. The manner provided by the Municipal Act will be found in section 338 and following sections of the Act.

### Duties of Clerk in Regard to Disqualified Councillors.

127.—J. S. B.—Two of our newly elected councillors are also school trustees or were so up to Dec. 31st last. These men were not able to attend first meeting of council, and have not yet made declarations of qualification and of office. Have I, as Clerk, or has any person any right to object to them making declarations? What words, if any, should be added to the usual form of declarations?

It is no part of your duty as clerk of the municipality to raise any objection to the making of the declarations of office and qualification by these two councillors. Since they were disqualified at the time of their election, under the provisions of Sec. 5 of Chap. 29 of the Ontario Statutes 1902, any candidate at the election, or any elector who gave or tendered his vote thereat, or in case of an election by acclamation, any elector entitled to vote at a municipal election for the municipal-



ity, may be the relator, and may take proceedings pursuant to Sec. 219 and following sections of the Municipal Act to have their respective elections voided. These councillors can make the declarations of office and qualification prescribed by Secs. 312 and 311 respectively of the Municipal Act without any addition to the forms prescribed. The only particulars as to qualification required to be set out in the latter declaration, is the declarant's PROPERTY qualification.

**Raising of General School Rate for School Board Disqualifies its Members as Councillors—Duties of Township Treasurer as to Vouchers—Appointment of Auditors—Change of Time for Holding Nominations.**

**128.**—J. M.—In your answer to question No. 13 in January WORLD for 1903, there is one point that is not quite clear to me re disqualification of a rural school trustee for being a member of a municipal council. There are several sections in our municipality that raise no trustee rate. The following amounts raised by the municipal council cover all the expenses of the schools for the year, viz.:

1st. The \$150 that the township raises for every school that is kept open one year, the municipal poor school grant and the legislative grants from the Government. Now is a trustee belonging to a section of that kind debarred from being a member of a municipal council?

2nd. How long should a township treasurer keep the vouchers after they have been passed by the auditors and how should he dispose of them?

3rd. Can municipal councils at their last sitting in December appoint their auditors to audit that year's business?

4th. Also at same sitting can they change the hour for holding nomination meeting from 12 to 1 to 1 and 2?

1. Yes. Under Sec. 5 of Chap. 29 of Ontario Statutes, 1902, the rate levied under the authority of Sec. 70 of the Public Schools Act, 1901, is just as much a rate levied for a School Board as that levied under Sec. 71.

2. There is no time limited for which municipal vouchers should be kept by the Treasurer. They are municipal records, and after they have been audited should be filed away and kept by the Treasurer for all time to come. It is hard to say when any of them may be required as evidence of some transaction in which the municipality is concerned.

3. No. Sub-Sec. 1 of Sec. 301 of the Municipal Act empowers the council of any municipality to pass by-law for appointing auditors in the month of November or December in each year, to perform the duties mentioned in Sec. 302 of the Act. Sub-Sec. 2 of Sec. 301 provides that notwithstanding this section, or any such by-law, the provisions of Sec. 299 of the Act, as to the appointment of auditors, shall apply to the audit of the accounts of the year in which such by law takes effect.

4. Yes. Sec. 122 of the Municipal Act as enacted by Sub-Sec. 6 of Sec. 9 of Chap. 26 of the Ontario Statutes, 1899, provides that notwithstanding anything contained in section 119 of this Act, the council of any township may by by-law provide that the nomination for Reeve

and Councillors may be held at one o'clock in the afternoon.

**Proposer and Seconder of Candidate Should Both be Present When Candidate Nominated.**

**129.**—W. J. N.—Proposed by T. F., seconded by C. B. R., That S. M. be a councillor of the village of C—— for the year 1903, etc., (there is no dispute as to the form and date).

The proposition was written and signed by proposer and seconder at the Dominion House before the meeting for nominations was opened, but it was carried by the seconder and handed to the Clerk between the hour of 12 a. m. and 1 p. m., the hour appointed by the published notice of nomination which is herewith enclosed, the proposer being at no time present in the Town Hall, the place of nomination.

Was this nomination a legal one?

No. The Proposer and Seconder should both be present at the nomination meeting, when the payer nominating their candidate is filed with the Returning Officer. (See our answer to question No. 57 in our issue for February, 1903.)

**Borrowing Powers of Municipalities—Control of Pathmasters.**

**130.**—G. W. T.—1. Over and above the levy made for municipal purposes a municipality wants to borrow money, but not by debenture. What is the limit to the amount that a municipality can borrow under these circumstances?

2. Are pathmasters under the supervision and control of the commissioners appointed by council?

Give statute bearing on the case in each instance.

1. The latter part of Sub-Sec. 1 of Sec. 402 of the Municipal provides that "no council shall assess and levy in any one year more than an aggregate rate of two cents in the dollar on the actual value, exclusive of school rates and local improvement rates." If the amount to be borrowed is not for the ordinary expenditure, and is not to be repaid within the municipal year in which it is raised, the by-law providing for the borrowing of the money must be submitted to the vote of the duly qualified electors for their assent before its final passing.

2. Pathmasters or overseers of highways appointed under the authority of Sec. 537 of the Municipal Act are under the control and supervision of the council appointing them. If commissioners, appointed under a by-law passed pursuant to Sec. 103 of the Assessment Act providing for the commutation of statute labor, are referred to, the control and supervision of pathmasters depends on the provisions made, as to this particular, in the by-law.

**Collection of Arrears of Taxes From Locatee of Crown Lands.**

**131.**—E. E.—Is present locatee liable for arrears of taxes on lot previously located? The present location was granted April 12th, 1901, no mention then being made of any arrears. The Township Collector this year places those arrears on locatee's tax paper.

Sub-Sec. 1 of Sec. 23 of the Assessment Act provides that "land which is subject to any claim of the Crown for unpaid purchase money, shall be liable to be assessed

to the extent of the interest of the owner for the time being of the equity of redemption therein, or of the PURCHASER as the case may be." And Sub-Sec. 3 provides "that the taxes to the extent of six years, if not satisfied shall be a charge on the land and payment thereof shall be enforced by sale as in other cases." Sec. 188 of the Act provides that "if the Treasurer sells any interest in land of which the fee is in the Crown, he shall only sell the interest therein of the lessee, or locatee, etc." Therefore when the taxes upon this land have been due for and in the third year, or for more than three years preceding the current year, the interest of the original locatee (now owned by the present locatee) will be liable to be sold to realize the amount of these arrears, and if returned by the Sheriff (your municipality being in the District of Muskoka) to the clerk of the municipality, (see Secs. 152, 153, 154 and 155 of the Assessment Act), the amount should be placed on the Collector's Roll against this land. The Collector has nothing to do with placing the amount on the Collector's Roll. (See Sec. 56 and following sections of Chap. 225, R. S. O., 1897) The purchaser should have enquired as to whether there were any arrears of taxes against this land when he purchased it from the municipal officials, who were cognizant of the fact.

**Compensation for Sheep Killed—Care of Indigents Having Property.**

**132.**—SUBSCRIBER.—1. We have had some sheep killed in our township and the owner came to the council for his pay, bringing witness who swore he saw the dogs at I. J. P.'s sheep and that he believed the dogs belonged to D. H. C. and X. D. near neighbors and that he (the witness) went to these men and they killed the dogs. Who is responsible for the pay?

It is claimed by some that the township is responsible even if the owner of the dogs is known and the decision of the Courts has held this but I do not understand the statutes in that way.

Please explain in full and cite cases where the township has been held liable (if any) and also the owner of the dogs.

2. Complaints have been made to one of our commissioners who is also a councillor and also one of the members of the Board of Health as to the destitute circumstances of an old lady (over 90) who resides with her son on a 50-acre farm. She has writing to the effect that her son is to provide her living (specified in the writings) then he is to have the place which he has a deed of now subject to his mother's living. He is not able to do anything and has not nor does not provide anything. The farm is mortgaged but they still live on the farm and the neighbors help keep them. Now what I would like to know is this,—what proceedings should be taken to secure this old lady her living and who is the proper party, the council or the Board of Health? The councillor member of Board of Health and the old lady all live in the same division. The farm was mortgaged subject to the old lady's living. The son is about 70 years old.

1. Section 18 of chapter 271, R. S. O., 1897, provides that the council of a municipality shall award compensation to the owner of sheep or lambs killed or injured by dogs, if the council is satisfied that the aggrieved party has made diligent search and inquiry to ascertain the owner or keeper of such dog and that such owner



or keeper cannot be found. In this case there is strong evidence that the owners or keepers of the dogs that did the damage are known, and the council should not pay the owner of the sheep killed until he has proceeded against the owner of the dogs, and on the conviction of the offenders, he has been unable to levy the amount ordered to be paid, for want of sufficient distress. (See section 17 of the Act.) A township is not responsible for and should not pay a claim of this kind when the owner of the dog doing the damage is known, only under the circumstances mentioned in section 17 of the Act. Nor is there in the published reports any decision of the courts to the effect that a township is so responsible.

2. It is optional with the council as to whether they make any move in this matter or not. If there is a House of Refuge in your county, these people should be removed there, where they would be comfortable and well cared for. Sub-section 2 of section 588 of the Municipal Act empowers township councils to pass by-laws granting out-of-door relief to the resident poor, and clause (a) of sub-section 1 enables them to take a conveyance of or security upon the property of indigents to whom they have made advances by way of charity or relief, but a council is not bound to take advantage of the provisions of this section.

#### Safe Keeping of Moneys of Municipalities.

**133**—CLERK.—Was there any legislation passed at the last session of the local legislature of Ontario compelling treasurers of township municipalities to make a deposit in some chartered Bank, approved of by the council as security for the money they (the treasurers) handle for the township? The article in the MUNICIPAL WORLD on this subject does not say there was.

No, but sub-section 5 of section 291 of the Municipal Act provides that "the Treasurer shall open an account in the name of the municipality in such of the chartered Banks of Canada or at such other place of deposit as may be approved of by the Council, and shall deposit to the credit of the such account all moneys received by him."

#### Qualification of School Trustees in Muskoka—Of Members of Local Board of Health

**134**—W. C.—1. Does the Act making it illegal for school trustees to become councillors apply to the District of Muskoka?

2. If no protest is entered against their election within the time appointed by law can they retain their seats and are their acts legal?

3. Is a member of the township Board of Health eligible for the office of councillor?

1. Members of a School Board for which rates are levied are disqualified as candidates for membership of the council of an organized township in the District of Muskoka as well as elsewhere in Ontario. (See section 5 of chapter 29 of the Ontario statutes, 1902.)

2. Yes.

3. Although the Municipal Act does not in specific terms disqualify a member

of a Local Board of Health as a candidate for membership of the council of the municipality, still, in order to avoid all difficulties and complications, we have hitherto advised, and do now advise, the resignation of a member of a Local Board of Health, intending to be a candidate for councillor before nomination day, as a matter of precaution.

#### Assessment of Telegraph and Telephone Poles and Wires.

**135**—W. L.—1. Are telegraph and telephone poles and wire occupying the public highways liable to be assessed?

2. If so, how would you get at the proper valuation to assess them?

1. and 2. Sub-section 3 of section 18 of the Assessment Act, as enacted by section 1 of chapter 31 of the Ontario statutes, 1902, provides that "the rails, ties, poles, wires, etc., sub-structures and super-structures upon the streets, roads, highways, etc., and other public places of the municipality belonging to such companies (that is the companies mentioned in sub-section 2, which include telegraph and telephone companies) shall be "land" within the meaning of the Assessment Act, and shall when and so long as in actual use be assessed at their actual cash value, as the same would be appraised upon a sale to another company possessing similar powers, rights and franchises, in and from the municipality, and subject to similar conditions and burdens, regard being had to all circumstances adversely affecting their value, etc." In a recent appeal against their respective assessments in the city of Toronto by the Toronto Railway, Bell Telephone and other Companies, to a board of County Judges, composed of Judges McDougall, McGibbon and McCrimmon, this legislation was upheld and explained. In the course of their judgment, these Judges remarked that "looking to the whole history of the legislation, it is reasonably plain that, with the exception as to rolling stock, it was intended to make the outside plant of the companies named liable to assessment at its cash value, and to remove the alleged injustice of the "scrap-iron" method of valuation. This judgment will be found reported on page 183 of THE MUNICIPAL WORLD for 1902, November issue.

#### Council not Bound to Accept Resignation of Disqualified Councillor.

**136**—W. D. M.—I thank you for the prompt reply to my letter of the 24th, re qualification of councillor, who is a public school trustee. Since the questions were asked, however, the said councillor has sent in his resignation as a member of council, to me. Had he not done so the course of the council would have been quite clear from your answer. We would now like to know how to act in the matter. Would the council be justified, knowing the reason for his resignation, to refuse to accept, and thus save the trouble and expense of a new election?

It is optional with the other members of the council as to whether they accept this member's resignation or not. They will be justified in refusing to accept it, if they deem this course the best, under the circumstances. If, however, proceedings

should be taken against him, he can disclaim the seat and in that event the candidate, if any, having the next highest number of votes will be entitled to the seat, but if there was no other candidate a new election will be necessary.

#### Contents of By-law Prohibiting the Running at Large of Cattle.

**137**—M. M.—Our township voted on the question of prohibiting all kinds of stock from running at large on the public highway and it was carried by quite a majority. Now is it necessary for us as a council in passing a by-law to mention in that by-law what the penalties shall be, or are they fixed by statute, also the manner in which any person has to proceed in order to make a conviction?

The council had no authority to submit a by-law of this kind to the vote of the electors, and it was an improper thing to do. Section 546 of the Municipal Act gives councils of townships power to pass by-laws of this kind of their own motion, if they see fit to do so. In framing the by-law, your council should provide for inflicting reasonable fines and penalties, not exceeding \$50 and costs, for breach of the by-law as provided in sub-section 1 of section 702 of the Act, and for enforcing payment of the fine inflicted as provided in sub-sections 2 and 3 of section 702. The by-law should not make any provision as to the procedure when a prosecution is instituted for its breach, as the statutes already do that. (See section 704 and following sections of the Act.)

#### Separation of Township From County.

**138**—W. H.—Our municipality is composed of three townships H. C. and M. We have belonged to the county of R up to the time of the last redistribution of constituencies for the House of Commons took place, then we were separated from R and attached to the district of N and at the last redistribution for the Ontario House, we were placed in East N, so that we vote in N for both houses of Parliament. Now it is evidently the intention of the county council of R to still hold us in their county for municipal purposes which would be taxation without representation. Can they do so and what course, in your opinion, should we take to effect the change?

Should the county council refuse to let us go quietly would we be justified in ignoring them if they ask for a copy of our assessment roll or ask us to pay county rates?

Until your municipality succeeds in prevailing upon the Provincial Parliament to pass legislation removing it from the County of R. and adding it to the District of N. for MUNICIPAL purposes, its council and their officials must conform to and carry out, and obey the requirements of the statutes, in the same manner and to the same extent as any other municipality in the County of R. It would, in the meantime, be in no way justified in neglecting or refusing to furnish the copy of its assessment roll as and when it is required by law, or to levy, collect, and pay over to the county its proportionate share of the county rate—the municipality is not being taxed without representation—as it forms part of constituencies which elect members to both the Federal and Provincial Parliaments, and is represented



in the county council by the county councillors for the county council division of which it forms a part.

Income of a Private Banker is Assessable.

**139**—G. M. E.—Is the income of a private banker assessable and need the assessor so assess said private banker if his attention is drawn to the matter?

The income of a private banker is assessable in the same manner and to the same extent as that of any other person, subject to the exemption mentioned in sub-section 26 of section 7 of the Assessment Act, and it is the duty of the assessor to assess it.

Appointment of Auditor—Improper Conduct of Deputy-Returning Officer.

**140**—RATEPAYER.—1. A by-law was passed by a township council appointing A and B auditors for 1902. In re-appointing them for 1903 is it necessary to do so by by-law or do they continue in office until removed by the council?

2. J. E. is a voter in polling division No. 4. At the municipal election he went to the Deputy Returning Officer of division No. 5 who gave him a ballot and allowed him to vote there, he not having a certificate from the Clerk allowing him to do so. In what position does this place the D. R. O. and how would his action affect the election?

1. These auditors should be re-appointed by by-law of the council for this year. Sub-section 1 of section 299 of the Municipal Act provides that "subject to the provisions of the next two sections as to cities, EVERY council shall at the FIRST MEETING thereof in EVERY year, after being duly organized, appoint two auditors, etc."

2. The procedure to be followed by a Deputy-Returning Officer, when a person claiming to be entitled to vote presents himself for the purpose of voting, will be found in section 165 and following sections of the Municipal Act. The deputy in this case ought not to have supplied a ballot to a person whose name did not appear on the voters list, but it is not clear whether he is liable to prosecution under section 193 (1) of the Municipal Act, because it may be contended that sub-section 1 of that section is aimed rather at a person who supplies a ballot who is not authorized at all to supply ballots.

Assessment of Superstructure of Railways— Assessment of Buildings Rented for Government Purposes

**141**—J. H. M.—1. The Grand Trunk Railway have located their pumping engine boiler and enclosed it in a good building, having also large tank for containing the water for their locomotives, this being one of their principal watering stations between Toronto and Montreal. As they claim exemption of this under the Statutes relating to exemptions, I would like to know if they are entitled to be assessed for these properties either as personal or real property as other of their properties in the corporation.

2. We have located here the post office, which is kept in the building belonging to the P. M. which the Government pay him rent for, the building not belonging to him but a private party.

3. The Customs Office is also held in a rented building, which the Government pays the rent of paying the owner direct as the owner is not the Custom's Officer, but the check comes payable to the owner of the building through the Government's officer. The owner also claims exemption, by being the landlord of the Government.

I would like to know if these properties are exempt as they claim or are they assessable, as other properties of private citizens?

1. It is only the land occupied by the road of a railway company, and not the superstructure, that is liable to assessment. (See *Great West. R. W. Co. v. Rouse*, 15 U. C. Q. B. 168; *London v. Great West. R. W. Co.*, 17 U. C. Q. B., 262; *Toronto v. Great West. R. W. Co.*, 25 U. C. Q. B., 570. In the case of the *Grand Trunk R. Co. v. Port Perry*, (34, C. L. J. 239), County Judge Dartnell held that WATER TANKS and platforms are part of the superstructure of a railway and are not assessable. We are of the opinion that the pumping house used in connection with the water tank would also be held to be part of the superstructure of the railway and therefore not assessable. We are assuming that the building and tank are on the right of way.

2. and 3. If there are leases under and by virtue of which the Crown is entitled to the occupancy of these properties, as appears to be the case, they are exempt from assessment and taxation under the authority of *Shaw v. Shaw* (12 U. C. C. P., 456); the Principal Secretary for War v. the Corporation of the City of Toronto (22 U. C. Q. B., 551), and the Attorney-General of Canada v. the City of Montreal (13 S. C. R., 351). We also refer you to our article on "Post-offices—Taxation of," on page 89 of the issue of the *WORLD* for May, 1899.

Appointment of Road Commissioners.

**142**—G. F.—Last year our township council adopted commutation of statute labor. Is it necessary to appoint road commissioners yearly?

Sub-section 1 of section 537 of the Municipal Act empowers councils of townships to pass by-laws for appointing such road commissioners, as are necessary in the affairs of the corporation, or for carrying into effect the provisions of any Act of the Legislature, or any by-law of the corporation, and for the removal of such officers.

Assessment of Non-Resident Lands.

**143**—W. H. N.—In this township nearly one half of the assessable acreage is owned by persons and corporations and held for the purpose of speculation and while they own one-half the land they only pay about one-third of the total taxes of the township owing to not having any improvements on these lands. As the present system of assessment in vogue in the township assesses wild land at one dollar per acre and cleared land at three dollars per acre, while generally speaking the valuable growth of timber on these lands makes them of more value than the cleared farms. As the holding of these lands is a detriment to the township in general in as much as it prevents settlement by not allowing the sale of any of these lands for settlement purposes, the council would like to be advised if they could make the assessment of all lands general and assess

cleared and wild land at one dollar and twenty-five cents per acre or adjust the assessment in any other way which would compel the speculative portion to pay the same share of taxes as the producing portion of the township?

The council has no authority to fix the assessment of lands in the municipality at a certain sum per acre or otherwise. A competent man should be appointed as assessor, and the values to be placed on all assessable property should be left to his judgment. Section 28 sub section 1 of the Assessment Act provides that "except in the case of mineral lands as hereinafter provided for, real and personal property shall be estimated at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor."

Payment of Doctor for Attending Contagious Disease Patient—Local Municipalities Liable for Rent of Polling Booths at Referendum Vote.

**144**—C. A. W.—1. A member of a ratepayer's family was taken ill and doctor was called when it was found it was a contagious disease. This was reported to a member of the Board of Health, and he reported same to Chairman and Secretary of Board by wire. They notified above member to have same doctor to watch case and prevent it from spreading and to caution him particularly that as said ratepayer was financially able to pay his own doctor's bills, the township did not wish to pay any large account. Afterwards doctor sends in full amount of bill for attendance to the township council, without first presenting it to ratepayer. Is the municipality responsible for full amount of account or any part of it?

2. In Election Liquor Act, 1902, did the municipalities have to furnish polling booths or is province liable for rent of same?

1. If the Board of Health engaged the doctor to attend to the patient he is entitled to his pay from the board, but if the patient or parent liable for his support is able to pay he must recoup the municipality. (See section 93 of the Public Health Act.)

2. The Treasurers of township municipalities are required to pay the rent of polling booths used at the Referendum vote on the 4th December last. (See section 92 of, and item 11 of Schedule B appended to, the Liquor Act, 1902; see also our answer to question No. 87 in our February issue for this year.)

Furnishing of Court Room for Police Magistrate—His Status When Hearing Outside Cases.

**145**—C. A. B.—Will you kindly state through your columns:

1. Whether an incorporated village having a Police Magistrate appointed for said village is legally required to provide a Court room for cases coming from other municipalities in the same county or united counties to be tried by said Police Magistrate.

2. If so, is the village obliged to heat and light same?

3. And would he be a Police Magistrate or a Justice of the Peace in above cases?

1. No.

2. No.

3. He would be acting in his capacity of a Justice of the Peace in and for the county for a village in which he is Police Magistrate. (See sections 27 and 30 of chapter 87, R. S. O., 1897.)



Qualification of School Trustees.

146—J. N. M.—Can a school trustee legally hold a seat in a township council?

At our township nomination there were seven men nominated for councillors and they all went to the poll and two of the men that were elected were public school trustees. Can these two men legally hold their seats in the council? If not, would the next two men securing the largest number of votes polled be entitled to the seat in the council or would there have to be another election?

Although a member of a School Board for which rates are levied is disqualified as a candidate for membership of a township council by section 5 of chapter 29 of the Ontario statutes, 1902, still, until his seat becomes vacant, by disclaimer, resignation, judicial decision or otherwise, a candidate in this position, who has been elected, can legally hold his seat in the council. If the councillors elect, who were disqualified in this way at the time of election file disclaimers as provided in sections 238 or 240 of the Municipal Act, the candidates having the next highest number of votes shall then become the members elected, as provided in section 241 of the Act.

Separate School Supporters Should Pay Taxes in Support of Nearest Separate School.

147—P. E. G.—Last year a number of Roman Catholic Separate School Supporters withdrew from R. C. S. School No. 8 and joined R. C. S. School No. 14. Those supporters live closer to the section No. 8 than they do to the 14. Trustees of school No. 8, who have erected a new school house last year, now claim that they have a right to collect those gone supporters' school taxes.

1. Can the whole school tax be collected or only an amount as would cover only those "gone supporters" portion of debt incurred for building?

2. What steps should trustees of school No. 8 take to recover moneys i. e. would such taxes be recoverable directly from school No. 14 or through the medium of the council?

(a) A Protestant public school supporter refused last year to join in when his school was turned into a R. C. Separate School and was not assessed to that school. There is a public school within three miles from that man's property but the assessor neglected to put him down for any school assessment. Can now some school sections claim his school taxes for last year, the Collector's Roll being now returned?

1. Assuming that these separate school supporters reside within three miles of two or more separate schools (two of which are numbers 8 and 14) that fact itself constitutes them supporters of the separate school nearest to their respective places of residence, (see section 44 of the Separate Schools Act), and school No. 8 being nearest to them, they must support and pay their school rates towards the maintenance of this school. ALL their school taxes, so long as they remain supporters of a separate school, must be paid and devoted to the support and maintenance of school No. 8.

2. We do not see how the Trustees of school No. 8 can recover the taxes payable LAST year by these people, but future school taxes can be collected from them by such Trustees, either by a collector appointed by them under the authority of

section 55 of the Act, or through the medium of the council pursuant to the provisions of section 58.

3. No.

Qualification of Councillor.

148—B. B.—1. A gentleman who owned ample property was elected to be a member of the town council, at the last election. He has since disposed of his property but will continue living here as a tenant of another property. Will he have to resign his seat in the council?

2. (a) A gentleman qualifying on his assessment as a tenant was elected to the town council. His lease expires on Feb. 21st. In the event of his not being able to release the said property before Feb. 1st. Will he have to resign?

(b) If he is able to release it, eventually, but the negotiations extend through the month of February will he have to resign his seat in the council because the negotiations were not completed prior to Feb. 1st?

1. No. Section 76 of the Municipal Act requires a candidate for the office of councillor of a town to possess the qualification in that section mentioned, "at the time of the election"—and the time of the election commences on nomination day. At this time he appears to have been fully qualified under this section. The cases in which a member of a council may become disqualified after his election will be found in section 207 of the Act.

2. (a) No, for the reason given above. (b) This will make no difference to our answer to (a).

Powers of Councils to Transact Business After 15th Dec.—Duties of Engineer in Assessment of Lands for Drainage Works.

149—O. J. W.—1. I wish you to outline the law in respect to the powers of municipal councils to hold meetings after the 15th of December. Would it be proper for a council to hold a court of revision on a drain which is being enlarged under the provisions of the Drainage Act after the 15th of December and would it be legal to (after taking the evidence) adjourn the Court till after the election and before the new council organizes? The result of the election defeated the reeve and one other member of the Court and one of the members of the Court who was returned had land appealed against leaving two members of the Court who were re-elected and free to give an independent judgment on the appeals. Would judgment from such a Court be regular? Would it be legal for a reeve, who was defeated on the 1st of January to sign checks at a meeting held on the 9th? What would be your opinion as to such a procedure?

2. In section 3 sub-section 3 of the Drainage Act of 1894 in describing lands assessable for injuring liability there appears in the 6th line the words (except the petition) what petition does this mean? The same words appear in the beginning of the 7th line in sub-section 4.

3. Section 12 of the Act authorizes the engineer to assess under three heads. Has the court handed down any judgments, which have changed the construction of the law so that an assessment for injuring liability would be held to be authorized upon lands benefited by as well as those lands not benefited by a drainage work and that holds that lands should not be assessed for outlet liability as described in section 2 sub-section 4 and that holds to the principal of assessing all lands high and low for injuring liability and second for direct benefit? I enclose you a part of a schedule of an assessment where the engineer had adopted such a principal. Is it legal?

4. Four persons namely S, F, R and W are the owners of lands that are low and flat and every freshet they are flooded from 6 in. to 2 feet with water, dependent upon the amount of rainfall in the freshet. How would section 3 sub-section 4 apply to such lands? (There are no lands assessed in the whole assessment assessed under the head of outlet liability.)

1. Section 328 of the Municipal Act provides that "no council of any local municipality shall, after the 31st day of December in the year for which its members were elected, pass any by-law or resolution for the payment of money, or which involves directly or indirectly the payment of money, nor shall they enter into any contract or obligation on the part of the municipality, nor shall they appoint to or dismiss from office any officer under the control of the council or do any other corporate act after said day, *except in case of extreme urgency.*" From what is stated we cannot gather whether the transaction of this drain business and issuing and signing of township cheques or orders by the moribund council after the 31st December was so urgent and necessary that the members of the old council were justified in getting them off their hands. We do not see, however, how the transaction of drainage business, at this time of the year is so urgent that its completion could not have been postponed until the council for 1903 had duly organized.

2. This section is now section 3 of chapter 226, R. S. O., 1897. The petition referred to is that mentioned in sub-section 1 of the section.

3. Section 12 of the Drainage Act does not mean that an engineer must in all instances assess each parcel of land, under all three heads mentioned in the section. He is to exercise his judgment as to whether the circumstances are such that the statute requires him to assess any particular parcel of land, under one or more of these heads. We are aware of no case in the published reports holding as you suggest, and we can understand how the lands contributing towards the construction of a drainage scheme might be so situated, as to be assessed for direct benefit and injuring liability only.

4. Under the circumstances stated, we are of opinion that these lands, if the drain to be constructed will pass through them, should be assessed both for the benefit they will directly derive from the construction of the drain, and their proportionate share of the cost of the construction of such drainage work as will be required for relieving the lands below from the water off the lands in question which the construction of the drain causes to flow through them.

Calculation of Statute Labor on Resident and Non-Resident Lands.

150—P. M.—In our municipality we allow each 200 acres for a parcel and charge two days labor for each parcel. The C. C. has always paid our demand until this year. I enclose you a list of their lands as they stand on the Resident roll for the year 1902. We charge every one \$1.00 a day for all labor performed. Are we right in demanding 36 days from the C. company?



If these lands are all entered in the resident assessment roll of the municipality, as appears to be the case, they are chargeable with and liable for statute labor in the same manner and to the same extent as other resident lands in the municipality. If the Canada Company deem their lands wrongly assessed as resident lands, they should appeal in the manner prescribed by the Assessment Act to have these lands struck off the resident roll, and placed on the non-resident roll of the municipality. If the Court of Revision, or County Judge on appeal to him, see fit to do this, and the assessed value remains the same as in the list furnished us, the statute labor on all parcels of land assessed for LESS THAN \$200 should be calculated in the manner prescribed by sub-section 2 of section 102 of the Assessment Act. (See section 72 of the Assessment Act which makes the roll final.)

#### Liability for Maintenance of Travelled Way Over a Dam.

151—C. F. S.—1. The river M runs through our municipality having a width of about 400 feet. The owner of the premises on both sides of the river where the road crosses river has a mill-dam across the river and covering on the dam which serves as a bridge. The road is a forced road and road and bridge (mill dam) have been travelled by the public for last eighteen years. The council of the municipality wished to keep bridge in repair but owner would not permit it. Then council gave notice to foreman on premises that said bridge was in need of repair. The owner then put up notice and warning on both sides of bridge that if anything happens he will not be responsible and warning not to meddle with anything on his property. Now the mail driver must cross this bridge twice a week. If any accident occurs, who will be responsible? Can the council be held responsible? Is this bridge a county or government bridge? Can the council take any further steps and what are they?

2 If one man is clerk and treasurer, who will hold the Treasurer's bond?

1. Sufficient information is not furnished us to enable us to definitely answer this question. It is stated that the road, the ends of which are connected by the travelled way over the mill-dam, is a "forced" road, but there is nothing to show that it has been dedicated to the public or assumed and established by by-law of the council as a public highway, or by whom, when, and under what circumstances, the dam and travelled way over it were constructed. If this bridge is located wholly within the township municipality, and the road is a public highway within the meaning of the Municipal Act, so long as the road is allowed to remain open for public travel, the municipality must maintain a bridge connecting its termini at the river, unless there is some special legislation, or circumstances unknown to us absolving it from that duty, and if the bridge be allowed to get out of repair, and any one is injured in consequence of it being in an unsafe condition, the municipality will be liable to him in damages. This bridge is not under the jurisdiction of the county unless it has been assumed by by-law of the county council, with the assent of the township,

or unless it crosses a river or stream forming or crossing a boundary line between two local municipalities, or separating two townships. (See sub-sections 1, 2 and 3 of section 613 of the Municipal Act.) We cannot from the particulars furnished say whether this is a Government bridge or not.

2. The clerk is the proper custodian of the Treasurer's bond, as well as the other records of the municipality. This is the statutory law. The practice is for bonds in cases of this kind to be deposited with the bank to be delivered on order of reeve of council.

#### Police Trustees Cannot Issue Debentures or Construct Sewers.

152—C. G.—1. Police village wishes to put down cement sidewalk, can they issue debentures for a space of ten or fifteen years or will it have to be paid by frontage tax?

2. Have the police trustees power to put in sewers? If so, how will they have to be paid by general taxes or frontage tax?

1. The police trustees have no authority to issue any debentures binding upon the ratepayers within the limits of the police village for any time, or for any purpose. Nor have they power to provide for the payment of the cost of putting down this sidewalk pursuant to the provisions of the local improvement sections of the Municipal Act. (See 664 and following sections of the Act.) The cost of this work will have to be paid out of the amount levied by the township council for police village purposes, under the authority of section 738 of the Act.

2. Section 741 of the Municipal Act authorizes the trustees of police villages to let contracts for building sidewalks, culverts, *putting in drains, etc.*, and the cost of these has to be paid out of the levy made under section 738 for the purposes of the police village. Nowhere is authority conferred on police village trustees to build sewers and collect the cost on the frontage tax system.

#### Sale of Portion of Road Allowance.

153—A. J. L.—Can a municipal council dispose of a portion of the original road survey that has never been opened out for road purposes and on which a stream of water flows? If so, what steps should they take and where in the statutes will I find such?

Yes, if the council passes a by-law pursuant to sub-section 2 of section 660 of the Municipal Act. Before the passing of this by-law, however, the preliminary proceedings prescribed by section 632 of the Act should be taken (see clause (a)) and when it has been passed, the by-law must be confirmed by a by-law of the county before it can have any effect. (See clause (b).)

#### Clerk's Duties as to Receiving Resignations of Candidates—Duty of Teacher in Disciplining Scholars.

154—SUBSCRIBER.—1. Has Clerk a right to accept resignation of candidate nominated without consent of mover and seconder?

2. Two candidates for reeve and five for councillor were nominated. Clerk accepted the

resignation of one candidate for reeve and one for councillor by written notice attested by witness on Nomination Day, there only being one reeve and four councillors to be elected. Is it legal?

3. Can a teacher keep pupils in school after school hours for punishment?

1. Yes, assuming that it is tendered within the time, and in the manner mentioned in section 129 of the Municipal Act.

2. Yes, provided these resignations were filed as provided in the above section, and in that case the remaining candidates were entitled to be declared elected reeve and councillors respectively by acclamation.

3. Yes, if the teacher deems this course necessary for the proper disciplining of the pupils.

#### Village Corporation Cannot Exempt Manufacturing Institution From Taxation, without Assent of Electors.

155—H. K.—Has a village power to exempt a manufacturer from his taxes for a term of years without the consent of the ratepayers?

No. See section 9 and clause (g) of section 10 of chapter 33 of the Ontario statutes, 1900.

#### Chairman of Public School Board Can Vote With Other Members.

156—A. W. M.—Can a chairman of a Public School Board in a town vote on any question at any time?

Kindly refer to section in law.]

Yes. Sub-section 4 of section 64 of the Public Schools Act, 1901, provides that "a majority of the members of the board (which includes the chairman) shall be necessary to form a quorum, and the vote of the majority of such quorum shall be necessary to bind the corporation."

#### Qualification for Councillor—Duties of Council and Clerk When Member of Council Disqualified

157—S. J. M.—In our township there were two candidates for reeve. One was a Canadian born British subject. The other one elected is an emigrant from Germany and has lived in the United States but for the past 12 years has resided in our township and acted as reeve for 1902. He swore he had his naturalization papers made out seven years ago but never got them in his possession.

1. Must he have naturalization papers in his possession or can he be disqualified?

2. If he is disqualified is his opponent reeve or has there to be another election? Is it the duty of the clerk before swearing him into office to demand his naturalization papers?

1. If his right to hold his seat is questioned in proceedings taken under the Municipal Act for that purpose, it will be necessary for him to produce his certificate of naturalization or prove that he received one.

2. Neither the council nor the clerk has any right to demand his naturalization papers before he is sworn into office. He has been elected and will hold his seat until it becomes vacant. He may resign or he may be disqualified by the court if proceedings are taken against him. If the candidate in question disclaims in the



manner provided by section 238 or 240, the candidate having the next highest number of votes shall then become the member of the council under section 241.

#### Opening of Road allowance.

**158**—A. A. Y.—With regard to the opening of road between concessions due notice of which has been given by publication of surveyor's description in full and posting notices as required by stating time also said by-law is to be passed. The point has been raised that "no council can force a road through deeded property unless there are two families without a way out." Is there any such law? I may say further that there is only one family shut in but the opening of said road is necessary to give other children a way to school within reasonable distance.

We know of no such legal provision as that stated. It is optional with the council as to whether it opens this road or not, and it should not do so, unless the needs of the general public require it. As to this the council should exercise its judgment, after having carefully considered all the facts and circumstances of and incidental to the particular case.

#### Collector's Duties as to Collection of Taxes.

**159**—SUBSCRIBER.—1. Collector's Roll returned to Tp. Treas. Feb. 2nd, 1903, with arrears of taxes say \$10 uncollected. The amount set down in Collector's Roll against said property say \$14. Now the Collector collected from present occupant the sum of \$4 being the amount levied for 1902 and has been unable to find the real owner of said property, believing him to be the proper person to recover the balance \$10 from. Roll returned with that amount unpaid as stated above.

Should the Collector recover the full amount from present occupant and upon his refusal to pay after the 14 day's notice prescribed by law, seize and sell chattels to recover the full amount?

1. It is not stated whether the "occupant" is the person who is actually assessed for the premises in respect to which these taxes are payable in 1902 and whose name appears upon the roll for that year as liable therefor. (See clause 1 of sub-section 1 of section 135 of the Assessment Act). If he was so assessed the collector should have realized the whole amount of these taxes out of the goods of the occupant, and he should return to the township treasurer only such balance as he could not realize in this way. The roll for 1902 having been returned by the collector to the township-treasurer, on the 2nd February last, the collector has no further authority to collect, in any way, any of the taxes on this roll.

2. The treasurer's only alternative is to return these unpaid taxes to the county treasurer, as required by section 157 of the Assessment Act, and leave the parties interested to fight out the question of liability amongst themselves.

#### Granting of Bonus to Woollen Mill.

**160**—J. M.—The proprietors of a woollen mill in our village has asked our council for a bonus of \$500 per year for a term of 15 years and also exemption from taxation (except school rate) and our council wants to know if this can be legally done by them. At the present time a by-law is in force granting the above men-

tioned proprietors the sum of \$100 per year and would also like to know if this would have any effect on the above.

A by-law making provision for the granting of this bonus can be legally passed for a term of 10 years, but not for a term of 15 years, if the requirements of section 9 of chapter 33 of the Ontario statutes, 1900, are first complied with. The council must first satisfy itself, however, that if it grants this bonus, it will not be transgressing the provisions of clause (f) of sub-section 12 of section 591 of the Municipal Act, as enacted by the above section.

#### Appointment of Men to Check Work of Assessor.

**161**—D. B.—Our council propose to appoint two men to go around the township with the assessor and assist him in making his assessment as they consider that three men would make a more complete assessment than one man. Would it be lawful to do so?

We do not think so. Section 295 of the Municipal Act empowers a council to appoint as many assessors as they may think necessary, but this means that a council may sub-divide a municipality into certain districts and assign to each assessor a certain district, and it is the duty of each assessor to assess property in the manner provided by the Assessment Act. We may say that it seems to us a novel procedure to appoint two or more men to tag after an assessor and dictate to him how he should assess property.

#### Validity of Petitions Under Toll Roads Act of 1901.

**162**—S. R. W.—There were several petitions filed with county clerk over 18 months ago. The county council took no action on the case. We are now threatened with a writ to compel us to appoint arbitrators.

1. There having been some amendments passed by the Legislature in 1902 and since the filing of the petition what effect, if any, does that have upon such petitions?

2. Are the petitions now in full force having been in the hands of the council for more than 18 months?

3. Is there any doubt as to the council being compelled to act under clause 4 of chapter 33 of the Statutes of 1901 and amendments thereto?

The petitions referred to were signed by the requisite number of ratepayers in the several municipalities.

1, 2 and 3. Section 4 of chapter 33 of the Ontario statutes, 1901, pursuant to which these petitions were presented, was repealed by section 1 of chapter 35 of the Ontario statutes, 1902, and the latter statute contains no provision preserving the efficacy of proceedings instituted under the former section. Sub-section 1 of section 1 of chapter 35 of the Ontario statutes, 1902, in addition to the provision for the appointment of arbitrators, contained in section 4 of chapter 33 of the Ontario statutes, 1901, contains a provision for the entering into an agreement as to the amount to be paid for the toll road between the owner or owners and the county, so as to obviate the necessity for the appointment of arbitrators to settle the matter. We are therefore of opinion that

the petitions filed pursuant to section 4 of chapter 33 of the Ontario statutes, 1901, are worthless, and that the county council cannot now be compelled to act upon them, but that proceedings, with the desired end in view, should be instituted and carried on under the authority of section 1 of chapter 35, Ontario statutes, 1902.

#### Qualification of Councillor.

**163**—COUNCILLOR.—Can a trustee for the year 1903 legally qualify as councilman for same year or is the business transacted with him sitting as councillor legal. Have had our January meeting, was the business of that meeting legal and what is the proper steps for him to take? In case a trustee's three years expire at close of 1902, must he resign prior to nomination?

It is not stated whether this man was a member of the School Board on nomination day (29th December last.) If he was, he was disqualified as a candidate for councillor under the provisions of section 5 of chapter 29 of the Ontario statutes, 1902. If he was elected such trustee at the annual school meeting last year (31st December) he should resign the office of school trustee in the manner prescribed by the Public Schools Act, 1901, (section 16) at the earliest opportunity, otherwise he will be disqualified from holding his seat in the council, under the provisions of section 80 of the Municipal Act as amended by section 5 of chapter 29 of the Ontario statutes, 1902. In either event the business hitherto done by the council has been legally transacted. This man can disclaim his seat in the council pursuant to section 238 or 240 of the Municipal Act, in which event the candidate having the next highest number of votes will become entitled to the seat.

In previous answers to correspondents in respect to questions of the like nature to this one we may possibly have given a wrong impression in not distinguishing between the case of a person who on nomination day had not sufficient property qualification and a person who is disqualified under section 80 of the Municipal Act. In the case of the former the test is whether he had sufficient property qualification on nomination day, and if he had and no proceedings are taken within the time limited by the Act he is then entitled to hold his seat for the rest of his term, but in cases of disqualification under section 80 a person holding a seat in any council must resign his seat, and in case of his neglect to do so proceedings may be taken under section 208 of the Municipal Act and the sections in that section referred to for the purpose of unseating him.

#### Same Person Can be Clerk of Two Townships.

**164**—F. L.—I have been appointed clerk of two townships and as I see nothing in the statutes against my being clerk of more than one township at the same time, I wish to hold them both. Is there anything in the law to prevent my doing so.

No.



## Qualification of Councillors.

**165**—SUBSCRIBER.—There is some doubt as to the validity of the election of the four councillors of the township. Proceedings to contest the validity of an election must be commenced within six weeks after an election or within one month after acceptance of office by the persons elected. Now suppose no person takes proceedings to contest the validity of the election within the specified time, after the month has passed would they (the councillors) be held to be properly elected and in a position to go on and do business?

The law is that business transacted by municipal councillors who have taken their seats in the council is valid, although one or more of them is or are disqualified.

## Duties of Auditors—Municipal Business Done by Disqualified Councillor, Legal.

**166**—COUNCILLOR.—1. In your issue of Feb. 2nd, 1902, No. 92, "Time within which an audit should be made," you mention a penalty of \$20. Who should impose that penalty, the council or a magistrate before whom information is laid?

2. On Dec. 2nd, 1902, our council appointed two auditors at a salary of \$20 each, at the time stipulating that the report should be in within the time set by law (sub-section 3 of section 304 Municipal Act.) The report was not completed until Feb. 2nd, 1903. May the council deduct \$20 from the salary due auditors, or must an information be laid before a magistrate? The report was accepted by council.

3. If a councillor is elected and takes the oath who is not qualified by reason of not having a high enough assessment, are the acts of the entire council illegal?

1. The council has no authority to impose this penalty. If recoverable, its payment should be enforced by summary proceedings taken in accordance with the provisions of section 704 of the Municipal Act.

2. If the council has passed a by-law pursuant to sub-section 1 of section 301 of the Municipal Act, providing for the appointment of auditors in the month of December in each year, that such by-law came into effect prior to the year 1902, and that these auditors were appointed pursuant to its provisions, the auditors were properly appointed by the council and should be paid the salary agreed upon without any deduction, by reason of their not having filed the report within the statutory period, or otherwise. The council accepted the auditors' report and the latter can successfully enforce payment of their respective salaries. In any event the council has no authority to deduct \$20 from the amount of the salary of each auditor (presumably the penalty imposed by sub-section 2 of section 304). Section 704 provides the means for enforcing its payment, if recoverable.

3. No.

## Power to Pass Through Adjoining Lands When Roads Blocked With Snow.

**167**—J. R.—A public highway is blocked with snow by reason of high rail fences on each side of the highway so that it is impossible to travel. Can a person who takes down the road fence and enters into the fields adjoining with his team be liable to be prosecuted for trespass?

The law in a case of this kind is stated as follows: "When the highway is

blocked, by reason of some sudden or unexpected obstruction, the public have the right to pass over adjoining property, to get around the obstruction, without being deemed guilty of a trespass."

## Collection of Separate School Taxes.

**168**—SUBSCRIBER.—1. Two years ago we changed our public school into R. C. separate school, and the trustees of the public school only lease to the trustees of R. C. separate school the school house and furniture. Have I the right to act under R. C. Separate School Act regarding the limit of the section?

2. A supporter of the public school has always assessed a lot in our section to have the right to send his children and he won't assess his farm. Have I the right to collect the tax of his farm for last year and the year before, 1902-1901?

3. We had a Protestant in our section, and when we made the change of our school his tax was sent to the nearest public school, and he never claimed a share in the school house furniture. Can he claim it now? The change was made Jan. 12th, 1901.

1. A separate school has no territorial limits similar to those assigned to public schools under the provisions of the Public Schools Act, 1901. The supporters of a separate school are those who are such under the provisions of the Assessment and Separate Schools Act, and those who file notices with the clerk of the municipality under the provisions of section 42 of the latter Act. You have therefore nothing to do with the limits of the separate school.

2. No.

3. If this man's lands are located within the territorial limits of the public school section, to which the school house and furniture leased by the R. C. separate school trustees belongs, he has an interest in the school furniture the same as any other ratepayer in the public school section and that only, but such interest is not one for which he can recover any money.

## Power of Councils to Grant Rebates of Taxes.

**169**—F.—In 1902 the first assessment roll that was made was set aside by the Judge at his Court of Revision of same. The council then proceeded to have a new assessment made, which of course left the return of the roll later than usual. The Court of Revision of the new roll was duly held, and there being no appeals to the Judge, the roll was finally confirmed and the collector's roll made, and in December some people came to council for a rebate or remission of part of their taxes owing to the fact that the buildings assessed were not erected or completed until after June or July last year.

1. Has the council any legal right to grant rebates of taxes, the parties not having made any appeal to Court of Revision?

2. If so, under what section of the Act are they justified?

3. If the council had not the right by law, are they personally responsible for such rebate or refund of taxes?

1. No. Section 74 (sub-section 1) empowers the COURT OF REVISION to grant rebates of taxes in certain cases, but this is not one of them.

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

3. The granting of these rebates would

be a misapplication of the funds of the municipality, for which the members of the council would be responsible.

## Duties of Councils and Treasurers as to Issuing and Cashing Orders or Cheques.

**170**—SUBSCRIBER.—In the beginning of any year, that is if the collector has made his returns to the treasurer, there is or should be in the hands of the treasurer the interest on debentures, school funds and whatever unexpended moneys raised by debentures or special levies for the disposition of which the treasurer and his sureties are responsible, and as treasurers are required to give bonds for the faithful performance of their duties, according to law, the remuneration for such services as a rule is very small considering the responsibility they assume. Such funds on hand are in many towns drawn upon to enable a council to meet their obligations without resorting to borrowing from the bank.

1. Can a council legally draw on such funds for current expenditure?

2. What is the treasurer's position regarding such funds?

3. What is the proper procedure for a council to adopt so as to secure the treasurer and his sureties from any personal liability, if any, in making use of such funds for current expenditures?

1. No. If the council requires any money for this purpose, it should borrow the amount under the authority of section 435 of the Municipal Act.

2. The duty of a municipal treasurer, as prescribed by section 290 of the Municipal Act, is to pay out any moneys in his hands belonging to the municipality to such persons, and in such manner as the laws of the Province and the LAWFUL by-laws or resolutions of the council of the municipal corporation whose officer he is, direct. He should therefore refuse to honor a cheque or order drawn on the account for current expenditure, if there are no funds in his hands to the credit of that account when it is presented. This section further provides that "the treasurer shall not be liable to an action for any moneys paid by him in accordance with any by-law or resolution passed by the council of the municipality of which he is treasurer, unless where another disposition of such moneys is expressly made by statute."

3. The council should not issue an order on the treasurer payable out of and chargeable to an account to the credit of which the treasurer has no moneys in his hands, and, if the council does this, the treasurer should refuse to honor or cash the order or cheque.

## Collection of Taxes in Districts.

**171**—A READER.—Three townships in a district in New Ontario are united as a municipality. There is no county organization. I am asked: "(a) In the absence of a by-law, can the tax collector of this municipality add five per cent. to taxes that are unpaid at a certain date? (b) Can the treasurer of this municipality on the first of each month of May add ten per cent. to taxes returned to him and unpaid at those dates, as is done by county treasurers? (c) What provisions exist, if any, for collecting taxes in arrears for three years by the sale of the lands in the case of said municipality?"



(a) No. To enable him to do this the council should pass a by-law pursuant to section 60 of the Assessment Act as enacted by section 4 of chapter 27 of the Ontario statutes, 1899.

(b) Yes. See section 53 of chapter 225, R. S. O., 1897, and sub-section 1 of section 169 of the Assessment Act.

(c) By section 53 of chapter 225, R. S. O., 1897, it is provided that arrears of taxes due to any municipality in any of the districts mentioned in this Act, shall be collected and managed in the same way as like arrears due to municipalities in counties, and that the treasurer and revee of the municipality shall perform the like duties as in counties are performed by the treasurers and wardens. These duties will be found in section 173 and following sections of the Assessment Act.

**Resignation of High School Trustee.**

172.—F. J. C.—In case a High School trustee who is appointed by the town council desires to retire, to whom must he tender his resignation?

The High Schools Act, 1901, contains no provision authorizing the resignation of a High School Trustee similar to that contained in section 16 of the Public Schools Act, 1901, as regards members of Public School Boards, and we are therefore of opinion that a High School Trustee has no power to resign his office. He can render his seat vacant, however, by absenting himself from the meetings of the board for three consecutive months without being authorized so to do, by resolution of the board, entered upon its minutes, in which event the remaining trustees shall direct the secretary of the board to notify the clerk of the county or municipality or Board of Trustees having authority to appoint such trustee accordingly. (See section 48 of the High Schools Act, 1901.)

**A New Election Necessary.**

173.—J. D.—At the nomination meeting held here seven electors were nominated for councillors. The four receiving the highest number of votes were duly elected and attended the first council meeting, when only three were qualified to fill the office of councillors, one being a school trustee, he, the said councillor, at once handed his resignation to the Clerk. This left one councillor short. Now, there is a difference of opinion amongst the electors. Some claim that a fresh election should be held. I claim not and have warned the next individual who obtained the next highest number of votes duly elected to the office of councillor for the year 1903. Am I right? See C. R. W. Biggar, M. A., 11th Edition Municipal Manual 1900, page 111, note J. also page 112 note F.

The notes in Biggar's Municipal Manual pointed out, have no reference to such a case as this. They apply only to cases where candidates were disqualified at the time of nomination, and notwithstanding the fact that notice of the disqualification was given at the nomination and made as public as possible thereafter and before polling day the electors persisted in voting for and electing the disqualified candi-

dates. If the disqualified councillor resigned as provided by section 210 of the Municipal Act, that is with the consent of the majority of the members present, which consent was duly entered on the minutes, or if he refuses to accept the office to which he was elected, a new election to fill the vacancy should be held pursuant to the authority of section 212 of the Act. If the councillor filed a disclaimer in the form prescribed by section 240 of the Act, then, the candidate having the next highest number of votes shall become the councillor elected as provided by section 241 of the Act.

**Council's Power to Sell Timber on Road Allowance.**

174.—J. W. C.—1. Have a municipal council a right to sell timber on road allowance that is enclosed in the adjoining farm without first opening the said allowance by by-law?

2. If the road is not required by the public, have the council a right to open the road to sell the timber providing the allowance was never given in lieu of another road?

3. If the man having the road allowance enclosed cuts the timber on said road and the said road is not required by the public for use how should the council proceed to get their pay for the timber or sell what remained?

1. Yes. Subject to the provisions of the Act respecting Timber on Public Lands, R. S. O., 1897, chapter 32, and subject also to the provisions of section 642 of the Municipal Act.

2. If this road allowance is enclosed with the land of the adjoining owner, by a lawful fence, and has not been opened by reason of another road having been used in lieu thereof, the council should pass a by-law providing for opening it in accordance with sections 642 and 643 of the Municipal Act, before the timber is sold. If the road remained unopened simply because it was not required for the use of the public, no by-law for its opening is necessary before the timber is disposed of.

3. The council can recover the value of the timber cut on this road allowance from the party who cut it by an ordinary action at law and can sell the remainder as above stated.

**Statute Labor of Farmers' Sons Assessed Jointly.**

175.—A. C.—This municipality has a by-law regulating the number of days statute labor to be performed as follows:—

\$ 500 assessment requires 2 days Statute Labor.					
1000	"	"	3	"	"
1500	"	"	4	"	"
2000	"	"	5	"	"
2500	"	"	6	"	"

B has an assessment of \$2500. B has four sons who are joint owners with him. B performs six days' statute labor for the property. Each of his sons performs one day making a total of ten days' statute labor.

(a) Can B and his sons be compelled to do this amount of statute labor?

(b) How many days statute labor should be done by B and his four sons?

(a) This statute labor is chargeable against the premises assessed, and is not a personal tax chargeable against and payable by the persons assessed. If the sons are assessed as joint owners with B,

as they have a right to be, under the authority of section 14 of the Assessment Act, they are not individually liable for the performance of any statute labor, and, according to the scale of statute labor in vogue in your municipality, six days' statute labor is all that can be charged against these premises. If B's sons were rated and entered on the assessment roll as "Farmers' Sons" pursuant to section 106 of the Act they would each be liable to perform one day's statute labor in addition to the six days properly chargeable in respect of the premises, making 10 days altogether.

(b) Four, if assessed JOINTLY as stated.

**Status of Councillor who has left the Municipality.**

176.—Subscriber.—One of our councillors elected in January last left our village on the 12th of January without taking his declaration of office and so far has not returned. Is he now disqualified and what steps should the council take to fill the vacancy?

This seat has not yet become vacant. Section 207 of the Municipal Act provides that if, after the election of a person as a member of a council, he absents himself from the meetings of the council for three months without being authorized so to do by a resolution of the council entered on the minutes, his seat in the council shall thereby become vacant and the council shall forthwith declare his seat vacant and order a new election. Section 319 provides that every qualified person duly elected to the office of councillor, who refuses such office, or neglects within 20 days to make the declarations of office and qualification, shall, on conviction thereof before two or more Justices of the Peace, forfeit not more than \$80 nor less than \$8, at the discretion of the Justices, to the use of the municipality, together with the costs of prosecution.

**Closing a Dedicated Road—Registration of Road By-Law Passed Prior to 29th March 1873.**

177.—W. D.—A by-law passed Dec. 2nd, 1862 established a road which has been used as such up till now. The road is said to have been a free gift from the person then owning the land. No deed was made conveying the land. The by-law was not registered.

1. Is the road a legal road under the above conditions or does it belong to the original owner?

2. Does section 633, Municipal Act, R. S. O., make all by-laws legal and binding passed previous to the 29th day of March 1873 whether registered or not?

3. Will it be necessary to go through the procedure indicated in the Statute if the municipal council desire to close the road?

1. In Mytton v. Duck et al (26 Q. B., 61,) it was held that the user of a road by the general public as a highway for thirty years after the patent issued would be conclusive evidence of a dedication as against the owner, and such dedication was equivalent to a laying out by him, so that the road, under C. S. U. C., chapter 54, section 336, was vested in the municipality. In the case of Frank v. Township of Harwich (chapter 18, O. R. 344, Chy. D,) seventy years user was held to be



sufficient evidence of dedication, and in *Johnston v. Boyle* (8 Q. B., 142) it was held that the placing of a gate across a travelled road after the public had enjoyed it for upwards of twenty years, can never abolish a highway.

2. Section 633 does not affect by-laws passed before the 29th March, 1873, in any way. Prior to that date a by-law passed for the purpose stated in that section did not require registration, and so far as this section is concerned such a by-law, if in other respects valid, is good without registration.

3. Yes.

#### Council May Refer to Railway Committee of Privy Council.

178.—L. A.—We as D—— township are somewhat perplexed in regard to a subway the G. T. R. is building through D—— township. They are deviating from the old track half a mile south. The deviated line runs on and across the side line. The ratepayers of that part of the township sent a petition to the council to have the subway put in parallel with the side road. The council notified their solicitor. He sent a man to look after it. He came. I met him at the subway. He said they had started to build and it had to go through. Now I would like to know if the Council can stop the building and make them put the subway in straight or if not make the G. T. R. pay damages to the township. If they persist in putting it in on an angle and if we can make them pay damages, how shall we proceed?

The council's remedy is to lay this matter before the Railway Committee of the Privy Council, requesting them to investigate, and adjust all questions relating to this subway between the company and the municipality. Under the Railway Acts the company is liable to a penalty for not replacing a highway after the completion of their railway on and across it.

#### Impounded Stock to be Taken to Pound of the Division in Which Impounded.

179.—J. R.—Is a ratepayer in duty bound to take stock to the nearest pound, or can he take them to any pound in the same municipality of which he is ratepayer?

Impounded stock should be taken and delivered to the pound keeper for and having jurisdiction in the division in which the person delivering the stock resides. (See sections 3 and 5 of chapter 272, R. S. O., 1897). We assume that no by-law has been passed by the council of the municipality, altering these provisions of the statute, pursuant to section 1. If there is such a by-law, its provisions should also be examined.

#### Ownership of Road Allowance.

180.—T. B. C.—Over forty years ago when the township was new, there was a road opened where there was no road allowance. It runs in a straight line between two farms. The township has had peaceable possession ever since. Road is well made, parts of it gravelled. Does the municipality own the road having possession so long? Can parties purchasing the farms close the road up or can they collect pay for the land?

Without knowing the nature and extent of the uses of this road by the public, it is

difficult to say whether a court would assume a dedication of the road for the public use. In the case of *Mytton v. Duck* (26, Q. B., 61,) it was held that the user of a road by the general public for thirty years after the patent issued would be conclusive evidence of a dedication as against the owner, and that such dedication was equivalent to a laying out by him, so that the road, under C. S. U. C., chapter 54, section 336, was vested in the municipality. This road appears to have been pretty thoroughly used and travelled by the public for over 40 years and to have been maintained and improved by the expenditure of moneys of the municipality, and would likely be held to have been sufficiently dedicated to the public as a highway. If it was so held the road would be vested in the municipality and the owners of adjoining lands would be entitled to no pay for it. (See also our answer to question No. 177 in this issue.)

#### Collection of Arrears of Taxes in Towns.

181.—O. L.—1. In the year 1895 a certain portion of this township was by an Act of the Legislature incorporated as a town. At the time of the incorporation there were taxes due (from freeholders, householders and tenants) from that portion of the township which now composes the town. These arrears were left on the old roll. In the year 1897 this roll was handed to our township collectors with instructions from the township council to collect these arrears. The collector succeeded in collecting a certain amount, but there still remained a certain amount uncollected. A couple or three years afterwards, the same old roll was handed to another collector who could not collect but a few cents. This roll is now handed back to the council. Now we are told that these arrears are outlawed and therefore are not collectable. Would you kindly give your opinion as to whether we can yet collect or not?

2. I may further state that we have an agreement entered into between the two corporations at the time of the separation of the town from the township to the effect that said two corporations shall share in any profit or loss from the assets or liabilities at the time of the separation so I presume that in the event of any loss on the part of this municipality on account of the above said taxes or arrears, then the other municipality would have to share with the loss according to agreement.

1. It is not stated whether this roll has ever being returned by the collector to the treasurer in the manner provided in sections 147 and 148 of the Assessment Act, or that the original collector or some other person in his stead, if the roll was not so returned, was authorized by resolution of the council, to continue the levy and collection of the taxes unpaid on the old roll, as provided in section 145 of the Assessment Act. We gather, however, that this old collector's roll was returned several times by the collectors successively appointed, and if this is so, payment of these taxes cannot be enforced by any collector or other person to whom the roll is delivered with directions to collect the arrears of taxes thereon, and since the handling of the roll throughout seems to have been unusual and irregular, we do not think the lands can now be sold to realize the amount of the arrears. We do not see, therefore, how they can now be collected at all.

2. We cannot express any opinion upon this question without having a copy of the agreement referred to.

#### Duties of D. R. O. After Close of Poll

182.—W. F.—In the last election (municipal) for the town of U—— at the closing of the poll, the deputy returning officer called in an outsider to help him through with the counting up of the ballots, making out of the statements, etc., as he did not understand the duties of the office. This same person handled all the ballots both used and unused and tallied up the reports even going so far as to write them out and then the D. R. O. signed them. One of the agents who was there objected to the outsider doing this thing saying the outsider had no right to be there and he said he had as he was invited there by the D. R. O. to assist him. Had the D. R. O. any right to call in an outsider (viz: one who was not appointed as an agent or who had not taken the oath of secrecy at the polling booth) and what penalty is attached for so doing?

The Deputy-Returning Officer acted improperly, and in a manner unauthorized by the Municipal Act in calling in an outsider to aid him in counting the ballots after the close of the poll. The persons present at the counting of the votes should be only the candidates or any or either of them, their duly authorized agents (not more than two) and the Deputy-Returning Officer and his poll clerk. (See sections 174, 175 and 177 of the Act.) Section 174 provides in every polling place the Deputy-Returning Officer shall immediately after the close of the poll, in the presence of the poll clerk (if any) and of such of the candidates or of their agents as may then be present, etc., and section 175 provides that no more than two agents for any candidate shall be entitled to be present at the same time at the counting of the votes, and section 194 imposes a penalty upon every officer, etc., but after the best consideration which we have been able to give this matter we think it very doubtful whether the clerk is liable to any penalty for what was done by him, and we would not advise that any proceedings be taken against him, though he acted wrongly in allowing a person who does not appear to have had any authority to be present at the counting of the ballots.

#### Powers of Councils in Dealing with School Estimates.

183.—C. A. P.—1. Has a council power to reduce the estimates of a school board when they ask for more money than is required for school purposes?

2. Has the school board a right to allow their treasurer to use a portion of the school funds in lieu of paying him a salary?

3. Is a school board bound to take into consideration any cash on hand from previous year when submitting their estimates to the council?

1. In the case of *Toronto Public School Board v. the Corporation of the City of Toronto* (4 O. R., 468,) the Court of Appeal for Ontario recently decided that a school board in preparing their estimates for the current year may include everything that in THEIR judgment may be needed to meet legitimate expenditure, that is, expenditure upon objects or for purposes within their lawful authority, and



they are bound to prepare them in such a manner as to shew generally the several objects of such expenditure and what is required in respect of each. The duty of the municipal council is to examine the estimates so far as to ascertain that they are for purposes within the power of the school board. If an item or class of items is clearly for an unauthorized purpose, it is the duty of the council to reject it. But beyond this the council cannot go. If within the power of the board they cannot MODIFY or REDUCE it. The council has no voice in the control of the affairs which are committed by law to the school board; their duty is to levy and collect and pay out from time to time as required the moneys shown by the estimates to be necessary for lawful school purposes. The council is not entitled to call for or inspect the contracts which the board makes with the teachers. Nor is it necessary in order to entitle the board to place the item of salaries in their estimate, that contracts should then have been entered into.

2. No.

3. Yes. By sub-section 9 of section 65 of the Public Schools Act, 1901, the trustees of a Public School Board are required to submit to the municipal council an estimate of the expenses of the schools under their charge for the CURRENT year, and by section 71 the council is required to levy such sums as may be required by the trustees for school purposes. A school board has no authority to accumulate a surplus in this way. (See sub-section 5 of section 16 and section 35 of the High Schools Act, 1901, as to the duties of trustees of High Schools and Municipal Councils in this regard.)

County Councils' Powers in Making Grants to Roads in Minor Municipalities.

184—J. J.—The county council has granted to the minor municipalities 15 per cent., of their rates to grade and gravel and otherwise improve the leading roads in their several divisions. The money to be expended where designated in county by-law, and expended by the county councillors. Has the county council a legal right to expend money on roads not assumed by county as county roads?

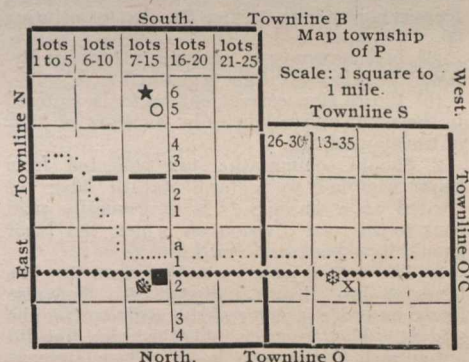
1. The councils of counties have this power, provided the roads in the local municipalities proposed to be improved are "highways, roads, streets, bridges or communications passing from or through any township, town or village municipality into a county road." See section 615 and sub-sections 6 and 7 of section 658 of the Municipal Act. In many counties there are no county roads, that is roads which belong to the county or which have, with the assent of the local municipality, been assumed as county roads under section 613 of the Municipal Act, and where there is no county road within a county, section 615 and sub-sections 6 and 7 of section 658 will not authorize the county in making any grant in aid of local roads.

Division of Township into School Sections — Payment of Members of Local Board of Health — Cost of Maintaining Persons in Quarantine.

185.—R. S. P.—I am enclosing a sketch of the township of P— showing my ideas of dividing same for school purposes. Has the municipal council power to pass a by-law making division as marked with heavy lines on diagram? At present there is only one school section known as S. S. No. 1, which includes all the lands from A to concession 6 inclusive and from lots 6 to 28 S. of river. The west end of township or the proposed S. S. No. 2 is wanting a school and No. 3 section will want a school within two years. Can No. 1 and No. 2 include what they like in section and leave balance for No. 3 section? According to the three mile radius the west end or No. 2 section and the No. 1 section would take over three parts of the township leaving only about 16 square miles for No. 3 section. The way I have it marked out, it would give section No. 1 about 23 square miles; No. 2 about 25 square miles and No. 3 about 24 square miles or each section about equal. If the council have not power to define boundaries, advise how to act. How would a consolidated school suit our case?

2. Can Board of Health collect or have they any right to charge for holding meetings.

3. Are they supposed to supply provision for persons under quarantine with scarlet fever and send bill to council for payment? If so can council charge same back to patients quarantined?



- ★ Proposed School Site No. 1.
- Present School Site.
- R Station.
- ⊗ Proposed School Site No. 3.
- ⊙ S Station.
- X Proposed School Site No. 2.
- ..... River.
- ..... Railway.

1. Sub-section 1 of section 12 of the Public Schools Act, 1901, provides that "the municipal council of every township, etc., shall sub-divide the township into school sections, so that every part of the township may be included in some section, and shall distinguish each section by a number, provided that no section formed hereafter shall include any territory distant more than three miles in a direct line from the school house." If in making this subdivision of the township into school sections, the boundary of the existing school section will require to be changed in any way, the provisions of section 41 of the Act will also have to be complied with. The division of the township into school sections must be made in accordance with the provisions of these sections, and as best suits the convenience of the rate-payers in the municipality. As to this, the members of the council being on the spot and acquainted with the locality are better judges than we can be.

2. There is no provision in the Public Health Act (R. S. O., 1897, chapter 248,) for the payment of members of the Local Board of Health for attending its meetings.

3. Section 93 of the Public Health Act provides that the health officers or Local Board of Health of a municipality shall provide nurses and other assistance and necessaries for persons afflicted with a contagious disease, and in quarantine, at their own cost or charge, or at the cost of their parents or other person or persons liable for their support, if able to pay the same, otherwise at the cost and charge of the municipality.

Publication of Auditor's Report.

186—S. L. M.—Is it imperative that the auditor's report and detailed statement be published? If so, what is a sufficient publication? No particular mode seems to be pointed out as in the case of the treasurers statement in December.

We presume the auditors' report, abstract and detailed statement prepared pursuant to sub-section 2 of section 304 of the Municipal Act is referred to. The auditors are required by this sub-section to transmit by mail in a registered package, one copy of the abstract, and also one copy of the detailed statement in such form as these have been submitted to the council, to the secretary of the Bureau of Industries, Toronto, and to file the other abstract and detailed statement and reports in the office of the clerk of the council, within one month after their appointment, and it is the duty of the clerk of the municipality to publish the auditors' abstract and report, if any, and shall also publish the detailed statement in such form as the council directs pursuant to section 306 of the Municipal Act.

Repair of Government Bridge.

187—J. M.—As regards my former question (No. 123) re bridge on E— river. This river is the western boundary of our corporation and on the opposite side of river is an Indian Reserve, not incorporated. The bridge was built to let the British military pass through on their way to the North West, the time of the rebellion, a good many years ago and it has been rebuilt several times since and maintained by the Canadian Government. The only interest our municipality has in the bridge is that it is on this river that divides it from the reserve and as it is in a dangerous shape at present, we were afraid if we would go to work and fix it that we would be taking it over and would have to keep it up afterwards. Also as it is on the boundary, we were afraid that if any thing would happen that we would be held responsible for it. We went to see the Government road inspector about it but all he would do, is for us to get a petition up to send to the Legislature, and that he would recommend it but the likes of that takes a long time and doesn't fix up the bridge for a very long time.

This bridge is evidently a Government work, and should not be repaired or in any way interfered with by the council of the municipality. The attention of the Government should be brought to the unsafe condition of the bridge as soon as possible, and every pressure available brought upon them to induce them to



repair it. In the meantime we do not think that the municipality will be held responsible for any accident that may happen any one by reason of the bridge being out of repair, but the council should use every reasonable means of warning travellers on and over the road in the municipality leading to it, of its unsafe condition and that the municipality will not be responsible for any accident which may happen.

**Remedy Against Person Piling Cordwood on Street.**

188.—H. M.—Our township has no by-law re obstruction on the highways. In an unincorporated village Mr. A. has placed in the centre of the highway several cords of firewood. Mr. B. told him not to do so. Mr. A. did so last year and in spring wood pile fell and covered about ten feet of roadway. Has Mr. B. any recourse other than through township council? If so, how should he proceed? The road is a public one and has been long established.

Mr. B. should request the council of the township to pass a by-law, pursuant to sub-sections 3 and 4 of section 557 of the Municipal Act, providing for the removal of this firewood at the expense of the party who placed it on the highway. This party may also be indicted for placing and maintaining a nuisance on a public highway.

**Protection of Dangerous Railway Crossing—Custody of Treasurer's Bond—Treasurer's Bond Need Not be Registered.**

189.—A. C.—1. The G. T. R. double track crosses our township. In one place a road that is very much traveled crosses it. At the point of crossing there is a cut of about four or five feet, making an exceedingly dangerous crossing. Have we any redress except by appeal to the railway committee referred to in answer to question seventy-five in February issue?

2. In appealing to said committee could the council in any way be held liable for costs except their own solicitors fees?

3. Failing to get a watchman, would we require to appeal through the same channel for an overhead bridge?

4. Is there any special Act regarding double tracked railroads?

5. If a township treasurer's bond is not registered, should it not be held by the clerk? If not, who should hold it?

6. Does the law require that the bond should be registered? I refer to a bond given by any number of ratepayers, say five.

- 1. No.
- 2. No.
- 3. Yes.
- 4. No.

5. The clerk of a municipality is the proper custodian of the treasurer's bond, under any circumstances.

6. A bond of this kind does not require registration.

**Duties of Auditors.**

190.—AUDITOR.—1. A initiates a drain under the Drainage Act and serves copy of report on B. B adopted report and passed by-law Dec. 16th, 1901.

Engineer's estimate :

Excavating, spreading, etc.	\$319 20	B Township.	
Survey, plan, profile, report.	35 00	Total ass. ag'nst pri. lands.	\$104 50
Assistance on survey.	3 00	Against municipality of B.	70 75
Pub. and serving by-laws B	6 00		\$175 25
Pub. and serving by-laws A	6 00	A Township.	
Clerk's fees, A	6 00	Total ass. ag'nst pri. lands.	342 50
" " B	3 00	Against municipality of A.	70 25
Letting and superintending.	14 80		
	\$393 00		\$312 75

Bridges from highways to private lands in A.	95 00
	\$488 00

By-law provides that the reeve of B may borrow the sum of \$175.25 and issue debentures at that amount bearing interest at 6% per annum, also for the collection of rates, etc. The total special rates and interest against each lot or part of lot shall be divided into three equal parts, one part to be levied and collected each year for three years, after final passing of by-law. Rates against roads and lands of municipality similarly provided for. No rates are entered on the collector's roll of 1902. No debentures have been issued. B has not had any settlement with A. B paid clerk for serving by-laws \$2, fees \$3, also for printing \$5.

(a) Is it necessary to register "Drainage By-laws" or is it legal if not registered?

(b) Please give correct entries to be entered in the assets and liabilities by auditors of 1902 of the above drain.

2. Should commutation tax collected from those who fail to perform statute labor be treated as a liability? It is generally paid back to the road division on which the labor should have been performed.

3. The council passed a motion remitting the taxes of Jno. Brown, indigent, \$4. They also issued an order in favor of the collector for the said \$4. The treasurer holds the order, but did not enter it in the cash book. The statement of settlement between the treasurer and collector states the \$4 was remitted.

a. Was it necessary to issue the order or was the motion sufficient?

b. Did the treasurer make correct entry or should the \$4 appear on both sides of cash book?

c. What shall we do with the order?

4. A and B have a settlement about a drain, drain initiated by A.

Total assessment against A.	\$256 00
" " " B.	121 00
	\$377 00

Items included in above: Clerk's fees, including preparing and distributing by-laws, A and B each \$10; publishing by-laws, each \$5; registering by-laws, each \$2. By-law passed April 7th, 1900. B did not register by-law, but paid clerk \$5 and printer \$5.

Among the settlement papers we find the following statement, but no itemized accounts:

Total cost.	\$377 00	A 68%
Actual cost.	298 44	B 32%

Less estimate \$78 56

A's proportion. \$202 66  
B's " 95 78, less \$17 fees, by-laws, etc. \$78 78

Due to A by B \$78.78.

Actual cost of drain to parties in B \$78.78 x \$17.00. 95 78

Estimated. \$121 00  
Actual. 95 78

\$25 22 to be refunded to assessed lands.

A. Is the above statement correct? (You notice B only paid \$10, whereas \$17 is deducted in settling with A, also in determining the refund).

B. When each municipality pays its own clerk's fees, printing, etc., or when these items are not the same in each township, would it be better to include only such items as cost of construction, engineer's expenses, etc., in settling? (These amounts are proportional to amount assessed against each municipality, less clerk's fees, etc.)

C. Is \$25.22 the correct amount to pay back to the lands?

1. (a) By section 15 of chapter 33 of the Ontario statutes, 1900, section 398 of the Municipal Act is made to apply to township municipalities. Therefore it is optional with the municipality as to whether it registers by-laws providing for the issue of debentures passed under the provisions of the Municipal Drainage Act or not.

(b) It is not stated whether these drainage works have been gone on with and completed by the initiating municipality. (a) If they have been, B's share of the cost of these drainage works is a liability of B to A and should be so entered in the statement of assets and liabilities of the former. The fact that debentures have not been issued should be referred to by the auditors in their report.

2. Yes. The overseer of the statute labor division in which the property is situate, shall expend the amount of the commutation money, and the treasurer of the municipality is required to pay the amount to the person performing the work on the order of the overseer or pathmaster. (See section 110 of the Assessment Act, sub-section 2.)

3. In this case, a motion passed by the council instructing the collector not to collect this amount from John Brown is all that is necessary. In making his return to the treasurer, pursuant to section 147 of the Assessment Act an entry should be made opposite this item thereon "instructed by council not to collect" and a certified copy of this resolution would be a sufficient voucher, for the treasurer, collector and auditors, as to the lawful disposition of this item.

(c) This order should be cancelled by the council and we do not see that it should be entered anywhere by the treasurer, or taken into consideration by the auditors in making their report.

A, B and C. In arriving at the sum to be refunded to the owners of lands assessed for these drainage works in B the sum ACTUALLY paid for preparing, publishing or printing, and registering the by-law and all other expenses of and incidental to the preparation, etc., of the by-law should first be deducted from the portion of the cost of the drainage works, estimated by the engineer to be payable by B, which in this case would be \$10 from \$121, leaving \$111—from the latter sum should then be deducted B's proportionate part of the ACTUAL cost of construction, that is 32 per cent of \$298.44, or \$95.50, leaving a balance of \$15.50 to be refunded to parties assessed in B for these drainage works.



Time For Holding Nomination of Councillors in Towns.

191.—F. J. C.—In towns when is the proper time—day and hour—to hold nominations for mayor and councillors as the law now stands? This question applies to the annual nomination day only. Please give the section of the law governing the question. For years we have been holding the nomination for mayor and councillors at 10 to 11 o'clock on the last Monday of December.

Mr. Winchester, the Master in Chambers, at Osgoode Hall, Toronto, recently gave judgment in the case of Rex ex. rel. Warr v. Walsh, unseating all the councillors of the town of Brampton, who were declared elected by acclamation on the 29th January last for the reason that the clerk of the town held the nomination meeting at 10 o'clock on the 29th December last, instead of at noon on that day, as the statute provides. The unseated councillors appealed from this decision, and Mr. Chief Justice Meredith reversed the decision of the Master, delivering the following judgment: "In each of the years from 1897 to 1902 (inclusive) the municipal council of the town of Brampton provided by by-law that the nomination for councillors should be held at the same time and place as the nomination for mayor, that hour being 10 o'clock in the forenoon, and this, they assumed to be, under sub-section 2 of section 118 of the Municipal Act (R. S. O., chapter 223). The difficulty arises in grafting the provisions of the Municipal Amendment Act of 1898 as to the election of councillors of towns having a population of not more than 5,000, upon the provisions of the Municipal Act." The learned Chief Justice held that "sub-section 1 of this section added by the Act of 1898 (71 a) had not the effect of abolishing (in the case of towns to which it applied) their division into wards, the only change made was that instead of there being a prescribed number of councillors for each ward, the number of councillors was fixed at six, and, instead of being elected by wards, they were all to be elected by a general vote. The language of sub-section 2 of the added section should be treated as an inaccurate expression of the idea that on the conditions and in the event mentioned in it, the former mode of constituting the council and of election of councillors might be restored. Sub-section 2 of section 118 should be read, in order to give effect to the amendment, as empowering the council, where the election is to be by general vote, to provide by by-law that the nomination of councillors shall be held at the same time and place as that for mayor, and to make the same provision in the case of all towns of over 5,000 where the nomination of councillors must still be made for the several wards of the town, and 119 should be read as providing that the meeting for the nomination of councillors in either case shall, unless the contrary is provided by by-law, be held at noon. Therefore, the council had power to pass the by-law under the authority of which the nomination for councillors was held, at the same time and

place as the nomination for mayor, and the appellants were properly nominated and duly elected." The latter part of sub-section (3) of section 219 of the Municipal Act makes the decision of a Judge of the High Court final, so that the decision of the Chief Justice settles the law on this point until the Legislature sees fit to amend the Act.

A Divided Drainage Scheme—Cost of Building Bridge

192.—I. J.—About 16 years ago, a scheme of drainage was brought into operation in this township, consisting of a number of main drains and some tributary ones covering a large area of territory. All the work was done under one engineer's report and one by-law. The assessments were under one head only with no distinction between benefit outlet and injuring liability, and nothing in the report to show for which of the three separate outlets each ratepayer was assessed. In 1897 the central outlet was repaired including one or two tributary drains and only a portion of the territory included in the original scheme was assessed for said work. The assessment was made under three heads of benefit, outlet and injuring liability. In the present year, a very expensive bridge was built over the central drain and the question arises, who are the proper parties to pay for said bridge, and in what proportion should they be assessed? The eastern and western portions of the territory assessed under the original by-law have now independent drainage of their own, and are almost entirely isolated from the central portion of said territory. In view of all these facts:

1. Should the cost of building the bridge above referred to, be levied on the whole territory assessed for the original construction of these drains, and in the same proportion as they were originally assessed for the whole scheme?
2. Should the cost of this bridge be levied only on the territory assessed under the by-law of 1897?
3. If the by-law of 1897 gives the proper basis of assessment for the cost of the bridge in question, should said cost be levied pro rata, according to the assessment for benefit only, for outlet only, for injuring liability only, or for the total assessment under all three heads?

1. Since the eastern and western portions of the territory assessed under the original by-law have now independent drainage this territory is no longer a part of that included in the original drainage scheme. In fact, there appears now to be THREE separate drainage schemes, formed respectively out of the eastern, western and central portions of the territory included in the original drainage scheme. We are therefore of opinion that the cost of the building of the bridge over the central drain cannot be assessed against ALL the lands in the territory included in the original drainage scheme.

2. Yes. Since it is evidently part of the central drainage scheme.

3. The cost of the building of this bridge should be levied pro rata over ALL the lands assessed under the by-law of 1897 whether for benefit, outlet or injury liability.

Opening of Road Allowance—Building of Fences Along—Impounding of Stock.

193.—P. S.—I own lots Nos. 18, 19, 20 and the east half of 21 in the 9th concession of this township and my son C— is located for lots 20 and 21 in the 10th concession. He works my farm and we are assessed for the whole as joint

owners. There is a road allowance between lots 20 and 21 part of which I cleared and part of which was some 12 or 15 years ago used as a public road. Part of the original road allowance is impassable and I consented when the road was needed to let the public use a piece of road across the corner of lot 20, concession 9 as shown in the accompanying plan but never gave the council a deed or other conveyance of said piece of road. On lot 20, concession 10, which was then government land the road then travelled deviated far from the road allowance. Another road having been opened in lieu of this, it was abandoned but as it was fenced as far as my clearing went and came handy as a cattle path to the woods, I left it open until after my son located for the two lots in the rear of my land when I applied to the council for permission to close it and the following resolution was passed by them in 1897:—

"Moved by XX.  
Seconded by XX.

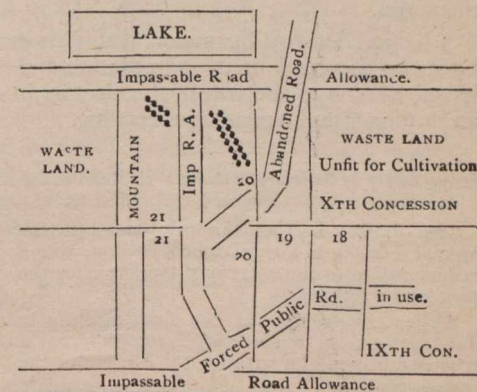
That ——— be allowed to close up abandoned road known as the old P. road until said road shall be needed for public use.

Carried."

I have kept the said road allowance closed ever since and as owing to a lake and other obstructions there is no other egress to the rear of our land and no one is owning or occupying other land near in that direction we can use the uncleared portion and the road allowance between it as pasture land without being put to the expense of fencing it. Now some of the neighbors are coveting the said road allowance quite a portion of which, as already stated, I have cleared and cultivated, and our woods, as pasture land for their cattle and have requested the members of this year's council to compel us to open the old road again though it is not needed or wanted nor can it be used as a public road or for any other public purpose except for pasture and a majority of the members seem to be inclined to grant their request if they can. Should they persist and succeed we would not only be compelled to enclose our wood pasture with an outside fence but we would also have to fence the road allowance on both sides which would require an outlay altogether out of all proportion to the value of the land, or the benefit we derive from it or we will have to pasture all the cattle in the neighborhood along on our bush pasture though I had to purchase my land and we have been paying taxes on my son's lots for years, besides increasing the risk of having them break into our cultivated fields and destroying our crops. I may yet state that we have a municipal by-law allowing cattle which are not known to be breechy to run at large and which regulates the height and condition of lawful fences.

1. Would the council under the circumstances described be justified and legally authorized to compel us to re-open either the formerly travelled road or the original road allowance through both concessions?

2. Can we legally protest against and prevent it and how?



3. If we can be compelled to open the road allowance, are we legally compelled to build road fences on both sides to protect our crops



or could we impound any cattle trespassing in our fields without having lawful fences between our fields and said road allowance?

1 and 2. In this case we are of the opinion that the council may open up the original allowance for road if in its description it deems it proper to do so, but it is not bound as a matter of law to do so.

2. If the council open up the original allowance for road the matter of building a fence along the road for your own protection is your concern and not that of the council, but the owners of cattle running at large will run the risk of having them impounded if they trespass upon your lands and may also render themselves liable for damages if their trespassing cattle do any damage.

#### Height of Barbed Wire Fences.

194—G. H.—1. A number of the farmers in our township are building barbed wire fences simply stringing three wires along on posts, without either pole on top or board at bottom. Is such fence lawful or allowable along a public highway?

2. Others are stringing wire along the trees through the woods. Is this legal?

3. What constitutes a lawful barbed wire fence?

1. There is nothing to prevent these parties building fences of the kind you describe, unless the council of the municipality has passed a by-law pursuant to sub-section 2 of section 545 of the Municipal Act, for settling the height and description of lawful fences in the limits of the municipality.

2. Yes, until the township council by by-law provides otherwise.

3. Such a barbed, wire fence, as each individual sees fit to erect, unless and until the council of the township by by-law settles the height and description of fences within the municipality, in which case, all parties erecting fences after the passing of such a by-law must conform to its provisions.

#### By-Law Commuting Statute Labor.

195—L. P.—1. Can a council pass a by-law to abolish statute labor and collect money for same and pay statute labor, where said council thinks it ought to be done?

2. Would it have to be put before the ratepayers and vote taken on same?

1. Yes. See section 103 of the Assessment Act.

2. No. A township council can pass a by-law of this kind of its own motion and its submission to the vote of the electors is an improper and irregular proceeding.

#### Fixing Salary of Secretary-Treasurer of Rural School Section.

196—J. B.—1. Can the ratepayers at the annual meeting in a rural school section, vote a remuneration to the secretary treasurer for the past year's services?

2. Can the trustees at the first meeting in January, engage a secretary treasurer, not a trustee and pay him without the consent of the ratepayers?

1 and 2. This appears to be a matter for the consideration of the ratepayers at the annual meeting. See sub-section 5 (f)

of section 14 of the Public Schools Act, 1901, and sub-section 4 of section 18.

#### Establishing Road Through Private Land.

197—M. C. T.—There has been a main travelled road across a man's farm in our township, which has been open for public travel for a number of years, but the council has never assumed the road or attached it to any road beat, from the fact they had no deed of the road. Now the party owning said land is willing to deed the road to the township.

1. Is it necessary to have the road surveyed, advertised, and etc., in the usual way before it could be assumed by the council, and attached to road beat.

2. Would it be necessary to have the required width?

P. S. I wish you to understand that it is not necessary to get a description to have a survey, as it lies parallel on the side of a lot.

1. and 2. All that is necessary is a by-law establishing the road as a highway. The boundaries of the road should be set forth in the by-law in the same manner as if the owner were conveying the land and the by-law should then be registered in the manner provided by section 633 of the Municipal Act and a deed of the road should be obtained from the owner and it should be registered.

#### Statute Labor on Lands on Island—Assessment of Pleasure Yachts.

198.—W. H.—1. Can non-resident parties owning land on an island containing about 1,000 acres situated in an unincorporated township be compelled to do statute labor under chapter 224, section 123, and can they be proceeded against under section 127, work to be done on the mainland?

2. Are pleasure yachts, steam and otherwise, exempt from being assessed under section 7, sub-section 29, chapter 224, R. S. O., 1897?

1. These parties are properly chargeable with and should perform statute labor according to the ratio prescribed by section 123 of the Assessment Act, or pay the commutation therefor, as mentioned in section 125 of the Act. In default of their so doing, they are liable to the penalty imposed by section 127 of the Act. Sub-section 2 of section 30 of the Act applies only to islands not exceeding ten acres in extent, and used with the houses erected thereon exclusively as summer resorts, etc.

2. The sub-section quoted exempts from assessment and taxation "vessel property of the following description: Steamboats, sailing vessels, tow barges and tugs." A pleasure yacht is either a steamboat or a sailing vessel, according as it is propelled by steam or wind, and in either event is exempt from assessment and taxation under this sub-section.

#### Unauthorized By-Law as to Pathmasters.

199—D. D.—Our council recently passed a by-law providing that the pathmaster's term of office expire July 1st., and that all statute labor not performed by that date be taken charge of by road commissioners appointed for that purpose. Is this by-law legal, and can it be enforced?

No. There is no authority for such a by-law.

#### Repair of Ditch and Watercourses' Drain.

200—J. C. S.—About five years ago a ditch was put through certain parts of our village under the Ditches and Watercourses' Act. A willow tree grows on a property owners lot, the roots of which now reach the ditch (which here is on the street) and completely fill up the tile, causing water to stand on properties above.

1. Can owner of property be compelled to remove the tree, or otherwise prevented from filling tile?

2. Whose duty would it be to cause him to do so?

3. Is he entitled to remuneration for tree, and if so, how much?

4. Who should pay expenses connected with keeping ditch in repair, benefited properties as per engineer's original award or the village as a whole?

1, 2 and 3. Under section 35 of the Ditches and Watercourses Act any person or party to the award whose lands are affected may take the proceedings laid down in that section and that is the only remedy. The owner cannot by any proceedings outside of the Act be compelled to cut down the tree.

4. Section 34 of the Act places the maintenance of the ditch upon the respective owners in such proportion as is provided in the original or any subsequent award.

#### Same Person Should Not be Clerk and Treasurer in Town Having Right to Sell Lands for Taxes.

201—SUBSCRIBER—For some years I have been treasurer of this town, and am now, and knowing that on or before February 1st., I have to furnish the clerk with a list of lands liable to be sold for arrears of taxes; and again in September a return of arrears due in respect to non-resident lands which have become occupied, besides many other sections in the Act that apply particularly to the office of clerk and treasurer as to county, city and towns, even tax deed required to be countersigned by the clerk. I do not think it advisable nor desirable to have the two offices combined. From questions Nos. 7 and 36 in your January number, re treasurer and clerk for villages, etc., some appear to think that the same also applied to cities and towns, so I take the liberty of submitting the following questions:

1. Can the offices of clerk and treasurer in cities and towns be legally held by the same person?

2. If not, please give a few reasons.

1 and 2. We have frequently given it as our opinion that the offices of clerk and treasurer of a municipality can be held by one and the same person, but in a city or in a town, having the right to sell lands for arrears of taxes, these offices should be held by different persons. Although the statutes do not, in terms, prohibit the holding of these offices by the same person in cities and the towns above referred to, still the duties these officers are called upon to perform under the provisions of the Assessment Act, render the offices incompatible. By section 224 of the Assessment Act, it is enacted that in cities and towns arrears of taxes shall be collected and managed in the same way as is herein before provided in the case of other municipalities and the treasurer and mayor of every city or town shall, for such purposes, also perform the like duties as are hereinbefore in the case of other municipalities, performed by the county treasurer



warden respectively. This involves the receiving and sending of certain returns and statements by the treasurer from and to the clerk, and therefore, we think that these officials should be separate persons. In towns not having the right to sell lands for taxes, we are of opinion, that these offices can legally be held by the same person.

**Liability for School Debentures—Duties of Medical Health Officer, Members of Local Board of Health and High School Trustees as to Declarations of Office—Duties of Auditors as to School Accounts.**

202.—J. B.—1. When we issued debentures some years ago to build a public school, is the property at that time held by public school supporters liable for debentures until all are paid, although it may have passed into the hands of separate school supporters?

2. Should the health officer, medical health officer and high school trustee take the declaration in revised statutes, chapter 223, section 313, the appointment having been made by the council?

3. If our municipal auditors find something wrong in the public school accounts, said wrong extending back over several years, said auditors refuse to go back further than last year, what is to be done? Is it the duty of the council to investigate? If so, where is our authority?

1. Yes. See sub-section 5 of section 42 of the Separate Schools Act (R. S. O., 1897, chapter 294.)

2. If by "health officer" members of local boards of health are meant, they, and a high school trustee appointed by the council, not being officers of the municipal corporation within the meaning of section 313 of the Municipal Act, are not required to make the declaration in this section mentioned, before entering on the discharge of the duties of their respective offices. A medical health officer, however, is an officer of the municipal corporation within the meaning of this section, being appointed by the council at a salary fixed and paid by them. (See section 31 of the Public Health Act, R. S. O., 1897, chapter 248.) and is subject to dismissal by them. (See section 34 of the Act), and should make this declaration before entering upon the duties of his office.

3. We do not think that it is any part of the duty of the municipal council of this village to concern itself as to the sufficiency or otherwise of the audit of the accounts of the public school board. If the board or the ratepayers are dissatisfied with the manner in which the auditors have performed their duties, or think that there is anything wrong with the public school accounts, the matter should be brought to the attention of the Provincial municipal auditor, who is empowered by section 9 of chapter 228, R. S. O., 1897, to hold an investigation.

**Duties of Auditors and Clerk as to Report of Former.**

203.—C. F. S.—1. At our first council meeting January 12th, 1903 the council appointed their auditors and the auditors audit the treasurer's account for the M. of R. on the 24th day of January, 1903, and they filed one copy in the clerk's office, and one they sent to the Bureau of Industries. The clerk took a copy of the report and published in the *Star Enterprise*. On the 13th of February the

reeve of our township came to my office and told me that I had no business to publish the auditor's report and send a copy to the Bureau of Industries, as the report has to be first accepted by the council. Who does appoint auditors? 2. Please give me the address of the new Canadian cement manufacturing company.

1. Sub-section 1 of section 299 of the Municipal Act, as amended by section 8 of the Municipal Amendment Act, 1898, provides that "Every COUNCIL shall at the first meeting thereof in every year after being duly organized appoint two auditors." Sub-section 2 of section 304 provides that "the auditors shall, under a penalty of \$20 in case of default, transmit by mail in a registered package, one copy of the abstract and also one copy of the detailed statement in such form as these have been SUBMITTED TO the council, to the secretary of the Bureau of Industries, Toronto, and shall file the other abstract together with the other detailed statement and reports, in the office of the clerk of the council within one month after their appointment." It will thus be seen that the auditor should send the copies of the abstract and statement prepared by them, to the secretary of the Bureau of Industries, and that the reeve or clerk has nothing to do with the performance of this duty. Section 306 prescribes the duties of the clerk in reference to the auditor's abstract and report, after they have been accepted by the council. It provides that he "shall publish the detailed statement in such form as the council directs," and in the case of a local municipality, the clerk shall transmit to the clerk of the county council, a copy of such abstract and statement, etc."

2. The Owen Sound, Portland Cement Co., (Limited), Owen Sound, Ontario, Geo. S. Kilbourn, secretary-treasurer.

**Tax Bark of Non Residents Assessable.**

204.—T. L.—Can the Assessor assess the tax bark of non-residents piled in the municipality.

Yes. This class of personalty is not exempt from assessment and taxation under the provisions of the Assessment Act, and section 38 of the Act (sub-section 1) provides as follows: "All personal property within the Province, the owner of which is not resident in the Province, shall be assessable like the personal property of residents, and whether the same is or is not in the possession or control, or in the hands, of an agent or a trustee on behalf of a non-resident owner, and all such personal property of non-residents may be assessed in the owner's name, as well as in the name of the agent, trustee or other person (if any) who is in the possession or control thereof."

**Opening Road Allowance—Compensation to Owners of Expropriated Lands—Aid to Agricultural Society.**

205.—A. A. Y.—The municipality of H— township has given legal notice by posting and advertising by-law, registered plans of survey of a new road through deeded property and given a copy of the by-law so passed to the interested parties. What course is now necessary to pursue to lay down fences and take possession of the road?

2. Should compensation be made first to

property owners affected, and what steps should be taken to settle with said property owners?

3. The Agricultural Society of the municipalities of H— and C— want to raise money for the purpose of securing land and buildings to carry on yearly exhibitions of the society and can raise sufficient for that purpose if the municipalities of H— and C— will guarantee 6 per cent. interest per annum on the amount so raised. Can a council for this purpose legally grant interest for a number of years?

1. Provided the by-law is properly prepared, and the road proposed to be opened is accurately described therein, and all the proceedings leading up to its passing, prescribed by the Act, have been regularly taken, the council may take possession of the road and remove any obstructions found upon it with the view of putting it in proper condition for public travel.

2. It is not necessary that compensation should be paid to the owners of land expropriated for the purposes of this road prior to its being entered upon and taken by the corporation (*Harding v. Township of Cardiff—29 Grant, 368*). If the council and the respective owners cannot agree upon the amount of the compensation to be allowed the latter for lands taken for the purposes of this road, it will have to be determined by arbitration proceedings taken pursuant to the provisions of the Municipal Act. (See section 437.)

3. No, but under the authority of sub-section 1 of section 591 of the Municipal Act township councils may pass by-laws "for granting and loaning money, etc., in aid of Agricultural Societies." (See also section 45 of chapter 43, R. S. O., 1897.)

**Township Council Can Purchase Land for Municipal Purposes, and Dispose of Same When not Required**

206.—ENQUIRER.—Is it legal for a township council to purchase lands for municipal purposes without the consent of the electors, and also to dispose of the same again if they wish?

Sub-section 1 of section 534 of the Municipal Act provides that councils of townships may pass by-laws for obtaining such REAL and personal property as MAY be required for the use of the corporation and for erecting, improving and maintaining a hall and any other houses and buildings required by and being upon the land of the corporation AND FOR disposing of such property when no longer required." A by-law of this kind does not require the assent of the electors before its final passing, unless the sum to be paid for the property to be acquired, is not to be paid within the same municipal year in which it is raised, in which case it must receive the assent of the electors of the municipality as provided in sub-section 1 of section 389 of the Municipal Act.

**Duty of Auditors as to School Accounts.**

207.—N. C.—Would like to know if our municipal auditors are not obliged to audit our school accounts free of charge. We are an urban municipality. They claim they have no right to audit same without being paid. Our municipal auditors have always audited our accounts in the past. I have shown them the School Act on that point and they still object.

By sub-section 11 of section 65 of the



Public Schools Act, 1901, it is made the duty of municipal auditors, in urban municipalities to audit all accounts, books and vouchers of the school board, and they must be assumed to know that this is a part of their duty when they accept the office at the salary agreed to be paid them by the council. They must therefore perform this duty, otherwise the council is not bound to pay them their respective salaries.

**Appointment of Engineer Under Drainage Acts—Voting Qualification of Tenant.**

208—K. C.—1. What form of by-law would you recommend for the appointment of engineer for the purposes of the Municipal Drainage Act?

2. Would an engineer appointed for the purposes of the Ditches and Watercourses' Act, be qualified to act under the Municipal Act without another by-law appointing him?

In some cases engineers are appointed under the Ditches and Watercourses Act, only to be authorized by resolution of the council to execute a municipal drainage work, hence the above questions.

3. Should a non-resident tenant or leaseholder have a vote if he leaves land for seven years at a time?

1. The Municipal Drainage Act (R. S. N., 1897, chapter 226,) does not make it necessary that a council should pass a by-law every time it employs an engineer to perform any services under the authority of the Act. A resolution instructing any engineer whom the council considers competent for the purpose, to proceed with the work, is all that is required.

2. Yes. If he is employed by resolution of the council to perform the services required in any particular case. The mere fact that he has been appointed engineer for the municipality by by-law under the provisions of the Ditches and Water Courses Act (R. S. O., 1897, chapter 285,) does not render him ineligible to perform services for the council so appointing him, under the provisions of the Municipal Drainage Act, if such council requests and instructs him to do so.

3. If this tenant possesses the other qualifications required by section 86 of the Municipal Act, if he has resided in the municipality in which the election is held, for one month next before the election, and is, or his wife is, a tenant in the municipality at the date of the election, he is entitled to vote thereat.

**Payment of Assessor for Equalizing School Section Assessment**

209.—M. E. L.—Who should pay the assessor for equalizing union school sections? In a letter written by the Deputy Minister of Education (see August, 1902 number of the WORLD) he states that the assessor's work should be paid out of the funds of the union section. If such is the case, kindly quote chapter and section.

The assessor should be paid by the Board of Trustees of the union school section for doing this work. Such is the opinion of the Education Department as expressed in the letter from the deputy minister, you refer to, and of the county judge in a case against the Township of Douro, reported on page 178 of THE

WORLD for 1901, (November issue). Under the authority of section 54 of the Public Schools Act, 1901, this work is done for, and redounds to the benefit of the rate payers of the union school section only and it is fair and just that they should pay for it, instead of the ratepayers of the township generally through the medium of the council.

**Opening of Road Allowance—Payment of Wire Fence Bonus—Rights of a Defaulting Contractor—Expropriation of Land for Road—Compensation for**

210—A. McL. A.—Between A and B there is nearly three-quarters of a mile of side road that never was opened for public travel. There was a fence (used as a line fence) built on centre of road allowance, there are three or four very deep ravines. It would cost between \$3000 and \$4000 to make any kind of road of it for public travel. It would be impossible to get a deviation that would be suitable. If either were opened the general public would not use it. A and B want council to rent them the road and they will build a new wire fence on the centre of road allowance. This we know we cannot do without giving a deviation. If not, they say they will build their fences in their proper places and tax us \$60, wire fence bonus which is in force in our township.

1. Is a council supposed to open a road like this that would almost sink the township?

2. Can this road allowance be called a road, taking it for granted that it cannot, with reasonable cost be opened?

3. Can they compel council to pay the bonus if they build these wire fences in their proper places?

B. Council of 1902 let a contract of cutting down a hill to A. He was to have it completed on or before 1st October. A. gave B. security in double the amount of contract. The summer being so wet A. was unable to complete the contract. Council took no action in prosecuting A. and B. Before 1st October A. was paid one third of value of contract. A. was working at contract after 1st October. There is considerable work to do yet.

1. Is the contract void?

2. Has either party any claim on the other?

C. In another part of our township there is a piece of road allowance on which there are some very bad hills to keep in repair on account of land slides, etc. At the foot of one of these hills there is an old bridge completely out of repair. The council do not feel like putting any more money on this road. D. who owns land next to this road, wants to exchange a deviation for this old road allowance. I know he will ask the council a big sum taking for his guide what the township will save in preparing the new road instead of the old.

1. If we cannot agree and D. objects to make a deal under any consideration, can we force an arbitration?

2. Explain the best way to go about this.

A. (1) It is optional with a municipal council as to whether it opens a road allowance, in the municipality, and it should not do so unless the convenience of the public renders such a course a necessity. Even if it is an ORIGINAL road allowance, the law does not COMPEL the council to open it.

(2) If this strip of land was originally laid out or reserved for the purposes of a public highway it is a road allowance vested in, and under the jurisdiction of the municipality, although never opened for public travel.

(3) As to this we must see a copy of the township by-law relating to the matter before we can give a definite answer.

B. (1) No, unless it so provides.

(2) If the municipality has sustained any damages, by reason of the failure of A to complete his contract within the time agreed upon, it can recover the amount from A and his surety by ordinary action at law.

C. (1 and 2) If the council considers it advisable to close or stop up and dispose of this road (as is authorized by sub-section 1 of section 637 of the Municipal Act) after taking the preliminary proceedings prescribed by section 632 of the Act, and to enter upon and use for the purpose of opening up and establishing a new road, a portion of lands of D (which the council is authorized to do, by sub-section 2 of section 637), and the council and D cannot arrive at a mutual agreement as to the amount of the compensation to be allowed to D for the portion of his land taken for this purpose, section 437 of this Act provides for the settlement of all differences between them by arbitration under the Act. As to the mode of appointing arbitrators see section 448 and following sections of the Municipal Act.

**Power of Councils to Rent Halls for Meeting Purposes.**

211.—A SUBSCRIBER.—There are two private halls in the centre of our municipality. It is necessary for our council to rent one of those halls each year as they have no town hall.

1. Has our council the right to rent one of those halls for a term of years, as they have to meet at the clerk's office each year and take declarations of office before renting a hall to meet in?

2. If so, in what way, by resolution or by-law?

1. It is not stated whether the hall the township council desires to rent is located in a town or village within or partly within the original boundaries of the township or not. If it is, sub-section 3 of section 534 of the Municipal Act empowers the council to rent it. If it is not so located, there is no authority conferred on a township council for this purpose. Sub-section 1 of this section empowers a township council to obtain such REAL and personal property as may be required for the use of the corporation, and to erect, improve, and maintain a hall thereon.

2. The council should pass a by-law in a matter of this kind.

**Appointment of Pathmasters, &c., and duties of as to Making Declarations of Office, &c.**

212—S. J. S.—1. Can a municipal council appoint its pathmasters, poundkeepers and fenceviewers for a longer time than one year, as it is a good deal of expense getting them to take the declaration every year?

2. If they have not taken the necessary declaration of office, but have been appointed by by-law and have accepted the appointment and acted as such officers, can they do so legally if contested by the Courts?

1. Yes. Although it is usual for councils to appoint these officers for one year only, and the council for the year following the appointment of any of these officers, may repeal the by-law appointing them, and appoint others in their places.

2. The fact that these officials have not made the required declarations of office, does not render any of their official acts illegal.