

QUESTIONS AND ANSWERS

Following are two questions received from a reader concerning roads and answers given by our Legal Division.

For a more detailed discussion on roads see the precis on **"Highways"** under Law and Surveying in the January 1971 issue of The Ontario Land Surveyor.

1. Q. Although we have some good authority on roads which states that **"Once a road — always a road"**, there are cases where municipalities have closed roads on their own authority and conveyed same to adjacent lands, was this permissible? I refer to road allowances laid out in the original township surveys which for various reasons have not been opened, or if opened have been abandoned.
A. If a municipality does in effect own a road that is a proper road that has been legally created and accepted by them, they must close this road under The Municipal Act by by-law. If they wish to sell the said closed portion, they must offer it to the adjoining owners at a fair price. With respect to township roads created by original township surveys, our understanding of the law is that it is vested in the township and that they are deemed to have accepted it whether or not they passed a by-law to that effect or have spent money on the said road. We prefer that the township pass a by-law so accepting, but will recognize that it is not absolutely necessary. Such being the case it would follow that the proper way to close such road would be by way of a by-law and if they are not going to keep the road so closed, that they offer to sell it at a fair price to the adjoining owners. It would also follow that it is immaterial whether or not they have abandoned such roads once opened.
2. Q. On undeveloped subdivisions where roads were not constructed and were not dedicated as public highways, are these lands still in private ownership? When did the certification of roads as public occur, in what year?
A. With respect to undeveloped subdivision where roads are not constructed if a plan of subdivision was, in fact, registered then it does not matter if words of dedication are shown on the plan as they are deemed to be so dedicated. The authority for this is found in Section 57, being Chapter 453, R.S.O. (1970). This section in substance has been the same under the various statutes of Ontario and before that the Province of Canada back to 1849 when it was stated in Section 41 of the 12th Victoria Chapter 35 of 1849, that allowances for roads, streets, etc., which have been surveyed of towns and villages of Upper Canada and laid down on plans made by companies and individuals and by different owners of the lands comprising the same and where any land has been sold in accordance with such plans that they are declared to be highways. Therefore, this section in effect confirms that any roads laid out on plans even before 1849 were declared to be highways provided the same land had been sold.