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Report  
of  
Law Dept  
for 1925

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U.S. DEPT. OF JUSTICE  
WASHINGTON, D.C.

A N N U A L R E P O R T  
OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE  
FOR THE YEAR 1925.

To the Mayor and City Council of the City of Seattle:

Gentlemen:

Section 16, Article XXIV, of the City Charter, requires that the head of every department of the government of The City of Seattle, except the Mayor and President of the City Council, shall make an annual report, on or before the 1st day of April, showing the amount of business transacted in his department, and the condition thereof, and containing recommendations as to any municipal legislation by him deemed necessary or advisable to improve the service rendered by his department, such annual report to be for the year ending December 31st preceding the making thereof.

Pursuant to this provision, I herewith submit the annual report of the Law Department for the year ending December 31st, 1925.

-I-

GENERAL STATEMENT OF LITIGATION

1. Tabulation of Cases:

The following is a general tabulation of suits and other proceedings pending in the Superior, Federal and appellate courts and before the Department of Public Works of Washington during the year:

	Pending Dec. 31 1924.	Commenced During Year 1925	Ended Dur- ing Year 1925	Pending Dec. 31 1925.
Condemnation Suits,	28	13	13	28
Condemnation Suits, Supplementary,	5	11	8	8
Damages for Personal Injuries,	98	54	56	96
Damages other than Per- sonal Injuries,	69	35	38	66
Actions relating to col- lection of assessment rolls,	3	1	4	--
Injunction Suits,	39	12	26	25
Mandamus Proceedings,	11	6	8	9
Miscellaneous Proceed- ings,	53	43	42	54
Public Service Proceed- ings,	1	0	0	1
	<u>307</u>	<u>175</u>	<u>195</u>	<u>287</u>

Total actions pending during period of this report, 482

2. <u>Personal Injury Actions:</u>	<u>Number</u>	<u>Amt. Involved</u>
Pending December 31, 1924,	98	\$852,532.30
Commenced Since Dec. 31, 1924,	<u>54</u>	<u>601,145.45</u>
Total,	152	\$1,453,677.75
Tried and concluded since Dec. 31, 1924,	<u>56</u>	<u>425,816.00</u>
Actions pending Dec. 31, 1925,	96	\$1,027,861.75

Of the personal injury actions pending in the department during the year, fifty-six, involving \$425,816.00, were tried and finally disposed of. Thirty-eight of these cases resulted in judgments in favor of the City, and in the remain-

ing eighteen cases, there were recoveries aggregating \$38,886.00, as against \$32,757.00 for the preceding year.

Of the fifty-four personal injury actions begun during the year, forty-four, involving \$526,718.45, were occasioned by accidents occurring in connection with the operation of the municipal street railway system.

3. Damages other than Personal Injuries:

	<u>Number</u>	<u>Amt. Involved</u>
Pending Dec. 31, 1924,	69	\$1,856,324.71
Commenced since Dec. 31, 1924,	<u>35</u>	<u>167,911.39</u>
Total,	104	2,024,236.10
Tried and concluded since Dec. 31, 1924,	<u>38</u>	<u>1,099,989.22</u>
Pending Dec. 31, 1925,	66	924,246.88

Of the total of one hundred four cases involving damages other than personal injuries, thirty-eight cases, involving \$1,099,989.22, were disposed of during the year. In twenty-four cases, there were judgments entered in favor of the City, and in the remaining fourteen cases, judgments were entered against the City in the aggregate amount of \$19,637.00

4. Injunction Suits:

Of the injunction suits maintained by or against the City, those classes particularly worthy of note relate to priority of local improvement bonds, Federal income tax against municipal street railway employees, licenses, hydrau-

lic power machinery patents, bascule bridge patents, telephone rates, dance halls, sale of power outside city, and the Veterans' Preference provision of the City Charter.

The injunction proceeding mentioned in previous reports brought by The Pacific Telephone and Telegraph Company against the State Department of Public Works to prevent interference with rate increases is still pending. This case is discussed under Subdivision III.

The injunction sought by the Puget Sound Power & Light Company to prevent ex-territorial sale of power, is also discussed under Subdivision III.

The injunction proceeding mentioned in the preceding report instituted against Burns Poe, as Collector of Internal Revenue, with a view to enjoining him from collecting Federal income taxes from municipal street railway employees, was dismissed by the United States District Court on July 6, 1925, at the instance of the Collector. On August 8, 1925, on behalf of one B. W. Roberts, an employee in the Utilities Department, Street Railway Division, we formally protested the payment of the tax and will, at the time provided by law, seek to recover back the payments made, said suit to be in the nature of a test suit to determine the merits of the question at issue, which were not determined in the injunction proceeding. In the meantime, we are informed, the Government has taken steps to appeal a decision adverse to it on this same question following a suit brought by the City of Detroit, involving the same question, which the United

States District Court decided favorable to the City's contention, holding that such income is not taxable by the Federal Government.

A Montrose M. Ringler sought an injunction in the Federal Court (Equity Cause No. 480) restraining the City and the Fire Marshal from interfering with him in conducting dances on a floating dance hall known as the "Sea Lark." The plaintiff contended that the "Sea Lark" was a merchant vessel, duly licensed under the laws of the United States, and that said vessel was therefore not subject to regulation by the City of Seattle, even if the dances were conducted on Elliott Bay within the city limits. The District Court denied his application for a temporary injunction.

Mention was made in the previous report of a proceeding instituted by the Strauss Bascule Bridge Company in the District Court seeking to enjoin the construction of the Montlake Bridge. The plaintiff's application for a temporary injunction was denied by Judge Neterer, and the plaintiff appealed to the Circuit Court of Appeals. The Circuit Court of Appeals, on April 20, 1925, affirmed Judge Neterer's order denying the temporary injunction. We have filed an answer, and the hearing on the merits, with a view to permanent injunction, is still pending.

In the case of State ex rel. Raines v. The City of Seattle, et al., 134 Wash. 360, mentioned in the preceding report, the Supreme Court upheld the validity of the Veterans'

Preference provisions of the City Charter. Double relief was sought in this case: First, to enjoin Mr. Henderson from discharging temporary employees and substituting the regularly certified veterans; and, second, to compel the Civil Service Commission, by mandate, to make up an eligible list without reference to Veterans' Preference.

In the case of Hollenback v. Seattle, 36 Wash. Dec. 407, it was sought to enjoin the City Treasurer from pro rating among all outstanding local improvement liens excess money received from the County after satisfaction of general taxes on county sale. The plaintiff, the holder of junior local improvement bonds, claimed that local assessment liens had priority in the inverse order of their levy. We contended for "parity" of all local improvement liens as among themselves. In this contention we were sustained by the Supreme Court.

Three injunction suits have been instituted in the District Court seeking to restrain the City and to collect damages by reason of alleged patent infringements in the construction of the Skagit plant. These cases are as follows: William Cramp, etc., Co. v. Seattle, No. 439; Allis-Chalmers, etc., Co. v. Seattle, No. 453; and Allis-Chalmers, etc., Co. v. Seattle, No. 454.

On January 15, 1925, the Municipal League sought to enjoin the City and its officers from interfering with it in the matter of maintaining booths in public places. These

booths were intended for the obtaining of signatures to petitions. Upon our appearance in the case, the attorneys for the League, after some delay, advised the court that they had no standing in law. The case was thereupon terminated by the court dismissing the same.

In the case of Martin v. The City of Seattle, Superior Court No. 186478, the plaintiff attacked the validity and constitutionality of Sections 13, 22 and 37 of Ordinance No. 48022 (License Code). The plaintiff, the owner of the Rex Theatre, was attempting to operate the same under a license previously issued to another party, the license, under the Code, not being transferable or assignable. The Superior Court upheld the validity and constitutionality of the sections involved.

5. Mandamus Proceedings:

There was mentioned in the preceding report a mandamus proceeding maintained against the railroad companies operating on Railroad Avenue, in which the Supreme Court upheld our right to compel joint construction and maintenance of the proposed Yesler Way viaduct and to apportion the cost of the same. The issuance of a peremptory writ was originally delayed by your Resolution No. 7952. Another resolution, No. 8396, was passed on the 23rd day of November, 1925, granting a still further delay to the railroad companies for a period of one year from the effective date of said resolution.

In the case of State ex rel. Ross v. Carroll, 133 Wash. 549, the Supreme Court upheld our contention that the salary of Mr. Ross could not be increased after the beginning of his term of office, although he was holding over from a preceding term and had not as yet been reappointed.

In the case of State ex rel. Seattle v. Shields, the City sought a writ of mandate to compel the County Treasurer to pay over to the City the sum of \$113,000.00 (approximate) in interest which had accrued on the City's portion of the 1919 street railway tax levied against the Puget Sound Traction, Light & Power Company. The trial court having denied the writ, we are appealing the matter to the Supreme Court, where it is now pending.

On June 10, 1925, Judge Webster sustained the writ.  
In the case of State ex rel. Clark, et al., v. Seattle, 37 Wash. Dec. 381, the petitioners sought, by mandamus, to compel the City to reconstruct the West Wheeler Street bridge, which had theretofore been destroyed by fire. We contended that such reconstruction was a question addressed to the discretion of the City Council. In this we were upheld by both the Superior and Supreme Courts.

In the case of State ex rel. Jeffery Kay v. Seattle, it was sought to restrain the enforcement of Sections 28 to 41, inclusive, of Ordinance No. 48022 (License Code), and to compel the City to issue a license to the relator. The relator, a jewelry auctioneer, contended that such provisions were unconstitutional. The court upheld the constitutionality of the ordinance, but on the facts held that Kay was entitled to another license.

In the case of State ex rel. Hubbard v. Seattle, 35 Wash. Dec. 353, the Supreme Court upheld our contention that a suspended civil service employee was not entitled to wages during the period of suspension, even though the order of suspension recited that he was suspended on full pay.

6. Miscellaneous Cases:

The miscellaneous actions tried and concluded during the period of this report include numerous actions growing out of police regulations, condemnation proceedings, tax foreclosures, habeas corpus proceedings, proceedings to quiet title, and other matters not involving monetary recoveries.

On June 15, 1925, Judge Neterer sustained the City's demurrer to the second amended complaint filed by the Strauss Bascule Bridge Company against the City seeking damages for alleged breach of contract in the matter of the construction of the West Spokane Street bridge. The Bridge Company contended that, under a contract theretofore had with the City, it was entitled to have the bridge constructed under its plan. The plaintiff has not appealed from Judge Neterer's order.

Forty-three miscellaneous actions were commenced during the year, involving \$280,044.00, in three of which, involving \$17,250.00, recoveries were sought against police officers for false arrest, etc. In these actions, this department was authorized by ordinances to defend the said officers. Of forty-two miscellaneous cases tried, thirty-eight were won

by the department, and in one case lost, a judgment of \$250.00 was rendered against the City.

Four hearings were conducted by the department before the Civil Service Commission, in which decisions were rendered by the Commission sustaining dismissal of the employees from service.

Twenty minor actions were commenced for the Lighting Department of the City, involving unpaid light and power bills. Judgments, including costs, were entered in thirteen cases, in the sum of \$439.90.

During the year, all pending tax foreclosure cases were concluded. As a result of the policy of pressing these tax foreclosure suits, many delinquent tax rolls are being paid up in full.

Condemnation proceedings involving the change of grade on Ninth Avenue South are still pending and will be brought on for trial early in 1926. This case involves many serious questions as to compensation subject to be awarded to packing plants and other concerns in the vicinity involved.

The condemnation of Erskine Way, et al., commenced during the current year, involves numerous streets and alleys in West Seattle. Access to this immediate territory will be greatly improved by reason of the linking up of California Avenue with the region to the west and south.



344 of these writs were against the wages of city employees, and eleven were for miscellaneous articles.

9. Supreme Court:

During the year, there were argued and submitted to the State Supreme Court fifteen cases on appeal. Of these, nine cases were decided favorably to the City, six against the City.

-II-

PUBLIC UTILITIES MUNICIPALLY OWNED.

1. Light and Power:

The department has handled many matters connected with the affairs of the municipal light and power plant, and conducted considerable litigation in its behalf.

We mentioned in the preceding report that we were seeking to have the Supreme Court dismiss the case of Willett v. Russell as a moot issue. This case involved an attempt to enjoin the construction of the sub-station at Eighth Avenue Northeast and East Seventy-fifth Street. Our motion to dismiss was sustained in the Supreme Court.

There was mentioned in previous reports the litigation arising out of the Boxley Creek disaster of December 23,

1918. The North Bend Lumber Company now seeks to have its case transferred to another county under an order for change of venue. Many affidavits have been filed in support of said change of venue, and many affidavits controverting the same have also been filed. The motion is noticed for hearing on April 17th, 1926. The motion for change of venue was made after the general election of March 10th, 1925, on which date the voters defeated, on referendum, a settlement ordinance theretofore passed by the City Council.

In addition to actual litigation for the Lighting Department, we have rendered numerous opinions, attended numerous conferences, and drawn numerous resolutions, ordinances, deeds, easements, franchises, water permits, and other instruments pertaining to the subject matter.

2. Street Railway:

Numerous damage suits arising out of accidents in connection with the municipal street railway system have been tried during the year.

In the case of Woodward v. Seattle, arising out of certain injuries sustained in connection with the operation of a street railway bus on Beacon Hill, the plaintiff sought damages in the sum of \$50,000.00. The City demurred to the complaint on the ground that the City, at the time of the injury, had no statutory authority for the operation of such bus, this injury having occurred prior to the recent amend-

ment to the Utility Act expressly authorizing such operation. Our demurrer was sustained, and the case is now pending on appeal to the Supreme Court.

3. Water:

We mentioned in the preceding report two cases, involving approximately \$11,000.00, arising out of the bursting of a watermain at Sixth Avenue and Union Street on July 20, 1923. Said cases had been successfully defended by the City and motions for new trial were pending. One of these cases was settled for a small sum, and in the other case the motion for a new trial is still pending and the plaintiff is attempting a direct settlement with the City Council.

One R. L. Sparger, having defaulted in the matter of his contract for the construction of a tunnel under the Duwamish River at First Avenue South intended for use in connection with the West Seattle trunk watermain, and the City having been compelled to call for new bids for the contract, involving an expense of something in excess of \$88,000.00, we have, pursuant to your direction, instituted proceedings against Mr. Sparger and his bond, with a view to the recovery of the loss sustained. The case has not as yet been brought to trial.

-III-

PUBLIC UTILITIES PRIVATELY OWNED.

1. Seattle Lighting Company:

Strange to relate, the year 1925 witnessed no litigation with the Seattle Lighting Company.

2. The Pacific Telephone and Telegraph Company:

Mention was made in previous reports of the litigation pending in the United States District Court between the Telephone Company and the Department of Public Works, in which attorneys for the respective cities were "of counsel" with the Attorney General.

On June 2, 1925, was commenced the taking of testimony before the late John T. Condon, Special Master in Chancery, appointed by the special three-judge court to take the testimony and to make his report and recommendations thereon. The taking of testimony involved several weeks' work. The case was argued to the master, who filed his report and recommendations sustaining the Telephone Company. Timely exceptions were taken and argued to the special statutory three-judge court on December 21, 1925. The matter is now under advisement by said court.

The writ of review sued out by the City to procure a revision of the order of the Department of Public Works entered March 31, 1923, is still pending before the Superior Court for Thurston County, that matter having been continued from time to time at the request of the Attorney General.

In order to compel the company to come to terms, so far as the local situation is concerned, we instituted in the Superior Court of this county the case of State ex rel. Seattle v. Myers, Phillips and The Pacific Telephone and Telegraph Co. Superior Court Judge King Dykeman granted the

company's petition for removal to the Federal Court. Our motion to remand was denied by Judge Neterer on the theory that, in part at least, the same issues were involved as in the decision previously mentioned as having been rendered by a three-judge court. On the request of the Attorney General and counsel for the other cities, we have refrained from pressing this matter to an issue, pending the determination of the main case.

3. Puget Sound Power & Light Company:

On September 28, 1925, was tried the case of Puget Sound Power & Light Co. v. Seattle and J. D. Ross, in which the plaintiff sought, by injunction, to restrain the City and Ross from selling power outside the city limits. The court was originally inclined to give the plaintiff a blanket injunction but, on re-argument, limited such injunction to restraint of sale to the Savage Lumber Company at Renton. No formal judgment has as yet been entered.

There were mentioned in the preceding report the suits brought in the Federal Court by the Puget Sound Power & Light Company and the Old Colony Trust Company, in which it was sought to compel the City to pay a proportional part of the Puget Sound Traction, Light & Power Company's personal tax for the year 1919 levied as against its street railway system, subsequently purchased by the City. Motions to dismiss having been sustained, an appeal was taken in the Puget Sound Power & Light Company case to the Circuit Court of Ap-

peals, which reversed the District Court and sent the cause back for hearing. This case is noted for trial on March 22, 1926. The Old Colony Trust appeal was taken direct to the United States Supreme Court. Argument of this appeal is noticed for the first week in March, 1926.

The Puget Sound Power & Light Company has instituted a suit to recover approximately \$11,000.00 in "franchise deposits" originally made in connection with certain street railway franchises surrendered at the time that the City purchased the traction system pursuant to Ordinance No. 39069. The case is still pending in the Superior Court.

#### 4. Water Companies:

The Supreme Court having decided in the case of Monroe Water Company v. Monroe that the State Department of Public Works had authority to abrogate free municipal service provisions contained in a franchise (a question involved in some of our own franchises), and the City of Monroe having requested our assistance in the matter, we appeared amicus curiae, urging a reversal of said decision, on the theory that the jurisdiction of the Department of Public Works related solely to rates and service in respect to the general public, and that such department had no jurisdiction to modify franchise provisions relating to the proprietary interests of municipal corporations. Our contentions were sustained, the departmental decision having been reversed on July 15, 1925. (35 Wash. Dec. 232).

MISCELLANEOUS BOARD HEARINGS.

1. City Planning Commission:

An Assistant Corporation Counsel has been detailed as legal adviser and has sat in with said Commission on all hearings at which his attendance had been requested.

2. Tax Hearings;

At the request of the City Council, we appeared before the County Board of Equalization, urging an increased valuation for the lease of the Metropolitan Building Company on the old University Tract. Said county board, before our appearance, had refused to raise the valuation to \$3,500,000. We were directed to ask for an increase to \$6,000,000. The motion for the increase was backed by the three councilmanic members of the board and opposed by the three County Commissioners. We appealed the matter to the State Tax Commission, which sustained the action of the county board. We thereupon took an appeal to the Superior Court, but, at the direction of the City Council, this appeal was later dismissed.

WORK OF THE CITY ATTORNEY.

1. Prosecutions for Violations of City Ordinances:

During the year, the City attorney disposed of 27,352 cases in the Police Court, resulting in the imposition and

collection of fines and forfeitures in the amount of \$180,156.70. Of the cases involved, 534 were prosecutions for violation of the liquor ordinances and proceedings upon search warrants. Appeals to the Superior Court were taken in seventy-one cases, of which fifty-seven were tried and disposed of. Forty-four appeal cases pending from former years were also tried and concluded.

2. Police Court Bond Difficulties:

In our preceding report, we called attention to trouble in connection with bonds filed in Police Court. We suggested certain remedial legislation with a view to correction of the evil, and transmitted to the City Council a resolution sponsoring the introduction of such remedial legislation in the recent special session of the State Legislature. This resolution was never acted upon by the City Council.

-VI-

O P I N I O N S .

During the year, in addition to innumerable conferences with city officials concerning municipal affairs, of which no formal record is kept, this department rendered one hundred forty-two written legal opinions upon various questions submitted by the several departments of city government.

-VII-

ORDINANCES, RESOLUTIONS AND BONDS.

The members of the City Council and the Mayor have, from time to time, requested this department to prepare ordinances and resolutions. Complying with such requests, the department has drawn, during the period of this report, one hundred seventy-four ordinances and resolutions.

During the year, 1345 bonds of officials, bidders, depositaries and others were examined and approved.

-VIII-

SERVICE OF PROCESS.

During the year, 2400 services of process were made by our witness clerk, who travelled 12,000 miles by the Ford automobile assigned to this department, making such service and after office hours, to be available and available at an expense of approximately \$160.00, exclusive of salary. 960 services were made in sixteen condemnation and L. I. D. cases, for which costs amounting to \$860.00 were taxed in those cases. A considerable amount of time and travel was required in locating witnesses in various damage cases, and during the year subpoenas were served upon 210 witnesses in different parts of this state and Oregon.

-IX-

MISCELLANEOUS MATTERS.

1. Charter Amendments:

At the request of the City Council, we prepared resolutions, with a view to charter amendments, as follows:

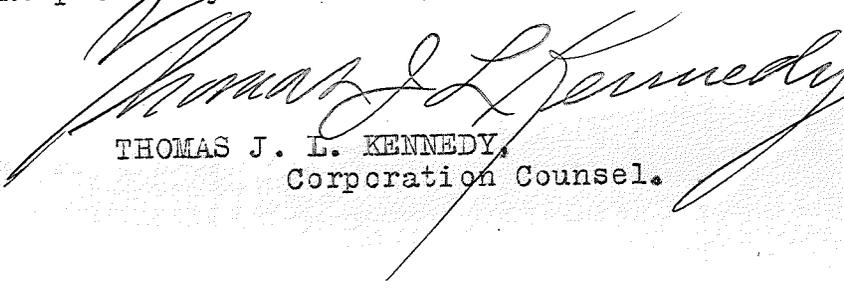
Amendment removing the limitation on the tax levy for the Park Fund; amendment increasing the salary of City Councilmen; and amendment increasing the salaries of the City Treasurer and City Comptroller. All of said amendments, except the first named, were defeated at the election held March 10th, 1925.

#### C O N C L U S I O N

In concluding this report, it is proper to express a high degree of appreciation of the industry, efficiency and loyalty of the personnel of this department. The measure of their devotion to the service is not prescribed by the office hours designated in the City Charter. They have at all times been anxious and willing, during office hours and after office hours, to do anything and everything necessary to the success of the cause and the interests of the City.

Public expression of appreciation is also due the other department heads and the personnel of their departments for their uniform courtesy and consideration in their dealings with this department. They have all shown a commendable spirit of help and co-operation.

Respectfully submitted,

  
THOMAS J. L. KENNEDY,  
Corporation Counsel.