

FILE NO. 109870

Annual Report
OF
Corporation Counsel

April 1, 1927.

FILED **FILED**

BY At 11 o'clock M

ADDRESS APR 1 1927

H. W. CARROLL
CITY COMPTROLLER AND EX-OFFICIO CITY CLERK
CITY COMPTROLLER

BY AND EX-OFFICIO CITY CLERK DEPUTY

ACTION OF THE COUNCIL

REFERRED	TO
REFERRED	TO
REPORTED	REPORT ADOPTED
REPORTED	REPORT ADOPTED
REF. FOR ORD.	C. B. ORD.
	DISPOSITION

REPORT OF COMMITTEE

Mr. President:

Your

Committee

to which was referred the within

would respectfully report that we have considered the same and respectfully recommend that

CHAIRMAN

CHAIRMAN

A N N U A L R E P O R T
OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE
FOR THE YEAR 1926.

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, 1926.

-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:

	<u>Pending Dec. 31 1925.</u>	<u>Commenced During Year 1926</u>	<u>Ended Dur- ing Year 1926</u>	<u>Pending Dec. 31 1926</u>
Condemnation Suits,	28	20	20	28
Condemnation Suits, Supplementary,	8	10	9	9
Damages for Personal Injuries,	96	57	47	106
Damages other than Per- sonal Injuries,	66	27	29	64
Actions relating to col- lections of assessment rolls,	0	1	0	1
Injunction Suits,	25	13	8	30
Mandamus Proceedings,	9	5	3	11
Miscellaneous Proceed- ings,	54	45	30	69
Public Service Proceed- ings,	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
	287	178	146	319
Total actions pending during period of this report,				465

<u>2. Personal Injury Actions:</u>	<u>Number</u>	<u>Amt. Involved</u>
Pending December 31, 1925,	96	\$1,027,861.75
Commenced Since Dec. 31, 1925,	<u>57</u>	<u>542,188.90</u>
Total,	153	\$1,570,050.65
Tried and concluded since Dec. 31, 1925,	<u>47</u>	<u>\$ 473,046.55</u>
Actions pending Dec. 31, 1926.	106	\$1,097,004.10

Of the personal injury actions pending in the department during the year, forty-seven, involving \$473,046.55, were tried and finally disposed of. Sixteen of these cases resulted in judgments in favor of the City, and in the remaining thirty-one cases, there were recoveries aggregating \$39,832.40, as against \$38,886.00 for the preceding year.

Of the fifty-seven personal injury actions begun during the year, thirty-nine, involving \$373,881.20, 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, 1925,	66	\$ 924,246.88
Commenced since Dec. 31, 1925,	<u>27</u>	<u>31,786.30</u>
Total,	93	\$ 956,033.18
Tried and concluded since Dec. 31, 1925,	<u>29</u>	<u>\$ 61,943.09</u>
Pending Dec. 31, 1926,	64	\$ 894,090.09

Of the total of ninety-three cases involving damages other than personal injuries, twenty-nine cases, involving \$61,943.09, were disposed of during the year. In fourteen cases, there were judgments entered in favor of the City, and in the remaining fifteen cases, judgments were entered against the City in the aggregate amount of \$8,435.25, as against \$19,637.00 for the preceding year.

4. Injunction Suits:

Of the injunction suits maintained by or against the City, those classes particularly worthy of note relate to taxes, endless chain sales, certification of referendum petitions, distributors, licenses, hydraulic power machinery patents, telephone rates, dance halls, and City Zoning.

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.

Mention was made in previous reports of an injunction prosecuted against Burns Poe, as Collector of Internal Revenue, with a view to enjoining him from collecting Federal income taxes from municipal street railway employees. In our last report, we announced an intention to sue at law for the recovery back of such income taxes paid under protest by the employees. Such action was rendered unnecessary by a recent act of Congress (§ 1211, Revenue Act, 1926) directing the repayment of all of such taxes collected during or prior to 1924. We assisted hundreds of city employees in securing refunds under the Act.

The suit of Montrose M. Ringler, instituted in the Federal Court (Equity No. 480) to restrain the City Fire Marshal from interfering with him in conducting a dance hall on the "Sea Lark," has been disposed of, so far as judicial restraint is concerned, but is still pending upon the question of damages.

The Montlake Bridge injunction proceeding instituted by the Strauss Bascule Bridge Company in the Federal Court and mentioned in our last report is still pending, having been passed for setting for trial on the merits.

Three injunction suits, mentioned in previous reports, instituted in the Federal Court seeking to restrain the City and to collect damages by reason of alleged patent infringements in the construction of the Skagit plant, are still pending but we anticipate an early settlement of these cases and the payment by S. Morgan Smith Company of all damages and costs incurred. These cases are entitled as follows: William Cramp, etc., Co. v. Seattle, No. 429; Allis-Chalmers, etc., Co. v. Seattle, No. 453; and Allis-Chalmers, etc., Co. v. Seattle, No. 454.

In the case of International Motor Transit Co. v. Seattle, involving our right to regulate by ordinance motor bus concerns

engaged in interstate commerce, the Superior Court granted an injunction which, upon appeal, was affirmed by the State Supreme Court. The State courts based their decision on a decision of the United States Supreme Court which, in our opinion, was not applicable, but the nature of the constitutional question involved and the form of the decision rendered by the State Supreme Court prevented a review of the question in the United States Supreme Court, since there is no jurisdiction for an appeal where the decision is in favor of the person claiming the protection of the Federal Constitution as against the local legislation.

In the case of *Sherman Clay & Co. v. E. J. Brown, et al.*, the Supreme Court upheld our right by ordinance to regulate the purchase and sale of second hand goods, including second hand musical instruments handled by a firm as an incident to the sale and disposal of new musical instruments.

The Metropolitan Building Company sought by injunction to prevent the County Board of Equalization and the King County Assessor from changing the tax rolls to comply with an order of the State Tax Commission. We appeared on behalf of the City members of the Board and procured an order dismissing the proceeding.

The Pilcar Sales Company and Rosenbury & Company sought, by separate injunction suits, to enjoin the City and its officials from interfering with them in certain endless chain sales enterprises conducted in violation of Ordinance No. 50914, on the ground that said ordinance was unconstitutional. Our demurrers were sustained by the Superior Court and the actions dismissed. The parties have not appealed. The successful termination of these cases has resulted in the practical elimination of endless chain sales within the City.

In the case of State ex rel. Harlin v. Superior Court, 139 Wash. 282, the Supreme Court upon certiorari affirmed the judgment of the Superior Court, which refused to enjoin Comptroller H. W. Carroll from certifying the sufficiency of certain referendum pe-

titions filed against a plan or system ordinance for the purchase of the lines of the Seattle & Rainier Valley Railway Company. This decision upholds the right of the electors to subject plan or system ordinances to the referendum.

In the case of The Jell-Θ Co., Inc., v. Brown, et al., the United States District Court denied an injunction and held valid the provisions of the License Code relating to and regulating distributors as not being an unreasonable burden upon interstate commerce. The plaintiff has prosecuted an appeal to the United States Circuit Court of Appeals, where the matter is now pending.

John Manos, who formerly operated a skating rink in the vicinity of Woodland Park, converted the same into a dance hall. A license was refused him and he sought to enjoin interference and to compel the issuance of such license. A temporary injunction was granted by Judge Frater, which was dissolved upon the hearing upon the merits, but the effect of the temporary injunction was to permit Manos to operate in violation of the ordinance, pending final hearing in the Supreme Court. By his failure to file a bond under the statute, Manos deprived himself of the opportunity of continuing the temporary injunction in effect pending appeal to the Supreme Court, where the matter is now pending. The case involves the constitutionality of the Zoning Ordinance.

The Zoning Ordinance was also involved in the case of State ex rel. Seattle Title Trust Co. v. Proctor, in which it was sought to enjoin the City from interfering with the construction of an old people's home in a First Residence District. Superior Court Judge Kinne upheld the validity of the ordinance. Appeal was taken to the Supreme Court, where the matter is now pending.

5. Mandamus Proceedings:

Mention has been made in previous reports of a mandamus proceeding successfully prosecuted against the railroad companies operating under franchises on Railroad Avenue with a view to compelling the joint construction and maintenance of the proposed Yesler Way viaduct. The matter of the issuance of a peremptory writ has been delayed from time to time by various resolutions of the City Council, including Resolutions Nos. 7952, 8396 and 8980 $\frac{1}{2}$. The last resolution delays further proceedings until November 23, 1927.

We mentioned in our previous report the case of State ex rel. Seattle v. Shields, involving the City's right to participate in the interest collected on the Traction Company's street railway tax. On August 12, 1926, the Supreme Court handed down a decision holding the City was not entitled to participate therein.

In the case of State ex rel. Brain v. Landes, et al., the Superior Court held that the Auditing Committee was not authorized to make a deduction from an employee's pay for services rendered as an off-set against vacation pay previously received, and which the Auditing Committee thought that he was not entitled to receive by reason of a void provision of an ordinance seeking to deprive the department head of authority to grant such vacation.

One Herbert Smith sought by mandamus to compel the Superintendent of Buildings to issue a permit for an apartment house in a First Residence District, on the theory that, as applied to plaintiff's property, the Zoning Ordinance was unconstitutional. The plaintiff evidently regarded our return as conclusive, as he has not sought further to prosecute the action.

6. Miscellaneous Cases:

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

Forty-five miscellaneous actions were commenced during the year, involving \$205,156.00, in five of which, involving \$71,335.00, recoveries were sought against police officers for false arrest, etc. In these actions, this department was authorized by ordinances to defend the said officers. Six cases were instituted by the City against various parties for rent, damages, to watershed, etc., involving claims of \$97,409.00. Of thirty miscellaneous cases tried, twenty-five were won by the department. None of the cases lost resulted in monetary recoveries against the City.

Nine 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.

Thirty-seven minor actions were commenced for the Lighting Department, involving unpaid light and power bills. Judgments, including costs, were entered in thirty-five cases, in the sum of \$24,444.97.

The condemnation proceeding involving the change of grade of Ninth Avenue South, mentioned in our previous report, and which involved several packing plants, was prosecuted to completion during the year 1926. The condemnation of Erskine Way was also completed.

The condemnation of Madrona Playfield was instituted and completed during the year and the assessment roll approved. This is the first instance in which resort was had to assessments for the payment of condemnation awards for playfields.

The summons and petitions for the Denny Hill Regrade No. 2 and the Second Avenue Extension condemnations have been prepared and filed and are in process of service. The condemnation involved in the regrade of Denny Way, popularly referred to as the Broad Street case, was filed and prosecuted to completion during the year.

1926.

7. Statement and Investigation of Damage Claims Filed Against the city:

	<u>Number</u>	<u>Amount Involved</u>
Claims for damage under investigation December 31, 1925,	666	\$1,696,055.19
Claims for damages referred to this department for investigation, Dec. 31, 1925, to Dec. 31, 1926,	<u>797</u>	<u>1,181,565.35</u>
	1463	\$2,877,620.54

Claims disposed of as follows:

	<u>Number</u>	<u>Amount Claimed</u>	<u>Amount Paid</u>
Settled	384	\$207,468.20	\$68,360.27
Rejected	<u>454</u>	<u>777,976.86</u>	
	838	\$985,445.06	
Claims pending Dec. 31, 1926.	625	\$1,892,175.48	

21 cases in suit settled in conjunction with Claim Agent:

Amount involved	\$82,694.15
Amount of Settlement	21,969.08

Number of street railway accident reports received from Department of Public Utilities and investigated, December 31, 1925, to December 31, 1926, 6144

Number of circulars and letters mailed in connection with the investigation of foregoing claims and reports 13,500

8. Garnishments:

During the period of this report, 216 writs of garnishment

were served upon the City, all of which were answered. 204 of these writs were against the wages of city employees, and twelve were for miscellaneous articles.

9. Supreme Court:

During the year, there were argued and submitted to the State Supreme Court twenty-two cases on appeal.

10. United States Supreme Court:

One case (Old Colony Trust Co. v. Seattle and King County) was submitted and argued before the United States Supreme Court.

11. United States Circuit Court of Appeals:

One case was submitted and argued before the Circuit Court of Appeals.

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.

There was mentioned in previous reports the litigation arising out of the Boxley Creek disaster of December 23, 1918. There was also mentioned the application of the North Bend Lumber Company for a change of venue. Many affidavits were filed on both sides, the preponderance as to number being upon the side of the City. The plaintiff delayed a hearing of the motion from time to time until April 12th, 1926, upon which date Judge French, of Kitsap County, was sitting in the King County Court. The parties were detained in the Presiding Judge's Department until the close of the day, when, upon Judge French being at leisure, the matter was sent out by the Presiding Judge to him for determination. Judge French ordered a change of venue to Pierce County, where the matter has been set down for hearing on the merits commencing January 4th, 1927.

On behalf of the Light Department, we filed a cross-complaint in the case of Puget Sound Bridge & Dredging Company v. Jahn & Bressi, et al., and secured judgment for approximately \$25,000.00 on account of electric current furnished the contractors. This matter is now on appeal to the Supreme Court.

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.

There was mentioned in the previous report the case of Woodward v. Seattle, arising out of personal injuries sustained in connection with the operation of a street railway bus on Beacon Hill and involving a claim for \$50,000.00. The Supreme Court sustained our contention that, there being no statutory authority for the operation of such busses at the time of the accident, such operation was ultra vires the City and the City not liable in damages by reason of any accident arising therefrom.

3. Water:

In the case of Puget Sound Power & Light Co. v. Sparger, et al., the City was a party by reason of being custodian of retained percentages on a City contract for the construction of the Duwamish Waterway Tunnel for the Water Department. We established both in the Superior and in the Supreme Courts the principle that the time for the filing of claims against reserved percentages begins to run, not at the time of forfeiture of the contract, but at the time of the final completion of the work thereafter.

In the case of Seattle v. Sparger, mentioned in the preceding report, Judge Paul held that the City was not entitled to recover from Sparger the additional expense of completing the Duwamish Waterway Tunnel above mentioned, and that the City, through its Superintendent of Water, first breached the contract.

Pursuant to ordinance, we instituted an action against the

Bowers Timber Company, et al., for the sum of \$12,000.00, treble damages, for timber trespass in the Lake Youngs Watershed. The matter has not yet been brought to trial.

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PUBLIC UTILITIES PRIVATELY OWNED.

1. Seattle Lighting Company:

Strange to relate, not only one but two years have passed without any 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.

The hearing before the Three Judge Court upon exceptions to the report of Special Master in Chancery John D. Condon resulted in a decision sustaining the Master. The Attorney General has taken an appeal to the Supreme Court of the United States and requested us to write the brief. It will probably be a year or more before the matter is finally heard and determined.

The City Council having by ordinance directed Clark Jackson, the Superintendent of Public Utilities, to take possession of certain telephone franchise property in the streets accruing to the City under Section 12 of Ordinance No. 6498 (Independent franchise), The Pacific Telephone and Telegraph Company applied to the Federal Court for an injunction. An answer has been filed on behalf of the City and the matter is awaiting setting for trial. In the meantime, the use of the property by the Company is being permitted under agreement with the City Council.

3. Puget Sound Power & Light Company:

There were mentioned in preceding reports the suits brought in the Federal Court by the Puget Sound Power & Light Company and the Old Colony Trust Company to compel the City to pay a porportionate part of the personal taxes of the Puget Sound Power & Light Company levied as against the street railway system taken over by the City on March 31, 1919. The Old Colony Trust Company having taken a direct appeal to the Supreme Court of the United States from the decision of the local District Court to the effect that it was without jurisdiction, the Supreme Court reversed the District Court and sent the matter back for trial, where it is now pending. Since the Old Colony Trust Company has no interest whatever in the payment of the tax, we anticipate that it will never bring on the matter for trial. The Circuit Court of Appeals having reversed the decision of the District Court, so far as the Puget Sound Power & Light Company was concerned, the matter was sent back for trial and heard by Judge Bourquin, visiting Federal District Judge from Montana. Judge Bourquin held that he was concluded by the decision of the Circuit Court of Appeals and awarded judgment in favor of the "Traction Company". Judge Bourquin, having awarded a general judgment to the Company, we took an appeal to the Circuit Court of Appeals, which modified its previous decision and exonerated the General Fund. Both parties thereupon took the matter to the Supreme Court of the United States by certiorari, where it is still pending.

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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 has 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. The Assessor had fixed a valuation for tax purposes of \$700,000.00. The County Board, having failed and refused to pass upon our application, we appealed to the State Tax Commission, which increased the valuation for tax purposes to the sum of \$1,375,000.00. The Company having taken an appeal to the Thurston County Superior Court, we filed a cross-appeal on behalf of the City, and the matter is still pending in the Thurston County Court.

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WORK OF THE CITY ATTORNEY.

1. Prosecutions for Violations of City Ordinances:

During the year, the City Attorney disposed of 42,192 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$247,819.65. Of the cases involved, 873 were prosecutions for violation of the liquor ordinances and proceedings upon search warrants. Appeals to the Superior Court were taken in eighty-nine cases, of which thirty were tried and disposed of. Twenty-five appeal cases pending from former years were also tried and concluded.

2. Police Court Bond Difficulties:

We mentioned in two previous reports troubles in connection with bonds filed in the Police Court. We are glad to record the fact

that conditions are vastly improved.

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OPINIONS.

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 five 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 eighty-one ordinances and resolutions.

During the year, 1330 bonds of officials, bidders, depositaries and others were examined and approved.

-VIII-

SERVICE OF PROCESS.

During the year, 3300 services of process were made by our witness clerk, who travelled 15,500 miles by the Ford automobile assigned to this department, making such service at an expense of approximately \$322.00 for gas, oil and repairs to service car. 2200 services were made in nineteen condemnation cases, for which costs amounting to \$1500.00 were taxed in those cases. The Denny Hill Regrade No. 2 condemnation required 1400 services at a cost of

\$960.00. A considerable amount of time and 2600 miles of travel were required in locating and serving subpoenas upon witnesses in sixty-three damage cases.

-IX-

MISCELLANEOUS MATTERS.

1. Charter Amendments:

At the request of the City Council, we have prepared a resolution submitting a charter amendment authorizing the City Council to provide by ordinance for a retirement and disability pension system for municipal employees.

2. Legislative Bills:

At the request of the City Council, we prepared five legislative bills for introduction at the 1927 session of the State Legislature.

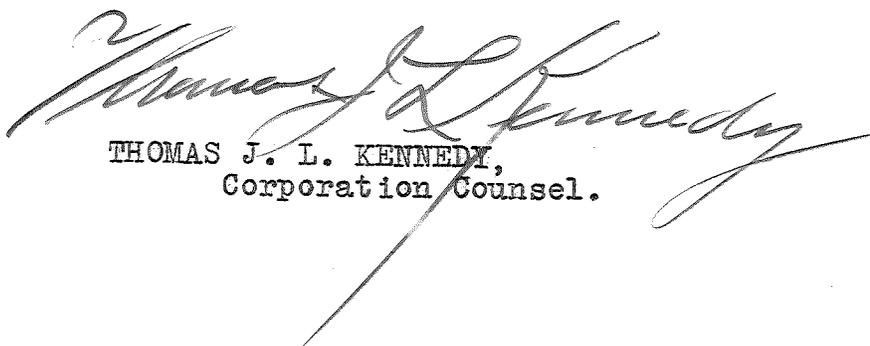
CONCLUSION

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.