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Report
Law Department
1930

A N N U A L R E P O R T
OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE
FOR THE YEAR 1930.

* * * * *

TO THE MAYOR AND CITY COUNCIL OF THE CITY OF SEATTLE:

Gentlemen:

Pursuant to Section 16, Article XXIV, of the City Charter, I herewith submit the annual report of the Law Department for the year ending December 31st, 1930.

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, 1929</u> | <u>Commenced During Year 1930</u> | <u>Ended Dur- ing year 1930</u> | <u>Pending Dec.31, 1930</u> |
|---|-------------------------------------|---|---|-------------------------------------|
| Condemnation Suits..... | 16 | 22 | 17 | 21 |
| Condemnation Suits, Supple- mentary..... | 5 | 15 | 16 | 4 |
| Damages for Personal Injuries..... | 123 | 80 | 82 | 121 |
| Damages other than Personal Injuries..... | 59 | 45 | 33 | 71 |
| Actions relating to collec- tion of Assessment Rolls.. | 17 | 1 | 16 | 2 |
| Injunction Suits..... | 23 | 15 | 15 | 23 |
| Mandamus Proceedings..... | 12 | 9 | 9 | 12 |
| Miscellaneous proceedings.. | 53 | 50 | 27 | 76 |
| Public Service Proceedings. | <u>0</u> | <u>1</u> | <u>0</u> | <u>1</u> |
| | 308 | 238 | 215 | 331 |

2. Personal Injury Actions:

| | <u>Number</u> | <u>Amt. Involved</u> |
|---|---------------|----------------------|
| Pending December 31, 1929, | 123 | \$1,392,128.08 |
| Commenced since December 31, 1929, | <u>80</u> | <u>800,611.97</u> |
| Total, | 203 | 2,192,740.05 |
| Tried and concluded since Dec. 31, 1929, .. | <u>82</u> | <u>924,393.65</u> |
| Actions pending December 31, 1930, | 121 | \$1,268,346.40 |

Of the personal injury actions pending in the department during the year, eighty-two, involving \$924,393.65, were tried and finally disposed of, as against eighty-five for the preceding year. Forty-four of these cases resulted in judgments in favor of the City, and in the remaining thirty-eight cases there were recoveries aggregating \$70,216.00, which is less than seven and one-half per cent. of the aggregate damages claimed.

Of the eighty personal injury actions begun during the year, fifty-one, involving \$477,406.00, are based on alleged 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 December 31, 1929, | 59 | \$362,259.30 |
| Commenced since December 31, 1929, | <u>45</u> | <u>25,606.82</u> |
| Total | 104 | 387,866.12 |
| Tried and concluded since Dec. 31, 1929, .. | <u>33</u> | <u>135,889.02</u> |
| Pending December 31, 1930, | 71 | \$251,977.10 |

Of the total of one hundred four cases involving damages other than personal injuries, thirty-three cases, involving \$135,889.02, were disposed of during the year. In fourteen cases there were judgments entered in favor of the City; in fourteen of the remaining

cases judgments were entered against the City in the aggregate amount of \$6,479.20. The remaining five, being the so-called "Cedar River dam cases", were settled for \$18,096.16 by ordinance after the conclusion of North Bend Lumber Co. case.

4. Condemnation Cases:

Sixteen condemnation cases were concluded during the year 1930 and fifteen new cases were commenced during 1930. This class of litigation involves an enormous amount of detail work on the part of the Senior Law Clerk and requires considerable "trading" ability, as well as legal knowledge, on the part of the Assistant assigned to these cases. The vast majority of these cases are settled on the basis of recommendations made by appraisers retained by the City, whose ability to analyze complex questions of damage and whose loyalty to the public interest in these matters is highly commendable.

5. Injunction Suits:

Two injunction suits were brought against the City to test the validity of Ordinance No. 59866 in respect to rates and classification of vehicles. Said ordinance is one of the few in the United States which attempts to regulate minimum as well as maximum fares for for-hire vehicles. We were successful in sustaining the validity of the ordinance in the Superior Court.

A number of injunction suits were brought by owners of property abutting the separation of grades for approaches to the new bridge at West Spokane Street. The City, in its eagerness to proceed with the physical work, neglected to acquire the necessary legal rights to change and separate the grades. We succeeded in avoiding the issuance of temporary injunctions by a legal maneuver which changed the character of the action so that the question of

damage to the private property was tried out in the same manner as in condemnation cases. This was accomplished without any material interruption in the progress of the physical improvement. We do not, however, wish to be put in the light of countenancing a dangerous procedure of this kind, as it might well have happened that an expensive delay might have resulted from the failure to acquire the necessary legal rights prior to the physical improvement. Another fortunate circumstance in this connection was the fact that there were General Funds available which had been allotted for the purpose of paying such damages.

Another case of similar nature with a similar result was that involving private property adjacent to the Duwamish River Bridge at 16th Avenue South.

The Pacific Coast Company brought an injunction action to restrain the City from constructing a viaduct on Lenora Street for an approach to the Port of Seattle docks. The injunction action was dismissed upon the City's filing condemnation proceedings to acquire the necessary property rights.

6. Mandamus Proceedings:

State ex rel Beebe v. Seattle, was mentioned in the 1929 report. This was a mandamus action to compel the City to restore Beebe to his position after his removal for incompetency and for the good of the service. The decision of the Superior Court denying the relator any relief was affirmed by the Supreme Court. The rule of law that the courts will not interfere where the Civil Service Commission has sustained the action of the department head (at least in the absence of strong proof of fraud or arbitrary action) was reiterated. This decision emphasizes the law that contrary to the general but erroneous impression the courts do not interfere in the enforcement of discipline and efficiency by

City department heads.

State ex rel A. R. Peter v. City. The relator Peter, who enlisted in the regular army of the United States in 1920 contended that he was entitled to the preference accorded to veterans in City employment by the Charter. This department had previously ruled that Mr. Peter's service did not constitute service "in time of war" as contemplated by Charter. The Superior Court, and on appeal the Supreme Court, sustained the principle embodied in said opinion.

State ex rel Chapman v. Edwards, et al. Application for Writ of Mandate to compel Firemen's Board of Trustees to grant relator a pension. After the court had sustained the City's demurrer to the amended application for Writ of Mandate, relator appealed to the Supreme Court. This appeal is now pending to be heard in the January term of court.

State ex rel City v. Seattle & Rainier Valley Railway Co. Action in mandamus to compel respondent to pave between its tracks on a portion of Rainier Avenue. The action was finally settled under an express authorization and direction by the City Council by the company laying planking between the tracks in the area designated. Another contemplated action was settled by the company's voluntarily paving between its tracks on Fourth Avenue between University and Pike Streets.

Vandervoort v. Seattle, mentioned in the 1929 report, was an action in mandamus by a general taxpayer to compel the Board of Public Works to remove market stalls in the sidewalk on Pike Place, etc. Plaintiffs were successful in the Superior Court, but on appeal to the Supreme Court the trial court was reversed on the legal ground presented by this department, which was that a mere taxpayer without any direct or beneficial interest, had no

legal right to invoke mandamus against the obstruction of a public place.

7. Certiorari Cases:

The cases of W. H. Searing and Hans Damm v. Board of Police Pension Fund Commissioners were brought by plaintiffs following action by the Commissioners reducing plaintiffs' police pensions. The Commissioners had previously been advised by this department that Searing and Damm were entitled under the law to the pensions they were then receiving. The Commissioners, however, insisted on a court decision in the matter and we accordingly defended the cases to the best of our ability under the circumstances. The court's decision was in accordance with the opinion rendered by this department.

State ex rel Boyd v. Firemen's Relief & Pension Fund Trustees: Application for Writ of Certiorari to review action of Board of Trustees of Firemen's Relief & Pension Fund in denying relator's application for pension. The case was initiated by one set of attorneys, and after demurrer had been sustained to two applications they were succeeded by other attorneys. The respondent's demurrer to the second application was sustained by the court and no appeal resulting, the case was closed. This decision reiterates the rule that relator having been granted a hearing by the Board of Trustees he cannot legally complain that the decision is erroneous.

State ex rel Christman v. Board of Trustees of Firemen's Relief & Pension Fund. This case was an application for writ of review of the action of the Board in denying relator a pension. In this case no hearing was granted relator and the court sustained the application. This emphasizes the necessity for a hearing.

8. Miscellaneous Cases:

Four actions were commenced against police officers for \$115,500.00 for false arrest. One false arrest case demanding \$10,000.00 damages was tried and won. In these actions this department was authorized by ordinance to defend said officers.

Of twenty-seven miscellaneous cases tried, all were won by the department, except one.

Twelve hearings were conducted by the Department before the Civil Service Commission, in which ten decisions were rendered by the Commission sustaining dismissal of the employees from service. Reinstatement was ordered in two cases.

One hundred forty-three minor actions were commenced for the Lighting Department, involving unpaid light and power bills amounting to \$10,460.57. Judgments, including costs, were entered in sixty-five cases and \$2,806.54 collected and paid to the Lighting Department. In addition thereto, the collection of a considerable number of past due accounts was effected without litigation by means of writing letters advising the various users of electric current that their accounts had been turned over to this department for collection, or that the removal of merchandise purchased on conditional sale from the City and out of the jurisdiction of the court rendered them liable to both civil and criminal actions. The handling of this work of the Lighting Department requires about eighty per cent. of the time of one of the Law Clerks of this department.

This department has commenced numerous actions for the abatement of buildings on private property on the ground that they are public nuisances. These cases are rapidly becoming more numerous, and while quite effective, consume a great amount of time.

a. Condemnation Assessment Roll Cases:

Outstanding condemnation assessment roll cases during the

year were North Broadway, 8th Avenue N. W. and Albro Place.

b. Assessment Foreclosure Proceedings:

A condemnation assessment foreclosure proceeding involving 1164 pieces of property was commenced during the year and will be concluded early in 1931. Another local improvement assessment roll foreclosure proceeding under the new 1929 law and involving 2200 pieces of property was commenced during the year and this also will be concluded early in 1931. The practical effect of this proceeding has been to enforce payment of an unusual amount of local improvement assessments long since delinquent.

9. Statement and Investigation of Damage Claims filed Against the City:

| | <u>Number</u> | <u>Amt. Involved</u> |
|---|---------------|----------------------|
| Claims for damage under investigation December 31, 1929, | 1123 | \$2,676,937.90 |
| Claims for damages referred to this department for investigation Dec. 31, 1929, to Dec. 31, 1930, | 977 | <u>1,875,062.21</u> |
| | 2100 | \$4,552,000.11 |

Claims Disposed of as Follows:

| | <u>Number</u> | <u>Amt. Claimed</u> | <u>Amount Paid</u> |
|------------------------------|---------------|---------------------|--------------------|
| Settled, | 400 | \$432,002.98 | \$51,437.99 |
| Rejected | 536 | <u>1,260,926.28</u> | |
| | 936 | 1,692,929.26 | |
| Claims pending Dec. 31, 1930 | 1164 | 2,859,070.85 | |

Twenty-one of above settled claims were in suit and settled in conjunction with Claim Agent:

| | |
|-----------------------------|--------------|
| Amount Involved, | \$114,480.50 |
| Amount of Settlement, | 12,232.15 |

Number of street railway accident reports from Department of Public Utilities and investigated, Dec. 31, 1929, to Dec. 31, 1930, 5559

Number of circulars and letters mailed in connection with the investigation of foregoing claims and reports, 12000

10. Garnishments:

During the period of this report, 274 writs of garnishment were served upon the City, all of which were answered. All of these writs were against the wages of City employees.

11. Supreme Court:

During the year, there were argued and submitted to the State Supreme Court fourteen cases on appeal, the City being successful in seven of these cases.

II.

PUBLIC UTILITIES MUNICIPALLY OWNED.

1. Light and Power:

This department has handled many matters connected with the affairs of the municipal light and power plant and system, particularly the drawing of plan and system ordinances of an extensive and complicated nature, condemnation ordinances and proceedings and ordinances providing for loans as advances to Capital Account, contracts, deeds, franchises, easements, permits and other instruments, rendered numerous opinions and attended numerous conferences pertaining to this phase of the City's business activities, and conducted considerable litigation involving small claims in its behalf.

2. Street Railway:

Numerous damage suits arising out of accidents in connection with the street railway system, the number and extent of which has been hereinbefore set forth, have been tried during the year.

The case of J. G. Von Herberg, referred to in the 1928 and 1929 reports, was decided in favor of the City by the Supreme Court

of the State.

The injunction suit brought by one Wylde, and others, to restrain the proposed discontinuance of service on the Lake Burien line outside the City limits is still pending in the State Supreme Court, the matter having been argued to the court en banc.

3. Water:

Jahn & Bressi v. Seattle, referred to in the 1928 and 1929 reports, in which the plaintiffs sought to recover \$236,000.00 for alleged breach of contract in connection with the Lake Youngs development, was decided adversely to the City in the Federal Court; plaintiffs recovering a judgment in the sum of \$76,000.00. An appeal to the Circuit Court of Appeals, 9th Circuit, is pending.

The City's action against the Pacific States Lumber Company, pursuant to Ordinance No. 58303, to eject said company from the Cedar River Watershed and to prevent further logging operations by it on City property, was removed to Kittitas County upon the motion for a change of venue interposed by the defendant company, based on alleged prejudice against it in King County. Trial commenced in Ellensburg November 6, 1930, and the testimony was concluded December 16, 1930. This case is one of great public interest and presents difficult and complicated legal problems. The decision of the Superior Court will follow argument early in 1931.

III.

MISCELLANEOUS BOARD HEARINGS.

1. Recodification:

As mentioned in the 1928 and 1929 reports, the City Council, with a view to recodification of the city penal ordinances, included an item therefor in the 1928 budget and provided for continuance

of the work by subsequent appropriations which are now exhausted. The work of recodification has gone forward as speedily as possible, in view of its volume and many complex problems and the impossibility, of late, of detailing an Assistant Corporation Counsel to this work exclusively. On December 31st, 1930, the actual codification was about three-fourths complete. By far the greater portion of the problems with respect to proposed changes had been solved at the hearings, but considerable detail work remains to be done. Some additional hearings are contemplated. It is hoped that the recodification will be finally completed by July 1, 1931, without the necessity for additional appropriations.

2. Railway Grade Separation:

This department has been represented at frequent conferences with the representatives of the various steam railways having in view grade separations in the south end trackage areas. Opinions have been furnished and litigation respecting the Albro Place grade separation is in progress with prospects of a speedy settlement.

IV.

WORK OF THE CITY ATTORNEY.

1. Prosecutions for Violations of City Ordinances:

During the year, the City Attorney disposed of 19,334 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$127,773.70. During the year 48 appealed cases were tried and disposed of, resulting in fines and forfeitures amounting to \$5,083.00.

V.

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 eighty-six written legal opinions upon various questions submitted by the several departments of city government.

VI.

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, two hundred forty ordinances and resolutions.

During the year, 1262 bonds of officials, bidders, depositaries and others were examined and approved.

During the year, 230 deeds were examined and approved.

VII.

SERVICE OF PROCESS.

During the year, 3570 services of process were made by our witness clerk, who travelled 18,000 miles by the Ford automobile assigned to this department. Services were made in twenty-seven condemnation cases and one tax foreclosure case. A considerable amount of time was required in locating and serving subpoenas upon 250 witnesses in sixty damage cases.

VIII.

MISCELLANEOUS MATTERS.

1. Charter Amendments:

At the request of the City Council, we have prepared six resolutions submitting charter amendments and four legislative bills.

C O N C L U S I O N

TOTALS, 1930.

| | |
|------------|---|
| 569 | civil cases commenced, pending and disposed of. |
| 230 | deeds approved. |
| 86 | opinions rendered. |
| 240 | ordinances and resolutions drawn. |
| 1,262 | bonds approved. |
| 5,559 | accident reports investigated. |
| 3,570 | process served. |
| <u>977</u> | <u>claims filed and investigated.</u> |
| 12,493 | Total civil matters given attention. |

This total, together with the work of the City Attorney, (19,334 Police Court cases) and the recodification of city ordinances and one hundred forty-one cases tried in the Justices Courts, collection of judgments in favor of the City, aggregating more than \$2,800.00, and attention to 274 garnishments of salaries of city employees, gives some idea of the volume of the business of this department which is handled by a force of less than thirty employees at a total cost of less than \$133,000.00 per annum.

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

is not prescribed by the office hours designated in the City Charter. They have at all times been willing, during office hours and after office hours, to do anything necessary to the success of the cause and the interests of the City, notwithstanding the fact that they receive no compensation for overtime work.

Respectfully submitted,


A. C. VAN SOELEN,
Corporation Counsel.