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Report  
Law Department  
1933

APR 2 1934  
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APR 2 1934

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

A N N U A L   R E P O R T  
OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE  
FOR THE YEAR 1933

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, 1933.

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 <u>1932</u>	Commenced during Year <u>1933</u>	Ended dur- ing Year <u>1933</u>	Pending Dec. 31 <u>1933</u>
Condemnation Suits .....	8	2	2	8
Condemnation Suits, Supplementary .....	1	0	1	0
Damages for Personal Injuries .....	146	56	67	135
Damages other than Personal Injuries .....	83	26	33	76
Actions relating to col- lection of Assessment Rolls .....	0	0	0	0
Injunction Suits .....	30	19	15	34
Mandamus Proceedings ....	10	8	5	13
Miscellaneous Proceedings	79	71	49	101
Public Service Proceedings	2	0	0	2
	<u>359</u>	<u>182</u>	<u>172</u>	<u>369</u>

2. Personal Injury Actions:

	<u>Number</u>	<u>Amt. Involved</u>
Pending December 31, 1932 .....	146	\$1,571,120.81
Commenced since December 31, 1932 .	<u>56</u>	<u>475,921.34</u>
Total .....	202	\$2,045,042.15
Tried and concluded since Dec. 31, 1932 .....	<u>67</u>	<u>633,785.27</u>
Actions pending December 31, 1933 .	135	\$1,411,256.88

Of the personal injury actions pending in the department during the year, sixty-seven, involving \$633,785.27, were tried and finally disposed of. Forty of these cases resulted in judgments in favor of the City, and in the remaining twenty-seven cases there were recoveries aggregating \$29,564.00, which is four and six-tenths per cent. of the aggregate damages claimed, as against six and three-tenths per cent. for the preceding year.

Of the fifty-six personal injury actions begun during the year, thirty-six, involving \$337,279.00, 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, 1932 .....	83	\$ 317,187.04
Commenced since December 31, 1932.	<u>26</u>	<u>50,340.27</u>
Total .....	109	\$ 367,527.31
Tried and concluded since December 31, 1932 .....	<u>33</u>	<u>134,822.25</u>
Pending December 31, 1933 .....	76	\$ 232,705.06

Of the total of one hundred nine cases involving damages other than personal injuries, thirty-three cases, involving \$134,822.25, were disposed of during the year. In nineteen cases there were judgments entered in favor of the City; in the

remaining fourteen cases, judgments were entered against the City in the aggregate amount of \$16,375.21.

4. Miscellaneous Cases:

Five actions were commenced against police officers for \$48,056.60 for false arrest. In these actions this department was authorized by ordinance to defend said officers.

Forty-one cases were filed seeking to foreclose mortgages and the City was compelled to answer in many cases in order to protect its liens upon the property involved.

Of forty-nine miscellaneous cases tried, forty-five were won by the department.

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

One hundred seven minor actions were commenced for the Lighting Department, involving unpaid light and power bills. Judgments, including costs, amounting to \$16,799.70, were collected. 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 Assistant in this department. Two hundred one garnishments were answered.

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 becoming increasingly numerous, and while quite effective, consume a great amount of time and considerable funds.

Tabulation 1 shows that the volume of pending trial work has increased from 359 cases pending December 31, 1932, to 369 pending December 31, 1933. Eminent Domain (condemnation) litigation has dropped to a nominal figure, but injunction suits, mandamus proceedings and miscellaneous proceedings show a substantial increase. The disposal of pending litigation, particularly tort actions, was impeded during 1933 by the congested condition of the Superior Court trial calendar and the cutting down of jury terms to two weeks each month. Despite this, 169 cases were completed during 1933.

#### OUTSTANDING CASES DURING 1933

##### CONDEMNATION ASSESSMENT ROLL

The Aurora Avenue et al. assessment roll case (Ordinance No. 59719), involving special benefits arising from the extensive north and south approaches and connecting laterals to the George Washington Memorial Bridge, was, as stated in our Annual Report for 1932, tried, commencing January 4th, and concluded January 21st, 1932. This was one of the largest condemnation assessment projects ever undertaken by the City. It affected thousands of pieces of property and was subjected to a concerted organized attack, thousands of objections being filed, the objectors being represented by numerous local attorneys. It was finally decided by the trial court (Judge Hall) on September 22, 1933, after several months of consideration and after the 1933 session of the State Legislature had

made available after January 1, 1934 certain gasoline tax moneys to pay part of the cost of the condemnation. Judge Hall reduced the roll fifty per cent., which reduction was made applicable to all the property assessed, regardless of whether the assessed property owners were represented by counsel or not. Property involving some \$200,000 in such assessments is on appeal to the State Supreme Court.

#### RATE HEARINGS

As stated in our annual report for 1932, the Seattle Gas Company filed a schedule (X-1) of increased rates for gas in the City, effective July 1, 1932, for the purpose of offsetting the three per cent. occupation tax imposed upon the Company by Ordinance No. 62662. The City protested the increase and a hearing was had in the fall of 1932 which resulted in an order issued on January 10, 1933 by the Department of Public Works sustaining the new schedule of increased rates. Thereafter, and on February 1, 1933, the City filed a petition requesting the Department to rescind, alter and amend its order of January 10th. The matter proceeded to a hearing on October 19, 1933 upon said petition and upon an amended complaint, opening up the broad question of valuation for rate-making purposes, filed by the Department. The hearing was concluded, but the Department had not disposed of the proceeding on January 1, 1934.

#### TAXATION

In July, 1932, the Pacific Telephone and Telegraph Company, Puget Sound Power & Light Company and Seattle Gas Company each filed suit in the Superior Court of King County, praying for an injunction restraining the City and its officers from enforcing

the provisions of Ordinance No. 62662 (the Occupation Tax Ordinance), which levied upon them an occupation tax measured by percentages of gross income from business in the City. On October 10, 1932 the Superior Court entered judgments and decrees denying the relief sought and dismissing the suits. Upon appeal, the State Supreme Court on April 21, 1933, sustained the action of the trial court. An appeal was taken in each case to the Supreme Court of the United States, which appeals were pending as of January 1, 1934.

The Puget Sound Power & Light Company, on January 28, 1933, commenced a second suit to restrain the enforcement of said Ordinance No. 62662 in so far as the same applied to the steam heat business conducted by said Company. This suit is still pending upon demurrer filed by the City. The case will be disposed of after the determination of the three cases last above mentioned.

These cases involve millions of dollars and are of the utmost importance to the City in view of the curtailment of revenues resulting from the enactment of the Forty Mill Act.

On December 31, 1932, Harry D. Austin, et al., instituted a suit against the City to restrain the enforcement of said Ordinance No. 62662, as amended by Ordinance No. 62709, whereby an occupation tax in the amount of \$250.00 per annum was imposed upon the business of lending money upon various kinds of security. The Superior Court entered a judgment and decree denying the relief sought and dismissed the action on June 7, 1933. Appeal was taken to the State Supreme Court and argument had thereon on November 13, 1933. Said appeal is pending.

Denny v. Wooster was an action brought to restrain the County Assessor from spreading upon the tax rolls three items of the City's 1934 tax levy in excess of 15 mills, as limited by the so-called "Forty Mill Act" (Chap. 4, Laws 1933). The items ques-

tioned were "Local Improvement Guaranty Fund" \$125,000.00, "Firemen's Relief and Pension Fund" \$127,701.49, and "Aurora Avenue Condemnation Warrants" \$130,000.00. The City intervened in the action and same was tried before Judges Ronald and Macfarlane sitting en banc. At the trial plaintiff was forced to concede the item for the Aurora Avenue Condemnation warrants and the trial court held that the item for the Local Improvement Guaranty Fund was properly excluded from the limitations of the act but that the Firemen's Pension Fund item must be included within the 15 mill levy by the City. This judgment was affirmed by the Supreme Court on appeal (75 Wash. Dec. 234).

As directed by Ordinance No. 63721, this Department in conjunction with the City of Tacoma began a suit in the Superior Court of Thurston County, July 31, 1933, against the State Tax Commission to enjoin the enforcement against the City of Seattle of the provisions of Chapter 191, Laws of 1933, which imposes an occupation or privilege tax upon the City in respect of the operation of its water system, light and power system and street railway system. Said court issued a temporary injunction as prayed and on December 8, 1933 entered its judgment and decree permanently enjoining and restraining the Commission from the enforcement of said act as against the Cities of Seattle and Tacoma. The appeal to the State Supreme Court taken by the Tax Commission on December 14, 1933 is still pending.

#### LIQUOR

During the year, three suits were commenced by various plaintiffs against the City attacking the validity of various portions of Ordinance No. 63561, as amended, regulating and taxing the use and sale of alcoholic beverages. Two cases, viz.:

Levin, et al. v. Seattle, et al., No. 263253, and Vittucci v. City of Seattle, et al., No. 263251, were disposed of in the trial court on July 19, 1933 by the entry of a judgment and decree denying injunction and dismissing the suits. Polishuk v. City was commenced December 16, 1933, and after the refusal by the court of a temporary restraining order, was pending as of January 1, 1934.

#### CIVIL SERVICE

H. W. Butchek, et al. v. Seattle, et al., was an action to enjoin the City from employing non-civil service day laborers in connection with the construction of an addition to the municipal waterworks system. The lower court ruled in favor of plaintiffs, but the Supreme Court reversed the case (74 Wash. Dec. p. 295).

The question of law involved was whether in constructing a public improvement by day labor under Section 10, Article VIII of the Charter, the City must select its workers from civil service under Article XVI of the Charter. The Supreme Court held that the work in question was not "operation and maintenance work under civil service rules, in connection with the water department, the cost of which latter service includes salaries and wages of officers and employes embraced within the official estimates under the budget law. It was separate and independent thereof - a single detached or independent piece of construction work \* \* \* . Such improvement may be done under the Charter by contract to the lowest bidder or by 'day labor', which words are too narrow to mean that continuity of service for which civil service is peculiarly and appropriately intended \* \* \* ." The court concluded that work by day labor under Section 10, Article VIII may be done by the City without regard to civil service. This department had previously written an opinion to the same effect.

State ex rel. Knez v. Seattle: This case involved two questions: 1. The validity of certain waivers executed by members of the Fire Department in the summer of 1932; and, 2. The power of the Council to reduce the salaries of firemen in view of the Initiative Measure of 1925 increasing the "rates" of pay of members of the Fire Department \$25.00 per month. The trial court (Kay, Judge) held that the Council had no power to alter the salaries fixed by the Initiative Measure and that the waivers were obtained under duress and were therefore void. Upon appeal, the Supreme Court by departmental opinion (76 Wash. Dec. 201) affirmed the judgment, holding, however, that firemen were public officers and therefore could not contract relative to their salaries, and did not pass upon the question of duress at all. The case is pending upon petition for rehearing.

State ex rel. Vahlbusch v. Dore: After the judgment in the Knez case the Mayor and Chief of the Fire Department laid off some 150 firemen for lack of funds, and the above case was commenced, praying for a writ of mandate compelling their restoration to duty. During the trial a compromise was effected whereby the firemen were restored to duty and the savings were effected by lay offs of fifty-two days per year without pay for each man, and plaintiff then took a nonsuit.

A companion case of Weisfield v. Dore, which was a taxpayer's action to restrain the Mayor and Chief from carrying out the lay off, was dismissed under the same compromise.

#### MISCELLANEOUS

On September 12, 1933, Joseph P. McDermott commenced an equitable action in the United States District Court for the Western District of Washington, Northern Division, seeking to restrain the

enforcement of Ordinance No. 63944 providing for the closing of barber shops at 6:00 o'clock P. M. The court on November 6, 1933 denied the City's motion to dismiss and granted a temporary injunction restraining the City from compelling McDermott's obedience to the ordinance. Thereafter the City joined issue by the filing of an answer, and the cause is now awaiting trial upon the merits.

Geo. Nelson v. City: This case involved the claims of subcontractors against the general contractor on the Denny Hill Regrade No. 2, L. I. D. No. 4818, and also claims by the general contractor against the City totaling \$63,600.55. His total recovery, including an item of \$2,215.87, which we at all times conceded, was \$9,676.22. The contractor has appealed from said judgment and said appeal is now pending. The City is cross appealing from two items totaling \$6,250.35 of said judgment.

## II.

### Statement and Investigation of Damage Claims filed Against the City:

	<u>Number</u>	<u>Amt. Involved</u>
Claims for damage under investigation December 31, 1932 .....	1168	\$2,805,349.14
Claims for damages referred to this department for investigation Dec. 31, 1932 to Dec. 31, 1933 .....	<u>831</u>	<u>1,155,019.83</u>
	1999	\$3,960,368.97

### Claims Disposed of as follows:

	<u>Number</u>	<u>Amt. Claimed</u>	<u>Amt. Paid</u>
Settled .....	405	\$ 370,249.53	\$58,449.16
Rejected .....	<u>395</u>	<u>709,318.87</u>	
	800	\$1,079,568.40	
Claims pending Dec.31,1933.	1199	\$2,880,800.57	

Eighteen of above settled claims were in suit and settled in conjunction with Claim Agent:

Amount involved ..... \$ 94,864.00  
Amount of settlement ..... 6,558.33

Number of street railway accident reports from Department of Public Utilities and investigated, Dec. 31, 1932 to Dec. 31, 1933 ..... 3,634

Number of circulars and letters mailed in connection with the investigation of foregoing claims and reports ..... 7,412

III.

MISCELLANEOUS

1. Recodification:

The work of recodification has been suspended by reason of reduction of force and lack of funds.

IV.

WORK OF THE CITY ATTORNEY

1. Prosecutions for Violations of City Ordinances:

During the year the City Attorney disposed of 17,300 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$55,834.90. During the year 19 appealed cases were tried and disposed of.

V.

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 fifty-

six written legal opinions upon various questions submitted by the several departments of City government. A material increase in the amount of advisory work of the department with a reduced force and drastic salary reductions, constitutes a serious problem.

VI.

ORDINANCES, RESOLUTIONS AND BONDS

The members of the City Council and the Mayor have, from time to time, requested this department to prepare, during the period of this report, one hundred eighty-four ordinances and resolutions; many of these were of unusual difficulty, involving a great deal of time and research.

During the year, 674 bonds of officials, bidders, contractors, depositaries and others were examined and approved.

VII.

SERVICE OF PROCESS

During the year, 945 services of process were made by the department's Claim Investigators, who have absorbed the work formerly done by a witness clerk whose position was abolished in 1932. This work included travel of 4,200 miles by a Ford automobile assigned to this department. A considerable amount of time was required in locating and serving subpoenas upon witnesses in damage cases.

VIII.

MISCELLANEOUS MATTERS

1. Charter Amendments:

At the request of the City Council we prepared five resolutions submitting charter amendments.

IX.

Fourteen cases were argued in the State Supreme Court, of which eight were won, five lost, and one modified in the City's favor.

### CONCLUSION

The budget allowance for this department for 1933 was \$76,156.40, which is by far the lowest figure in thirteen years. The 1920 budget for this department was \$107,665.00. By the exercise of the most rigid economy, more than \$5000.00 of the 1933 budget was voluntarily saved by the department. Drastic salary decreases running as high as thirty to thirty-five per cent. in this department inaugurated in 1932 were still in effect. In the case of my Assistants, some were reduced to the salary they had received as law clerks several years before. Some fair adjustment of these salaries must, in my opinion, be made if the morale of the department is to be maintained. The department has already lost the services of my chief Assistant (Mr. Newton), an Assistant (Mr. Smith) and of the Senior Law Clerk (Miss Morrow) because of these low salaries.

The fact that the department was able to function so effectively as is indicated in this report, in the face of the adverse conditions referred to, is a tribute to the industry, efficiency and loyalty of the personnel.

As hereinbefore pointed out, the volume of advisory work increased materially in 1933, and the total number of cases pending at the close of the year was larger than in 1932, illustrating that the work (except condemnation cases) has not lessened during the depression.

Another substantial increase in work has resulted by reason of the City's applications for Reconstruction Finance Corporation loans, Public Works Administration applications, State aid, etc. The amount of detailed legal work in this connection has been enormous.

The legal problems presented by the business and governmental activities of the City of Seattle are probably not appreci-

ated by those not familiar with the operations of this department. They have multiplied during the depression. The demand for utility rate adjustments; projects for work relief (State, R. F. C., P. W. A. etc.); legal problems arising out of reduction of force; sometimes unreasonable demand for economy without curtailment of service, and search for a legal basis for raising revenue other than by taxation of property, and the united opposition of privately owned gas, power and telephone utilities to excise taxation by the City, are illustrative of the legal problems mentioned.

Respectfully submitted,

*A. C. Van Soelen.*  
A. C. VAN SOELEN,

Corporation Counsel