

150384 ✓

Report  
Law Department  
for 1935

---

**FILED**

N. \_\_\_\_\_ o'clock \_\_\_\_\_ M.

APR - 2 1936

H. W. CARROLL  
CITY COMPTROLLER

AND EX-OFFICIO CITY CLERK

ANNUAL REPORT  
OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE  
FOR THE YEAR 1935

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 31, 1935.

I.

GENERAL STATEMENT OF LITIGATION

I. 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>1934</u>	Commenced during <u>Year 1935</u>	Ended dur- ing Year <u>1935</u>	Pending Dec. 31 <u>1935</u>
Condemnation Suits . . . . .	14	6	7	13
Condemnation Suits, Supplementary . . . . .	0	1	1	0
Damages for Personal Injuries . . . . .	136	80	73	143
Damages other than Personal Injuries . . . . .	89	31	44	76
Actions relating to collec- tion of Assessment Rolls .	0	0	0	0
Injunction Suits . . . . .	30	17	14	33
Mandamus Proceedings . . . . .	15	14	17	12
Miscellaneous Proceedings	101	46	66	81
Public Service Proceedings	3	0	1	2
	<u>388</u>	<u>195</u>	<u>223</u>	<u>360</u>

2. Personal Injury Actions:

	<u>Number</u>	<u>Amt. Involved</u>
Pending December 31, 1934 . . . . .	136	\$1,503,850.77
Commenced since December 31, 1934 . .	<u>80</u>	<u>777,182.60</u>
Total . . . . .	216	\$2,281,033.37
Tried and concluded since December 31, 1934 . . . . .	<u>73</u>	<u>807,137.80</u>
Actions pending December 31, 1935 . .	143	\$1,473,895.57

Of the personal injury actions pending during the year 1935, 73, involving \$807,137.80, were tried and finally disposed of; 27 were won outright; 16, involving \$145,823.50, were lost, the aggregate recoveries to the plaintiffs being \$17,856. The balance, involving \$661,314.30, were settled for \$44,591.00.

Of the eighty personal injury actions begun during the year, fifty-one, involving \$547,158.04, 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, 1934 . . . . .	89	\$ 422,389.02
Commenced since December 31, 1934 . .	<u>31</u>	<u>70,280.37</u>
Total . . . . .	120	\$ 492,669.39
Tried and concluded since December 31, 1934 . . . . .	<u>44</u>	<u>131,019.46</u>
Pending December 31, 1935 . . . . .	76	\$ 361,649.93

Of the total of one hundred twenty cases involving damages other than personal injuries, forty-four cases, involving \$131,019.46, were disposed of during the year. In twenty-eight cases there were judgments entered in favor of the City; of the remaining sixteen cases, ten were settled and six lost, costing the City in the aggregate \$6,362.79.

4. Miscellaneous Cases:

Six actions were commenced against police officers for \$47,500.00 for false arrest. In these actions this department was authorized by ordinance to defend said officers.

Nineteen 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 Sixty-six miscellaneous cases tried, sixty-two were won by the department.

Eight hearings were conducted by the department before the Civil Service Commission, in which two decisions were rendered by the Commission sustaining dismissal of the employees from service, one refused to sustain the department, and five are still under consideration by the commission.

One hundred six actions were commenced for the Lighting Department, involving unpaid light and power bills. Judgments in favor of the City, including costs, amounted to \$9,183.08. 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. The handling of this work of the Lighting Department requires about eighty per cent. of the time of one Assistant in this department.

One hundred sixty-two garnishments were answered.

The disposal of pending litigation, particularly tort actions, was again impeded during 1935 by the congested condition of the Superior Court trial calendar and the cutting down of jury terms. Despite this, 223 cases were completed.

SPECIAL MENTION

Time does not permit of a continuance of the practice of referring in detail to outstanding cases decided during the past year. The following brief reference, however, is made to unfinished cases referred to under the title "Outstanding City Cases Decided

During 1934" in the annual report for 1934.

The cases of Pacific Tel. & Tel. Co. and the Home Tel. & Tel. Co. of Spokane against the State Tax Commission to restrain the enforcement of the state occupation or business tax law (Ch. 191, Laws of 1933) were referred to because of this City's interest in the decision on account of its effect on our own occupation tax Ordinance No. 62662. Said cases were decided favorably to the State Tax Commission in August, 1935, the decisions being reported in 83 Wash. Dec. 67. The companies concerned have appealed to the Supreme Court of the United States, and we contemplate participating in said suits in said court by the filing of a brief and, if possible, participating in the argument.

As a result of the decision of the State Supreme Court in State ex rel. Knez v. City, 176 Wash. 283, affirmed on rehearing en banc, 78 Wash. Dec. 33, the City provided by ordinance for the payment of the back salaries to Police and Firemen entitled to the salary rate fixed by Initiative Ordinance No. 46089 in 1924. Ordinance No. 64981 acknowledged said back salary indebtedness and provided for the issuance and sale of \$800,000 of general obligation bonds of the City for the payment thereof. The validity of said bonds, though in excess of the constitutional debt limitation, was sustained by the Supreme Court, sitting en banc, in the case of Weisfield v. City of Seattle, 180 Wash. 288.

Another "back pay" controversy which arose in 1935 involved several hundred employees in the Water, Engineer's, Streets and Sewers, Health, Building, Public Works and Railway Departments. The period involved was between July 1st and August 5th, 1932, at which latter date a general ordinance reducing salaries in practically all departments, on a sliding scale from fifteen to thirty-five per cent., became effective. The reductions were, however, actually put into effect in the departments above referred to by administrative order on July 1st, 1932, so-called "waivers" being secured from the employees concerned. The City Council refused to pay the claims and

three suits were commenced, entitled Andrews v. City, Coy v. City and Campbell v. City. Duress in securing the waivers was alleged and proven to the satisfaction of the trial court, and judgment entered against the City in the aggregate sums of \$3,000 from the Railway Fund, \$2,000 from the Water Fund and \$13,000 from the General Fund. The court allowed interest from the date of the commencement of the actions, to-wit: June 27, 1935, but none prior to said date, following our contention in this respect that the case of Rhodes v. Tacoma, 97 Wash. 341, applied. It will be noted that the actions referred to were brought within the three year statute of limitations. No appeal was taken by the City, as the question of duress is one of fact.

The Aurora Avenue assessment roll case (Ordinance No. 59719), involved special benefits arising from the extensive north and south approaches and connecting laterals to the George Washington Memorial (Aurora) bridge, referred to in the 1933 and 1934 annual reports, and involving more than \$200,000 in assessments, was affirmed by the State Supreme Court in February, 1935, the decision being reported in 180 Wash. 523.

The so-called "Gravel Pit Cases", referred to in the 1934 report, in which the plaintiffs recovered judgment against the City in the total sum of \$11,000, were reversed on appeal to the State Supreme Court. See Evans et al v. Seattle, 182 Wash. 450.

The "Gas Rates" controversy with the Seattle Gas Company, referred to in the 1934 report, was pending in the State Supreme Court in 1935.

The hearing before the Department of Public Works involving the Pacific Tel. & Tel. Co. and the Home Tel. & Tel. Co. of Spokane was still pending in the Department at the close of the year 1935, the State Department apparently not having the necessary funds to complete its studies of said companies' rate structures.

## 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, 1934 . . . . .	1028	\$2,691,804.69
Claims for damages referred to this department for investigation Dec. 31, 1934 to Dec. 31, 1935 . . . . .	<u>919</u>	<u>1,347,194.94</u>
	1947	\$4,038,999.63

### Claims disposed of as follows:

	<u>Number</u>	<u>Amt. Claimed</u>	<u>Amt. Paid</u>
Settled . . . . .	384	\$359,172.39	\$54,837.10
Rejected . . . . .	<u>537</u>	<u>943,528.67</u>	
	921	1,302,701.06	
Claims pending Dec. 31, 1935	1026	2,736,298.57	

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

Amount Involved . . . . . \$94,982.00

Amount of Settlement . . . . . 9,408.00

Number of street railway accident reports from Department of Public Utilities and Investigated, Dec. 31, 1934 to Dec. 31, 1935 . . . . . 4,050

Number of circulars and letters mailed in connection with the investigation of foregoing claims and reports . . . . . 7,300

## III.

### WORK OF THE CITY ATTORNEY.

During the year 1935 the City Attorney prosecuted some 40,071 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$112,719.13. Approximately half of these cases involved traffic violations. The total number of cases handled was almost double that of the previous year, and, incidentally, the fines and forfeitures aggregated to the City

nearly twice as much revenue as during the previous year.

Fifty police court appeal cases were decided; the results were thirty-eight convictions and twelve acquittals.

The volume of police court work has become enormous, due, apparently, to more strict law enforcement. The increase in the number of cases decided has, however, more than correspondingly increased the number of appeals by persons convicted to the Superior Court, where they are entitled to a jury trial. The law places the burden of diligently prosecuting a police court appeal upon the appellant. The only penalty, however, for failure to diligently prosecute an appeal, is the chance that the court will, upon the motion of the City, dismiss the same and affirm the judgment of the police judge. Appeal bonds approved by the police judge are, of course, required as a condition to the right of appeal. It is in many cases difficult, however, to collect on such bonds, particularly where they are property bonds. We have also found that the Superior Court is rather loath to dismiss the appeal and forfeit the bond if the appellant has any reasonable excuse for his failure to diligently prosecute his appeal.

A curtailed personnel in this department and the difficulty of getting these cases set for trial in the Superior Court, especially during the present curtailed jury service, present a perplexing problem. It is recommended that the matter of special legislation affecting police court trials and appeals, particularly with reference to traffic cases, be presented to the 1937 Session of the State Legislature. We have in mind specifically a statute providing for the automatic dismissal and remand to the police court of appeals not diligently prosecuted by the appellant, and possibly that a cash or surety bond be required as a condition to any such appeal.



#### IV.

##### 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 thirty-eight written legal opinions upon various questions submitted by the several departments of City government. A continued increase in the amount and difficulty of advisory work of the department with a reduced force and drastic salary reductions still in effect, constitutes a serious problem.

#### V.

##### 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, three hundred fifty-one ordinances and resolutions, an increase of one hundred thirty-five over 1934.

During the year, 772 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling \$4,400,564.00.

#### VI.

##### MISCELLANEOUS MATTERS

##### 1. Charter Amendments:

At the request of the City Council, we prepared nine resolutions submitting Charter amendments.

#### VII.

Twelve cases were argued in the State Supreme Court, of which six were won and six lost.

##### CONCLUSION

The 1935 Budget of the Law Department was \$73,509, which is the lowest figure in fifteen years. We were able to operate at about this figure because there were added thereto savings from 1934. In July, 1935 we were, however, along with other departments, re-

quested to make a further saving, and a saving of \$2,500.23 was effectuated by Ordinance No. 65448. This was done in the face of a material increase in the number of opinions, heretofore referred to, an enormous increase in the number of ordinances and resolutions drawn, and the greatly increased police court work, all referred to in detail in this report.

As hereinbefore pointed out, the volume and complexity of advisory work, ordinances and resolutions increased materially in 1935.

The fact that the department was able to function so effectively as is indicated in this report, in the face of the reduced salaries in effect since 1932 and reduction in personnel, is a tribute to the industry, efficiency and loyalty of the personnel.

Respectfully submitted,

A. C. Van Soelen.  
Corporation Counsel.