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Annual Report  
Law Department  
1936

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APR 5 - 1937

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 1936

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, 1936.

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 1935	Commenced during Year 1936	Ended dur- ing Year 1936	Pending Dec. 31 1936
Condemnation Suits . . . . .	13	5	5	13
Condemnation Suits, Supplementary . . . . .	0	2	2	0
Damages for Personal injuries . . . . .	143	74	101	116
Damages other than Personal Injuries . . . . .	76	21	39	58
Actions relating to collec- tion of Assessment Rolls	0	0	0	0
Injunction Suits . . . . .	33	16	22	27
Mandamus Proceedings . . . . .	12	9	12	9
Miscellaneous Proceedings	81	30	38	73
Public Service Proceedings	<u>2</u>	<u>0</u>	<u>2</u>	<u>0</u>
	360	157	221	296

2. Personal Injury Actions:

	<u>Number</u>	<u>Amt. Involved</u>
Pending December 31, 1935 . . . . .	143	\$1,473,895.57
Commenced since December 31, 1935 . . .	<u>74</u>	<u>742,606.47</u>
Total . . . . .	217	\$2,216,502.04
Tried and concluded since December 31, 1935	<u>101</u>	<u>994,462.89</u>
Actions pending December 31, 1936 . . .	116	\$1,222,039.15

Of the personal injury actions pending during the year 1936, 101 involving \$994,462.89 were tried and finally disposed of; 59 were won outright; 15, involving \$200,175.44, were lost, the aggregate recoveries to the plaintiffs being \$36,465.00. The remaining cases, involving \$150,158.00, were settled without trial for \$11,476.00.

Of the 74 personal injury actions begun during the year, 47, involving \$386,078.42, 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, 1935 . . . . .	76	\$ 361,649.93
Commenced since December 31, 1935 . . .	<u>21</u>	<u>25,317.18</u>
Total . . . . .	97	\$ 386,967.11
Tried and concluded since December 31, 1935 . . . . .	<u>39</u>	<u>170,945.58</u>
Pending December 31, 1936 . . . . .	58	\$ 216,021.53

Of the total of 97 cases involving damages other than personal injuries, 39 cases, involving \$170,945.58, were disposed of during the year. In 22 cases there were judgments entered in favor of the City; of the remaining 17 cases, 6 were settled and 11 lost, costing the City in the aggregate \$11,139.85.

4. Miscellaneous Cases:

Three actions were commenced against police officers for \$18,712.48 for false arrest, and one against Light Department employees

for \$20,025.00 for assault. In these actions this department was authorized by ordinance to defend said officers.

Twelve 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 38 miscellaneous cases tried, 26 were won by the department.

Three hearings were conducted by the department before the Civil Service Commission, in which 2 decisions were rendered by the Commission sustaining dismissal of the employees from service, and one appeal was dismissed.

35 actions were commenced for the Lighting Department, involving unpaid light and power bills. Judgments in favor of the City, including costs, amounted to \$1,439.37. In addition thereto, collection of a considerable number of past due accounts was effected without litigation by means of writing letters advising 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 80% of the time of one Assistant in this department.

One hundred forty-seven garnishments were answered.

The disposal of pending litigation, particularly tort actions, was again impeded during 1936 beyond our control. Despite this, 220 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 is made to cases of unusual interest:

#### Cases

We referred in the 1936 report to the case of Pacific Tel. & Tel. Co. against the State Tax Commission to restrain the enforcement of the State Occupation or Business Tax Law (Chap. 191, Laws of 1933), because of Seattle's interest in the decision on account of its effect on our own occupation tax ordinance, No. 62662. Said case was decided favorably to the State Tax Commission in 183 Wash. 697. The Pacific Tel. & Tel. Co., the Great Northern Railway

Co. and the Northern Pacific Railway Co., all concerned in the question of law involved, appealed to the United States Supreme Court. The cases were argued in that court January 13, 1936, and decided March 2, 1936.

The writer of this report and Mr. Walter L. Baumgartner, at that time an Assistant Corporation Counsel, filed a brief in the United States Supreme Court as Amicus Curiae. Because of the importance of the question of law involved, Mr. Baumgartner was sent to Washington, D. C., and under the very unusual circumstances of the case was permitted to participate in the argument in behalf of the appellee, the State Tax Commission. The decision of the United States Supreme Court was favorable to the State and the Tax Commission, and is reported in 297 U. S. 403, 80 L. ed. 760.

Neils v. Seattle, 185 Wash. 269. Action by certain taxpayers to enjoin the City from submitting to referendum Ordinance No. 65613, which revoked a temporary permit theretofore granted to the Seattle and Rainier Valley Railway Company to use certain streets for the operation of its street railway system after the expiration of its franchise. Other taxpayers intervened in the action resisting the application for injunction. The question of law involved was whether such an ordinance was subject to the referendum. This department had concluded that although the question was a close one, that the ordinance was not subject to referendum. In order, however, to have the question definitely settled, the City authorities were compelled to take the position that under the broad powers of referendum and the Seattle Charter it was subject to referendum. The court held that Section 11082, Rem. Rev. Stat., granted to the legislative authority of the City full power to authorize the construction, maintenance and operation of electric railroads on public streets, and that the power thus conferred can not be delegated by the grantee to others, nor can it be limited or restricted by any charter provision inconsistent therewith.

Demosey v. Seattle, 59 Pac. (2d) 923. Held that a cause of action against the City was barred by the Charter provision that all claims against the City must be presented within thirty days after the time when the claim accrued, even though the damages out of which the claim arose were not apparent until after the time for presentation had expired. It was claimed that the damage to the plaintiff's house was caused by water escaping from a broken watermain, and that the damage did not become apparent until six months after the flooding of the premises. This case was one of unusual interest and involved a review of leading English as well as American cases dealing with the disputed point of law.

E. F. Nudd v. Seattle, Superior Court No. 275840, 88 Wash. Dec. 212. Action for personal injuries by a kick from a horse which was one of the team used by the City in a sewer cleaning and dragging operation. The jury returned a verdict for the plaintiff, but the trial court granted the City's motion for Judgment N.O.V., basing his decision on the City's defense of governmental function. The plaintiff appealed to the State Supreme Court which affirmed the judgment of the trial court on technical grounds.

W. G. Green v. City, Superior Court No. 291446. Action by some 200 employees in various departments to recover back pay for 1932. To avoid the statute of limitations, it was alleged that the duress and coercion which motivated the giving of waivers, continued throughout Mayor Dore's former term, or until June 1, 1934, and included coercion against the bringing of suit. This contention was sustained by the Trial Court (Kinne), and under direction of the City Council no appeal was taken therefrom.

State ex rel. Ausburn v. City, Superior Court No. 290808. Action by some 240 members of the Fire Department to recover back pay for the years 1933, 1934, 1935 and 1936 alleged to be illegal reductions of salary in violation of the initiative ordinance.

The amounts sued for covered deductions made while relators were under suspension, in 1933 for 25 day periods, and in 1934, 1935 and 1936 on plan of one day off in eight without pay. The Trial Court (Hall) found for the relators, holding that suspensions for other than disciplinary purposes were illegal. The case is pending on appeal to the Supreme Court.

As a result of the Superior Court decision, numerous other cases were commenced involving the same question as regards both the Fire and Police Departments, all of which are being held in abeyance by agreement of counsel pending the decision of the Supreme Court in the Ausburn case. The amount involved, if the relators prevail, will approximate \$1,000,000.00.

State ex rel. L. A. Thompson v. Seattle, 185 Wash. 105. Action in mandamus by Thompson to compel reinstatement as plumber in Park Department, claiming plumbing work was being done and he was entitled to do it. Action dismissed by Trial Court and affirmed by Supreme Court on ground that under peculiar Charter provisions the Park Board had sole authority to determine whether it needed a permanent plumber or not, and having made no provision for a permanent plumber it could not be compelled to employ relator.

State ex rel. Jarrett v. Seattle, 186 Wash. 541. Action in mandamus for reinstatement as Auto Truck Driver, Street Department. Jarrett had been laid off when number of positions of Auto Truck Driver had been reduced by ordinance to fifteen. However, the Street Department continued to operate its 36 trucks, using laborers to drive the trucks when operated. The Court held, and the decision was affirmed by the Supreme Court on appeal, that as long as the City operated thirty-six trucks there were thirty-six positions of Auto Truck Driver, and Jarrett was entitled to one of them.

State ex rel. W. H. Plachy v. City, Superior Court No. 286644. Action in mandamus by Plachy to compel the City and the Employees'

Retirement System Board of Administration to pay him a pension. Plachy worked for the City for many years but never became an employee under civil service. The Court, in dismissing the action, held that he never became a member of the Employees' Retirement System and, therefore, was not entitled to a pension or retirement allowance thereunder.

#### Utility Rate Hearings

The "gas rates" controversy with the Seattle Gas Company, referred to in the 1934 and 1935 reports, was heard before the Department of Public Service of Washington (D. P. W. No. 6545) on October 19, 1933. The direct occasion for the hearing was the filing by the Gas Company of tariffs increasing its rates in the amount of three per cent., it being claimed by the Company that said increase was necessary for it to earn a fair return on its investment in view of the imposition on it by the City of Seattle of an occupation or business tax in the amount of three per cent. of the Company's gross earnings. In order to determine this question, it became necessary for the department to make a rather complete investigation of the Company's "prudent investment" and rate structure. The department on February 14, 1934 entered an order disallowing the increase. The Company applied for a writ of review to the Superior Court for Thurston County, which reversed the order of the department and remanded the case to the department on December 6, 1934. The department and the City appealed from said judgment to the State Supreme Court (Cause No. 25865). Conceiving the case on appeal was not sufficiently strong because certain forecasts of the Company's prospective earnings had not materialized, the department and the City stipulated with the Gas Company to dismiss the appeal, and the order dismissing the same was signed January 10, 1936. As a result, the judgment of the Superior Court remanding the case to the department became fully effective. The department thereupon resumed its investigation and entered its

findings of fact and order dated April 18, 1936, sustaining the three per cent. increase in rates on the ground that the Company's earnings had fallen short of the forecast made in the department's previous order, and that the rates established by said order "are unduly low and unfair". The department in said order specifically found that the Company's "prudent investment" as of November 30, 1935 (the effective date of the Company's reorganization) was \$11,412,355. The department in said order adverts to the practical difficulty of incurring the additional expense of arriving at a revised valuation of the Company's "used and useful property" in excess of the above figure of \$11,412,355. This finding and order finally concludes this controversy with the Gas Company.

The hearing before the Department of Public Works involving the Pacific Telephone & Telegraph Company and the Home Telephone & Telegraph Company of Spokane (D. P. W. No. 6529) referred to in the 1933, 1934 and 1935 reports, was concluded by the department's entry of findings of fact, opinion and order dated December 1, 1936. This case was initiated by the Department of Public Service of Washington on its own motion in connection with complaints challenging the rates, services and facilities of both of said utilities, which complaints were joined in by the cities of Seattle, Spokane, Tacoma, Aberdeen and Bellingham. The North End Federated Clubs of Seattle filed a separate complaint. The department launched a State-wide general valuation and rate proceeding. Several hearings were had during 1934 and 1935. On August 16, 1935 the case of State v. Northwestern Electric Co., 183 Wash. 184, was decided. Said decision invalidated a "cost statute" upon which the department relied for financing its investigation. The department was "compelled to release most of its staff of engineers and accountants and rate experts". It, however, proceeded with "a small staff of accountants and engineers", which it soon found, however, inadequate to make the necessary investigation. Marshaling such data as had been accumulated, however, the utilities and the department agreed upon certain

rate adjustments and reductions, which were put into effect on January 15, 1936, through the filing by the utilities of rate reductions in intrastate toll rates, adjustments in night rates, and reductions in extra charge for hand sets (about which there was much complaint) from twenty-five cents per month to fifteen cents per month. Total savings to ratepayers are estimated by the department in the amount of "\$544,600 annually". The department estimated that it would cost at least \$300,000 to finance a complete investigation. It stated that if such an appropriation is made available "a new cause can be instituted". The problem of making such funds available was declared to be one for the Legislature. In the light of the foregoing, said Cause No. 6529 was, as above stated, dismissed on December 1, 1936, and the matter closed as of said date.

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, 1935 . . . . .	1026	\$2,736,298.57
Claims for damages referred to this de- partment for investigation Dec. 31, 1935 to Dec. 31, 1936 . . . . .	1025	1,363,548.11
	<u>2051</u>	<u>\$4,099,846.68</u>

Claims disposed of as follows:

	<u>Number</u>	<u>Amt. Claimed</u>	<u>Amt. Paid</u>
Settled . . . . .	445	\$ 469,434.22	\$ 53,562.36
Rejected . . . . .	<u>485</u>	1,153,882.42	
	930	<u>\$1,623,316.64</u>	
Claims pending Dec. 31, 1936	1121	\$2,476,530.04	

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

Amount Involved . . . . .	\$65,743.96
Amount of Settlement. . . . .	2,236.50

Number of street railway accident reports from Department of Public Utilities and investigated, Dec. 31, 1935 to Dec. 31, 1936 . . . . . 4,329

Number of circulars and letters mailed in connection with investigation of foregoing claims and reports. . . . 8,871

### III.

#### WORK OF THE CITY ATTORNEY

During the year 1936 the City Attorney prosecuted some 49,236 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$185,374.85. 35,396 of these cases involved traffic violations. The total number of cases handled is an increase of 9,167 over that of the previous year, and, incidentally, the fines and forfeitures increased \$72,655.72 over the previous year.

This enormous increase in the number of police court prosecutions also resulted in an increased number of appeals by persons convicted to the Superior Court. It became necessary to detail an Assistant Corporation Counsel (Mr. McGillivray) to take charge of this appeal work. Prior to such special assignment, the appeal work was taken care of by various Assistants as time permitted. A lull in the setting of civil cases permitted Mr. McGillivray to give his entire time to this work during most of the year 1936.

The law on police court appeals passed in 1903 and amended twenty years later only in respect to penalties, was hopelessly antiquated and appellate procedure was in a state of utmost confusion. This condition is referred to in detail in the 1935 report. In spite of these handicaps, vigorous action on these appeals was taken by this department although the law places the burden on the appellant, with the result that at the end of the year 232 police court appeals were tried and otherwise disposed of. In 141 cases, convictions and pleas of guilty were entered. Eighteen appellants were acquitted and in 73 cases appeals were dismissed on the City's motion because of the failure of the appellants to diligently prosecute. In all cases of dismissal, the police court sentences were confirmed and the appellants committed to the City Jail, except in a few where the bondsmen were unable to produce the appellant and the bonds were forfeited. A total of \$7,934.30 in fines and forfeitures, in addition to jail sentences in many cases, was collected by this

department and transmitted to the City Treasurer. Police Officer C. E. Nuesser was, at our request, detailed by the Chief of Police to assist us in the service of process, commitment of defendants, etc. This work was of great assistance to the department.

At the close of the year 1936, police court appeals were in better shape than they have been in many years.

In connection with police court appeals, this department also drew a bill for introduction in the State Legislature modernizing police court appeal procedure and correcting many abuses that were possible under the act of 1903.

#### 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 written legal opinions upon various questions submitted by the several departments of City Government.

#### 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, four hundred sixty-two ordinances and resolutions, an increase of one hundred eleven over 1935. The large increase in the number of ordinances prepared is due, in part, to extensive repeals incident to the work of codifying the City ordinances, a W. P. A. project under the supervision of Mr. Howard A. Hanson.

During the year, 788 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling \$3,579,888.00.

VI.

MISCELLANEOUS MATTERS

1. Charter Amendments:

At the request of the City Council, we prepared one resolution submitting/<sup>a</sup>Charter amendment.

VII.

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

CONCLUSION

The 1936 Budget of the Law Department was \$72,781.40, which is the lowest figure in sixteen years. This was done in the face of another increase in the number of ordinances and resolutions drawn, and the greatly increased police court and police court appeal work, referred to in detail in this report.

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

Respectfully submitted,

  
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Corporation Counsel