FILE No. 158560

Annual Report

OF

Law Department

For year ending Dec. 31, 1937.

FILED APR 4 1938	
BY	
ADDRESS	

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

BY O A Erlandson DEPUTY

ACTION OF THE COUNCIL

REFERRED APR 4 1938	TO JUDICIARY ~~FINANCE~~
REFERRED	TO
REPORTED	REPORT ADOPTED
REPORTED	REPORT ADOPTED
REF. FOR ORD.	C. B. ORD.
APR 11 1938	DISPOSITION ON FILE

REPORT OF COMMITTEE

Mr. President:

Your Judiciary *Committee*

to which was referred the within Annual Report

would respectfully report that we have considered the same and respectfully recommend that it be placed on file.

Hanley CHAIRMAN

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CHAIRMAN

5M 8-36 J-F CO.

CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1937

A. C. VAN SOELEN
CORPORATION COUNSEL

CITY OF SEATTLE

LAW DEPARTMENT

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A. C. VAN SOELEN,	*Corporation Counsel*
J. AMBLER NEWTON	*Assistant Corporation Counsel*
CAMPBELL C. MCCULLOUGH	*Assistant Corporation Counsel*
GLEN E. WILSON	*Assistant Corporation Counsel*
JOHN E. SANDERS	*Assistant Corporation Counsel*
JOHN A. LOGAN	*Assistant Corporation Counsel*
JOHN A. HOMER	*Assistant Corporation Counsel*
GEORGE T. MCGILLIVRAY	*Assistant Corporation Counsel*
CHARLES V. HOARD	*Assistant Corporation Counsel*
E. A. SWIFT, JR.	*Assistant Corporation Counsel*
BRUCE MACDOUGAL	*City Attorney*
R. B. MCCLINTON	*Chief Clerk*
RUTH GRIFFIN	*Secretary*
TOM M. ALDERSON	*Law Clerk*
JOHN F. COOPER	*Claim Agent*

Annual Report

OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1937

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, 1937.

I.

GENERAL STATEMENT OF LITIGATION

1. *Tabulation of Cases:*

The following is a general tabulation of suits and other civil proceedings pending in the Superior, Federal and appellate courts during the year 1937:

	Pending Dec. 31, 1936	Commenced during Year 1937	Ended during Year 1937	Pending Dec. 31, 1937
Condemnation Suits	13	3	1	15
Condemnation Suits, Supplementary	0	0	0	0
Damages for Personal Injuries	116	95	109	102
Damages Other than for Personal Injuries	58	38	51	45
Actions relating to collection of Assessment Rolls	0	0	0	0
Injunction Suits	27	14	22	19
Mandamus Proceedings	9	10	11	8
Miscellaneous Proceedings	73	57	43	87
Public Service Proceedings	0	0	0	0
	296	217	237	276

2. *Personal Injury Actions:*

	Number	Amt. Involved
Pending December 31, 1936	116	$1,222,039.15
Commenced since December 31, 1936	95	693,638.60
Total	211	$1,915,677.75
Tried and concluded since December 31, 1936	109	921,507.08
Actions pending December 31, 1937	102	$ 994,170.67

Of the personal injury actions pending during the year, 109 involving $921,507.08 were tried and finally disposed of; 64 cases were won outright; in 17 cases involving $179,942.27, the plaintiffs recovered, in the aggregate, only $13,816.00. The remaining cases, involving $206,603.95, were settled without trial for $25,640.50.

Of the 95 personal injury actions begun during the year, 64 involving $553,716.27 are based on alleged accidents occurring

in connection with the operation of the municipal street railway system.

3. *Damages other than Personal Injuries:*

	Number	Amt. Involved
Pending December 31, 1936	58	$ 216,021.53
Commenced since December 31, 1936	38	40,883.18
Total	96	$ 256,904.71
Tried and concluded since December 31, 1936	51	123,182.62
Pending December 31, 1937	45	$ 133,722.09

Of the total of 96 cases involving damages other than personal injuries, 51 cases involving $123,182.62 were disposed of during the year, of which 24 were won, 13 settled and 14 lost, costing the City in the aggregate only $9,547.69.

4. *Supreme Court:*

Eight cases were argued in the State Supreme Court, all of which were won by the City.

5. *Miscellaneous Cases:*

Five actions were commenced against police officers for $115,750.00 for false arrest. In these actions this department was authorized to defend said officers.

Sixteen 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 43 miscellaneous cases tried, 37 were won by the department.

Five hearings relating to dismissals of employees, etc., were participated in by the department before the Civil Service Commission.

Thirty-two actions were commenced for the Lighting Department involving unpaid light and power bills. Judgments in favor of the City, including costs, amounted to $1,027.02. In addition thereto, collection of $543.46 of past due accounts was effected without litigation.

One hundred thirty-seven garnishments were answered.

II.
CLAIMS

Statement and Investigation of Damage Claims filed against the City:

	Number	Amt. Involved
Claims for damage under investigation December 31, 1936	1,121	$2,476,530.04
Claims for damages referred to this department for investigation Dec. 31, 1936, to Dec. 31, 1937	1,304	1,960,970.76
	2,425	$4,437,500.80

Claims disposed of as follows:

	Number	Amt. Claimed	Amt. Paid
Settled	593	$ 507,058.46	$107,030.70
Rejected	542	1,126,141.80	
	1,135	$1,633,200.26	
Claims pending Dec. 31, 1937	1,290	$2,804,300.54	

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

Amount Involved	$37,086.34
Amount of Settlement	2,602.55
Number of street railway accident reports investigated, Dec. 31, 1936, to Dec. 31, 1937	4,822
Number of circulars and letters mailed in connection with investigation of foregoing claims and reports	9,231

III.
POLICE COURT PROSECUTIONS AND APPEALS

During the year 1937 the City Attorney prosecuted some 47,825 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $255,487.20. 34,116 of these cases involved traffic violations. The total number of cases handled is a decrease of 1,411 from that of the previous year, but the fines and forfeitures increased $70,112.37.

This number of police court prosecutions results in a large number of appeals to the Superior Court by persons convicted. It has been necessary to continue an Assistant Corporation Counsel (Mr. McGillivray) in the prosecution of this appeal work. Prior to such special assignment, the appeal work was taken care of by various Assistants as time permitted. Mr. McGillivray has given most of his time to this work during the year 1937, with very gratifying results.

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 208 police court appeals were tried and otherwise disposed of. In 110 cases, convictions and pleas of guilty were entered. Eight appellants were acquitted and in 70 cases appeals were dismissed on the City's motion because of the failure of the persons convicted to diligently prosecute their appeals. In all cases of such 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. Twenty appeal cases were dismissed because of the death of appellants, lack of sufficient evidence, etc. A total of $6,282.00 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. Neuser was, at our request, again detailed by the Chief of Police to assist us

in the service of process, commitment of defendants, etc. His work was of great assistance to the department.

At the close of the year 1937, less than 30 police court appeals, all recent, were pending.

In connection with police court appeals, this department drew, and the State Legislature passed, Chapter 79, Laws of Washington, 1937, modernizing police court appeal procedure and correcting many abuses that were possible under the act of 1903.

Said act was of assistance in clearing the police court appeal calendar.

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 78 written legal opinions upon various questions submitted by the several departments of City government.

V.
ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

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, 277 ordinances and resolutions.

During the year, 996 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $8,737,243.87.

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

CASES OF SPECIAL INTEREST
SUPREME COURT

State ex rel. Ausburn v. Seattle, 190 Wash. 222, 111 A. L. R. 418. This is an important case referred to in the 1937 report in which the trial court (Judge Hall) found for the plaintiffs. The action was brought by some 240 members of the Fire Department to recover certain back pay for the years 1933 to 1937, inclusive. After the decision by the trial court against the City, hundreds of cases in behalf of members of the Fire and Police Departments, respectively, were brought involving in all about one million dollars. The specific question involved was whether such members whose salaries were fixed in an initiative ordinance in 1924, could recover back pay for periods of one day in each eight during which they were suspended without pay

as an economy measure. The City had in 1933 adopted by ordinance that system of spreading the work rather than reducing the force, as the case of ***State ex rel. Knez v. Seattle,*** 176 Wash. 283, had established that the salary scale of such employees, who are referred to in said decision as "officers," could not be reduced without a vote of the people. The City was successful in its appeal in the Ausburn case.

The points decided by the State Supreme Court are well set forth in the following syllabus contained in the A. L. R. report above cited:

> "1. The power of suspension conferred by a provision in a city charter that municipal officers and employees in the classified civil service shall hold office until removed or retired, but that nothing therein shall limit the power of any officer to suspend without pay a subordinate for a period not exceeding thirty days, may be exercised for the purpose of reducing expenses, even in the case of employees whose salary has been fixed by an initiative ordinance, and is not limited by a city civil service rule adopted under charter authority that the appointing officer shall have for disciplinary purposes exclusive authority to suspend any employee without pay for a period not exceeding thirty days.
>
> "2. The adoption of an initiative ordinance fixing salaries of members of the fire department, but making no provision as to time, does not prevent the city council, as an economy measure, from suspending an earlier ordinance granting firemen one day off in every eight with pay, and requiring each member to take one day off in every eight without pay.
>
> "3. Authority under a charter provision to lay off members of a city's fire department as an economy measure cannot be modified or abrogated by a platoon rule of the fire department which provides in effect that a fireman is never released from duty as long as he remains on the force."

Hagerman v. Seattle, 189 Wash. 684, 110 A. L. R. 1110. This case definitely sustains the position of the City that "the immunity of municipal corporations from liability for the negligence of their employees when engaged in the performance of a governmental function extends to the negligent operation of a truck used by the Health Department for the transportation of supplies to municipally maintained hospitals."

Seattle Gas Co. v. Seattle, 92 Wash. Dec. 401; a declaratory judgment action by the Seattle Gas Company, contending that amounts paid to the City as occupation taxes under Ordinance No. 62662 and to the State under Ch. 191, Laws of Wash. 1933, and Ch. 180, Laws of Wash. 1935, were deductible from the taxpayer's gross income. The City contended that the only deductions allowable were sums paid as *sales* taxes as distinguished from occupation taxes, and that the deductibles claimed were all sums paid as occupation taxes. The trial court (Judge Ronald) held for the plaintiff. The City appealed. The case was argued three times before the Supreme Court: Once before the

Department May 12, 1937, once before the court en banc October 5, 1937, and on rehearing before the court en banc March 10, 1938. In its decision above cited rendered December 3, 1937, after the first en banc hearing, the Supreme Court sustained the City's contentions on all points, holding that none of the claimed deductions were allowable. On March 16, 1938, a majority of the court adhered to the decision rendered en banc December 3, 1937.

Miller v. Seattle, 91 Wash. Dec. 126. In this case, a promotional examination was held in 1936 for the position of "Captain of Police" and was open to all members of the Police Department who held the position of "Sergeant of Police." A former "Lieutenant of Police" brought the action to cancel the eligible list and the examination and to compel the Commission to hold an examination which only the former "Lieutenants of Police" would be able to take.

The office of "Lieutenant of Police" had been created in the 1912 salary ordinance, had been continued up to and including the year 1936 but was abolished by "noninclusion" in the 1936 salary ordinance.

The Supreme Court held that the City Council has the right to create offices and abolish them in the interest of either economy or efficiency, which holding followed several prior decisions of the court.

The additional question which had not theretofore been decided by the Supreme Court was the question whether the "noninclusion" of a position or office in the annual salary ordinance of the City abolished the said position, and that the question was answered in the affirmative by the court.

A. Claire Smith v. Seattle, 92 Wash. Dec. 65: A case involving specification of an article of special manufacture (Mazda Lamps) in a call for bids under the competitive bidding provisions of the City Charter, Sections 14 and 15, Article VIII. Heretofore it has been questioned whether the City could buy a patented or monopolized article under the provision for letting all contracts to the lowest bidder, since there can be little, if any, competition in such a manner. Courts of other jurisdictions are divided on the subject. We had no authoritative decision from our own court. The Mazda Lamp case finally settled the matter in this jurisdiction, and it is now plain that a city under the competitive bidding provision of charter or statute may, if it so desires, designate a patented article or an article controlled by one manufacturer.

Peterson v. Seattle, 91 Wash. Dec. 512: Injunction suit to prevent use for private purposes of a portion of a street on tide

lands vacated by ordinance of City Council. Trial court (Judge Kinne) held City had no power to vacate a street platted on tide lands.

On appeal to Supreme Court, decision of trial court reversed and held (Sept. 22, 1937) that City has power to vacate streets platted on tide lands, the same as other streets.

FEDERAL COURT

Puget Sound Power and Light Co. v. Seattle, U. S. Dist. Ct., Western District, Northern Division, in equity, No. 1189. On July 30, 1937, said Company brought said action for declaratory judgment involving $8,336,000 of unpaid railway revenue bonds, seeking primarily to establish priority of said bonds over operating expenses. Complained of particularly by plaintiff was the impounding by the City of all the cash revenues of the railway system under Ordinance No. 67463. Said impounding ordinance was instigated by Mayor John F. Dore and directed the seizure of all railway cash and its deposit and disbursement by the Superintendent of Railways under the direction of the Board of Public Works outside the City Treasury, such cash to be used primarily for the payment of wages. An amended and supplemental bill of complaint along the same lines but amplified and reciting the failure of the City to pay $208,400, semi-annual interest, on the railway purchase bonds due September 1, 1937, was filed September 20, 1937.

On August 18, 1937, the City moved to dismiss said action, relying principally on the ground that Section 9491, Rem. Rev. Stat., provides a complete, speedy and adequate remedy for the matters complained of by the plaintiff. The hearing on said motion was continued from time to time by stipulation of the parties pending possible settlement as an incident to a rehabilitation and refinancing plan, which Attorney George F. Vanderveer was by Ordinance No. 67557, approved July 29, 1937, employed to negotiate. The contract of employment provided by said ordinance was revocable if negotiations were not completed by November 30, 1937. Such negotiations were not completed by the end of 1937, but the City Council had not elected to terminate said contract.

The contract also purported to invest Mr. Vanderveer with authority to control certain prospective litigation and contained no reference to control thereof by the Corporation Counsel. In a Superior Court action by a taxpayer the court held that in so far as said contract purported to divest the Corporation Counsel of control over any litigation, the same was void. Mr. Vanderveer in his pleadings in said taxpayer's action admitted the supervisory power of the Corporation Counsel to control all litigation of the City.

SUPERIOR COURT

Brooks v. Seattle, Superior Court Cause No. 292134. In this case, one Marvin Brooks, a CWA worker, was killed while engaged in the reerection of the Water Department bridge at Cedar Falls, the reerection of which was a part of the large CWA project the Federal Government undertook in the Cedar River Watershed.

There had been two Superior Court cases involving the death of this worker. The first case was tried to the court without a jury and the plaintiff exercised her statutory right of taking a voluntary nonsuit. The second case came to trial before the court sitting with a jury which was demanded by the plaintiff (the widow and personal representative of the deceased). The jury on May 18, 1937, returned a verdict in favor of plaintiff in the sum of $4,750.00, whereupon the defendant City moved for judgment notwithstanding the verdict. The trial court granted defendant's said motion and dismissed the action, whereupon the plaintiff appealed to the Supreme Court of the State. The hearing in the Supreme Court was had on Friday, October 29, 1937.

Note: The State Supreme Court has sustained the City's contention that there was no liability on the part of the City in such cases, and we will refer specifically to the grounds thereof in our next annual report.

Weiffenbach v. Seattle: The plaintiff while engaged in extra-hazardous work on the roof of a building (measuring for repairs) came in contact with a high tension wire attached to a City light pole. The pole from some unknown cause had leaned from a vertical position towards the building almost four feet. The business of transmitting electricity is designated in the Workmen's Compensation Act as extrahazardous. The plaintiff was severely burned and totally disabled. He elected to sue the City for negligence on the theory that the City was a third party within that provision of said Act permitting a suit where the injury inflicted is through the wrong or negligence of another. There is a proviso that if at the time of the accident the third party is "in the course of an extrahazardous employment" there is no election. It was contended by the plaintiff that there being no workmen present, the City was not in the course of any employment when the accident occurred.

We believe this is the first time that this question has arisen, having found no similar case. The trial court sustained our theory of the case, dismissing the same on the ground that the Act in the use of the words "in the course of employment" should not be limited to actual workmen on the ground but related to all those apart from the scene who were engaged in an

activity deemed extrahazardous under the act. The trial court, however, expressed some doubt as to interpretation of the Act. and proceeded to hear the evidence and make findings for the plaintiff, and assessed the damage at some $36,000, but dismissed the action on the ground that the plaintiff must seek his remedy through the Industrial Insurance Fund, as we contended he should.

Brougham v. Seattle, Superior Court No. 297109. An action for towing and storage charges alleged to have been earned pursuant to Article IX of the Seattle Traffic Ordinance. The plaintiff's garage had been designated as an official vehicle pound pursuant to said Article to which many vehicles parked in violation of the Code had been removed from the streets and stored under the direction of the police officers of the City. After the discontinuance of his garage as an official vehicle pound in July, 1936, the plaintiff sued the City for towing and storage charges on a portion of such vehicles which had not been redeemed by the owners thereof and which, with three exceptions, were so nearly worthless that they could not be sold for the amount of such charges.

The City contended that the plaintiff and other garage owners acting for the City in the removal of illegally parked cars had orally agreed that when such vehicles were not redeemed and could not be sold for the amount of towing and storage charges against them, they would be released to the garage owners in full payment of such charges. The plaintiff denied such agreement, and contended that under the ordinance he was entitled to towing charges at $2.50 per car and storage charges at 25 cents on each car for each day stored amounting in the aggregate to $1,946.50. The lower court found for the City. The plaintiff appealed to the State Supreme Court.

Northwest District Communist Party v. Dore, et al., Cause No. 303252: Action to enjoin City from preventing use of Civic Auditorium for meeting of Communist Party, in accordance with lease made by Superintendent of Buildings. Right to use Auditorium denied by Mayor.

Hearing before Judge Hall; application for injunction denied; judgment of dismissal entered November 17, 1937.

King County v. Seattle, Cause No. 297144: Fee case—decided by trial court, now on appeal to Supreme Court. Trial court held City liable in police court appeals on acquittal of defendant, for jury fee of $12.00, but not for appearance fee or judgment fee. Both county and city have appealed.

Finne v. Collier—Cause No. 303828:

Action to enjoin sale of property by City Treasurer for delinquent Aurora Avenue condemnation assessments, on grounds that the City received money by legislative appropriation for purpose of reducing assessments not applied to that purpose, and that City had not paid into condemnation award fund money fixed by the Board of Eminent Domain Commissioners as general benefits.

Judgment denying injunction and dismissing action entered by Judge Douglas December 28, 1937.

In Re Proceedings for Foreclosure of Delinquent Local Improvement Assessments—Cause No. 300241:

Action to foreclose delinquent local improvement assessments—Objection to proceedings and motion to quash summons made by certain property owners in Aurora district on grounds that certificate of City Treasurer and published summons were not in accordance with law.

Motion to quash summons denied by Judge Batchelor December 17, 1937.

CONCLUSION

The 1937 Budget of the Law Department was $81,195.20.

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

Respectfully submitted,

A. C. VAN SOELEN,
Corporation Counsel.

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