File 162162

CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1938

JUDICIARY

A. C. VAN SOELEN
CORPORATION COUNSEL

The City of Seattle--Legislative Department

MR. PRESIDENT:

Your Committee on Judiciary

to which was referred Comptroller's File No. 162162, City of Seattle Law Department Annual Report, 1938,

Recommends that the same be placed on file.

.....
Chairman

Date Reported and Adopted

.....

.....
Chairman

CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1938

A. C. VAN SOELEN,	*Corporation Counsel*
J. AMBLER NEWTON	*Assistant Corporation Counsel*
CAMPBELL C. MCCULLOUGH	*Assistant Corporation Counsel*
GENE 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 1938

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, 1938.

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 1938:

	Pending Dec. 31, 1937	Commenced during Year 1938	Ended during Year 1938	Pending Dec. 31, 1938
Condemnation Suits	15	2	11	6
Condemnation Suits, Supplementary	0	2	2	0
Damages for Personal Injuries	102	64	101	65
Damages Other than for Personal Injuries	45	39	45	39
Actions relating to collection of Assessment Rolls	0	0	0	0
Injunction Suits	19	10	9	20
Mandamus Proceedings	8	10	7	11
Miscellaneous Proceedings	87	40	37	90
Public Service Proceedings	0	1	0	1
	276	168	212	232

2. *Personal Injury Actions:*

	Number	Amt. Involved
Pending December 31, 1937	102	$ 994,170.67
Commenced since December 31, 1937	64	709,521.58
Total	166	$1,703,692.25
Tried and concluded since December 31, 1937	101	1,006,778.62
Actions pending December 31, 1938	65	$ 696,913.63

Of the personal injury actions pending during the year, 101 involving $1,006,778.62 were tried and finally disposed of; 59 cases were won outright; in 11 cases involving $116,104.68, the

plaintiffs recovered, in the aggregate, only $12,699.00. The remaining cases, involving $281,862.88, were settled without trial for $30,576.00.

Of the 64 personal injury actions begun during the year, 47 involving $511,630.71 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, 1937	45	$ 133,722.09
Commenced since December 31, 1937	39	158,383.97
Total	84	$ 292,106.06
Tried and concluded since December 31, 1937	45	83,042.41
Pending December 31, 1938	39	$ 209,063.65

Of the total of 84 cases involving damages other than personal injuries, 45 cases involving $83,042.41 were disposed of during the year, of which 28 were won, 12 settled and 5 lost, costing the City in the aggregate only $8,321.69.

4. *Supreme Court:*

Eleven cases were argued in the State Supreme Court, six were won by the City, four lost and one modified.

5. *Miscellaneous Cases:*

Two actions were commenced against police officers for $17,500.00 for false arrest and two cases were commenced against other city employees for $3,738 damages claimed. In these actions this department was authorized to defend said officers and employes.

Eight 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.

Six cases seeking to quiet title against the City were filed.

Of 37 miscellaneous cases tried, 33 were won by the department.

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

Sixteen actions were commenced for the Lighting Department involving unpaid light and power bills. Judgments in favor of the City, including costs, amounted to $1,666.96. In addition thereto, a considerable amount of past due accounts were collected without litigation.

One hundred twenty-eight 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, 1937	1,290	$2,804,300.54
Claims for damages referred to this department for investigation Dec. 31, 1937, to Dec. 31, 1938	1,056	1,083,360.67
	2,346	$3,887,661.21

Claims disposed of as follows:

	Number	Amt. Claimed	Amt. Paid
Settled	500	$ 314,707.20	$ 63,665.90
Rejected	567	604,700.06	
	1,067	$ 919,407.26	
Claims pending Dec. 31, 1938	1,279	$2,968,253.95	

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

Amount Involved	$35,597.27
Amount of Settlement	3,800.33
Number of street railway accident reports investigated, Dec. 31, 1937, to Dec. 31, 1938	4,222
Number of circulars and letters mailed in connection with investigation of foregoing claims and reports	9,193

III.

POLICE COURT PROSECUTIONS AND APPEALS

During the year 1938 the City Attorney prosecuted some 46,128 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $245,937.75. 33,238 of these cases involved traffic violations. The total number of cases handled is a decrease of 1,697 from that of the previous year, and the fines and forfeitures decreased $9,549.55.

This number of police court prosecutions results in a considerable 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 1938, with very gratifying results.

Vigorous action on these appeals has been taken by this department, although the law places the burden on the appellant, with the result that at the end of the year 87 police court appeals were tried and otherwise disposed of. In 30 cases, convictions and pleas of guilty were entered. Eight appellants were acquitted and in 40 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. Eight appeal cases were dismissed because of the death of appellants, lack of sufficient evidence, etc. A total of $2,-137.35 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 on a part time basis 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 1938, only 20 police court appeals, all recent, were pending.

Under Chapter 79, Laws of Washington, 1937, modernizing police court appeal procedure, there has been a marked decrease in police court appeals.

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 99 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, 213 ordinances and resolutions.

During the year, 812 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $4,197,456.50.

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

Harbor Radio Telephone Application:

In the summer of 1937 the Harbor Department at the behest of the shipping interests of the Port made application to the Federal Communications Commission for a construction permit for a Radio Telephone station in connection with the Harbor Radio. The Pacific Telephone and Telegraph Co., which operates radio telephone station KOW, appeared as respondent and contested the application. Hearings were held in Seattle before an Examiner in October, 1937. The Examiner filed his report April 25, 1938, recommending that the application be denied on the ground that the Telephone Company was adequately serving the territory. After the City's application was filed, and prior to the Examiner's Report, the Telephone Company reduced its rates three times. Since the proposed service of the City was radically different than that given by the Telephone Company, the City filed exceptions to the Examiner's Report, and the matter was argued before the Commission in Washington, D. C., on June 30, 1938. On December 19, 1938, the Commission handed down its decision denying the application on the ground that there was no showing of a public need for the service which was not supplied by the existing station and that the frequency applied for, being primarily designed for ship to ship communication, serious interference would result from the occupation of this frequency by the City's station. Commissioner Walker dissented and contended that the City, as a municipal corporation, should have the right to give to the public the service applied for, and if the frequency requested is not available, another should be assigned.

Telephone Rate Hearings:

The Pacific Telephone & Telegraph Co. filed schedules with the Department of Public Service requesting:

A. The privilege of passing on to its subscribers any occupation taxes levied by cities and towns; and,

B. The right to install a metered telephone service.

The going into effect of said schedules was suspended by the Department pending public hearings thereon.

Hearings have been held and completed on the passing on of the occupation tax, briefs were written and filed, but no decision has been made as yet. The hearings on the metered service have not as yet been scheduled by the Department.

VI.

MATTERS OF SPECIAL INTEREST FEDERAL COURT and STREET RAILWAY FINANCING

The case of *Puget Sound Power & Light Co. v. Seattle,* U. S. District Court, Western District, Northern Division, in equity, No. 1189, for declaratory judgment involving $8,336,000 of unpaid railway revenue bonds, is referred to in the 1937 report as pending on the motion of the City to dismiss the same. In order to assist in a possible settlement and voluntary dismissal of said action through a refinancing and rehabilitation plan involving a prospective loan from the Reconstruction Finance Corporation the City and the company both withdrew their memorandum briefs and left pending only a stipulation for continuance from time to time pending possible settlement. Such a stipulation for continuance was on file on December 31, 1938.

In the meantime on March 23, 1938, the City Council passed Resolution No. 12273 terminating the employment of Attorney George F. Vanderveer, who was by Ordinance No. 67557, approved July 29, 1937, employed to negotiate a settlement with the company on a commission basis. This matter is referred to in the 1937 Report. Mr. Arthur B. Langle had in the meantime at the March, 1938, election been elected Mayor, succeeding the late Mayor John F. Dore. Mayor Langlie and the City Council laid the groundwork for, and the Mayor later filed with the Reconstruction Finance Corporation an application for a loan of $10,500,000 to refinance and rehabilitate the street railway system. The Reconstruction Finance Corporation conditionally approved a loan in the sum of $10,000,000 for such purpose by its Resolution dated September 26, 1938. At the close of the year 1938 the City was busily engaged in effectuating a composition with its street railway division creditors so as to enable it to refinance within the sum allocated for such purpose by the Reconstruction Finance Corporation. Said corporation was also considering some modifications of the conditions of its said resolution of September 26, 1938. The prospects for refinancing and rehabilitating the street railway system during 1939 were good at the close of 1938.

SUPREME COURT

Brooks v. Seattle, 193 Wash. 253. Writ of certiorari denied by U. S. Supreme Court October 10, 1938; 83 L. Ed. (Adv. Op.) 11.

This case was referred to in the 1937 annual report and presented the question whether the City was liable for the death of a C.W.A. worker who was engaged in the re-erection of a water department bridge at Cedar Falls, which re-erection was a part of a large C.W.A. project the Federal government undertook in the Cedar River watershed.

The State Supreme Court held that there was no liability on the part of the City in such cases, the principal reasons being that the City in aiding and cooperating with the United States government in a national employment program was engaged in the promotion of the general welfare, and therefore could not be subjected to liability. The court also held that it was immaterial that the City received a certain benefit from the prosecution of C.W.A. projects, as the prime purpose was to relieve the national unemployment situation.

Goff v. City of Seattle, 97 Wash. Dec. 591, was decided January 7, 1939, but is included in this report because it was commenced in 1938 and involves interesting and important questions on debt limitation. This was a test case to determine the validity of the issuance by the City of approximately three and one-half million dollars funding bonds to retire an equivalent amount of outstanding General Fund warrants. Principally because of a fall in revenue over a period of years the City was faced in 1938 with a cumulative deficit of several millions of dollars in warrants, it became necessary to fund a substantial portion thereof and because of the City's unbalanced budget, among other things, the question of debt in excess of that authorized by Section 6 of Article VIII of the State Constitution was presented. The City undertook in the trial court to prove that all the warrants proposed to be funded had been issued for necessities and therefore constituted an exception to the constitutional limitation above referred to, as recognized by the court in a long line of cases. The plaintiff taxpayer cross examined the City's witnesses at length, but offered no affirmative evidence to disprove the necessities testified to. He contended, however, that some ten items of expense aggregating some $500,000 were not for "necessities" and were not "mandatory municipal expense or expenses essential to the continued functioning of the City as a unit of government," citing particularly *Patterson v. Edmonds,* 72 Wash.

88, a case decided in 1911 involving the necessities of the Town of Edmonds at that time. The trial court sustained the plaintiff's contention as to three items as being "non-essential," to-wit: Firland's Tuberculosis Sanitorium, maintenance of streets and auto driver for the Legislative Department, and sustained the authority in the City to issue funding bonds for all but said excepted items. The plaintiff appealed on certain items allowed and the City cross-appealed on the items disallowed, emphasizing particularly the Firlands item as a health measure. The court decided the matter **en banc,** reviewing all the previous decisions and resting its decision almost entirely on Patterson v. Edmonds, concluding that none of the items objected to were essential to the continued functioning of the City government and that they were therefore not subject to funding. The court expressly disclaimed any "inference from our decision unfavorable to the validity of the warrants as a charge against the resources pledged to their support." The City has since funded some $3,290,000 of warrants which were not questioned.

In ***Cassells v. City of Seattle,*** 95 Wash. Dec. 361, on the City's appeal, the Supreme Court affirmed a verdict in favor of the plaintiff in a street car case. This decision suggests that "aged" persons are entitled to a higher degree of care than the "highest" degree of care to which all passengers are entitled.

In ***City v. Al Mathewson,*** 194 Wash. 351, on the City's appeal, the Supreme Court reversed the trial court which had dismissed a charge of reckless driving on the grounds of alleged "former jeopardy." The plea of former jeopardy was based on a previous charge involving the same offense, which was dismissed upon motion of the defendant upon technical grounds.

In ***Collins v. Town of Bucoda,*** 191 Wash. 242; 193 Wash. 601, we appeared as amicus curiae in an action in mandamus relative to the Local Improvement Guaranty Fund Act. The Supreme Court in an **en banc** hearing in January, 1938, affirmed the departmental decision which determined the effective date of said Act, a question of considerable interest to the City of Seattle.

In ***King County v. City of Seattle,*** 95 Wash. Dec. 244, the Supreme Court decided the question of the liability of the City for costs of cases on appeal from police court, where the defendant is acquitted.

In ***Parr v. City of Seattle,*** 97 Wash. Dec. 47, on the City's appeal, the Supreme Court on technical grounds reversed the trial court which, under the declaratory judgment act, held that part of the License Code relating to pinball machines was unconstitutional. This decision is not, however, satisfactory as to the legal status of said machines, which is the question we desired to have decided.

In ***Willebrandt v. City of Seattle,*** 96 Wash. Dec. 538, on the plaintiff's appeal, the Supreme Court affirmed the decision of the trial court sustaining the City's demurrer to a complaint seeking damages for personal injuries and dismissing the case. This case is unique in that it is seldom that the City is in a position to secure the dismissal of a personal injury case without the expense of a trial.

H. W. Brougham v. City, 194 Wash. 1. This case is referred to in the 1937 report. The Supreme Court, on the plaintiff's appeal, sustained the judgment in favor of the City on the ground that the impounding ordinance involved an exercise of the police power and a governmental function of the City, and that the City was not liable if its officers failed to comply therewith, and further, that the ordinance gave plaintiff a right to compensation only when impounded cars were redeemed or sold, and the cars in question not having been redeemed or sold, that he could not recover the towing and storage charges claimed.

Adams v. City

Airth v. City

Chatfield v. City—Supreme Court No. 27130.

The above cases are actions by employes of the Park Department for back salary on account of (a) reduction in salary in 1932, (b) reduction in working time in 1934 and 1935, and (c) an alleged wrongful layoff in 1935. The municipal questions involved were: (1) The power of the Park Board over salaries and working conditions in the Park Department in view of the specific provisions of Article XIII, Secs. 3, 7 and 8 of the Charter, and (2) whether the alleged claim of duress tolled the statute of limitations on the claims for 1932. The trial court held generally for the plaintiffs on the ground that the Budget Law had superseded the Charter provisions and

that sufficient duress had been shown to toll the statute of limitations. The City appealed and the cases were argued to a department of the Supreme Court on November 7th and on the Court's own motion re-argued to the Court **en banc** on December 16, 1938. No decision had been filed on December 31, 1938.

Haga v. City, 95 Wash. Dec. 186: Haga was a carpenter in the Park Department. He was laid off January 1, 1936, on a reduction of the number of positions of carpenter. A laborer was assigned to the remaining carpenter as a helper. His principal duties were to drive the truck and get material on the job, but he occasionally, under the direction of the Carpenter, would saw a board or nail it in place. Most of the carpenter work was done by W. P. A. labor. The court, however, found, referring to a similar finding by the Civil Service Commission, that he was performing the same duties as Haga had when he was employed. Haga made no protest about this condition but did protest against the W. P. A. carpenters. The court held that this protest, such as it was, was sufficient to put the Department on notice of the work the laborer was doing and allowed recovery for back salary.

SUPERIOR COURT

Schuehle v. Seattle, No. 300586: This case was tried in the Superior Court beginning January 17th and ending February 15th. The court filed a memorandum opinion March 10, 1938, upholding the contentions of the City. It involved construction of a bridge on Admiral Way at Schmitz Park, known as the Schmitz Park Bridge.

The contract was let with provision for four street railway tracks. After work had started a change was made eliminating the street railway. This made a much lighter structure, and caused loss in concrete yardage, loss in steel and made the work more difficult according to the contention of the contractor, because of the thinning of vertical walls in the span.

The case was brought on the theory that the change constituted new and different work from that within the contemplation of the parties and increased the cost to such an extent that the contractor would be entitled to be compensated for the reasonable value, rather than at the contract bid prices, which the contractor contended was some $26,000 more than he was paid.

After judgment was entered in favor of the City, the plaintiffs served notice of appeal and the same is now pending.

State ex rel. Kenneth Fletcher v. City, et al., No. 305157: This suit was brought to set aside and cancel an examination given by the Civil Service Commission for positions of "Laborer." Approximately 2,400 applicants took the examination, which was held over a period of days in the Civil Auditorium. The basis of the suit was that the examination was not "practical" and that no oral examination was given, as required by Civil Service Rules.

The trial court dismissed the action after finding that the physical working tests devised by the Commission were practical and that the oral examination, which consisted of a short interview after each applicant had completed the working test, was as complete as an oral examination for laborers could be made.

Hocking, et ux v. Frederickson, as Supt. of Bldgs., No. 310150: In this case the plaintiffs had maintained a fuel yard since 1908 in a district which was subsequently zoned for business. Pursuant to the provisions of Section 5 of the Zoning Ordinance, as amended by Ordinance No. 66914, owners of property within 200 feet of the fuel yard filed a 75% petition asking the discontinuance of the fuel yard. The Board of Public Works, after hearing, ordered the discontinuance of the fuel yard. The suit sought to restrain the Superintendent of Buildings from in any way interfering with the operation of the said fuel yard.

The trial court, after hearing, held that the City had properly exercised its police power and that the operation of the fuel yard under the evidence constituted a nuisance to the property in the immediate vicinity and denied the plaintiffs any relief.

State ex rel. Hearty v. Civil Service Commission—Cause No. 305719: This case involved an examination for auto truck driver held in 1937. The examination was held and the papers graded by the staff of the Commission on the basis of 60-20-20 for the several parts of the examination. The results were reported to the Commission which approved same and ordered the grades sent out and an eligible list prepared. Hearty was number 14 on this grading. Later the Commission claimed the staff had graded the papers on a different basis than ordered by the Commission which was claimed to be 20-40-40 and ordered the papers regraded. On the regrade Hearty

dropped to number 41 and brought suit claiming the Commission had no right to regrade the papers after having once approved the examination and after the papers had been identified. In this contention he was sustained by the Trial Court. This case is on appeal to the Supreme Court.

Northwest District Communist Party v. Seattle, Superior Court Cause No. 305196, was an action for damages based on the refusal of the City to permit the Communist Party to use the Civic Auditorium for a meeting on the night of November 10, 1937, pursuant to the terms of a written lease between the Superintendent of Buildings and the Communist Party. The lease was cancelled and the use of the Auditorium refused on direction of the Mayor. The trial court refused to allow a recovery on the grounds that the cancellation of the lease was justified because of the danger of breach of the peace if the meeting were held, and upon the further ground that the Communist Party is a subversive organization and that its doctrines advocated the overthrow of the Government by force and violence and that the City would have no power to enter into a lease with such a party.

Pearson v. Seattle, Superior Court Cause No, 310059, involved the validity of Seattle's ordinance regulating and licensing solid fuel dealers. The lower court held the fees excessive and the ordinance discriminatory. The case is now pending in the Supreme Court on the appeal of the City but no decision has been rendered.

Magnolia Playfield, Ordinance No. 66096, Superior Court Cause No. 291708. Value of the property was fixed by the court in the sum of $8,000.00. The court disallowed the City's claim of title from the county by virtue of a deed for a nominal consideration. At an assessment roll hearing on June 24, 1938, the court modified the roll by decreasing it in the sum of $171.25. It was otherwise confirmed in all respects. On July 27, 1938, the council accepted the awards.

Summit Playfield, Ordinance No. 67752, Cause No. 303751. The total awards were in the sum of $50,000. The court cancelled and annulled the assessment roll. On November 21, 1938, the awards were rejected by the City Council.

In re Skagit Right-of-way Around Renton, Ordinance No. 68073, Cause No. 306364; summons and petition filed on April 22, 1938; on July 14, 1938, Ordinance No. 68441 authorizing

discontinuance of proceedings was approved by the Mayor, the City having adjusted its franchise difficulties with the City of Renton.

CONCLUSION

The 1938 Budget of the Law Department was $82,520.00 and a saving of some $600 was realized.

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. VanSoelen

A. C. VAN SOELEN,

Corporation Counsel.