FILE NO. 165763

Annual Report

OF

Law Department

For year 1939.

FILED April 5, 1940.

W. C. THOMAS
CITY COMPTROLLER AND EX-OFFICIO CITY CLERK

BY O. Erlandson, DEPUTY

ACTION OF THE COUNCIL

REFERRED APR 8 1940	TO JUDICIARY
REFERRED	TO FINANCE
REPORTED	REPORT ADOPTED
REPORTED	REPORT ADOPTED
REF. FOR ORD.	C. B. ORD.
JUL 29 1940	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

the same be placed on file.

Ernst
CHAIRMAN

Faulk
CHAIRMAN

5M 2-40 GATEWAY

ACV:AP 4-1-40

CITY OF SEATTLE

L A W D E P A R T M E N T

ANNUAL REPORT

1939

A. C. VAN SOELEN
Corporation Counsel

CITY OF SEATTLE

L A W D E P A R T M E N T

ANNUAL REPORT

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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 MacDOUGALL	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 1939.

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, 1939.

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 1939:

	Pending Dec. 31, 1938	Commenced during Year 1939	Ended during year 1939	Pending Dec. 31, 1939
Condemnation suits, ...	6	2	1	7
Condemnation suits, supplementary, ...	0	0	0	0
Damages for personal injuries, ...	65	64	71	58
Damages other than for personal injuries, ...	39	22	34	27
Actions relating to collection of assessment rolls,	0	1	1	0
Injunction suits, ...	20	13	20	13
Mandamus proceedings, ...	11	13	5	19
Miscellaneous proceedings,.	90	64	71	83
Public service proceedings,	1	3	3	1
	232	182	206	208

2. Personal Injury Actions:

	Number	Amt. Involved
Pending December 31, 1938,.....	65	$696,913.63
Commenced since December 31, 1938, ...	64	491,814.25
Total, ...	129	1,188,727.88
Tried and concluded since December 31, 1938, ...	71	455,032.00
Actions pending December 31, 1939, ...	58	733,695.88

Of the personal injury actions pending during the year, 71, involving $455,032.00 were tried and finally disposed of; 47 cases were won outright; in 7 cases involving $147,124.00, the plaintiffs recovered, in the aggregate, $35,437.00. The remaining cases, involving $73,179.00 were settled without trial for $9,670.00.

Of the 64 personal injury actions begun during the year, 41, involving $310,186.35, 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, 1938, ...	39	$209,063.65
Commenced since December 31, 1938, ...	22	12,376.49
Total, ...	61	221,440.14
Tried and concluded since December 31, 1938, ...	34	59,049.00
Pending December 31, 1939, ...	27	$162,391.14

Of the total of 61 cases involving damages other than personal injuries, 34 cases involving $59,049.00 were disposed of during the year, of which 23 were won, 7 settled and 4 lost, costing the City in the aggregate only $8,238.00.

4. Supreme Court:

Thirteen cases were argued in the State Supreme Court, five were won by the City, six lost and two modified.

5. Miscellaneous Cases:

Three actions were commenced against the Chief and certain police officers for $69,340 for false arrest. A judgment recovered against the Chief in one case of $2,750 was settled for $1,000.

Actions against two City employees defended by us resulted in two small judgments, $118 and $155.

One case was filed seeking to foreclose a mortgage and the City was compelled to answer to protect its lien upon the property involved.

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

Three actions in certiorari were filed against the City.

Eighteen condemnation suits by the State relating to the Lake Washington toll bridge were filed.

Of seventy-one miscellaneous cases tried, thirty-nine were won by the department.

Twenty-eight cases were settled and adjusted without any money recovery.

In an unusual personal injury case in which plaintiff suffered loss of an arm and other serious injuries, he recovered $21,984. Plaintiff's combined cause of action involved an alleged defective crosswalk in which he claimed he stumbled in front of an oncoming street car.

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

Twenty-nine actions were commenced for the Lighting Department, involving unpaid light and power bills. Judgments in favor of the City, including costs, amounted to $2,515.40. In addition thereto, a considerable amount of past due accounts were collected without litigation.

Seventy-three garnishments were answered.

II.

CLAIMS.

Statement and Investigation of Damage Claims filed against the City in 1939:

	Number	Amt. Involved
Claims for damages referred to this department for investigation Dec. 31, 1938, to Dec. 31, 1939, ...	1174	$1,367,985.47

Claims disposed of as follows:

	Number	Amt. Claimed	Amt. Paid
Settled, ...	478	$377,449.91	$59,860.38
Rejected, ...	557	958,049.37	

Twenty-one of above settled claims were in suit and settled in

conjunction with Claim Agent:

Amount Involved, ...	$63,727.23
Amount of Settlement, ...	7,626.78
Number of street railway accident reports investigated Dec. 31, 1938, to Dec. 31, 1939, ...	4424
Number of circulars and letters mailed in connection with investigation of foregoing claims and reports, ...	8006

Aggregate settlements and judgments against the City in connection with the transportation system are remaining at a steady level. Percentage of gross receipts paid out for these items: 1938 2.29%
1939 2.19%

III.

POLICE COURT PROSECUTIONS AND APPEALS.

During the year 1939 the City Attorney prosecuted some 71,680 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $281,092.32. 58,464 of these cases involved traffic violations. The total number of cases handled is an increase of 25,552 from that of the previous year, and the fines and forfeitures increased $35,154.58.

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 1939, 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 101 police court appeals were tried and otherwise disposed of. In 32 cases convictions and pleas of guilty were entered. Four appellants were acquitted and in 44 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. 26 drivers' licenses were suspended and revoked. A total of $4,110.50 in fines and forfeitures, in addition to jail sentences in many cases, was collected by this department and transmitted to the City Treasurer. A police officer was, at our request, 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 1939 only 9 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 85 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, 245 ordinances and resolutions.

During the year 747 bonds of officials, bidders, contractors,

depositaries and others were examined and approved, totaling $4,706,510.59.

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

Telephone Rate Hearing:

As stated in the 1938 Annual Report, the Pacific Telephone and Telegraph Company in that year made rate filings, by the first of which they desired to pass on to the subscribers the Occupation Tax imposed by the City of Seattle and other cities. By another filing, they proposed to install a metered service in the City of Seattle, and the establishment of Grant, Sheridan and Glendale Exchanges as extended service; and by still another requested certain increases in toll rates. These schedules were all suspended by the Department of Public Service pending public hearings thereon.

Pursuant to the direction of the City Council, this department represented the City at the hearings and, joining with the State, King County, other cities and private protestants, objected to the allowance of said schedules. Hearings were held and completed on the passing on of the Occupation Tax. Briefs were prepared and filed, but no decision was made by the Department thereon.

Subsequently, hearings were scheduled on the metered service and the other features of the filings, and all of the cases were consolidated. Hearings commenced about August 1, 1939 and extended continuously until January 9, 1940, which was presumptively the deadline under the original suspension of the rates, under Rem. Rev. Stat. Sec. 10424 (1937 Sup.). It being impossible to complete the hearing on that date, the Telephone Company agreed to withdraw its filings and to refile the same so as to permit an additional seven months suspension of the rates and completion of the hearing. The hearing is scheduled to resume on April 16, 1940.

This department was in attendance at all of the hearings and

cooperated with the Department of Public Service and other protestants in the conduct thereof, and introduced evidence regarding the additional expense to the City under the proposed rates and also evidence as to prices paid for comparable materials by the City, particularly in the instance of poles, which were considerably less than Western Electric's price to the Telephone Company.

At the conclusion of the hearings we expect to participate in the argument and file briefs with the other protestants.

Pacific States Lumber Company, Bankruptcy:

On October 5, 1939, the Pacific States Lumber Company, which was conducting logging operations in the Cedar River Watershed under contract entered into with the City in 1917, was adjudicated a bankrupt. At the date of adjudication, the bankrupt was indebted to the City in the sum of $21,058.94 for timber cut and removed, and in addition there was approximately two and one-half million feet of City timber, of the approximate value of $5,000.00, which had been cut but not removed. A considerable amount of uncut City timber also remained, which the Company under its contract was obligated to cut, remove and pay for.

The City had a faithful performance bond in the sum of $25,000.00, executed by the United Pacific Insurance Company. The Trustee desired to remove the timber which was cut but did not propose to cut any further timber in the watershed. The City filed a secured claim in the Bankruptcy proceedings for $21,058.94, with interest at six per cent. from October 5, 1939, and likewise made demand upon the bonding company for payment thereof under the bond, and further notified the bonding company that it was the City's position that the felled timber belonged to the City, but that if it were determined that said timber belonged to the Trustee, the City would make claim against the bond for the value thereof. The matter was finally settled under direction

of the Bankruptcy Court by the bonding company paying to the City the full amount of the bond in the sum of $25,000.00, out of which the City's secured claim, with interest, was paid, and the balance, amounting to $3,369.05, was applied as a pre-payment on the timber which had been cut but not removed. The Trustee will, in addition, pay to the City the difference between the $3,369.05 and the value of said timber as finally determined. In consideration of this settlement the City waives any claim for breach of said contract prior to the date of adjudication of bankruptcy.

VI.

STREET RAILWAY REFINANCING.

The City in 1939 completed the plan for the refinancing and rehabilitation of its transportation system. Seattle City Council Resolution No. 12543, passed February 3, 1939, formally approved and accepted the resolution of the Reconstruction Finance Corporation of the United States, adopted December 9, 1938, providing for a loan of $10,200,000, to be secured by 4½% transportation system revenue bonds of the City of Seattle, payable from the revenues of said system only. Of this amount, $5,700,000 may be used for rehabilitation and $4,500,000 for the extinguishment of the old debts of the system. Seattle City Council Resolution No. 12632, passed June 12, 1939, approved and accepted an amendatory resolution of said Reconstruction Finance Corporation, adopted on June 2, 1939. The effect of the amendatory resolution was to eliminate the original requirement for a "test suit". It also provided that the bonds issued by the City shall be callable by the City after July 1, 1943, as to the whole of the issue of bonds then outstanding "on any interest payment date at the price of par and accrued interest thereon, plus a premium of one-half of one per cent. of par for each 12 months' period or fraction thereof between the single date set for redemption of all of the bonds

then outstanding and the respective serial dates of maturity thereof." On and after July 1, 1944, the City may repay or repurchase all, but not less than all, of the bonds at the time held by said Corporation at 101½%.

On June 19, 1939, the City Council passed, and the Mayor approved, an emergency ordinance numbered 69274, providing for the issue of $10,200,000 revenue bonds and containing the conditions required by the Reconstruction Finance Corporation. This ordinance was drafted by the Reconstruction Finance Corporation's legal staff, after consultation with the undersigned in Washington, D. C., in April, with Thomson, Wood & Hoffman, bond attorneys of New York City, collaborating. On August 22, 1939, the first block of the bonds provided for by Ordinance No. 69274 was delivered to the agents for the Reconstruction Finance Corporation and the first payment on old debts of the system was made. Puget Sound Power & Light Company accepted $3,250,000 in full settlement of the purchase money bonds held by it in the sum of $8,336,000, together with a large amount of unpaid interest thereon. Several hundred thousand dollars of City Railway Fund warrants were surrendered and cancelled for eighty cents on the dollar, without interest. With the approval of the Reconstruction Finance Corporation the City left open a continuing offer to all such warrant holders on the same terms. The same offer was made to miscellaneous railway revenue bond holders, and at the close of the year less than $270,000 of old bonds and warrants were outstanding. On said August 22, 1939, entire control of the municipal transportation system passed to the Transportation Commission of the City of Seattle, as contemplated by the terms of the loan and as authorized by Chapter 47, Laws of Washington, 1939, which authorized the City to make said loan. As an incident to the settlement with the Puget Sound Power & Light Company, said company on August 22, 1939, executed a formal release to the City of all obligations under Ordinances Nos. 39025

and 39069 and the contracts therein contained, including the obligation of the City to purchase the substations of the company referred to in Section 5 of Ordinance No. 39069 not theretofore purchased by the City. Said release is on file in the office of the City Comptroller. All pending litigation against the City in connection with street railway bonds and warrants was terminated by orders of dismissal with prejudice. Rehabilitation of the system by the purchase of new equipment was well on its way at the close of the year 1939. The system was free from litigation in which it has been more or less continuously involved since 1920.

SUPREME COURT.

State ex rel Hearty v. Mullin, 198 Wash. 99, involved the rules of the Civil Service Commission; held that where the Commission after full examination has definitely fixed and announced the grade of an applicant, it has no right to adopt new ratings.

Chatfield, et al, v. Seattle, 198 Wash. 179. These were actions by Park Board employees for back salary, reduced by resolution of the Park Board. Held that the authority to fix the wages and hours of labor of park employees is vested in the legislative authority of the City and not in the Park Board. The case was reversed in part, the Supreme Court holding that the three year statute of limitations applies to an action to recover back salary and approved the Civil Service Rule providing for lay-off out of order.

B. H. Crowley v. The City of Raymond, 198 Wash. 432. The Supreme Court reversed the trial court and held that the placing of a warning sign closing traffic on an icy street for the purpose of protecting the children coasting thereon was the performance of a governmental function for which the City would not be liable to one injured as the result of the placing of said warning sign. We appeared as amicus curiae in support of the appellant city, which

prevailed on the appeal.

State ex rel.Hartzell v. Seattle, 199 Wash. 455. This was an action by City Light per diem employees for "overtime" compensation for work ordered to be performed on Sundays and holidays. The Supreme Court held that said employees were entitled to such compensation under the existing ordinances; that there was no laches short of the statute of limitations.

State ex rel. Cooper v. Seattle, 199 Wash. 568. This case involved two separate positions in the Lighting Department, lineman's helper and poleman. The work had been carried on in the field indiscriminately by men who had classified by examination for both positions. The Civil Service Commission attempted by classification to consolidate polemen and linemen's helpers positions. The City Council attempted by motion to consolidate the two positions. There was a lay-off in October, 1937. The Civil Service Commission certified a combined seniority list of the names as if there were but one position, linemen's helpers. Four of the helpers filed protests and brought suit for reinstatement and back salary, on the ground that they could not thus be deprived of their seniority and positions; that there was no effectual consolidation and that the polemen were not entitled to the position because they had not qualified by examination and therefore had no seniority as lineman's helpers. The Superior Court found in favor of the lineman's helpers and granted them back salary during their lay-off, with an offset for money earned in private employment during the lay-off. This judgment was affirmed on appeal.

Martin Schuehle v. Seattle, 199 Wash. 675. Action by plaintiff contractor suing for extra compensation in the construction of the Schmitz Park Bridge. The Supreme Court reversed the lower court on the facts, holding that the changes and deviations in the plan for the construction of a public bridge were material and not within the contemplation of the parties or covered in the contract and the

evidence was "overwhelming" that the contractor built a substantially different bridge than the one bid on, reducing his compensation, and that he was entitled to recover in quantum meruit and the amount of the "reduction" is the measure of the recovery.

Poland v. Seattle, 100 Wash. Dec. 175. An action for personal injuries to a pedestrian struck by a street car on Westlake Avenue. The Supreme Court reversed the trial court, holding that the pedestrian was guilty of contributory negligence as a matter of law in failing to see or hear the street car.

Pearson v. Seattle, 199 Wash. 217. This was an attack upon the constitutionality of the "Solid Fuel" ordinance. The Supreme Court affirmed the lower court, holding that a City ordinance regulating and licensing the business of dealers in solid fuel in which the license fee exceeded the actual cost of inspection and enforcement was unreasonable, discriminatory and conclusively showed an intent to levy a tax for revenue, notwithstanding the specific declaration in the ordinance that it was regulatory.

Baskett v. Seattle, 100 Wash. Dec. 383. An action for personal injuries. The appeal was taken on "short record" embodying the alleged misconduct of a juror. The Supreme Court dismissed the appeal, holding that the certification of the statement of facts was technically insufficient.

Seattle v. Bell, 199 Wash. 441 (July 3, 1939). Demurrer to criminal complaint sustained by Police Court Judge, on ground that ordinance prohibiting commercial charity solicitation was unconstitutional. Judgment of Police Court reviewed by certiorari on City's application by Superior Court, McDonald Judge. Reversed and cause remanded to Police Court for trial. Defendant's appeal from judgment of Superior Court dismissed by Supreme Court because notice thereof was not given within five days of entry of judgment, the Supreme Court holding that the original "criminal" character of the case was

not changed by the fact that it was reviewed by certiorari in Superior Court.

Keller v. Seattle, 200 Wash. 573 (September 28, 1939). Judgment on verdict for personal injuries caused by an alleged extraordinary jerk on a street car reversed and new trial granted because of erroneous instruction that if the plaintiff passenger was injured "by virtue of the manner in which the defendant operated the car, then I instruct you that there is a presumption that plaintiff's injury was caused by negligence of the defendant and the burden of proof is then on the defendant to show that it was not negligent." The Supreme Court, en banc, held that the plaintiff had the burden of establishing that she was injured by defendant's negligence; that no presumption of negligence arose because she was injured by the manner in which the street car was operated, as it might have been operated in the most careful manner possible and that the res ipsa loquitur construction given was therefore erroneous. The court further held that such error was not cured by other instructions that the burden of establishing defendant's negligence was upon plaintiff.

Watkins v. Seattle, 102 Wash. Dec. 595, Supreme Court. Action by Watkins for himself and as assignee of several other truck drivers in the Streets and Sewers Department, who were laid off or reduced in rank in 1932. After their reinstatement in 1936, as a result of the case of State ex rel. Jarrett v. Seattle, 186 Wash. 541, they brought action for back pay, claiming for the period within the statute of limitations. The trial court dismissed the action largely on the ground of their laches. The Supreme Court, however, held that in view of evidence that the men had "continually" protested to the Civil Service Commission and the department heads, and had financially supported the Jarrett case, since that case had held that their lay-off was wrongful, and since the Civil Service Commission had reinstated them, with full seniority rights, they were not guilty of laches,

and on the authority of State ex rel. Hartzell v. Seattle, 199 Wash. 455, the case of linemen in the Light Department, granted recovery for all salary within three years of the commencement of the action, except in the case of Albee, who did not protest against his lay-off until a later date. In his case they only granted relief from the time he protested. On the question of protest against lay-off, the Supreme Court remarked that there was no specific requirement in the Civil Service Rules that such protest be in writing, or any time limit thereon. Since the Civil Service Commission on January 9, 1939, amended Section 8, Rule X of the Civil Service Rules, so as to require written protest within ten days in case of lay-off as well as removal, it would seem that such amendment would prevent the recurrence of that question and fix a factual status before large claims for back pay could arise in the near future.

With reference to the reinstatement of these truck drivers by the Civil Service Commission, it appeared that this office had rendered an opinion advising that their status was the same as that of Jarrett, and that they were entitled to be reinstated. It developed at the time of the trial of the case that all of the men, with the exception of Christenson, had filed written request for reduction to laborer, of which fact we were not advised at the time of the opinion referred to.

It was our contention that the men either voluntarily gave up their rights to the position of Truck Driver by their request for reduction, or if the reductions were not voluntary but were procured under duress, they should have made protest within ten days, inasmuch as same were removals within the contemplation of the Civil Service Law. The Supreme Court indicated that they were not removals and that they were only qualified reductions, and supported this holding by the fact that the Commission in its Minutes had so indicated at a subsequent date, and furthermore, that the men had been reinstated.

Haga v. Seattle, 103 Wash. Dec. 26. In this case Haga and certain other carpenters and painters brought action for back pay, all of them claiming that the City had done maintenance work with W.P.A. labor while they were prevented from working, and Haga, in addition, claimed for 45 days during which he was not working, during which he claimed that Ridley did carpenter work in the Park Department, and also that carpenters inferior to him had been employed in the Park Department.

The trial court dismissed the case. On appeal, the Supreme Court affirmed that portion of the judgment relating to the performance of work by the City with W.P.A. labor, but allowed Haga recovery for a period of twenty-six days during which time two carpenters who had been certified to the Park Department from the original eligible list worked in that department. It was our contention, sustained by the trial court, that since Haga had served a probationary period in the Light Department subsequent to any service in the Park Department, he was on the reinstatement register for the Light Department only, and that the Commission properly certified from the original list on request for certification to the Park Department.

It appears that subsequent to the first Haga case, Haga protested to the Commission, and the Commission granted him "reinstatement" rights in the Park Department. It was our contention that this action on the part of the Commission was a violation of its Rules. The Supreme Court, however, holds that since in the first Haga case, 195 Wash. 226, the Court had held that Haga was wrongfully separated from the Park Department during the entire period covered by his cause of action in that case, his service in the Light Department during that period was made necessary by conduct on the part of the City which the Court contended was wrongful, and that the City can not now include such service as a part of the probationary period in the Light Department.

SUPERIOR COURT.

Queen City Construction Co. v. Seattle, tried in May, 1939, involved a complex question and considerable detail. The contract was for Unit No. 9 of the Henderson Street trunk sewer to be laid under East Marginal Way for about a mile north of Michigan Street, in open trench. There was a considerable amount of water encountered and the engineer had agreed to pay $2.00 a lineal foot for a subdrain underneath the sewer trench for the purpose of draining the underground waters into sumps and pumping. The specifications placed the duty of dewatering upon the contractor. After one section of this work had been done, Mr. Wartelle, the then Engineer, informed the contractor that the City would not make any further payment on the subdrain. The work was completed and the contractor brought suit for the recovery of the balance on the subdrain, which amounted to between eight and nine thousand dollars.

The Superior Court decided the case against the City and permitted recovery for the full amount, with interest. At the first of the year the case was on appeal to the Supreme Court.

Arcorace & Coluccio v. Seattle involved a contract for Units Nos. 3, 4, 6 and 7 of the Henderson Street trunk sewer. The case was tried in February and March of 1939. It involved many complex questions of fact and law and much detail. The contractor brought suit for the recovery of some $60,000 for the use of compressed air in the laying of the sewer in tunnel under Empire Way, through Dunlap Canyon, on the theory that under the plans and specifications the City had warranted that ground conditions were good and that the sewer could be laid without the use of compressed air; also for some $8,000 extra by reason of the dismantling and re-assembling of a 60" wood stave pipe to be used as an overflow sewer on Henderson Street from Rainier Avenue East to Lake Washington, the pipe having floated out of position after the

trench had been dug and the sewer had been laid, after a severe rain storm in April, 1937, the contractor claiming that the cause of the flotation was change in the order of work made by the City. The case resulted in the lower court in a decision favorable to the City with respect to the $60,000 item for compressed air in excavating tunnel, and in a recovery for the contractor in the amount of some $6,000 with respect to the wood stave pipe. It is now on appeal.

General Tire Co. v. City and Purchasing Agent, (Superior Court Cause No. 314972), filed July 14, 1939. Proceedings to enjoin City from accepting the bid of the Commercial Automotive Service, Inc., for Marathon truck tires, on the ground that the Marathon tire was not a first line tire, and the call, or at least the custom of the City in the past, had been to call for bids upon and use only first line tires, it being claimed that the Marathon tire was a third grade tire and that many of the bidders had bid only on first line tires. This contention was sustained by the trial court and the City enjoined from entering into a contract for the purchase of Marathon truck tires. Thereupon, the Purchasing Agent announced that he would award the bid for truck tires to the Signal Oil Company, which had, on the first call, been awarded the contract for passenger tires.

A second suit was commenced by the General Tire Co. v. The City Purchasing Agent and Signal Oil Co., (Cause No. 315233) to enjoin the City from accepting the bid of the Signal Oil Co. for "Lee" truck tires, the claim being made that the entire call was abortive and that a new call should be made. After trial, the court refused the injunction and on August 7, 1939, dismissed the action.

Napier v. Runkel and City, (Sup. Ct. Cause No. 317192). Suit to quiet title as to certain real estate purchased from King County which King County acquired through a general tax foreclosure proceeding which was conducted by a description according to an unrecorded plat. The matter was argued on demurrer, first to the original com-

plaint and later to an amended complaint. The court sustained the demurrer of the defendants and rendered a memorandum decision that a foreclosure of general taxes, according to an unrecorded plat, would be insufficient to give the court jurisdiction of the foreclosure proceeding and that consequently no title could be vested in the county or conveyed to a purchaser through such proceedings.

Gallagher v. Chief of Police and City, (Sup. Ct. Cause No. 317453), filed December 4, 1939, sought to enjoin the enforcement of the City's motor vehicle caravanning ordinance (No. 69578) and the State motor vehicle caravanning law (Ch. 184, Laws 1937). The City demurred to the complaint and after argument the court, on January 15, 1940, filed a memorandum decision sustaining the demurrer and ruled that the City ordinance was valid and constitutional and that the attack upon the State law could not be maintained without joining in the action the necessary State officials.

State ex rel. Sumpter v. City Treasurer, (Sup. Ct. Cause No. 315412), filed August 10, 1939, to compel City Treasurer to distribute gas tax moneys for reimbursement and payment of Aurora Avenue assessments in accordance with Ch. 4, Sec. 181 of the Laws of 1939. The City demurred and moved to require the bringing in of State officials as party defendant. Demurrer was overruled; the motion denied. The City answered, placing the case at issue. The case has been set for trial and continued several times at the request of the relator.

State ex rel. City v. King County and County Treasurer, (Cause No. 317354), filed November 28, 1939. Mandamus action to compel the County Treasurer to pay and disburse to the City proceeds from the resale of property acquired by King County through a general tax foreclosure, without deducting any sums for interest on delinquent taxes or any sums received as interest on deferred payments on installment contracts for the sale of such property. Defendants demurred to the petition. After argument, the trial court filed his memorandum decision on February 1, 1940, overruling defendants' demurrer. Defendants stood on demurrer, following which judgment was entered in accordance with prayer of complaint. Notice

of appeal was given on February 23, 1940, and the case is set for argument in the Supreme Court on May 6, 1940.

Morris Fine v. City, In this case plaintiff, who had been dismissed as a police officer, brought action against the City and the Police Pension Fund Board Trustees for re-payment of his contributions to the Police Pension Fund. We filed a demurrer, and plaintiff failing to file his complaint, after order of the Court to do so, the action was dismissed.

State ex rel. Singular v. City, and State ex rel. Egner v. City. Actions in mandamus by linemen in the City Light Department for reinstatement, they claiming that they had been wrongfully laid off. It was their contention that linemen were retained who were not residents of the City of Seattle. The defendant's demurrers were sustained and the alternative writs of mandate quashed on the authority of Art. XVI, Sec. 12, of the Charter, and Easson v. Seattle, 32 Wash. 405, to the effect that the appointing power only had authority to discharge and that since plaintiffs were laid off in accordance with Civil Service Rules they had no right of action. Both of relators appealed from the order sustaining the demurrer, there having been no judgment of dismissal entered, and the cases are pending in that status.

State ex rel. Prater v. City. In this case Prater and several other laborers, residents along the transmission line, had been dismissed by the Superintendent of Lighting on the order of the Civil Service Commission that since there was an eligible list for laborer, the plaintiffs were not entitled to employment, never having qualified under Civil Service Rules by examination for said employment. The evidence showed that the men had been employed for a number of years; that in 1933 the Commission had gone up along the transmission line, taken applications and conducted some sort of oral inquiry, but had never established an eligible list or published any grades.

The trial court entered judgment denying the plaintiffs any recovery as to back salary, but holding that they were entitled to be

placed upon an eligible list for "intermittent work along the transmission line."

There was no appeal and the case stands in that situation.

State ex rel. Morris, et al, v. City. This was an action brought by twelve eligibles on the list for auto truck driver, by which they claimed that the City was operating some 183 auto trucks, only 55 of which were operated by auto truck drivers. The trial court, after a trial lasting some ten days, in which it, over our objection, conducted an inquiry into the actual performance duties of the operators of all the motor vehicle equipment of the City, finally concluded that the eleven line trucks in the Light Department, now operated by materialmen, and five dump trucks stationed at the transmission line patrol stations of the Light Department outside the City, should be operated by auto truck drivers, and granted judgment accordingly.

This case is on appeal to the Supreme Court at the present time.

City v. G. N. Railway Co., et al, (Superior Court Cause 307990). This suit was brought by the City to recover $21,596.98 expended by the City in temporarily relocating and readjusting the westerly switching track on Railroad Avenue (now Alaskan Way) during the course of the recent Railroad Avenue improvement. The four major railroad companies involved contended that the work was incidental to the improvement work conducted by the City; whereas the City contended that it was incidental to the permanent readjustment of the track which the railroad companies were bound to make at their own cost and expense under the terms of their franchise. After much negotiation the case was finally settled and compromised under authority of Ordinance No. 69547 by the payment to the City of half of the costs ($10,798.49).

State ex rel. Haley v. Elliott, et al, (Superior Court Cause 316190) and State ex rel. Dunn v. Elliott, et al, (Superior Court Cause 316286). These cases involved promotional examinations in the

Police Department for the positions of Captain and Sergeant. The plaintiffs in both cases contended that the Civil Service Commission had no right to regrade the examination papers to correct material errors after the identification of the candidates was known and notices of grades and relative standing was sent to them. The Haley case also involved the question of the right of the Civil Service Commission to give shooting tests to certain candidates at a later date than the time the tests were taken by the majority of the candidates. The Dunn case also involved the question whether the Civil Service Commission has the power to give an oral interview or test in view of the fact that the Charter provides that the examination shall be public and competitive.

In both cases the trial courts held that the Commission acted within and in strict accordance to the rules and dismissed the same.

Both cases are now on appeal to the Supreme Court of the state.

Morse, et ux v. City, (Superior Court Cause 309831). This case was brought to recover damages against the City by reason of the alleged wrongful revocation by the City of a building permit theretofore issued to plaintiffs, it being contended that the City had wrongfully rezoned the property and that plaintiffs had a right as a matter of law to build in accordance with the permit theretofore issued.

The demurrers to the complaint and amended complaint were sustained by the Superior Court on the ground that the City in issuing or revoking building permits acts in a governmental capacity and can not be subjected to damages; that the remedy of the plaintiffs, if any, is by injunction to restrain the City from interfering with their alleged rights. Since the sustaining of the demurrers, the plaintiffs have not further prosecuted the suit.

CONCLUSION.

The 1939 Budget of the Law Department was $82,893.00, which was barely sufficient.

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,

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