

C.F. 173544

Report
Law Dept.
for 1941.

4/11/42

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At _____ o'clock _____ M
APR 3 1942
W. C. THOMAS
CITY COMPTROLLER
AND EX-OFFICIO CITY CLERK

JUDICIARY
~~FINANCE~~
APR 6 - 1942

APR 20 1942 ON FILE

The City of Seattle--Legislative Department

MR. PRESIDENT:

Your Committee on Judiciary
to which was referred

the within report of the Law Dept. for 1941, would respectfully
report that we have considered the same and respectfully recommend that

the same be placed on file.

Date Reported
and Adopted

Frank McLaughlin
Chairman

Chairman

Committee

Committee

THE CITY OF SEATTLE

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

ANNUAL REPORT

1941

A. C. VAN SOELEN
Corporation Counsel

THE CITY OF SEATTLE

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A. C. VAN SOELEN, Corporation Counsel

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JOHN A. LOGAN	Assistant Corporation Counsel
JOHN A. HOMER	Assistant Corporation Counsel
GEORGE T. McGILLIVRAY	Assistant Corporation Counsel
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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 1941

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, 1941:

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 1941:

	Pending Dec. 31, 1940	Commenced during Year 1941	Ended dur- ing Year 1941	Pending Dec. 31, 1941
Condemnation suits	5	1	0	6
Condemnation suits, supplementary	0	0	0	0
Damages for personal injuries	79	59	73	65
Damages other than for personal injuries	26	17	20	23
Actions relating to col- lection of assessment rolls	0	0	0	0
Injunction suits	19	10	5	24
Mandamus proceedings	13	8	9	12
Miscellaneous proceedings..	70	30	35	65
Public service proceedings.	<u>4</u>	<u>0</u>	<u>0</u>	<u>4</u>
	216	125	142	199

2. Personal Injury Actions:

	<u>Number</u>	<u>Amt. Involved</u>
Pending December 31, 1940	79	\$ 911,414.50
Commenced since December 31, 1940	<u>59</u>	<u>514,602.62</u>
Total	138	\$1,426,017.12
Tried and concluded since December 31, 1940	<u>73</u>	<u>645,164.52</u>
Actions pending December 31, 1941	65	\$ 780,452.60

Of the personal injury actions pending during the year, 73, involving \$645,164.52, were tried and finally disposed of; 40 cases were won outright; in 8 cases, involving \$121,449.05, the plaintiffs recovered, in the aggregate, \$14,252.00. The remaining cases, involving \$224,546.56, were settled without trial for \$23,300.50.

Of the 59 personal injury actions begun during the year, 42, involving \$307,443.77, are based on alleged accidents occurring in connection with the operation of the municipal transit system.

3. Damages Other Than Personal Injuries:	<u>Number</u>	<u>Amt. Involved</u>
Pending December 31, 1940	26	\$ 163,286.45
Commenced since December 31, 1940	<u>17</u>	<u>18,216.74</u>
Total	43	\$ 181,503.19
Tried and concluded since December 31, 1940..	<u>20</u>	<u>16,710.31</u>
Pending December 31, 1941	23	\$ 164,792.88

Of the total of 43 cases involving damages other than personal injuries, 20 cases involving \$16,710.31 were disposed of during the year, of which 12 were won, 6 settled and 2 lost, costing the City in the aggregate only \$4105.62.

4. Supreme Court:

Fourteen cases were argued in the State Supreme Court. Nine were won by the City, five lost.

5. Miscellaneous Cases:

One action was commenced against the Chief and certain police officers for \$25,000.00 for trespass and unlawful search. Three pending false arrest cases were tried and resulted in verdicts for the defendants in two cases and a settlement for \$100.00 in the third case.

Six cases seeking to quiet title against the City were filed. These cases rise out of efforts to destroy the City's lien for local assessments where County has sold property for delinquent taxes.

Fifteen cases were tried resulting in collection of delinquent assessments amounting to \$2456.44.

Five injunction actions were tried; 4 were won and one lost.

Nine mandamus actions were tried; 5 were won and 4 lost.

One condemnation suit by the Housing Authority of the City of Seattle for the condemnation of housing sites was filed, tried and concluded.

Seven condemnation actions were filed by the United States Government to condemn land for various Federal projects.

Of 35 miscellaneous cases tried, 25 were won by the department.

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

Sixty-six actions were commenced for the Lighting Department, involving unpaid light and power bills. Collections, including costs, amounted to \$2704.71. In addition thereto a considerable amount of past due accounts were collected without litigation.

One hundred six garnishments were answered.

II.

CLAIMS

	<u>Number</u>	<u>Amt. Involved</u>
Claims for damages under investigation December 31, 1940	1709	\$2,816,972.46
Claims for damages referred to this department for investigation Dec. 31, 1940 to Dec. 31, 1941	1355	1,085,395.88

Claims disposed of as follows:

	<u>Number</u>	<u>Amt. Claimed</u>	<u>Amt. Paid</u>
Settled	712	\$ 392,010.46	\$ 73,674.92
Rejected	406	<u>612,199.46</u>	
		\$1,004,209.92	

Claims pending December 31, 1941 1946 \$1,898,158.42

Forty of above settled claims were in suit and settled in conjunction with Claim Agent.

Amount Involved	\$ 259,589.62
Amount of Settlement	23,958.01

Number of street railway accident reports investigated
December 31, 1940 to December 31, 1941 4471

Number of circulars and letters mailed in connection
with investigation of foregoing claims and reports 11,988

III.

POLICE COURT PROSECUTIONS AND APPEALS

During the year 1941 the City Attorney prosecuted some 97,323 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$428,569.60. 74,519 of these cases involved traffic violations. The total number of cases handled is an increase of 20,770 from that of the previous year, and the fines and forfeitures increased \$142,333.90.

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. Mr. McGillivray has given most of his time to this work during the year 1941, 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 77 police court appeals were tried and otherwise disposed of. In 69 cases convictions and pleas of guilty were entered. Eight appellants were acquitted. Seven drivers' licenses were suspended and revoked. A total of \$1850.00 in fines and forfeitures, and \$221.10 costs, 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 1941 only 22 police court appeals, all recent, were pending.

Under Chapter 79, Laws of Washington, 1937, modernizing police court appeal procedure, there has been a marked and continued decrease in the number of 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 111 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, 304 ordinances and resolutions.

During the year 908 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling \$6,971,563.59. Nine depositary bonds of banking houses, amounting to \$15,650,000, were examined and approved.

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

Particular matters of interest are as follows:

STATE SUPREME COURT

Arcorace & Coluccio v. City, 9 Wash. (2d) 666. This case was tried in the Superior Court, February and March, 1939 - Judge Findley. It involved a claim for some sixty thousand dollars as extra pay for use of compressed air in driving sewer tunnel under Empire Way through Dunlap Canyon, and some six thousand dollars for the re-laying of wooden main in Henderson Street as a storm sewer in connection with the Lake Washington sewer diversion project. The plaintiffs recovered in the lower court some six thousand dollars on account of the re-laying of the storm sewer and were denied recovery for the compressed air claim. In August, 1941, the judgment was affirmed on the plaintiffs' appeal and reversed on our cross-appeal, except as to one item of less than \$200.

Napier and King County v. Runkel, City of Seattle, et al.,

9 Wash. (2d) 246. Action to quiet title to certain real estate which the plaintiff Napier had purchased from King County on a tax property resale, the property having been originally acquired by King County through a general tax foreclosure proceeding. In the assessment and taxation of the property and in the foreclosure proceedings the property involved was described as certain lots in a given addition "according to the unrecorded plat thereof." The City had levied local improvement assessments against the property which had not been paid at the time of the County foreclosure or the resale of the property to the plaintiff Napier. The trial court held that the property having been described on the tax rolls and in the foreclosure proceedings according to an unrecorded plat, and not otherwise, the County tax foreclosure was void and that consequently the local improvement assessments levied by the City were not cut off. The decision of the trial court was affirmed by the Supreme Court.

Vinup v. Seattle, 111 Wash. Dec. 489. This case, which was mentioned in the 1940 report, involved the validity of the gasoline station licensing provisions of the License Code. The Supreme Court affirmed the judgment of the Superior Court in enjoining the City from enforcing those provisions. The court held that the measure could not be sustained as a police regulation because the fees greatly exceeded the cost of inspection and regulation. The court conceded that ordinarily the City has power to license for regulation, but that the State had completely preempted the field and prohibited the City from levying any kind of an excise tax on gasoline stations by reason of Section 23 of the State Gas Tax Act, which reads as follows:

"The tax herein levied is in lieu of any excise, privilege or occupational tax upon the business of manufacturing, selling or distributing motor vehicle fuel, and no city, village, town, county, township or other subdivision or municipal corporation of the state shall levy or collect any excise tax upon or measured by the sale, receipt, distribution or use of motor vehicle fuel."

Accordingly the City will be prohibited from licensing gas stations for revenue purposes, although its power to impose a fee under the police power for the purpose of regulation and inspection is still unimpaired.

State ex rel. Olson v. Seattle; State ex rel. Green v. Seattle, 7 Wash. (2d) 379. In these consolidated cases two employees of the Department of Lighting brought suit to compel the City and the Civil Service Commission to classify them as "Account Clerks", which is the next higher position above that of "Intermediate Clerk." The employees under the old classification had been designated "Clerk B-3". However, they performed many of the duties of the next higher position, to-wit, Bookkeeper, and when the P. A. S. reclassification was made in 1938 they contended that their position had so developed that they were entitled to be reclassified as "Account Clerks". The court found that the old classification "Clerk B-3" was equivalent to the reclassified position of "Intermediate Clerk" and held that the employees were not entitled to the positions of "Account Clerk" for the reason that they could not receive the higher position without taking a promotional examination, even though they had been performing many of the duties of the higher position. The court further held that the Civil Service Commission was correct in refusing to reclassify the employees into a higher position.

Alki Natatorium Case. This case involved possession of the Alki Natatorium. By agreement with the City the Welden Construction Company was to erect and to operate for a period of twenty years from March 1, 1934, a natatorium building, tanks, fixtures, etc. on the beach property of the City at Alki. Under the contract the building was to cost at least \$60,000, was to become the City's property when completed, and on the failure of the Construction Company to perform certain of its contract obligations was to be returned to the City's possession after notice and opportunity to perform. The building was erected as agreed.

On September 9, 1939, Cornelius C. Chavelle, at suit of the plaintiff, Willis T. Batcheller, Inc., was appointed receiver for the Construction Company and took possession of the building. Certain concession fees due under the contract were not paid and the City, after demand therefor, elected to and gave notice of forfeiture of the contract and petitioned the Superior Court for restoration of the premises to its possession. The petition was resisted by the receiver, who prevailed in the Superior Court. However, on appeal the Supreme Court reversed the Superior Court and awarded possession of the natatorium to the City. See Willis T. Batcheller, Inc., a corporation, Plaintiff, vs. Welden Construction Company, a corporation, Defendant; Cornelius C. Chavelle, as Receiver for said defendant, Respondent, The City of Seattle, a municipal corporation, Appellant, 9 Wash. (2d) 392.

SUPERIOR COURT CASES

Gengler v. Seattle. Action was brought by plaintiff against King County and Seattle to quiet the title of plaintiff to property which he purchased from King County at a tax property resale. The City's interest in the property was by virtue of certain local improvement assessments, some of which had been levied prior to the time that the County acquired title to the property, and some of which were levied during the time that the County held title to the property. Decree of the Superior Court (Judge Ronald) was entered February 15, 1941, holding that all assessments of the City, both those levied before the time the County acquired title and those levied during the time the County held title, were ineffective and subordinate to the title of plaintiff. The City appealed to the Supreme Court.

Briner v. Seattle and the Board of Public Works, Defendants;
Dual Parking Meter Company, Intervener. Action was brought to enjoin the City from installing parking meters pursuant to a contract awarded the Dual Parking Meter Company under Ordinance No. 70745. The contract fixed the price for the parking meters and provided that the same should be paid for out of the revenues derived from the use of the parking meters, 75% to the Company and 25% to the City, until the parking meters were paid for. On October 16, 1941, the decree was entered by Judge Donald A. McDonald, dismissing the action with prejudice. On October 27, 1941, plaintiff appealed to the Supreme Court and the appeal is pending.

Shyvers v. Seattle. Action was brought to enjoin the City from enforcing Ordinance No. 70621, as amended by Ordinance No. 70905, which required the payment of a \$10.00 annual license fee for each mechanical musical device (juke box), plus an additional \$1.00 annual fee for each connected coin box or slot in excess of three, in each place of business. The ordinances were attacked on the ground that the license fee was excessive and that the ordinances were void and ineffective, among other reasons because, as alleged, the title contained more than one object, in violation of the provisions of the City Charter. After a trial Judge Douglas held that the titles, purporting to combine regulatory and revenue features, were void under the City Charter; and also that the ordinances were in fact revenue measures under the guise of police power regulatory measures and were therefore void. On November 14, 1941, the trial court entered a judgment enjoining the enforcement of the ordinances. On December 10, 1941, the City appealed to the Supreme Court.

Surry v. Seattle. Action brought to enjoin the enforcement of Ordinance No. 70933, requiring a license and the payment of a license fee for conducting the business of a "merchant patrolman." Plaintiff claimed the ordinance was invalid because it required a

merchant patrolman to comply with Ordinance No. 66591, as amended, relating to the appointment of special policemen. After a trial Judge Meakim held the ordinance void, and on December 18, 1941, entered a decree enjoining the City from enforcing the same. The City appealed to the Supreme Court.

La Fray v. Seattle, in re Armory Way judgments, was brought by the Municipal League to test the validity of the judgments and an "agreement" with the respondents in connection therewith, as creating debts within the City's constitutional debt limit. Judge Allen held that no debt was created and dismissed the action. An appeal is now pending in the Supreme Court.

State ex rel. Rand v. Collier, et al. Mandamus to compel the City Treasurer and Comptroller to pay interest and principal of street railway bonds issued in 1919, the last installment falling due in September, 1937; and the payment of warrants issued in 1937 on the City Railway Fund, presented and not paid for want of funds. We defended on the ground that the issuance of bonds under the ordinance and state law (Ch. 47, Laws of 1939) making a loan from the RFC had placed the revenues of the street railway beyond the reach of the two City officers named as defendants. Judge Meakim in the Superior Court ordered that the writ be issued. The matter is now pending on appeal to the Supreme Court.

Cornu v. City. An action by a resident in the district asking for abatement of the City's fire and garbage dumps on the marshland north of the Athletic Pavilion at the University of Washington. The case was never brought to trial, the City having made alterations in its method of dumping garbage and having restricted the use of its fire dump. This case presents a very interesting question of whether garbage disposal by the filling process may constitute a public nuisance. The issue appears to have been avoided.

State ex rel. Warner v. Superior Court. Brought by the Prosecuting Attorney to restrain the dog pound at the foot of Harrison Street as a public nuisance. This case was brought because of complaints from residents in the neighborhood. Those controlling the dog pound made alterations which were satisfactory to the residents, so the case never came on for trial and has been dismissed.

MISCELLANEOUS CASES

In re Sanitary Laundry Company Bankruptcy. The City was cited to appear before the referee in Bankruptcy, sitting as Special Master, to show cause why the Trustee in Bankruptcy should pay a water bill against certain premises involved in the proceeding and why we should not be restrained from discontinuing service. It appeared that prior to the Trustee's taking over on November 22, 1939, there was a water bill against the premises of some \$362.25. The Trustee operated the laundry and water was furnished and payments made which the Water Department applied on the account as it stood against the premises. In June, 1941, the Trustee sold the laundry to New Richmond Laundry "free of all taxes and claims of the United States, the State of Washington, or any subdivision thereof." The purchaser continued to make payments for water which approximately equaled the current bills, but all payments were applied on the account against the premises.

Upon our demand that the account be brought up to date or service would be discontinued, the New Richmond Laundry had us cited before the Referee, who, after hearing, refused to restrain us from exercising our statutory lien rights to shut off the water, and later directed the Trustee to pay the delinquency as an expense of administration. It was held that the City had not lost its lien.

Telephone Rate Cases. As noted last year, the review cases involving the various orders of the Department of Public Service were presented to Judge Wright in the Superior Court of Thurston

County and by him taken under advisement. On July 18, 1941, he filed a short memorandum opinion and on September 29, 1941, a decree in which all orders of the Department were reversed and remanded to the Department for further proceedings in accordance with said decree.

Appeals were filed by the Department of Public Service. The Cities also appealed in order to preserve the question of the right of the Department to order or permit the Telephone Company to pass on occupation taxes, franchises and other similar municipal charges, including the "street rental" fee collected in Seattle in lieu of franchise. The appeals are pending and can not be completed until the Supreme Court decides a certiorari action arising out of the refusal of the Superior Court to certify a proposed statement of facts presented by the Department of Public Service.

CONCLUSION

The 1941 Budget of the Law Department was \$83,470.00, of which some \$1400 was unexpended.

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

ACV:ML