

ANNUAL REPORT *file*
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W. C. THOMAS
CITY COMPTROLLER

AND EX-OFFICIO CITY CLERK

THE CITY OF SEATTLE

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

ANNUAL REPORT

1942

A. C. VAN SOELEN

Corporation Counsel

THE 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 |
| GLEN E. WILSON | Assistant Corporation Counsel |
| JOHN E. SANDERS | 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 |
| JOHN F. COOPER | Claim Agent |

ANNUAL REPORT

OF THE LAW DEPARTMENT OF THE CITY OF
SEATTLE FOR THE YEAR 1942

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, 1942.

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 1942:

| | Pending Dec. 31, 1941 | Commenced during Year 1942 | Ended dur- ing Year 1942 | Pending Dec. 31, 1942 |
|---|-----------------------------|----------------------------------|--------------------------------|-----------------------------|
| Condemnation suits..... | 6 | 3 | 2 | 7 |
| Damages for personal injuries..... | 65 | 51 | 56 | 60 |
| Damages other than for personal injuries..... | 23 | 22 | 20 | 25 |
| Actions relating to col- lection of assessment rolls..... | 0 | 1 | 0 | 1 |
| Injunction suits..... | 24 | 5 | 8 | 21 |
| Mandamus proceedings..... | 12 | 2 | 4 | 10 |
| Miscellaneous proceedings. | 65 | 30 | 37 | 58 |
| Public service proceedings | 4 | 0 | 0 | 4 |
| | <u>199</u> | <u>114</u> | <u>127</u> | <u>186</u> |

2. Personal Injury Actions:

| | Number | Amt. Involved |
|---|-----------|-------------------|
| Pending December 31, 1941..... | 65 | \$ 780,452.60 |
| Commenced since December 31, 1941.. | <u>51</u> | <u>492,228.34</u> |
| Total..... | 116 | \$1,272,680.94 |
| Tried and concluded since December 31, 1941..... | <u>56</u> | <u>513,495.50</u> |
| Actions pending December 31, 1942.. | 60 | \$ 759,185.44 |

Of the personal injury actions pending during the year, 56 involving \$513,495.50, were tried and finally disposed of; 25 cases were won outright; in 3 cases, involving \$26,384.00, the plaintiffs recovered, in the aggregate, \$2,100.00. The remaining cases, involving \$288,225.05, were settled without trial for \$55,046.00.

Of the 51 personal injury actions begun during the year, 38 involving \$386,795.34, 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, 1941..... | 23 | \$ 164,792.88 |
| Commenced since December 31, 1941..... | <u>22</u> | <u>13,176.41</u> |
| Total..... | 45 | \$ 177,969.29 |
| Tried and concluded since December 31, 1941 | <u>20</u> | <u>28,406.33</u> |
| Pending December 31, 1942..... | 25 | 159,562.96 |

Of the total of 45 cases involving damages other than personal injuries, 20 cases involving \$28,406.33 were disposed of during the year, of which 13 were won or settled and 7 lost. The losses aggregated only \$1,896.03.

4. Supreme Court:

Eight cases were argued in the State Supreme Court. Five were won by the City, three lost.

5. Miscellaneous Cases:

Three actions were commenced against the Police Chief and certain police officers for \$51,650.00 for "false arrest." One action was commenced against a bus driver for \$5,000.00 for assault.

Five actions were commenced by the City for damages to City equipment.

Eight injunction actions were tried; 7 were won and 1 lost.

Four mandamus actions were tried; 4 were won.

Eleven condemnation actions were filed by the United States Government to condemn land for various Federal projects. In most of these the City was only nominally interested.

Of Thirty-seven miscellaneous cases tried, 21 were won by the department.

Two actions against the Chief of Police for false arrest and assault were filed. One was won. One action for \$16,000.00 was settled for \$100.00.

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

Seventeen actions were commenced for the Lighting Department, involving unpaid light and power bills. Collections, including costs, amounted to \$512.77. In addition thereto a considerable amount of past due accounts were collected without litigation.

One hundred eight garnishments were answered.

II

CLAIMS 1942

| | <u>Number</u> | <u>Amt. Involved</u> |
|---|---------------------|-----------------------|
| Claims for damages under investigation Dec. 31, 1941..... | 1,946 | \$1,898,158.42 |
| Claims for damages referred to this department for investigation Dec. 31, 1941 to Dec. 31, 1942..... | 1,131 | 1,309,372.42 |
| Claims disposed of as follows: | | |
| | <u>Amt. Claimed</u> | <u>Amt. Paid</u> |
| Settled 637 | \$ 399,641.98 | \$ 81,109.98 |
| Rejected 639 | 867,427.00 | |
| | <u>1,276</u> | <u>\$1,267,068.98</u> |
| Claims Pending | <u>Number</u> | <u>Amt. Involved</u> |
| Dec. 31, 1942..... | 1,801 | \$1,940,461.86 |
| Twenty-eight of above settled claims were in suit and settled in conjunction with Claim Agent: | | |
| Amount Involved | \$ 233,704.76 | |
| Amount of Settlement | 30,132.55 | |
| Number of street railway accident reports investigated Dec. 31, 1941, to Dec. 31, 1942..... | | 4,249 |
| Number of circulars and letters mailed in connection with investigation of foregoing claims and reports..... | | 13,389 |

III

POLICE COURT PROSECUTIONS AND APPEALS

During the year 1942 the City Attorney handled some 127,968 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$522,313.10. 97,775 of these cases involved traffic violations. The total number of cases handled is an increase of 50,645 over the previous year, and the fines and forfeitures increased \$93,743.50.

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 handling of this appeal work. He has given much of his time to this work during the year 1942, 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 disposed of. In 33 cases convictions and pleas of guilty were entered. Only one appellant was acquitted. A total of \$2,471.00 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 H. T. Johnson was, at our request, detailed on a part-time basis by the Chief of Police to assist in the service of process, commitment of defendants, etc. His work was of great assistance to the department.

At the close of the year 1942 only 25 police court appeals, all recent, were pending.

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 69 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, 457 ordinances and resolutions.

During the year 760 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling \$37,089,915.65. Nine depositary bonds of banking houses, amounting to \$15,650,000.00, were examined and approved.

At the request of the City Council we prepared one resolution submitting a charter amendment.

Particular matters of interest are as follows:

STATE SUPREME COURT CASES

LaFRAY vs. SEATTLE, 12 Wash. (2nd) 583.

Pending on appeal in the 1941 report. Involved the validity of judgments in Armory Way Condemnation, aggregating approximately \$176,000.00. The lower court decided on the merits that the judgments did not constitute a debt of the city and were valid. The Supreme Court remanded the case for further proceedings on the ground that it was necessary that the judgment creditors be made parties defendant before the legal question would be decided.

An amended complaint has been filed, making judgment creditors parties, and the same is now pending.

STATE ex rel. RAND vs. SEATTLE, 13 Wash. (2nd) 107.

In the 1941 report this case was on appeal. Mandamus to compel the City Comptroller and the City Treasurer to pay outstanding street railway special fund bonds and warrants.

The trial court (Judge Meakim) had granted the prayer of the complaint. The Supreme Court reversed, holding that mandamus did not lie under the law and the facts but suggesting that an action might lie against the City for damages for diversion of funds.

HALL vs. ELLIOTT, 115 Wash. Dec. 444.

In this case the Seattle Civil Service Commission included in the line of promotion for the position of Transit Cashier certain Transit Operators who had been "detailed" to the position of Jr. Transit Cashier for many years.

The plaintiffs, two Jr. Transit Cashiers, who in 1919 passed a qualifying examination as such, brought the action to enjoin the Commission from permitting the "detailed" employees to take the examination and the trial court accordingly issued an injunction against the Commission on the theory that the plaintiffs were vested with the right to take the examination to the exclusion of "detailed" employees.

The Supreme Court reversed the trial court, on the ground that injunction was not the proper remedy for the plaintiffs and ordered the action dismissed. A decision on the merits was therefore not obtained.

KUHR vs. SEATTLE, 115 Wash. Dec. 431.

This case involved damages to private property by reason of an earthslide from Shelby Street west to Eastlake Avenue. Shelby Street had been an unused and unimproved street but in view of the fact that the City for a number of years had permitted promiscuous dumping of earth on Shelby Street, the Supreme Court in effect held that the City had permitted a nuisance to be constructed and maintained and was therefore liable in damages to an abutting owner.

SEATTLE vs. NORTHERN PACIFIC RY. CO., 12 Wash. (2nd) 247.

This case involved the construction of a contract entered into in 1917 between the City and the Northern Pacific Railway Company with reference to the construction and reconstruction of the University and Ballard Bridges.

Both the trial court and the Supreme Court construed the

contract strictly against the City. With reference to the reconstruction of the University Bridge it was held that the company was not liable for the cost of the increased width of the bridge but that it could only be charged on the basis of the width of the original bridge. With reference to the Ballard Bridge it was held that the contract did not apply to the South approach to the bridge and that the company as to the North approach was only liable to pay its share over its right of way, and half of such amount where it owned a joint right of way with another Railroad Company.

CENGLER vs. KING COUNTY, 12 Wash (2nd) 227.

After this case was argued in a Department in the Fall of 1941, the Supreme Court, on its own motion, set the case for argument en banc on January 7, 1942. After the argument en banc the Court, on January 15, 1942, filed a decision reversing the trial court and holding that the City is authorized by valid statute to levy Local Improvement Assessments against general tax foreclosed property during the period when the title thereto is held by the County and that upon a resale of the property to a private purchaser he must take the title subject to such assessments unless the assessments are paid from the proceeds of the sale.

SURRY vs. SEATTLE, Vol. 114, Wash. Dec. No. 6, p. 262.

After the judgment was entered by the trial court on December 18, 1941, declaring invalid Ordinance No. 70953 (the Merchant Patrolman's License Ordinance), the City appealed, and the Supreme Court, on July 25, 1942, reversed the judgment of the trial court, and directed a dismissal of the action, holding that said Ordinance is valid.

JOSEPH G. JACKSON vs. THE CITY OF SEATTLE, 115 Wash. Dec. 434.

Action for personal injuries by a passenger on a City bus who was injured while alighting from the bus when she stepped in a hole in the parking strip.

According to the testimony, the bus did not have a regular stopping place at the intersection.

The case was tried to a jury and resulted in a verdict in favor of the City. On the plaintiff's appeal the Supreme Court held:

1. That, as a common carrier, the City was required to exercise the same high degree of care for passengers boarding or alighting from its vehicles as it owed in their transportation and that it was the City's duty to select a safe place to stop its vehicle, whether it was the usual stopping place or not, if it was one at which a passenger was expressly or impliedly invited to alight.

2. A passenger alighting from a common carrier is obliged to exercise only ordinary or reasonable care for her own safety and has a right to assume that a place at which a carrier's car stops is a reasonably safe place to board or alight, unless it is obviously dangerous.

3. Plaintiff had the right to assume that the City was discharging her at a reasonably safe place and it was not contributory negligence on her part to act upon that assumption unless the danger was so open and obvious as to challenge the attention of a reasonably prudent person similarly situated. The Supreme Court held that there was no evidence of contributory negligence on the part of the plaintiff and that it was reversible error for the trial court to give an instruction on contributory negligence.

4. The trial court also gave an instruction on unavoidable accident. The plaintiff contended that there was no evidence to justify such an instruction and that it was error to give it, but the Supreme Court held that the trial court did not err in giving the unavoidable accident instruction.

The case was reversed and remanded for a new trial solely because of the instruction on contributory negligence.

TELEPHONE RATE CASES.

We filed brief on behalf of fifteen cities in the Supreme Court, presenting to the Court the contention that the Department of Public Service had no authority to authorize or direct the passing on to telephone users the occupation taxes, franchise and other similar charges levied against the Pacific Telephone and Telegraph Company in the respective cities. It is expected the case will be on the calendar of the Supreme Court for the May term, 1943, although the Telephone Company has not as yet filed its brief.

NOVEL SUPERIOR COURT CASES

ARTHUR G. SMITH vs. EARL MILLIKIN, et al., King County Superior Court Cause No. 334174.

Smith, a cook in the Police Department, brought suit against the Board of Police Pension Fund Commissioners and the Board of Administration of the Employees Retirement System for a declaratory judgment as to his rights to participate in one of the two Funds. The Police Pension Board answered that it had enacted a rule in 1933 whereby membership in the Police Pension Fund was limited to those entering within the entrance age for Patrolman and, further, that Smith had executed a written waiver of right to participate. The Board of Administration alleged that no application had been made to it by Smith. The Court (Batchelor) sustained the validity of the rule of the Police Pension Board and of the waiver and dismissed the case without prejudice to Smith's right to apply for membership in the Employees Retirement System. There was no appeal.

BERNICE RAWLINGS, ADMINISTRATRIX, vs. CITY OF SEATTLE.

Bernice Rawlings, Administratrix, vs. City of Seattle was an action for wrongful death brought by the Administratrix of the Estate of Clifford T. Rawlings, who met his death under the wheel of a Rainier Avenue trolley coach at Rainier Avenue and Genesee Street. The deceased, who was thirty-one years of age, attempted to board the coach after it had started. He ran alongside of the coach rapping on the

window when he fell or tripped over a bus zone standard and the rear wheel of the coach ran upon him and came to rest on his body. It was left in that position for half an hour or more until it was removed by a wrecking car.

Plaintiff contended, first, that the City was negligent in maintaining the bus standard in such a location that deceased tripped over it, and further contended that deceased's death was occasioned by failure of the operator to immediately remove the wheel of the coach from deceased's body. Plaintiff asked for \$35, 275.00.

After the case was assigned to a department for trial, but before a jury had been empanelled, the action was settled for a comparatively small sum.

SHYVERS vs. SEATTLE, Superior Court Cause No. 328571.

After the decision of the trial court in this case and the Judgment thereon entered November 14, 1941, the City gave notice of appeal to the Supreme Court but did not perfect the same, and afterward abandoned it when the Council repealed Ordinances Nos. 70621 and 70905, which had been invalidated by the Court in said judgment, and enacted, in lieu thereof, Ordinance No. 71881, imposing a penalty on playing "indecent" etc. music on mechanical musical machines or using the same for gambling, and also enacted Ordinance No. 71909, imposing a license fee of \$7.50 for each mechanical musical machine exhibited for use or play.

SEATTLE LODGE #92 ELKS vs. THE CITY AND KIMSEY, Chief of Police, Superior Court Cause No. 337328.

Action to restrain the City from enforcement of the anti-gambling ordinance against slot machines in clubs, on the theory that the State authorized such operation by Chapter 119, Rem. Rev. Stat. Sec. 2472-1, 2) of the Laws of 1937, which made it a felony for anyone to operate slot machines except in clubs. The City ordinance prohibits such operation. The City's contention was that the State act does not authorize slot machines in clubs, at least where cities prohibit them, and that therefore the City ordinance prohibiting the same is valid and not in conflict with the act.

The case was heard and argued before Judge Meakim in October, and had not been decided on December 31st.

CONCLUSION

The 1942 Budget of the Law Department was \$84,920.00, of which some \$7,753.97 was unexpended. This is the largest amount and percentage of savings effectuated in many years and was made possible by leaving positions vacated by military leave and one resignation unfilled as long as possible. Also, a drop in the volume of litigation dropped the item of court costs to a new low figure.

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

Respectfully submitted,

A. C. Van Soelen

A. C. VAN SOELEN,
Corporation Counsel.

ACV:klm