

FILE NO. 180515

Report
OF
Law Department
for
the year 1943

FILED Mar. 31 1944

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

BY L. Barnes DEPUTY

ACTION OF THE COUNCIL

REFERRED <u>APR 3 - 1944</u>	TO FINANCE JUDICIARY
REFERRED	TO
REPORTED	REPORT ADOPTED
REPORTED	REPORT ADOPTED
REF. FOR ORD.	C. B. ORD.
<u>JUN 26 1944</u>	DISPOSITION ON FILE

REPORT OF COMMITTEE

Mr. President:

Your Finance and Judiciary

Committee

to which was referred the within Report

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

Fin.
CHAIRMAN

Jud.
CHAIRMAN

ANNUAL REPORT
 OF THE LAW DEPARTMENT OF THE CITY OF
 SEATTLE FOR THE YEAR 1943

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, 1943.

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 1943.

	Pending Dec. 31, 1942	Commenced during Year 1943	Ended dur- ing Year 1943	Pending Dec. 31, 1943
Condemnation suits	7	1	0	8
Damages for personal injuries .	60	50	51	59
Damages other than for personal injuries	25	20	21	24
Actions relating to collection of assessment rolls	1	1	1	1
Injunction suits	21	7	6	22
Mandamus proceedings	10	0	2	8
Miscellaneous proceedings.....	58	44	35	67
Public service proceedings	4	0	0	4
Appeals from Police Court	<u>25</u>	<u>124</u>	<u>79</u>	<u>70</u>
	211	247	195	263

2. Personal Injury Actions:

	<u>Number</u>	<u>Amt. Involved</u>
Pending December 31, 1942	60	\$759,185.44
Commenced since December 31, 1942....	<u>50</u>	<u>439,643.38</u>
Total	110	\$1,198,828.82
Tried and concluded since December 31, 1942	<u>51</u>	<u>489,038.48</u>
Actions pending December 31, 1943 ...	59	\$709,790.34

These tabulations include a number of dormant cases.

Of the personal injury actions pending during the year, 51 involving \$489,038.48, were tried and finally disposed of; 22 cases were won outright; in 6 cases, involving \$43,254.50, the plaintiffs recovered, in the aggregate, \$7800.00. The remaining cases, involving \$232,052.98, were settled without trial for \$25,273.50.

Of the 50 personal injury actions begun during the year, 45 involving \$415,643.38, 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, 1942	25	\$159,562.96
Commenced since December 31, 1942	20	41,294.41
Total	<u>45</u>	<u>\$200,857.37</u>
 Tried and concluded since December 31, 1942..	<u>21</u>	<u>38,096.99</u>
 Pending December 31, 1943	24	\$162,760.38

Of the total of 45 cases involving damages other than personal injuries, 21 cases involving \$38,096.99 were disposed of during the year, of which 9 were won outright. One case for \$31,953.00 water damage was settled for \$17,750.00, and the balance disposed of for less than \$1000.00.

4. Supreme Court:

Three cases were argued and won in the State Supreme Court.

5. Miscellaneous Cases:

Five actions were commenced by the City for damages to City equipment. Seven actions were tried resulting in recoveries of \$1865.87.

Seven injunction actions were tried; and won.

Two mandamus actions were tried; and won.

Seventeen 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. Nine were concluded and recoveries to the city from the U. S. Government amounted to \$24,690.13.

Of Thirty-five miscellaneous cases tried, 32 were won by the department.

Four actions against the Chief of Police and Police Officers for false arrest and assault were filed. One action for \$838.42 was settled for \$250.00. One action for \$10,000.00, filed against the Commissioner of Health, is pending. One assault case for \$5000.00 against a bus driver was settled for \$300.00.

Three Habeas Corpus actions were filed, tried and won.

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

One Hundred and Seven actions were commenced for the Lighting Department, involving unpaid light and power bills. Collections, including costs, amounted to \$1969.91. In addition thereto a considerable amount of past due accounts were collected without litigation.

One Hundred and Twelve garnishments were answered.

II

CLAIMS 1943

	<u>Number</u>	<u>Amount Involved</u>
Claims for damage under investigation December 31, 1942.....	1856	\$2,190,386.49
Claims for damages referred to this department for investigation December 31, 1942 to December 31, 1943	<u>1505</u>	<u>\$1,274,508.63</u>
	3361	\$3,464,895.12

Claims disposed of as follows:

	<u>Number</u>	<u>Amt. Claimed</u>	<u>Amt. Paid</u>
Settled	865	\$527,588.12	\$148,806.55
Rejected	<u>639</u>	<u>886,096.90</u>	
	1504	\$1,413,685.02	
Claims pending Dec. 31, 1943	1857	2,051,210.10	

Thirty-seven of the above settled claims were in suit and settled in conjunction with Claim Agent.

Amount Involved	\$334,869.66
Amount of Settlement	55,035.68

Number of street railway accident reports investigated, December 31, 1942, to December 31, 1943 4,794

Number of circulars and letters mailed in connection with investigation of foregoing claims and reports..... 11,900

This tabulation includes a number of dormant claims.

III

POLICE COURT PROSECUTIONS AND APPEALS

During the year 1943 the City Attorney handled some 120,454 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$549,657.75. 94,480 of these cases involved traffic violations. The total number of cases handled is a decrease of 7514 over the previous year, but the fines and forfeitures increased \$27,344.55.

There was an increase in the number of appeals to the Superior Court by persons convicted and it has been necessary for an Assistant Corporation Counsel (Mr. McGillivray) to devote practically all his time to this appeal work.

Vigorous action on these appeals has been taken by this department with the result that at the end of the year 79 police court appeals were disposed of. In 35 cases convictions and pleas of guilty were entered. Five appellants were acquitted and 31 appeals dismissed for failure to prosecute the appeal diligently. A total of \$5,958.80 in fines and forfeitures, in addition to jail sentences in many cases, was collected by this department and transmitted to the City Treasurer. 11 drivers licenses were suspended. Police Officer H. T. Johnson was, at our special request, continued on detail by the Chief of Police to assist in the service of process, commitment of defendants, etc. His work is of invaluable assistance to the department.

At the close of the year 1943 70 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 61 written legal opinions upon various questions submitted by the several department 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, 322 ordinances and resolutions.

During the year 643 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling \$28,959,737.87.

At the request of the City Council we prepared 4 resolutions submitting charter amendments.

Particular matters of interest are as follows:

SUPREME COURT CASES

State ex rel Pac. T. & T. Co. vs. Dept. of Public Service, 119 Wash. Dec. 356. The telephone rate case brought by the Department of Public Service was decided by the Supreme Court on October 22, 1943. The Department had entered a blanket order reducing rates and requiring the telephone company to include in its charge to subscribers excise taxes (occupational tax, street rental, franchise and so forth) and had determined that a 5% return was sufficient. The Superior Court had reversed the Department and remanded the case for further proceedings without deciding the right to pass on excise taxes. The Supreme Court modified the Departmental ruling with respect to the passing on of municipal charges and decided that the Department had the power, after hearing, to fix a different rate in cities which would absorb such charges, but had no power to authorize the inclusion in bills rendered. The theory being that through a statewide uniform rate such charges would be paid in part by other communities than those making the charges. The 5% return was held reasonable. The Court found against the Department as to properties held out of use as to pensions and deductions from rate base of depreciation reserve. It found that the rate base was too low

and remanded the whole case back to the Department for further action.

Dalton v. Clark, 118 Wash. Dec. 314. Filed February 25, 1943 and decided in the Supreme Court on June 28, 1943. Plaintiffs sought to restrain the Transit Commission from entering into a contract involving housing for busses at the North Seattle barns without a call for bids through the Board of Public Works. The cost of construction was about \$200,000.00. This decision has clarified the Statute of 1939 (Ch. 47) creating the Transit Commission holding that it supercedes the city charter where inconsistent. It was also held that the act contemplated that the Transit Commission should have full power to expend the funds under its jurisdiction and to enter into contracts without submitting the same to the Board of Public Works; there being no provision in the Act requiring a call for bids the Commission was not bound by the charter.

Nelson v. Seattle, 16 Wash. (2d) 592. Plaintiff, a passenger in an automobile driven in a southerly direction on 12th Avenue, was injured when a northbound automobile driven by one Matt Zoffel skidded into the path of the automobile in which plaintiff was riding. Plaintiff sued both the city and Zoffel, alleging negligence on the part of the city in failing to keep the surface of the street safe for travel and in failing to sand the surface of the wooden block pavement. The jury returned a verdict against both Zoffel and the city in the sum of \$6,036.55. The verdict was set aside as to the city and judgment n.o.v. granted in favor of the city. On appeal the judgment was affirmed. The Supreme Court held that the danger signs posted by the city "danger when wet; speed 15 miles" was sufficient notice to users of the highway and that the city was not liable for a slippery condition of the street due to natural causes under the facts.

SUPERIOR COURT CASES

State ex rel Seattle Lodge No. 92 B.P.O.E. et al, vs. Kimsey, et al, Superior Court Cause No. 337228, was an attempt

to restrain the Chief of Police from enforcing ordinance No. 16046 with respect to slot machines in clubs. The plaintiffs claimed a right to operate under the state act making it a felony to own or operate slot machines except in clubs. The matter was argued before Judge Meakim who held that the city ordinance prohibiting gambling by any device was not in conflict with the state law. The action was dismissed.

City v. Western Union Telegraph Company, Superior Court Cause No. 344864, and City v. Postal Telegraph Company, Superior Court Cause No. 344863. These cases were brought by the City to collect rental fixed in Ordinance No. 72436 for the use of poles and wires in the city streets. The companies in their answer set up that they were in existence and operating long prior to 1890 and that under the Federal Post Road Act of 1866 and the state act of March 28, 1890, (Sec.11352 Rem.Rev.St.) they were granted a franchise to use the streets of the city free of charge. This, notwithstanding that the act contained a provision where the right of way is within the incorporated limits of any incorporated city, "the consent of the city council thereof shall be first obtained before such telegraph or telephone lines can be erected thereon". The matter was argued on demurrer to the affirmative defense and the demurrer was overruled. Final judgment was signed March 20, 1944 and the cases will be appealed for final determination.

Fincher v. City, Superior Court Cause No. 329795. Brought by the widow to recover for personal injuries resulting in the death of the husband. The accident happened in November, 1938 and claim was filed within the thirty days and settlement was had with the husband shortly thereafter. The husband died shortly after the settlement. The complaint was filed alleging that death was the result of the accident and therefore that the settlement could be voided by the widow. This is a rather interesting situation and one that seldom arises. On demurrer to the complaint the Superior Court held that the settlement could not be repudiated by the widow. The action was dismissed. No appeal resulted.

Sheets v. City. Plaintiff was struck by an automobile driven along 16th Avenue S. W. while leaving the plant of Associated Shipyards. The city's negligence charged was insufficient street lights at the point of the accident. The city's demurrer to the complaint was sustained by the Superior Court on the ground that the city is not liable for mere insufficiency of lighting.

McAlpin vs. City. Plaintiff wife, a passenger on a city bus, sustained injury in a collision between the bus and a private automobile. A claim was filed on behalf of the community. Subsequently the husband died and the wife brought suit against the city and the automobile operator individually and as administratrix of her husband's estate. The city demurred to the complaint on the theory that the cause of action was a community cause of action, that upon the husband's death the community is dissolved and the cause of action did not survive his death. The city's demurrer was sustained and judgment of dismissal entered. Plaintiff appealed to the Supreme Court but has filed no brief, pending negotiations for settlement with the owner of the private automobile.

CONCLUSION

The 1943 Budget of the Law Department was \$65,880.00. A substantial saving was effectuated by leaving positions vacated by military leave unfilled as long as possible. Also, a drop in the volume, and changes in the character, of litigation dropped the item of court costs to a new low figure.

The fact that the department functioned so effectively as is indicated in this report, and with the savings referred to, under war conditions, is a tribute to the industry, efficiency and loyalty of the personnel.

Respectfully submitted,


A. C. VAN SOELEN,
Corporation Counsel.

March 31, 1944.

ACV:mr