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CITY OF SEATTLE
LAW DEPARTMENT
Annual Report
 1946

APR 7 - 1947

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~~FINANCE~~
JUDICIARY

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FILED
 At _____ o'clock _____
APR 3 1947
W. C. THOMAS
 CITY COMPTROLLER
 AND EX-GRADUO CITY CLERK

A. C. VAN SOELEN
 Corporation Counsel

ON FILE

MAR 27 1950

The City of Seattle-Legislative Department

MR. PRESIDENT:

Your Committee on Judiciary

to which was referred the within Annual Report

would respectfully report that we have considered the same and respectfully recommend that

Date Reported
and Adopted
MAR 27 1950

THE SAME BE PLACED ON FILE.

Chairman



Chairman

CITY OF SEATTLE
LAW DEPARTMENT

Annual Report

1946

A. C. VAN SOELEN,	<i>Corporation Counsel</i>
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CAMPBELL C. McCULLOCH	<i>Assistant Corporation Counsel</i>
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JOHN A. HOMER	<i>Assistant Corporation Counsel</i>
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CHARLES V. HOARD	<i>Assistant Corporation Counsel</i>
CHAS. L. CONLEY	<i>Assistant Corporation Counsel</i>
E. A. SWIFT, JR.	<i>Assistant Corporation Counsel</i>
BRUCE MACDOUGAL	<i>City Prosecutor</i>
FAYE FORDE	<i>Secretary</i>
JOHN F. COOPER	<i>Claim Agent</i>

Annual Report

OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1946

To the Mayor and City Council of the City of Seattle:

Gentlemen: Pursuant to Section 12, Article XXII of the City Charter, I herewith submit the annual report of the Law Department for the year ending December 31, 1946.

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 1946:

	Pending Dec. 31, 1945	Commenced during Year 1946	Ended dur- ing Year 1946	Pending Dec. 31, 1946
Condemnation suits	7	10	6	11
Damages, for personal injuries.....	65	41	58	48
Damages, other than for personal injuries	29	20	33	16
Injunction suits	21	5	22	4
Mandamus proceedings	8	7	9	6
Miscellaneous proceedings	44	10	35	19
Public service proceedings (dormant)	3	0	0	3
Total	177	93	163	107
Appeals from Municipal and Traffic Courts	79	135	85	129
Grand Total	256	228	248	236

A cleanup of dormant civil cases in 1946 is reflected in this report. A lag of from three to six months in the trial of Police and Traffic Court appeals is a court calendar difficulty which we cannot control.

2. Segregation—Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1945.....	65	\$ 777,111.03
Commenced since December 31, 1945.....	39	359,382.09
Total	104	\$1,136,493.12
Tried and concluded since December 31, 1945.....	58	463,703.55
Pending December 31, 1946.....	46	\$ 672,789.57

Of these personal injury actions 58 involving \$463,703.55 were tried and finally disposed of in 1946; 6 cases were won outright; in 19 cases, involving \$161,270.76, the plaintiffs recovered in the main small verdicts aggregating \$40,189.15. The remaining 33 cases, involving \$262,710.09, many of which were dormant, were settled or dismissed without trial for a total of \$15,857.00.

Of the 39 personal injury actions begun during the year, ³³ ~~41~~ involving \$291,049.65, are based on alleged accidents occurring in connection with the operation of the municipal transit system.

3. Segregation—Damages Other Than Personal Injuries:

	Number	Amount Involved
Pending December 31, 1945.....	29	\$ 74,829.98
Commenced since December 31, 1945.....	20	17,659.17
	49	\$ 92,489.15
Tried and concluded since December 31, 1945.....	33	70,828.12
	16	\$ 21,661.03
Pending December 31, 1946.....		

Of the total of 49 cases involving damages other than personal injuries, 33 cases involving \$70,828.12 were disposed of during the year, of which 6 were won outright. Ten cases involving \$9,269.95 were settled for \$2,855.79; 7 cases resulted in verdicts against the city for \$2,485.29. Eleven cases begun during the year, involving \$3,208.29, arose from Transit accidents.

4. Supreme Court:

Seven cases were argued in the State Supreme Court. Five were won and two lost.

5. Miscellaneous Cases:

Three injunction actions were tried and won. Nineteen were dismissed without trial.

Four mandamus actions were tried, 3 won and 1 lost.

Of 35 miscellaneous cases tried, 3 were won, 2 lost by the department, and 30 dismissed.

Two actions against the Chief of Police and Police Officers for false arrest and assault, aggregating 38,521.92 were filed. One action for \$2,000.00, against the Chief of Police, was won.

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

Thirty-one actions were commenced for the Lighting Department, involving unpaid light and power bills. Collections, including costs, amounted to \$336.51. In addition, a considerable amount of past due accounts was collected without litigation.

Sixty-five garnishments were answered.

II. CLAIMS 1946

	Number	Amount Involved
Claims for damages under investigation December 31, 1945—cumulative	1,609	\$1,684,555.05
Claims for damages referred to us for investigation December 31, 1945 to December 31, 1946.....	1,457	1,432,864.13
Total claims pending December 31, 1946.....	1,623	1,832,874.50

Claims disposed of as follows:

	No.	Amt. Claimed	Amt. Paid
Settled	836	\$ 478,443.02	\$149,561.80
Rejected	607	806,001.66	
	1,443	\$1,284,444.68	

Thirty-three of above settled claims were in suit and settled in connection with Claim Agent.

Amount Involved	\$110,020.40
Amount of Settlement	24,554.39
Number of Transit System accident reports investigated in 1946....	4,663
Number of circulars and letters mailed in connection with investigation of foregoing claims and reports.....	13,751

III. MUNICIPAL COURT

During the year 1946 the City Prosecutor handled a calendar of 29,135 cases, other than traffic, in the Municipal Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$169,901.87.

MUNICIPAL TRAFFIC COURT

In the Municipal Traffic Court for the year 1946, a calendar of 98,223 traffic cases was handled by assistants acting as City Prosecutors, resulting in fines and forfeitures amounting to \$507,597.50. One hundred and forty-five drivers' licenses were revoked and 882 suspended.

Mr. C. C. McCullough and Mr. C. V. Hoard, Assistant Corporation Counsel, have been assigned to the Traffic Court as alternate City Prosecutors.

MUNICIPAL AND TRAFFIC COURT APPEALS

Eighty-five appeals were disposed of in 1946. In 42 cases convictions were had or pleas of guilty were entered. Eight appellants were acquitted; 15 cases were dismissed for insufficiency of evidence (witnesses moved away, etc.), in 20 appeals, the lower court was affirmed. A total of \$5,681.60 in fines and forfeitures was collected by this department and transmitted to the City Treasurer; jail sentences were imposed in many cases. Mr. Louis Stokke was detailed 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.

An Assistant Corporation Counsel has been assigned at practically full time to handle this appeal work.

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 86 written legal opinions upon questions submitted by the various 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, 310 ordinances and 38 resolutions.

During the year 1,104 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling \$25,050,000.00.

The ordinances prepared included authority for two general bond issues; for a Public Safety Building and site \$5,500,000, and for sewer improvements \$3,000,000. These were the first general bond issues of magnitude for some years and included provision for an annual tax levy during the term of said bonds in excess of the 40-mill limitation on property taxes imposed by the State Constitution, Amendment 17 and by Chapter 253, Laws of 1945. Said bond issues were submitted to the voters and carried at the March 1946 general municipal election. Condemnation proceedings for the acquisition of the building site above referred to on the square block immediately north of the County-City Building were commenced.

A proposed additional general bond issue for improvements in the street lighting system was authorized by Ordinance No. 75329, which ordinance was later repealed following our opinion of March 16, 1946, on the basis of a decision in the State Supreme Court in *Union High School District No. 1 Skagit County v. "The Tax-payers" of said District*. On September 13, 1946, said court decided 8 to 1 that Chapter 253, Laws of 1945, is valid. Said law provides, among other things, that an election involving an annual tax levy in excess of the 40-mill limitation on property taxes "shall not be held oftener than once a year." The moral seems to be that the city should submit all such bond issues at the same election. It became necessary to defer this seemingly much needed improvement in the lighting system until the municipal election of March 1948.

Ordinances were also prepared for municipal light and power bond issues of \$1,250,000 refunding bonds and for the completion of Ross Dam, \$6,500,000.

NEW CHARTER

At the general municipal election of March 1946 a new and revised Charter of the City of Seattle, prepared by a commission of freeholders as provided in Article XI, Section 10 of the State Constitution, was submitted to the voters for ratification and carried. In my opinion the freeholders did a remarkably fine piece of work in revising and modernizing the somewhat outmoded Charter of 1896. All meetings of the Freeholders Commission were well attended and the Corporation Counsel attended for advice on law questions at the Commission's request.

MEMO ON UNUSUAL CASES, 1946

BATCHELOR v. SEATTLE, 125 Wash. Dec. 843.

This case involved certain shoreland lots on Lake Washington north of Madison Park, deeded to the City under Chapter 157, Laws of 1939, by the state upon certification by a committee appointed by the Governor to determine whether the same were suitable and needed for park and playground purposes. The plaintiff and the State at the behest of the Land Commissioner and Joseph E. Wickstrom, an owner of land in the vicinity, contested the constitutionality of the Act and also claimed that because the city hadn't made use of the property in a formal way, the same had reverted under a clause inserted by the State in the deed that if use were not commenced within a year, the same should forfeit.

Suit was brought in 1940, tried in 1944 by Judge Foley from the Superior Court of Spokane County. The decision was against the city on the one ground that the city had not made use of the property and that the reversion clause was valid. The case was argued in the Supreme Court in 1945 and decision rendered in September 1946. Judge Foley was reversed—the court holding that the clause in the deed was without authority and that the city had made use of the property in any event by holding it as a view space on the waterfront.

Another interesting feature of the case was a cross-complaint of Wickstrom in which he sought to recover the value of an easement strip at the northeast corner of 43rd Avenue North and McGilvra Street. This easement was the private property of the cross-complainant but not exclusive. The court held, we believe for the first time in this jurisdiction, that where there is a private easement of access over property which subsequently is made into a public easement, there is no right of recovery, the two being merged.

STATE ex rel. THORP v. SEATTLE, 126 Wash. Dec. 312.

At the municipal election in March 1946, an initiative measure was adopted establishing a 48-hour week in the Fire Department. This necessitated the establishment of three platoons, which would increase the members in the Fire Department by approximately 50% and cost in the neighborhood of a half million dollars for the portion of the year remaining after the measure was adopted. At the same election the voters adopted a new Charter, one provision of which postponed the effective date of initiative measures until the ensuing budget year where the cost would exceed \$20,000.

The plaintiff firemen contended that the initiative measure having been adopted under the old Charter would be governed by its terms and sought to compel the three-platoon system at once. The city contended that the new Charter controlled and the matter must be therefore postponed until the first of the ensuing year.

Both the Superior Court, Judge Todd, and the Supreme Court sustained the city's position, which establishes the proposition that a new charter supersedes all matters in the old charter except as they are continued in the new.

STATE ex rel. P. U. D. No. 1 SKAGIT COUNTY v. WYLIE, Weyerhaeuser Timber Co., Intervenor-Defendant.

This was brought to compel the defendant, as Secretary of the District, to sign bonds issued for the purchase of the Puget Sound Power & Light electric system in western Washington according to a contract which had been approved by the commission fixing the price of \$135,000,000. After consultation with the Mayor, City Council and the Superintendent of Lighting, we appeared as friends of the court and contended that the P.U.D. Act of 1931, as amended, did not confer power upon a small district such as Skagit County to purchase and operate a utility covering the western portion of the state, nor did it confer the power to operate as a private utility in King, Pierce and Island Counties where there were no organized P.U.D.'s. The State Attorney General took a similar position in the matter.

The case was decided contrary to these contentions by Judge Brickey of the Skagit County Superior Court in April 1946 and appealed to the Supreme Court, where it was heard en banc on September 4, 1946. No decision had been received as of the first of the year. One of the Judges, Judge Beals, was not present and it is understood that the court was divided 4 to 4. As Judge Matthew Hill would be seated in early January, it was anticipated that a re-hearing en banc would be granted.

CONCLUSION

The year 1946, which is the subject of this report, was the first full postwar year and it saw the return from military leave of Assistants C. C. McCullough, who served as a Colonel, and John A. Logan and Charles V. Hoard, who served as Captains in the United States Army during World War II. Assistant Charles L. Conley had returned previously from such service, also as a Captain.

The end of the year saw the retirement of Roy B. McClinton, Chief Clerk of the department for some 35 years and a member of the department since 1909. Mr. McClinton, who served as a Captain in the army in World War I, was over the age for retirement during World War II but stayed on under a provisional reappointment to help out the department which was under-manned. This was a climax to a long term of faithful service for the city.

There has been some drop in the volume of general litigation, particularly in personal injury cases, and it has been easier to settle just claims during and since the war. Condemnation proceedings, dormant during the depression and the war, are again becoming numerous.

The department as usual operated well within its budget, which was \$86,920 in 1946. The Claim Division staff was augmented by one additional investigator and an intermediate clerk-stenographer; the salaries of these positions were paid by the Seattle Transit System. A dearth of law stenographers arising during the war has continued. The staff has, as usual, cooperated fully in getting out the work under sometimes difficult circumstances including the fact that salaries in the many specialized positions in the department have not kept pace with the increasing cost of living.

Respectfully submitted,

A. C. VAN SOELEN,
Corporation Counsel.

