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Corp Council

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Council for yr 1894.

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# The City of Seattle

LAW DEPARTMENT

*Seattle, Washington*

February 28th, 1895.

Hon. Byron Phelps,

Mayor of The City of Seattle.

Dear sir,--

Following the precedent established by my predecessor in making an annual report of the condition of affairs of the law department, I have the honor to herewith submit a report showing the condition of the city's legal business from the time of my induction into office, up, to and including the first day of January, 1895.

Soon after I took possession of the office the city council requested that the office of the corporation counsel be removed to the City Hall, so that the legal advisor of the city and his assistants might be in close proximity with the other officers of the city government; and I find that it brings good results, for the reason that, necessarily, this office can become more intimately acquainted with the condition of the city's business than if the office were kept in some other portion of the city, to say nothing of the economy in saving rent and other expenses incident to having the office elsewhere.

In this connection, one of the advantages in having the corpora-

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tion counsel in the same building with the other city officers, is that all questions which arise and require legal attention and advice can be readily answered; while if the office were in some other portion of the city a great many questions of importance, probably, would not be submitted, because of the lack of time on the part of the officers to obtain the necessary information or advice. The fact that the office is in the building, of course, makes the daily routine work more arduous.

The work of the municipal court requires the attention of the city attorney to such an extent that his services are almost constantly required in that court; and while the work is not of an intricate nature, yet the fact that attention must be given to the work in that court, almost wholly unfits the city attorney from devoting his attention to the civil business of the city; hence all of the civil business devolves upon myself and my assistant, Mr. Frank A. Steele. Mr. Melvin G. Winstock, the city attorney, is thoroughly competent for the office of city attorney, and is an energetic and careful prosecutor.

When I took possession of the office a number of cases were pending aside from the numerous cases arising from street grade assessments, which are now being prosecuted as rapidly and industri-

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ously as it is possible. All of the street grade assessment cases were turned over to me, except those in the hand of John W. Pratt, who had at that time, and now has, a contract for the prosecution of certain of these cases. During previous administrations the collection of these grade cases were given to attorneys out side of the law department, and the city either paid a percentage for the collection of the grade taxes wherein suits were necessary to collect, or paid a salary to an attorney to attend to such business. I find that there are a great number of these cases which have not been prosecuted with the vigor that should have been given them, and for that reason a great many warrants are unpaid, and the city's credit has, for that reason, become to some extent impaired. It is impossible to get warrant holders to fully appreciate the condition under which these warrants were issued. The fact that they were issued by The City of Seattle and drawn upon special funds does not entirely relieve the minds of the people who hold these warrants of the too common error that they are liabilities of the city instead of the liabilities of the improvement districts.

This office, at the present time, is collecting all the data and ascertaining the exact condition of all the old cases, in order to place them in judgment as soon as possible. This duty is a very ar-

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dous one and requires a great deal of pains taking. All street grade assessments made previous to the adoption of the freeholders' charter must be collected by actions against the delinquent property owners. I estimate, as nearly as it is possible for me to do at the present time, that there are about three hundred of these delinquent street grade cases now pending, all of which have been pending from two to six years, and the force in this office are now using all the energy and time which it is possible to use to bring these cases to a final determination. A number of judgments will be entered in a few days.

Among the principal cases which were pending at the time I took possession of this office were the cases brought by seven of the national banks against the city, the object of which is to restrain the city from the collection of taxes assessed against the capital stock of the banks. These suits affect the taxes of 1891 and 1892, and the taxes amount, at the present time, including principal, interest and penalty, to the sum of \$24,999.81. The cases were decided in both the superior and supreme courts in favor of the city. From the decision of the supreme court the banks have appealed to the Supreme Court of the United States, contending that the question at issue involves the construction of section 219 of the revised

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statutes of the United States, which provision of the act of congress provides that all the shares in an association of this kind may be assessed by authority of the state within which banks are located, subject to two restrictions only. First, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State; and second, that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. In other words, the banks claim that discrimination was made against them in the assessments for said years, on the ground that persons escaped taxation. The supreme court of this state held adversely to the contention of the banks in the cases in which the city was interested, as well as the County of King, said cases being reported in 38 Pacific, page 219. Owing to the public importance of these cases-- they being cases relating to the revenue-- I think it advisable to ask the Supreme Court of the United States to advance these cases upon the docket; otherwise it may not be able to reach them inside of two years.

A number of important cases are now pending in which the city is interested; among others, is the case of John M. Klien against the City, recently decided by Judge Hanford of the Circuit Court of the

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~~Circuit Court~~ of the United States, it being an action for the infringement of an alleged patent granted to the plaintiff for an improved pin for holding insulators to be attached to electric wires. The plaintiff claimed that the pin was a patentable improvement and that the city had been using the same without his consent. The court holds that iron pins were in use for such purposes for a long time before the plaintiff in this case claims to have conceived the idea of this invention, and holds that the only improvement that seems to have been made upon former methods was the use of soft metal instead of material that had been used previous to the time he obtained his alleged patent. The court held that the patent was issued without lawful authority, and is void. The plaintiff in the case will, in all probability, appeal to the Circuit Court of Appeals.

The following actions on account of the Krug deficiency have been commenced by me:

Against D. H. Gilman, on a check for \$2205.51, given by him to Adolph Krug September 11th, 1893. Mr. Gilman says that he will be able to pay this amount by March 1st, and I have good reason to believe that he will do so; hence no judgment has yet been taken against him.

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Against D. T. Denny, to foreclose a mortgage on real estate given to secure the payment of \$12,400.00. The mortgage is a first lien upon the real estate. A decree will be taken shortly.

Against D. T. Denny and Louisa Denny, his wife, on a promissory note for \$5000.00, upon which judgment will soon be taken.

Against Fred E. Sander and others, to foreclose a trust deed, in which case Lester Turner is Trustee for the City and several of the banks of the City. The City's claim is \$5000.00. The trust deed covers some valuable property in Maynard's plat of the City. A decree has been rendered for the full amount of the claim of the several parties; and I think that the whole of the sums secured will be realized.

A decree has been rendered on the Griffith claim in the case of Mary L. McDonald against L. H. Griffith and others, in which the City in made a party, but the lien of the City is subsequent to that of McDonald. There were some collaterals given, also, to secure this claim, and a promissory note signed by T. W. Griffith, the wife of L. H. Griffith, and by John Collins. No suits have yet been commenced to foreclose the pledges or to obtain personal judgment on the note. These actions will soon be commenced, however.

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Suit has also been commenced against Ex-treasurer Ames and the sureties upon his bond, to recover a deficiency arising out of the collections made by him on street assessments. The action would have been determined long ago, but for the contention of the defendants that a check given by Ames should be deducted from the amount due. This check was accepted by the City in its settlement with the Krug bondsmen. The finance committee authorized me to offer to reduce the amount claimed by the City by deducting one-half of the face value of said check. I made the offer, and am informed that the defendants are willing to settle on that basis.

The case against ex-city treasurer Isaac Parker was appealed by the defendants to the Supreme Court and will be heard at the next session of the court. The amount involved is \$7,988.02, and interest.

A number of other cases of importance, involving many different legal propositions, have been tried. Among others may be mentioned the cases of E. D. Bacon and others against the City, which involves the validity of the reassessment of Weller Street. The case was tried some months ago, but not decided, and the court has asked that the case be re-argued.

The case of Henry A. Frederick against the City, involving the validity of the reassessment of Division Street, was also tried. The

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City has appealed this case to the Supreme Court. One of the questions involved is the power of the city council to order a reassessment where all of the jurisdictional steps were not taken when the improvement was ordered and the first assessment, based thereon, made. Even though the contract for the improvement was in all things complied with, and the street graded as provided in the ordinance authorizing the improvement, and the property owners received the benefit, the Superior Court held that the reassessment could not be made if any jurisdictional steps were omitted. The improvement was ordered in 1890.

A case, which has been pending for nearly two years, has recently been decided by the Superior Court adversely to the City, in which the plaintiff seeks to recover for the amount paid at a sale of land for delinquent taxes where it appeared that the property was assessed to two different persons, and where the taxes had been paid by one person in whose name it was assessed, but not by the other. The position taken by the City was the familiar one, that the purchaser at a tax sale buys at his own risk. If the title fail, or the tax for any other reason is invalid, the municipality is under no legal obligation to refund the money. This case will be appealed to the Supreme Court.

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The suit of Pearson against the City to recover the "unearned" portion of the amount paid for an "amusement license", was decided against the City. I took the position that in no event could the amount paid for a license be recovered back, and that an amusement license did not authorize the licensee to conduct a public dance in a saloon. The court also held that a claim of the kind sued on need not be verified as required by sections 41 and 42 of Article IX of the charter. This case will be appealed to the Supreme Court, for the reason, principally, that we desire a construction of the above provision of the charter.

I am of the opinion that in all cases where any principle of law is involved it will in the end be more economical to have the question settled by the court of last resort, than to be compelled to ask for a construction by the Superior Court, and thus leave the question an open one to be argued in every case where the question is at issue, and probably get different rulings in many cases. The settling of such questions will tend to discourage litigation.

There are several cases now pending against the City for damages on account of alleged defective sidewalks and crossings, in which the plaintiffs claim large damages.

In this connection it may be well to state that the charter should

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be so amended that the expense of building and repairing sidewalks could be charged against the abutting property owners. It will be necessary to repair or rebuild many of the walks within a short time.

An action was recently brought against the City on street improvement warrants, in which the plaintiff alleges that the City has negligently refused to collect the assessment levied against the property. A somewhat similar case was decided in favor of the City by the Supreme Court in May, 1893. (*Soule vs. Seattle*, 6 Wash., 315).

There are about seventy-five cases now pending and undetermined, including those already mentioned, but not including grade cases. Many of them are of importance so far as the amount involved is concerned, and in a majority the City is the defendant. The docket kept in this office will show the status of all of them.

It is gratifying to know that the care which has been taken in the preparation of improvement ordinances under the bond system, and leading up to the issuance of the bonds for said improvements, has been rewarded by the fact that no legal objections have been made to any of the proceedings, although prominent attorneys have carefully examined them from the passage of the general ordinance, No. 3349, down to and including the ordinance authorizing the execution and delivery of the bonds in payment for the improvements.

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In this report I have only sought to touch upon the more important matters connected with the work of this department, as a report showing the status of all business would make it unnecessarily lengthy. The condition of all business can be readily ascertained by an inspection of the files and records of this office.

To Mr. Frank A. Steele, the assistant corporation counsel, I am greatly indebted for his valuable services in assisting me in discharging the onerous duties of this office.

Respectfully,

*M. G. Winstock*  
Corporation Counsel.