206597

CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1949

MAR 6 - 1950
3-21-50
MAR 27 1950

JUDICIARY
file
ON FILE

FILED
At ..... o'clock ..... M.
MAR 3 1950
W. C. THOMAS
CITY COMPTROLLER
AND EX-OFFICIO CITY CLERK

A. C. VAN SOELEN
Corporation Counsel

MAR 27 1950 ON FILE

The City of Seattle--Legislative Department

MR. PRESIDENT:

Your Committee on Judiciary
to which was referred the within Annual Report

Date Reported and Adopted MAR 27 1950

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

THE SAME BE PLACED ON FILE.

Paul E

..... Chairman

.....

.....

.....

.....

.....

.....

Committee

..... Chairman

.....

.....

.....

.....

.....

.....

Committee

CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1949

A. C. VAN SOELEN, *Corporation Counsel*

J. AMBLER NEWTON	*Assistant Corporation Counsel*
CAMPBELL C. MCCULLOUGH	*Assistant Corporation Counsel*
GLEN E. WILSON	*Assistant Corporation Counsel*
ARTHUR SCHRAMM	*Assistant Corporation Counsel*
JOHN A. LOGAN	*Assistant Corporation Counsel*
JOHN A. HOMER	*Assistant Corporation Counsel*
CHARLES V. HOARD	*Assistant Corporation Counsel*
CHAS. L. CONLEY	*Assistant Corporation Counsel*
GEORGE T. MCGILLIVRAY	*Assistant Corporation Counsel*
E. A. SWIFT, JR.	*Assistant Corporation Counsel*
BRUCE MACDOUGALL	*City Prosecutor*
G. GRANT WILCOX	*Law Clerk*
FAYE FORDE	*Secretary*
JOHN F. COOPER	*Claim Agent*

Annual Report

OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1949

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, 1949.

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 1949.

	Pending Dec. 31 1948	Commenced during Year 1949	Ended during Year 1949	Pending Dec. 31 1949
Condemnation suits	17	4	11	10
Damages for personal injuries	61	52	69	44
Damages other than for personal injuries	38	34	26	46
Injunction suits	3	2	2	3
Mandamus proceedings	2	7	4	5
Miscellaneous proceedings	11	13	8	16
Public service proceedings	1	0	1	0
Sub-Total	133	112	121	124
Appeals from Municipal and Traffic Courts	121	210	176	155
Grand Total	254	322	297	279

2. Segregation — Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1948	61	$ 796,617.93
Commenced since December 31, 1948	52	526,461.54
Total	113	$1,323,079.47
Tried and concluded since December 31, 1948	69	893,623.74
Actions pending December 31, 1949	44	$ 429,455.73

Of these personal injury actions, 69 involving $893,623.74 were tried and finally disposed of in 1949; 27 cases involving $410,878.96 were won outright; in 19 cases, involving $247,455.20, the plaintiffs recovered $43,948.50. The remaining 23 cases, involving $235,289.58, were settled or dismissed without trial for a total of $33,017.10.

Of the 52 personal injury actions begun during the year, 40 involving $392,113.40, are based on alleged negligence in connection with the operation of the municipal transit system.

3. *Segregation — Damages Other Than Personal Injuries:*

	Number	Amount Involved
Pending December 31, 1948	38	$119,371.59
Commenced since December 31, 1948	34	165,100.01
	72	$284,471.60
Tried and concluded since December 31, 1948	26	100,949.21
Pending December 31, 1949	46	$183,522.39

Of the total of 72 cases involving damages other than personal injuries, 26 such cases involving $100,949.21 were disposed of during the year, of which 8 were won outright. Nine cases involving $13,986.93 were settled for $5,067.84; 9 cases resulted in verdicts against the city for $3,812.34. Amount sued for $20,509.37. In one case the city brought suit and collected $8,500.00 for the Lighting Department. Nine cases begun during the year, involving $7,134.99, arose from Transit accidents.

The total expense for claims and suits involving the Transit System was $188,296.76 in 1949. This is 1.87% of the gross revenues of the System for that year. This is remarkably low and reflects credit on all concerned.

4. *Supreme Court:*

Ten cases were argued in the State Supreme Court. Three were won and two lost, the other five are waiting decision.

5. *Miscellaneous Cases:*

Two injunction actions were tried and won. Three still pending.

Four mandamus actions were tried, 5 are still pending.

Of 8 miscellaneous cases tried, 7 were won, 1 lost by the department.

One action against the Chief of Police and Police Officers for false arrest and assault, amounting to $7,500 was tried and won and two other cases for false arrest are still pending.

Twelve hearings relating to dismissals of employes, etc., were

participated in by the department before the Civil Service Commission, in which departments were sustained in nine hearings, in one charges were withdrawn, and two were reinstated.

Forty-five actions were commenced for the Lighting Department, involving unpaid light and power bills; collections, including costs, amounted to $1,153.10. In addition a considerable amount of past due accounts was collected as a result of 620 letters sent out by this department. Eighty-one garnishments were served on the city, and all 81 completed during 1949. Twenty-one preliminary opinions on L.I.D. bond issues completed and 35 final opinions on the legality of bonds and warrants were rendered to the Board of Admiistration of the City Employes' Retirement System during 1949.

II.

CLAIMS FOR 1949

	Number	Amount Involved
Claims for damages under investigation December 31, 1948	1,827	$1,941,617.33
Claims for damages referred to this department for investigation December 31, 1948, to December 31, 1949	1,287	1,577,910.81

Claims disposed of as follows:	No.	Amt. Claimed	Amt. Paid
Settled	602	$ 515,445.94	$ 137,601.28
Rejected	848	653,647.72	
	1,450	$1,169,093.69	
Claims pending December 31, 1949	1,664	$2,350,434.45	

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

Amount Involved	$227,975.33
Amount of Settlement	29,506.69

Number of Seattle Transit System accident reports investigated December 31, 1948, to December 31, 1949 3,299

Number of circulars and letters mailed in connection with investigation of foregoing claims and reports 10,210

III.

MUNICIPAL (POLICE) COURT

During the year 1949 the City Prosecutor handled a calendar of 23,398 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $154,486.40. The Prosecutor is Bruce MacDougall.

MUNICIPAL (TRAFFIC) COURT

In the Municipal Traffic Court for the year 1949 a calendar of 142,429 traffic cases resulted in fines and forfeitures amounting to $745,049.00. Six hundred thirty-four drivers' licenses were revoked and 1,142 suspended; 79 jail sentences were imposed. Assistants Corporation Counsel C. V. Hoard and C. L. Conley acted as alternate city prosecutors.

MUNICIPAL COURT APPEALS

One hundred seventy-six appeals (140 Traffic—36 Police) were disposed of in 1949. In 77 (63 Traffic—14 Police) convictions were had or pleas of guilty were entered; 16 appellants (12 Traffic—4 Police) were acquitted; 25 cases (17 Traffic—8 Police) were dismissed for insufficiency of evidence, witnesses moving away, death of defendants, and defendants being already confined to jail. Fifty-eight appeals (44 Traffic—14 Police) were abandoned by the defendants and remanded to the trial court. A total of $10,823 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 this 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 103 written legal opinions upon questions submitted by the various departments of City government.

V.

ORDINANCES, RESTRICTIONS, PROCLAMATIONS 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, 333 ordinances and 19 resolutions, and 114 ordinances were prepared for settlement of claims.

During the year 2153 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $44,891,591.73.

UNUSUAL CASES

Submitted by MR. SCHRAMM:

Rothrock v. City was an action to recover for the death of the little girl who fell into the sewer manhole at 13th and East Union Street and was drowned. While the legal liability in this case was doubtful the case had great sympathetic appeal. It was settled for $2500.00.

Phinney v. City involved an automobile collision occurring at the intersection of Delridge Way and West Orchard Street. The plaintiffs, who were strangers in the city and guest passengers in an automobile traveling east on West Orchard Street were injured when the car in which they were riding collided with a southbound automobile on Delridge Way. Delridge Way is an arterial highway. The arterial stop sign on West Orchard Street requiring traffic entering the arterial from the west to stop had been down for approximately two weeks. The city defended on the theory that the erection and maintenance of arterial and other signs regulating traffic is a governmental function and that there was no liability. The case was submitted to the jury which returned a verdict against the city and in favor of the defendants whose automobile was traveling on the arterial highway. On appeal the Supreme Court agreed that the erection and maintenance of traffic signs is a governmental function but held that the rule of non-liability for negligence in the performance of such functions did not apply for the reason that there was a "statutory duty" resting upon the city to erect and maintain these signs.

In *Oberloh v. City* the plaintiff, a passenger on a motorcycle, was run over by the rear wheel of a transit bus and seriously injured at West Marginal Way and Carleton Street. The bus was proceeding northbound and the motorcycle attempting to pass on its right collided with it when the bus made a right turn into Carleton Avenue. Plaintiff was thrown under the rear wheel of the bus. He was hospitalized at Madigan General Hospital for a long period of time. His claim was not filed within the 30-day period but was a matter of 5 or 6 days late. Plaintiff in his complaint attempted to excuse the delay in filing the claim by showing that he was physically and mentally incapacitated from acting on his own behalf and that he was without friends or relatives to help him. However, upon the trial it appeared that his wife, mother, sisters and brother-in-law visited him from time to time at the hospital. The trial court sustained the city's challenge to the sufficiency of the evidence on the ground that a timely claim had not been filed, holding that no sufficient showing was made to justify the failure to timely file the claim, if such a failure can be excused at all under the existing statute and decisions of the Supreme Court.

In *Young v. City* plaintiff was injured when he stepped through defective planking on the dock at the end of Massachusetts Street. The accident happened prior to the end of the war at a time when the Navy prohibited persons from being in the dock area except on necessary business and when provided with a Coast Guard pass. In defense of this action the City put on evidence to support the contention that plaintiff was a trespasser by reason of the above regulations which were denied in the plaintiff's reply. Admiral Zeusler, who was Commandant of the Coast Guard for the 13th Naval District at the time of the accident and who is now assistant to the president of the Alaska Steamship Company, testified for the city. He produced the Coast Guard regulation prohibiting persons from being in the dock area except upon necessary business and with proper identification and testified that at that time the Coast Guard maintained guards along the waterfront to enforce the regulation. The trial court sustained our contention that plaintiff was a trespasser and dismissed the action upon the city's motion at the close of all the evidence.

Ellis, Administrator v. City involved a bus accident occurring at 1st Avenue South and Connecticut Street. A bus traveling north on 1st Avenue South late at night ran over and killed a man who was lying in the crosswalk as the bus approached. Plaintiff's evidence merely showed that the man was in the crosswalk when run over. There was no explanation of where he came from or what position he was in. However, the city's evidence showed that as the bus approached the intersection the deceased was lying in the crosswalk and was not seen by the operator in time to avoid striking him. The case was submitted to the jury on the question of whether the operator should have seen the man lying in the crosswalk in time to avoid running over him and the jury returned a verdict in favor of the city.

Robinson v. City was an action for damages for injuries sustained by reason of a defect in the pavement of Beacon Avenue near the Jefferson Park Golf Course. Plaintiff, returning from work about 5:30 in the evening after dark, was driving his automobile south on the west portion of Beacon Avenue. Attempting to pass another car his wheels struck a chuck hole at the extreme left edge of the pavement, went out of control, traveled 300 feet and crashed into a tree causing severe injuries to the plaintiff. The trial court held that the plaintiff was guilty of contributory negligence and could not recover.

Burtch v. City and *Bond v. City* were companion cases consolidated for trial. They involved a collision between a transit bus and an automobile at the intersection of Nob Hill Avenue and Boston Street. A northbound automobile carrying two boys and two girls

was struck by a westbound bus killing one girl, injuring her sister and both of the boys. The actions were brought on behalf of the parents of the deceased girl and on behalf of the sister and the boy who was a passenger. The driver of the automobile was not a party to the action nor did he appear at the trial. In this case the negligence on the part of the driver of the car was not imputed to any of the injured parties. Therefore they had only to prove some negligence on the part of the bus operator contributing to the injury. The case was submitted to the jury on the question of the bus driver's negligence and a verdict was returned in favor of the city.

In *Nopson v. City* the plaintiff, an elderly woman, was injured by the sudden stopping of a transit bus. Plaintiff's testimony merely showed that the bus made a sudden stop and that there was nothing so far as plaintiff's witnesses could see which required the stop. Defendant's evidence was that an automobile traveling alongside the bus suddenly cut in front of the bus requiring the operator to stop suddenly to avoid a collision. This testimony was not rebutted except as the direct testimony of plaintiff's witnesses that they saw nothing to require it to stop might constitute a dispute in the testimony. The trial court submitted the case to the jury and gave an instruction on *res ipsa loquitur*. The jury returned a verdict in favor of the plaintiff but the court granted the city's motion for a new trial on the specific ground that he erred in giving the instruction on *res ipsa loquitur*. The case turned on this point in the Supreme Court, which held that where there was evidence of a passenger being injured by the sudden unexplained stopping of a bus a presumption of negligence arose but where the sudden stopping was explained by defendant's evidence then the presumption was no longer in the case and the *res ipsa loquitur* instruction should not have been given. The granting of the new trial was affirmed.

Gregory v. City involved an action for personal injuries sustained by the plaintiff in falling in a sump within the boundaries of a platted but unopened and unimproved street. This place was on the side hill on the west slope of Queen Anne Hill a short distance east of the 15th Avenue approach to the Garfield Street Bridge. A roadway which is little more than a wagon trail runs south from Garfield Avenue about a block east of 15th Avenue West and swings around in an arc toward the north. Between the two arcs of the roadway the area is grassy, wooded and wholly unimproved. Plaintiff, visiting someone who lived on the top roadway, started down the hill about midnight. Instead of following the roadway he cut across from one part of the circling roadway to the other and fell into a sump which existed some distance from either roadway but within the platted limits of the street.

The lower court sustained a demurrer to plaintiff's complaint and this was affirmed by the Supreme Court, the latter holding that the city is not liable for injuries sustained in an unopened and unimproved portion of a "paper" street.

Submitted by MR. WILSON:

State ex rel. Welch v. Civil Service Commission
State ex rel. Emerson v. Civil Service Commission

These two cases arose out of the Civil Service examination for Purchasing Agent. Two examinations were held simultaneously, a promotional examination limited to employes of any city department with two years' regular service as Chief Clerk, Buyer or Warehouse Supervisor, and an original opened to U. S. citizens with age limitation 30 - 50.

The Commission set minimum qualifications for both examinations of "High school graduation with at least five years' experience in progressively responsible positions in purchasing or warehouse work, at least two years of which shall have been in administrative positions."

Both Welch and Emerson took the promotional examination, Welch having been a Buyer in the Division of Purchases, and Emerson, Chief Clerk. Welch passed the written examination but failed on experience, the Commission holding that his service as Buyer did not satisfy the minimum requirement of two years' service in administrative positions. Emerson failed the written examination.

Welch's case raised the legal question of the power of the Commission to fix the minimum qualification and the factual question of whether Welch's service as Buyer satisfied the requirement. The court (Judge Douglas) after trial held that the Commission had the power and was not arbitrary or capricious in fixing the minimum qualification and that under the evidence a Buyer in the Division of Purchases as then organized could not acquire the administrative experience required and dismissed the case.

Emerson's case involved the scope and practicability of the written portion of the examination claiming that the examination was "rigged" so as to give advantage to certain applicants. However, Emerson had not protested to the Civil Service Commission within the time required by its Rule (Civil Service Rule V-6) and when the court decided the Welch case, Emerson took a voluntary nonsuit. There was no appeal in the Welch case.

Benedict v. Police Pension Fund Board.

Action in mandamus to compel the Police Pension Board to grant Relator a pension under the Police Pension Act which grants a pension to widows of police officers who lose their lives while actually engaged in the performance of their duty as police officer. In the instant case the officer was shot by his twelve-year-old son while sitting in his home. The Police Pension Board, after hearing, determined that the officer was not actually engaged in the performance of duty and denied the application for pension. Relator's case was based upon the theory that since under the law of this state it is a crime to point a loaded gun at another it was the officer's duty to prevent the commission of such crime and he was therefore killed in the performance of duty. There was, however, the question of fact whether the officer was aware that the boy was pointing his loaded pistol at him. The Board determined this question adversely to the applicant. The trial court held that the officer was engaged in the performance of his duty in that he saw the boy pointing the gun at him and was aware that a crime was being committed. He, therefore, ordered the Board to grant the pension. The case was appealed to the Supreme Court and we are confident of reversal inasmuch as under the law the determination of such questions of fact is vested in the Police Pension Board and in the absence of arbitrary or capricious conduct on the part of the Board the court has no power to substitute its judgment on the facts for that of the Board.

Submitted by MR. NEWTON:

The *Washington Public Service Commission, Plaintiff, v. the Pacific Telephone & Telegraph Company, a corporation, Respondent,* Cause No. U-8207. This matter was pending on January 1st under the title *Washington Department of Public Works v. The Telephone Company* under a schedule for increased rates filed November 22, 1948, to produce additional revenue of $3,800,000.00. This schedule was suspended by the Director of Public Works on December 3, 1948.

After the first of January the 1949 Legislature recreated the Public Service Commission and provided for three members and abolished the office of Director of Public Works and the Department of Public Works. The Hearings were held by the Public Service Commission consuming 24 days altogether in 1949. On August 8, 1949, the company filed a tariff for additional revenue with the Commission estimated to raise an all-over sum of $7,000,000.00, including the schedule of November 22, 1948. The Public Service Commission on August 24, 1949, granted the company an interim rate increase producing $619,000.00. Substantial raises in rates had already been granted in California and Oregon. The

final order in the case was entered December 9, 1949, and authorized an increase estimated at $3,560,105.00 which sum includes the interim increase. The passing on to ratepayers of the various taxes imposed by the city is continued in effect. There seems to be no remedy for this matter except through state legislation.

Submitted by MR. HOARD:

City of Seattle v. Globe & Rutgers Insurance Co.

In 1947 the city purchased and rebuilt at an expense of approximately $20,000 a war surplus steel tug for use on Ross Lake. By reason of the terrain it was necessary to take the tug through British Columbia. She was navigated under her own power from Seattle to near the mouth of Silver Creek on the Fraser River. On November 14, 1947, Globe & Rutgers Insurance Co. insured against all damages resulting from transportation of the tug by motor truck and trailer from such point to Ross Lake. On Nov. 24th when within the State of Washington and about ten miles south of the Canadian border the trailer mired, the tug rolled off and was damaged.

Bids were called for repair of the tug. One of $6,495 was received from a Vancouver, B. C. firm. The lowest American bid was $9,785. Because of the risk of re-transporting the tug into Canada, anticipated difficulty of inspection during repairs, and possible difficulty of legal redress in case the work was improperly performed, and other reasons, it was decided that the American bid was the lowest and *best* bid, and a contract for repairs was let in response thereto. After completion of repairs but before acceptance by the city it was discovered that the engine base of the tug had been cracked by freezing subsequent to the accident but before repair. By supplemental agreement with the contractor a new engine base was installed for $1,015.34, the cost of materials necessary for such installation. The insurance company disclaimed liability in excess of $6,495, the amount of the Canadian bid.

Suit was instituted in Superior Court of the State of Washington for King County on Nov. 5, 1948, and was thereafter removed by the defendant to the U. S. District Court in Seattle on the ground of diversity of citizenship. The difference between the total cost of repairs ($10,800.34), and the amount sued for ($12,222.27), consisted of incidentals, including preparation of the vessel for storage pending repair, labor and transportation expenses incidental thereto, etc. The action was thereafter compromised, and on April 27, 1949, a consent decree against the insurance company in the amount of $8,500 was entered.

Submitted by MR. LOGAN and MR. WILCOX:

The summons, petition and notice of lis pendens were filed on August 12, 1948, in the matter of the condemnation of elevated, depressed and surface roadways on Alaskan Way, Cause No. 397727, under Ordinance No. 77088. Service of process was had and on January 31, 1949, the city applied for an adjudication of public use for that portion of the project beginning at Aurora Avenue and John Street and extending south to Alaskan Way and Washington Street; this was noted in an effort to expedite the improvement notwithstanding a pending change in alignment south of said street. The adjudication was denied by the court on the ground that the petition was insufficient in that it did not include the property south of Washington Street. On March 26th a motion was made for leave to file an amended and supplementary petition based on an amendatory ordinance (No. 77749), and on March 29, 1949, the order including the property previously omitted was signed by Judge Hodson and the amended and supplementary petition filed. The total number of property descriptions involved was 153 and the number of parties was approximately 300. All parties were duly served and on June 21, 1949, the adjudication of public use with respect to the entire route as amended by Ordinance No. 77749, was signed by Judge Hodson. On October 11, 1949, the first agreed verdicts based on the figures of the city's appraisers were entered in a judgment and decree of condemnation signed by Judge Todd; and on November 28, 1949, another segment of right of way between 1st Avenue and Battery Street and Alaskan Way at Pike Street was obtained with only one contest and judgment was entered by Judge Findley on December 13, 1949. On December 21st at a special setting, trial of the remainder of the case was set for February 27, 1950. This is the most significant City of Seattle condemnation case in 20 years and offers many problems for the city's appraisers as well as for the Engineering and Law Department.

CONCLUSION

The Law Department budget for 1949 was $130,160 plus an emergency appropriation of $1,000 for court costs incidental to the telephone rate hearing hereinbefore referred to. There was a saving of approximately $500 because no travel expense was incurred. It is therefore apparent that the budget was most closely figured and lived up to.

The staff as usual cooperated fully and enthusiastically in getting out the work of the department under sometimes difficult circumstances.

A. C. VAN SOELEN,
Corporation Counsel.