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CITY OF SEATTLE
LAW DEPARTMENT

Annual Report

1951

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A. C. VAN SOELEN
Corporation Counsel

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Annual Report

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J. AMBLER NEWTON	<i>Assistant Corporation Counsel</i>
CAMPBELL C. McCULLOUGH	<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>
GEORGE T. MCGILLIVRAY	<i>Assistant Corporation Counsel</i>
G. GRANT WILCOX	<i>Assistant Corporation Counsel</i>
BRUCE MACDOUGALL	<i>City Prosecutor</i>
ROBERT C. STRONG	<i>Law Clerk</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 1951

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, 1951.

I.

GENERAL STATEMENT OF LITIGATION

1. Tabulation of Cases:

The following is a general tabulation of suits and other civil proceedings commenced, pending and ended in the Superior, Federal and Appellate courts during the year 1951.

	Pending Dec. 31 1950	Commenced during Year 1951	Ended during Year 1951	Pending Dec. 31 1951
Condemnation suits	11	6	6	11
Damages for personal injuries....	54	77	63	68
Damages other than for personal injuries	38	37	41	34
Injunction suits	1	11	4	8
Mandamus proceedings	3	1	2	2
Miscellaneous proceedings	20	18	18	20
Public service proceedings	1	1	1	1
Sub-Total	128	151	135	144
Appeals from Municipal and Traffic Courts	159	193	187	165
Grand Total	287	344	322	309

2. Segregation—Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1950.....	54	\$ 834,011.64
Commenced since January 1, 1951.....	77	1,862,966.15
Total	131	\$2,696,977.79
Tried and concluded since January 1, 1951.....	63	962,321.02
Actions pending December 31, 1951.....	68	\$1,734,656.77

Of these personal injury actions 63 involving \$962,321.02 were tried or finally disposed of in 1951; 27 involving \$537,872.25 were won outright; in 14 cases involving \$102,132.80, the plaintiffs recovered \$32,669.84. The remaining 22 cases involving \$322,315.97 were settled or dismissed without trial for a total of \$48,765.00.

Of the 77 personal injury actions begun during the year 1951 a large portion involving \$689,522.01 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, 1950	38	\$ 119,821.95
Commenced since January 1, 1951.....	37	66,935.47
	75	\$ 186,757.42
Tried and concluded since December 31, 1950.....	41	71,557.73
Pending December 31, 1951	34	\$ 115,199.69

Of the total of 75 cases, involving damages other than personal injuries, 41 involving \$71,557.73 were disposed of during the year 1951 of which 22 involving \$60,306.90 were won outright. Eight cases involving \$6,412.66 resulted in recoveries, in a total sum of \$2,082.40. Eleven cases involving \$4,838 were settled for the sum of \$1,465.27.

The total expense for claims and suits involving the Transit System was \$205,363.65 in 1951. This is 1.92% of the gross revenues of the System for that year. The year 1951 reflects one of the lowest loss percentages in the history of the city operation of the system, and reflects great credit on all concerned.

4. Supreme Court

One appeal from last year is still pending in the Supreme Court and six new appeals were filed in 1951, some of which have been argued, but none were decided.

5. Miscellaneous Cases:

Three injunction actions were tried and won, 1 lost and 8 are still pending. Two mandamus actions tried and two are still pending. Eighteen miscellaneous cases were disposed of during the year.

Eight hearings relating to dismissals of employes, etc., were participated in before the Civil Service Commission, in which the departments were sustained in seven hearings and one charge was withdrawn and the employe resigned.

A number of actions were commenced for the Lighting Department for unpaid light and power bills and many past-due accounts were collected as a result of 707 letters sent out in cooperation with said department. One hundred three garnishments were handled during 1951. Ninety-one were completed without court action. Twelve were answered by the city and the costs collected were transmitted to the City Treasurer.

II.

CLAIMS IN 1951

	Number	Amount Involved
Claims for damages under investigation, December 31, 1950	1783	\$3,308,507.83
Claims for damages referred to this department for investigation December 31, 1950, to Decem- ber 31, 1951	1496	2,826,949.18
Claims disposed of as follows:	No.	Amt. Claimed
Settled	681	\$1,369,558.49
Rejected	878	1,230,876.24
	1559	\$2,600,434.73
Claims pending December 31, 1951.....	1720	\$3,037,469.43
30 of above settled claims were in suit and settled in connection with Claim Agent Amount involved		\$497,552.85
Amount of settlement		49,086.35
Number of Seattle Transit System accident reports investigated December 31, 1950, to December 31, 1951.....		3,150
Number of circulars and letter mailed in connection with investigation of foregoing claims and reports.....		10,108

III.

MUNICIPAL (POLICE) COURT

During the year 1951 the City Prosecutor, Bruce MacDougall, handled a calendar of 25,739 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$194,756.60.

MUNICIPAL (TRAFFIC) COURT

In the Municipal Traffic Court for the year 1951 a calendar of 146,407 traffic cases (this shows an increase of 7,175 cases over 1950) resulted in fines and forfeitures amounting to \$782,113.00. Six

hundred eighty-three drivers' licenses were revoked and 1,247 suspended; 83 jail sentences were imposed. Assistant Corporation Counsel C. L. Conley acted as city prosecutor.

MUNICIPAL COURT APPEALS

One hundred eighty-seven (125 Traffic, 62 Police) were disposed of in 1951 by Assistant Corporation Counsel Charles V. Hoard. In 75 cases (58 Traffic, 17 Police) convictions or pleas of guilty were entered. In twelve cases (7 Traffic, 5 Police) the appellants were acquitted. In four cases (2 Traffic, 2 Police) were dismissed for insufficiency of evidence, witnesses moving away, death of a defendant, and defendants being already confined to jail. Ninety-six appeals (58 Traffic, 38 Police) were abandoned by the defendants and remanded to the Traffic and Police Courts for the enforcement of original judgments. A total of \$6,708.70 in fines, forfeitures and costs were collected by this department and transmitted to the City Treasurer. Mr. Louis Stokke was continued on detail by the Chief of Police on a part-time basis to assist by way of service of process, commitments of the defendants, interviewing of witnesses, receiving their statements and keeping detailed records of the appeals. This work is of much value to both the police and law departments.

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 87 written legal opinions on questions submitted by the various departments of the city government.

Also, the City Employes Retirement System requested opinions on 37 L.I.D. bond issues and 18 preliminary and 19 completed opinions were rendered.

V.

ORDINANCES, RESOLUTIONS, PROCLAMATIONS AND MISCELLANEOUS

The members of the City Council and the Mayor requested that this department prepare during the year 1951, 430 ordinances, 29 resolutions, 1 proclamation; and in addition, 83 ordinances were prepared for the settlement of claims.

During the year 1,353 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling \$39,924,966.00.

MEMO OF NOTEWORTHY CASES

Submitted by Mr. Schramm:

Hendrickson v. City, was an action brought by the parents of a child who lost her life by drowning in the Cedar River. The claim was filed and the action brought against the city on allegations that City Light negligently released large quantities of water at the Cedar River Dam; that a wall of water two feet or more in height rushed down the river and trapped the girl, causing her death. A few days after the accident occurred arrangements were made with City Light to simulate the same conditions at the dam as those existing on the day of the drowning. The same amounts of water were released in the same manner and at the same times as on the day of the accident and measurements of the water level at the point of the accident were taken over a period of several hours. The tests showed that the water rose at a very gradual rate. In addition the only eye-witness testified that the water was already high when the girl waded into the stream. The case was tried to the Court (Judge Batchelor) who held that there was no evidence of negligence on the part of the City.

Kilbourne v. City was an action brought to recover personal injuries sustained by a two-year old child when a rotted branch of a tree in Seward Park fell on the child. Plaintiff attempted to avoid the rule of governmental non-liability by alleging the maintenance of a nuisance in the park. The case was tried to a jury in Judge Seering's court. The jury returned a verdict of approximately \$5,000.00 in favor of the plaintiff but the city's motion for judgment notwithstanding the verdict was granted, the verdict was set aside and judgment entered in favor of the city. Plaintiff is now appealing the case to the Supreme Court.

Case v. City and *Callihan v. City* involved actions brought by tenants of Linnea Court Apartments who were injured when the heating plant exploded. The City was made a party on allegations that it had permitted installations in violation of ordinances governing heating plants, failure to inspect and other allegations of official neglect. The City demurred to the complaint. After many depositions had been taken in *Case v. City* the plaintiff finally dismissed the city from the action. This was followed by dismissal of the city in the *Callihan* case.

Submitted by Mr. Newton:

State ex rel. June B. Miller v. John B. Cain as Superintendent of Buildings, Superior Court No. 431454. Miss Miller owns a lot 50 by 100 feet at the southwest corner of Broadway and Roanoke Street, classified in the zoning ordinance effective July, 1923, as

First Class Residence. In May, 1923, she leased the lot to the Shell Oil Co., who constructed a small gasoline service station before the Zoning Ordinance became effective. The station was operated as a non-conforming use under Sec. 9 of the ordinance until October, 1950, when it was abandoned because it had become outmoded and inadequate.

The Shell Oil Co. offered to renew the lease if permit could be obtained for construction of a new modern and adequate station. Miss Miller applied to the Building Superintendent for a permit under plans submitted by the Shell Co. Mr. Cain refused the permit on the ground that the plan submitted constituted an extension and enlargement of a non-conforming use contrary to the provisions of Sec. 9(b) of the ordinance. Miss Miller then brought this action in mandamus against the Building Superintendent to compel the issuance of a permit on the ground that the zoning provision relied on was unconstitutional and void as depriving her of property without due process of law. Judge Douglas of the King County Superior Court held the provision valid as a reasonable exercise of the police power and dismissed the action. From this Miss Miller has appealed to the State Supreme Court, where it is now pending. The legal question involved is believed to be one of first impression in this State — whether a City may, under the police power, provide for the extinguishment of a non-conforming use after such use as it existed at passage of ordinance has become economically unfeasible without substantial extension and enlargement. This is a most important feature of zoning, for if such a regulation is invalid then non-conforming uses may continue on forever and thus defeat in a large measure the purpose of zoning.

Submitted by Mr. Wilson:

Coburn v. City.

Stratton as Executor v. City.

Harvey as Administratrix v. City.

These three cases all arose out of the fact that a member of the City Employees' Retirement and Death Benefit Systems had nominated a person other than his wife as the beneficiary of the death benefit and return of accumulated contributions payable upon the death of the member. In each instance the designated beneficiary was joined as a party defendant so that the city and its Board of Administration of the Retirement and Death Benefit Systems was only a "stake-holder." The contentions of Plaintiffs were that the accumulated contributions and death benefit assessments were paid from community funds and therefore the deceased member could not lawfully give away community property by designation of a beneficiary other than his wife. The authority cited was principally

Occidental Life Ins. Co. v. Powers, 192 Wash. 475, a life insurance case. The court held that the rule of the life insurance cases was applicable to the accumulated contributions and the death benefit, and the plaintiffs and the designated beneficiaries in each case then settled the cases by division of the funds accordingly.

Woodcock et al. v. City:

This action was brought by several property owners in a proposed local improvement district for the paving of East 43rd Street, et al., to restrain the physical improvement and any other action under the ordinance ordering the improvement and creating the local improvement district. One of the contentions raised by plaintiffs was that they had not been given a hearing before the City Council as required by the statute, Rem. Rev. Stat., Section 9352, et seq. The evidence disclosed that plaintiffs had been granted a hearing before the Streets and Sewers Committee composed of five members of the City Council and a majority thereof, but had not been heard by the City Council in a formal meeting thereof. It has been the custom for many years for the City Council to refer matters calling for a public hearing to its committees. The Court (Judge Shorett) held, however, that the statute required a hearing before the City Council and that the failure to grant such hearing deprived the Council of jurisdiction to proceed with the improvement and granted the injunction. In view of the fact that the property owners were anxious that the improvement be accomplished it was decided not to appeal Judge Shorett's decision to the Supreme Court and the City Council proceeded to initiate the improvement by a new resolution and to conduct the statutory hearings before the City Council in a special meeting.

Submitted by Mr. Logan:

Hammerschmith et al. v. City:

Four lumber companies with booming grounds on the Skagit River, sued the City of Seattle for loss of logs from their booming grounds which allegedly was caused by the negligence of the city in causing a flash flood by opening of their gates at Diablo Dam in a period of excessively high waters. This matter was tried in admiralty in the District Court of the United States for the Western District of Washington, Northern Division, before the Honorable John C. Bowen, District Judge.

Libelants asserted that the city was negligent (1) in not providing a "hole" in the lake for the impounding of water during excessively rainy seasons; (2) in releasing large quantities of water over short periods of time so as to cause flash floods and (3) in failing to give libelants any advance warning or notice of the release of waters.

The trial was quite protracted involving highly complicated hydraulic and hydro-electric testimony. At the conclusion of all the evidence the court found for respondent, holding (1) that the libelant had failed to establish their case by a fair preponderance of the evidence; (2) that the city and its officers had operated their dam and the storage facilities of the lake in a manner compatible with the proper conduct of hydro-electric power production and (3) that the libelants were guilty of contributory negligence in mooring their rafts at the time and in the place under the conditions existing.

The holding of the trial court was important to the city as an adverse decision would seriously affect the operations of the Ross and Diablo Dams.

Submitted by Mr. McCullough:

During the year 1951 I disposed of 33 cases (trial and settlement). This included three slide cases. Of the total, five were settled out of court, in three of these cases the city paid nothing, the co-defendant paying the total amount. In 14 cases a judgment or verdict was for the City. In 12 of these cases judgment or verdict was for the plaintiff. Two were police court appeals in which the verdict was for the defendant. Of the total, three of them were slide cases. Two of these were tried before Judge Agnew resulting in a judgment for the plaintiff for \$350. The third slide case (*Peck v. City*) which involved a total destruction of a house located on the property valued at \$35,000, the plaintiff alleged and the city admitted that the sewer in front of the property was fractured. By using a model and sinking several test holes however, we were able to show the trial court, after eight trial days, that the proximate cause of the slide was not the water from the sewer but that it was deep underground percolating waters.

CONCLUSION

The Law Department Budget for 1951 was \$136,180 as against \$131,266 spent in 1950. The office force has remained constant at 25 members, notwithstanding a substantial increase in the work done as appears from this report. The entire staff is to be commended in this regard. Some particulars as to the work done may be emphasized as follows:

An interesting feature of 1951 was the results obtained in trial work handled by Assistant Corporation Counsel Arthur Schramm.

During 1951 he tried 17 cases involving \$418,750; and 4 cases were dismissed on demurrer or otherwise before trial involving \$182,400.

All but three of these 21 cases involving a total of \$601,150 for personal injuries and property damage were won outright. The three which were lost, involving \$47,450, resulted in judgments totaling \$15,000. Seven of the cases tried and two of the cases dismissed without trial were transit cases, all of which resulted in judgments in favor of the city.

During 1950 there were assigned to him 33 cases involving \$784,000; and in 1951, 49 cases involving \$1,772,000; total \$2,556,000. During 1951 he disposed of 35 cases involving \$821,000, leaving on hand December 31, 1951, 47 cases involving \$1,735,000.

These assignments reflect an increase in the number of personal injury actions from 56 filed in 1950 to 77 filed in 1951.

There was also in 1951 a recurrence of slide claims and litigation ably handled by Assistant Corporation Counsel McCullough.

The number of claims against the city which were disposed of also increased from 1,351 in 1950 to 1,559 in 1951. This increased work was ably handled by the Claim Division.

The number of Traffic and Police Court appeals increased from 179 filed in 1950 to 193 filed in 1951. The number of such appeals disposed of in 1950 was 175 and in 1951 was 187. These were handled by Assistant Corporation Counsel Hoard.

Respectfully submitted,

A. C. VAN SOELEN,
Corporation Counsel.

The Argus Press



Seattle