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CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1952

A. C. VAN SOELEN
Corporation Counsel

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ROBERT C. STRONG	*Law Clerk*
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JOHN F. COOPER	*Claim Agent*

Annual Report

OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1952

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, 1952.

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 1952.

	Pending Dec. 31 1951	Commenced during Year 1952	Ended during Year 1952	Pending Dec. 31 1952
Condemnation suits	11	17	13	15
Damages for personal injuries	68	79	68	79
Damages other than for personal injuries	34	36	30	40
Injunction suits	8	6	6	8
Mandamus proceedings	2	3	3	2
Miscellaneous proceedings	20	13	10	23
Public service proceedings	1	1	1	1
Sub-Total	144	155	181	168
Appeals from Municipal and Traffic Courts	165	205	209	161
Grand Total	309	360	340	329

2. *Segregation — Personal Injury Actions:*

	Number	Amount Involved
Pending December 31, 1951	68	$1,734,656.77
Commenced since January 1, 1952	79	1,673,561.87
Total	147	$3,408,218.64
Tried and concluded since January 1, 1952	68	1,410,435.44
Actions pending December 31, 1952	79	$1,997,783.20

Of these personal injury actions 68 involving $1,410,435.44 were tried or finally disposed of in 1952; 24 involving $611,735.36 were won outright; in 14 cases involving $173,672.69, the plaintiffs recovered $41,002.66. The remaining 30 cases involving $625,027.39 were settled or dismissed without trial for a total of $83,541.11.

Of the 79 personal injury actions begun during the year 1952 a large portion involving $1,206,116.60 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, 1951	34	$ 115,199.69
Commenced since January 1, 1952	36	140,301.79
	70	$ 255,501.48
Tried and concluded since December 31, 1951	30	$ 62,744.73
Pending December 31, 1952	40	$ 192,756.75

Of the total of 70 cases, involving damages other than personal injuries, 30 involving $62,744.73 were disposed of during the year 1952 of which 11 involving $44,867.49 were won outright. Nineteen cases involving $17,622.24 resulted in recoveries, in a total sum of $4,398.49.

The total expense for claims and suits involving the Transit System was $265,807.15 in 1952. This is 2.50% of the gross revenues of the System for that year, and while somewhat higher than in previous years reflects great credit on all concerned.

4. *Supreme Court*

One appeal from last year is still pending in the Supreme Court and nine new appeals were filed in 1952, four of which were completed and six still pending. Of the four completed, three won by city and one lost.

5. *Miscellaneous Cases:*

Five injunction actions were tried and won, one lost and eight are still pending. Three mandamus actions were tried and two are still pending. Ten miscellaneous cases were disposed of during the year.

Four hearings relating to dismissals of employes, etc., were participated in before the Civil Service Commission, in which the departments were sustained in three hearings and in one instance the employe was reinstated.

A number of actions were commenced for the Lighting Department for unpaid light and power bills and many past-due ac-

counts were collected as a result of 821 letters sent out in cooperation with said department. Eighty-nine garnishments were handled during 1952. Seventy-four were completed without court action. Fifteen were answered by the city and the costs collected were transmitted to the City Treasurer.

Thirty-five claims for damages to city property were forwarded by the Engineering Department to this department for collection. In 29 of them we collected $1,672.07 and forwarded the same to the City Treasurer; the others are pending in suit. We also collected and forwarded to the City Treasurer moneys collected in a number of claims for damages to City Light property during 1952.

II.

CLAIMS IN 1952

			Number	Amount Involved
Claims for damages under investigation, December 31, 1951			1720	$3,037,469.43
Claims for damages referred to this department for investigation December 31, 1951, to December 31, 1952			1560	3,029,732.28
Claims disposed as follows:	No.	Amt. Claimed		Amt. Paid
Settled	738	$1,353,937.46		$ 305,537.43
Rejected	607	1,578,617.53		
Total	1345	$2,932,554.99		
Claims pending December 31, 1952	1935			$3,134,646.72
41 of above settled claims were in suit and settled in conjunction with Claim Agent				
Amount involved				$ 620,213.68
Amount of settlements				83,325.68
Number of Seattle Transit System accident reports investigated December 31, 1951 to December 31, 1952			3,113	
Number of circulars and letters mailed in connection with investigation of foregoing claims and reports			10,004	

III.

MUNICIPAL (POLICE) COURT

During the year 1952 the City Prosecutor, Bruce MacDougall, handled a calendar of 22,274 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $159,259.70.

MUNICIPAL (TRAFFIC) COURT

In the Municipal Traffic Court for the year 1952 a calendar of 144,627 traffic cases resulted in fines and forfeitures amounting to $725,079.50. Five hundred ninety-four drivers' licenses were revoked and 1187 suspended; 66 jail sentences were imposed. Assistant Corporation Counsel C. L. Conley acted as city prosecutor in this court.

MUNICIPAL COURT APPEALS

Two hundred and nine (135 Traffic, 74 Police) were disposed of in 1952 by Assistant Corporation Counsel Charles V. Hoard. In 66 cases (56 Traffic, 10 Police) convictions or pleas of guilty were entered. In seventeen cases (11 Traffic, 6 Police) the appellants were acquitted. Five cases (2 Traffic, 3 Police) were dismissed for insufficiency of evidence, witnesses moving away, death of defendants, and defendants having been already confined to jail. One hundred and twenty-one appeals (66 Traffic, 55 Police) were abandoned by the defendants and remanded to the Traffic and Police Courts for the enforcement of the original judgments. A total of $9,752.80 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 96 written legal opinions on questions submitted by the various departments of the city government.

Also, the City Employes Retirement System requested opinions on 28 L.I.D. bond issues and 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 1952, 424 ordinances, 28 resolutions; and in addition, 82 ordinances were prepared for the settlement of claims.

During the year 1528 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $40,-221,804.44.

MEMO OF NOTEWORTHY CASES

Submitted by Mr. Wilson:

Re: *C. R. Stoor and S. S .Sampson v. City et al., and Norman Curtis v. City et al.*

The above cases which involved Civil Service examinations for Fire Captain and Police Sergeants, respectively, were consolidated for all purposes as the same question was involved in each. The City Charter (Art. XVI, Sec. 10) provides that whenever "possible" vacancies shall be filled by promotion on the basis of service credit and standing upon written competitive examinations except where tests of manual or professional skill are necessary.

In the examinations in question the examinees were given a written examination and then were called in groups of seven before a board of special examiners, given a problem and directed to discuss it among themselves, the examiners meanwhile observing and grading each individual.

Plaintiffs contended that said form of examination was illegal on the ground (1) that it was an oral examination contrary to the charter and (2) that it was not competitive inasmuch as there were no objective standards.

It was our contention that this was a test of professional skill and that objective standards alone were not required. In this we were sustained by the trial court Judge Theodore S. Turner. The case is on appeal to the Supreme Court. We are advised by the Civil Service Commission that the case is attracting wide attention all over the country as this type of examination is considered necessary in examinations for supervisory positions.

Submitted by Mr. Schramm:

Laurelon Terrace v. Seattle, 40 Wn.(2d) 883, was an action to recover property damages allegedly resulting from negligence of the city in the planning and construction of the 40th Avenue Northeast trunk sewer.

The plaintiff constructed a large apartment house project in a tract south of Sand Point Way. An unnamed stream which had its source in the vicinity of East 65th Street and 40th Avenue Northeast extended down and across the Laurelon Terrace property thence into Union Bay. It passed under several streets north of the Laurelon Terrace property through 36-inch culverts, the last such culvert before the stream entered the Laurelon property

being under Sand Point Way. In the course of the Laurelon development the tract was levelled and the stream bed was filled. However, a 15-inch pipe was installed to carry the stream flow underground through the Laurelon property.

Prior to the commencement of the 40th Northeast sewer work there were existing sewers serving the area north of Laurelon Terrace. At 40th Avenue Northeast and East 55th Street there were two manholes into which several sewers emptied. Both of these manholes had outlets into a 24-inch sewer leading to the North Trunk sewer but were so constructed that when the 24-inch sewer was carrying its capacity load the overflow was diverted into the unnamed stream. As a part of the new trunk sewer project a large overflow and diversion chamber was constructed at the intersection of 40th Avenue Northeast and East 55th Street which replaced the two overflow manholes. From this chamber the drainage was carried into the 24-inch sewer and thence into the North Trunk sewer until the 24-inch sewer was carrying to capacity, when the overflow was diverted into a ditch just below the chamber and thence into the stream.

When heavy rains fell coupled with frozen ground conditions, the 15-inch pipe under the Laurelon property was insufficient to carry the stream and it flooded their property.

The case was tried before Judge Meakim sitting with a jury. The trial lasted six days and resulted in a verdict in favor of the city. On plaintiff's motion for a new trial the court granted a new trial on the ground that it was error to submit to the jury an instruction on contributory negligence on the part of plaintiff. The city appealed and the Supreme Court reversed the order granting a new trial. The Supreme Court did not pass upon the correctness of the contributory negligence instruction but held that the city had breached no duty which it owed the plaintiff; that plaintiff could not recover in any event and that the new trial should not have been granted.

Whitney, Executor, v. Seattle, 40 Wn.(2d) 229, involved a writ of certiorari to review an order of the Superior Court of Skagit County denying the city's motion for a change of venue. This arose from a case brought in Skagit County to recover for the death of a passenger in an automobile as the result of a collision with the City Light's Skagit River Railroad speeder (as a result of this collision two men were killed and their wives seriously injured). This action involved only the action brought by the executor of one of the men who was killed.

The action was brought in Skagit County pursuant to R.C.W. 4.12.020 (Rem. Sup. 1941 Sec. 205) providing that "*in a cause arising because of a motor vehicle accident* plaintiff shall have the option of suing either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides, * * *." The action having been started in Skagit County, the city filed a motion for change of venue which was argued before the Superior Court of Skagit County and by that court denied. The city took the case to the Supreme Court by writ of certiorari, its contention being that a speeder on rails is not a motor vehicle under the motor vehicle statutes; that the motor vehicle was only incidentally involved and that this was not a motor vehicle accident within the meaning of the venue statute.

The Supreme Court, however, while refusing to supply a general definition of the term "motor vehicle accident" held that there being a collision on a public highway between a train and an automobile, this came within the terms of the venue statute and affirmed the Skagit County Court's order denying the motion for change of venue.

SUBMITTED BY MR. LOGAN:

City of Seattle v. Samis Land Company was an outgrowth of the Alaskan Way condemnation. In that proceeding the jury awarded said company damages for land taken, damage to the remainder and $58,857.00 for the removal and readjustment of a two-story building on the corner of First Avenue and Battery Street.

After judgment it became necessary for the city to clear the street area. The respondent, after notification by the city to remove the building from the property acquired by the city in said condemnation, a comparatively narrow strip, failed to do so. The city cited respondent into court on an Order to Show Cause why a Writ of Assistance should not be granted the city directing the Sheriff of King County to immediately place the city in peaceable possession of the property by requiring respondent to forthwith remove said building pursuant to said judgment. This matter was argued before Judge Clay Agnew on two occasions and the court in a memorandum decision first granted and then denied the city's petition for Writ of Assistance and held that although the city had the right to enter the premises and cut off the building and remove it from the city's property, the judgment did have the effect of compelling the respondents to remove the building; and further that there was no evidence that they were "interfering" with the city in the removal of the building from the city street.

There was no time for appeal since the contract for the improvement of the street had to be let and the matter was settled as recommended by the City Engineer, by the city purchasing the

building for an agreed price with a credit to the city for the amount of the removal costs contained in the judgment. The city thereafter used the building in place; and is improving the street by a subsurface tunnel according to plan, and is supporting the portion of the building by cantilever construction.

City v. Fender, No. 32255, Supreme Court. This is an action for mandatory injunction brought by the city in 1952 to compel Anna Fender, present fee owner of the abutting property, to remove a portion of the building from area acquired by the city in the Armory Way condemnation proceedings in 1943 for street purposes. The property was previously owned by one Denis Murphy who was awarded compensation for land taken and the sum of $11,660.00 "which sum includes the cost of readjusting or removing the improvements standing whole or in part upon said land, to or upon the part of the land remaining, together with the depreciation in the market value of said improvement by reason of said readjustment or moving." Denis Murphy satisfied the judgment in 1943 but did not readjust or move the building.

In 1944 Mrs. Fender acquired the property from Murphy by an unqualified warranty deed and was the fee owner at the time mandatory injunction was instituted by the city. Her "defense" to the action was that she acquired the property except the portion condemned by the city and that there was no "obligation" on her part to remove the portion of the building encroaching upon the city street. The matter was before Judge Jones who, following this line of reasoning, dismissed the case.

The city appealed and the matter was heard before Department No. 2 of the Supreme Court and was subsequently on rehearing heard by the court en banc. No decision has been reached up to date.

SUBMITTED BY MR. WILCOX:

Of 28 condemnation suits pending during 1952, 23 were "active," 13 for the Engineering Department, 2 for the Water Department, 5 for the Park Department and 3 for the Lighting Department. The balance were "inactive" pending the outcome of direct negotiations by the departments concerned, the receipt of more detailed plans, etc. The "active" cases involved 286 parcels of real property and approximately 700 respondents, most of whom were dealt with individually or thru their attorneys. 17 suits involving awards totaling $1,151,084.00 were completed. These suits involved 245 parcels of real property and approximately 350 respondents. The average award per parcel was $4,961.00. Each suit averaged total awards in the sum of $71,900.00. Total awards in

the largest single suit (the Lake Way Overpass) totaled $689,006.00. "Court costs" mainly appraisal and expert witness fees were paid in this case from the City Street Fund.

The averages given above for numbers of parcels and respondents will probably increase during 1953, three new condemnation suits involving 59 parcels of real property having been commenced in the first two months of 1953. So will the expense to be charged to "Court Costs." The volume of this type of litigation ordered by ordinance is getting entirely out of hand, and additional personnel and appropriations will be required to handle it during 1954 and probably before that time.

CONCLUSION

The foregoing report shows in statistical form the "amount of business transacted" by the Law Department during 1952 as required by Charter Article XXII, Section 12. However, we note that said section also contemplates a statement of the "condition" of the department and recommendations as to "legislation" deemed necessary or advisable to "improve" the service thereof.

As to these factors you are advised that the limit of production in the way of service has been reached and that we can no longer carry on the constantly increasing work required by ordinance—particularly condemnations—without additional personnel and funds. In this connection there has been included in the foregoing detailed report a statement showing that 17 condemnation suits involving awards totaling $1,151,084 were completed in 1952. Our portion of this work was done by one assistant who devoted his full time and another who devoted approximately half time. During the years 1920 to 1930 a similar amount of condemnation work per year required the full time services of two assistants and two law clerks. Also during that period "criminal" litigation required only the services of one assistant full time and another part time, including appellate work in this connection. Since then a Traffic Court has been created and last year this criminal work required the full time services of three assistants—one of whom, with some help, handled 209 police and traffic court appeals in the Superior Court.

In view of this and the tempo of condemnation work which seems to be increasing, I strongly recommend that the necessary "legislation" be enacted and appropriations made to augment the force by at least one assistant and one law clerk. These will have to be provided if the present standard of service is to be maintained, to say nothing of it being "improved."

I have during the past three years requested in my Budget Estimates such a modest increase in the number of employes in

order to carry on the increased work effectively but these requests have been turned down on the theory that it is the "policy" of the city not to increase the forces of General Fund departments. I have pointed out that employment of additional help can be financed from the Cumulative Reserve and City Street Funds in connection with condemnations payable out of said funds. This is authorized in the Engineering Department particularly. If this is not done and soon, condemnation litigation will have to be deferred as it is impossible to defer the handling of the criminal and civil litigation. I have also advised the City Council in this connection that the present force of 25 employes is away below the allowance of 25 years ago when some 31 employes were necessary to carry on considerably less work. To the best of my knowledge this is the only department of comparable magnitude where such a condition exists.

Respectfully submitted,

A. C. VAN SOELEN,
Corporation Counsel.

The Argus Press
Seattle

The City of Seattle--Legislative Department

MR. PRESIDENT:

Date Reported and Adopted .....

Your Committee on Judiciary

to which was referred the within Aunnual Report, City of Seattle Law Department, 1952,

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

the same be placed on file.

..... **Chairman**

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..... Laube **Chairman**

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