File No. #224042

CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1953

JUDICIARY

APR 5 1954 *Public Safety*

APR 12 1954 *On File*

A. C. VAN SOELEN
Corporation Counsel

#41521

The City of Seattle--Legislative Department

_____

MR. PRESIDENT:

Your Committee on Judiciary

to which was referred the within City of Seattle, Law Department, Annual Report, 1953,

Date Reported and Adopted .....

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

THE same be placed on file.

.....Chairman

.....Chairman

CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

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A. C. Van Soelen,	*Corporation Counsel*
Arthur Schramm	*Assistant Corporation Counsel*
Campbell C. McCullough	*Assistant Corporation Counsel*
Glen E. Wilson	*Assistant Corporation Counsel*
John A. Logan	*Assistant Corporation Counsel*
Charles V. Hoard	*Assistant Corporation Counsel*
Chas. L. Conley	*Assistant Corporation Counsel*
John C. Vertrees	*Assistant Corporation Counsel*
George T. McGillivray	*Assistant Corporation Counsel*
G. Grant Wilcox	*Assistant Corporation Counsel*
Charles R. Nelson	*Assistant Corporation Counsel*
Bruce MacDougall	*City Prosecutor*
A. L. Newbould	*Law Clerk*
Faye Forde	*Secretary*
John F. Cooper	*Claim Agent*

Annual Report

OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1953

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, 1953.

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 1953:

	Pending Dec. 31, 1952	Commenced in 1953	Completed in 1953	Pending Dec. 31 1953
Condemnation suits	15	8	12	11
Damages for personal injuries	79	80	80	79
Damages other than for personal injuries	40	51	49	42
Injunction suits	8	3	6	5
Mandamus proceedings	2	1	2	1
Miscellaneous proceedings	23	6	12	17
Public Service proceedings	1	1	1	1
Sub-Total	168	150	162	156
Appeals from Municipal and Traffic Courts	161	170	236	95
Grand Total	329	320	398	251

2. *Segregation — Personal Injury Actions:*

	Number	Amount Involved
Pending December 31, 1952	79	$1,997,783.20
Commenced since January 1, 1953	80	1,406,644.10
Total	159	3,404,427.30
Tried and concluded since January 1, 1953	80	1,451,704.05
Actions pending December 31, 1953	79	1,952,723.25

Of these personal injury actions 80 involving $1,451,704.05 were tried or finally disposed of in 1953; 25 involving $575,564.92 were won outright; in 33 cases involving $652,571.98 the plaintiffs recovered $158,907.81. The remaining 22 cases involving $223,567.15 were settled or dismissed without trial for a total of $24,875.00.

Of the 80 personal injury actions begun during the year 1953 a large portion involving $905,621.90 are, as usual, 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, 1952	40	$ 192,756.75
Commenced since January 1, 1953	51	116,231.96
	91	$ 308,988.71
Tried and concluded since December 31, 1952	49	97,228.29
Pending December 31, 1953	42	$ 211,760.42

Of the total of 91 cases, involving damages other than personal injuries, 49 involving $97,228.29 were disposed of during the year 1953 of which 25 involving $63,245.78 were won outright. Twenty-four cases involving $33,982.51 resulted in recoveries in a total sum of $11,775.35.

The total expense for claims and suits involving the Transit System was $300,088.70 in 1953. This is 2.80 per cent of the gross revenues of the System for that year, and while somewhat higher percentagewise than in the previous year which was 2.50 per cent, reflects great credit on all concerned.

4. *Supreme Court*

Six appeals from last year are still pending in the Supreme Court and seven new appeals were filed in 1953. Five appeals were completed during 1953 leaving eight (8) still pending. Of the five completed, three were won by the city and two lost.

5. *Miscellaneous Cases:*

Six injunction actions were tried; four won and two lost. Five are still pending. Two mandamus actions were tried and won and one is still pending. Twelve miscellaneous cases were disposed of during the year—eleven were won and one lost.

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 an employe was allowed to resign instead of being dismissed.

A number of actions were commenced for the Lighting Department for unpaid light and power bills and many past-due accounts were collected. One hundred nineteen garnishments were handled during 1953. One hundred nine were completed without court action. Ten were answered by the city and the costs collected were transmitted to the City Treasurer.

Thirty-nine claims for damages to city property were forwarded by the Engineering Department to this department for collection. We collected by suits and settlements $3,669.72 and forwarded the same to the City Treasurer; the remainder 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 1953.

II.
CLAIMS IN 1953

	Number	Amount Involved
Claims for damages under investigation, December 31, 1952	1935	$3,134,646.72
Claims for damages referred to this department for investigation December 31, 1952, to December 31, 1953	1383	3,040,956.93

Claims disposed as follows:	No.	Amt. Claimed	Amt. Paid
Settled	660	$ 798,175.49	$ 202,900.63
Rejected	803	2,035,485.32	
	1463	$2,833,660.81	

Claims pending December 31, 1953	1855	$3,937,216.70
33 of above settled claims were in suit and settled in conjunction with Claim Agent		
Amount involved		$ 448,826.77
Amount of settlements		62,738.00
Number of Seattle Transit System accident reports investigated December 31, 1952, to December 31, 1953	2,876	
Number of circulars and letters mailed in connection with investigation of foregoing claims and reports	9,862	

III.
MUNICIPAL (POLICE) COURT

During the year 1953 the City Prosecutor, Bruce MacDougall, handled a calendar of 20,244 cases (a monthly average of 1,682) other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $157,582.20 (a monthly average of $13,075.00).

MUNICIPAL (TRAFFIC) COURT

In the Municipal Traffic Court for the year 1953 a calendar of 216,688 traffic cases resulted in fines and forfeitures amounting to $985,033.00. Seven Hundred Forty-three drivers' licenses were revoked and 1390 suspended; 121 jail sentences were imposed. Assistant Corporation Counsel C. L. Conley acted as city prosecutor in this court.

MUNICIPAL COURT APPEALS

Two Hundred Thirty-six (128 Traffic, 108 Police) were disposed of in 1953, being principally handled by Assistant Corporation Counsel Charles V. Hoard. In 59 cases (41 Traffic, 18 Police) convictions or pleas of guilty were entered. In sixteen cases (11 Traffic, 5 Police) the appellants were acquitted. Two cases (1 Traffic, 1 Police) were dismissed for insufficiency of evidence, witnesses moving away or other causes. One Hundred Fifty-nine appeals (76 Traffic, 83 Police) were abandoned by the defendants and remanded to the Traffic and Police Courts for the enforcements of the original judgments. A total of $5,246.00 in fines, forfeitures and costs were collected by this department in connection with these appeals 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 many conferences with city officials concerning municipal affairs, of which no formal record is kept, this department rendered 101 written legal opinions on questions submitted by the various departments of the city government.

Also, the City Employes Retirement System requested opinions on 27 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 1953, 370 ordinances, 24 resolutions; and in addition, 90 ordinances were prepared for the settlement of claims.

During the year 1570 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $35,781,249.39.

MEMORANDA OF NOTEWORTHY CASES

Seattle v. Fender, 42 Wn.(2d) 213: This was an action brought by the city for mandatory injunction to compel Anna Fender, as fee owner of certain lots in Block 34 of A. A. Denny's 6th Addition, to remove a portion of a building standing thereon from the public street area acquired by the city as a part of the Armory Way condemnation proceedings under Ordinance 66339, Cause 292884, in which Judgment on the Verdicts was entered June 14, 1939. Said judgment included the cost of cutting off and adjusting the building to the remainder of the property not taken. Condemnee respondent —one Dennis Murphy, satisfied the judgment and drew down the money but never adjusted the building.

The city did not construct Armory Way as proposed and presumably for that reason never took any steps to clear the area condemned until this action was brought in 1952. Dennis Murphy on September 20, 1944 sold the property to Anna Fender, excepting from the conveyance the portion acquired by the city. Mrs. Fender at all times thereafter occupied the entire building and rented out apartments therein.

In 1952 the city commenced this action to enforce its property rights acquired in said condemnation and to clear the street area so acquired, which is obstructed by a portion of the building. Such action was taken at the request of the City Engineer because the presence of the building — particularly the portion thereof which stands on the street property, is so close to the Alaskan Way Viaduct as to constitute a "public nuisance." The trial court held that Mrs. Fender had no obligation to remove the building. The city appealed and the Supreme Court affirmed the judgment under the following rather curious reasoning:

The court said among other things, "If Mrs. Fender owns the entire building she is maintaining a public nuisance in that a portion of the building is encroaching upon a street." This of course was our theory of the case but the court went on and concluded that "the record is devoid of any evidence that Mrs. Fender purchased that portion of the building situated on the land condemned by the city, or that she is claiming such portion. The deed from Dennis Murphy conveyed only to the condemnation line. In a proper proceeding she could be enjoined from occupying the land owned by the city, if such occupancy encroaches upon a public street, thereby creating a nuisance. But this is not such a case."

By the above language the court suggests that the city might have or may still enjoin the "occupancy" of the portion of the building in question. Presumably we should appreciate the court's suggestion that the city has some remedy in the premises but we would regard it as a waste of time and money to pursue such a suggestion because such portion of the building would still presumably remain where it is with "occupancy" enjoined. The result is that the whole building is still there.

Perhaps the moral of this case is that the city should more speedily proceed to enforce the rights that it acquires in a condemnation proceeding as there is no doubt in our mind that the fact that the city tolerated this condition for some 12 or 13 years and had as a practical matter abandoned the Armory Way project for which this property right was acquired, influenced both the trial and the Supreme Court. The decision is also a headache for the title companies inasmuch as the court has held in effect that Mrs. Fender owns only a portion of the building, which is a unit, and subsequent purchasers from Mrs. Fender will presumably take her title subject to the same weakness.

Another interesting case involves the city's petition to take and damage some 37.5 acres of land in Moore's 5 Acre Tracts for a site for electrical generating and distribution facilities, including a steam plant and a substation, for the municipal light and power system as contemplated by Ordinance 82100.

In this case the trial court (Judge Hodson) denied the city's motion for an adjudication of public use and dismissed the case on the ground that the city did not plead and prove a "plan and system ordinance" under RCW 80.40.070. The city contended that it had complied in toto with the requirements RCW 8.12.010 *et seq.*, covering condemnations by the city and that RCW 80.40.070, which relates to improvements of municipally owned utilities, has nothing to do with condemnations. The city sought writ of review by certiorari, citing *State ex rel. N.W. Elec. Co. v. Superior Court,* 29 Wn.(2d) 694, and *State ex rel. Grays Harbor L. Co. v. Superior Court,* 100 Wash. 485.

The Supreme Court refused to review the matter on the merits, holding that the city had a right of appeal which was exclusive, citing *Puyallup v. Lacey,* 43 Wash. 110. We contended that the Puyallup case was overruled *sub silentio* by the above later cases. The court, however, granted the motion of certain respondents to dismiss the writ of review.

This is another curious decision, the result of which apparently is that the condemnee respondents in a condemnation case must proceed by *certiorari* to review an order granting an adjudication

of public use; but that the condemnor must proceed by appeal to review an order denying an adjudication of public use — all under the same statute, which is RCW 8.12.110 as interpreted by the above cases.

The effect of Judge Hodson's decision and the Supreme Court's refusal to review the same has been to delay the acquisition by condemnation of the site in question, pending the enactment of new ordinances.

Submitted by MR. SCHRAMM:

Adkisson v. Seattle, Roxbury Homes, Inc. and Glendale Construction Co., 42 Wn.(2d) 676:

This was an action seeking to recover $275,000.00 for the deaths of two men killed on West Roxbury Street when their automobile ran into and upon a pile of dirt placed in the street in connection with a private contract for the construction of watermains. The City by ordinance had granted to Roxbury Homes, Inc., the right to install watermains for a large tract which Roxbury was developing in the south end of the city. Roxbury in turn let a contract to Glendale Construction Company for the work.

In the performance of the work Glendale dug a trench and piled the excavated dirt along the south side of the trench, the trench and dirt pile occupying the north half of Roxbury Street. Barricades and lights were placed to protect the work. About 12 o'clock on a Saturday night Ralph Adkisson and Frederick Wagner, traveling west on Roxbury in a car driven by Adkisson, ran through the barrier, scattering lights, and ran up on to the dirt pile, traveled along the dirt pile 32 feet, slipped off the dirt pile on to the paved highway and came in contact with an eastbound car. The collision severed the body of the Adkisson car from the chassis and the chassis continued westward another 14 feet. Adkisson and Wagner were both killed.

Plaintiff sued on alternative causes of action alleging in one cause of action negligence on the part of the defendants and in a second cause of action alleging wanton misconduct on the part of defendants, both causes of action being based upon insufficiency of lights, barriers and lack of warning signs.

The case went to trial before Judge Malcolm Douglas and continued over a period of 12 court days. At the close of plaintiff's testimony the court dismissed the causes of action based on wanton misconduct and at the close of all testimony submitted to the jury the causes of action based on negligence. The jury returned a verdict in favor of all defendants finding in answer to special interrogatories submitted by the court: (1) that defendants were

guilty of negligence; (2) that defendants' negligence was not a proximate cause of the accident; (3) that Adkisson was guilty of contributory negligence and (4) that Adkisson's negligence was the sole proximate cause of the accident.

On appeal the Supreme Court in 42 Wn.(2d) 676 affirmed the verdict based on negligence but held that the trial court should have submitted the cause of action based on wanton misconduct, stating that the failure to have any lights on the work would have been wanton misconduct but the insufficiency of the lights alone would not constitute wanton misconduct. However, the court held that the question of the sufficiency of the lights taken with all of the surrounding circumstances, namely, the topography, atmospheric conditions, heavily traveled highway, etc., made a jury question as to whether the defendants were guilty of wanton misconduct. The case was sent back for a retrial upon that issue alone but has never been brought on for trial.

Kilbourn v. Seattle, 143 Wash. Dec. 345:

This case involves an action to recover damages to a small child injured in Seward Park when a rotted branch of a tree fell on the child. The city defended on the theory that the operation of a park is a governmental function and that the city is not liable for the negligence of its agents and servants in the performance of such a function. Plaintiff attempted to induce the court to overrule the governmental immunity rule and also contended that the situation constituted a nuisance which would render the city liable in spite of governmental immunity. The trial court submitted the case to the jury on the theory of nuisance. The jury returned a verdict in favor of the plaintiff and the trial court granted the city's motion for judgment notwithstanding the verdict. Plaintiff appealed and the Supreme Court after calling the case back for a rehearing *en banc* on its own motion affirmed the trial court, reaffirmed the governmental immunity rule, and held that the condition in question did not constitute a nuisance.

Bradshaw v. Seattle and Northern Pacific Railway Company, 143 Wash. Dec. 705:

This was an action to recover $176,000.00 for the death of one passenger in an automobile and injury to her son and to the driver of the car, arising out of a collision between the automobile and an N. P. switch engine crossing West Marginal Way on a spur track in the vicinity of Iowa Avenue. The negligence charged against the city was in failing to post a sign warning of the spur track and in permitting shrubbery to obscure the approach of the switch engine.

Plaintiff's main contention was that this was an inherently dangerous crossing; that the statute which required the local authorities to maintain such signs to direct, warn and guide traffic "as may be necessary" was a legislative command which took the case out of the rule of governmental immunity.

This case, also tried in Judge Douglas' court, resulted in a verdict in favor of the plaintiff against both defendants in the sum of $38,000.00.

Both defendants appealed. The case was argued before a department of the Supreme Court and later on the court's motion was called back for reargument *en banc* on the city's appeal only. Reargument before the entire court was had and the court held that the city was not liable; that the statute in question was too indefinite to constitute a legislative command; that traffic regulation is a governmental function; that the city was not liable for negligence in the performance of that function and is not liable for permitting shrubbery to obscure the approach to a highway and dismissed the city from the case.

Submitted by MR. NELSON:

The case of *City v. Lough* is an action where the City seeks to recover from the defendant damages resulting in an intersection collision between the defendant and Fire Department emergency equipment. At the time of the accident the Fire Department's vehicle was answering an emergency call and had its red light blinking and its siren sounding.

The Superior Court, although finding that the collision was not the result of any negligence on the part of the City, entered judgment for the defendant. This case is now being appealed to the State Supreme Court of the State.

SUMMARY

We find it difficult to make the foregoing detailed report, which is almost entirely statistical in nature, more informative and interesting; but we will attempt to do this by way of summary as follows:

Said report shows, among other things, the completion of an even dozen condemnation suits with 171 awards in favor of property owners aggregating $1,104,585 for the taking and damaging of private property for public use. This work includes filing and completing suit with incidental appraisals, conferences and settlements in the great majority of cases, leaving relatively few contested cases. This work, together with the detail involved, took

the full time of one assistant and more than half the time of another, plus considerable secretarial and law clerk service.

The most important and involved of the condemnation cases was the Lake Way Overpass across Rainier Avenue with approaches. Many unique problems of taking and damaging arose; and this office was under constant pressure to complete the condemnation before the summer of 1953 so that construction work might proceed, and this was done.

The condemnation for Miller Playfield extension was another important case, which was followed by a lengthy hearing on the condemnation assessment roll. This roll, prepared by the Board of Eminent Domain Commissioners, affected hundreds of pieces of property in the Capitol Hill and adjacent districts by small assessments on each lot for "special benefits." The court confirmed the assessment roll after modifying the same in material respects which involved the elimination of many "fringe" areas deemed by the court not specially benefited; and the city paid the difference.

Then there are the personal injury cases—80 of which were disposed of in 1953. Many of these were worthy cases in which settlements prior to the trial were impossible or we thought inadvisable. These 80 cases involved claims aggregating $1,400,000 for "pain and suffering," medical and hospital expenses, etc. In 25 of these cases the jury and the court agreed with us that there was no merit in them, but whether "won" by the city as these were, or by the plaintiffs as 33 of them were, they involved considerable expense by way of expert witness fees for doctors, X-ray reports, etc.; and this is true also of the 22 cases which were settled. All involved the full time work and skill of two experienced assistants.

Fifty cases for property damage disposed of in 1953 offered much less of a problem. 25 of them were won outright. The equivalent of the full time of one assistant was involved however and considerable expense for investigation and expert testimony of engineers, appraisers, etc., was also involved.

Under the heading "Miscellaneous cases" is involved the work of two or three assistants part time; and the "collection" work referred to, which was principally for the Engineering Department, took much time and effort, which is of questionable justification.

The work of the two Municipal Courts—Police and Traffic, has grown tremendously in late years and involves the full time services of two City Prosecutors. Appeals from those courts by defendants continue to increase even though the figures show that this is a losing game for the appellants. The 236 appeals disposed of in 1953 was a record and in only 16 cases did the appellants prevail; and in only 2 cases was the city forced to dismiss. Convic-

tions and remands still occur in the more than 90% of these appeals. We do think, however, that the Superior Court Judges should in more instances than they do, follow our recommendations for increased penalties in cases of conviction on appeal. This type of work takes the full time of one assistant and about half the time of another.

The 101 written opinions in 1953 involved much of the time of several assistants and also much of my own time. Much litigation was perhaps avoided thereby, however, and this advisory work is most important. The number of ordinances drawn by this department continues to grow—some 460 ordinances being prepared in 1953. There is also referred to in the report miscellaneous legal work, such as approval as to form of millions of dollars of surety bonds, mainly incidental to public improvement work and city purchases; opinions and service to the Firemen's and Police Pension Boards, Civil Service Commission, and City Employees' Retirement System; also important work—advisory and otherwise—for City Light, Seattle Transit System and the Board of Public Works.

Conferences with the garbage contractor—City Sanitary Service Co., and consideration of claims filed by them in conjunction with the City Engineer; and preparation for the defense of suit by said company occupied much time in 1953.

Proper recognition of the excellent work of the Claim Division is deserved and the volume of work done is apparent from the figures contained in the foregoing report. There is also to be considered the responsibility and judgment which must be exercised by these members of the staff—particularly the Claim Agent, in recommending the rejection or settlement of nearly 1500 claims in a single year; and the only way in which the city can be successfully defended in law suits arising out of such claims is that fair settlements in worthy cases be worked out and that the city retain a reputation for fair dealing in this respect. We think these objectives have been attained.

CONCLUSION

The problem of sufficient personnel and adequate salaries to handle the volume of legal and related work of this department referred to in the 1952 report has been to a considerable extent solved by the action of the City Council in the 1954 Budget of the Law Department based on my recommendations, which were followed—particularly as to personnel. For this I express my appreciation.

The department in 1953 suffered two serious losses in personnel by death. J. Ambler Newton, Chief Assistant, who had been with

the department some 35 years, passed away early in 1953. Arthur Schramm was advanced to succeed him. Later in the year, John A. Homer, with the department since 1930, also passed away. Charles V. Hoard was advanced to succeed Mr. Homer. The resulting vacancies were filled by the appointment of John C. Vertrees, former Deputy Prosecuting Attorney, and the advancement of Charles R. Nelson from Law Clerk. A. L. Newbould, a graduate of the University of Washington Law School, class of 1953, was appointed to succeed Mr. Nelson.

The Claim Division also suffered a loss in 1953 by the retirement of Ten Million, employed in city claim work for some 35 years. Douglas McClinton was advanced to succeed Mr. Million. Also in 1953, John J. Hoban, Senior Claims Investigator and Junior Adjuster was, at the request of Mayor Pomeroy and the City Council, transferred first to part time and later to full time work as Coordinator of the Vehicle Safety Committee of which the Mayor is Chairman. Mr. Hoban is still nominally attached to this department and has filed a separate report of the work of the Vehicle Safety Committee in 1953. Said report shows effective results, and all concerned are to be commended in this connection; and Mr. Hoban is especially to be commended for the initiative and ability displayed by him in this connection.

The office force as augmented in 1953 by the appointment and advancement of younger men may in time be an even more effective organization than before. In any event the traditions of the office are being carried on by a well balanced force, to the members of which great credit is due.

Respectfully submitted,

A. C. VAN SOELEN,
Corporation Counsel.

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Seattle