CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1954

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GEORGE H. HOLT	*Law Clerk*
FAYE FORDE	*Secretary*
JOHN F. COOPER	*Claim Agent*

Annual Report

OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1954

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, 1954.

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 Municipal, Superior, Federal and Appellate courts during the year 1954.

	Pending Dec. 31 1953	Commenced During Year 1954	Ended During Year 1954	Pending Dec. 31 1954
Condemnation suits	11	13	14	10
Damages for personal injuries	79	83	70	92
Damages other than for personal injuries	42	46	36	52
Injunction suits	5	5	5	5
Mandamus proceedings	1	5	2	4
Miscellaneous proceedings	17	23	16	24
Public Service proceedings	1	0	1	0
Sub-Total	156	175	144	187
Appeals from Municipal and Traffic Courts	95	237	150	182
Grand Total	251	412	294	369

2. *Segregation — Personal Injury Actions:*

	Number	Amount Involved
Pending December 31, 1953	79	$1,952,723.25
Commenced since January 1, 1954	83	2,387,209.69
Total	162	4,339,932.94
Tried and concluded since January 1, 1954	70	1,723,922.56
Actions pending December 31, 1954	92	2,616,010.38

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Of these personal injury actions 70 involving $1,723,922.56 were tried or finally disposed of in 1954; 19 involving $463,455.77 were won outright; in 24 cases involving $761,209.75, the plaintiffs recovered $221,994.48. The remaining 27 cases involving $499,257.04 were settled or dismissed without trial for a total of $116,150.00.

Of the 83 personal injury actions begun during the year 1954 a large portion involving $1,160,122.81 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, 1953	42	$ 211,760.42
Commenced since January 1, 1954	46	227,604.38
	88	$ 439,364.80
Tried and concluded since December 31, 1953	36	74,922.40
Pending December 31, 1954	52	$ 364,442.40

Of the total of 88 cases, involving damages other than personal injuries, 36 involving $74,922.40 were disposed of during the year 1954 of which 21 involving $40,810.80 were won outright. In seven cases involving $23,143.80 the plaintiffs recovered $4,885.00. The remaining eight cases involving $10,967.80 were settled or dismissed without trial for a total of $4,713.98.

The total expense for claims and suits involving the Transit System was $296,517.73 in 1954. This is 2.89% of the gross revenues of the System for that year, and which is slightly higher in percentage than the previous year which was 2.80%, but the amount paid was $300,088.70. This reflects great credit on all concerned.

4. *Supreme Court*

There were eight cases pending in the Supreme Court December 31, 1953. One new case was filed in 1954. Eight cases were decided in 1954. The City won 4 and lost 4. One case is still pending.

5. *Miscellaneous Cases:*

Five injunction actions were tried; four won and one lost. Two mandamus actions were tried and won. Sixteen miscellaneous cases were disposed of during the year—fourteen won by the City and two lost. Six of the fourteen cases won were false arrest actions, brought against the Chief of Police and police officers and claiming $112,500.00. Another case of the fourteen won was a so-called "conspiracy" action brought against members of the City Council claiming $50,000.00 which was won.

One hearing relating to dismissals of employes was participated in before the Civil Service Commission, in which the department was sustained.

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 and eighty-nine garnishments were handled during 1954. One hundred and seventy-five were completed without court action. Fourteen were answered by the city and the costs collected were transmitted to the City Treasurer.

Thirteen claims for damages to city property were forwarded by the Engineering Department to this department for collection. By suits and settlements, we have collected some of these, and forwarded the collections to the City Treasurer. We also collected and forwarded to the City Treasurer moneys collected in a number of claims for damages to City Light property during 1954.

II.
CLAIMS IN 1954

	Number	Amount Involved
Claims for damages under investigation December 31, 1953	1855	$3,937,216.70
Claims for damages referred to this department for investigation December 31, 1953, to December 31, 1954	1391	4,919,539.23

Claims disposed as follows:	No.	Amt. Claimed	Amt. Paid
Settled	744	$1,111,313.56	$ 256,375.83
Rejected	601	3,465,872.81	
	1345	4,577,186,37	
Claims pending December 31, 1954	1901		$4,279,569.56
31 of above settled claims were in suit and settled in conjunction with Claim Agent.			
Amount Involved			$ 511,637.71
Amount of Settlements			110,783.00
Number of Seattle Transit System accident reports investigated December 31, 1953, to December 31, 1954	2,717		
Number of circulars and letters mailed in connection with investigation of foregoing claims and reports	10,109		

III.
MUNICIPAL (POLICE) COURT

During the year 1954 the City Prosecutor, Bruce MacDougall, handled a docket of 18,014 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $133,089.70.

MUNICIPAL (TRAFFIC) COURT

In the Municipal Traffic Court for the year 1954 a docket of 264,250 traffic cases resulted in fines and forfeitures amounting to $1,204,575.50. Nine hundred and ten drivers' licenses were revoked and 1597 suspended; 204 jail sentences were imposed. Assistant Corporation Counsel C. L. Conley acted as city prosecutor in this court.

MUNICIPAL COURT APPEALS

One hundred and fifty (91 Traffic, 59 Police) were disposed of in 1954 being principally handled by Assistant Corporation Counsel Charles R. Nelson. In 53 cases (43 Traffic, 10 Police) convictions or pleas of guilty were entered. In eighteen cases (9 Traffic, 9 Police) the appellants were acquitted. Nine cases (3 Traffic, 6 Police) were dismissed for insufficiency of evidence, witnesses moving away or other causes. Seventy appeals (36 Traffic, 34 Police) were abandoned by the defendants and remanded to the Traffic and Police Courts for the enforcement of the original judgments. A total of $4,438.50 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 processes, 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 112 written legal opinions on questions submitted by the various departments of the city government.

Also, the City Employes Retirement System requested opinions on 21 L.I.D. bond issues and opinions were rendered.

V.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1954 390 ordinances 27 resolutions; and in addition, 84 ordinances for the settlement of claims.

1619 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $67,794,514.00.

Submitted by MR. SCHRAMM and MR. VERTREES—*City Sanitary Service Company v. City,* Superior Court No. 460433.

This case involved the construction of the garbage collection contract. The contractor contended that he was only required to collect garbage from business establishments and apartments when the cans were placed on the street or in the alley. The City Engineer had required him to collect all garbage regardless of placement. The contractor did so and brought this action to collect $1,200,000.00 as compensation for additional services for such collections during the first seventeen months of the contract. The City contended that this, aside from apartment houses, was "extra work" payable on that basis under the terms of the contract. The City offered $62,000.00 in settlement of the contractor's claim for the first year of the contract disregarding apartment house collections as required by the contract.

The case was tried before Honorable Lloyd Shorett, Judge of the Superior Court, over a period of three weeks. The trial court held that the contract provision for placement of cans on street or alley applied only to business establishments and not to apartments; that the contractor's work in picking up nonconforming cans was "additional work" rather than "extra work" and not required under the contract; and fixed the amount of his recovery for the seventeen months period at $101,000.00, which was paid and the controversy subsequently settled as to the remaining term of the contract.

Perrigo v. City—MR. SCHRAMM and MR. LOGAN.

This action arose out of the Montlake Bridge operation when one leaf of the bridge was raised a short distance without warning of any kind and the Perrigo car struck the edge of the leaf resulting in the death of Leonard Perrigo, serious injuries to his wife, Joyce Perrigo, and injuries to their eighteen month old son, Mark Perrigo. Action was brought for $256,850.00. Efforts to settle were fruitless and the City admitted liability and the case was tried solely on the question of damages, resulting in a total verdict and judgment of $118,385.00 which was paid out of the City Street Fund. The Automobile Club of Washington has since brought a suit questioning the constitutionality of such payment from said fund.

Fleming v. City—MR. SCHRAMM.

This action arose out of the death of Leo P. Fleming who boarded a transit bus in an intoxicated condition, failed to pay his fare and when the operator attempted to compel Fleming to pay fare, Fleming dropped some money on the floor of the bus and in stoop-

ing to pick it up and again in straightening up bumped into the driver who pushed him away. Fleming staggered back seven or eight feet to the fare box, struck the fare box or supporting rail, turned and fell out of the coach backwards striking his head on the pavement and receiving injuries from which he died a few hours later.

The case was first tried in Superior Court before the Honorable Frank James and resulted in a verdict for plaintiff in the sum of $11,000.00. Upon the City's motion the court granted a new trial because of errors in instructions.

The second trial of the case in Superior Court was before Honorable Henry W. Cramer and resulted in a verdict in the sum of $55,000.00 which the court on motion for new trial reduced to $37,500.00. On appeal the Supreme Court held that the court erred in excluding eleven transcripts of police court convictions for drunkenness and reversed the case sending it back for a trial solely on the question of damages, holding that the City's liability was established.

The third trial of this case in Superior Court was before Honorable Malcolm Douglas resulting in a verdict in the sum of $19,580.00 which sum was paid.

By MR. MOREN:

1. *Johannes v. City of Seattle, et al.*

Plaintiffs, husband and wife, brought suit against the City of Seattle and its bus driver as a result of an auto-bus collision at 7th Avenue and Westlake Avenue, in Seattle. As a result of the automatic semaphore controlling this intersection having become stuck in a green position for traffic traveling in the direction the auto was proceeding, a policeman started to direct the flow of traffic. Plaintiffs testified they proceeded into the intersection with the green light, following several cars ahead of them, when the left rear portion of the auto was struck by the front of the bus. The defendants' testimony indicated that the bus entered the intersection pursuant to signals by the police officer, when the auto cut in front of the bus. Plaintiffs' auto repair bill was $419.39; and plaintiff wife, passenger in the auto, claimed $5,000.00 damages for permanent back injuries as a result of the collision. A jury brought in a verdict for defendants.

2. *City v Nelson.*

Defendant appealed from a conviction in traffic court of driving while under the influence of liquor and reckless driving. Defendant, representing himself, testified that he is a machinist and is working on his master's degree in literature at the University of Washingtin. His explanation for striking an auto parked at the

curb was that he was unacquainted with the automatic gear shift on the auto he was borrowing, with the result that instead of getting the auto into reverse gear, while attempting to park it, he got it into low gear, ramming the parked auto forward over the curb and a distance of 30 feet beyond. By way of illustrating the frailty of the human mind, with the inference that the officer who conducted the Harger drunkometer test erred in his calculations, he had a fellow machinist testify as to errors he made in his trade with respect to minute calculations. The Court and jury were amused at the perserverance if not imagination of defendant, and justice prevailed to the extent of defendant's being found guilty of reckless driving; the jury found defendant not guilty of drunken driving, however.

3. *Hibbard v. City.*

Plaintiff brought suit to recover damages to his auto sustained as a result of an auto-bus collision at an intersection at around 4:15 o'clock AM. Liability turned on the question of who had the green light. Interestingly enough, plaintiff was a Greyhound bus driver, returning home from work at the time of the accident, and the passenger in his car likewise was a fellow Greyhound bus driver. The only two people on the city bus were the bus driver and a student driver. The witnesses therefore involved two Greyhound drivers against two city bus drivers. When plaintiff was impeached on his denial of ever having been convicted of a crime, Judge Todd discredited plaintiff's testimony that he had the green light and found for defendant on defendant's counter-claim in the amount of $106.09.

4. *City v Marsh et al.*

Occupying the unusual position of plaintiff in a civil action, the City of Seattle brought suit against a contractor in the amount of $2282.06 for damages caused to a city street by virtue of the contractor's laying a sewer pipe, the City joining as co-defendant the company who issued a performance bond. The defendant contractor counterclaimed against the City in the amount of about $1800.00, claiming the City had required him to restore the street to a better condition than it was prior to his commencement of the work. The bonding company interposed a general denial to plaintiff's complaint. When it was discovered quite by chance several days prior to trial that the defendant contractor was in involuntary receivership at the time the action commenced, plaintiff dismissed the action as to the contractor at the time of trial, since the receiver is an indispensable party to such proceeding, plaintiff thereby eliminating the contractor's counterclaim. When the bonding company's motion to dismiss the action was denied, since the performance

bond made said company severally liable, the bonding company moved to rejoin the contractor so as to utilize the defenses and counterclaim raised by the contractor. After much conflicting testimony, the Court issued findings in favor of the plaintiff city.

5. *Pascuzzi v. City.*

Plaintiff sought to recover damages in the amount of $1123.26 as a result of his basement and garage being flooded by water to a depth of 5 feet as a result of a watermain break. Plaintiff relied on the doctrine of *res ipsa loquitur.* To overcome such presumption of negligence, defendant introduced evidence showing that the 51½-inch inside diameter creosoted wood stave pipe which broke without warning was of standard construction and design; that all practical means of inspecting said pipe daily were employed, that the break could not have been anticipated, since it was caused by an unusual soil condition which corroded the encircling steel bands which supported the pipe. Plaintiff being unable to rebut any of defendant's testimony showing complete absence of negligence, the Court entered findings in favor of defendant city.

Report of Municipal Court Cases on Appeal by CHARLES R. NELSON:

In those cases appealed to the Superior Court from the Municipal Traffic and Police Courts, interesting questions of fact and law often arise.

(1) In the case of *City of Seattle v. Harley W. Heath,* Superior Court No. 28121, the defendant was convicted in Traffic Court of drunk driving, reckless driving and hit-run driving. Among other penalties, he was given 30 days in the City Jail, suspended.

In a jury trial in the Superior Court before Honorable Hugh Todd, the defendant represented himself *pro se.* The defendant called only one witness and did not testify on his own behalf. His one and only witness related that the defendant and he had spent the entire day prior to the accident in question going from tavern to tavern in Renton, Kent and Seattle and that they had consumed large quantities of beer in each tavern. The witness further testified that in the evening of the day in question after he and the defendant had left the tavern on 7th Avenue in Seattle that the defendant while driving his own automobile had sideswiped a parked car but did not stop; that the defendant, when he observed someone following him, turned off his headlights and drove in such manner as to evade his pursuer but was unable to do so. After this witness's testimony, the defendant rested his case. The jury found the defendant guilty as charged in the complaint and the defendant was sentenced to serve 30 days in the City Jail as well as pay other penalties as provided by law.

The interesting question which occurs to one concerning this case is what defense did the defendant have to the charges made against him and why they were not presented if they were available. This question is particularly interesting in view of the fact that the defendant maintains that he is a graduate of Yale University.

(2) The case of *City of Seattle v. Michael Kapral,* Superior Court No. 28062, raised an interesting question of law. In that case the defendant allegedly committed a misdemeanor in the presence of the police officers and was arrested at the time of the alleged offense. Subsequent thereto a complaint against the defendant was made by one of the police officers and this complaint was verified by the Clerk of the Municipal Police Court. Following the conviction of the defendant in Police Court, the defendant in Superior Court attacked the complaint on the ground that it had not been verified before a Police Judge as required by law. The legal question thus raised was argued in the Superior Court before the Honorable William J. Wilkins on February 3, 1954. At that time the court granted defendant's motion to dismiss the complaint and the plaintiff, City of Seattle, thereafter moved for reconsideration by the court. The court heard argument on the plaintiff's motion to reconsider on February 19, 1954. At the conclusion of this argument, the court requested written briefs be submitted by the parties. Plaintiff submitted its written brief which was answered by the defendant and the court requested that argument again be had at which time the court would render its decision.

The question involved was a highly technical one and it has not yet been passed upon by our Supreme Court. It has, however, been passed upon in other jurisdictions. The law, in those jurisdictions which have passed upon the question, is that a criminal complaint which is used as a basis for the *issuing of a warrant of arrest must be verified before a judge or magistrate.* On the other hand, when a defendant has been arrested for allegedly committing a misdemeanor, the criminal complaint which is served against him for certain alleged offenses may be verified by the Clerk of the Municipal Police Court.

After having heard argument on this question three different times and after having read the written briefs submitted by the parties, Judge Wilkins ruled that the complaint in the instant case was sufficient and defendant's motion to dismiss the complaint was denied.

Submitted by MR. WILCOX:

During 1954 nine condemnation suits were concluded and 93 awards in the total sum of $789,568.00 made by juries or the court where property owners elected to waive their right to jury trial.

Most of the spring was devoted to the acquisition of property necessary for the First Avenue South bridge and approaches. These proceedings, involving three consolidated cases, were filed in September, 1953, and concluded in March, 1954, a relatively short pendency for so large a proceeding, made possible by the advanced stage of the engineering planning before the matter was submitted to us for condemnation. Several unique features were involved, including the relocation of a railroad and the substitution of access roadways to minimize damages to parcels deprived of access by the bridge structures themselves. A related proceeding involved the widening of those portions of Highland Park Way which are to be used as part of the approach system. The awards were paid by the State out of Motor Vehicle funds in the 1st Ave. So. proceeding.

Another unusual proceeding involved the acquisition of the property necessary to construct a new entrance to a pedestrian underpass already existing at North 79th Street and Aurora Avenue, the original entrance from the east having been closed when the driving surface of Aurora Avenue was widened.

It is interesting to note that the schedule of condemnation proceedings is subject to the availability of courts and jury terms so that frequently a case prepared for disposition late one year must await a trial date in the following year. At the end of 1954, five cases were set for trial during January and February of 1955. These cases involved about 100 parcels and $381,537.00.

Also, during the year 1954 condemnation proceedings were renewed for the acquisition of the site for a thermal-electric generating plant and receiving substation in the Duwamish Valley industrial area, the Supreme Court, in effect, having sustained the dismissal of an earlier proceeding brought under Ordinance No. 82100 for technical reasons. A new ordinance, No. 82892, superseding Ordinance No. 82100, was enacted, together with a new plan or system ordinance, No. 82835, and a new cause (No. 469558) filed pursuant to the new ordinance. Acting upon the authority provided by these later ordinances, all but one parcel have been acquired by condemnation or by direct negotiation by the Lighting Department. The remaining parcel is to be acquired by said Department by negotiation.

SUMMARY AND CONCLUSION

The year 1954 was another busy one, as shown in the foregoing report. Condemnation awards aggregated $789,000 plus, a large proportion of which were for 1st Avenue South Bridge approach rights which awards were paid by the State of Washington from Motor Vehicle funds. The City's Engineering and Law Department costs were paid by the city and in the main from the City Street Fund, also a motor vehicle fund.

A large tract in the Duwamish River Valley was acquired by condemnation for the Lighting Department for a thermal-electric generating plant and receiving substation.

Litigation with the garbage contractor hereinbefore referred to over extra or additional work, occupied much time and attention on the part of both the Engineering and Law Departments and resulted in a judgment clarifying the garbage contract as to compensation for certain extra or additional work, which judgment was satisfactory to the city and was paid. The City Council and the garbage contractor thereafter arrived at a settlement in these respects covering the remaining term of the contract which is embodied in Ordinance No. 83256.

Annexation problems also occupied much time of the Engineering and Law Departments—particularly conferences and the drafting of agreements with sewer and water districts. We refer particularly to the contract with the Lake City Sewer District executed under authority of Ordinance No. 83224, Comptroller's File No. 225188.

Many alleged false arrests and unlawful imprisonment cases continued to be a time consuming chore, as did appeals from the Municipal Traffic (91) and Police Courts (59). 70 of such appeals were subsequently abandoned by the appellants and the cases remanded. 9 Police and 9 Traffic Court appellants were acquitted on appeal.

The amount of the verdict in the Perrigo case hereinbefore referred to and which involved the operation of the Montlake Bridge span, while well within the evidence, points to the need for the city to take measures to protect itself from such liability in the future. Said bridge is a part of a state highway in the city and the duty of maintenance is under law on the State of Washington. By agreement with the state, the city acts as a State Agent in this connection. We have previously recommended to the City Engineer that he negotiate with the state to the end that the state protect the city by taking out, or paying for, public liability insurance taken out by the city. If such insurance cannot be secured, we recommend that the city should set up a reserve fund for self-insurance on span bridges and that the state should be required

to pay the necessary moneys into such a fund as a part of its contract with the city whereby the city acts as its agent in such connection.

Numerous legislative bills for consideration by the 1955 Session of the State Legislature were prepared. Many of these deal with the local improvement laws and were requested by the City Engineer. Assistant Corporation Counsel John C. Vertrees was assigned to cooperate with and assist the Legislative Committee of the City Council at Olympia during the forthcoming session.

Numerous conferences were held with the Superintendent of Lighting and an opinion rendered concerning the extent of, and the limitations on the city's authority to enter into agreements concerning the development of possible additional power generating plants. The question of an agreement with the Province of British Columbia concerning immediate and future flooding of lands in the Province was again brought before the International Joint Commission in Washington, D. C., in April, 1954. Little progress was made for the reason, among others, that due to a vacancy in the American section, the Canadian section members were in the majority and they were apparently disinclined to direct the Province to carry out a memorandum agreement assented to by the city but not formally authorized to be executed by the Province. In July of 1954 the city was granted a permit to flood certain lands in British Columbia for the period ending in March, 1955, for which permission the city paid a substantial amount. There was some difficulty with the Province in securing even this temporary permit which the city finally secured with the assistance of Congressman Pelly and the State Department.

The completion of 112 opinions on complex questions of law, the preparation of 374 ordinance and 27 resolutions occupied much of our time.

All this, among other things, reflects the growth of the city. Our work was handled with a staff of 28 employes, which includes 15 attorneys. It is of interest in this connection that the staff consisted of 31 employes in 1930. This comparison reflects great credit on the present staff. I also wish to express my appreciation to the City Council for its careful consideration of my budget requests for personnel and salary adjustments for 1955 involving my assistants.

Respectfully submitted,

A. C. VAN SOELEN,
Corporation Counsel.

The Argus Press
Seattle

The City of Seattle--Legislative Department

MR. PRESIDENT:

Your Committee on Judiciary

Date Reported and Adopted .....

to which was referred the within Annual Report of the Law Department, City of Seattle, 1954,

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

the same be placed on file.

..... **Chairman**

..... **Chairman**