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CITY OF SEATTLE
LAW DEPARTMENT
Annual Report

1955

APR 2 1956 ~~Public Safety~~ JUDICIARY

5/16/56 file
MAY 21 1956 On File



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City Clerk
A. C. VAN SOELEN
Corporation Counsel

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LAW DEPARTMENT

Annual Report

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A. C. VAN SOELEN, *Corporation Counsel*

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CHARLES R. NELSON	<i>Assistant Corporation Counsel</i>
CHARLES V. MOREN	<i>Assistant Corporation Counsel</i>
GEORGE H. HOLT	<i>Assistant Corporation Counsel</i>
BRUCE MACDOUGALL	<i>City Prosecutor</i>
R. H. SIDERIUS	<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 1955

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, 1955.

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 1955.

	Pending Dec. 31 1954	Commenced During Year 1955	Ended Dur- ing Year 1955	Pending Dec. 31 1955
Condemnation suits	10	7	8	9
Damages for personal injuries	92	96	85	103
Damages other than for per- sonal injuries	52	28	36	44
Injunction suits	5	3	1	7
Mandamus proceedings	4	1	2	3
Miscellaneous proceedings	24	22	20	26
Public Service proceedings....	0	0	0	0
Sub-Total	187	157	152	192
Appeals from Municipal and Traffic Courts	182	292	216	258
Grand Total	369	449	368	450

2. Segregation—Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1954	92	\$2,616,010.38
Commenced since January 1, 1955	96	2,839,230.50
Total	188	\$5,455,240.88
Tried and concluded since January 1, 1955	85	2,092,779.09
Actions pending December 31, 1955	103	\$3,362,461.79

Of these personal injury actions 85 involving \$2,092,779.09 were tried or finally disposed of in 1955; 27 involving \$1,019,634.19 were won outright; in 11 cases involving \$271,294.43, the plaintiffs recovered \$50,237.92. The remaining 47 cases involving \$801,850.47 were settled or dismissed without trial for a total of \$174,954.86.

Of the 96 personal injury actions begun during the year 1955, a large portion involving \$1,199,291.40 are based on alleged negligence in connection with the operation of the Municipal Transit System.

3. Segregation—Damages Other Than Personal Injuries:

	Number	Amount Involved
Pending December 31, 1954	52	\$ 364,442.40
Commenced since January 1, 1955	28	599,437.19
	80	\$ 963,879.59
Tried and concluded since December 31, 1954	36	77,046.88
Pending December 31, 1955	44	\$ 886,832.71

Of the total of 80 cases, involving damages other than personal injuries, 36 involving \$77,046.88 were disposed of during the year 1955 of which 14 involving \$25,621.58 were won outright. In eight cases involving \$18,729.95 the plaintiffs recovered \$11,662.97. The remaining 14 cases involving \$32,695.35 were settled or dismissed without trial for a total of \$7,911.66.

The total expense of claims and suits involving the Transit System was \$342,881.99 in 1955. This is 3.34% of the gross revenues of the System for that year, and which is slightly higher in percentage than the previous year which was 2.89%, but still reflects great credit on all concerned because among other things such gross revenues are falling off.

4. Supreme Court:

There was one appeal pending in the Supreme Court December 31, 1954. Fourteen new appeals were filed in 1955. Four were decided in 1955. The City won two and lost two. Eleven are still pending.

5. Miscellaneous Cases:

One injunction action was tried and won; seven are pending, but are dormant. Two mandamus actions were tried and won and three are still pending. Twenty miscellaneous cases were disposed of during the year—16 won by the City and two lost. Two were settled for \$2,000 and the amount involved was \$11,000. Three of the 16 cases won were false arrest actions brought against the Chief of Police and police officers involving \$95,708.00.

Seven hearings relating to dismissals of employes was participated in before the Civil Service Commission, in which the department was sustained in six. The other hearing is under advisement.

A number of actions were commenced for the Lighting Department for unpaid light and power bills and many past-due accounts were collected. Two hundred twenty-one garnishments were handled during 1955. One hundred and ninety-three were completed without court action; 28 were answered by the city and the costs collected were transmitted to the City Treasurer.

A number of claims for damages to city property were forwarded by the Engineering Department to this department for collection. By suits and settlements, we have collected on a number of the claims, and forwarded the same 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 1955.

II.

CLAIMS IN 1955

	Number	Amount Involved
Claims for damages under investigation December 31, 1954	1901	\$4,279,569.56
Claims for damages referred to this department for investigation December 31, 1954, to Decem- ber 31, 1955	1275	2,607,418.14
Claims disposed of as follows:	No.	Amt. Claimed
Settled	579	\$1,419,130.57
Rejected	834	1,785,390.03
	1413	\$3,204,520.60
Claims pending Dec. 31, 1955	1763	\$3,682,467.10
68 of above settled claims were in suit and settled in conjunction with Claim Agent.		
Amount Involved		\$ 938,510.03
Amount of Settlements		189,212.74
Number of Seattle Transit System accident re- ports investigated December 31, 1954, to De- cember 31, 1955	2,486	
Number of circulars and letters mailed in con- nection with investigation of foregoing claims and reports	11,384	

III.

MUNICIPAL (POLICE) COURT

During the year 1955 the City Prosecutor, Bruce MacDougall, handled a calendar of 14,796 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$100,950.00.

MUNICIPAL (TRAFFIC) COURT

In the Municipal Traffic Court for the year 1955 a docket of 265,844 traffic cases resulted in fines and forfeitures amounting to \$1,300,878.25. Four hundred forty-one drivers' licenses were revoked and 2352 suspended; 294 jail sentences were imposed. Assistant Corporation Counsel C. L. Conley acted as city prosecutor in this court.

MUNICIPAL COURT APPEALS

Two hundred and sixteen (118 Traffic, 98 Police) were disposed of in 1955 being principally handled by Assistant Corporation Counsel Charles R. Nelson. In 78 cases (53 Traffic, 25 Police) convictions or pleas of guilty were entered. In 16 cases (11 Traffic, 5 Police) the appellants were acquitted. Twenty-five cases (13 Traffic, 12 Police) were dismissed for insufficiency of evidence, witnesses moving away or other causes. Ninety-seven appeals (40 Traffic, 57 Police) were abandoned by the defendants and remanded to the Traffic and Police Courts for the enforcement of the original judgments. A total of \$5,897.50 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 process, commitments of the defendants, interviewing of witnesses, receiving their statements and keeping detailed records of such appeals. This work is of much value to both the Police and Law Departments.

A number of the above mentioned Police Court appeals involved violations of the City's ordinances which adopt by reference the Washington State Liquor Control Act, and in September 1955 Assistant Corporation Counsel George H. Holt was assigned to handle such appeals. He has since disposed of 21 such appeals in 17 of which the defendants were found guilty, three were dismissed for insufficiency of the evidence, and one is now pending in the State Supreme Court.

The case now before the Supreme Court is *City v. Green*, which involves the question whether or not a search warrant which merely states "premises" is broad enough to authorize the search of an

automobile, in which 90 bottles of liquor were found. This question which has not been determined in the State of Washington, was argued in the Supreme Court on February 27, 1956.

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

Also, the City Employees' Retirement System requested opinions on 16 L.I.D. bond issues and opinions were rendered.

V.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1955, 341 ordinances, 21 resolutions; and in addition, 81 ordinances were prepared for the settlement of claims.

1553 bonds of officials, bidders, contractors, depositories and others were examined and approved, totaling \$37,329,094.90.

MEMO OF UNUSUAL CASES — 1955

The following cases of unusual interest handled during the year 1955:

By MR. WILSON:

1. *In re Magnolia Boulevard.*

This was an appeal from the assessment roll for the improvement of Magnolia Boulevard by grading, paving, etc. The appeal was by the owners of 54 pieces of property in the total of \$67,811.38. The appellants contended that the boulevard had not benefited their property inasmuch as there was a considerable area between the paved portions and their property lines which still remained public property and that they did not have access to the boulevard. After trial which consumed a week, the court canceled the assessments as to seven parcels totaling \$5,889.31 and confirmed the roll as to the remainder. There was no appeal.

2. *Backenhus v. City Police Pension Board.*

This was an action by a retired police officer against the city and the Police Pension Fund Board in which it was contended that he was entitled to an increase in pension and for back payments.

Prior to 1935 the Police Pension Fund provided that upon retirement the member should receive half of the pay attached to the rank held by him at the time of his retirement. In 1935 an amendment to the act was passed in which it was provided that the maximum pension allowable should be \$125 a month, which at that time was one-half of the pay of a captain in the Police Department. Plaintiff contended that this act was unconstitutional as to plaintiff in that he had a "vested right" to receive one-half of the pay attached to the rank and that when he was employed by the city his right to receive his pension based upon the law in effect at that time became vested. Upon trial in the Superior Court, the court held generally for the plaintiff and the case is now pending on appeal in the Supreme Court, having been argued to the court en banc October 11, 1955.

By Mr. WILCOX:

During 1955 eight condemnation suits were concluded and 120 awards of "just compensation" in their aggregate sum of \$639,134 were made by juries or by the court when a jury was waived. Six of the eight proceedings involved one or more contests, but examination discloses that the total of the awards fixed by juries exceeded the total of the awards recommended by the appraisers appointed by the city by only \$19,373 or 3.03%. The respondents' "asking" prices in contested matters exceeded the recommendation of the city's appraisers by \$93,873.

Probably the most unusual case was that conducted pursuant to Ordinance 83792 to acquire additional property necessary for the expansion of the Engineering shops at North 128th Street and Ashworth Avenue in the Haller Lake District. A little more than four years ago a tract of which the subject property was a part had sold for approximately \$600, plus delinquent taxes of approximately \$400. Two years later the tract was sold to the respondent in this case for \$18,000. A few months prior to the city's condemnation the respondent sold a portion of the tract not within the city's taking for \$10,000 cash and only a week before the trial sold still another portion on contract for \$33,000, thereby evidencing an almost unbelievable rise in property values. The city's appraisers fixed the value of the property to be taken at \$19,000 based upon sales of comparable property in the area (a block off of Aurora Avenue). The respondent's appraisers submitted a value of \$34,725 to the jury and the respondent himself stated the value at \$48,000. After a four-day trial the jury returned a verdict for \$21,000, only \$2,000 more than the city's figure. This case will doubtless be remembered by the jurors and by Judge Revelle as the "Cattail Case", the city on the 4th day of hearing having intro-

duced a bouquet of cattail reeds picked fresh that morning from the respondent's property in rebuttal to the latter's contention that his land was well drained and that water never stood upon it.

Another condemnation involving a novel situation was that under Ordinance 83061 to acquire a reservoir site in Lake Forest Park. The property sought by the city was already subject to easements restricting the height of buildings and shrubbery and other items which might interfere with the line of sight required by the U. S. Army in connection with its operation of a Nike installation on the property adjoining. The city's appraisers advised us, as did the appraisers for the respondents, that this was the first instance to their knowledge in which it had been necessary to evaluate for condemnation purposes any properties already subject to U. S. Government line of sight easements.

A suit under Ordinance 83409 changing the grade of 17th Avenue South in the vicinity of the Lakeway Overpass was the first in some time involving the question of change of grade only.

At the end of 1955 there were six condemnation suits pending involving some 141 parcels of real property and there were seven additional suits to be filed as soon as sufficient title information and maps are procured. The largest case to be carried over to 1956 is that of the 67-parcel condemnation for a pipeline right of way to serve Mercer Island.

As an incident to condemnation proceedings, payment for which involves the assessment of properties specially benefited, this department assists the Board of Eminent Domain Commissioners in the presentation of its evidence in hearings before the Superior Court on special assessment rolls. Accordingly on December 1, 1955, this department assisted the Eminent Domain Commissioners in a hearing on the assessment roll prepared in connection with land acquisition for the extension of Garfield Playfield under Ordinance 83569. The court confirmed the roll which assessed the sum of \$107,397 against some 6,000 parcels of land found by the Commissioners to be specially benefited. The Commissioners also found a general benefit to the city in the sum of \$3,769.46. The cost of spreading this extensive special assessment roll, which cost is by law included in the roll, was \$9,716 which seems to us to be high.

By MR. MOREN:

1. Cause No. 463671 involved a suit in the amount of \$150.00 auto damage and \$7500.00 claimed damages for a miscarriage allegedly suffered by plaintiff as a result of an automobile-bus collision. During the second day of trial the case was settled in the amount of \$75.00, plaintiff's counsel apparently realizing his in-

ability to establish with the necessary medical certainty a causal relationship between trauma resulting from the collision and the miscarriage.

2. No. 469946 involved a claim in the amount of \$20,000 for personal injuries and \$750.00 auto damage as a result of an automobile-bus collision in the intersection of 23rd and Yesler. The jury brought in a verdict for defendant city.

3. No. 475876 involved a claim in the amount of \$10,000.00 for back and neck injuries sustained by plaintiff who fell on a portion of a boarded sidewalk, the partial use of which sidewalk had been granted by the City of Seattle to the co-defendant public market. This case was advantageously settled in the amount of \$2800.00, of which amount the city paid \$1200.00 and co-defendant paid the balance of \$1600.00.

4. No. 467917. Plaintiff wife fell as she was boarding a stopped bus claiming that her fall was caused by a slippery step. She claimed damages in the amount of \$10,000.00 for back and rib injuries sustained in this fall. This case was dismissed without the city's having to pay anything, plaintiff realizing that she would be unable to sustain the burden of proof as to negligence.

5. No. 475263. Plaintiff was struck by a bus while crossing Broadway at John Street as a result of which he sustained head and rather severe knee injuries for which he claimed \$25,000.00 damages. There was a conflict of testimony as to whether or not the bus was crossing the intersection when the light had turned red. The case was settled in the amount of \$2100.00, plaintiff's special damages totaling \$1750.00.

6. No. 471659. Plaintiff claimed damages in the amount of \$2691.40 for injuries to her leg sustained by her slipping on a bus step which had become slippery during snowy weather. The case was settled in the amount of \$47.00 on the ground of absence of negligence on the part of defendant.

7. No. 476132. Plaintiff fell while debarking from a bus which jerked just as she was about to step on to the curb. Plaintiff sustained a fracture of the radius and ulna of the left arm with consequent permanent partial disability in the use of this limb. This case was settled for \$1,850.00, suit having been brought in the amount of \$16,100.00.

8. No. 472192. Plaintiff claimed multiple injuries as a result of falling while boarding a bus which jerked just as she stepped on the bus. She claimed damages in the amount of \$13,500.00. This case was settled for \$87.50, settlement in this amount being possible due to plaintiff's previous litigious record.

9. No. 471405. Plaintiff sustained a severe cut on her face by striking a fare box on a bus as a result of the bus' sudden stop necessitated by a motor scooter suddenly cutting in front of the bus. Plaintiff claimed damages in the amount of \$7500.00. A jury verdict was brought in for the city.

10. No. 477436. Plaintiff claimed \$10,250.00 damages for back trouble caused by striking a seat on the bus when the bus swerved and stopped suddenly in attempting to avoid colliding with an auto which cut in front of the bus. This case was settled for \$125.00 on the ground that there was no negligence on the part of the bus operator.

11. No. 471810. Plaintiff claimed damages in the amount of \$25,000.00 for back trouble and serious aggravation of a phlebitis condition in her leg as a result of sliding off a bus seat on to the floor due to a sudden swerving on the part of the bus. This case was settled for \$6,000.00, plaintiff having sustained \$2500.00 special damages at the time of settlement. The bus operator denied any unusual movement of the bus and no witnesses observed plaintiff's fall so her testimony would be uncontradicted.

12. No. 473093. Plaintiff claimed false arrest and imprisonment and malicious prosecution as a result of his being arrested by a police officer who at the time was working as an employee of Diamond Parking Station. A verdict was brought in for all defendants.

13. No. 476952. Plaintiff sought \$10,000.00 damages as a result of rib fractures sustained in falling off a bus step on to some stakes in the adjoining parking strip. This case was settled for \$75.00 on the basis of absence of negligence on the part of the defendant.

14. No. 474717. Plaintiff claimed false arrest and imprisonment as a result of mistaken identification as a suspected robber. The case was dismissed with prejudice upon co-defendants' paying \$300.00 to plaintiff, with no contribution by defendant City nor its employees.

15. No. 479394. Plaintiff sustained a markedly severe aggravation to a dormant defective back condition as a result of a jolt caused by the bus going over a curb. Medical examination reveals that plaintiff has a cancer of the backbone which unquestionably will result in death. It appeared that there would be a conflict of medical testimony as to the causal relationship between the jolt and the aggravation of plaintiff's cancerous condition. This suit in the amount of \$25,000.00 was settled for \$5,000.00.

16. No. 479852. Plaintiffs, husband and wife, claim multiple injuries as a result of an auto-bus collision at Eastlake and Stewart. The weight of the evidence indicated that the bus was the

avored driver with respect to the signal light operation. This suit in the amount of \$8500.00 was settled for \$107.00.

By MR. SCHRAMM:

1. *De Grief v. City.*

This action was brought by Roy De Grief, Justice of the Peace sitting as the Municipal Judge in Traffic Court, to have the 1955 municipal court law, Ch. 290, Laws of 1955, declared unconstitutional. When the case was commenced a show cause order was issued asking a temporary injunction against putting the act into effect and on the hearing the court issued a temporary injunction. The case was tried before Judge Harold A. Seering who sustained the act in all particulars.

Plaintiff appealed to the Supreme Court and filed a supersedeas bond to keep the temporary injunction in effect during the appeal. The case has been set for argument in the Supreme Court on February 20, 1956.

2. *Automobile Club of Washington v. City.*

This was an action brought by the Automobile Club of Washington to restrain the city from paying the judgment in the case of *Perrigo v. City* from the City Street Fund. The *Perrigo* case arose by reason of an accident on the Montlake Bridge when bridge employees engaged in testing the south leaf of the bridge opened the same without warning and the *Perrigo* automobile collided with the leaf, resulting in the death of Mr. *Perrigo* and severe injuries to his widow and some injuries to a minor child.

The *Perrigo* case resulted in a verdict against the city in the sum of approximately \$119,000.00 which the city paid from the City Street Fund, the moneys in which came from the State Highway Fund derived from motor vehicle fees and gasoline taxes. The Automobile Club claimed that such payment was a diversion of the State Highway Fund prohibited by the 18th amendment to the state constitution. The city contended that the payment was not a diversion but was an expense of the "operation" of the Montlake Bridge, a movable span bridge.

The trial court held in favor of the city and the plaintiff has appealed the case to the Supreme Court. It has not yet been set down for hearing in the Supreme Court.

3. *City v. Kuney-Johnson Co.*

The city brought an action for damages on August 8, 1955, against Max J. Kuney and Lloyd W. Johnson, co-partners doing business as Kuney-Johnson Company and United Pacific Insur-

ance Company for breach of a special warranty on the contract for the general work in the construction of the new Public Safety Building. Kuney-Johnson Company, a co-partnership, was the contractor for the general work, United Pacific Insurance Company was the surety on their performance bond, and the action was brought as soon as the necessary evidence was furnished by the Superintendent of Buildings, along with a report as to the amount and nature of the damage, which was furnished by a plastering contractor.

The plans and specifications on which the contract for the general work was let provided that traditional sand plaster was to be used in the plastering. That the contractor on November 11, 1949, applied in writing to the city's architects for approval to change the specifications to substitute Perlite aggregate in lieu of sand in the plaster work and such substitution was approved by the architects employed by the city to supervise the work.

The plans and specifications contained the usual provision that the contractor would replace any defective material or improper workmanship discovered within one year after acceptance of the work; and also a special provision to the effect that when the architect approves a substitution, the approval is given with the "understanding that the contractor guarantees the substituted article or material to be equal to or better in all respects than the material specified."

More than one year after the acceptance of the building it developed that the Perlite aggregate used in the plastering work was insufficient for the purpose for which it was intended in that it was subject to a volumetric increase which caused the plaster to expand, bulge, crack and push moldings, sashes, etc. out of place. This defective condition appeared in many parts of the building.

The defendants demurred to plaintiff's complaint on the ground that the one year limitation in the contract limited recovery in all cases to one year. The city contended that the special warranty of substituted material applied and that action for breach of such warranty could be brought at any time within the six year statute of limitations for actions in written contracts. The demurrer was argued orally and written briefs were submitted and the court (Judge Wright) orally overruled the demurrer in November, 1955. A motion for reconsideration was filed by defendants and after further hearing the trial court sustained defendants' demurrer. The city elected to stand on its complaint, judgment of dismissal was entered and notice of appeal to the Supreme Court was given by the city on February 28, 1956. The case is now pending in the Supreme Court.

CONCLUSION

The Law Department budget for 1955 was \$176,820, \$12,000 of which was charged to the City Street Fund for condemnation work chargeable to such fund. The budget was figured too close however and an emergency appropriation of \$8,000 for court costs was necessary due principally to heavy expenses for appraisals—particularly in connection with the case of *Chas. F. Clise v. The City*, which involves the rezoning of tidelands adjacent to the Magnolia District. Even so the total expenses for 1955 exceeded actual expenses for 1954 by only \$2,094.

We lost during 1955 the services of a capable assistant, John C. Vertrees, who resigned to enter private practice. It is becoming increasingly difficult to acquire, and particularly to retain the services of capable and experienced young lawyers at the salary the city is willing to pay. I may say in this connection however that the City Council has cooperated with me in approving my budget requests—particularly as to the salaries of my assistants and I have no criticism to offer in this connection, other than to suggest that the city does not pay enough, particularly for technically trained help, in the higher salary brackets.

There was a high volume of legal and advisory work in this department in 1955, which we were barely able to handle with the present staff, to whom I express my appreciation for much work well done.

Respectfully submitted,

A. C. VAN SOELEN,
Corporation Counsel.

The Argus Press



Seattle