CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1956

A. C. VAN SOELEN
Corporation Counsel

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George T. McGillivray	*Assistant Corporation Counsel*
G. Grant Wilcox	*Assistant Corporation Counsel*
R. H. Siderius	*Assistant Corporation Counsel*
George H. Holt	*Assistant Corporation Counsel*
William W. Brown	*Assistant Corporation Counsel*
Bruce MacDougall	*City Prosecutor*
Frank W. Draper	*Law Clerk*
Faye Forde	*Secretary*
John F. Cooper	*Claim Agent*

Annual Report

OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1956

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, 1956.

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 1956.

	Pending Dec. 31 1955	Commenced during Year 1956	Ended during Year 1956	Pending Dec. 31 1956
Condemnation suits	9	7	12	4
Damages for personal injuries	103	86	90	99
Damages other than for personal injuries	44	43	30	57
Injunction suits	7	5	7	5
Mandamus proceedings	3	4	4	3
Miscellaneous proceedings	26	15	18	23
Sub-Total	192	160	161	191
Appeals from Municipal and Traffic Courts	258	277	231	304
Grand Total	450	437	392	495

2. *Segregation — Personal Injury Actions:*

	Number	Amount Involved
Pending December 31, 1955	103	$3,362,461.79
Commenced since January 1, 1956	86	2,139,959.78
Total	189	$5,502,421.57
Tried and concluded since January 1, 1956	90	2,777,066.11
Actions pending December 31, 1956	99	$2,725,355.46

Of these personal injury actions 90 involving $2,777,066.11 were tried or finally disposed of in 1956; 45 involving $1,497,988.94 were won outright; in 13 cases involving $473,080.04, the plaintiffs recovered $108,970.06. The remaining 32 cases involving $805,997.13 were settled or dismissed without trial for a total of $115,024.00.

Of the 86 personal injury actions begun during the year 1956, a large portion involving $1,393,788.16 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, 1955	44	$ 886,832.71
Commenced since January 1, 1956	43	157,184.32
	87	$1,044,017.03
Tried and concluded since December 31, 1955	30	504,259.08
Pending December 31, 1956	57	$ 539,757.95

Of the total of 87 cases, involving damages other than personal injuries, 30 involving $504,259.08 were disposed of during the year 1956 of which 20 involving $414,498.94 were won outright. In six cases involving $83,210.00 the plaintiffs recovered $52,692.00. The remaining 4 cases involving $6,550.14 were settled or dismissed without trial for a total of $3,344.52.

The total expense for claims and suits involving the Transit System was $311,634.00 in 1956. This is 3.11% of the gross revenues of the System for that year, and which is slightly less in percentage than the previous year which was 3.34%. This reflects credit on all concerned.

4. *Supreme Court:*

There were eleven cases pending in the Supreme Court December 31, 1955. Twelve new cases were filed in 1956. Seven cases were decided in 1956. The City won four and lost three. Sixteen cases are still pending.

5. *Miscellaneous Cases:*

Seven injunction actions were tried—five won and two lost; five are pending, two of which are in the Supreme Court. Four mandamus actions were tried—three won and one lost; and three are still pending. Eighteen miscellaneous cases were disposed of during the year—twelve won by the City and six lost. Two of the twelve cases won were false arrest actions brought against the Chief of Police and police officers, amount claimed $211,000.00.

Twelve hearings relating to dismissals of employees were participated in before the Civil Service Commission, in which the department was sustained in nine. Resignation was substituted for dismissal in two cases and one was ordered reinstated.

Eight actions were commenced for the Lighting Department for unpaid light and power bills and damages to City Light property, and the recovery of $1,463.10 was made by judgments and settlements. Two hundred garnishments were handled during 1956. One hundred and eighty-eight were completed without court action; twelve 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 1956.

II.

CLAIMS IN 1956

	Number	Amount Involved
Claims for damages under investigation December 31, 1955	1763	$3,682,467.10
Claims for damages referred to this department for investigation December 31, 1955 to December 31, 1956	1355	5,223,599.87

Claims disposed of as follows:

	No.	Amount Claimed	Amount Paid
Settled	677	$1,028,966.77	$305,673.15
Rejected	519	1,010,206.39	
	1196	2,039,173.16	
Claims pending December 31, 1956	1922		$6,866,893.81

Thirty of above settled claims were in suit and settled in conjunction with Claim Agent.

Amount Involved	$694,000.29
Amount of Settlements	122,194.54

Number of Seattle Transit System accident reports investigated December 31, 1955, to December 31, 1956 2431

Number of circulars and letters mailed in connection with investigations or foregoing claims and reports 10,138

III.

MUNICIPAL (POLICE) COURT

During the year 1956 the City Prosecutor, Bruce MacDougall, handled a calendar of 15,729 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $128,115.57.

MUNICIPAL (TRAFFIC) COURT

In the Municipal Traffic Court for the year 1956 a docket of 288,340 traffic cases resulted in fines and forfeitures amounting to $1,505,409.50. Twenty-five drivers' licenses were revoked and 2515 suspended; 483 jail sentences were imposed. Assistant Corporation Counsel C. L. Conley acted as city prosecutor in this court.

The fall in the number of drivers' licenses revoked is in our opinion due to a change in the law—RCW 46.56.010, as amended by Laws of 1955, Chapter 393, Section 3. This change in the law relates to the effect of an appeal taken from a conviction in the Municipal Traffic Court for drunken or reckless driving, said amendment providing that it is "the intent and purpose of this section that (such) licenses shall remain in full force and effect during the period that any appeal (from a conviction in the Municipal Traffic Court) is pending." The applicable law formerly provided that on any such conviction the driver's license may be taken up by the municipal traffic judge notwithstanding an appeal to the Superior Court. The effect of this change in the law has been highly detrimental to traffic law enforcement in cities and has resulted in a great increase in the number of appeals which are taking up a lot of our time and are costing the taxpayers money. It is our understanding that such change in the law was sponsored, or at least agreed to by a committee of the Automobile Club of Washington, among others. We were unable, due to the great press of business in 1956, to suggest to the Mayor and the City Council repeal of the 1955 amendment to the state law above referred to. We suggest however that steps be taken by the Mayor soon to obtain citizens' support for the repeal of such amendment in the 1959 session of the State Legislature.

MUNICIPAL COURT APPEALS

Two hundred and thirty-one (114 Traffic, 117 Police) were disposed of in 1956, being principally handled by Assistant Corporation Counsel George H. Holt. In one hundred and nineteen (119) cases (58 traffic, 61 police) convictions or pleas of guilty were entered. In five cases (3 traffic, 2 police) the appellants were acquitted. Seventeen cases (10 traffic, 7 police) were dismissed for insufficiency of

evidence, witnesses moving away or other causes. Ninety appeals (43 traffic, 47 police) were abandoned by the defendants and remanded to the Traffic and Police Courts for the enforcement of the original judgments. A total of $5,290.00 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 for the first three months of this year, then Don Hall was assigned for the rest of the year 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 and both officers did excellent work.

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

Also, the City's Employees' Retirement System requested opinions on 29 L.I.D. bond issues and opinions were rendered.

V.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1956, 415 ordinances, 32 resolutions; and in addition, 89 ordinances were prepared for the settlement of claims.

1648 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $50,423,245.27.

MEMO OF NOTEWORTHY CASES — 1956

By Mr. Wilcox:

During 1956 there were twelve condemnation suits concluded, the total awards amounting to $1,420,988.10. In addition thereto, there are awards in the sum of $74,150 for the acquisition of a site for Fairmount Playground in West Seattle still to be accepted, the acceptance to depend upon the outcome of a hearing on the assessment roll prepared by the Eminent Domain Commission pursuant to RCW 8.12.480 *et seq*.

The number of imperfect street rights of way and inadequate streets inherited from King County in the annexation of the large area north to 145th Street has given rise to the need for a number

of condemnations. That for Mineral Springs Way under Ordinance 84990 was the first of this series to be paid for out of city funds. Some of the lesser acquisitions can doubtless be paid for as a part of the cost of a local improvement district project, a procedure authorized by the 1955 Legislature and now set forth in RCW 35.44.020. During 1956 a drainage right of way and a watermain right of way were processed in this manner.

Rising land values, increased cost of condemnation proceedings and the fact that almost all contemplated playfield acquisitions in recent years have involved improved property have led to the adoption by the City Council of a policy that neighborhood groups seeking to avail themselves of the special assessment procedure for acquisition of playfield sites under Ch. 8.12 RCW be required to submit along with their petition for the improvement, an appraisal of the land to be acquired by a recognized appraiser. This appraisal is then submitted informally to the Board of Eminent Domain Commissioners who endeavor to estimate the benefit to the city as a whole and to the properties in the neighborhood specially benefitted, with a view to determining whether the project is feasible before the city commits itself by a condemnation ordinance to the expenditure of considerable sums for processing, appraisers, etc.

By Mr. Siderius:

In *Manor Park Inc. v. City,* plaintiff corporation claimed damages to its apartment building caused by flooding when a hot water tank safety valve stuck in an open position. The alleged negligence of the City Water Dept. was in "raising the water pressure to a degree known to be in excess of the safety valve limits" of hot water tanks in the vicinity.

Though there are many cases that consider the liability of a municipality for inadequate water pressure (usually where plaintiff's building burns down and pressure is insufficient to extinguish the blaze), the question of liability for excessive pressure was a new one. The evidence indicated that maintenance of adequate pressure in all areas of the city necessitates emergency pumping from one substation to another and resultant pressure fluctuations in any given area. The Superior Court found that this did not constitute negligence and the action was dismissed.

By Mr. Wilson:

Bakenhus v. City and Police Pension Board, 48 Wn.(2d) 695.

This action which was mentioned in the 1955 report by a retired police officer against the City and the Police Pension Fund Board in which it was contended that plaintiff was entitled to an increase in

pension and for back pension based upon his contention that the police pension law in effect at the time—1925—he became a member of the Police Department created a contractual or vested right with which the legislature could not by amendment of the public pension fund law interfere. The facts were that in 1937 the legislature amended the police pension fund act to provide that the maximum pension allowable should be $125 a month, which at that time was one-half the pay of a Captain in the Police Department. As stated in the 1955 report the Superior Court held generally for the plaintiff and the case was argued to the Supreme Court en banc October 11, 1955. On April 19, 1956, the Court by 7 to 2 decision affirmed the trial court holding that despite the majority rule to the contrary, the acceptance and retention of employment by a member of the Police Department established a contract between the employee and the city which gave him a right to a pension which could not be *unreasonably* impaired by intervening legislative changes in the pension system. Two of the justices dissented on the ground that by remaining in the service and accepting the benefits of the amended law, plaintiff was estopped from contesting the validity thereof.

Frank H. Browning v. City, the Civil Service Commission and the Board of Administration of the Retirement System.

This was an action in the Superior Court by a retired Civil Service employee against the City, the Civil Service Commission and the Board of Administration of the City Employees' Retirement System to require (1) "reinstatement" of plaintiff as Engineer Examiner in the Civil Service Department and (2) to require the Board of Administration of the City Employees' Retirement System and the City of Seattle to recompute any retirement allowance granted appellant upon the basis other than that followed by the Board of Administration which plaintiff claimed was contrary to law. As provided by the City Employees' Retirement ordinance, plaintiff had been retired from his position as Engineer Examiner in the Civil Service Department on the first of the month following that in which he reached age 67. He was permitted to resume his duties as Engineer Examiner thereafter as a temporary or provisional employee and was so carried on the payroll of the city. Said temporary employment continued for a period of two years and until December 31, 1951, at which time his position was abolished by non-inclusion in the 1952 Salary Ordinance.

The cause came on for trial and at the conclusion of the plaintiff's case defendants challenged the sufficiency of the evidence to support any judgment in favor of the plaintiff. The trial court held (1) that the City under its charter was authorized to and did by ordinance

fix an age limit at which all Civil Service employees who were members of the Retirement System should be compulsory retired for service including the plaintiff and (2) that plaintiff had wholly failed to sustain the burden of proof of establishing that the administration of the Employees' Retirement Fund was faulty and not in accordance with law. The court accordingly entered findings of fact and conclusions of law and judgment of dismissal, and the case is now on appeal by the plaintiff to the Supreme Court.

By MR. SCHRAMM:

John J. Kennett v. David Levine, et al.

Mayor Gordon S. Clinton filed with the City Council notice of removal for cause of John J. Kennett as a transit commissioner. the principal grounds specified being incompatibility in that while serving as transit commissioner he was also, as a member of a firm of private attorneys, filing claims and bringing actions against the city in matters arising out of transit operations. The City Council fixed a date for hearing the Mayor's notice of removal. Notice was served on Kennett, who appeared in person and by counsel at the time of hearing, and made various objections to the jurisdiction of the City Council, motions to make more definite and certain, etc., all of which were rejected by the City Council. Kennett then moved for a continuance of the hearing, which was granted and a new date fixed for the hearing. Before such date Kennett obtained an alternative writ of prohibition out of the Superior Court seeking to prohibit the City Council from hearing the Mayor's notice of removal and restraining the City Council pending the hearing on the writ. We made return to the writ of prohibition by way of motion to quash the writ, demurrer to the petition for the writ, and answer. The matter came on for hearing before Judge William J. Wilkins, who sustained our demurrer and granted our motion to quash the writ and dismissed the proceeding. Kennett immediately filed notice of appeal and applied to the Supreme Court for a writ of supersedeas, restraining any action by the City Council on the Mayor's notice of removal pending the decision of the Supreme Court. This application was resisted but the Supreme Court issued a writ of supersedeas and set the case down for argument on March 25, 1957.

City of Seattle v. Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 587, et al.

A labor contract pursuant to RCW 35.22.350 as amended by Ch. 145, Laws of 1955, under which most of the employees of the Seattle Transit System worked during the year 1956 expired on October 31, 1956. Negotiations for a new agreement continued after the expira-

tion of the old agreement and when they failed, the officials of the above union called for a strike vote. Employees voted in favor of a strike; the union officials fixed November 23, 1956, at two o'clock a.m. as the date for commencement of the strike and on that date the transit employees struck. This was the day after Thanksgiving and on the following Monday, November 26, we filed a complaint in the name of the city against the union and its officers. We secured from the Superior Court an order to show cause why the union and its officers should not be enjoined from striking, picketing, or engaging in other concerted action and from aiding, abetting, and encouraging such action for any purpose, and particularly for the purpose of coercing the Seattle Transit Commission and the city government to comply with the demands of the union regarding wages, working conditions and other related matters. The defendants made return to the show cause order by motion to quash supported by affidavits.

On November 30, 1956, the matter came on for hearing before Judge James W. Hodson and after hearing lengthy arguments with briefs from counsel for both sides, the court granted the city's application for a temporary injunction. Upon the signing of the temporary injunction the defendants asked leave to supersede the injunction which was denied by the trial court. Later on the same day they made application to the Supreme Court for a writ of supersedeas to hold in abeyance the temporary injunction until the matter could be heard on appeal. The Chief Justice of the Supreme Court directed that notice be given to the city and set the matter for hearing on the following morning before himself and all of the available Supreme Court judges. The following morning the application for supersedeas was presented and argued by attorneys for the union and resisted by Mr. Van Soelen and myself, principally on the ground that the remedy by appeal was adequate, and that we would agree to a hearing of the appeal in January, 1957, if convenient to the court. The application for supersedeas was denied.

The transit employees went back to work with the approval of the defendant union, and are still on the job. The appeal is still pending but has not been pressed in the State Supreme Court.

The principal cases relied on by the city for the temporary injunction are cited in a note in 31 A.L.R.(2d) beginning at p. 1145; particularly *City of Los Angeles v. Los Angeles Building and Construction Trades Council, et al,* 210 Pac.(2d) 305; and in the argument on supersedeas, the case of *Cooper v. Hindley,* 70 Wash. 351 was cited by us. See also "anti-strike" provisions in Ch. 287, Laws of Washington 1947 and Ch. 242, Laws of 1949 referred to by Judge Hodson.

CONCLUSION

The Law Department Budget for 1956 was $184,890.00, $12,000.00 of which was charged to the City Street Fund for condemnation expense and $6600.00 to the Water Fund for special work. The budget was again figured too closely however and an emergency appropriation of $6000.00 for court costs was necessary because of an increase in litigation and other expense thereof.

The volume of work in this department has continued to increase and in 1956 we were barely able to handle the work with the then staff, to whom I express my appreciation for much work well done.

Noteworthy in the large number of ordinances referred to in paragraph V of this report was Ordinance 84728 submitting to the voters the proposition of a bond issue of $5,000,000 for a new Central Library, which was adopted at the March, 1956, election and ratified by Ordinance 85028. Also Ordinance 85404 submitting to the voters a proposition for a bond issue of $7,500,000 for a Civic Center Development, which was adopted at the November, 1956, special election, and Ordinance 85774 ratifying and confirming such proposition and bond issue. Both propositions so submitted included a tax levy in excess of the 40-mill tax limit to service such bonds.

Also prominent in the increase in the work of this department in 1956 was the large amount of advisory work, ordinances and agreements with Water and Fire Districts, etc. in connection with the recent annexations to the city.

Also much special work was done for Seattle City Light in 1956 in connection with fees payable to the Federal Power Commission, the temporary flooding of lands in British Columbia and large claims for extras by the contractors for the Ross Powerhouse. In connection with the last mentioned, it became necessary to employ special counsel in connection with such claims by the contractor aggregating large amounts of money. The special counsel so employed are specialists in contract litigation and were selected by us at an agreed per diem compensation. The bills for such work are sent to us for approval and are paid out of Lighting Department funds.

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 1956 Annual Report of the City of Seattle Law Department,

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

THE SAME BE PLACED ON FILE.

Paul J. Alexander Chairman ..... Chairman

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