CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1957

A. C. VAN SOELEN
Corporation Counsel

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Annual Report

OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1957

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, 1957.

I.
GENERAL STATEMENT OF LITIGATION

1. *Tabulation of Cases:*

The following is a general tabulation of law suits and civil proceedings commenced, pending and ended in the Federal, Superior, and other local courts during the year 1957, including appeals from the Municipal Police and Traffic Courts:

	Pending Dec. 31 1956	Commenced during Year 1957	Ended during Year 1957	Pending Dec. 31 1957
Condemnation suits	4	10	8	6
Damages for personal injuries	99	109	80	128
Damages other than for personal injuries	57	30	41	46
Injunction suits	5	10	8	7
Mandamus proceedings	3	2	3	2
Miscellaneous proceedings	23	9	11	21
Sub-Total	191	170	151	210
Appeals from Municipal and Traffic Courts	304	311	425	190
Grand Total	495	481	576	400

Most of the personal injury cases handled during the year are based on claims in connection with the operation of the Seattle Transit System, and many of the cases marked "pending" are dormant and will be disposed of without trial.

2. *Segregation — Personal Injury Actions:*

	Number	Amount Involved
Pending December 31, 1956	99	$2,725,355.46
Commenced since January 1, 1957	109	3,209,945.19
Total	208	$5,935,300.65
Tried and concluded since January 1, 1957	80	2,215,509.88
Actions pending December 31, 1957	128	$3,719,790.77

Of these personal injury actions 80 involving $2,215,509.88 were tried or finally disposed of in 1957; 27 involving $905,155.72 were won outright; in 21 cases involving $605,795.13, the plaintiffs recovered $233,384.88. The remaining 32 cases involving $704,559.03 were settled or dismissed without trial for a total of $58,541.07.

Of the 109 personal injury actions begun during the year 1957, a large portion involving $1,919,218.31 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, 1956	57	$539,757.95
Commenced since January 1, 1957	30	126,246.71
	87	$666,004.66
Tried and concluded since December 31, 1956	41	188,357.19
Pending December 31, 1957	46	$477,647.47

Of the total of 87 cases, involving damages other than personal injuries, 41 involving $188,357.19 were disposed of during the year 1957 of which 18 involving $112,422.59 were won outright. In twelve cases involving $63,858.85 the plaintiffs recovered $40,856.23. The remaining 11 cases involving $12,075.75 were settled or dismissed without trial for a total of $4,035.65.

The total expense for claims and suits involving the Transit System was $280,696.36 in 1957. This is 2.83% of the gross revenues of the System for that year, and which is substantially less in percentage than the previous year which was 3.11%.

4. *Supreme Court:*

There were 16 appeals pending in the Supreme Court December 31, 1956. Eleven new appeals were filed in 1957. Nineteen were decided in 1957. The City won eleven and eight are still pending.

5. *Miscellaneous Cases:*

Eight injunction actions were tried—four won and four lost; seven are pending, two of which are in the Supreme Court. Three mandamus actions were tried—two won and 1 lost; and two are still pending. Eleven miscellaneous cases were disposed of during the year—eight won by the City and three lost. One of the eight cases won was a false arrest action brought against the Chief of Police and police officers involving $119,429.12.

Three hearings relating to dismissals of employes were participated in before the Civil Service Commission, in which the department was sustained in all three.

Ten actions were commenced for the Lighting Department for unpaid light and power bills and damages to City Light property. By suits and settlements we have collected $2,043.66, and forwarded the same to the City Treasurer. 190 garnishments were handled during 1957, of which 167 were completed without court action, and 23 were answered by the city and the costs collected were transmitted to the City Treasurer.

Many claims, mostly for damage to city property, were forwarded by the Engineering Department to this department for collection. A number have been collected and reports concerning the rest have been made.

II.

CLAIMS IN 1957

	Number	Amount Involved
Claims for damages, dormant, on file December 31, 1956, and against which the 3-year statute of limitations has not run	1922	$6,866,893.81
Claims for damages, active, and referred to this department for investigation December 31, 1956, to December 31, 1957	1498	5,262,804.93

Claims disposed of during 1957:	No.	Amount Claimed	Amount Paid
Settled	779	$1,652,511.18	$300,648.58
Rejected	773	3,100,711.30	
	1,552	$4,753,222.48	

Fifty of above settled claims were in suit and settled in conjunction with Claim Agent.	
Amount Involved	$967,744.46
Amount of Settlements	92,499.08
Number of Seattle Transit System accident reports investigated December 31, 1956, to December 31, 1957	2,459
Number of circulars and letters mailed in connection with investigations of foregoing claims and reports	12,102

III.

MUNICIPAL (POLICE) COURT

During the year 1957 the City Prosecutor, Bruce MacDougall, assisted the Court in disposing of a calendar of 16,244 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $139,339.00.

MUNICIPAL (TRAFFIC) COURT

In the Municipal Traffic Court for the year 1957 a docket of 294,007 traffic cases resulted in fines and forfeitures amounting to $1,697,-419.00. Seven drivers' licenses were revoked and 3,261 suspended; 633 jail sentences were imposed. Assistant Corporation Counsel C. L. Conley acted as city prosecutor in this court.

MUNICIPAL COURT APPEALS

A record total of four hundred twenty-five appeals from the Municipal Courts (235 Traffic, 190 Police) were disposed of in 1957 being principally handled by an assistant, Thomas J. Owens. In one hundred sixty-five cases (81 Traffic, 84 Police) convictions or pleas of guilty were entered. In thirty-five cases (28 Traffic, 7 Police) the court and juries found the defendants guilty after trial. In twelve cases (7 Traffic, 5 Police) the appellants were acquitted. Thirty-two cases (16 Traffic, 16 Police) were dismissed for insufficiency of evidence, witnesses moving away or other causes. One hundred eighty-one appeals (103 Traffic, 78 Police) were abandoned by the defendants and remanded to the Traffic and Police Courts for the enforcement of the original judgments. A total of $18,308.00 in fines, forfeitures and costs were collected by this department in connection with these appeals and transmitted to the City Treasurer. Mr. Don Hall 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 assistance to both the Police and Law Departments and Mr. Hall has done an excellent job in connection with this great number of appeals.

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 106 written opinions on many novel questions of law submitted by the various departments and Boards of the city government.

Also, the City Employees' Retirement System requested opinions on 30 L.I.D. bond issues and opinions were rendered.

V.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1957, 369 ordinances, 57 resolutions; and in addition 116 ordinances were prepared for the settlement of claims.

1547 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $47,262,685.51.

CIVIL CASES DISPOSED OF DURING 1957

By Mr. Siderius:

McGillicuddy v. City

This lawsuit was for $50,000 damages for back injuries allegedly sustained when the plaintiff wife was injured while boarding a trolley. Plaintiffs claimed that the trolley jerked suddenly while she was climbing its steps, throwing her to the floor. Her medical expense was high and she had been hospitalized for her injuries. Plaintiff at a pre-trial deposition denied any pre-existing back difficulty, and had represented to her doctors that she had no prior back injury. A verification of her hospital record disclosed that, contrary to plaintiff's sworn statements, she had a long history of back difficulty pre-existing the trolley accident. This discovery cast such a serious doubt upon her entire testimony, that the case was settled for an amount representing a fraction of the medical expense.

Kimerer v. City

Plaintiff was unloading trash at the municipal fire dump at 125th and Aurora when his foot went through the dirt surface. A live coal lodged in his shoe top and his ankle was burned. He testified that he was several feet from the fire area when the ground gave way beneath him. This action was for $5,000 damages, alleging negligence of the city employes in maintenance of the dump surface.

At the trial the city unsuccessfully urged that the plaintiff was a mere licensee, that he was guilty of contributory negligence, that he assumed the risk of such garbage dump hazards, and finally that maintenance of a municipal fire or trash dump is a governmental function. Jury verdict was for the plaintiff for $2,000. The city's motion for new trial and judgment notwithstanding the verdict were denied, presumably on the basis of *Hutton v. Martin,* 41 Wn.(2d) 780 (1953), in which it was decided that "garbage disposal" is a proprietary function, overruling *Krings v. Bremerton,* 22 Wn.(2d) 220, which held that it is a governmental function.

It is said in the *Hutton* case (p. 784) that the City of Grandview "was charging for the service it rendered * * *. It was operating a *public utility* under statutory authority and should be held liable for its torts." Whether this observation by the court is the basis of the decision is not clear. We think it is and that where the city is *not* operating a garbage dump as a "public utility," as in Seattle the reasoning may well not apply. Whether the operation of a fire or

trash dump, particularly where a fee is charged by a city, is governmental has not been decided by the Washington Supreme Court, and we would prefer to leave this question open.

By MR. DRAPER:

The cases tried by me, together with the results, and the cases settled are set out below:

Jenkins v. City, $25,000.00. Plaintiff fell in an unguarded side sewer excavation in 5100 block, Ballard Ave. Defense verdict.

Harrell v. City, $10,000. Plaintiff sued for damage to real property occasioned by noise from adjacent Park Department maintenance facility and by rats attracted to area by installation. The City's challenge to sufficiency of plaintiff's evidence sustained.

Hird v. City, $15,000. Plaintiff sustained personal injuries when bus and private vehicle collided at intersection. Case dismissed without prejudice on defendant's motion for failure to join husband as party plaintiff.

Alsted v. City, $2,000. Damage to plaintiff's home occasioned by slide. Defense verdict.

Rotunna v. City, $65,000. Personal injuries sustained by plaintiff when his car struck from rear by Transit coach. Defense verdict.

Davis v. City, $8,000.00. Damage to real property by reason of slide. City had removed toe of slope in years past. Settled for $1,900.00.

Moore v. City, $1,000.00. Damage to real property in course of street improvement. Settled for $300.00.

Williams v. City, $12,300. Inadequate sewer line had backed up into plaintiff's basement for 5 years. Tried to court. Judgment for plaintiff $1,028.00 (Offer of settlement $850.00).

Baba v. City, $11,485.50. Damage to plaintiff's realty when water main at 1st and Yesler ruptured. Settled for $907.25.

Kennedy v. City, $10,000. Personal injury to plaintiff when Transit coach in which she was a passenger stopped abruptly. Verdict for plaintiff $3,025.

Travers v. City. Damage to plaintiff's auto caused by bus pulling out from stop sign without adequate margin of safety. Settled at $390.

By MR. NEWBOULD:

De Grief v. City and *M. V. Clarke v. City,* 149 Wash. Dec. 36:

In 1955, Roy De Grief, Justice of the Peace, sitting as Municipal Judge in the City's Traffic Court, commenced an action to declare the 1955 Municipal Court Act, Chapter 290, Laws of 1955, unconstitu-

tional. As stated in our report for the year 1955, the City prevailed in the Superior Court and Judge De Grief appealed to the State Supreme Court. In 1957, the Supreme Court rendered its decision in favor of the City, holding that the State Legislature intended that said act be applied to the municipal courts in Seattle and further, that the plaintiff had failed to show "a justiciable controversy as between the parties . . . "

Following such decision, M. V. Clarke filed an action seeking relief similar to that prayed for by Judge De Grief, the latter intervening as an interest party, and a temporary injunction was issued by Judge Birdseye. The Clarke case was heard on the merits before Judge Henry Clay Agnew and on December 11, 1957, decided in favor of the City. Plaintiff has appealed to the Supreme Court and filed a supersedeas bond to keep the temporary injunction in effect during the appeal.

Automobile Club of Washington v. City, 49 Wn.(2d) 262:

Also included in our report for 1957 was the action by the Automobile Club of Washington to restrain the City from paying a judgment against the city in favor of Mrs. Perrigo from the City Street Fund. The Automobile Club claimed that the payment of a judgment arising out of injuries sustained in connection with operation of the Montlake Bridge was a diversion of funds derived from motor vehicle fees and gas taxes, in violation of the State Constitution. On appeal, the Supreme Court held that the State Director of Highways is a necessary party to the adjudication of the issues raised by the plaintiff and directed his joinder as a party defendant. Said Director has taken a position in favor of the plaintiff and the case is pending trial in Thurston County Superior Court.

Owens v. Seattle, 49 Wn.(2d) 187:

The *Owens* case arose out of a depression in the traveled portion of Airport Way in which rain water had accumulated in a pool which the court states was "three to four inches deep, extending for a distance of some two hundred sixty feet." Although holding that the City has a duty to eliminate or warn of hazards which constitute a "real danger not reasonably to be anticipated by users of the street," the case was returned to the Superior Court for a new trial on refusal of the trial court to give an instruction requested by the City.

Campbell v. City:

The *Campbell* case arose out of an automobile accident, allegedly caused by the existence of street car rails on the University Bridge, installed in 1933 and not in use since 1940, and referred to by the court as a "two-and-one-half-inch ribbon of steel, projecting a quarter of

an inch above the plane of the bridge deck and extending its full length." On appeal, the Supreme Court held that the jury was entitled to find the City negligent for failure to remove said rails during a period of fourteen years.

Peterson v. City, 151 Wash. Dec. 166:

During a snowfall in March of 1955, a transit system coach unable to secure traction stopped on California Avenue, secured its brakes and placed blocks under the rear wheels of the coach. Plaintiff, a passenger, alighted from the coach at the driver's suggestion and proceeded some three steps from the coach and slipped and fell. The Supreme Court sustained a judgment entered upon a jury verdict in favor of the plaintiff. The case is of particular interest in the future handling of transit personal injury litigation involving passengers who have alighted from transit coaches and raises serious questions as to the extent of the City's responsibility as a common carrier in such connection.

State ex rel. Haas v. Pomeroy, 50 Wn.(2d) 23:

This action brought by plaintiff to compel the submission of Ordinance 84392, which ordinance increased water rates, to the voters for ratification or rejection. The Supreme Court sustained the City's position that particularly where a city-owned utility has revenue bonds outstanding, the corporate authorities of the city have the authority to fix the rates for such utility services and therefore an ordinance which does not more than fix rates is not subject to the referendum provisions of the Seattle Charter.

State ex rel. West v. City, 50 Wn.(2d) 94:

The *West* case involved a Writ of Certiorari to review the action of the Civil Service Commission sustaining relator's dismissal from City service. The Lighting Department had followed the Civil Service rule 1-1 which purports to authorize an "appointing officer" to designate "a person . . . to appoint, discipline and remove subordinates." Relator alleged in her complaint that she was not removed by the Superintendent of Lighting but by the "personnel supervisor." On appeal, the Supreme Court held that Article XVI, §12, of the City Charter vests the removal power in the head of a department and invalidates any rule attempting *to delegate* that power to some other officer or employee. The court indicated that facts might exist to show that the relator was dismissed by the said Superintendent, which facts will be presented on the trial on the merits of the relator's cause. The results in the *West* case has suggested a change in the procedure used by some of the City's departments in connection with removals which

is the subject of our opinion (No. 4560) dated August 19, 1957, to the Superintendent of Lighting.

Seattle v. Kuney-Johnson Co., 50 Wn.(2d) .....:

As a follow-up to the summary contained on pages 12 and 13 of our report for 1955, the dismissal of the City's case against the Public Safety Building Contractors was affirmed by the Supreme Court this year, the court holding that when the contractor asked and received permission to substitute Perlite for sand in the plastering of said building, the contractor thereby guaranteed that substitute material to be equal to or better than the sand plaster, but that the contractors' warranty was only for a period of *one year,* as in the other cases of warranty.

Kind v. Seattle, 50 Wn.(2d) 485:

The plaintiffs in this action sought recovery for damage to certain business properties in the vicinity of 1st Avenue South and Yesler Way by reason of a 21-inch watermain burst in January of 1954. The trial court concluded the City may be liable regardless of lack of negligence and entered judgments in favor of the plaintiffs. On appeal, the Supreme Court sustained the lower court's judgment, even though the City showed the pipe to be adequately designed, of standard manufacture, installed in accordance with best known engineering methods, laid in a good foundation and that on inspections the pipe was found to be in good condition. The court indicates that in future similar watermain break cases, the City must be prepared to come forward with affirmative evidence showing the cause of any such break, and the doctrine of *res ipsa loquitur* will be applied.

In the case of *John J. Kennett v. David Levine, et al.,* 49 Wn.(2d) 605, Mr. Kennett, who had been removed by the Mayor of Seattle from his office of Transit Commissioner "for cause," was granted a writ of supersedeas pending his appeal, which is reported in 50 Wn. (2d) 212.

On the merits of the appeal, the court held at page 218 as follows:

> "We have determined that a *prima facie* cause of removal (incompatibility) was stated; hence it follows that the Superior Court properly refused to prohibit the City Council from proceeding with a hearing on the notice of removal, and properly sustained a demurrer to the appellant's application for a writ of prohibition."

COMMENTS AND CONCLUSION

The Law Department budget for 1957 was $217,090 and a force of 31 persons was employed, including the Corporation Counsel, an

elective officer, 10 Assistants and 4 Junior Assistants, all appointive by the Corporation Counsel. The balance of the staff, including 6 Secretaries, a City Claim Agent and 7 employes in the Claim Division, are appointive under civil service rules and regulations.

Under Article XIII of the City Charter the Corporation Counsel has "full supervisory control of all litigation of the city, or in which the city or any of its departments are interested." This includes the Seattle Transit System, and the term "litigation" includes all things incidental to lawsuits, including claims against the City, and legal advice to such departments.

As specially noted in the report, 425 appeals from the Municipal Traffic and Police Courts were disposed of and the average time lag between these appeals and the disposition thereof has been reduced to some seven months. This has been accomplished with the cooperation of the Judges of the Superior Court, particularly by their provision for a special setting during the summer months when ordinarily there are no juries sitting and few of such appeals can be disposed of. There will be another such special setting during the summer of 1958 and it is hoped that the average time lag between the notice of appeal by the defendants in the Municipal Courts and the trial by jury, unless waived, in the Superior Court will be reduced to three or four months.

As has been noted in previous reports, the principal reason for the great increase in the number of appeals from the Municipal Traffic Court in particular, has resulted, in our judgment, from an amendment to the State law in 1955 which provides that the driver's license of persons convicted of drunken and reckless driving in the municipal court shall not, as formerly, be taken up by the Municipal Judge if a timely appeal to the Superior Court under RCW 35.22.530, *et seq.*, is taken, and the result is as above stated.

While it is the duty of the appellant in such cases to diligently prosecute his appeal, this principle of law is difficult to enforce and the number of such appeals is increasing and their disposition presents quite a problem. Fortunately a considerable percentage of such appeals are eventually dropped by the appellants and remanded to the Municipal Court. Many times, however, it is necessary to assign the trial of such appeals to assistants who have their hands full trying civil cases. Progress is being made, however, under these difficult circumstances.

A reorganization of the legal staff was necessary in 1957 by reason of the retirement of First Assistant Corporation Counsel Arthur Schramm and later of Assistants C. C. McCullough and Charles V. Hoard, and the untimely death of Assistant Glen E. Wilson. This was accomplished in the main by the advancement of younger assistants

and in one case by the appointment of an attorney with previous public law practice and who was then engaged in private practice. These appointees have taken over the additional responsibilities and the results to date have been highly satisfactory.

Previous to this the Law Department operation, along with other City operations, was the subject of an administrative survey by private consultants who filed a report including, in Volume 3 thereof at pages 21-35, a reference to the City's "legal services." It is recognized therein that "internal control over operations" in the Law Department is good, "individual work loads are fairly well balanced, a follow-up system on assigned work is in effect, and record keeping is accurate and efficient," department operation is stable and at a reasonable cost to the City, that the department "appears to enjoy the confidence of the local legal profession," that the operation is "economical," and that "*neither added costs nor savings* of any magnitude are anticipated" by the "reorganization" proposed.

Such proposed reorganization would, among other things, divide the department into five sections with stated functions, to be set forth in an "administrative code" and with an "attorney" in charge of each section who would be "responsible" to the Corporation Counsel pending further charter changes.

I am not in accord with such recommendations for reorganization, which were evidently hastily reached by non-lawyers who did not consult with me or I am sure with any informed lawyer concerning the practicability, desirability, and expense thereof, or the effect on the existing organization which is functioning well; and I have so advised the Mayor by letter dated February 5, 1958, stating the reasons for my disagreement, in response to the Mayor's inquiry.

It is also said in such recommendation for reorganization that the processing of claims can be expedited by an ordinance combining the top level position of Assistant Claim Agent with two intermediate positions of Claim Adjuster and three base positions of Claim Investigator, all in the Claims Division of the Law Department.

Such disregard of advancement along promotional lines and experience is an unsound and impractical suggestion. However, I believe, and the City Claim Agent concurs, that the work of processing claims may and should be further expedited and added incentive furnished at the Investigator level by the creation of an additional position of Assistant Adjuster, which would be promotional from Claim Investigator, and I recommended authorization in the 1958 Budget and Salary Ordinance for such an additional position. This recommendation was not followed but I was advised that the matter would be reconsidered by the City Council at a later date.