CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1959

A. C. VAN SOELEN
Corporation Counsel

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Annual Report

OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1959

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, 1959.

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 1959.

	Pending Dec. 31 1958	Commenced during Year 1959	Ended during Year 1959	Pending Dec. 31 1959
Condemnation suits	11	10	7	14
Damages for personal injuries	133	127	138	122
Damages other than for personal injuries	32	44	33	43
Injunction suits	4	6	5	5
Mandamus proceedings	3	4	4	3
Miscellaneous proceedings	17	18	10	25
Habeas Corpus cases	0	3	3	0
Sub-Total	200	212	200	212
Appeals from Municipal and Traffic Courts	154	509	545	118
Grand Total	354	721	745	330

2. *Segregation — Personal Injury Actions:*

	Number	Amount Involved
Pending December 31, 1958	133	$3,071,458.28
Commenced since January 1, 1959	127	3,541,643.48
Total	260	$6,613,101.76
Tried and concluded since January 1, 1959	138	2,831,486.22
Actions pending December 31, 1959	122	$3,781,615.54

Of these personal injury actions, mostly involving Seattle Transit operation, 138 involving $2,831,486.22 were tried or finally disposed of in 1959; 46 involving $822,231.62 were won outright; in 28 cases involving $805,444.80, the plaintiffs recovered $140,608.13. The remaining 64 cases involving $1,203,809.80 were settled or dismissed without trial for a total of $150,424.79.

Of the 127 personal injury actions begun during the year 1959, a large portion involving $1,881,756.42 are based on alleged negligence in the operation of the Municipal Transit System.

3. *Segregation — Damages Other Than Personal Injuries:*

	Number	Amount Involved
Pending December 31, 1958	32	$357,521.85
Commenced since January 1, 1959	44	405,640.88
	76	$763,162.73
Tried and concluded since December 31, 1958	33	237,122.41
Pending December 31, 1959	43	$526,040.32

Of the total of 76 cases, involving damages other than personal injuries, 33 involving $237,122,41 were disposed of during the year 1959 of which 11 involving $159,617.02 were won outright. In 7 cases involving $25,159.08 the plaintiffs recovered $5,420.77. The remaining 15 cases involving $52,346.31 were settled or dismissed without trial for a total of $13,135.25.

The total expense for claims and suits involving the Seattle Transit System was $362,552.42 in 1959. While this is 3.88% of the gross revenues of the System for the year, this is a remarkably low figure in view of the magnitude of the operation.

4. *Supreme Court:*

There were ten appeals involving the City pending in the State Supreme Court, December 31, 1958, and seven new appeals were filed in 1959. Twelve were decided in 1959, of which the City won eight. Five are still pending.

5. *Miscellaneous Cases:*

Five injunction actions were tried — five won; five are pending, one of which is in the Supreme Court. Three mandamus actions were tried — three won, and three are still pending. Three Habeas Corpus cases were filed in 1959 and all three were won. Ten miscellanous

cases were disposed of during the year — eight won by the City and two lost.

Seven hearings relating to dismissal of Civil Service employees were participated in before the Civil Service Commission, in which the department was sustained in all cases.

Forty-one accounts were referred to the Law Department in 1959 and sixteen actions were commenced for the Lighting Department alone, principally for damage to City Light property. By suits and settlements we have collected $5,868.28 for the Lighting Department and have forwarded the same to the City Treasurer. One hundred and ninety-one (191) garnishments were handled during 1959. One hundred and seventy (170) were completed without court action; twenty-one (21) were answered by the City and the costs collected were transmitted to the City Treasurer.

Claims for damages to City vehicles and property were forwarded by other Departments to this department for collection. By suits and settlements, we have collected on a number of such claims and forwarded the same to the City Treasurer.

II.

CLAIMS IN 1959

	Number	Amount Involved
Claims for damages, dormant, on file Dec. 31, 1958, and against which the statute of limitations has not run	1798	$6,712,075.61
Claims for damages, active, and referred to this department for investigation Dec. 31, 1958, to Dec. 31, 1959	1255	5,103,186.17

Claims disposed of during 1959:

	No.	Amount Claimed	Amount Paid
Settled	718	$2,472,015.35	$407,094.87
Rejected	872	4,162,730.71	
	1590	$6,634,746.06	

Some of the above settled claims were in suit and settled in conjunction with Claim Agent.	
Amount Involved	$1,695,564.89
Amount of Settlements	205,543.21
Number of Seattle Transit System accident reports investigated December 31, 1958, to December 31, 1959	2,094
Number of circulars and letters mailed in connection with investigations of foregoing claims and reports	10,062

III.

MUNICIPAL (POLICE) COURT

During the year 1959 the City Prosecutor, Bruce MacDougall, handled a calendar of 15,337 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $132,788.00.

MUNICIPAL (TRAFFIC) COURT

In the Municipal Traffic Court for the year 1959 a docket of 17,222 traffic cases resulted in fines and forfeitures amounting to $2,235,621.45. Sixteen (16) drivers' licenses were revoked and 2,232 suspended, and nine (9) operators' licenses cancelled and also two hundred fifty-eight (258) jail sentences were imposed. Assistant Corporation Counsel C. L. Conley and Robert Elias acted as city prosecutors in this court.

MUNICIPAL COURT APPEALS

An unprecedented number, five hundred and forty-five (545) appeals from the Municipal Courts (458 Traffic, 87 Police) were disposed of in 1959 being principally handled by Assistant Corporation Counsel Charles R. Nelson and Richard P. Ruby. In three hundred and twenty-four (324) cases (295 Traffic, 29 Police) convictions or pleas of guilty were entered. In sixty-two (62) cases (54 Traffic, 8 Police) the court and juries found the defendants guilty after trial. In fourteen (14) cases (9 Traffic, 5 Police) the appellants were acquitted. Twenty-seven (27) cases (20 Traffic, 7 Police) were dismissed for insufficiency of evidence, witnesses moving away or other causes. One hundred and sixteen (116) appeals (78 Traffic, 38 Police) were abandoned by the defendants and remanded to the Traffic and Police Courts for the enforcement of the original judgments. Two appeal bonds were forfeited and two hundred and forty (240) drivers' licenses were revoked and suspended. A total of $54,248.00 in fines and forfeitures was collected by this department in connection with these appeals and transmitted to the city treasurer. Mr. Forest Roe was assigned on detail by the Chief of Police on a part-time basis to assist by way of service of process, commitments of the defendants, interviewing of witnesses, receiving their statements and keeping detailed records of the appeals and his 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 105 written legal opinions on questions submitted by the various departments of the city government.

Also, the City Employees' Retirement System requested opinions on the legality of 23 L.I.D. bond issues and these were rendered.

V.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1959, 427 ordinances, 46 resolutions; and in addition 119 ordinances were prepared for the settlement of 263 claims.

Fifteen hundred and thirty-one bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $52,070,273.60.

Legal papers served and filed during 1959, including condemnation suits, summons and petitions, answers, judgments, notice of appearances and subpoenas, totaling 1,532 in all, were handled by Process Server Louis Stokke.

Notes on Seattle cases in the State Supreme Court; condemnation cases, and miscellaneous cases tried in 1959 and of special interest follow:

NOTES ON SEATTLE CASES IN STATE SUPREME COURT, 1959

Pritchett v. Seattle, 53 Wn.2d 521

In the Superior Court, the jury returned a verdict in favor of the City in this cause arising out of the alleged negligent operation of a transit coach, resulting in personal injury to the plaintiff, a passenger, which verdict the trial judge set aside. On the City's appeal from such judgment notwithstanding the verdict the Supreme Court reversed the trial court, sustaining the City's position that it was error to set aside a verdict in favor of the City where the evidence was in conflict and did not conclusively establish the negligence of the bus operator as the cause of the plaintiff's injuries.

While no outstanding principle of law is established or modified, this result is a tribute to the skill of an experienced attorney handling personal injury cases and Mr. William Brown, Assistant, is to be commended for his impersonal handling of the difficult situation of a city employee seeking to recover from the City for injuries allegedly attributable to a City proprietary function.

In re Seattle, 53 Wn.2d 712

This decision arises out of an appeal by the City from a Superior Court order annuling an assessment roll prepared by the Board of Eminent Domain Commissioners for the taking of property for a playground in the Rainier Beach district. The court sustained the City's position and reaffirmed the principle that where property owners fail to show that their property is not benefited in the amount of the assessment, the method used by said Board in the preparation of the assessment roll is immaterial, so long as there is no "ratable difference" in the amount of the assessment as between properties similarly situated. The Court defines "ratable differences" as "such a difference as would seem to be arbitrary, and in fraud of the rights of the property owner."

Maybury v. Seattle, 53 Wn.2d 716

The City petitioned here for a writ of certiorari to review a pretrial order in Superior Court limiting trial to the issue of damages only under the so-called "new rules" relating to summary judgment. This opinion decides an issue of first impression in this State and holds that such "summary judgments" will be reviewed by the Supreme Court "only by appeal from the final judgment."

Dailey v. Seattle, 154 Wash. Dec. 881

This cause arose out of the administration of the Police Pension

Fund and is one of a number of cases attempting to resolve the difficult issues presented by *Bakenhus v. Seattle,* 48 Wn.2d 695. This appeal settles two issues: (1) The position of "supervising captain" is a "rank" as that term is used in the 1915 and 1955 policemen's relief and pension acts, and (2) the 1955 police pension act cannot be applied to the plaintiff and those policemen similarly situated, particularly as to the decrease in pension which would result if said 1955 act were so applied.

Seattle v. Ross, 154 Wash. Dec. 794

The Court held that Section 9-a of Ordinance 40149 as amended by Ordinance 86061 reading as follows:

> "It is unlawful for anyone not lawfully authorized to frequent, enter, be in or be found in, any place where narcotic drugs or their derivatives are unlawfully used, kept or disposed of."

is unconstitutional and therefore reversed a conviction in municipal and superior court thereunder. The reasoning of the opinion seems to be that although the City's legislative body may create a presumption of one fact from evidence of another "having a rationale connection" therewith, the presumption created by the ordinance in question had no rationale connection with the narcotics traffic and denied the defendant an opportunity to explain his presence in such a "place" unless he could show he carried some "express authority to go upon the premises, as a law enforcement officer, narcotic agent or the like . . ."

City v. Martin, 154 Wash. Dec. 663

This appeal concerned that portion of the old Seattle Zoning Ordinance 45382 providing as follows:

> "In the First or Second Residence Districts any non-conforming use of premises which is not in a building shall be discontinued within a period of one year from the date this ordinance shall become effective."

The defendant here was using his premises for the repair of various types of heavy equipment at the time his property was annexed to the City on January 4, 1954, and the question presented to the court was whether the City could compel a termination of an existing non-conforming use under the above-quoted ordinance. The court sustained the City's position here that said ordinance was a reasonable exercise of the City's police power, but carefully limited its decision to the fact of the particular case.

Hagen v. Seattle, 154 Wash. Dec. 210

This appeal by the City arose out of an adverse decision in the trial court and in connection with the improvement by widening, etc., of 23rd Avenue S.W., and the Supreme Court reaffirmed the original grade doctrine established in *Fletcher v. Seattle* (1906) 43 Wash. 627, which held that the right to make an original grade is implied in the dedication of the street, and, in the absence of negligence, the making or improvement of such an original grade can be neither a taking nor a damaging of private property.

Seattle v. State, 154 Wash. Dec. 128

In connection with the acquisition of property for the Water Department's Tolt River Watershed, it was necessary for the City to institute condemnation proceedings against the State of Washingon to acquire certain "State school and capital building lands." The City obtained an order adjudicating public use and the State sought review of such an order by writ of certiorari.

The Supreme Court concluded that the City is authorized by statute to condemn State-owned lands "not dedicated to a public use" for the purposes of establishing a water supply reservoir, and dismissed the State's writ.

Automobile Club of Washington v. Seattle, 155 Wash. Dec. 159

The issue presented on this appeal was whether the City could expend City Street Fund monies, derived from motor vehicle fuel taxes, to pay a judgment against the City arising out of the negligent operation of the Montlake Bridge, a movable span.

The City contended that such expenditure was within the language of the eighteenth amendment to the State Constitution providing that motor vehicle fuel taxes shall be expended "exclusively for highway purposes, including the cost and expense of . . . operation of movable span bridges . . ."

The court in a 6-to-3 decision held that personal judgments are not a "highway purpose" as contemplated by said 18th amendment stating that "it was (not) the intent of the people, in adopting the eigheenth amendment, to indirecly waive (governmental) immunity by permitting a city to compel the state to reimburse it for expenditures made by the city (on the theory that they are incurred for a highway purpose) to satisfy personal injury judgments rendered against it."

CONDEMNATION CASES, 1959, HANDLED BY ASSISTANTS G. GRANT WILCOX AND JOHN P. HARRIS

15th West et al

Motorists passing along 15th Avenue West between Garfield Street and the south end of the Ballard Bridge in recent weeks have no doubt noticed the extensive construction work now taking place on private property recently acquired by the city for construction of this major north-south arterial. However, many do not realize the extensive legal work necessary before the construction work could proceed.

The physical improvement which was among those authorized by the voters in the 1954 Arterial Improvement Bond Issues, consists of the addition of two lanes of travel on the west side of 15th Avenue West, the construction of an underpass at Dravus Street and a "cloverleaf" at the south end of the Ballard Bridge, thus eliminating the traffic lights and permitting free flow of traffic at these two presently congested points.

Months of appraisal work and negotiations with property owners were necessary before this office was able to present the necessary evidence and agreements for just compensation for property acquisitions by condemnation for court decree on June 1, 1959. Complicated "readjustment" problems were encountered in many cases because of the partial acquisition of business properties such as General Meats, Inc. and Superior Concrete Products, the latter property rights not being acquired until February, 1960. These problems were solved, however, and these businesses, among others, will now be able to continue operating on reduced area at their present locations.

Each of the 98 property owners in the project were conferred with and offered compensation through the staff on the basis of recommendations made by independent appraisers retained by the City for this purpose. In many cases, after these conferences, adjustments in compensation were made after hearing the "side" of the various owners or their appraisers, and contests, with right of trial by jury, were reduced to a minimum. The total condemnation awards paid in July, 1959, amounted to $1,110,591.66; and the award paid in the Superior Concrete Products' case in February, 1960, was $93,000.00.

Tolt River Water Supply

The year 1959 was marked by two more major steps toward the completion of the $22,000,000 plan and system for the development of the Tolt River Water System designed to supply 180 MGD (million gallons daily) or 280 gallons per customer daily for 642,860 users. This was the acquisition by condemnation through this office of a site for a storage reservoir, a dam and an impounding reservoir on the south fork of the Tolt River, above the falls, and two segments of pipeline rights of way, a short segment of 4.9 miles connecting the dam and the regulating basin, and a much longer 24.2 miles segment, 100 feet in width, connecting the regulating basin with a reservoir site above Lake Forest Park, acquired by the City in June, 1955.

The plan is to have a high dam and storage reservoir on the South Fork, now under construction, and a direct diversion dam on the North Fork. Water will be diverted from the North Fork whenever the flow exceeds the minimum flow required for fish spawning and propagation. Any deficiency of flow in the North Fork will be supplemented by drawing water from the South Fork Storage Reservoir. Pipelines from both dams will lead to a control basin. Buildings for screens, chlorination, etc., will be constructed at the outlet of the basin.

Completion of the impounding reservoir, its dam and the regulating reservoir, and the first pipeline along the right of way into Seattle will enable the Water Department to supply 275 million gallons of water daily, a safe margin over the 225 million gallons being consumed daily now, but necessary to meet the projected consumption of 250 million gallons per day in 1970.

The cost of installing additional transmission lines from the present source of supply through the densely populated center of the City is almost prohibitive, and of installing transmission lines around the east side of Lake Washington only slightly less so. In the interest of economy, greater flexibility, and the factor of safety, it was desirable to secure a second source of supply from which water would enter at the northern end of the City by gravity flow at an elevation greater than 420 feet. Seattleites being relatively heavy users of water (the average gallon per capita consumption per day is 138-140) and the greatest population growth in the City of Seattle since 1954 having occurred in the north end this was the logical choice, and the population projection is such as to indicate a continuation of the same growth trend.

In the acquisition of the pipeline rights of way there were 208 parcels of real property affected one way or another, so that with at

least two persons interested in each parcel and more often four or more, there were some 600 individuals to be contacted with reference to the "just compensation" due them under the State Constitution, including rearrangements of their improvements, etc., all in the 11 months from the date of commencement of the condemnation action through the condemnation trial. Three property owners contested the awards recommended by the appraisers and were granted a total increase of $1,700.00. All other properties were acquired at figures recommended by the independent real estate appraisers appointed by the City for a total of $228,764.50.

The acquisition of the reservoir site itself involved lands owned variously by the Weyerhaeuser Timber Co., whose roads are to be used temporarily or relocated, and the State of Washington. A controversy arose over the right of the City to condemn State lands, the State pointing to a statute which permits the issuance of permits to overflow State lands required for reservoir purposes, while fee ownership and control of the area is maintained by the State. The City, in turn, demonstrated to the trial court the necessity of acquiring the fee title and therefore absolute sanitary control of the area in order to insure the purity of the City's water without adding to the present chlorination system the very expensive process of filtration to remove certain harmful organisms known to be dangerous for human consumption but which cannot be destroyed by simple chlorination, as suffices at Cedar River. Tolt River water is known to be comparable in quality to that obtained from the Cedar River. This controversy ultimately found its way to the State Supreme Court where it was decided in the City's favor (*Seattle v. State,* 154 Wash. Dec. 128), and the City accordingly proceeded to condemn the necessary State lands for the dam, impounding reservoir site, regulating basin and pipeline. The reservoir area is surrounded by vast future timber resources, many of which belong to the Weyerhaeuser Timber Company, and the preservation of controlled access to these, and their protection from fire during and after construction necessitated many long conferences between attorneys and operating personnel of Weyerhaeuser, representatives of the City Water and Engineering Departments and the Corporation Counsel's office so that maximum fire prevention measures would already be in effect at the time of clearing the reservoir site. No usable timber will be wasted and such land as was under planned reforestation and is to be flooded for the reservoir will be replaced to the extent possible by exchange land elsewhere. Existing roads had to be relocated above the flooded area, and a scheme evolved which would compensate Weyerhaeuser for their use by the City and its contractors until the City had completed its own access road up the route of the pipeline. Mean-

while negotiations were being carried on with the State of Washington for payment of some of the State land through the medium of exchange of lands located elsewhere, and since all three parties were variously interested in preserving timber resources, fire protection plans and logging regulations agreed upon with the Weyerhaeuser Timber Co. were extended to the land of the State, some of which it ultimately became necessary to condemn for want of available exchange lands. The State retained title to the timber above the line of flooding.

The entire package of land has now been assembled and both the dam and pipeline are well under way. The next major step in the program is a suit just now begun by this office to acquire the necessary pipeline rights of way extending inward toward the City from the Lake Forest Park reservoir site and into existing mains.

MISCELLANEOUS CASES

Arntzen v. Seattle, Superior Court No. 510764: Plaintiff, an elderly woman, was thrown to the floor of a bus which it was contended was caused by an alleged unusual jerk of the bus. Her injuries at the time appeared superficial with minimal injuries to the head. Two weeks after the accident she was stricken with a cerebral hemorrhage which was totally and permanently disabling, causing her to be bedridden for the rest of her life, all allegedly from her fall on the bus. During the original trial before a jury where she testified from a hospital bed, her attorneys for strategic reasons dismissed the case and started anew. The prayer of the complaint was in the sum of $135,000. Shortly before the case was to go to trial for the second time, because of the involved neuro-surgical problems in the case and the dispute between the neuro-surgeons called by the plaintiff and the City and the further possibility of another stroke occurring during the trial of the case, the sum of $5,000 was offered to plaintiff which she accepted. This, in our opinion, was a good settlement by Chief Trial Assistant John A. Logan.

Jakoboni v. City of Seattle, Superior Court No. 524038: This was a civil suit arising out of a $300,000 watermain contract. The plaintiff sought approximately $9,000 damages for extra work he claimed he had done or regular work unpaid for. The city admitted a few hundred dollars still owing but had not paid it pending settlement of the matter. The nonjury trial of the case took 4 days and resulted in a judgment for the plaintiff in the amount of $560.53. Plaintiff then appealed to the Supreme Court, No. 35424, and respondent's brief is now being prepared by Assistant Richard P. Ruby.

Merritt-Chapman & Scott Corporation v. City of Seattle, U.S. District Court, Western District of Washington, Northern Division:

This action, which was commenced on July 29, 1959, stems from disputes between the City and the plaintiff, prime contractor on Gorge High Dam which is under construction on the Skagit River for the Department of Lighting. In the complaint the contractor asked the court to declare that the contract between it and the City had been legally terminated because of alleged radical changes in the scope and method of proceeding with the work. Alternatively, it asked that it be awarded damages for increased expenses caused by these changes in the total sum of $2,437,151.49 to date. It also asked that the court declare it entitled to a total of 482 days' extension of contract completion time in addition to extensions of 427 days already granted by the City. The City's motion to dismiss the complaint was granted on December 30, 1959, and an order was entered dismissing the action without prejudice to the plaintiff commencing an action for damages. The plaintiff has appealed this decision to the United States Court of Appeals for the Ninth Circuit. It will be at least several months before the case is heard by that court. With the approval of the Mayor, the City Council and the Superintendent of Lighting, the law firm of Helsell, Paul, Fetterman, Todd & Hokanson was retained at an early date in the dispute with the above prime contractor to prepare, as special counsel, the city's defense to the above action which was anticipated, and to carry on as such counsel for the city in that connection along with First Assistant Corporation Counsel A. L. Newbould.

Civic Auditorium conversion legislation and litigation:

On December 11, 1958, attorney Alfred J. Schweppe filed the case of *William H. Davis v. City of Seattle, et al,* being an action for declaratory judgment and injunction seeking to declare void Seattle Ordinances 87661 and 87672, both of which contemplated the conversion of the present Civic Auditorium into a concert-convention hall of about 3,100 seating capacity and construction of an 800-seat multi-purpose auditorium and to enjoin any expenditures in connection therewith. The action was brought in behalf of "a citizen and taxpayer in the City of Seattle and a bond owner" who claims that Ordinances 87661 and 87672 constitute a "diversion" of bond moneys which was "illegal and void" unless "authorized by a new vote of the people" because contrary to and in violation of "plans" approved by the voters of Seattle on November 6, 1956; contrary to and in violation of Ordinance 85774 providing for the issuance of Civic Center bonds; contrary to the "covenants" of said Civic Center bonds; and in violation of the State and Federal constitutions.

At the trial on June 4-5, 1959, all the testimony in the case supported the reasonableness of, and the necessity for, the conversion plan as well as the architectural soundness thereof. However, on June 16, 1959, judgment and permanent injunction was entered by Judge James W. Hodson enjoining the city from expending 1956 bond money pursuant to Ordinances 87661 and 87672 and declaring such ordinances void for the reason, among others, that said ordinances were not submitted to the voters for approval or rejection.

The city's position was and is that since there is no constitutional or statutory restrictions on the city's legislative authority, which has power over disposition of the bond proceeds under Ordinances 87661 and 87672, which are reasonable and necessary said ordinances must be upheld unless the exercise of the city's legislative authority is found by the court to be unreasonable, arbitrary or capricious, or amounting to constructive fraud, concerning which there is not even an allegation in the complaint, and of course no proof whatever.

Judge Hodson's decision is on appeal to the State Supreme Court, the city having filed its brief on November 23, 1959, and the respondent on January 13, 1960. The case will be argued in the May, 1960, term of the State Supreme Court.

Pending such appeal, however, in an endeavor to expedite the conversion plan, the city's legislative authority on July 20, 1959, enacted ordinance 88409 which submitted to the voters for their ratification or rejection the proposition to convert the present Civic Auditorium structure into a concert-convention hall under the simple referendum pursuant to Charter Article IV and said ordinance received in its favor a great majority of some six to one of all votes cast for and against the same and has become and is in full force and effect as an ordinance of The City of Seattle as provided in said Charter Article IV, and as proclaimed by the Mayor on October 8, 1959.

Following such proclamation, Ordinance 88710, which provides for the employment of such architectural firms and of a primary architect to complete plans and specifications for the conversion so authorized and the construction of a multi-purpose auditorium of 800 seating capacity, and makes certain appropriations from the Civic Center Development Bonds 1956 Fund and authorizes the City Comptroller to draw and the City Treasurer to pay the necessary warrants, was enacted.

Notwithstanding such vote of the people, Mr. Schweppe brought a second suit on December 11, 1959, challenging the validity of referred Ordinance 88409 on the ground that said ordinance constitutes a diversion by the city of bond fund moneys and that the elec-

tion was not in accordance with Amendment 17 of the Washington State Constitution which authorizes any taxing district to issue general obligation bonds for capital purposes only when authorized by a three-fifths majority of the electors voting on the proposition to issue such bonds and to pay the principal and interest thereon by an annual tax levy in excess of the limitation provided in said amendment "at which election the total number of persons voting on the proposition shall constitute not less than forty per centum of the total number of votes cast in such taxing district at the last preceding general election."

The city's position is that such constitutional requirement for a total number of persons voting on such a proposition is not applicable to the referendum election of September 29, 1959, for the reason, among others, that no additional levy in taxes is contemplated or authorized in the conversion plan. The city filed its answer on December 31, 1959, and the case will be tried early in 1960 in the Superior Court.

SUMMARY AND CONCLUSION

The Law Department budget for 1959 was $241,095 and the increased volume of trial, advisory and administrative work in 1959 is indicated in the foregoing tabulation and I wish at this point to make special reference to the work of the claims and legal divisions in the following connection:

The Ravenna Sewer break and resulting cave-in of practically the entire street area in Ravenna Boulevard in the vicinity of 16th Avenue N.E., which commenced November 11, 1957, was a near disaster which fortunately did comparatively little damage to private property. However, 64 claims aggregating $177,807.19 were filed of which 46 totaling $127,892.64 were settled for $24,301.34; 18 claims totaling $50,000, including two in suit for $26,500, are still pending, and 14 have been rejected as noncompensable. From this it appears that the total amount the city will pay in the final disposition of all these claims will not exceed $40,000.

Other claims against the city disposed of in 1959 include the following:

Thirty sidewalk claims asking $149,066.58 were settled for $21,-686.11, and 17 additional of such claims which were in litigation in the amount of $303,658.55 were disposed for for $14,832.37, the total for 1959 being $36,518.48.

One hundred sewer claims (backup) asking $62,296.19 were settled for $15,236.43. Three of such claims which were in litigation in

the amount of $16,853.54 were disposed of for $4,800.00, the total for 1959 being $20,036.43.

In view of the magnitude of the sidewalk maintenance problem in as large a city as Seattle, this is a comparatively small annual expense; and the same is true of the sewer back-up problem, the annual expense of which has been greatly exaggerated.

The continuing increase in condemnation work, particularly in connection with the improvements to the arterial highway system and the expansion of the water supply system, two of which cases are hereinbefore referred to, has resulted in the assignment of two Assistants at practically full time to this work and the unprecedented increase in the number of appeals from the Municipal Courts —458 Traffic and 87 Police—to the Superior Court in 1959 has necessitated assigning two Assistants practically full time to this work also. It is said that the great increase of Traffic Court appeals has resulted from the clean-up of the backlog of such cases in the Municipal Traffic Court. It is to be hoped that this is the case because it is manifestly impossible to try such number of cases on appeal. However, 10 to 15 of these appeals have been disposed of each week, including one jury and several nonjury trials per week. The vast majority of these traffic appeals involve drunken driving with an additional charge of reckless driving. These are all new trials in the Superior Court and because of the difficulty of proving the additional charge of reckless driving, we often consent to the reduction of the second charge to negligent driving if the appellant is willing to plead guilty to the driving while drunk charge. On a plea of guilty to the charge of driving while drunk, our standard recommendation for a first offense if $150.00 fine and license suspension of 30 days. A lesser sentence for this offense is never recommended and often a stronger one is recommended in an aggravated case or for a defendant with a bad driving record and although this sometimes results in a lesser fine than imposed by the Municipal Traffic Court the conviction is what we are after and it is apparent that it would serve no useful purpose to force these appeals to trial by jury at the option of the appellant with the sentence to be fixed by the the Superior Court in any event.

The employment of private counsel to represent the city in the hearings before the Federal Power Commission on the city's application for a license for hydro-electric project at Boundary on the Pend Oreille River, being FPC Project No. 2144, was continued during 1959, during which year extensive hearings were held in Washington, D.C.

The application of the city to the International Joint Commis-

sion for an order supplementing the Commission's order of 1942 involving the flooding of certain Crown Lands in British Columbia by the proposed raising of Ross Dam to elevation of 1,725 feet was heard by the Commission October 15, 1958, and later the Commission rendered two reports, the Canadian section voting to deny the city's application and the American section voting to grant the same, and both sections reported to their respective governments accordingly.

Early in 1959 two experienced attorneys in private practice, Robert M. Elias and Charles R. Nelson, were appointed. Mr. Elias was assigned to replace Charles L. Conley as City Prosecutor in the Municipal Traffic Court. Mr. Conley who had been with us for many years, was on leave of absence on account of illness and subsequently resigned effective January 1, 1960. Mr. Nelson on account of his previous connection with the office was assigned to supervise appeals from the Municipal Courts and also to handle specialized cases. During 1959 Anthony Arntson resigned to become City Attorney of Yakima, C. D. Fransen to become a Deputy Prosecuting Attorney of Yakima County and R. H. Siderius to enter private practice. We regret the loss of these experienced lawyers and of Mr. Siderius in particular and his place will be hard to fill, as he has specialized in the defense of personal injury cases.

In closing I wish to express my appreciation for the capable manner in which the ever-increasing volume and complexity of work in the department has been so well taken care of by the entire staff, to the members of which I express my thanks.

I also thank the City Council for its consideration and adoption of my budget estimates for 1959 and 1960, with particular reference to a more adequate salary scale for the appointive assistants, too many of whom have been leaving city service each year to enter other public service and the private practice.

Respectfully submitted,

A. C. VAN SOELEN,
Corporation Counsel.

The City of Seattle--Legislative Department

Date Reported and Adopted

MR. PRESIDENT:

Your Committee on Judiciary

to which was referred the within Law Department Annual Report - 1959,

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

THE SAME BE PLACED ON FILE.

Paul J. Alexander, Chairman

Chairman