CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1960

A. C. VAN SOELEN
Corporation Counsel

CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1960

A. C. VAN SOELEN, *Corporation Counsel*

A. L. NEWBOULD.....*First Assistant*
JOHN A. LOGAN.....*Principal Trial Assistant*
G. GRANT WILCOX.....*Assistant*
GEORGE T. MCGILLIVRAY.....*Assistant*
JOHN P. HARRIS.....*Assistant*
GORDON F. CRANDALL.....*Assistant*
ARTHUR T. LANE.....*Assistant*
CHARLES R. NELSON.....*Assistant*
ROBERT M. ELIAS.....*Assistant*
PETER K. STEERE.....*Assistant*
RICHARD P. RUBY.....*Assistant*
JERRY F. KING.....*Assistant*
ROBERT B. LESLIE.....*Assistant*
BRUCE MACDOUGALL.....*City Prosecutor*
ROBERT WARD FREEDMAN.....*Junior Assistant*
JOHN A. HACKETT.....*Junior Assistant*
FAYE FORDE .....*Secretary*
JOHN F. COOPER.....*Claim Agent*

Annual Report

OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1960

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, 1960.

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 during the year 1960, including appeals from the Municipal Police and Traffic courts:

	Pending Dec. 31 1959	Commenced during Year 1960	Ended during Year 1960	Pending Dec. 31 1960
Condemnation suits	14	14	19	9
Damages for personal injuries	122	86	102	106
Damages other than for personal injuries	43	41	39	45
Injunction suits	5	5	3	7
Mandamus proceedings	3	1	4	0
Miscellaneous proceedings	25	27	19	33
Habeas Corpus cases	0	0	0	0
Sub-Total	212	174	186	200
Appeals from Municipal Police and Traffic Courts	118	417	367	168
Grand Total	330	591	553	368

2. *Segregation — Personal Injury Actions:*

	Number	Amount Involved
Pending December 31, 1959	122	$3,781,615.54
Commenced since January 1, 1960	86	2,470,964.32
Total	208	$6,252,579.86
Tried and concluded since January 1, 1960	102	2,478,192.57
Actions pending December 31, 1960	106	$3,774,387.29

Of these personal injury actions mostly involving Seattle Transit operation, 102 involving $2,478,192.57 were tried or finally disposed of in 1960; 41 involving $975,124.35 were won outright; in 10 cases involving $320,833.82, the plaintiffs recovered the aggregate sum of $112,874.26. The remaining 51 cases involving $1,182,234.00 were settled or dismissed without trial for a total of $185,299.10.

Of the 86 personal injury actions begun during the year 1960, a large portion involving $1,044,878.50 are as usual 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, 1959	43	$ 526,040.32
Commenced since January 1, 1960	41	483,680.05
	84	1,009,720.37
Tried and concluded since December 31, 1959	39	202,507.73
Pending December 31, 1960	45	807,212.64

Of the total of 84 cases involving damages other than personal injuries, 39 involving $202,507.73 were disposed of during the year 1960 of which 13 involving $80,295.41 were won outright. In 8 cases involving $39,183.00 the plaintiffs recovered $11,941.37. The remaining 18 cases involving $83,029.32 were settled or dismissed without trial for a total of $15,130.53.

The total expense for claims and suits involving the Transit System was $243,688.42 in 1960. This is 2.61% of the gross revenues of the System for the year.

4. *Supreme Court:*

There were five appeals involving the City pending in the State Supreme Court December 31, 1959, and seven new appeals were filed in 1960. Eight were decided in 1960, of which the City won four and four are still pending.

5. *Miscellaneous Cases:*

Three injunction actions were tried—three won; seven are pending, one of which is in the Supreme Court. Four mandamus actions were tried—three won, one lost and none pending. No Habeas Corpus cases were filed in 1960. Nineteen miscellaneous cases were disposed of during the year—16 won by the City and three lost.

Three hearings relating to dismissals of employes were held by the Civil Service Commission, in which the department was sustained in two and one employee was returned to the eligible register in lieu of reinstatement.

A number of accounts were referred to the Law Department in 1960 and actions were commenced for the Lighting Department, principally for damage to City Light property. By suits and settlements we have collected $2,982.43 for the Lighting Department and have forwarded the same to the City Treasurer. One Hundred and eighty-eight (188) garnishments were handled during 1960. One Hundred and fifty-eight (158) were completed without court action; thirty (30) 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 these claims and forwarded the same to the City Treasurer.

II.
CLAIMS IN 1960

	Number	Amount Involved
Claims for damages, dormant, on file Dec. 31, 1959, and against which the statute of limitations has not yet run	1463	$5,180,497.72
Claims for damages, active, and referred to this department for investigation Dec. 31, 1959, to Dec. 31, 1960	1109	4,766,598.46

Claims disposed of during 1960:

	No.	Amount Claimed	Amount Paid
Settled	689	$3,035,285.87	$418,551.95
Rejected	599	3,354,084.94	
	1288	6,389,370.81	

Some of the above settled claims were in suit and settled in conjunction with Claim Agent.	
Amount involved	$1,975,679.76
Amount of settlements	218,869.16
Number of Seattle Transit System accident reports investigated December 31, 1959, to December 31, 1960	1,998
Number of Circulars and letters mailed in connection with investigations of foregoing claims and reports	11,981

III.

MUNICIPAL POLICE COURT

During the year 1960 the City Prosecutor, Bruce MacDougall, handled a calendar of 14,501 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $131,921.00.

MUNICIPAL TRAFFIC COURT

In the Municipal Traffic Court for the year 1960 there was a docket of 43,643 traffic cases resulting in fines and forfeitures amounting to $449,620.50 and traffic bureau forfeitures amounting to $1,958,971.50, totaling $2,408,592.00 for the year.

Three driver's licenses were revoked and 1180 suspended, and eleven (11) operator's licenses cancelled. Also, two hundred jail sentences were imposed.

Assistant Corporation Counsel Robert M. Elias acted as City Prosecutor in this court.

MUNICIPAL COURT APPEALS

A large number, 367 appeals from the Municipal Courts (265 Traffic, 102 Police) were disposed of in 1960 being principally handled by Assistant Corporation Counsel Richard P. Ruby and Robert B. Leslie. In 176 cases (129 Traffic, 47 Police) convictions or pleas of guilty were entered. In 42 cases (36 Traffic, 6 Police) the court and juries found the defendants guilty after trial. In 5 cases, (2 Traffic, 3 Police) the appellants were acquitted; and 19 cases (10 Traffic, 9 Police) were dismissed for insufficiency of evidence, witnesses moving away or other causes. 125 appeals (88 Traffic, 37 Police) were abandoned by the defendants and remanded to the Traffic and Police Courts for the enforcement of the original judgments. 85 driver's licenses were revoked and suspended. A total of $25,086.90 in fines and forfeitures and Superior Court costs in the amount of $598.70 were collected by this department in connection with these appeals and transmitted to the city treasurer. Mr. Forest Roe was detailed 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. This work is of much value to both the Police and Law Departments and Mr. Roe did excellent work in this connection.

IV.

OPINIONS

During the year, in addition to many conferences with city officers concerning municipal affairs of which no formal record is kept, this department rendered 81 written legal opinions on close questions of law which involved much legal research.

Also, the City Employees' Retirement System requested opinions on the validity of 27 L.I.D. bond issues and opinions were rendered.

V.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1960 379 ordinances, 51 resolutions, and in addition 117 ordinances were prepared for the settlement of 251 claims.

1801 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $52,367,246.03.

Legal papers served and filed during 1960, including condemnation suits, summons and petitions, answers, judgments, notice of appearances and subpoenas, totaling 1559 in all, were handled by Process Server Louis Stokke.

MEMO OF NOTEWORTHY SUPERIOR COURT PROCEEDINGS AND OTHER ACTIVITIES IN 1960

The Condemnation Section handled several unusual cases during the year 1960. One involved the acquisition of an easement establishing building setback lines on 15th Avenue N. W. between Shilshole and West 46th Street to insure an adequate fire protection lane between structures on private property and the recently constructed overpass and widened approach to the north end of the Ballard Bridge. Another, the first of a series of similar cases to be processed as the Law and Engineering Departments find time saw the City acquiring the "odds and ends" of property necessary to complete the street grid system in one section of the area acquired in the 1954 annexation north from 85th Street to 145th Street. This involved about 80 parcels. Another case involved the joint acquisition by Seattle School District No. 1 and the City of Seatle of the former Meadowbrook Golf Course. The two municipal corporations consolidated their cases to avoid the issue of severance damage, but ultimately each took title separately for the respective purposes of school site and park and recreational purposes. Three other major condemnations pending were completed, the acquisition of a site for the City Hall, the widening of 15th Avenue West and construction of an interchange at Emerson Street and of an overpass at Dravus Street, and the Tolt River Pipeline Right of Way. These were in addition to a number of routine small acquitions.

Submitted by G. Grant Wilcox

Matthews v. City—November, 1960—Slide case—defense verdict.

This was a suit brought by a property owner for damages to his property allegedly sustained as a result of the city's action in opening and grading 6th Avenue between Yesler Way and Terrace Street in the summer of 1956. The slide complained of occurred in January, 1958. Plaintiff alleged that the City was negligent in opening this portion of 6th Avenue and did not provide lateral support for the earth adjoining said street thereby causing the slide in question.

The case was tried to a jury before Judge Raymond Royal on November 2, 3, and 4 and resulted in a verdict for the city. The jury specifically found that the opening of this portion of 6th Avenue constituted an original grading thereof; that the city was not negligent in doing this work and that plantiff's property was not damaged thereby.

—Submitted by John P. Harris.

City of Seattle v. State of Washington, Thurston County, Cause No. 31203:

This was an appeal by the City from an order of the State Tax Com-

mission sustaining tax assessments amounting to some $82,000 upon the City Water and Park Departments. The Thurston County Superior Court held for the City on all issues presented and set aside the assessments, agreeing with our contentions that the State Utiliy tax may not be assessed upon sums received by the Water Department from water users as reimbursement for the costs of installing facilities to serve such users and that the State Business & Occupation tax may not be assessed upon revenue produced by Park Department facilities such as pools and beaches, all operations of the Park Department being governmental in nature. The State has appealed this decision to the State Supreme Court. —Submitted by Jerry F. King

R. F. Jones Co., Inc., et al. v. City of Seattle, U. S. District Court Cause No. 4888 (*L. D. Ragan v. City of Seattle,* Superior Court Cause No. 551633, Supreme Court Cause No. 35761) was brought in Federal District Court seeking declaratory relief by having declared unconstitutional that portion of Seattle amusement device Ordinance No. 87384, which applied to music machines, so-called "juke boxes." Plaintiffs contended that the restriction upon the number of juke box operators within the city and the method of limitation were a deprivation of rights guaranteed by the 14th Amendment of the U. S. Constitution and similar provisions of the Washington State Constitution and in addition granted operators who had been such prior to 1958 a monopoly.

The City obtained a stay of proceedings in Federal Court on the ground that the facts alleged did not constitute a justiciable issue under the statute implementing the 14th Amendment relied upon by plaintiffs and on the ground of equitable abstention which would permit the state court to deal in the first instance with a controversy principally involving the State Constitution and statutes. One of the plaintiffs, L. D. Ragan, then filed suit in Superior Court seeking similar relief. The request for summary judgment was heard before Judge Eugene A. Wright in August, and summary judgment was granted for the defendant City. Plaintiff's appeal is now pending in the State Supreme Court. —Submitted by Robert B. Leslie

STATE SUPREME COURT CASES 1960

Davis v. City of Seattle, 156 Wash. Dec. 787.

The voters of Seattle on November 6, 1956, approved a $7,500,000 bond issue to finance the acquisition of a 28-acre site and certain immediate improvements for a modern civic center to be paid by a tax levy in excess of the 40-mill constitutional and statutory limitation. After the land was acquired by condemnation it became evident that

the funds remaining were insufficient to construct the buildings originally contemplated.

A revised plan by referendum ordinance was submited to the voters for the conversion of the existing Civic Auditorium into a concert-convention hall in place of the construction of a new building for which there was insufficient funds. This ordinance was approved by the voters of Seattle on September 29, 1959, at a special referendum election held pursuant to Charter Art. IV.

The above taxpayer instituted two suits referred to in the 1959 Report, to enjoin the city from proceeding with the conversion plan, the first on the theory that it was unlawful to deviate from the original program for a new building which he won and the city appealed, and the second on theory that the referendum election was not conducted according to Amendment 17 of the State Constitution relating to indebtedness payable from an excess tax levy, which he lost and he appealed.

The Court in a 5 to 4 decision above cited held that the purpose of Amendment 17 "is to protect against excess tax levies and not to regulate the more routine matters of the use of funds." The Court held that the referendum ordinance was authorized by the Seattle Charter and changing the use of the funds from the bond issue did not involve the limitation imposed by the Washington Constitution on tax levies exceeding the 40-mill limit. The case was argued by Mr. Van Soelen personally and the decision ended a long delay in the city Civic Center building program which resulted from an injunction granted by Judge Hodson in the first Davis Case, and the City has proceeded with the conversion plan for a concert and convention hall.

Municipality of Metropolitan Seattle v. Seattle, 157 Wash. Dec. 343

A metropolitan municipal corporation (called "Metro") was formed in April of 1958 pursuant to an election under state law Ch. 213 RCW to provide sewage disposal service in the Lake Washington drainage area including the cities of Kirkland, Bellevue, Seattle and the metropolitan area. A 50-year agreement was authorized between Metro and Seattle for the disposal of Seattle's sewage payable from the gross revenues of Seattle's Sewer Utility. Metro brought a declaratory judgment action against the City to determine the validity of this agreement. The trial court declared the contract valid on appeal and the judgment was affirmed.

In an opinion written by Judge Ott the Supreme Court held that (1) the election procedure used for the formation of Metro was valid, (2) the state law, Ch. 213 Laws of 1957, authorizing the establishment of such a metropolitan municipal corporation was constitutional, and

(3) the contract between Metro and Seattle was valid. In addition a number of basic questions of state control over local government functions and local police powers are considered and decided by the court.

Housing Authority of City of Seattle v. The City of Seattle, 156 Wash. Dec. 10.

The Housing Authority of Seattle created under Chapter 23-24, Laws of 1939 to provide low rental housing, brought an action against the City to enjoin the collection of sewer charges authorized in 1955 by Seattle Ordinance 84390 which established a sewer utility. The trial court held that the Authority was by contract exempt from the charge and the city appealed. The State Supreme Court affirmed in a 6 to 3 decision holding that the city had "waived" all "service charges" in the agreement between the City and the Housing Authority relating to the so-called Yesler Housing Project in Seattle.

Judge Ott, speaking for the majority, reviewed the legislative history leading up to the federal and state statutes enacted in 1939 to promote the general welfare by providing public low rent housing throughout the nation. Congress made federal aid conditional upon a city contributing 20% of the annual federal contribution in the form of cash or special "tax" exemptions. The Washington Legislature exempted all Housing Authority property from property taxes, and authorized contracts with cities to waive other "service charges" which contract, in the case of the Yesler Housing project, included the following language:

> ". . . furnish, without cost or charge to the Authority and the tenants of each Project, the usual municipal services and facilities *which are or may be* furnished free to other dwellings and inhabitants in the city, . . ."

The city contended that the "service charges" waived were those for service furnished free to others at the time of the contract and in the future, and that charges for the use of sewers on a utility basis were not exempt under the contract and three of the judges agreed. The majority held however that the agreement made was part of the city's contribution toward the housing project within the contemplation of the federal and state statutes and that "the City had exempted the Authority from the payment of sewerage charges" for the useful life of this particular project.

The decision fortunately applies only to the agreement for the Yesler Housing project and not to the other projects of the Seattle Housing Authority and care should be taken in future agreements that such projects should not be exempted from possible future utility charges paid by all others.

City of Seattle v. Harclaon, 156 Wash. Dec. 559.

A jury award was entered in a condemnation proceeding for land for the Seattle Civic Center. One contention on appeal was that the trial judge's questioning of expert witnesses was a comment on the evidence.

In a per curiam opinion the court stated that respondent's original counsel did not claim any misconduct at the time of trial, and, that failing to give the trial court a chance to correct it, subsequent counsel cannot urge trial objections for the first time on appeal.

Judge Finley, in a concurring opinion, pointed out that an aggrieved party need not object at the time to the matter complained of but can raise the question when arguing the motion for a new trial.

Assistant John P. Harris argued the case on appeal.

Jakoboni v. City, 157 Wash. Dec. 215

The plaintiff A. Jakoboni contracted with the City to install water mains for $300,000. As the work progressed, the contractor asked for payment for alleged extra work done. A dispute arose as to the amount due and Jakoboni sued for approximately $9,000 for extra work. The trial court entered judgment for $560.53 and Jakoboni appealed. The Court upheld the judgment, finding no error by the trial court.

Wood v. Seattle, 157 Wash. Dec. 367

This decision reversed a summary judgment in favor of the City and ordered the trial court to grant a new trial.

The plaintiff, Paul D. Wood, sustained personal injuries when he attempted to alight from a City bus while using crutches, contending that the City was negligent in among other things failing to assist him off the bus. On a motion for summary judgment the trial court dismissed the plaintiff's complaint, ruling that the plaintiff was guilty of contributory negligence as a matter of law.

Judge Ott, speaking for the Court in en banc decision, ruled that the evidence presented a genuine issue of fact relative to the plaintiff's contributory negligence.

The case was argued by Assistant William W. Brown for the City.

Sherman v. Seattle, 157 Wash. Dec. 124

This decision affirmed a jury verdict and judgment rendered in favor of the plaintiff, Gregory Sherman, a three-year-old child injured by a lift apparatus at city-owned Diablo Dam.

The lift apparatus is a platform on wheels running on rails, extend-

ing up a 550-foot hill which links the Diablo Dam with the town of Diablo—referred to as a "company town"—owned by the City. As the platform began its descent—controlled by an operator at the top of the hill—the boy was seen playing alone between the rails by others. Despite all attempts to warn the operator and stop the lift, it passed over the boy, necessitating amputation of his left arm.

The trial court had submitted the case to the jury on instructions indicating that

(1) Negligence of the City could be inferred where the proof shows that the lift was an attractive nuisance, and

(2) Negligence could be found if the City failed to use reasonable care to protect the boy from injury.

Reviewing Washington Decisions, the court held the lift was not an "attractive nuisance" but that the City would be negligent if it failed to use reasonable care to protect the plaintiff from harm, regardless of his status on the land (trespassor, licensee, or invitee).

In looking at the evidence, the court concluded that it was sufficient to support the verdict that the City was negligent and that the amount thereof was not excessive. In this regard the Court stated that it would not substitute its judgment for the jury's "unless this court's sense of justice is shocked by the amount of the award."

Judge Donworth wrote the majority opinion. Judges Ott and Mallery dissented on the ground that the jury might have based its verdict on the instruction regarding "attractive nuisance," which was error.

The case was argued by Chief Trial Assistant John A. Logan for the City.

In re condemnation petition of Seattle, 156 Wash. Dec. 476.

The City—because of a faulty title certificate—did no serve appellant with original process in a proceeding to condemn private land in Seattle for park purposes, nor was service made by publication.

After the trial court issued an order of public use, the City learned of appellant's interest in the land. Ample time was afforded to the appellant to prepare for the trial on the compensation question.

The court held that appellant's actual notice of the proceedings for over two months prior to trial cured the defects in service—emphasizing that a condemnation proceeding is a proceeding in rem—not in personum. Thus "personal jurisdiction over the land owner is not a prerequisite to valid court action."

The case was argued by Assistant John P. Harris for respondent City of Seattle.

SUMMARY AND CONCLUSION

The Law Department budget for 1960 was $274,325 of which $234,300 was for salaries. Substantial salary savings in addition to those estimated were made due to the fact that we had considerable difficulty in filling vacancies in the position of Assistant Corporation Counsel. We regret the loss by resignation during 1960 of Assistants William W. Brown and Frank W. Draper, both with considerable experience in the office; also of Mr. Haydn H. Hilling who had been with us a short time. Mr. Brown specialized in the trial of personal injury cases and made many settlements advantageous to the city and was unusually successful in trial work and the evaluation of claims. Mr. Draper specialized in property damage cases and made a good record in the office. Their places were hard to fill. We were able to secure the services of an experienced attorney, Mr. Gordon F. Crandall, who was appointed to fill one of the vacancies and Assistant John P. Harris was advanced to fill the other. The third vacancy was also filled by advancement and Attorneys Robert Freedman and John A. Hackett were appointed Junior Assistants. It is the general policy of the office to fill vacancies by advancement. Sometimes it is necessary to secure, if possible, the services of specialists in private law practice. These have been difficult to secure at the current salary rates to which we are restricted by the City Council and through its control of the budget.

We were unable in 1960 to convince the City Council that substantial increase in the salary of assistants, particularly in the higher brackets, is necessary to attract and hold the services of competent attorneys, and the salaries for such assistants as allowed in the 1961 Budget are unrealistic.

The employment of local private counsel and also of special counsel in Washington, D. C., to represent the City in the hearings before the Federal Power Commission on the City's application for license for a hydroelectric project at Boundary on the Pend Oreille River by F.P.C. 2144 was continued during 1960, during which year extensive and final hearings before an examiner were held in Washington, D. C. We are well satisfied with this special representation and in our opinion the prospects of the granting to the city of the necessary federal license are good.

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 wish particularly to comment on the industry and ability displayed

by the younger members of the staff of Assistants who have taken on additional responsibilities with good results.

Respectfully submitted,

A. C. VAN SOELEN
Corporation Counsel

The City of Seattle--Legislative Department

MR. PRESIDENT:

Date Reported and Adopted .....

Your Committee on Judiciary

to which was referred the within City of Seattle, LAW DEPARTMENT, Annual Report -- 1960,

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

THE SAME BE PLACED ON FILE.

..... **Chairman**

.....

.....

.....

..... **Chairman**

.....

.....

.....