CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1961

A. C. VAN SOELEN
Corporation Counsel

CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1961

A. C. VAN SOELEN, *Corporation Counsel*

A. L. NEWBOULD.....*Assistant Corporation Counsel*
JOHN A. LOGAN.....*Assistant Corporation Counsel*
G. GRANT WILCOX.....*Assistant Corporation Counsel*
GEORGE T. MCGILLIVRAY.....*Assistant Corporation Counsel*
JOHN P. HARRIS.....*Assistant Corporation Counsel*
GORDON F. CRANDALL.....*Assistant Corporation Counsel*
ARTHUR T. LANE.....*Assistant Corporation Counsel*
CHARLES R. NELSON.....*Assistant Corporation Counsel*
ROBERT M. ELIAS.....*Assistant Corporation Counsel*
JERRY F. KING.....*Assistant Corporation Counsel*
ROBERT B. LESLIE.....*Assistant Corporation Counsel*
JOHN A. HACKETT.....*Assistant Corporation Counsel*
ROBERT WARD FREEDMAN.....*Assistant Corporation Counsel*
BRUCE MACDOUGALL.....*City Prosecutor*
CONRAD SMEETH.....*Junior Assistant Corporation Counsel*
JAMES G. LEACH.....*Junior Assistant Corporation Counsel*
FAYE FORDE.....*Secretary*
JOHN F. COOPER.....*Claim Agent*

Annual Report

OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1961

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, 1961.

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 1961.

	Pending Dec. 31 1960	Commenced during Year 1961	Ended during Year 1961	Pending Dec. 31 1961
Condemnation suits	9	13	17	5
Damages for personal injuries	106	69	71	104
Damages other than for personal injuries	45	30	35	40
Injunction suits	7	6	3	10
Mandamus proceedings	0	3	1	2
Prohibition writs	0	2	1	1
Miscellaneous proceedings	33	15	20	28
Habeas Corpus cases	0	1	1	0
Sub-Total	200	139	149	190
Appeals from Municipal and Traffic Courts	168	420	456	132
Grand Total	368	559	605	322

2. *Segregation — Personal Injury Actions:*

	Number	Amount Involved
Pending December 31, 1960	106	$3,774,387.29
Commenced since January 1, 1961	69	1,885,379.44
Total	175	$5,659,766.73
Tried and concluded since January 1, 1961	71	2,305,128.75
Actions pending December 31, 1961	104	$3,354,637.98

Of these personal injury actions mostly involving Seattle Transit operation, 71 involving $2,305,128.75 were tried or finally disposed of in 1961; 23 involving $559,893.84 were won outright; in 5 cases involving $204,719.64, the plaintiffs recovered the aggregate sum of $26,170.95. The remaining 43 cases involving $1,540,515.27 were settled or dismissed without trial for a total of $229,327.90.

Of the 69 personal injury actions begun during the year 1961, a large portion involving $993,312.56 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, 1960	45	$807,212.64
Commenced since January 1, 1961	30	99,194.83
	75	$906,407.47
Tried and concluded since December 31, 1960	35	340,322.95
Pending December 31, 1961	40	$566,084.52

Of the total of 75 cases involving damages other than personal injuries, 35 involving $340,322.95 were disposed of during the year 1961 of which 14 involving $123,153.01 were won outright. In 9 cases involving $180,004.29 the plaintiffs recovered $37,089.15. The remaining 12 cases involving $37,165.65 were settled or dismissed without trial for a total of $15,389.10.

The total expense for claims and suits involving the Transit System was $230,211.42 in 1961. This is 2.44% of the gross revenues of the System for the year.

4. *Supreme Court:*

Four appeals involving the City were pending in the State Supreme Court December 31, 1960, and eight new appeals were filed in 1961. Five (5) were decided in 1961, the City prevailed in four and lost one. Seven (7) appeals are pending.

5. *Miscellaneous Cases:*

Three injunction actions were tried—2 won, and one lost; ten are pending. One mandamus action was tried and won and 2 are pending. One *habeas corpus* case was filed in 1961 and tried and won. Twenty miscellaneous cases were disposed of during the year—15 won by the City and 5 lost.

Five hearings relating to dismissals of employes were participated

in before the Civil Service Commission, in which the department was sustained in four and one returned to the eligible register.

A number of accounts were referred to the Law Department in 1961 and actions were commenced for the Lighting Department, principally for damage to City Light property. By suits and settlements we have collected $2,074.58 for the Lighting Department and have forwarded the same to the City Treasurer. One hundred and eighty-four (184) garnishments were handled during 1961. One hundred and sixty-three (163) 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 the claims and forwarded the same to the City Treasurer.

II.
CLAIMS IN 1961

	Number	Amount Involved
Claims for damages, dormant, on file Dec. 31, 1960, and against which the statute of limitations has not yet run	1284	$3,557,725.37
Claims for damages, active, and referred to this department for investigation Dec. 31, 1960, to Dec. 31, 1961	964	$5,557,124.72

Claims disposed of during 1961:

	No.	Amount Claimed	Amount Paid
Settled	571	$3,226,740.82	$390,911.91
Rejected	614	$3,722,408.19	

Some of the above settled claims were in suit and settled in conjunction with Claim Agent.	
Amount involved	$2,005,226.92
Amount of settlements	$ 213,757.73
Number of Seattle Transit System accident reports investigated December 31, 1960, to December 31, 1961	1,766
Number of circulars and letters mailed in connection with investigations of foregoing claims and reports	10,032

III.
MUNICIPAL POLICE COURT

During the year 1961 the City Prosecutor, Bruce MacDougall, handled a calendar of 16,149 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $149,127.00.

MUNICIPAL TRAFFIC COURT

In the Municipal Traffic Court for the year 1961 there was a docket of 42,769 traffic cases resulting in fines and forfeitures amounting to $430,913.00 and traffic bureau forfeitures amounting to $1,950,330.00, totaling $2,336,243.00 for the year.

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

MUNICIPAL COURT APPEALS

A large number, 456 appeals from the Municipal Courts (343 Traffic, 113 Police) were disposed of in 1961 being principally handled by Assistant Corporation Counsel Conrad Smeeth. In 145 cases (121 Traffic, 24 Police) convictions or pleas of guilty were entered. In 67 cases (63 Traffic, 4 Police) the court or juries found the defendants guilty after trial. In 14 cases (10 Traffic, 4 Police) the appellants were acquitted; and 29 cases (14 Traffic, 15 Police) were dismissed for insufficiency of evidence, witnesses moving away or other causes. 201 appeals (135 Traffic, 66 Police) were abandoned by the defendants and remanded to the Traffic and Police Courts for the enforcement of the original judgments. A total of $23,060.30 in fines and forfeitures and Superior Court costs in the amount of $1,107.20 were collected by this department in connection with these appeals and transmitted to the city treasurer. Mr. Forrest 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 Department and Mr. Roe did excellent work in this connection.

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 71 written legal opinions on close questions of law submitted by the various departments of the city government, and involving much legal research.

Also, the City Employees' Retirement System requested opinions on 20 L.I.D. bond issues and opinions were rendered.

V.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1961, 471 ordinances, 62 resolutions; and in addition 83 ordinances were prepared for the settlement of 190 claims.

1526 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $57,790,481.00.

Legal papers served and filed during 1961, including condemnation suits, summons and petitions, answers, judgments, notice of appearances and subpoenas, totaling 1319 in all, were handled by Process Server Louis Stokke.

MEMO OF NOTEWORTHY SUPERIOR COURT PROCEEDINGS AND OTHER ACTIVITIES OF 1961

Among the more outstanding personal injury cases was the consolidated case of *Helgesen, Neuman, et al., v. The City and the County*. Five occupants of an automobile collided with a city utility pole. The pole was one of a series located on a county right of way, which had been left by the County and the City within the traveled portion of a widened street, without barricades, reflectors or warnings of any nature. The injuries were extremely serious. The case was settled for $80,000.00, of which amount the City paid $48,000.00 and the County paid $32,000.00.

Another case which resulted in a hung jury and which was subsequently settled, involved an allegedly defective street in the University District. Two occupants of an automobile were seriously injured when the driver lost control and collided with a utility pole. One of the plaintiffs suffered a complete personality change by reason of serious head injuries. The case was in trial for three weeks. It was settled for $25,000.00, of which sum the City paid $22,500.00 and the driver of the car paid the balance. The driver of the car was joined as an additional party defendant upon the City's motion after the suit had been commenced against the City individually.

In the case of *Hosea v. The City*, an escaped trusty from the Wallingford Police Precinct obtained an automobile in the neighborhood, became intoxicated and collided with plaintiffs several miles from the station. Serious injuries were sustained by the plaintiff husband, with permanent disability, and the plaintiff daughter sustained a severe head injury. The case was tried for one week. After a verdict for the plaintiffs, on the City's motion, a Judgment *N.O.V.* was granted. This

case raises fundamental questions of Tort liability in connection with the supervision of city prisoners and governmental immunity. The plaintiff indicated an appeal will be taken.

Northwest Building Company v. City of Seattle involved a claimed $65,000.00 for injuries sustained by the building owner and contractor during the construction of the Norton Building. It was alleged that a city watermain broke open. Slides and other effects of the water-soaked soil caused heavy damage. At the conclusion of a three-week trial, a defense verdict was returned in favor of the City.

In *Butler v. City*, the contractor on the Broad Street Underpass construction filed a claim for extras and modifications amounting to $78,000.00. This case was tried to the Court for ten days, at which time it was settled for $15,000.00, the sum which the City had originally offered, in payment of the extras.

The above cases were prepared and tried by Chief Trial Assistant Logan and Assistant Freedman.

Lightner v. City (Pending in Supreme Court). The appellant in the instant case alleged a fall in the restaurant portion of the clubhouse at Jefferson Park Golf Course. The City successfully moved to dismiss the case on the grounds that the golf course was a public park and that the restaurant located thereon was incidental to the primarily governmental function of the golf course. Appellant contended on appeal that the doctrine of governmental immunity should be abrogated. This cause was argued *en banc* on February 5, 1962.

The above case was prepared and argued by Chief Trial Assistant Logan and Assistant Freedman.

Larkin v. Cummings, et al., was a suit by a mother against five Seattle Police officers for $125,000.00, in which the mother alleged that the officers wrongfully killed her son, upon whom she was dependent.

The case arose out of occurrences which took place on July 28, 1955, shortly after midnight. At that time the Seattle Police were notified that three armed men were heading toward a residence on Graham Street with the intent to shoot someone there. As three police cruisers approached the residence, gunfire was heard in the residence, and when the first police cruiser stopped in front of the residence, one bullet was fired through its windshield and another bullet was fired through its door. The officers took cover behind the cars and returned the fire which was directed at them from behind the residence. During this exchange of fire, a person ran from behind the residence

toward the officers and appeared to have a gun in his hand. The officers shouted repeatedly for this person to stop, but he raised his hand as if to fire a gun, then turned and ran toward a hedge. When he failed to stop, the officers opened fire on him and he was killed.

It was later revealed that the person killed was not one of the armed men who invaded the residence, but was a member of the group assembled at the residence for a stag party. Also, no gun was found which could be proved to have been in this person's possession.

The three armed men, after later being apprehended, were prosecuted and convicted for their criminal activity upon the night in question. The person who was killed proved to be a twenty-year-old boy whose mother brought the action. The case went to trial before the Honorable Ward Roney and a jury in Superior Court in King County on January 26, 1961. After four days of trial, the jury deliberated for twenty-four hours and returned a verdict in favor of all the defendant police officers. The police officers were thus exonerated of any negligence in the performance of a very dangerous, trying and disagreeable assignment in line of duty.

In *Young v. City,* the plaintiff who was a paying passenger on a City Transit bus, fell and was injured when the bus driver brought the bus to a sudden and violent stop. The bus driver and two passengers who were the only witnesses to testify concerning the accident besides the plaintiff, all said that a car came alongside the bus and cut directly in front of the bus and the bus driver had to apply his brakes hard to avoid hitting the car.

The jury returned a verdict in favor of the plaintiff in the amount of $2,500.00. The City's Motion for Judgment notwithstanding the verdict of the jury was granted by Judge Richard J. Ennis, for the reason that there was no evidence in the case upon which the jury could have based its finding that the bus driver was negligent. The plaintiff has appealed the case to the Supreme Court seeking to upset Judge Ennis' decision.

In *Pursley v. City,* the plaintiff alleged that she fell on a city sidewalk as she left the Civic Ice Arena about 11:00 p.m., following a performance there. She stated that she tripped when she stepped into a hole in the sidewalk. The case went to trial on June 13, 1961, before the Honorable Henry W. Cramer and a jury. At the time of the trial the sidewalk in question had been removed to make way for Century 21 buildings. However, the plaintiff produced pictures for the jury's consideration, claiming that the pictures showed the hole into which the plaintiff stepped. The case was submitted to the jury and it returned a verdict in favor of the defendant City on the basis that

the pictures did not show a hole in the sidewalk large enough to warrant a finding that it could be the cause of plaintiff's fall.

In the case of *Miller v. City*, a father, as guardian, sued the City and a Park Department employee for injuries suffered by his minor daughter. The injuries were sustained by the daughter when she was bucked off and kicked by a pony at the Woodland Park Zoo. The pony belonged to the Park Department and the girl was riding it under the supervision of the Park Department employee.

It was alleged that the City and its employee were negligent in letting the girl ride a pony which the City knew or should have known had a propensity to be wild and to buck; in failing properly to supervise the riding of the pony and in failing properly to saddle the pony.

The case was tried December 4, 1961, before the Honorable Frank James, and at the conclusion of the plaintiff's case, it was dismissed by Judge James who held that the plaintiff had failed to prove any of the allegations of negligence by the City or its employee.

The above cases were prepared and tried by Assistant Charles R. Nelson.

State ex rel. West v. City, Supreme Court No. 36255. This appeal by the City arises out of the complaint of an ex-City Lighting Department employee that her removal for cause under Art. XVI, Sec. 12, of the City Charter was irregular and void in that the "statement of reasons" for said removal filed with Civil Service Commission was signed not by the Superintendent of Lighting but by the departmental personnel director. The Superior Court Judge held that the fact that the Superintendent of Lighting appeared as a witness at the Civil Service Commission's investigation into this removal for cause and there testified that he had discussed the employee's removal with his subordinates and that he "approved" it did not make the removal "by" the Superintendent of Lighting. In ruling that the removal was void because of such lack of personal signature the Court followed what he understood to be the holding of the Supreme Court in a prior appeal by this employee in *State ex rel. West v. Seattle*, 50 Wn. (2d) 94 (1957).

The City's contention on appeal is that the testimony of the Superintendent of Lighting that he approved this removal made the removal by him within the meaning of the City Charter provision relating to removals for cause, and that the lack of his signature on the statement of reasons for the removal, if it must be regarded as an irregularity, was not prejudicial to the employee, she having received a full and fair hearing by the Civil Service Commission into the merits of the removal.

Ralph Conklin v. The City, 158 Wash. Dec. 177. The appellant in this case was injured when he stepped in the path of a Seattle Transit bus. On appeal, the defense verdict was upheld, the Court holding that the doctrine of last clear chance was inapplicable and that any error in the instructions redounded to appellant's favor, and further that the defendant City's reference to the prior convictions of the plaintiff were proper and without error.

Ragan v. City of Seattle, 158 Wash. Dec. 777. This suit was brought seeking declaratory relief (originally as *R. F. Jones Co., Inc., et al., v. The City of Seattle,* in Federal District Court) by having declared unconstitutional that portion of the Seattle Amusement Device Ordinance 87384 which applied to music machines. Plaintiffs contended that the restriction upon the number of "juke box" operators and the method of limitation were a deprivation of rights guaranteed by the Fourteenth Amendment of the United States Constitution and similar provisions of the Washington State Constitution, and in addition granted operators who had been such prior to 1958 a monopoly.

Upon appeal from a summary judgment in favor of the City, Judge Hill, speaking for the majority of the Supreme Court, in a six to three decision, declared that the ownership, location and operation of juke boxes is a type of activity which under the exercise of the police power may not only be regulated but prohibited; and that in view of local conditions involving coercion and racketeering among operators, the City's method of exercise of that power through limitation upon the number of operators, which in effect created a closed class, could not be said to be unreasonable or without substantial relationship to the accomplishment of a purpose within the scope of the police power.

The above case was prepared and argued by Assistant Robert Leslie.

City of Seattle v. State of Washington, 158 Wash. Dec. 161. The State Tax Commission had by order sustained tax assessments amounting to some $82,000.00 upon the City Water and Park Departments. On appeal by the City the Thurston County Superior Court had in September, 1960, held for the City on all issues presented and set aside the assessments, agreeing with our contentions that the State Utility tax could not be assessed upon sums received by the Water Department from water users as reimbursement for the cost of installing facilities to serve such users and that the State Business and Occupation Tax could not be assessed upon income received by the Park Department from its operation of swimming pools, pony

rides and similar activities. The State appealed to the State Supreme Court which affirmed the Superior Court decision as to the taxes assessed upon the Water Department (amounting to over $80,000.00) but reversed the Superior Court as to the Park Department (involving about $4,000.00) holding the Park operations in question, be within the statutory definition of "business."

The above case was prepared and argued by Assistant Jerry F. King.

State ex rel. Green v. Superior Court, King County, 158 Wash. 151. In this case the relator Green was charged with 21 parking violations before William H. Simmons as Municipal Judge. Upon trial four of the offenses were dismissed. The rest were continued. Green alleged that he was to be tried for a single violation every week for seventeen weeks and asked for a Writ of Certiorari. He was successful in the certiorari action in having the remaining charges dismissed. Municipal Judge William H. Simmons made a motion to set aside the orders under the Writ of Certiorari and asked for a re-hearing which the court granted. This appeal to the Supreme Court was to determine whether the Superior Court was correct in granting the motion to vacate its own order.

The Supreme Court in its decision in this case decided that none of the nine grounds upon which a new trial may be granted in Rules of Pleading, Practice and Procedure 59.04 W was appropriate since there was no question but what the court had at one time had jurisdiction over the person and the subject matter involved.

Any error which existed in the application of the certiorari proceeding could have been corrected on a motion for a new trial or on an appeal to the Supreme Court but a motion to vacate the judgment was held not to be a substitute.

This case was prepared and argued by Assistant Charles R. Nelson.

Mona Reiger v. The City of Seattle, et al., 57 Wn.(2d) 651, 359 P.(2d) 151. In this case plaintiff was a full-time provisional police matron for the City of Seattle from December 28, 1953. Although her position is a classified one under the City Civil Service system, she had not been required to take a civil service examination until April 8, 1958. She passed the written and physical examinations but was given a mark in her oral examination too low to make her eligible for the position available. She then sued the City to determine the validity of the Commission's action. She contended that the oral examination was arbitrary, capricious and an abuse of the discretion of the Commission. The court granted summary judgment to the City.

The Supreme Court sustained the trial court's granting of the summary judgment for the defendant City. The Supreme Court pointed out that these civil service procedures were essentially administrative. In such a case, the court cannot perform supervisory powers. Its powers are limited to a review of the actions of the agency to determine if its conclusions, *as a matter of law,* are arbitrary, capricious or contrary to law.

This case was prepared and argued by former Assistant Peter Steere.

CONDEMNATIONS

During 1961 the condemnation section handled fifteen condemnation proceedings involving a total of 322 parcels and awards totaling $1,733,806.83. Four condemnations were processed for the Park Department, one for the Lighting Department, one for Transit, one for the Sewer Utility, one for the Water Department and seven for the Engineering Department.

The largest single judgment was $774,435.97 in the form of awards for the taking of property necessary for a new storage yard and garage site for the Transit System, immediately east of the Civic Center site.

Two limited access facilities including the Montlake Interchange and Phase I of the Spokane-Fauntleroy Overpass were the first such facilities for which rights of way were acquired by the City. Acquisition of these rights of way involved statutory hearings before the City Council since portions of existing streets were designated as part of a limited access facility.

Three cases involved the taking of rights of light, air and access only. These were the Spokane-Fauntleroy Overpass mentioned above, an exit ramp from the Alaskan Way Viaduct at Seneca Street and a pedestrian overpass at 102nd and Aurora for the benefit of children attending Oak Lake School from West South Aurora Avenue.

Submitted by Assistant G. Grant Wilcox.

SUMMARY AND CONCLUSION

The Law Department budget for 1961 was $293,390 of which $247,340 was for salaries. Substantial salary savings in addition to those estimated were made due to resignations from the position of Assistant Corporation Counsel in 1961 as it is the general policy of the office to fill vacancies by advancement. Sometimes, however, it is necessary to secure, if possible, the services of specialists from the private law practice. These have been difficult to secure at the current

salary rates, but we were able in 1961 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.

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 1961, 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 we are pleased to report the grant to the city of the necessary federal license by order of the Federal Power Commission dated July 10, 1961, a copy of which license is in C.F. 243029, accepted by Ordinance 90419 and a modification by Ordinance 90616. A preliminary construction plan and system has been adopted by Ordinance 90719 with an estimated cost of $3,940,000 appropriated by Ordinance 90439. This is a tremendous accomplishment, which, however, the Pend Oreille P.U.D. continues to oppose.

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 Annual Report, 1961, City of Seattle Law Department,

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

THE SAME BE PLACED ON FILE.

..... **Chairman**	..... **Chairman**
.....	.....
.....	.....
.....	.....