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CITY OF SEATTLE
LAW DEPARTMENT

Annual Report

✓ 1962



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~~Public Safety~~ JUDICIARY

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On File

A. C. VAN SOELEN
Corporation Counsel

CITY OF SEATTLE
LAW DEPARTMENT

Annual Report

1962

A. C. VAN SOELEN, *Corporation Counsel*

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ROBERT B. LESLIE.....*Assistant Corporation Counsel*
JOHN A. HACKETT.....*Assistant Corporation Counsel*
ROBERT WARD FREEDMAN.....*Assistant Corporation Counsel*
JAMES G. LEACH.....*Assistant Corporation Counsel*
BRUCE MACDOUGALL.....*City Prosecutor*
WILLIAM L. PARKER.....*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 1962

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, 1962.

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 1962.

	Pending Dec. 31 1961	Commenced during Year 1962	Ended dur- ing Year 1962	Pending Dec. 31 1962
Condemnation suits	5	6	6	5
Damages for personal injuries.....	104	83	73	114
Damages other than for personal injuries	40	17	30	27
Injunction suits	10	13	11	12
Mandamus proceedings	2	4	4	2
Prohibition writs	1	0	1	0
Miscellaneous proceedings	28	20	19	29
Certiorari Writs	0	5	0	5
Sub-Total	190	148	144	194
Appeals from Municipal and Traffic Courts	132	511	414	229

2. *Segregation—Personal Injury Actions:*

	Number	Amount Involved
Pending December 31, 1961.....	104	\$3,354,637.98
Commenced since January 1, 1962.....	83	2,996,708.08
Total	187	\$6,351,346.06
Tried and concluded since January 1, 1962.....	73	1,823,063.68
Actions pending December 31, 1962.....	114	\$4,528,282.38

Of these personal injury actions mostly involving Seattle Transit operation, 73 involving \$1,823,063.68 were tried or finally disposed of in 1962; 27 involving \$649,764.24 were won outright; in 13 cases involving \$350,618.71, the plaintiffs recovered the aggregate sum of \$51,890.03. The remaining 33 cases involving \$822,680.73 were settled or dismissed without trial for a total of \$99,791.16.

Of the 83 personal injury actions begun during the year 1962, a large portion involving \$839,896.42 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, 1961.....	40	\$ 566,084.52
Commenced since January 1, 1962.....	17	216,454.91
	57	\$ 782,539.43
Tried and concluded since December 31, 1961.....	30	284,148.19
	27	\$ 498,391.24
Pending December 31, 1962.....		

Of the total of 57 cases involving damages other than personal injuries, 30 involving \$284,148.19 were disposed of during the year 1962 of which 13 involving \$112,338.10 were won outright. In 8 cases involving \$149,970.50 the plaintiffs recovered \$16,619.01. The remaining 9 cases involving \$21,839.50 were settled or dismissed without trial for a total of \$6,242.25.

The total expense for claims and suits involving the Seattle Transit System was \$236,286.14 in 1962. This is 2.15% of the gross revenues of the System for the year.

4. Supreme Court:

There were seven appeals involving the City pending in the State Supreme Court December 31, 1961 and ten new appeals were filed in 1962. Seven (7) were decided in 1962, and the City prevailed in five cases and lost two. There are still ten cases pending.

5. Miscellaneous Cases:

Eleven injunction actions were tried—7 won, and 4 lost; 12 are pending. Four mandamus actions were tried and won and two are pending. Nineteen miscellaneous cases were disposed of during the

year—and all were won by the City. Five writs of certiorari were commenced during 1962 and the five are still pending.

Seven hearings relating to dismissals of employees were participated in before the Civil Service Commission, in which the department was sustained in six and in one the employee was returned to the eligible register.

A number of accounts were referred to the Law Department in 1962 and actions were commenced for the Lighting Department, principally for damage to City Light property. By suits and settlements we have collected \$556.74 for the Lighting Department and have forwarded the same to the City Treasurer. One Hundred and fifty-six (156) garnishments were handled during 1962. One Hundred and thirty-nine (139) were completed without court action; seventeen (17) 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 1962

	Number	Amount Involved	
Claims for damages, dormant, on file December 31, 1961, and against which the statute of limitations has not yet run.....	1063	\$2,165,701.08	
Claims for damages, active, and referred to this department for investigation December 31, 1961 to December 31, 1962.....	1048	\$6,436,382.19	
Claims disposed of during 1962:			
	No.	Amount Claimed	Amount Paid
Settled	626	\$2,475,711.47	\$402,554.15
Rejected	647	\$3,544,940.24	
Some of the above settled claims were in suit and settled in conjunction with Claim Agent.			
Amount involved			\$1,767,950.38
Amount of settlements.....			\$ 143,913.15
Number of Seattle Transit System accident reports investigated December 31, 1961 to December 31, 1962.....			2,040
Number of circulars and letters mailed in connection with investigations of foregoing claims and reports.....			10,874

III.

MUNICIPAL POLICE COURT

During the year 1962 the City Prosecutor, Bruce MacDougall, handled a calendar of 19,874 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$184,457.00.

MUNICIPAL TRAFFIC COURT

In the Municipal Traffic Court for the year 1962 there was a docket of 41,571 traffic cases resulting in fines and forfeitures amounting to \$545,403.75 and traffic bureau bail forfeitures amounting to \$2,191,803.00, totaling \$2,737,206.75 for the year.

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

MUNICIPAL COURT APPEALS—1962

414 convictions in the Municipal Courts (305 Traffic, 109 Police) were disposed of on appeal in 1962 as follows: 118 appeals (62 Traffic, 56 Police) were abandoned by the defendants and remanded to the Municipal Courts for the enforcement of the original convictions. In 169 cases (145 Traffic, 24 Police) convictions on pleas of guilty were entered. In 64 cases (60 Traffic, 4 Police) the court or juries found the defendants guilty after trial. In 24 cases (19 Traffic, 5 Police) the appellants were acquitted; and 36 cases (16 Traffic, 20 Police) were dismissed for insufficiency of evidence, witnesses moving away or other causes. In 2 traffic cases bail was forfeited and in 1 traffic case a deferred sentence was given. A total of \$29,277.30 in fines and forfeitures and Superior Court costs in the amount of \$893.40 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.

There is some misunderstanding concerning the reason for, and the results of, the many so-called appeals from the Municipal Traffic Court. As aptly suggested by Chief Justice Ott of the State Supreme Court in the foreword to the Rules for Courts of Limited Jurisdiction in Vol. 161 Wash. Dec. No. 8A: "The municipal court conviction became a nullity when the accused person appealed to the Superior

Court, where the municipal ordinance violation was tried *de novo* * * *." This is so because the right to trial by jury is absolute. Thus the opportunity to appeal and thereby "nullify" the conviction for a serious traffic offense is hard to resist as the convicted defendant has usually nothing to lose except the cost of a bond on appeal and an attorney's fee. He gains a reprieve—some 60 days—witnesses against him may have left the city or the state and he may produce additional witnesses and other evidence and the court or jury may differ with the municipal judges as to the weight of the evidence.

So much for the reasons for the number of appeals.

As to results the above figures show that only 11.4% of the 305 Traffic Court appellants "won" on appeal in 1962 in the sense that they were acquitted or the case against them was dismissed, and while appellants on the "new trial" sometimes receive lesser sentences than in the Traffic Court, this is seldom if ever a gain financially or otherwise; although we understand that some attorneys specializing in such appeals assert that their clients have a "50-50" chance of "winning" on appeal, such is manifestly not the case.

As noted there were in 1962 some 145 pleas of guilty accompanied in most instances by pleas for leniency by way of (a) reduction by Superior Court of the charge; and/or (b) pleas for a lesser sentence than imposed by the Municipal Court. Such pleas are a matter of right and are addressed to the discretion of the Superior Court, which usually asks for the recommendation of this office. We make a recommendation where merited, and it is an advantage to the city and to the court to avoid the time and expense of a trial by jury to which the defendant is entitled as a matter of right. A recommendation for leniency is seldom made by this office unless as to first offenders. If the plea is accepted by the court, judgment of conviction is entered and sentence imposed, which may or may not exceed the sentence imposed by the Municipal Court.

Where this office makes a favorable recommendation, a reference thereto is usually included in the judgment. It is said by some that this practice invites appeals. The alternative of course is for this office to not recommend leniency in any case and to insist on a trial regardless of expense to the taxpayers and of the congestion which would follow the trial of 145 or more of such cases in addition to the contested cases above referred to. This office is satisfied that pleas of guilty on appeal do not add to the number of appeals and we believe the judges of the Superior Court concur.

IV.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1962, 371 ordinances, 29 resolutions; and in addition 88 ordinances were prepared for the settlement of 200 claims.

1412 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling \$51,322,784.85.

Legal papers served and filed during 1962, including condemnation suits, summons and petitions, answers, judgments, notices of appearance and subpoenas, totaling 1155 in all, were handled by Process Server Louis Stokke.

V.

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 63 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 15 L.I.D. bond issues and opinions were rendered.

The following is a chronological resume of the written opinions rendered to the various departments of city government throughout the year:

INDEX OF 1962 OPINIONS BY NUMBER

- 4945 Employees' Retirement System. Employee may conditionally "waive" right to return of retirement system contributions.
- 4946 Firemen's Pension Board. No refunds to "Prior Firemen" electing to take benefits of 1961 Act.
- 4947 Mayor Clinton. No legal duty to "enforce" a particular law absent "willful neglect" as defined by RCW 42.20.100.
- 4948 Superintendent of Lighting. Correct name of grantee may be inserted in easement.
- 4949 Transit System. Fuel tax exemption under RCW 82.36.275 as amended by Ch. 117 L. '61 includes Seattle Transit charter service inside city.
- 4950 City Engineer. No authority to assess for barricades or signs warning of ungraded street, sufficiency of signs or barricades.

- 4951 City Engineer. Status of so-called Mills or "Willow" St. property deeded to city and accepted as "street" by Ordinance 78819.
- 4952 City Council. Proposed lease of air space over Freeway by State to City and sub-lease to tenant-operator for off-street parking garage.
- 4953 Chief of Police. Fees for "continuous moorage" at floats in certain street ends.
- 4954 City Council. Neither issuance of building permit nor original grade of streets establishes city liability for slides.
- 4955 City Council. L.I.D. Act does not authorize assessment for "neighborhood bomb shelter."
- 4956 City Council. Off-street parking facilities Act of '59 does not apply to Seattle Center Garage.
- 4957 Purchasing Agent. Charter 5% preferences to Washington manufacturers not superseded by RCW 39.24.010.
- 4958 Examining Board for Meat Salesmen. Failure to renew Meat Salesman's license over period of years does not invalidate certificate of competency.
- 4959 City Council. City cannot fix price of commodities.
- 4960 Chief of Police. Ch. 124 L. '61 voids ordinances relating to "short firearms" except as to purchase.
- 4961 Civil Service Commission. Charter Amendment extending period of probation is prospective.
- 4962 Board of Public Works. Changes in Board of Public Works bid bond requirements.
- 4963 Planning Commission. Planning Commission's duties, functions and staff continue under '62 Charter Amdt. 6.
- 4964 City Engineer. City should place signs warning of hazardous street conditions.
- 4965 City Engineer. Monorail public liability insurance.
- 4966 Board of Public Works. Street improvement contract — delay in securing right of way — "reasonable" changes in design and quantities.
- 4967 Park Commissioners. Use of boulevard subsurface by abutter for fall-out shelter.
- 4968 City Engineer. Public sewer easements not extinguished by L.I.D. assessment foreclosure.

- 4969 Traffic Advisory Comm. "Unlawful" blinking lights and devices — prosecution v. "abatement."
- 4970 Superintendent of Bldgs. Establishment or extension of cemeteries prohibited by charter applies to "columbarium."
- 4971 Firemen's Pension Board. Fireman re-entering department in 1959 entitled to prior service credit upon return of refunded pension contributions.
- 4972 Water Superintendent. Disposition of \$500 customer deposits held by City in dissolution of a Water District.
- 4973 City Engineer. No. Beach sewer connection charge under Ord. 82736 not affected by general sewer connection charge under Ord. 82583.
- 4974 City Council. Proposed ordinance prohibiting "fraudulent failure" to return rented personal property.
- 4975 Mayor Clinton. Proposed lease of area under Freeway for city employee parking.
- 4976 City Comptroller. "Automobile Rental Agency License" required only for "place of business" where vehicles are "kept" for rent or lease.
- 4977 City Council. Protest on Green Lake water ski tow concession based on Zoning Ordinance.
- 4978 Transit System. Decision by Engineer in dispute with Eugene Detroit Contractor, Inc.
- 4979 Park Commissioners. Sale of property adjoining Washington Boulevard dedicated as "parkway."
- 4980 Mayor Clinton. Yesler-Atlantic Urban Renewal—"Enforcement of Conservation Standards" by agreement and eminent domain—mixed uses.
- 4981 City Council. Request of Seattle Yacht Club for assignment of City's preferential right to purchase L. 1 Bk. 17-A replatted Lake Union Shorelands.
- 4982 Chief of Police. No city liability for unavoidable damage to vehicles impounded pursuant to Ord. 82011—duty of towing contractor.
- 4983 City Council. Employment Agency License required even though agency is compensated by employer and on a term rather than fee basis.
- 4984 City Engineer. Proposed revision of Traffic Code.
- 4985 Firemen's Pension Board. Plea of "guilty" equivalent to conviction of felony within meaning of Firemen's Pension Law.

- 4986 Employees' Retirement. City Employees' Retirement System not available to Metro employees.
- 4987 City Council. Amendment to Ord. 83099 makes "obscene" shows, motion pictures, etc. unlawful.
- 4988 Planning Commission. Ex-officio members on Planning Commission covered by bonds otherwise furnished.
- 4989 Mayor Clinton. Acquisition of old Armory site—effect of deed restriction against diversion of use of fragment of site.
- 4990 Mayor Clinton. Active advocacy of L.I.D. project by city department not authorized.
- 4991 City Council. Proposal to finance construction of sewer along Lake Union by "special connection charge" in lieu of L.I.D.
- 4992 City Engineer. City has duty to remove "danger trees" in unimproved street areas.
- 4993 City Council. Advertising in front of moving picture and other theatres regulated by ordinance.
- 4994 Transit Commission. Feasibility study and program for combined development of Transit site.
- 4995 Board of Public Works. Application of Seattle ordinances to Metro's sewer construction under easement in Military Reservation.
- 4996 City Council. Sale of partnership interest as a "transfer" or "sale" of the business under Sec 18 of License Code.
- 4997 City Council. Administrative officer's method of measuring distance between schools and motion picture theatres controlling.
- 4998 City Council. Property conveyed to City by County for Center for "handicapped persons, playground and park purposes only."
- 4999 City Council. Building and use permits involving change of use.
- 5000 Employees' Retirement System. City service for retirement system purposes not discontinued by "Metro" employment.
- 5001 Firemen's Pension Board. Personal disability of widow may toll statute of limitations.
- 5002 City Engineer. Recording preserves city's lien for sewerage charges delinquent over six months.
- 5003 City Council. City may reinitiate by resolution an L.I.D. project previously defeated by protest—postcard poll—contents.

- 5004 Purchasing Agent. Whether material is "manufactured" in Washington is question of fact addressed to Purchasing Agent.
- 5005 City Comptroller. Six year statute of limitations applies to payment for supplies under purchase order.
- 5006 Chief of Police. Legal defense of police officers in personal suit for damages.
- 5007 Mayor Clinton. Sec. 300-E of License Code and portions of Ordinance 79335 inconsistent with RCW 9.47.030 relating to "gambling devices."

STATE SUPREME COURT CASES—1962

The following case was prepared and argued by Assistants Arthur T. Lane and John P. Harris:

Wyckoff v. Seattle, et al. Nettleton Lumber Company v. Seattle, State of Washington, 160 Wn. Dec. 99. In the above consolidated cases the plaintiffs sought a judicial determination that certain Seattle Tide Lands streets abutting their properties had become "automatically vacated" under Chapter 19, § 32, Laws of 1889 - 1890, which provided that any county road which remained unopened for public use for five years after the grant of authority for such opening became vacated. Such a determination would have given the plaintiffs full ownership of said streets, which were dedicated to the use of the public in 1895 by the State of Washington in its Seattle Tide Lands plat covering first class tidelands located within two miles of the City of Seattle. The area in question was subsequently annexed to the City in 1907. The trial court granted summary judgment in favor of the City and State, and the plaintiffs appealed to the State Supreme Court which heard the case en banc and held, in a unanimous decision filed May 31, 1962, that "streets platted by the state on tidelands of the first class are not 'county roads' within the meaning of the nonuser statute (Laws of 1889-90, Chap. 19 § 32), and have not been vacated by operation of law."

The Supreme Court's favorable decision in this highly important case serves to preserve the public easement for travel in dedicated tidelands streets, thus insuring necessary access for the proper future development of the City's tidelands areas.

The following case was prepared and argued by Assistant John P. Harris:

Seattle v. Nazarems, 160 Wn. Dec. 657. This action was brought by the City to secure the removal of encroachments within a City-Lighting Department-transmission line right of way easement which

crosses a portion of the defendants' property. The encroachments consisted of a living room extension and carport.

The formal easement in question did not specifically prohibit structures in the right of way although it did provide that the city had the right of access for the construction, operation and maintenance of the system, the right to construct a road over said right of way and to clear danger trees.

The Superior Court ruled that the encroachments would not have to be removed if the defendants provided \$300,000.00 liability insurance covering all damage that might result from damage to, or breakage of, the transmission lines caused by fire in the encroaching structures.

An appeal was taken from this decree to the Supreme Court of the State which held that "under the facts of this case the city is entitled immediately to the unobstructed use of its right of way—and that public liability insurance coverage is an inadequate solution of the problem." The court accordingly struck the trial court's proviso concerning liability insurance and ruled that the encroachments would have to be removed by the defendants within six months.

The court in reaching its decision relied on the trial court's findings that the encroaching structures constitute a hazard to the city's transmission lines, in that they may catch fire and cause the lines to be shorted out, and on the testimony that these obstructions hindered the city's right of access for maintenance purposes.

The result in the *Nazaremus* case, which will undoubtedly become a "landmark case" in this field, is a very satisfactory one from the city's standpoint and it is anticipated that the court's decision will be of considerable benefit to the Lighting Department in the administrative enforcement of its rights acquired under transmission line easements.

The following cases were prepared and argued by Assistant Charles R. Nelson:

Washington Natural Gas Co. v. City, 160 Wn. Dec. 184. In this action the plaintiff Gas Company sought to recover from the City the \$38,869 cost of relocating its gas main within Spokane Street as required for construction of the Alaskan Way Viaduct. The plaintiff contended that since the franchise granted to it in 1873 to lay gas mains in city streets did not designate who should bear the cost of such relocation, the imposition of that cost on plaintiff constituted a deprivation of property without compensation in violation of Article I, Section 16 of the Washington Constitution.

The plaintiff appealed from an adverse ruling in Superior Court to the State Supreme Court which heard the case en banc and held, in a unanimous decision, that franchise rights are qualified by the police power, that a utility company must remove or relocate its facilities placed in streets under franchise when required by public convenience and necessity, that unless there is a specific franchise provision to the contrary a utility company must bear the cost of such removal or relocation and consequently that the City's action was not violative of plaintiff's constitutional rights.

Young v. City, 160 Wn. Dec. 808. In this case the plaintiff, a passenger on a city transit coach, was thrown to the floor and injured when the driver stopped suddenly because an unidentified car traveling in the same direction cut directly in front of the coach. The jury returned a verdict for the plaintiff but the trial court granted the city's motion for judgment notwithstanding the verdict on the ground that the evidence failed to establish negligence on the part of the transit operator in this emergency situation.

The plaintiff appealed to the State Supreme Court which reversed the trial court and reinstated the verdict, holding that, under the evidence, the jury was entitled to find that the sudden turning of the other vehicle was reasonably foreseeable under the existing traffic conditions, that an emergency requiring such a violent stop did not exist because of the traveling positions and speeds of the respective vehicles, and that the transit operator failed to exercise the degree of care required of him.

This decision was based solely on the peculiar factual issues of the case and does not modify the existing law relating to common carriers.

The following case was prepared and argued by Assistants John A. Logan and Robert W. Freedman:

Lightner v. Balow, et al., 59 Wn.(2) 856. In this action the plaintiff seeks recovery for injuries sustained when he slipped and fell in the restaurant portion of the Jefferson Park Municipal Golf Course Club House. The operator of the restaurant, Neil Balow, and the City were joined as defendants. The City's motion to dismiss plaintiff's case was granted in Superior Court upon the basis of the doctrine of governmental immunity.

The plaintiff appealed to the State Supreme Court which reversed the trial court's dismissal and held that plaintiff was entitled to introduce evidence on the question of whether the restaurant was a proprietary rather than a governmental function, since if the restaurant

operation was of a proprietary nature, the defense of governmental immunity would not be available to the City.

The following cases were prepared and argued by Assistant Robert B. Leslie:

City v. Love, 161 Wn. Dec. 113, was an appeal from a conviction in Superior Court of the unlawful sale of intoxicating liquor in which the defendant contended that the trial court erred in instructing the jury that it should consider as intoxicating liquor "a bottle containing a liquid the color of whiskey of a known brand, under its usual label, bearing the unbroken government seal."

The Supreme Court held that the instruction should not have *required* such a finding but that this error was not prejudicial to the defendant since, under the evidence, the only reasonable determination the jury could have made was that the bottle contained whiskey.

The case of *City v. Shields* involved an appeal from a Traffic Code conviction in Superior Court which was not properly perfected and was therefore dismissed by the Supreme Court upon the City's motion.

Noteworthy Superior Court Proceedings in 1962

The following cases were prepared and tried by Assistants John A. Logan and Robert W. Freedman:

In the case of *Stone v. Seattle*, plaintiff, a musician stepped into a hole in the public sidewalk and seriously injured his hand. The plaintiff proved at the trial that he could no longer continue in his profession by reason of the permanent injury to his hand. The abutting property owner was joined as a defendant on the grounds that he had helped cause the defective sidewalk condition complained of and the case was submitted to a jury which returned a \$23,000 verdict against both defendants. This case is on appeal to the State Supreme Court and the defendant property owner has posted a supersedeas bond for the entire judgment. The City is arguing for a new trial or for affirmation of the judgment against the defendant property owner.

In *Footte v. Seattle, et al.*, plaintiff sought to recover \$105,000 for injuries sustained when he attempted to jump over an open sewer excavation in the Lake City area in Seattle. After the deposition of the plaintiff was taken, plaintiff died. The City and the other defendants moved for summary judgment, which was granted and an order of dismissal of the plaintiff's case, with prejudice, was entered. The plaintiff's successor in interest has taken an appeal from the order of dismissal which is now pending in the Supreme Court.

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

In *State ex rel. Torkel Nilson v. Seattle, et al.*, the plaintiff Nilson sought a writ of mandamus which would require the Mayor of Seattle, the Chief of Police of Seattle, the Prosecuting Attorney of King County and the Sheriff of King County to enforce the "gambling laws" of the State of Washington within the City of Seattle.

The cause was heard before J. Rakow, a visiting Judge from Klickitat County, who denied the writ in accordance with the well established rule of law that a writ of mandamus will not lie to enforce a general course of conduct on the part of public officials.

State ex rel. Robert Michael v. The Municipal Traffic Court of the City of Seattle, et al., was a suit in which the plaintiff-relator sought the extraordinary writs of certiorari, mandamus and prohibition to compel the Municipal Traffic Court of Seattle to grant plaintiff's motions for a jury trial, for a change of venue and for a dismissal of the action.

The case was heard before J. Kalin, a visiting Judge from Grays Harbor County, who denied plaintiff's petition for the issuance of the writs on the grounds that the Municipal Court Act, pursuant to which the Municipal Traffic Court of Seattle was established, confers upon said court "exclusive original jurisdiction" of all cases alleging the violation of an ordinance of The City of Seattle, and that said Act prohibits a trial by jury in cases alleging the violation of a city ordinance.

The following case was prepared and tried by Assistants John P. Harris and John A. Hackett:

Hilliard, et al. v. Seattle. As a part of its plans for the development of a permanent Civic Center, the City of Seattle over the years acquired, by purchase in 1953 and by condemnation in 1958, a site for a parking garage directly across Mercer Street from the old Ice Arena and Civic Auditorium properties and in 1960, authorized by ordinance the issuance of general bonds to finance construction of a multiple level parking facility on the site to serve the Seattle Civic Center properties. Such a facility was constructed and completed just prior to commencement of the Seattle World Fair-Century 21 Exposition in April 1962 and the City proposed to lease the garage to Century 21 Inc. during the Fair and for a term ending December 31, 1962. A lease had already been executed covering the City's Interbay Sanitary Fill Site which is Park property and had been prepared for automobile parking use by Century 21.

The plaintiffs in this case desired to lease and operate the parking garage and also the Interbay parking lot during the Fair and sought to enjoin the proposed lease of the garage to Century 21 Inc. In contending that the City was required to call for competitive bids for any lease and operation of the Civic Center garage and also for the Interbay site under the provisions of Ch. 302 Laws of 1959, which plaintiffs contended was the exclusive authority for cities to acquire, construct, finance and operate any "off-street parking facilities." The city asserted its charter and statutory authority, as an integral part of its Civic Center development and otherwise to acquire, finance, construct and operate the parking garage independently of the statute of 1959 which is a special Act; that it had in fact done so with regard to said garage and that the mandatory leasing and competitive bid requirements of said Ch. 302 were not applicable. It was further urged that said Ch. 302 did not in any way apply to the parking use contemplated for the Interbay Sanitary Fill Site which was of a temporary nature only and that the eventual contemplated use of said site is for park and playground.

The temporary injunction sought by plaintiffs was denied but at a subsequent trial on the merits, the court entered a declaratory judgment that the Interbay site and parking garage leases to Century 21, Inc. were void and that Ch. 302 Laws of 1959 was exclusive and applicable to both such facilities.

The City has appealed from this judgment to the State Supreme Court and the City will operate the garage facility itself pending the Supreme Court's decision.

The following proceedings were handled by Assistants G. Grant Wilcox and Robert B. Leslie:

State ex rel. Duvall, et al v. The City Council of The City of Seattle, et al. Following the City Council hearing on the plan for limiting access along the proposed R. H. Thomson Expressway between East Madison Street and the Montlake Interchange and the approach to the second Lake Washington Bridge, which plan was approved by Ordinance 90770, certain property owners represented by Attorney Alfred J. Schweppe appealed pursuant to RCW 37.52.075 to the Superior Court of Thurston County. Upon review the Thurston County court remanded the matter for a second hearing before said City Council, which hearing was held on April 30 and on May 3, 1961 and the plan was again approved by Ordinance 91253 and the petitioners again appealed to the Thurston County Superior Court.

The petitioners urge that the City Council in adopting the plan proposed by the Planning Commission and the Engineering Depart-

ment of The City of Seattle, which generally avoids the Arboretum and proceeds instead along its west margin, is arbitrary and unreasonable and that the location of the Expressway should be within the Arboretum at certain points. The respondents, the City Council, denied such allegations and our position is that the limited access hearing and proceedings for review thereof involve only the reasonableness of the limitation of access to and from *existing* streets.

Following the petitioners' second appeal to the Thurston County Superior Court, the matter was argued extensively in November 1962 before Judge Wright of said Court.

The following cases were prepared and tried by Assistant Gordon F. Crandall:

In *Brown v. City of Seattle and Seattle Housing Authority*, plaintiff sought a writ of prohibition to prevent the City from approving a site near 8th and James for a high-rise public housing project for the elderly. The right to approve or disapprove new public housing projects is reserved to the City in a cooperation agreement with the Seattle Housing Authority. Plaintiff contended that it was necessary to secure approval of the site by the City Planning Commission prior to City Council approval. The writ was dismissed by the trial court, and plaintiff's appeal was later abandoned.

Nelson et al. v. City of Seattle and Seattle Housing Authority was the second legal round in the effort to prevent construction of said high-rise housing project for the elderly. Plaintiffs by certiorari asked the Superior Court to review the rezoning of portions of the site to accommodate high-rise construction, contending *inter alia* that the Planning Enabling Act (RCW 35.63) had not been complied with and that the rezoning was therefore void. The trial court ruled that RCW 35.63 is permissive legislation and that Seattle could under its police power zone without reference to said Act. The Supreme Court denied plaintiffs' application for supersedeas but their appeal is still pending.

Lenci et al. v. City of Seattle. In this case four motor vehicle wreckers in Seattle sought judgment to declare Ordinance 90316 invalid, which licenses motor vehicle wreckers and requires an eight foot view-obscuring fence around their activities with no more than one opening on any public way. Plaintiffs contended these requirements were unreasonable, discriminatory and in conflict with state law. The trial court found the fence and access requirements unreasonable and held for plaintiffs. The City's appeal is pending.

Seattle et al. v. General Electric, Allis Chalmers, Westinghouse, et

al. During 1962 the State Attorney General filed suit against certain major electrical equipment companies on behalf of Seattle, the State of Washington and several other publicly-owned electric utilities in the state for treble damages from an alleged conspiracy to fix prices and rig competitive bids. The complaints ask for damages for the City for nearly fifteen (15) million dollars. These cases are now pending in Federal District Court in Seattle but will not be tried until extensive discovery proceedings have been completed.

In the case of *Omni Productions, Inc. v. Seattle*, plaintiffs sought a building and use permit to conduct a rodeo during the World's Fair in a sports stadium adjacent to a residential area, which was denied on the grounds that the proposed rodeo constituted an unlawful "change of use" for this nonconforming stadium. The trial court disagreed however, ruling that the rodeo was included within the allowable nonconforming uses of the stadium. No appeal was taken and thereafter the rodeo closed for lack of attendance.

The following cases were prepared and tried by Assistant Jerry F. King:

State ex rel. Perry v. Seattle. This case involves the removal for cause by the Chief of Police of a patrolman in his department, which removal was sustained by the Civil Service Commission after investigation under Art. XVI, Section 12 of the Charter, but was set aside by the Superior Court upon review by certiorari of such proceedings. The trial court ruled that the reasons found by the Commission to sustain such removal for cause—that the patrolman had been stopped twice by the State Patrol for driving while affected by intoxicating liquor while off duty but partially in uniform, which two events occurred within three weeks of one another, did not, as a matter of law, establish sufficient cause for removal.

The City contended that under the City Charter the question of whether sufficient cause exists for the removal of an employee is to be resolved by the appointing officer and that here the determination made by him was not arbitrary nor for frivolous reasons and that therefore the Civil Service Commission's order sustaining the dismissal was proper and not subject to reversal by the courts. The appeal taken by the City from this decision to the State Supreme Court is now pending.

Seattle Sporting Goods, Inc. v. Seattle. In this case several local dealers in short firearms sought a declaratory judgment that Ordinance 90475, requiring permits to *purchase* certain dangerous weapons, including short firearms, was invalid in view of Ch. 124, Laws of Washington 1961. The claim was that by such statute the State had

pre-empted the field of short firearm control and left the city without authority to regulate purchases of such weapons. The Superior Court, however, agreed with our view that under said statute the City retains authority to enact legislation not inconsistent therewith and that because the statute was silent on *purchase* permits the instant ordinance requiring the same was valid. Notice of appeal was given by the plaintiffs but was later stricken on their motion.

Air Mac, Inc. v. Seattle. The operators of certain of the pedicabs and electricabs at the World's Fair here sought, and secured, a declaratory judgment that the admissions tax imposed by Ordinance 72495 upon persons paying "an admission charge to any place" did not apply to persons paying such charges for use of their facilities, the court accepting the argument that the same were not "places" because of the circumstance that such facilities are free running and not operated on a fixed course within an enclosure.

The following case was prepared and tried by Assistant James G. Leach:

In the case of *City v. Alva Long*, the defendant was charged under Section 172 of the Traffic Code with driving without a valid motor vehicle operator's license in his possession. The defendant was convicted in Municipal Traffic Court and appealed to Superior Court where he argued that Section 172 is invalid because the state has pre-empted the entire licensing field through RCW 46.08.010 which provides for the issuance of licenses to all operators of motor vehicles.

The City pointed out that, although the State alone may *issue* such licenses, the City has the authority, under its police power, to provide a *criminal sanction* against one who operates a motor vehicle within the City without a valid operator's license in his possession. Superior Court Judge Henry Clay Agnew upheld the validity of Section 172 and found the defendant guilty. The defendant has appealed to the Supreme Court of Washington and the matter is now pending.

The following case was prepared and tried by Assistant William L. Parker:

State ex rel. City of Seattle v. Walter T. McGovern, Judge of the Municipal Court, City of Seattle.

This action arose out of a prosecution of a violation of the City's Donation Solicitation Ordinance 48022 by members of a religious organization who were soliciting on the city streets without first obtaining the required permit. At the time of trial, Judge McGovern dismissed the action on the ground that the ordinance, as drawn, was

unconstitutional for the following reasons: (1) The permit fees were excessive in amount as applied to religious solicitation, and (2) the City Comptroller's authority to grant a license was not controlled by sufficient standards.

The City obtained a review of this ruling in the Superior Court by Writ of Certiorari. Judge Birdseye upheld the ruling that the ordinance did not set forth sufficient standards to control the discretionary authority of the Comptroller. As a result of these decisions, this office recommended to the council that Ordinance 48022 be amended to reflect recent decisions of the U.S. Supreme Court pertaining to First Amendment freedoms.

The following cases were prepared and tried by Assistant Arthur T. Lane:

Sittner, et al. v. City: In this case a number of local auto wreckers and metal salvage dealers sought a declaratory judgment that Ordinance 90000, which regulates and controls the emission of air pollutants, was unconstitutional. The plaintiffs' arguments were rejected by Superior Court Judge Ross R. Rakow, visiting from Klickitat County, who agreed with the city's contentions that the control of air pollution is a proper subject for the exercise of the city's police power and is not in conflict with state legislation on the same subject; that a reasonable basis exists for classifying plaintiffs' activities, and those similarly situated, differently from heat processing equipment, such as mills and foundries; and that increased costs of operation in order to comply with a police power ordinance cannot invalidate it.

An appeal by the plaintiffs from this decision to the State Supreme Court is now pending, and since the validity of air pollution control legislation has never been considered by such court before, it will be a case of first impression.

Nordic Builders v. City: In this case the plaintiffs, local building contractors, sought an injunction restraining the City Purchasing Agent from awarding a contract for furnishing and supplying an 80 x 160 foot prefabricated metal building to City Light at its Skagit Hydro-electric project to a party who was not the lowest bidder therefor. Plaintiffs argued that the award should have gone to them since they had submitted the low bid for such building, and further that the furnishing of such a large building was a "public improvement" rather than an item of "equipment" within the meaning of the City Charter and therefore should have been awarded through the Board of Public Works rather than the Purchasing Agent.

Superior Court Judge Eugene A. Wright agreed with the City's

contention that plaintiff's bid, although the lowest submitted, was not the "lowest and best" bid submitted as required by the City Charter provisions relating to the Purchasing Agent, since it was not responsive in several material particulars to the plans and specifications prepared by the Lighting Department; and further that since the building, despite its large size, was prefabricated and could be moved from place to place, did constitute an item of "equipment" within the provisions of the City Charter relating to the Purchasing Agent.

Furse v. City of Seattle: In this case the plaintiff, who operated a private bus transportation company from downtown to southern and northern parts of the City and King County, brought an action against the City for \$250,000 damages allegedly caused his company by the extension in 1959 of certain Seattle transit service to such areas which had been annexed to the City in 1954.

King County Superior Court Judge Henry Clay Agnew dismissed the action and agreed with the City's contentions that the operation by the City of transit service within annexed areas did not constitute a constitutional taking or damaging of plaintiff's competing private transportation line; that the State franchise under which plaintiff operated was in no respects an exclusive one; and that a 1957 State statute prohibiting cities from extending transportation and other services to annexed areas within a certain period of time without payment of damages caused thereby to private transportation and other companies did not apply to the extension of services to areas which had been annexed prior to 1957, as was the case here.

This case was appealed by the plaintiff to the State Supreme Court and was later dismissed by such Court upon plaintiff's motion.

SPECIAL MENTION

Local private counsel and special counsel in Washington, D.C. continued to represent the City in litigation arising out of the license granted in 1961 for the Boundary hydroelectric project on the Pend Oreille River. Good results continued during the year 1962 and we are well satisfied with this special representation, which included the defense of the following actions:

P.U.D. No. 1 of Pend Oreille County v. Federal Power Commission (The City of Seattle, Intervenor), 308 F.(2d) 318. The P.U.D. appealed to the U.S. Court of Appeals for the District of Columbia from the order granting the Boundary License upon the same grounds raised and rejected by the Federal Power Commission. The appeal

was decided in favor of the City on August 30, 1962, and a petition for certiorari was later denied by the U.S. Supreme Court.

Beezer v. The City of Seattle (P.U.D. No. 1 of Pend Oreille County, Intervenor), King County Superior Court No. 576444. A so-called taxpayer's suit to enjoin the Boundary project was filed in late 1961, in which the P.U.D. was permitted to intervene, and it was alleged that as the City could not lawfully acquire the P.U.D.'s property it should be enjoined from making expenditures of public money on the project. The City's motion for summary judgment of dismissal was granted January 9, 1962, but the State Supreme Court in 160 Wash. Dec. 241 reversed the trial court on the ground that it should determine whether or not the property sought by Seattle was a part of the P.U.D.'s "electric power and light plant or electric system." A subsequent motion to dismiss the appeal was denied in 160 Wash. Dec. 652. A motion is now pending to dismiss this action on the ground that it has become moot by reason of the Supreme Court's denial of certiorari in the appeal from the order granting the federal license.

P.U.D. No. 1 of Pend Oreille County v. The City of Seattle, Superior Court for Pend Oreille County No. 5290. After receiving the federal license, the City entered upon the site for survey and exploratory purposes to determine the location and extent of the property necessary for the project. The P.U.D. brought suit to enjoin such work, claiming a trespass upon its property, and judgment enjoining the City was granted in Pend Oreille County Superior Court on January 26, 1962. The City has appealed, but it is anticipated that this case also will be declared moot by reason of the U.S. Supreme Court's denial of certiorari referred to above.

RE: URBAN RENEWAL PROJECTS—1962

During 1962 Seattle applied for federal financial assistance for several urban renewal projects in various stages of development, including two projects adjacent to institutions of higher learning, and our work in this connection consisted of advising the Mayor and Urban Renewal Coordinator in conferences and by written opinions on the legal aspects and limitations of the State Urban Renewal Law, preparing ordinances and resolutions to implement the plans for the projects, preparing certificates and legal information reports to the federal agency involved and rendering opinions to the federal agency on the legality of the City's applications for funds and urban renewal plans.

While urban renewal and redevelopment laws have been used to eliminate slums in eastern cities for some years, such activity is rela-

tively new to Seattle and other Washington cities. Urban renewal projects are conducted here by the City itself rather than by an independent agency or redevelopment corporation, which gives city government closer control over selection of areas to be treated and the techniques to be used. However, considerable difficulty was experienced by the Urban Renewal Coordinator in expediting approval of its projects during 1962 due in part to the pendency of *Miller v. Tacoma*, a "test case" involving the constitutionality of said law decided by the State Supreme Court in early 1963, and also to misunderstandings with the Federal Agency as to the declaration of "blighted area" under the state Urban Renewal Laws. In *Miller v. Tacoma*, 161 Wash. Dec. 373, the court in a 5-4 decision upheld the constitutionality of the Urban Renewal Law and held condemnation of private property on an area basis for industrial re-use to be for a "public use."

SUMMARY AND CONCLUSION

The Law Department Budget for 1962 was \$329,313, of which \$280,688 was for salaries. However salary savings in addition to those estimated were made in 1962 due to two resignations from positions of Assistant Corporation Counsel because the vacancies were filled by advancement and two new appointments to Junior Assistant Corporation Counsel which substantially reduced the amount allowed.

Our budget estimate, particularly as to salaries, was adopted by the City Council with practically no changes which we appreciate. This figure does not include per diem compensation for local private counsel and for 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 hydroelectric project at Boundary on the Pend Orielle River, FPC No. 2144, which license was granted July 10, 1961. These were followed by protracted litigation in the Federal courts referred to previously in this report, but it now appears that the City's right to the license is secure.

The foregoing references in this report to written opinions by number and subject matter, to State Supreme Court cases involving the City, to certain noteworthy Superior Court proceedings, to the suit in behalf of Seattle against certain major electrical equipment companies for damages resulting from an alleged conspiracy to fix prices and rig competitive bids, which case was filed by the State Attorney General in behalf of Seattle and other cities, the reference to the case entitled *P.U.D. No. 1 of Pend Oreille County v. Federal Power Commission, The City of Seattle, Intervenor*, reported in 308 F.(2d) 318 in which the City was represented by special counsel, and to the progress on the city's urban renewal projects, all during 1962, reflect the varied

and complex legal problems attending Seattle's activities—governmental and proprietary—during a single year.

A noteworthy event late in 1962 was the completion of the City's new Municipal Office Building at 600 Fourth Avenue. The Law Department, including the Claim Division was the first of the city departments to move to the fine new quarters provided on the 10th floor of the new building. The plans for the office layout, conference rooms and law library and the Claim Division wing were prepared by Chief Assistant A. L. Newbould, who also supervised the ordering and placement of new furniture and the move to the new building which occurred during a week end in July 1962. The entire office force cooperated in placing the furniture and the Assistants especially worked long hours including the placing of the books in the law library. The quarters assigned to us are very much appreciated and the whole layout is a credit to all concerned.

In closing I again express my appreciation for the continuing 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 also to comment on the industry and ability displayed by the Assistants, all of whom have taken on additional responsibilities with good results.

During the past five years I have delegated to Chief or First Assistant Corporation Counsel A. L. Newbould an increasing share of the administrative functions of the office including the selection of assistants, the assignment of law suits, approval of ordinances as to form, review of drafts of formal opinions on questions of law, review of briefs in the State Supreme Court, preparation of Law Department annual budget estimates, and many special assignments. All of such duties have been performed by him with in most instances no direct supervision at all and the balance with a minimum of review and supervision, and during two periods of illness on my part in 1960 and 1961, Mr. Newbould performed the duties of both offices. For all of this he is entitled to this special recognition.

Respectfully submitted,

A. C. VAN SOELEN
Corporation Counsel

The City of Seattle--Legislative Department

MR. PRESIDENT:

Date Reported
and Adopted

Your Committee on Personnel & Judiciary
to which was referred 247802,

APR 20 1964

1962 Annual Report of the Law Department of the City
of Seattle, recommends that,

the same be placed on file.

..... Chairman

Massari

..... Chairman