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CITY OF SEATTLE  
LAW DEPARTMENT

*Annual Report*

1963



*Personnel & Judiciary*

~~*Public Safety*~~

APR 6 1964

4-9-64 *file*

APR 13 1964 *On File*

A. L. NEWBOULD  
*Corporation Counsel*

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LAW DEPARTMENT

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1963

A. L. NEWBOULD, *Corporation Counsel*

JOHN P. HARRIS.....*Assistant Corporation Counsel*  
JOHN A. LOGAN.....*Assistant Corporation Counsel*  
G. GRANT WILCOX.....*Assistant Corporation Counsel*  
CHARLES R. NELSON.....*Assistant Corporation Counsel*  
GORDON F. CRANDALL.....*Assistant Corporation Counsel*  
ARTHUR T. LANE.....*Assistant Corporation Counsel*  
GEORGE T. MCGILLIVRAY.....*Assistant Corporation Counsel*  
JERRY F. KING.....*Assistant Corporation Counsel*  
JOHN A. HACKETT.....*Assistant Corporation Counsel*  
ROBERT W. FREEDMAN.....*Assistant Corporation Counsel*  
WILLIAM L. PARKER.....*Assistant Corporation Counsel*  
RICHARD C. NELSON.....*Assistant Corporation Counsel*  
BRUCE MACDOUGALL.....*City Prosecutor*  
ROBERT M. ELIAS.....*City Prosecutor*  
NEAL KING.....*Junior Assistant Corporation Counsel*  
FAYE FORDE.....*Secretary*  
JOHN F. COOPER.....*Claim Agent*

A  
TRIBUTE  
to

A. C. VAN SOELEN

*Resumé of outstanding service to the public  
in The City of Seattle Law Department*

Appointed Law Clerk in 1920

Appointed Assistant Corporation Counsel in 1925

Appointed Chief Assistant Corporation Counsel  
in 1929

Elected Corporation Counsel by City Council in  
1930

Elected Corporation Counsel by voters in 1932,  
1936, 1940, 1944, 1948, 1952, 1956, 1960

Retired November 1, 1963

# Annual Report

## OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1963

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, 1963.

### 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 1963.

	Pending Dec. 31 1962	Commenced during Year 1963	Ended dur- ing year 1963	Pending Dec. 31 1963
Condemnation suits.....	5	8	9	4
Damages for personal injuries.....	114	77	88	103
Damages other than for personal injuries .....	27	22	27	22
Injunction suits .....	12	10	8	14
Mandamus proceedings .....	2	3	3	2
Prohibition writs .....	0	2	2	0
Miscellaneous proceedings .....	29	31	22	38
Certiorari Writs .....	5	4	3	6
Sub-Total .....	194	157	162	189
Appeals from Municipal and Traffic Courts .....	229	525	538	216
Grand Total .....	423	682	700	405

##### 2. Segregation — Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1962.....	114	\$4,528,282.38
Commenced since January 1, 1963.....	77	2,978,788.32
Total.....	191	\$7,507,070.70
Tried and concluded since January 1, 1963.....	88	2,020,069.60
Actions pending December 31, 1963.....	103	\$5,487,001.10

Of the above personal injury actions 88 involving \$2,020,069.60 were tried or finally disposed of in 1963; 38 involving \$1,051,046.46 were won outright; in 6 cases involving \$107,236.84, the plaintiffs recovered the aggregate sum of \$9,536.91. The remaining 44 cases involving \$861,786.30 were settled or dismissed without trial for a total of \$98,538.77.

Of the 77 personal injury actions begun during the year 1963, a large portion involving \$952,097.15 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, 1962.....	27	\$ 498,391.24
Commenced since January 1, 1963.....	22	141,973.28
	49	\$ 640,364.52
Tried and concluded since December 31, 1962.....	27	240,141.45
Pending December 31, 1963.....	22	\$ 400,223.07

Of the total of 49 cases involving damages other than personal injuries, 27 involving \$240,141.45 were disposed of during the year 1963 of which 15 involving \$211,139.62 were won outright. In one case involving \$500.00 the plaintiffs recovered \$300.00. The remaining 11 cases involving \$28,501.83 were settled or dismissed without trial for a total of \$7,999.32.

The total expense for claims and suits involving the Transit System was \$210,654.05 in 1963. This is 2.21% of the gross revenues of the System for the year.

**4. Supreme Court:**

There were nineteen appeals involving the City pending in the State Supreme Court December 31, 1962, and sixteen new appeals were filed in 1963. Ten (10) were decided in 1963 and there are 22 cases still pending in the Supreme Court.

**5. Miscellaneous Cases:**

Eight injunction actions were tried and won and 14 are still pending. Three mandamus actions were tried and won and two are pending.

Twenty-two miscellaneous cases were disposed of during the year — 19 were won by the City and three were lost. Three writs of certiorari were tried during 1963; the City won two, lost one and six are now pending.

Three hearings relating to dismissals of employees were filed during the year — two are still pending and one employee was returned to work.

A number of accounts were referred to the Law Department in 1963 and actions were commenced for the Lighting Department, principally for damage to City Light property. By suits and settlements the Law Department has collected \$1,720,52 for the Lighting Department and forwarded the same 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 1963**

	Number	Amount Involved
Claims for damages, dormant, on file December 31, 1962, and against which the statute of limitations has not yet run.....	838	\$ 2,581,431.56
Claims for damages, active, and referred to this department for investigation December 31, 1962, to December 31, 1963.....	952	11,698,626.94
Claims disposed of during 1963:		
	No.	Amount Claimed
Settled .....	583	\$2,954,591.67
Rejected .....	502	3,187,230.60
Some of the above settled claims were in suit and settled in conjunction with Claim Agent.		
75 Claims. Amount involved.....		\$1,469,960.98
Amount of settlements.....		131,863.38
Number of Seattle Transit System accident reports investigated December 31, 1962, to December 31, 1963.....		1,994
Number of circulars and letters mailed in connection with investigations of foregoing claims and reports.....		12,810

### III.

#### MUNICIPAL POLICE COURT

During the year 1963 the City Prosecutor, Bruce MacDougall, handled a calendar of 20,838 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$182,488.00.

#### MUNICIPAL TRAFFIC COURT

In the Municipal Traffic Court for the year 1963 there was a docket of 41,556 traffic cases resulting in fines and forfeitures amounting to \$539,653.00 and traffic bureau forfeitures amounting to \$2,382,164.50, totaling \$2,921,817.50 for the year.

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

#### MUNICIPAL COURT APPEALS

538 convictions in the Municipal Courts (408 Traffic, 130 Police) were disposed of on appeal in 1963, as follows: 201 appeals (127 Traffic, 74 Police) were abandoned by the defendants and remanded to the Municipal Courts for the enforcement of the original convictions. In 196 cases (172 Traffic, 24 Police) convictions on pleas of guilty were entered. In 59 cases (56 Traffic, 3 Police) the court or juries found the defendants guilty after trial. In 27 cases (24 Traffic, 3 Police) the appellants were acquitted. Fifty-four cases (29 Traffic, 25 Police) were dismissed for insufficiency of evidence, witnesses moving away or other causes. In two cases deferred sentences were given. A total of \$21,653.00 in fines and forfeitures and Superior Court costs in the amount of \$726.10 were collected by this department in connection with such 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.

#### ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1963, 367 ordinances, 51 resolutions; and in addition 98 ordinances were prepared for the settlement of 194 claims.

1401 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling \$44,446,313.26.

Legal papers served and filed during 1963, including condemnation suits, summons and petitions, answers, judgments, notice of appearances and subpoenas totaling 1,460 in all, were handled by Process Server T. Guy Warren.

**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 55 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 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 1963 OPINIONS BY NUMBER**

- 5009 City not authorized to condemn or assess for portion of joint street improvement outside city limits.
- 5010 Share of cost of trunks, pumping and treatment plant may be charged to L.I.D. if benefited.
- 5011 Auction of surplus City real estate valid if authorized and confirmed by City Council.
- 5012 Lessee liable for flood lighting parking lot — parol evidence rule.
- 5013 Harbor Department service not creditable under Police Pension Act.
- 5014 Proposed ordinance limiting the sale of goods originating in "Communist dominated" countries is unconstitutional.
- 5015 Board of Natural Resources — RCW 43.30.150 — now State Harbor Commission, alone may establish harbor lines under Amendment 15 to State Constitution.
- 5016 University Addition — Northlake, Wash. R-8 Urban Renewal Plan.
- 5017 Conveyance of land in University-Northlake Urban Renewal Project to U. of W.



- 5018 Return to city service from military leave is condition precedent to city service retirement benefits.
- 5019 Disposition of urban renewal land — University Addition-First Hill — competitive bidding required.
- 5020 Notification to State's lessee at Armory of Building Code requirements for alterations.
- 5021 No authority to annex Cedar River Watershed territory.
- 5022 Administrative and legislative responsibility for properties acquired for Urban Renewal Project.
- 5023 Hiram Chittenden Locks exempt from sewerage charges until connected.
- 5024 Bankruptcy not cause for termination or reduction of police disability pension.
- 5025 Board may by rule extend the period of authorized variances.
- 5026 Civil Service Commission age limitations in connection with examination not "discriminatory practice" under RCW Chapters 49.44 and 49.60.
- 5027 Decision of State Director of Agriculture concerning enforcement of Ordinance 84106 — Milk Code.
- 5028 Use by abutters of streets dedicated but unopened.
- 5029 Ordinance assertion of "public use and necessity" for condemnation for "view point."
- 5030 *Marie K. West v. Seattle*, Supreme Court No. 36255.
- 5031 Fire truck purchase contract — "unreasonable delay" in replacing turbine engine is question of fact.
- 5032 Civil Service Commission "investigation" of employees under Charter, Article XVI, Sec. 14, limited to conduct involving administration of such article.
- 5033 Assessment on property specially benefited for natural stream improvements authorized by L.I.D. law.
- 5034 Roxbury Sewer District "dissolved" by ordinance pursuant to RCW 35.13.220-243.
- 5035 Sec. 87 of License Code requiring "purchase permits" for short firearms in conflict with Ch. 163, Laws of Washington, 1963.
- 5036 "Penalty assessment" levied by Ch. 39, Laws of Washington, 1963, for "driver education."
- 5037 City liable for loss of concrete yield if caused by modification of mix.
- 5038 City cannot condemn property in excess of its needs for public use.
- 5039 Proposed city tennis courts in State Freeway right of way.

- 5040 Theatre license may be suspended only for violation of city ordinance or state law.
- 5041 Ordinances defining and licensing pool and billiard rooms, and fixing age limits.
- 5042 Ownership of invention developed by city employees on city time is question of contract.
- 5043 Pension Fund physicians not "employees" for purposes of deductions from compensation and payment of excise tax under Federal Insurance Contributions Act.
- 5044 Proposed Metro rules including regulation of city sewer construction.
- 5045 Amount due contractor when performance terminated by city prior to completion.
- 5046 Liquidated damages enforceable only where city is actually damaged by breach.
- 5047 Abandoned wells, cesspools, etc., may be "public nuisances."
- 5048 Nonabutting owner, upon vacation of street, can recover only for special damages.
- 5049 State-wide referendum on Chap. 37, Laws of 1963, suspends city's authority to enact legislation pursuant thereto by referendum or otherwise.
- 5050 Zoning Ordinance § 27.16 — Limitation on second rezoning petition within one year.
- 5051 "Business" of towing "disabled motor vehicles" peculiarly subject to regulation by ordinance.
- 5052 Chap. 56, Laws of '63, authorizes city L.I.D.'s in "adjacent" unincorporated territory.
- 5053 Divorced wife of deceased police officer not a "surviving spouse."
- 5054 City's continued power to license and tax those in the business of bill posting.
- 5055 Status of certain employees not returned from military service.
- 5056 Payment of water utility special tap charge under Interbay "golf city" lease.
- 5057 "Advance Land Acquisition Fund" — C.F. 249337.
- 5058 Police Pension Fund service credit for former harborman does not include prior Transit service.
- 5059 Civil Defense Compensation Board for Seattle-King County Civil Defense organization.
- 5060 Temporary, reasonable zoning ordinance height limitations lawful.

- 5061 *Boss v. Spokane*, Supreme Court No. 36396.  
5062 Reservation of "slope rights" in vacated street areas.  
5063 Hearing not necessary for certain modifications of an urban renewal plan.

#### STATE SUPREME COURT CASES — 1963

*State ex rel. Bolen v. Seattle*, 61 Wn.(2d) 196.

This case raised the question of whether a 1961 police pension statute conflicted with Washington State Constitution, Art. 2, Sec. 23, as amended by Amendment 35. Such constitutional provision prohibits the granting of extra compensation to public servants after their services have been rendered but, as amended, does not prevent "increases in pensions after such pensions shall have been granted." In 1959 legislation was enacted which for the first time provided pensions for widows of city policemen. By 1961 legislation it was sought to extend such pensions to widows who had become such *prior* to the enactment of the 1959 legislation. The Superior Court held they were entitled to the pension, but on the City's appeal the judgment was reversed, the Supreme Court agreeing with the City that the legislation could not be considered "an increase of an existing pension" and hence was unconstitutional as sought to be applied to them. This case was tried and argued by Assistant Arthur T. Lane.

*Seattle v. Long*, 61 Wn.(2d) 737.

In this important criminal case the defendant had challenged the authority of the City by ordinance to require him to have a valid state vehicle operator's license on his person while driving his automobile within the City of Seattle. He had appealed a Municipal Court conviction and fine imposed for violation of such ordinance. Both the Superior and Supreme Courts agreed with the City's contention that under its constitutionally derived authority to enact police regulations "not in conflict with general law," the City had not lost authority to prohibit the conduct in question by the State Motor Vehicle Code which also makes such conduct punishable as the Code does not show upon its face that it was intended by the legislature to be exclusive. This decision will support many other sections of the new Traffic Code which might otherwise have been similarly attacked. The case was ably tried and argued by Assistant James G. Leach.

*State ex rel. West v. Seattle*, 61 Wn.(2d) 658.

The City here had asked the Supreme Court to review a Superior Court decision reinstating Marie K. West to the position of Clerk in the City Lighting Department, from which she had been removed for

cause in 1955. The court affirmed the Superior Court, holding that Charter Art. XVI, Sec. 12, requires all removals for cause to be made "by" the employee's appointing power and that the attempted removal of Mrs. West was void as having been made "by" an assistant to the appointing power. The court rejected the City's contention that sufficient compliance had been had in view of the testimony of the appointing power that he "approved" such removal. The various departments have been advised of the ramifications of this decision.

*City v. Nave*, 162 Wn. Dec. 438.

The defendant here had been convicted in Superior Court, on appeal from Municipal Court, of having failed to obey a traffic sign reading "Curb Lane for Transit and Right Turn Only 7-9 A.M." On his appeal the Supreme Court reversed the conviction, agreeing with defendant that such sign did not say *when* one must make a right turn and concluding that the sign did not satisfactorily convey the meaning intended for it by the Traffic Engineers, which had been, of course, that one should be in the right turn lane only immediately prior to making a right turn. The court also reversed defendant's conviction of having resisted arrest.

*McGarvey v. Seattle*, 162 Wn. Dec. 515.

The plaintiff in this case, a man eighty years of age with impaired eyesight, had fallen into an open city manhole which, he had alleged in his complaint against the City, had been unbarricaded. The verdict of the jury had resolved conflicting evidence in favor of the City and the complaint was dismissed. On plaintiff's appeal the court returned the case to Superior Court for a new trial, holding that certain instructions given the jury by the trial court had been incomplete.

*Beezer v. The City of Seattle* (P.U.D. No. 1 of Pend Oreille County, Intervenor), 162 Wn. Dec. 559.

This so-called taxpayer's suit to enjoin the Boundary Project was filed in late 1961 and the P.U.D. was permitted to intervene. At the time of our Annual Report for 1962, the United States Supreme Court had denied certiorari in the P.U.D.'s appeal from the order granting the federal license, and we then anticipated that the *Beezer* case would thereby become moot. However, in a 5-4 decision the State Supreme Court ordered the lower court to proceed to trial to determine whether any of the property sought by Seattle was a part of the P.U.D.'s "electric power and light plant or system," which a city might not be able to condemn because of RCW 35.84.030. After trial, judgment of dismissal was entered in favor of the city. Shortly thereafter and before *Beezer* and the P.U.D. could perfect their appeal, the United States Supreme Court reversed the State Supreme Court's latest decision

(Docket No. 677, March 2, 1964) which concluded this long and difficult litigation and cleared the way for construction of the Boundary Project.

*Sittner v. City*, 162 Wn. Dec. 819.

In this important case which attracted national attention the City successfully defended the constitutionality of Ordinance 90000, the air pollution control ordinance. The plaintiffs, engaged in the burning of scrap metal to be sold to foundaries, had alleged the ordinance was an "unreasonable" exercise of the City's police power and violated the equal protection clause of the State and Federal Constitutions. The Supreme Court rejected each contention, agreeing with the City that the legislation was valid. The case was tried and argued by Assistant Arthur T. Lane.

*State ex rel. Perry v. City*, 162 Wn. Dec. 875.

This is a civil service case, involving the review by the courts of the removal for cause by the Chief of Police of a patrolman in his department. After investigation under Charter Art. XVI, Sec. 12, the Civil Service Commission had sustained the dismissal, making a finding that the same was "not arbitrary." The Superior Court, upon review by certiorari of such decision, reversed the Commission and ordered reinstatement. The City appealed to the Supreme Court which "abrogated" the Superior Court decision but ordered a "new hearing" before the Civil Service Commission, stating that the Commission should exercise its *independent* judgment as to whether the dismissal had been made for just cause. Upon the new hearing, in January, 1964, the Commission again sustained the dismissal. The former patrolman has sought another review by the Superior Court and the matter now is there pending. The case was prepared and tried by Assistant Jerry F. King.

*Strickland, et al. v. City*, 162 Wn. Dec. 895.

This case, prepared and tried by Assistant John P. Harris, arose from claims of owners of property near the mouth of Thornton Creek on Lake Washington, that their lands had been damaged by silt carried by the creek and deposited at its mouth, creating a delta. The owners claimed that the City had caused the delta to build up more rapidly than it otherwise would have by using Thornton Creek as a part of its storm sewage system. The creek flows through private property, more than one third of its watershed is outside the city limits, and it was the City's contention that it was simply the continuing urbanization of the watershed area which had caused accelerated surface runoff. After a fifteen-day trial the jury returned a verdict for the City on the issue of siltation damage. The trial court (the Hon. Lloyd Shorett) thereupon issued an injunction requiring the City to take "corrective

measures" to prevent "unnatural" deposits of silt on plaintiffs' lands, and providing that if it did not the City should be liable for damages. The City appealed from such injunction, and in a unanimous decision the Supreme Court reversed the trial court, holding that a municipality is not liable for the nonnegligent construction of streets, culverts, and ditches, simply because these improvements cause an acceleration of the velocity and turbulence of water in a stream which is the natural receiver of surface waters drained from the area. The Supreme Court accordingly dissolved the trial court's injunction and affirmed the jury's verdict.

#### SUMMARY AND CONCLUSION

The Law Department budget for 1963 was \$339,293, of which \$287,868 was for salaries. However, substantial salary savings in addition to those estimated were made in 1963 due to vacancies in two positions.

In addition to our regular staff of lawyers, we continued the employment of local private counsel and also of special counsel in Washington, D.C., to represent the City in litigation relating to the City's application for a license for a hydroelectric project at Boundary on the Pend Oreille River. Early in 1964 the City's right to construct such project was finally determined by the U.S. Supreme Court. Special counsel are to be commended for their success and outstanding efforts on behalf of the City.

The statistics and resumes in this report summarize not only the professional services of the lawyers in the department who have performed ably and well and in many instances beyond regular office hours, but also summarize the last year of public service of A. C. Van Soelen. Mr. Van Soelen served as the City's elected Corporation Counsel from 1930 to 1963 and performed in a highly capable and conscientious manner. It is to Mr. Van Soelen that credit is due for the high esteem in which the legal profession holds the office and for the department's ability to handle the increase in both volume and complexity of legal work.

In closing I wish to express my appreciation to the City Council for their continued cooperation and understanding in connection with the Law Department budget and particularly in providing professional salaries adequate to assist us in attracting and retaining qualified personnel.

Respectfully submitted,

A. L. NEWBOULD  
*Corporation Counsel*

# The City of Seattle--Legislative Department

MR. PRESIDENT:

Date Reported  
and Adopted

Your Committee on Personnel & Judiciary  
to which was referred File No. 250514,

1963 Annual Report of the Law Department of  
The City of Seattle, recommends that,

THE SAME BE PLACED ON FILE.

..... Chairman

*Marsait*

..... Chairman