CITY OF SEATTLE

LAW DEPARTMENT

1964 Annual Report

A. L. NEWBOULD
Corporation Counsel

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City Prosecutors

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Claim Agent

JOHN F. COOPER

Cover: Assistants Corporation Counsel John A. Hackett and Jerry F. King in the Law Department Library.

MR. PRESIDENT:

Date Reported and Adopted
APR 12 1965

Your Committee on Public Safety

to which was referred File No. 253004, being Annual Report of Seattle Law Department for 1964,

RECOMMENDS THAT THE SAME BE PLACED ON FILE.

..... **Chairman**

..... **Chairman**

A. L. NEWBOULD
Corporation Counsel
SEATTLE

To the Mayor and City Council of The City of Seattle:

Submitted herewith is the annual report of the Law Department of The City of Seattle for the year ending December 31, 1964, as required by Section 12, Article XXII of the City Charter.

The statistics which follow evidence noted increases in the volume of this department's responsibilities during 1964 including, to mention a few, the number of claims filed against the City, appeals decided by the State supreme court, suits by citizens testing the validity of certain city actions, and appeals from municipal traffic court to the superior court. The impact of an increased work load has had its greatest effect in connection with the assignment of professional personnel to handle the traffic court appeal case load and if the present trend continues, will undoubtedly necessitate the creation of additional positions in the office.

The increased volume of activity is matched only by the complexity of legal issues referred to the department during the year and this report is a tribute to the members of the staff for the capable and efficient manner in which they have individually carried their respective responsibilites and performed their assigned duties, for which I express my gratitude.

During the year one assistant, Bruce MacDougall, retired after 42 years of City service in the Law Department, principally in the position of City Prosecutor, and Mr. Robert W. Freedman resigned his position as Assistant Corporation Counsel to return to the private practice of law. Mr. James G. Leach returned to the Law Department and is serving as City Prosecutor, and Mr. J. Roger Nowell was added to the staff. Also during the year a third year law student from Cornell University, and a University of Washington law graduate awaiting military service were employed during the summer and fall months on legal research problems.

The employment of special counsel locally and in Washington, D.C. was continued during the year in connection with the City's application for a federal license to construct the Boundary hydroelectric project on the Pend Oreille River. The success of counsel was highlighted by the U.S. Supreme Court decision in *Beezer v. Seattle,* 11 L ed 2d 656 overruling the decision of the State supreme court adverse to the City's position, and conclusively establishing the City's right and priority for the Boundary project. At the close of 1964 special counsel participated with members of the City's legal staff in acquiring the necessary property rights from the Pend Oreille County P.U.D. for the Boundary project.

Considerable effort was made during the year to improve the liaison between the Law Department and city administrative personnel, with a view to participation by the legal staff early in administrative planning. While this aspect of the department's services is not reflected in the statistical analyses, even though many hours of conference and research were required, I am satisfied that such liaison will reduce the amount of litigation and result in increased efficiency of the City departments. Also during the year initial and exploratory steps were taken to advise city officers generally of current and prospective legal issues raised by State and U.S. supreme court decisions. Such efforts have been by way of memoranda and group conferences and by all indications the same have been well received. As the occasion requires, this program will continue and be expanded and may well fit in with or supplement such in-service training program as the Executive Department may adopt.

The State supreme court in 1964, in an extremely important development in the field of municipal tort liability, abrogated the doctrine of governmental immunity which formerly precluded the maintenance of actions based on alleged negligence in the operation of certain municipal functions including the Police, Fire, Park and Public Health Departments. The department has not yet experienced the full impact of increased litigation which is anticipated as a result of this development.

During 1964 the Law Department was able to operate within its budget of $385,551, of which $305,850 was allocated for salaries, without a request for additional funds and was able to effectuate a considerable amount of savings. It is clear however that salaries must be increased for the department's specialized personnel if we are to remain competitive in attracting professional and office personnel and retain our present enviable position of experienced personnel with minimum turn-over.

In conclusion, I would extend my appreciation to the City Council and the Mayor for continued cooperation and understanding in connection with the Law Department budget and operations, and to the heads of the City's administrative departments for their assistance in preparing for the trial of cases, and other services and cooperation without which this department could not adequately represent the City and resolve the multitude of difficult problems presented.

Respectfully submitted,

A. L. Newbould

A. L. NEWBOULD
Corporation Counsel

April 1, 1965

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 1964.

	Pending Dec. 31, 1963	Commenced during Year 1964	Ended during Year 1964	Pending Dec. 31, 1964
Condemnation suits	4	22	6	20
Damages for personal injuries	103	83	78	108
Damages other than for personal injuries	22	32	25	29
Injunction suits	14	15	15	14
Mandamus proceedings	2	3	3	2
Habeas corpus	0	2	2	0
Miscellaneous proceedings	38	43	32	49
Certiorari Writs	6	4	4	6
Sub-Total	189	204	165	228
Appeals from Municipal and Traffic Courts	216	625	558	283
Grand Total	405	829	723	511

2. *Segregation—Personal Injury Actions:*

	Number	Amount Involved
Pending December 31, 1963	103	$5,487,001.10
Commenced since January 1, 1964	83	2,455,677.42
Total	186	$7,942,678.52
Tried and concluded since January 1, 1964	78	2,653,642.12
Actions pending December 31, 1964	108	$5,289,036.40

Of the 78 personal injury actions concluded in 1964, 24 were won outright; in ten cases in which $611,050.23 was claimed, plaintiffs recovered $146,690.87; and the remaining 45 cases in which plaintiffs claimed $1,410,185.74 were settled or dismissed without trial for a total of $282,087.07.

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

	Number	Amount Involved
Pending December 31, 1963	22	$ 400,223.07
Commenced since January 1, 1964	32	263,890.55
	54	$ 664,113.62
Tried and concluded since December 31, 1963	25	191,033.65
Pending December 31, 1964	29	$ 473,079.97

Of the total of 54 cases involving damages other than personal injuries, 25 involving $191,033.65 were disposed of during the year

1964 of which 8 involving $166,213.58 were won outright. In 13 cases involving $19,671.13 plaintiffs recovered $9,967.51. The remaining 4 cases involving $5,148.94 were settled or dismissed without trial for a total of $725.00.

There were twenty-one cases filed in 1964 claiming damages to property by the construction of the monorail. The amount sued for was $1,970,666.67.

In twenty-four cases filed in 1964 claiming refunds of street vacation fees paid, the amount sued for was $260,664.08.

The above actions involving personal injuries as well as those involving damages other than personal injuries may be further segregated as to the department or activity involved, as follows:

	Number	Amount Paid
Transit System	44	$ 115,445.00
Engineering Department		
Sidewalk	12	28,672.00
Street	16	16,736.00
Miscellaneous	6	4,920.00
Lighting Department	6	15,263.00
Park Department	4	157,800.00
Building Department	2	Covered by Insurance
Water Department	1	3,649.45
Police Department	1	78,335.00
Garbage Utility	1	18,500.00
Sewer Utility	1	150.00

4. *Supreme Court:*

There were twenty-two (22) appeals involving the City pending in the State Supreme Court December 31, 1963 and thirteen (13) new appeals were filed in 1964. Eleven (11) were decided in 1964 and two appealed cases were settled favorably for the City without requiring a Supreme Court decision. At the close of 1964 there were 22 cases pending in the Supreme Court.

5. *Miscellaneous Cases:*

Fifteen injunction actions were tried; 13 were won, 2 lost and 14 are still pending. Three mandamus actions were completed, the City winning one and losing two. Two others are pending. Thirty-two miscellaneous cases were disposed of during the year—25 were won by the City and 5 were lost; 2 were settled. Four writs of certiorari were tried during 1964; the City won 3, lost 1 and 6 are now pending. Two habeas corpus writs were tried, the City won 1 and lost 1.

Six hearings relating to dismissals of employees were filed during the year—in five the department was sustained and one employee was returned to work.

A number of accounts were referred to the Law Department in 1964 and actions were commenced for the Lighting Department, principally for damage to City Light property. By suits and settlements we have collected $1,863.32 for the Lighting Department and have 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.

One hundred seventy-three garnishments were handled during 1964. 153 were completed without court action; 20 were answered by the City and the costs collected were transmitted to the City Treasurer.

II.

CLAIMS IN 1964

	Number	Amount Involved
Claims for damages, dormant, on file December 31, 1963, and against which the statute of limitations has not yet run	1,176	$ 8,138,236.23
Claims for damages, active, and referred to this department for investigation December 31, 1963 to December 31, 1964	1,283	$12,685,864.38

Claims disposed of during 1964:

	No.	Amount Claimed	Amount Paid
Settled	566	$2,449,759.87	$469,080.86
Rejected	380	$2,457,197.44	
Number of Seattle Transit System accident reports investigated December 31, 1963 to December 31, 1964			2,369
Number of circulars and letters mailed in connection with investigations of foregoing claims and reports			11,004

The Claim Division handled 247 claims involving the Transit System in 1964 in which the claimants sought $248,400.23 and which were settled for $71,573.18 and the total expense in 1964 for claims and suits involving the Transit System was $187,018.18. The Transit System computed the expense of claims and suits at 2.14% of the gross revenue of the System for the year.

During 1964 the Claim Division prepared and presented to the City Council 118 ordinances in settlement of 234 claims, which were settled for $43,077.35. Below is a tabulation showing in detail the department involved, the fund from which settlement was appropriated, and the amount paid.

Department (Fund)	No. of Claims	Amount Paid
Engineering		
Sewerage Utility Fund	100	$19,901.32
Garbage Collection and Disposal Fund	4	75.13
Surplus Funds in L.I.D.s	2	388.44
City Street Fund	1	135.00
Emergency Fund		
Street	21	4,210.75
Sidewalk	14	6,081.93
Construction	3	1,029.80
Storm Sewer	6	1,509.02
Sewer	2	142.74
Light	1	200.40
Reimbursable (6th and Pine watermain break)	1	1,000.00
	155	$34,674.53
Park		
Emergency Fund	5	$ 776.45
Police		
Emergency Fund	2	321.47
Building		
Emergency Fund (Civic Center)	1	37.00

Emergency Fund Recap	Claims	Paid
Engineering Department	48	$14,174.64
Park Department	5	776.45
Police Department	2	321.47
Building Department	1	37.00
Totals	56	$15,309.56

Lighting Department		
"Other Miscellaneous Expense"	60	5,370.56
Water Department	11	1,897.34
	234	$43,077.35

III.

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 56 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 15 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 1964 OPINIONS BY NUMBER

5086 Northlake Urban Renewal Project—City not authorized to agree to pay prorated portion of real estate tax.

5087 RCW 67.20.010 doubtful authority for sports stadium.

5088 Extension of Sewerage Utility to property beyond city limits.

5089 Proposed amendment of the City's towing contract — C.F. 249853.

5090 Chap. 193 Laws of '41 as amended authorizes Garbage Utility revenue bonds without prior voter approval.

5091 Liability for personal injuries at fire stations and extra-territorial use of city fire equipment.

5092 Taxicabs transporting students under School District contract.

5093 "Way Open to the Public" in Traffic Code includes private property adapted to and used by public for travel.

5094 Conditions in Sec. 26.25 of Zoning Ordinance applicable on variance appeals.

5095 *City of Tukwila v. City of Seattle,* King County Cause No. 625867.

5096 Protection of rights to Seattle Center emblem.

5097 No "in lieu" tax liability for Seattle Center parking garage.

5098 City not liable for "in lieu" tax on off-street parking property.

5099 Public beach rights along Puget Sound in vicinity of N.W. 100th and Blue Ridge Drive N.W.—C.F. 251072.

5100 Denny trust fund for disabled firemen not available for memorial.

5101 City employee "subversive persons" oaths.

5102 Cost of relocating Water Department facilities to accommodate state highway improvement outside city.

5103 Municipal Court of Seattle limited to two departments until population reaches 650,000.

5104 Preservation of historical buildings and sites by zoning or condemnation.

5105 Public right of way exempt from tax foreclosure.

5106 Fees for regulation and licensing must be related to cost thereof.

5107 Seattle Branch Federal Reserve Bank building subject to Building Code.

5108 *Albright v. Spokane,* 64 Wash. Dec.(2d) 782—Police widows' pensions.

5109 Pension payments to estate of missing fireman.

5110 City not legally obligated to pay for services furnished jail inmates at King County Hospital.

5111 RCW 47.54.040 applicable to Seattle's use of State freeway property for parking facilities.

5112 "Vehicle for hire" — Vehicles carrying handicapped persons under contract.

5113 Proposed deletion of "Way Open to the Public" from Traffic Code.

5114 Ordinance 72495 (Admission Taxes) not applicable to touring vehicles at Seattle Center.

5115 Amusement ride inspection certification by public liability insurers.

5116 Street vacation — limited benefit of abutters' slide damage "hold harmless" agreement.

5117 "Operations" at Boeing Field are immune under state law from city business tax.

5118 Reservation of general easements for unidentified utilities in street vacation ordinances.

5119 Public easement for travel in street areas released only by vacation under RCW Chap. 35.79.

IV.

PROSECUTION OF CRIMINAL ACTIONS

MUNICIPAL POLICE COURT

During the year 1964 the City Prosecutor, Bruce MacDougall and his successor, handled a calendar of 19,248 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $181,307.00.

MUNICIPAL TRAFFIC COURT

In the Municipal Traffic Court for the year 1964 there was a docket of 40,665 traffic cases resulting in fines and forfeitures amounting to $602,812.50 and traffic bureau forfeitures amounting to $2,362,635.50 totaling $2,965,241.50 for the year.

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

MUNICIPAL COURT APPEALS

558 convictions in the Municipal Courts (431 Traffic, 127 Police) were disposed of on appeal in 1964, as follows: 177 appeals (123 Traffic, 54 Police) were abandoned by the defendants and remanded to the Municipal Courts for the enforcement of the original convictions. In 183 cases (157 Traffic, 26 Police) convictions on pleas of guilty were entered. In 85 cases (81 Traffic, 4 Police) the court or juries found the defendants guilty of one or more offenses after trial. In 24 cases (16 Traffic, 8 Police) the appellants were acquitted. In 87 cases (54 Traffic, 33 Police) all charges were dismissed for insufficiency of evidence, witnesses moving away or other causes. One case was deferred and bail forfeited in another. A total of $21,918.20 in fines and forfeitures and Superior Court costs in the amount of $681.20 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.

V.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1964, 379 ordinances, 28 resolutions; and in addition 118 ordinances were prepared for the settlement of 234 claims.

1,272 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $79,635,211.42.

Legal papers served and filed during 1964, including condemnation suits, summons and petitions, answers, judgments, notice of appearances and subpoenas, totaling 1,838 in all, were handled by Process Server T. Guy Warren.

VI.

CONDEMNATIONS

During 1964 the condemnation section, headed by Assistant G. Grant Wilcox, handled one condemnation proceeding in federal court and four such proceedings in King County superior court involving a total of 106 parcels and awards totaling $881,729.20.

The case of *City of Seattle v. 351.47 Acres of Land More or Less* was a condemnation action filed by The City of Seattle in United

States District Court for the Eastern District of Washington, Northern Division, in which the City sought to acquire from P.U.D. No. 1 of Pend Oreille County, Washington, property and property rights necessary for the construction of the Boundary Hydroelectric Project and impounding reservoir. The impounded waters in such reservoir will submerge and render useless a P.U.D. dam site known as Z Canyon, a short distance upstream from Seattle's Boundary site and recognized as the "second best" hydro site on that reach of the Pend Oreille River.

Following numerous conferences and several pre-trial hearings, an order of immediate possession was entered March 20, 1964 and the matter set for trial as to the compensation due the Public Utility District on September 14, 1964. In the trial, which lasted nearly three weeks, Seattle based its valuation of the rights sought upon comparable sales of similar timber lands in the vicinity, contending that since it and not the P.U.D. had a license from the Federal Power Commission, and Boundary and Z Canyon were mutually exclusive sites, "dam site" value could not be attributed to the P.U.D. properties. The P.U.D. produced evidence of valuation based upon a projected dam and its resultant income on the theory that it was entitled to have its property valued as though its highest and best use was for a dam site, even though it owned only a portion of the property and property rights necessary for such a project. However, the court struck all of the P.U.D.'s valuation evidence, thus leaving the $16,000 fixed by the City's appraisers as the only evidence as to the value of the P.U.D. properties in the record and a judgment and decree of condemnation were entered in such amount.

In a condemnation under Ordinance 92471, certain property and property rights were acquired which were necessary for the widening and extending of North and Northeast 130th Streets between Third Avenue Northeast and Greenwood Avenue North.

In another condemnation, under Ordinance 91851, certain property was acquired for the expansion of the existing Charles Street shop site. Such expansion will allow the centralization of related service functions of various city departments, particularly those involving vehicle and heavy equipment servicing and storage, and the partial replacement of existing facilities of the City Comptroller (Weights and Measures) and Engineering Department which were acquired by the State of Washington for Primary State Highway No. 1, Seattle Freeway. Other city departments and utilities including the Water Department and Sewer Utility will also share this central storage area and shop facility.

The City's growing awareness of the need to preserve access for recreational purposes to its lakes and Puget Sound was evidenced by

two condemnations, one under Ordinance 92847 to acquire property necessary for the expansion of the Don Armeni Boat Launching Ramp located on Harbor Avenue S.W. in West Seattle, and another under Ordinance 91912 to acquire property necessary for park and recreational purposes and a site for the harbor police on Lake Union. The latter was a particularly interesting case because most of the existing site improvements were adaptable to the City's use without extensive modification, a circumstance which made it difficult to impress upon the jury that fair market value and not value to the City was the proper measure of compensation.

U.S. SUPREME COURT CASES—1964

Beezer v. City (P.U.D. No. 1 of Pend Oreille County, Intervenor); 11 L.ed.(2d) 656.

1964 saw the end of nearly ten years of controversy and litigation to block the City's construction of the Boundary Project, a 900,000 kilowatt, low-cost hydroelectric development of the Lighting Department on the Pend Oreille River in the northeastern corner of the state. A taxpayer's suit, in which the P.U.D. was permitted to intervene, to enjoin construction of such project was filed in late 1961, in which it was alleged that the City could not lawfully acquire the P.U.D.'s property, and that it should be enjoined from making expenditures of public money on the project. Such litigation was in addition to other litigation in which the P.U.D. was then directly contesting the Federal Power Commission's grant of a license to Seattle. Such other litigation had been concluded on August 30, 1962 by denial of a petition for certiorari by the U.S. supreme court from an order of the U.S. court of appeals for the District of Columbia affirming such FPC action. The City had won a summary judgment of dismissal in the *Beezer* case in King County superior court in early 1962 but the State supreme court later reversed the trial court on the ground that it should determine whether or not the property sought to be acquired by Seattle was a part of the P.U.D.'s "electric power and light plant or electric system." Pursuant to such decision the King County superior court subsequently did determine that such property was not a part of the P.U.D.'s electric system. Determination of this issue however was rendered moot as a result of direct appeal by the City of the *Beezer* case from the State supreme court to the U.S. supreme court on the basis that such case involved an unpermissible collateral attack on the orders of the Federal Power Commission and that United States legislation had pre-empted jurisdiction of the subject matter of the action. The United States supreme court agreed with the City's contention, and by per curiam order entered on March 2, 1964 reversed the decision of the State supreme court. Thereupon on April 6, 1964,

in compliance with this order, the Washington State supreme court entered its order of dismissal of the *Beezer* action, thus clearing away the last legal obstacle to the City's construction of the low-cost Boundary Project. Shortly thereafter the major construction contract for such project was awarded and with the Law Department's assistance necessary ordinances were prepared and $45,000,000 of revenue bonds were sold to finance such project in part. In addition this Department was then able to bring to trial the necessary condemnation of P.U.D. in federal district court, which is fully reported in the condemnation section herein.

Sittner, et al. v. City, 12 L.ed.(2d) 177.

This case involved the constitutionality of the City's basic air pollution control ordinance under both the state and federal constitutions. The plaintiffs, who comprised a number of local auto wreckers and metal salvage dealers engaged in the burning of scrap metal to be sold to foundries, had alleged that the ordinance was an unreasonable exercise of the city's police power in its use of certain devices to measure air pollution and violated the equal protection clause of the state and federal constitutions because of allegedly discriminatory measures to control different sources of air pollution. The State supreme court had rejected such contentions, agreeing with the City that such legislation was valid and on April 20, 1964 the United States supreme court denied plaintiffs' petition for certiorari, thus ending the litigation and establishing the validity of this basic and important ordinance.

STATE SUPREME COURT CASES—1964

The Law Department's activity before the Bar of the supreme court of the State of Washington during the past year is reflected in the following summary of decisions rendered during 1964 in cases involving the City.

David P. Hilliard, et al. v. City, Century 21 Exposition, Inc., 63 Wn.(2d) 401.

In this case the City in 1962 executed two short term leases with Century 21 Exposition, Inc. as lessee for the operation of off-street parking facilities serving Seattle Center including the Mercer Street parking garage. The City did not call for bids on such leases beforehand on the grounds that the statute purportedly requiring such bids did not apply to parking facilities constructed and operated under the City's general authority as a part of a public facility such as the Seattle Center. However, the supreme court concluded otherwise and a call for bids was accordingly issued in June of 1964 for the lease of

the Mercer Street parking garage. No bids were received and said garage is presently being operated by the City.

This case was tried and argued by Assistants John P. Harris and John A. Hackett.

Lenci, et al. v. City, 63 Wash. Dec.(2d) 664.

The trial court in the above case had declared invalid that portion of Ordinance 90316 licensing motor vehicle wreckers which requires an eight-foot view obscuring fence with no more than one opening on any public way. The City appealed and the supreme court, in a unanimous en banc decision reversed the trial court and held the view obscuring fence requirement to be valid. The access limitation, however, was held to be unreasonable and void as it failed to take into account the difference in size of wrecking yards or the amount of frontage which they might have upon any public way. The ordinance has since been amended to cure this defect.

This case was tried and argued by Assistant Gordon F. Crandall.

Anderson, et al. v. City, et al., 64 Wash. Dec.(2d) 212.

In this case certain property owners sued to restrain the City from issuing a building permit for a high-rise apartment house for property on Commodore Way immediately south of the Hiram Chittenden Locks, alleging that Ordinance 90506 rezoning the property for such use was invalid because its passage was induced by misrepresentations as to the intended height of the proposed building and because it constituted "spot zoning." When it was discovered that a much higher structure was planned than originally represented, the rezoning ordinance was repealed by the City. The trial court sustained a challenge to the legal sufficiency of the opening statement and dismissed the case.

On appeal the supreme court held that plaintiffs had made out a prima facie case of "spot zoning" in their opening statement and remanded the cause to the superior court for trial. However, the case became moot before trial as no construction was commenced within the life of the permit, and the present zoning does not permit such high-rise structures.

This case was tried and argued by Assistant Gordon F. Crandall.

Stone, et al. v. City and Howard M. Buck, et al., 64 Wash. Dec.(2d) 182.

The City in this case was joined with the owner of an apartment as co-defendant in a personal injury action arising from a fall in a large hole in the sidewalk which had existed for several months. The trial court directed a verdict against the City. The apartment owner was held jointly liable by the jury for the reason that tenants of the apart-

ment had driven their cars over the defective area to reach their parking spaces. The apartment owner appealed to the supreme court, contending that there was insufficient evidence to justify a finding that his tenants caused the defect and also that the trial court erred in instructing the jury that a reasonably prudent apartment owner either knew or should have known that his tenants would cross the sidewalk area to reach the parking space provided for them. The court rejected these contentions and affirmed the jury's verdict against the apartment owner as well as the trial court's directed verdict against the City.

This case was prepared and argued by Assistants John A. Logan and Robert W. Freedman.

Foote v. City, et al., 64 Wash. Dec.(2d) 293.

The plaintiff in this case on a windy, rainy, pitch dark night tried to jump an open trench which was dug for the purpose of installing a side sewer to plaintiff's house. Plaintiff's attempt was unsuccessful and he fell into the trench, sustaining serious injuries. The City successfully moved for summary judgment in the trial court on the basis that plaintiff had assumed the risk and voluntarily exposed himself to a dangerous situation and therefore was guilty of contributory negligence as a matter of law. The supreme court reversed this ruling, holding that there was an issue of fact as to plaintiff's contributory negligence and remanded the case to superior court for trial.

This case was tried and argued by Assistants John A. Logan and Robert W. Freedman.

Tembruell v. City, 64 Wash. Dec.(2d) 514.

The plaintiff in this case had retired in 1949 from the Seattle Police Department entitled to a lifetime disability pension under RCW Chap. 41.20. Such pension was terminated by the Police Pension Board in 1958 after Tembruell had entered a plea of guilty in superior court to the crime of grand larceny. The Board had taken such action under RCW 41.20.110 providing pension payments must be stopped when the recipient thereof has been "convicted of any felony." The court had not sentenced Tembruell upon his plea of guilty however, but had deferred sentencing for three years. In 1961 the criminal charge against him was dismissed under the deferred sentence statute (RCW Chap. 9.95) and Tembruell brought suit to have his pension reinstated. The trial court and the supreme court accepted Tembruell's argument that the legislature had intended that police pensions be forfeited only upon the recipient's "conviction *in a juridical sense*" of a felony and that "conviction" not followed by sentencing did not justify termination of the pension.

This case was tried and argued by Assistants Arthur T. Lane and Jerry F. King.

State ex rel. O'Brien v. Towne, 64 Wash. Dec.(2d) 591.

A number of defendants who were charged with various traffic offenses in the Seattle municipal court made motions in that court for a jury trial. These motions were denied and the defendants obtained writs of certiorari in the superior court where nine separate cases were consolidated and heard. The superior court held unconstitutional RCW 35.20.090 which provides that "No trial by jury shall be allowed in criminal cases involving violations of city ordinances." The superior court dismissed said cases, holding that there was a denial of equal protection of the law for those charged in the Seattle municipal court since persons charged in other courts of equal rank could have a jury trial in such courts as well as in superior court on appeal.

The City of Seattle then obtained a writ of certiorari from the supreme court to have that court review the judgment of dismissal. The supreme court rendered a unanimous en banc decision reversing the superior court and holding that RCW 35.20.090 was not unconstitutional. The court pointed out that the trial court had erred since jury trials are not allowed in police courts of first, second, third class cities, and towns, pursuant to the statutory provisions applicable to such cities and towns and held that the right to jury trial for "petty" offenses is not guaranteed by either the state or federal constitutions.

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

State ex rel. Robert H. Duvall, et al. v. The City Council of Seattle, 64 Wash. Dec.(2d) 609.

After the City Council held a limited access hearing as required by RCW Chap. 47.52 concerning the proposed route of the limited access R. H. Thompson Expressway, certain property owners brought suit in Thurston County superior court challenging the City Council's findings, contending that a route hearing was contemplated by the statute and that another route for the expressway should have been chosen by the Council. The trial court rejected plaintiffs' contentions, but this ruling was reversed on appeal by the supreme court on the grounds that the City Council had not made "specific findings" as to whether the proposed route was required by public convenience and necessity rather than other routes proposed by persons attending the hearing. The court ordered the case remanded "for the preparation of proper findings upon the record as already made, or to be made, if required by the Council." The City Engineer has requested that a new hearing be scheduled for May 27 and 28, 1965.

This case was prepared and argued by Assistant G. Grant Wilcox.

Hosea v. City, 64 Wash. Dec.(2d) 691.

The plaintiffs in this case were seriously injured when their automobile was struck by a car driven by John Ussery, an escaped trusty from Wallingford Police Station. Mr. Ussery had been fined for drunk driving in traffic court and had been sent to Wallingford Police Station as a trusty to serve out his fine which he was unable to pay. Ussery escaped, stole a private car, and while driving on the wrong side of the road and in a drunken condition, collided with the plaintiffs' car. The jury returned a substantial verdict against the City but the trial court granted the City's motion for judgment notwithstanding the verdict. The supreme court in an en banc decision, three judges dissenting, reversed the trial court's ruling, holding that the doctrine of governmental immunity had been abrogated and that the duties assigned to Ussery at the Wallingford Police Station were in a sense a proprietary function of the City. The jury's verdict was reinstated.

This case was tried and argued by Assistants John A. Logan and Robert W. Freedman.

Kahin v. City, 64 Wash. Dec.(2d) 886.

The plaintiff in this case brought an action to recover damages for limitation of access to his service station allegedly resulting from the installation of a number of traffic markers in Roosevelt Way which abutted the service station on one side. The trial court granted the City's motion for summary judgment and dismissed the case. This ruling was affirmed by the supreme court which held that the installation of these traffic markers to warn, regulate, and guide traffic in Roosevelt Way constituted a reasonable exercise of the City's police power and that plaintiff had not suffered a compensable claim. The court indicated that an owner would be entitled to compensation in such a case "only when the use of the police power in limiting the access has become unreasonable."

This case was tried and argued by Assistant John P. Harris.

Nelson, Torka and Brown v. City and Seattle Housing Authority, 64 Wash. Dec.(2d) 877.

In this case plaintiffs sought review by the superior court of Ordinance 91078 rezoning certain property in the vicinity of 8th Avenue and James Street from RM (multiple residence — low density) to RMH (multiple residence — high density). The action was commenced to prevent construction of a 300 unit, 17 story apartment building planned by the Seattle Housing Authority at this location for elderly persons of low income. The superior court held that Ordinance 91078 had been validly enacted and plaintiffs appealed to the State supreme court.

In its decision the supreme court held that the City Council had not acted arbitrarily and capriciously in rezoning the area, and further that it was unable to accept the contention that the State Planning Enabling Act (RCW Chap. 35.63) pre-empted the field of municipal zoning and provided the only permissible procedural means of accomplishing that zoning. The court concluded that the statute was "clearly permissive rather than mandatory legislation" and that it "did not pre-empt the field of municipal zoning to the extent that the pertinent action of the Seattle City Council was voided by the previous failure to file a comprehensive zoning plan with the County Auditor."

This case was tried and argued by Assistant Gordon F. Crandall.

Patton v. Civil Service Commission, 65 Wash. Dec.(2d) 302.

The plaintiff in this case had asked the City Civil Service Commission to conduct an investigation under Charter Article XVI, Sec. 14, into her allegations of misconduct on the part of certain named Seattle police officers. This office by written opinion had previously advised the Commission that under the charter it had no authority to so proceed and the request for investigation accordingly was denied. Plaintiff then sought a writ of mandamus in superior court which would compel the Commission to make such investigation. After argument the Honorable Donald L. Gaines held for the City and dismissed the action. On appeal the superior court decision was unanimously affirmed by the State supreme court on the grounds that the charter section in question authorized Commission investigations only into "the administration of the classified civil service system," not into more general allegations of employee misconduct.

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

Noteworthy Superior Court Proceedings in 1964

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

Ropo, et al. v. City. In this action ten Seattle cabaret operators challenged Seattle Ordinance 72495 which imposes an excise tax upon persons paying "admission charges" in certain places, including places which impose charges "for" food and refreshment while "free" entertainment is being provided in the same room. Up to 99% of the refreshments sold in said cabarets are alcoholic drinks and beverages. The plaintiffs alleged that such tax as imposed is a municipal "excise tax upon liquor," prohibited by RCW 66.08.120, a portion of the Washington State Liquor Control Act of 1933. In defending the action the City relied upon RCW 35.21.280, a 1943 act which gives municipalities authority to tax persons paying admission charges. The

Honorable Howard J. Thompson found for the plaintiffs and ordered some $65,000 in taxes "refunded." The City has appealed to the supreme court where the case was argued en banc on February 26, 1965.

Schwartz v. City. Two persons owning property fronting Park Department property in Interlaken Boulevard East brought suit for an injunction to restrain the City from shutting off a water pipe used to irrigate Park Department property. In 1925 plaintiffs' predecessors had for unknown reasons been permitted to connect to said irrigation pipe and plaintiffs ever since had used it as their connection to a water main several blocks distant. Said pipe is now worn out and is no longer necessary for City purposes. The Honorable Hardyn B. Soule, visiting superior court judge from Tacoma, after hearing the evidence and legal argument, held for the City, ruling that the City could shut off the pipe and was under no compulsion to continue providing plaintiffs with a connection to a water main.

Kelly v. City. By this action, filed June 30, 1964, plaintiffs sought to enjoin the City from revising the boundaries to some 320 election precincts which at the March, 1964 municipal general elections had been found to contain more than 300 voters. Their theory was that such revision could be accomplished only after *State* general elections held in November. At the time of suit the Comptroller's office had invested some 9,157 hours of clerical labor in preparing such revision. After hearing argument the Honorable Frank D. James dismissed the action, agreeing with the City that such precinct revision must be done after "any" general election.

Bobbie Brooks, Inc. v. City. The License Division of the City Comptroller's office determined after investigation that plaintiff, a manufacturer and seller of girl's wearing apparel with offices in the Terminal Sales Building was "engaged in business" in the City and hence liable to registration and audit under Ordinance 72630, the City's Business Tax ordinance. Plaintiff alleged that it was engaged exclusively in *interstate commerce*, not taxable by the City under the U.S. Constitution, and brought suit to restrain the City from acting against it under said ordinance. The City moved for summary judgment which motion, after argument, was granted by the Honorable Henry Clay Agnew, the court agreeing with the City that under certain Washington supreme court cases plaintiff was engaged in local non-interstate business. Plaintiffs have given notice of appeal to the State supreme court.

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

State ex rel. Chong, et al. v. City, et al. In this case plaintiffs sought, by petition for writ of certiorari, to review the action of the City Council in reversing the City's Board of Adjustment and granting a zoning variance to General Insurance Co. to reconstruct an advertising sign atop their building in the University District. At the trial of the action plaintiffs were unable to show that they would suffer any special damage from the granting of the variance and on April 24, 1964 the petition was dismissed on the grounds that plaintiffs had no standing to maintain the action.

State ex rel. View Protective Association, et al. v. City, et al. Plaintiffs in this case petitioned for writ of certiorari to review the proceedings of the City Council and City Planning Commission with regard to an application by a property owner for a permit to construct a "planned unit development" on Shilshole Bay in Seattle. Plaintiffs were property owners on Sunset Hill who objected that the height of the proposed buildings would impair their view of Puget Sound and the Olympic Mountains. However, upon the City's motion, the action was dismissed as premature as the applicant had completed only six of eight steps necessary to secure the permit and the court found that the matter was not ready for review.

Sunset Outdoor Advertising, etc. v. City; Metromedia, Inc. v. City.

In the above cases, commenced on June 28, 1963, the named outdoor advertising companies contended that Seattle Ordinance 91201, which amends the Zoning Ordinance (86300) and requires discontinuance of nonconforming advertising signs, was unconstitutional and asked that the City be enjoined from terminating 159 nonconforming advertising signs in residential (R) and neighborhood business (BN) zones by July 1, 1963 as required by said ordinance. The companies also alleged that the Zoning Ordinance was invalid insofar as it made the aforementioned signs nonconforming in 1957 by rezoning the sites upon which the signs were located for R or BN uses.

The cases were consolidated and came on for trial on January 13, 1964 before Superior Court Judge James W. Mifflin, who sustained the City's contention that Ordinances 86300 and 91201 were reasonable and valid exercises of the City's police power, but held that the period of time between the effective date of Ordinance 91201, June 28, 1962, and the date for discontinuance of the plaintiffs' signs, July 1, 1963, was unreasonably short, and therefore enjoined the City from requiring removal of any of such signs until September 1, 1966. The court further held that with respect to sixty-eight of such signs the City's attempt to require removal thereof was arbitrary and capricious, because of the presence of steep terrain, slide conditions, adjacent non-residential development, imminent freeway construction

and other reasons, and permanently enjoined the City from enforcing Ordinance 91201 as to such locations "unless or until there is a material change in the character or development of the immediate vicinity of each such sign."

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

In *City of Seattle v. Norman See,* the defendant appealed to superior court from a conviction in municipal court of violating the Seattle Fire Code by refusing to admit an inspector into his commercial premises for a routine inspection.

The stipulated facts were that the building was a commercial building and not a dwelling and that the inspection was requested without benefit of a search warrant as authorized by the Fire Code. Defendant argued that his state and federal constitutional rights were violated.

The Honorable Henry W. Cramer found the defendant guilty, stating that there existed an important need for fire inspection and prevention, that the building was not a dwelling and that the ordinance and inspection were valid exercises of police power, not violating any constitutional mandates.

The defendant appealed to the State supreme court where the case is now pending.

The following case was prepared and tried by Assistant G. Grant Wilcox:

In Re Consolidated Appeal of Aitken, L.I.D. 6274. This case involved the consolidated appeal to superior court of some 70 property owners from Council confirmation of the assessment roll in Local Improvement District 6274 in which over 1,060 parcels were assessed variously for storm drains, water mains, fire hydrants, sidewalks, street grading and street paving. Early in the preparation of the case it became evident that some steps would be necessary to reduce the scope of the trial evidence to manageable limits and by stipulation of counsel the appellants' properties were divided into eleven categories according to the nature of the improvements for which they were assessed. Thereupon counsel, after a tour of the district, jointly selected one parcel in each category which was designated as a typical parcel or "Control." At the trial evidence was presented by the appellants that each control parcel was not benefited in the amount of the assessment levied against it and the City presented evidence that the benefit, expressed in enhancement of market value, was equal to or exceeded the amount of the assessment. It had previously been agreed that the results with respect to each control parcel would be applied to each

other parcel in the same category, and the court entered judgment in accordance with such agreement. The court in its decision agreed with the City's appraisers in all but a few instances in which assessments were reduced as to corner lots.

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

Donald A. Dahl v. Seattle Transit Commission; Donald A. Dahl v. City.

Two separate taxpayers' actions were commenced during the year by the same plaintiff attacking a fare increase authorized by the Transit Commission and the legal validity of such Commission.

In the first case, as the result of an action of the Transit Commission authorizing a certain fare increase as of November 1, 1964, Mr. Dahl sought to restrain such increase until the Commission established and maintained a bookkeeping system satisfactory to plaintiff and until a public hearing was held on a certain report by a Citizens' Transit Advisory Committee appointed by the Mayor. On the City's motion, Judge Henry Cramer of King County superior court dismissed the action on the basis that plaintiff had not properly joined The City of Seattle as a necessary party defendant in such action.

In the second case, Mr. Dahl contended that Article XXIII of the City Charter which established the Transit Commission, is contrary to the laws of the State of Washington (Laws of 1957, Ch. 288, Sec. 7) and therefore that the Commission as such is "unlawful" and should be restrained from operating and managing the Transit System. The City contended that such statute, insofar as it authorizes the legislative authority of the City by ordinance to operate the City's transportation system, is permissive only and that said Article XXIII as adopted by the voters of the City is valid. The Honorable Eugene A. Wright of the King County superior court agreed with the City's contention and entered a summary judgment dismissing the case. The case is presently on appeal.

City of Tukwila v. City of Seattle. In 1958, The City of Seattle, Department of Lighting, was granted a 50-year franchise by the City of Tukwila to transmit and distribute electric energy throughout all the streets of such city at an ultimate franchise cost of $500,000. In 1962, Tukwila passed two ordinances which in effect, by establishing "exclusive service areas," purported to limit City Light's service area to an area comprising only about 15% of Tukwila. In 1964 the Department of Lighting received an application for electric service from N C Machinery Co. for a new plant which was then being constructed in a part of Tukwila which purportedly, by such prior ordinances, had

been designated as within the "exclusive service area" of Puget Sound Power & Light Co. After City Light had under-built an existing electric line to provide service to N C Machinery, the City of Tukwila brought an action against The City of Seattle to enjoin such service. In its answer, among other things, the City alleged that the Tukwila ordinances purporting to establish "exclusive service areas" were unconstitutional impairments of Seattle's franchise rights granted by the 1958 franchise ordinance.

After trial in King County superior court, the Honorable James W. Hodson declined to invalidate such ordinances and enjoined the proposed service to N C Machinery. However, upon Seattle's entry of notice of appeal to the State supreme court, Judge Hodson entered an order of supersedeas which will allow City Light to serve N C Machinery Company during the period of appeal.

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

Buxton v. City.

The plaintiff, age 21, while driving to work early in the morning in October, 1962, catapulted off the Spokane Street Bridge and was grievously and permanently injured. He brought suit for $350,000, alleging defective construction and maintenance of said bridge. Pre-trial procedures involved the taking of some 40 depositions and the serving of extensive interrogatories on both sides. The plaintiff, a paraplegic at the time of trial, testified from a wheelchair. The trial involved complicated engineering and medical testimony, difficult evidentiary problems and took over three weeks to try. The case was submitted to the jury which deliberated some 26 hours, rendering a verdict in favor of the city. The case is presently on appeal.

RETIREMENT

Bruce MacDougall retired on July 31, 1964 after 42 years of service in the Law Department and it is fitting that special acknowledgment be made of his outstanding career of public service.

Mr. MacDougall was appointed Law Clerk in 1922, Assistant Corporation Counsel in 1927 and, beginning in 1930, served as the City Prosecutor in Seattle municipal court where for 34 years he ably represented the City in criminal actions involving violations of city ordinances.

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C. G. E. LANDSOR
COMPTROLLER AND CITY CLERK