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CITY OF SEATTLE

LAW DEPARTMENT

1965 Annual Report

APR 4 1966 ~~Public Safety~~ Judiciary

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A. L. NEWBOULD
Corporation Counsel

CITY OF SEATTLE

LAW DEPARTMENT

Annual Report

1965

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WOODFORD B. BALDWIN
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Cover: Assistants Corporation Counsel Gordon F. Crandall, Charles R. Nelson and William L. Parker in the Law Department Library.

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, 1965, as required by Section 12, Article XXII of the City Charter.

This year's report again reflects an increase in the volume of this department's responsibilities during 1965, including an increase in the number of cases in which appeals have been taken to the State Supreme Court, and a 50% increase over the previous year in the number of Municipal Court appeals to Superior Court. This latter development has, as indicated in last year's report, required an increase in the number of Assistants assigned to prosecute these appeals in Superior Court.

The members of my staff have responded energetically to the increased volume of litigation noted above and have performed their assigned duties capably and well.

At the close of the year, the Principal Trial Assistant, John A. Logan, retired after 35 years service in the department as a trial lawyer engaged in the defense of personal injury and property damage actions against the City. During his career, Mr. Logan compiled an outstanding record and is recognized by the bench and bar of the City as one of the leading defense lawyers in this area.

During the year Assistant Jerry F. King, resigned after 6 years of City service to accept the position of City Attorney with the City of Vancouver, Washington. During his six years in the department Mr. King was principally engaged in the complex and demanding assignment of researching and preparing opinions, drafting legislation and handling civil service matters. Mr. King's loss was keenly felt.

Mr. Richard C. Nelson also resigned in 1965 after two years of effective service in the department, principally in the prosecution of Municipal Court appeals. Also during the year Assistants Woodford B. Baldwin and Denny E. Anderson, were added to the staff.

The employment of special counsel locally was continued during the year in connection with the suit of Merritt-Chapman Scott Corporation against the City for substantial damages allegedly resulting from the performance of its contract for construction of the Gorge High Dam on the Skagit River. At the end of the year trial of the cause was in progress in Superior Court.

It is felt that the Law Department's continued program of improved liaison with City administrative personnel, including the efforts made

during the year to advise City officers generally of current and prospective legal issues raised by State and U. S. Supreme Court decisions, has reduced the amount of litigation and has resulted in increased efficiency of the City departments.

The Law Department operated within its budget of $387,695, with the exception of a small emergency fund appropriation for the repair of library shelving damaged in the April 29, 1965 earthquake. Considerable savings were effectuated in the $308,880 amount of said budget which was allocated for salaries. The granting by the City Council of this department's proposed reclassification of professional personnel and adjusted salary ranges in connection therewith and with regard to the Claim Division should greatly assist the department in attempting to remain competitive in attracting professional and office personnel and in retaining our present experienced personnel.

I wish to express my appreciation to the City Council for their cooperation in providing the adjusted salary levels referred to above, and to the Mayor and the heads of the City's administrative departments for their cooperation and assistance in connection with the Law Department's operations.

Respectfully submitted

A. L. NEWBOULD
Corporation Counsel

April 1, 1966

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 1965.

	Pending Dec. 31, 1964	Commenced during Year 1965	Ended during Year 1965	Pending Dec. 31, 1965
Condemnation suits	20	2	12	10
Damages for personal injuries	108	78	65	121
Damages other than for personal injuries	29	42	35	36
Injunction suits	14	7	9	12
Mandamus proceedings	2	3	3	2
Habeas corpus	0	2	2	0
Miscellaneous proceedings	49	45	32	62
Certiorari Writs	6	6	8	4
Sub-Total	228	185	166	247
Appeals from Municipal and Traffic Courts	283	672	841	114
Grand Total	511	857	1007	361

2. *Segregation – Personal Injury Actions:*

	Number	Amount Involved
Pending December 31, 1964	108	$5,289,036.40
Commenced since January 1, 1965	78	2,712,373.63
Total	186	$8,001,410.03
Tried and concluded since January 1, 1965	65	2,913,537.42
Actions pending December 31, 1965	121	$5,087,872.61

Of the 65 personal injury actions concluded in 1965, 32 were won outright; in 9 cases in which $405,053.22 was claimed, plaintiffs recovered $96,712.07. The remaining 24 cases in which plaintiffs claimed $1,132,706.29 were settled or dismissed without trial for a total of $62,432.70.

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

	Number	Amount Involved
Pending December 31, 1964	29	$ 473,079.97
Commenced since January 1, 1965	42	422,182.03
Total	71	$ 895,262.00
Tried and concluded since January 1, 1965	35	131,540.14
Pending December 31, 1965	36	$ 763,721.86

Of the total of 71 cases involving damages other than personal injuries, 35 involving $131,540.14 were disposed of during the year 1965, of which 15 involving $60,631.64 were won outright. In 11 cases involving $37,776.46 plaintiffs recovered $9,914.45. The remaining 9 cases involving $33,132.04 were settled or dismissed without trial for a total of $14,593.63.

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		43	$ 120,335.68
Engineering Department			
Sidewalk		8	20,101.70
Street		14	15,153.66
Miscellaneous		6	3,424.00
Lighting Department		3	5,000.00
Park Department		3	1,225.00
Building Department		3	1,500.00
Water Department		1	0.00
Police Department	Covered by insurance with the exception of one case involving $87.50	7	
Fire Department		2	
Garbage Utility		None	
Sewer Utility		10	16,825.31

4. *Supreme Court:*

There were twenty-two (22) appeals involving the City pending in the State Supreme Court December 31, 1964 and fourteen (14) new appeals were filed in 1965. Eleven (11) appeals were decided or otherwise disposed of in 1965 and at the close of 1965 there were 25 cases pending in the Supreme Court.

5. *Miscellaneous Cases:*

Thirty-two miscellaneous cases were completed. The City won 28, lost 4, and 62 are still alive.

Nine injunctive actions were tried; 8 were won, 1 lost and 12 are still pending. Three mandamus actions were completed, the City winning 2 and losing 1. Two others are pending. Eight writs of certiorari were tried during 1965; the City won 5, lost 3, and 4 are now pending. Two habeas corpus writs were processed.

Advisory assistance was provided to the Civil Service Commission as requested with regard to several dismissal hearings and certain other matters before the Commission.

Claims for damages to city vehicles and property were forwarded by other departments to this department for collection. By suits and

settlement we have collected on a number of the claims and forwarded the same to the City Treasurer.

One hundred and fifty-nine (159) garnishments were handled during 1965. One hundred and twenty-two (122) were completed without court action; thirty-seven (37) were answered by the City and the costs collected were transmitted to the City Treasurer.

II.

CLAIMS IN 1965

	Number	Amount Involved
Claims for damages, dormant, on file Dec. 31, 1964; and against which the statute of limitations has not yet run	1,513	$15,917,143.30
Claims for damages, active, and referred to this department for investigation Dec. 31, 1964 to December 31, 1965	1,036	52,658,270.94

Claims disposed of during 1965:

	No.	Amount Claimed	Amount Paid
Settled	651	$5,514,096.73	$294,860.40
Rejected	513	7,174,380.97	

Number of Seattle Transit System accident reports investigated December 31, 1964 to December 31, 1965	1,619
Number of circulars and letters mailed in connection with investigations of foregoing claims and reports	11,049

The Claim Division handled 238 claims involving the Transit System in 1965 in which the claimants sought $277,430.30 and which were settled for $77,831.15 and the total expense in 1965 for claims and suits involving the Transit System was $198,166.83. The Transit System computed the expense of claims and suits at 2.26% of the gross revenue of the system for the year.

During 1965 the Claim Division prepared and presented to the City Council 137 ordinances in settlement of 332 claims, for a total of $78,928.77. Following 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	147	$38,214.74
Garbage Collection and Disposal Fund	2	162.18
Surplus Funds in L.I.D.s	1	218.94
City Street Fund	4	2,764.62
Emergency Fund		
Street	24	6,556.88
Sidewalk	14	5,744.37
Storm Sewer	7	4,743.76
Traffic	3	771.13

	Claims	Paid
Park		
Emergency Fund	11	778.25
Executive		
(Motor Transportation Division maintenance on Fire Department signal)	1	23.97
Police		
Emergency Fund	1	25.00
Building		
Emergency Fund (Seattle Center)	1	7.00
Emergency Fund Recap		
	Claims	Paid
Engineering Department	48	$17,816.14
Park Department	11	778.25
Police Department	1	25.00
Executive Department	1	23.97
Building Department	1	7.00
Totals	62	$18,650.36
Lighting Department		
"Other Miscellaneous Expense"	86	8,351.71
Water Department	30	10,556.22
	332	$78,928.77

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 49 written legal opinions on close questions of law submitted by the various departments of City government, and involving considerable legal research.

Also, the City Employees' Retirement System requested opinions on L.I.D. bond issues and 16 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 1965 OPINIONS BY NUMBER

5120 Authority to revoke street use permit for nonpayment of fees and discontinue permitted use not affected by decision in *Nystrand v. O'Malley*, 60 Wn. 2d 792.

5121 City may not by contract restrict State use of National Guard Armory proceeds.

5122 Validity of variance from zoning access requirements.

5123 Reemployment rights of employee returning from military service.

5124 City responsibility in sale of tax title property in potential slide area.

5125 Merchandise "panels" may be lotteries prohibited by Ordinance 16046.

5126 Plat boundary streets vest in dedicator's successor upon vacation.

5128 Five years military service maximum credit for fireman's service retirement.

5129 Police pensions — payments to surviving spouses under Ch. 140, Laws of 1961.

5130 Rights of abutting owners to use unimproved street areas.

5131 Retirement System — right of named beneficiary to nominate further beneficiary.

5133 Ordinance 70005 requires license only for "Coupon books" sold with merchandise.

5134 Referendum petition must be filed "before" effective date of ordinance sought to be referred.

5135 Payment of portion of operation and maintenance costs of Seattle Center International Fountain by Lighting Department.

5137 "Unanimous vote" requirement in certain local improvement district statutes.

5138 Brokers may be employed to aid urban renewal land disposition.

5139 Local improvements by contract or day labor question for Board of Public Works.

5140 Second proposed ordinance to regulate certain strike and lockout employment practices.

5141 Firemen's Pension Fund not entitled to rights of subrogation or indemnification in connection with disability benefit payments.

5142 Sales of petroleum from bonded warehouse to aircraft engaged in foreign trade immune from B & O tax.

5143 Fireman's disability retirement, disability must occur while in active service.

5144 Police pensions — payments to certain widows married less than 5 years prior to officer's retirement.

5145 "Subversive person" oaths for appointive and elective city officials.

5146 Application of City B & O tax to National and other bank activities.

5148 Validity of rules requiring vehicle identification under "Cabulance" ordinance (93789).

5149 Limitation on actions to collect local improvement assessments — tax title property.

5150 Professional services fee collection agency not subject to license fee under § 7-A (b) of Ordinance 62662.

5151 City may not abandon L.I.D. assessment procedure after completion of physical improvement.

5152 RCW Chap. 35.68 — local improvement districts for sidewalk construction, reconstruction and repair.

5153 "Timber" possibly includes thinnings under Cedar River Watershed Cooperative Agreement.

5154 Disqualification of councilman for "personal interest."

5155 Joint utility billing, "performance" budgeting, expenditures for "tourism."

5156 Refuse transfer station not authorized use in "manufacturing" zone.

5157 Board of Adjustment, exclusive original jurisdiction on variance applications.

5158 Park Bond money may not be used for Westlake Mall improvements.

5159 1960 Park Bond projects — use of bond fund investment earnings and City personnel.

5160 Legislation necessary to limit number and location of amusement arcades and panoram devices.

5161 Vendor's right to receive rentals limited by option agreement.

5162 Application of business tax ordinance (No. 72630) to the sale of jet fuel products.

5163 C. F. 254381 — Proposal of Sapro, Inc. to dispose of refuse.

5165 Relocation of facilities of Eastgate Sewer District in proposed reservoir site.

5166 Investment service for donations to Library unauthorized.

5167 Opening of obstructed, unimproved, dedicated street ultimately a legislative question.

5168 "Legal" holidays.

IV.

PROSECUTION OF CRIMINAL ACTIONS MUNICIPAL POLICE COURT

During the year 1965 the City Prosecutor, James G. Leach, handled a calendar of 16,916 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $128,349.00.

MUNICIPAL TRAFFIC COURT

In the Municipal Traffic Court for the year 1965 there was a docket of 40,125 traffic cases resulting in fines and forfeitures amounting to $590,251.00 and traffic bureau forfeitures amounting to $2,286,555.00 totaling $2,876,806.00 for the year 1965.

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

MUNICIPAL COURT APPEALS

841 convictions in the Municipal Courts (589 Traffic, 252 Police) were disposed of on appeal in 1965, as follows: 209 appeals (138 Traffic, 71 Police) were abandoned by the defendants and remanded to the Municipal Courts for the enforcement of the original convictions. In 365 cases (258 Traffic, 107 Police) convictions on pleas of guilty were entered. In 144 cases (122 Traffic, 22 Police) the court or juries found the defendants guilty after trial. In 64 cases (49 Traffic, 15 Police) the appellants were acquitted. In 58 cases (22 Traffic, 36 Police) all charges were dismissed for insufficiency of evidence, witnesses moving away or other causes. Imposition of sentence was deferred in one case. A total of $48,160.20 in fines and forfeitures and Superior Court costs in the amount of $1,892.01 were collected by this department in connection with these appeals and transmitted to the City Treasurer. Mr. Forest Roe was again 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. Mr. Roe's efficient performance of this assignment was of great value to both the Police and Law Departments.

V.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1965, 424 ordinances, 36 resolutions. In addition 137 ordinances were prepared for the settlement of 332 claims.

1,118 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $49,861,139.77.

Legal papers served and filed during 1965, including condemnation suits, summons and petitions, answers, judgments, notices of appearance and subpoenas, totaling 2,019 in all, were handled by Process Server T. Guy Warren.

VI.

CONDEMNATIONS

During 1965 the condemnation section, headed by Assistant G. Grant Wilcox, handled three condemnation proceedings in King County Superior Court involving a total of 157 parcels and awards totaling $59,283.50.

In a condemnation under Ordinance 91809, certain property rights were acquired which were necessary for sanitary sewers serving a large area of the Fauntleroy and Arbor Heights section of West Seattle.

Under Ordinance 92699, the City acquired by condemnation the necessary rights to replace a sewer located in 19th Avenue East (a platted but unopened street) which was damaged by fill work done in the nearby Montlake playfield.

On July 21, 1965 a judgment was entered on seven of eight parcels in the Columbia Street on-ramp condemnation under Ordinance 92961. This matter involved access for southbound traffic to the Alaskan Way Viaduct and the principal issue was the damage to the rights of light, air and access of the abutting properties by reason of the on-ramp construction. The awards were in the amounts recommended by the appraisers appointed by the City.

Apprehension on the part of abutting property owners that there might be interference with the use and enjoyment of their properties as a result of traffic noise was apparently dispelled to their satisfaction by the City's restyling of the ramp rail from an open bannister type to a higher solid form. It was stipulated that compensation as to the remaining parcel would not be determined until after the on-ramp was constructed.

STATE SUPREME COURT CASES – 1965

The Law Department's activity before the Supreme Court of the State of Washington during the past year is reflected in the following summary of decisions rendered during 1965 in cases involving the City.

Epperly v. City, Merritt-Chapman & Scott Corp., 65 Wn.2d 777.

Guy Epperly, an employee of Merritt-Chapman & Scott Corp., was killed on April 4, 1960 by a falling cable while he was working on

construction of Gorge High Dam on the Skagit River. Merritt-Chapman & Scott Corp. was the prime contractor. By virtue of his employment, Mr. Epperly was covered by the State Industrial Insurance Act and foreclosed by statute from suing the contractor. His widow sued the City of Seattle instead, alleging that it had a duty to provide the employee with a safe place to work and a duty to inspect the equipment of its contractor. However, this theory of recovery was rejected as a matter of law by the Honorable Henry Clay Agnew and the Supreme Court affirmed this ruling, holding that an owner of premises has no duty to protect the employee of an independent contractor from the negligence of such contractor, and has no duty to keep the place of employment reasonably safe where the work itself is of an unsafe nature.

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

Boe, et al. v. City, 66 W.D.2d 142.

By Ordinance 89902 enacted in 1960 the City required payment of a special connection charge as a condition to connection to the City sewer where the property had not been previously assessed or otherwise charged for construction of lateral or trunk sewers. The rate for such charge was based upon construction costs for sewers in 1960. Plaintiffs paid this charge as required to connect a trailer park to the sewer but thereafter sued for a refund on the grounds that the rate was unreasonable. The enabling statute, RCW 35.92.025, authorized such charges "in order that property owners shall bear their equitable share of the *cost* of such system." In the trial court the Honorable F. A. Walterskirchen held that "cost" in this context meant original cost and that the ordinance was therefore void as applied to plaintiff because the abutting sewer had been constructed in 1934 at costs substantially lower than the 1960 costs upon which the connection charge was based. This view was upheld by the State Supreme Court on the City's appeal.

The City has since amended Ordinance 89902 to establish a variable rate for the special connection charge which generally declines with the age of the abutting sewer.

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

State ex rel. Edmond Meany Hotel, Inc. v. City, et al., University District Parking Associates, Inc., Intervenor, 66 W.D.2d 319.

In this case the Meany Hotel petitioned for a writ of mandamus to require the City to issue a building and use permit for the conversion of said hotel from its existing use as a hotel to a home for the retired without a Zoning variance from the applicable yard requirements of the Zoning Code. The City had refused the permit on the grounds that

the use proposed by the petitioner was a "home for the retired" as defined in the Zoning Ordinance (86300), that such use was a "residential" use and that certain yard requirements were therefore required which the building could not meet. The petitioner's request for a variance from such yard requirements had previously been denied. Petitioner argued that its proposed use was as a "hotel" for which no yard areas are required, that even if it was a "home for the retired" this use was not classified as a "residential" use in the Zoning Code, and that said Zoning Code permitted the change of use because of the right to make alterations granted to buildings such as petitioner's, which were non-conforming as to bulk.

The Honorable Henry Clay Agnew upheld the City's position in the trial court, dismissing the petitioner's application for writ of mandamus, and this ruling was affirmed on appeal by the State Supreme Court, which held that the proposed use did constitute a "home for the retired" which was properly classified as a residential use under the Zoning Code, and that the hotel's prior non-conformance as to bulk would not allow alterations which would effect a change of use.

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

Seattle v. See, 67 W.D.2d 465.

In this case the defendant had appealed to Superior Court from a Municipal Court conviction of violating the Seattle Fire Code by refusing to admit a fire inspector to his warehouse for a routine inspection which had been requested by the inspector without probable cause and without benefit of a search warrant, as authorized by said Fire Code. Defendant contended that to uphold this conviction and sanction such procedure would violate his state and federal constitutional rights.

The Honorable Henry W. Cramer rejected these contentions and found the defendant guilty. On appeal the State Supreme Court affirmed the conviction, holding that it was within the authority of the City to adopt reasonable ordinances authorizing such inspections, and that the ordinance in question, which excluded residences, did not violate state and federal constitutional provisions proscribing unreasonable searches and seizures, or the equal protection clause of the U. S. Constitution, or privileges and immunities' clause of the State Constitution.

The Court in its decision made the following pertinent observation:

> "The problem of keeping cities and their inhabitants free from explosions and fires is a serious task facing all fire departments. It is obvious that routine inspections are necessary to insure the safeguarding of life and property. The need to conduct routine

inspections of commercial premises, — outweigh the interest in privacy with respect to such premises."

This case was tried in Superior Court by Assistant William L. Parker and was prepared and argued in the Supreme Court by Assistants Jerry F. King and Jorgen G. Bader.

Seattle v. Buerkman, 67 W.D.2d 525.

The defendant in this case was convicted in Municipal Traffic Court of driving while under the influence of intoxicating liquor and reckless driving. The defendant appealed this conviction to the Superior Court and the case came on for trial before the Honorable George R. Stuntz. At the time of trial the defendant's attorney moved to dismiss the case, arguing that defendant had been denied a speedy trial and also had been denied counsel in Traffic Court in that he was not granted a continuance when his attorney failed to appear to represent the defendant. The City moved to dismiss the case and remand it to Traffic Court on the ground that the appeal had not been properly perfected. The trial court ruled that the defendant had been denied a substantial right in that the defendant had been required to face trial without benefit of counsel in Traffic Court and remanded the case to the said court for a new trial. On appeal the Supreme Court upheld defendant's contention that counsel had been denied in Traffic Court and while substantiating the City's position that the appeal had not been properly perfected, the Court considered the hearing in the Superior Court to be on writ of review and found no error in this procedure.

A petition for rehearing is still pending in this case which was tried and argued by Assistant William L. Parker.

Baxter-Wyckoff Co. v. City, Nettleton Lumber Co. v. City, 67 W.D. 2d 543.

The plaintiffs in these consolidated cases made use of Southwest Florida Street under street use permit in connection with their respective industrial operations and occupied large portions of said street with buildings, industrial installations, and storage areas. Florida Street was dedicated to public use and platted by the State in 1897 on State tidelands but had never been improved by the City for public travel. Baxter-Wyckoff Company devoted 73,000 square feet of Florida Street to its wood processing operation, for which it was charged an annual fee of $2,156.60. Nettleton Lumber Company used 13,000 square feet for structures and storage and paid $425.05 annually under its street use permit.

The plaintiffs sought to enjoin the collection of such fees on the grounds that they were not commensurate with the cost of administration, inspection and policing involved in the issuance and con-

tinuance of such permits. The Honorable Theodore S. Turner agreed with plaintiffs' contention and permanently enjoined the City from collecting the fees in question without prejudice to the right of the City to recompute and charge fees which were reasonably related to the cost of administration, inspection and policing.

The City appealed to the State Supreme Court which, in an en banc decision, reversed the Superior Court's ruling, holding that since the private use of public street area in question could be prohibited by the City absolutely, the City could therefore charge such fees and impose such other conditions with respect to said private use as it seemed proper, and that the fees charged plaintiffs for the permits issued under Ordinance 90047 "may not be reviewed by the courts."

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

Ropo, Inc., et al. v. City, 67 W.D.2d 561.

This case was instituted by certain cabaret owners to seek refund of admissions taxes alleged to be illegally imposed and collected by the City under the admissions tax ordinance (No. 72495). Judgment in favor of the plaintiffs was granted by the Superior Court and the City appealed to the State Supreme Court which reversed said judgment in an *en banc* decision.

Respondent cabaret owners made the contention in trial court and on appeal that the tax imposed by the admissions tax ordinance was in fact an "excise tax upon liquor" in violation of the pre-emption provisions of the Washington State Liquor Act (RCW 66.08.120). In answer thereto Judge Finley, speaking for the majority, concluded that "the taxes remitted to the City of Seattle were not 'excises upon liquor', but legislatively-authorized levies by the municipality upon the privilege of being admitted to a place where free entertainment is provided." Respondents' petition for rehearing was denied.

This case was tried and argued by Assistants Jerry F. King and John A. Hackett.

Noteworthy Superior Court Proceedings in 1965

1965 was notable for an increase in litigation involving local improvement districts. The following local improvement district cases were prepared and tried by Assistants G. Grant Wilcox, Jorgen G. Bader and E. Neal King:

Thymian v. Massart, et al. involved a property owners' application for a writ of prohibition to prevent the City from proceeding with the Broadview district paving project under Local Improvement District 6314. Property owners who opposed the improvement had filed a protest signed by the owners of the property subject to more than

60.19% of so much of the total cost of the improvement as it was planned to assess against assessable property in the district, in an attempt to divest the legislative authority of the City of authority to proceed with the improvement. However, RCW 35.43.180 specifies that such a protest shall be signed "by the owners of the property within the proposed improvement district subject to sixty per cent or more of the *total cost* of the improvement . . .", which was $2,067,463 of which the City was willing to bear $492,000 (Street, Sewer and Water Funds). Since the property owners' protests actually represented only 49.90% of the total cost of the project, the City Council determined to proceed and litigation ensued.

The Honorable Eugene A. Wright rejected the City's contention that the statute is to be read literally and the protest percentage to be computed using the total cost of the project and entered judgment prohibiting the City Council from proceeding further with L.I.D. 6314. The City has appealed to the State Supreme Court where the case is now pending.

In the case of *Atkinson v. Massart, et al.* heard at the same time, a question similar to that in the *Thymian* case was presented concerning the North 85th Street paving project under L.I.D. 6315. In the *Atkinson* case the City's contribution, which was deemed to fairly reflect the general benefits to the City as a whole, was of such size that it became a mathematical impossibility for protesting owners to muster a sixty per cent protest under any interpretation of RCW 35.43.180. This case was also decided adversely to the City by the Honorable Eugene A. Wright who upheld the same contentions made by the property owners in the *Thymian* case. An administrative determination was made to proceed with a limited arterial improvement on North 85th Street and to abandon the local improvement district procedure.

In re Consolidated Appeal of John Gee, L.I.D. 6295 involved the question of assessable benefits to abutting residential property by reason of the installation of sidewalks and the grading and blacktopping of North 130th Street from 5th Aveune Northeast to Greenwood Avenue North. After the improvement was completed a number of abutting property owners appealed to the Superior Court from the confirmation of the assessment roll by the City Council.

The Superior Court modified appellants' assessments and entered judgment confirming the assessments in such amounts as were demonstrated by the evidence to be equivalent to the enhancement in fair cash market value of each property by reason of the local or special benefits resulting from the improvement.

Corporation of the Catholic Archbishop of Seattle v. City, et al. By Resolution 18168 the City Council of The City of Seattle declared

its intention to order the construction of a sanitary sewer system in Westlake Avenue North, Fairview Avenue East and other streets peripheral to Lake Union and Portage Bay, and notices were mailed to about 350 property owners within the proposed local improvement district. After a hearing Ordinance 92714 was enacted ordering the improvement and levying assessments on a per square foot basis under the special benefits method. After construction had been completed the Streets and Sewers Committee of the Seattle City Council began sitting as a Board of Equalization upon the assessment roll and objections filed thereto by property owners. The Corporation of the Catholic Archbishop then brought this action to prohibit the City Council from holding hearings and making any attempt to assess the property of St. Vincent dePaul's salvage bureau. The court granted a temporary and later a permanent injunction as requested by the petitioners. The court interpreted RCW 35.43.080 to mean that since the special benefits resulting from the improvement extended farther than 90 feet back from the sewer the City Council should have created an "enlarged" district and stated in the resolution "what portion of the amount to be charged to the property specially benefited shall be charged to the property lying between the termini of the proposed improvement and extending back from the marginal lines thereof to the middle of the block of (or 90 feet back) on each side thereof and what proportion thereof to the remainder of the enlarged district . . ." and that the initial notice mailed to property owners was inadequate. The City contended that the segregation requirement did not apply to special benefits districts and the intial notices were correct and that in any event the alleged deficiencies were not jurisdictional defects that would deprive the City Council of its statutory right and duty to hold the hearing and confirm the assessment roll. Furthermore, petitioners by their knowledge and participation in the proceeding, acceptance of the benefits, and on other grounds had waived any right to assert their objections by an injunctive action. This case is presently on appeal.

An injunction was denied to another property owner within the district bringing a similar action in the case of *Chris Berg, Inc. v. City of Seattle, et al.*

The following case was prepared and tried by Assistant Gordon F. Crandall:

Apostle, et al. v. City. In this case twenty-three property owners in the "Northlake" urban renewal project adjacent to the University of Washington sought to enjoin condemnation of their properties, alleging that the Urban Renewal Law, RCW Ch. 35.81, was unconstitutional on its face and as applied in this project, that the evidence of blight was insufficient, that condemnation was not necessary, and

that the property owners had been denied due process of law. The Honorable James W. Hodson held in February 1965, that the Urban Renewal Law was constitutional, as previously decided in *Miller v. Tacoma*, 61 Wn.2d 374 (1963), that the City Council's finding that area was a blighted area was supported by substantial evidence and was not arbitrary and capricious, and that the City Council's findings were adequate in form. Appellants' appeal was argued before the State Supreme Court on February 15, 1965 and the case is now under consideration in said court.

The following cases were prepared and tried by Assistant John A. Hackett:

Seattle v. County of King, et al. In this action the City challenged King County's right to require payment by the City of moneys "in lieu of taxes" under RCW 35.86.070 for city-owned and operated "off-street parking facilities." The Honorable Walter T. McGovern granted summary judgment in favor of the City on the ground that said charges constitute a taxing of municipally owned property in violation of Article VII, Sec. 1 of the Washington Constitution. The County appealed to the Supreme Court where the case was argued *en banc* on January 11, 1966.

King County v. City. The County commenced this action seeking to recover from the City the value of medical services rendered indigent City Jail prisoners at the King County Hospital. After hearing testimony and argument, the Honorable Ward Roney dismissed plaintiff's action, agreeing with the City that the King County Harborview Hospital is required, pursuant to state law (RCW 36.62.100), to provide medical and surgical care to indigents and to admit free of charge those patients unable to pay for their costs of care and treatment. The case is presently on appeal.

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

Romerein, et al. v. C. G. Erlandson, City Comptroller; City of Seattle and Housing Authority of The City of Seattle, Washington, Intervenor. In this case the petitioner by alternate writ of mandamus sought to compel the City Comptroller to accept certain referendum petitions rejected as untimely filed and to verify the sufficiency of the signatures contained therein.

The City and the Housing Authority moved for a summary judgment on the grounds that certain of the referendum petitions were not timely filed and that those peitions which were timely filed did not contain the requisite number of valid signatures, even if all were ruled to be valid. The Honorable Walter T. McGovern granted summary judgment in favor of the City and Housing Authority.

The factual basis of the dispute was as follows: The City Council passed Ordinance 93643 entitled:

> "AN ORDINANCE vacating 8th Avenue, et al. on petition of Seattle Housing Authority."

on February 23, 1965 and said ordinance was signed by the Mayor on February 24, 1965. Referendum petitions relating to said ordinance and containing 12,086 signatures were filed with the City Comptroller on March 25, 1965; the signatures contained therein were verified and 9,637 were valid; on March 26, 1965 additional petitions containing 4,147 signatures were filed and said petitions were not accepted by the Comptroller on the grounds that they were not timely filed.

The Court in upholding the contention of the City and the Housing Authority ruled that the City Charter, Article IV, Sec. 1-J which in part reads "which petitions shall be filed with the City Comptroller before the date fixed for the taking effect of the said law or ordinance, which shall in no case be less than thirty (30) days after the final favorable action thereon by the Mayor and City Council, acting in their usual prescribed manner . . .", required the referendum petitions to be filed before March 26, 1965 and that therefore those that were filed on March 26, 1965 were not timely filed. Petitioner has given notice of appeal from this ruling to the State Supreme Court where the case is now pending.

The following case was handled by Assistants Richard C. Nelson and Denny E. Anderson:

The City of Seattle v. Drew. In this case the defendant appealed to Superior Court from a conviction in Muncipal Court of violating the "abroad-at-night" ordinance found in Section 29 of Ordinance 16046 as amended, which defines as unlawful conduct a person's failure to give a satisfactory account of himself upon the demand of any police officer when wandering or loitering at night, or when abroad at night under other suspicious circumstances. On the defendant's pre-trial motion, the Honorable Howard J. Thompson held that the ordinance was unconstitutional on its face since it lacked a sufficiently accepted meaning so as to constitute a standard against which conduct of a person accused could be compared or weighed, in making a judicial determination, and violated the Fourteenth Amendment to the United States Constitution and Sections 3, 7, and 9 of Article I of the Washington State Constitution.

The City has appealed to the State Supreme Court where the case is now pending.

The following case was prepared and tried by Assistants John A. Logan and Jorgen G. Bader:

Roberts v. Seattle. In this case the plaintiff, with her mother as a passenger, drove eastbound on North 90th Street past a yield right of way sign into the intersection with Wallingford Avenue. At the same time a 14-year old boy driving a stolen car sped northward on Wallingford. The cars collided in the intersection, crippling the plaintiff and killing her mother. The combined claim of plaintiff and her mother's estate in the amount of $525,000 was based on the theory that the City should have replaced the yield right of way sign facing North 90th Street with a stop sign. The jury returned a verdict in favor of the City as to plaintiff, but found for the mother's estate against the City in the amount of $708.00. It is anticipated that an appeal to the State Supreme Court will be taken in this case.

The following case was prepared and tried by Assistants G. Grant Wilcox and E. Neal King:

King County v. City of Seattle, City of Tacoma, et al. In this action King County sought to condemn certain property, including property owned by The City of Seattle and located in its Cedar River Watershed, for a road to be known as Lester Road. The Honorable Eugene A. Wright granted summary judgment in favor of The City of Seattle, dismissing it from the condemnation action, upon the grounds that King County lacked statutory authority to condemn property owned by the City, that it lacked authority to condemn property devoted to a public use and that the present public use of said property is superior as compared to the County's proposed use. A similar ruling was made in favor of The City of Tacoma as to property located in its Green River Watershed. King County appealed to the State Supreme Court and the case was argued *en banc* on January 11, 1966.

The following case was prepared and tried by Assistants Arthur T. Lane and Woodford B. Baldwin:

Fine Arts Guild, Inc., Paramount Film Distributing Corp., et al., and Sterling Theatres v. City.

Fine Arts Guild, corporate owner of the Ridgemont Theatre, commenced this action against the City in which it sought to have all ordinances pertaining to obscenity in motion pictures declared unconstitutional. By the time of trial, nearly all the major motion picture producers and distributors doing business in the City had started similar actions and the cases were consolidated for trial before the Honorable James W. Mifflin.

All plaintiffs contended that the City ordinances were an unconstutional prior restraint on their right to freedom of expression, in that prior showings to the City Theatre Board were required when requested; that their rights to due process of law were violated by the ordinances; and that by segregating the public into classes of

1) adults, 2) those between 18 and 21, and 3) those under 18, for purposes of classifying movies, the City denied them equal protection of the laws.

The trial court ruled that Ordinance 40144 as amended, Ordinance 83099 as amended, and Ordinance 93227 were unconstitutional in their entirety, and further ruled that the plaintiffs would be entitled to an injunction restraining the City from engaging in any practices not authorized by City ordinances if necessity for such relief arises in the future. The trial court also ruled, however, that the concept of classifying movies with respect to the age groups of potential viewers was proper. This case is presently on appeal to the State Supreme Court.

On the recommendation of this department an "interim ordinance", which prohibits the public showing of "obscene" movies and restricts the showing of certain other movies to those persons over 18 years of age, but which does not contain any of the "prior restraints" alleged to exist in the former ordinances, has been adopted by the City in order to provide some regulation of motion pictures during the pendency of the appeal.

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

Ragan v. City. The City Council on November 22, 1965 enacted Ordinance 94348 amending Section 63 of Ordinance 48022, the City License Code, to provide that it shall be unlawful for the owner, manager or operator of any cabaret to permit female employees or entertainers to appear therein "with the breasts exposed to public view." The plaintiffs operated two cabarets featuring "topless" dancers and in this action sought to enjoin the enforcement of Ordinance 94348, alleging that it was invalid on numerous grounds.

Upon trial of the action, the Honorable Story Birdseye denied the requested injunction and dismissed plaintiffs' case, holding that the ordinance in question constitutes a valid exercise of the police and licensing power of the City and does not violate the provisions of the Washington State Constitution or the United States Constitution.

The plaintiffs have appealed to the State Supreme Court where the case is now pending.

RETIREMENT

John A. Logan retired on December 31, 1965 after 35 years of service in the Law Department and it is fitting that special acknowledgment be made of his outstanding career of public service.

Mr. Logan was appointed Law Clerk in 1930, Assistant Corporation Counsel in 1934, and Principal Trial Assistant in 1958, and throughout his career served as a trial lawyer, defending the City in major personal injury and property damage actions and in this field he was recognized as one of the leading defense lawyers in this area. In addition, Mr. Logan was an expert in the field of eminent domain, handling many important condemnations for the City, including the Alaskan Way Viaduct condemnation.