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CITY OF SEATTLE

LAW DEPARTMENT

1966 Annual Report

A. L. NEWBOULD
Corporation Counsel

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Annual Report

1966

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Cover: Assistants Corporation Counsel G. Grant Wilcox, Arthur T. Lane and E. Neal King 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, 1966, as required by Section 12, Article XXII of the City Charter.

The outstanding achievement during 1966 was the department's record before the Washington State Supreme Court. Fourteen cases in which the City was a party were decided by written opinion of the Court during the year and eleven upheld the City's position. The Court's rulings in these cases are summarized elsewhere in this report.

There is a notable increase in the amount of litigation wherein parties have alleged that acts of City government infringe upon individual liberties and violate rights guaranteed by the Constitutions of the United States and the State of Washington. Examples are the *Rohrer* case, decided by the State Supreme Court in November, in which a municipal court defendant unsuccessfully asserted that a jury trial in Seattle Municipal Court is required by the federal and state constitutions, and the pending case of *Seattle v. See,* argued before the United States Supreme Court by the undersigned on February 15, 1967, in which it was contended by the defendant that the Seattle ordinance providing for Fire Department safety inspections of commercial premises is violative of the constitutional provisions against unreasonable searches and seizures and constitutes an impermissible invasion of privacy.

The most significant trend in the personal injury field is the frequency with which the City is being joined as an additional defendant in automobile collision and pedestrian-automobile cases on the grounds that allegedly improper or inadequate traffic regulation contributed to the cause of the accident. This increase is due at least in part to the recent abrogation of the doctrine of governmental immunity.

During the past year the department commenced the task of recommending repeal or modification of City ordinances which were obviously obsolete. This project will continue through 1967.

The members of my staff have demonstrated the willingness and ability to accept increased responsibilities and have performed their assignments effectively and efficiently. I again wish to express my appreciation 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 and to the City Council for their continued cooperation in providing salary levels sufficient to attract and retain competent professional and office personnel.

Respectfully submitted

A. L. Newbould

A. L. NEWBOULD
Corporation Counsel

April 1, 1967

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 1966.

	Pending Dec. 31, 1965	Commenced during Year 1966	Ended during Year 1966	Pending Dec. 31, 1966
Condemnation suits	10	5	10	5
Damages for personal injuries	118	80	89	109
Damages for other than personal injuries	36	29	30	35
Injunction suits	12	11	12	11
Mandamus proceedings	2	0	1	1
Habeas corpus	0	3	2	1
Certiorari writs	5	3	3	5
Miscellaneous proceedings	72	55	41	86
Monorail property damage	22	0	0	22
Street vacation fee refunds	33	1	0	34
Sub-Total	310	187	188	309
Appeals from Municipal and Traffic Courts	114	874	749	239
Grand Total	424	1061	937	548

2. *Segregation — Personal Injury Actions:*

	Number	Amount Involved
Pending December 31, 1965	118	$5,513,384.78
Commenced since January 1, 1966	80	3,304,887.62
Total	198	$8,818,272.40
Tried and concluded since January 1, 1966	89	3,791,286.80
Actions pending December 31, 1966	109	$5,026,985.60

Of the 89 personal injury actions concluded in 1966, 12 involving $607,309.00 were won outright. In 5 cases in which $90,085.00 was claimed, plaintiffs recovered $9,270.60. Of the remaining 72 cases in which plaintiffs claimed $3,093,892.80, 8 involving $449,595.90 were covered by insurance and the other 64 cases, involving $2,644,296.90 were settled or dismissed without trial for a total of $155,662.00.

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

	Number	Amount Involved
Pending December 31, 1965	36	$ 763,745.34
Commenced since January 1, 1966	29	613,534.62
Total	65	$1,377,279.96
Tried and concluded since January 1, 1966	30	356,178.41
Pending December 31, 1966	35	$1,021,101.55

Of the 30 cases involving damages other than personal injuries concluded in 1966, 4 involving $226,434.12 were won outright. In 8 cases involving $39,676.98 plaintiffs recovered $11,082.26. Of the remaining 18 cases involving $90,067.31, 17 were settled or dismissed without trial for a total of $24,202.33, and 1 case was covered by insurance.

The above actions concluded in 1966 involving both personal injuries and damages other than personal injuries are further classified as to department or activity involved as follows:

	Number	Amount Paid
Transit System	52	$ 51,813.64
Engineering Department		
Sidewalk	7	8,000.00
Street	12	12,670.60
Miscellaneous	24	102,875.00
Park Department	4	1,500.00
Building Department	2	3,800.00
Water Department	3	1,000.00
Fire Department	1	0.00
Seattle Center Department (5 cases covered by insurance)	6	0.00
Sewer Utility	8	18,557.95

4. *Appeals:*

Twenty-five appeals involving the City were pending in the State Supreme Court December 31, 1965 and 21 new appeals were filed in 1966. Nineteen appeals were decided or otherwise disposed of in 1966. The City prevailed in eleven of the fourteen cases decided by the State Supreme Court during 1966. The remaining five appeals which had been taken from Superior Court judgments favorable to the City were either dismissed for want of prosecution or by stipulation. At the close of 1966 twenty-three cases were still pending in the State Supreme Court, two in the United States Court of Appeals, Ninth Circuit, and two in the United States Supreme Court.

5. *Miscellaneous Cases:*

Forty-one miscellaneous cases were completed of which the City lost 10 and won or otherwise disposed of 31; 86 cases are still pending.

Twelve injunctive actions were tried, the City winning 10 and losing 2; 11 actions are pending. One mandamus action was tried and won by the City; one other is pending. Three writs of certiorari were completed and won by the City during 1966; five others are pending. Two habeas corpus writs were processed; one is still pending.

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 past due accounts, certain costs incurred by the City, and damages to City vehicles and property were forwarded by other departments to this department for collection. By suits and settlement we have collected a number of these claims and forwarded the same to the City Treasurer.

One hundred five garnishments were handled during 1966. Seventy-nine were completed without court action; 26 were answered by the City and the costs collected were transmitted to the City Treasurer.

II.

CLAIMS IN 1966

	Number	Amount Involved
Claims for damages, dormant, on file December 31, 1965; and against which the statute of limitations has not yet run	1,385	$55,886,936.54
Claims for damages, active, and referred to this department for investigation December 31, 1965 to December 31, 1966	987	10,199,008.16

Claims disposed of during 1966:

	Number	Amount Claimed	Amount Paid
Settled	404	$2,047,541.40	$106,215.21
Rejected	453	6,524,377.80	

Number of Seattle Transit System accident reports investigated December 31, 1965 to December 31, 1966	1,581
Number of circulars and letters mailed in connection with investigations of foregoing claims and reports	9,875

The Claim Division handled 197 claims involving the Transit System in 1966 in which the claimants sought $229,882.64 and which were settled for $63,574.50 and the total expense in 1966 for claims and suits involving the Transit System was $122,033.36. The Transit System computed the expense of claims and suits to be 1.2% of the gross revenue of the system for the year.

During 1966 the Claim Division prepared and presented to the City Council 106 ordinances in settlement of 207 claims, for a total of $42,640.71. Following is a tabulation showing in detail the department involved, the fund from which settlement was appropriated and the amount paid.

DEPARTMENT (Fund)	Number of Claims	Amount Paid
Engineering:		
Sewerage Utility Fund	65	$ 13,650.90
Garbage Collection & Disposal Fund	2	203.09
Emergency Fund:		
Sidewalk	13	7,466.00
Street	11	1,756.71

Storm sewer	3	499.78
Sewer	7	960.33
Construction	2	415.00
Traffic	7	943.12
	110	$ 25,894.93
Park:		
Emergency Fund	9	2,467.38
Executive — (Urban Renewal Div.):		
Emergency Fund	1	15.53
Police:		
Emergency Fund	2	29.77
Fire:		
Emergency Fund	1	99.05
Building:		
Emergency Fund	1	50.00
Lighting Department:		
"Other Miscellaneous Expense"	66	8,427.40
Water Department	17	5,656.65
Total	207	$ 42,640.71

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

In addition, 13 opinions on L.I.D. bond issues were requested by and rendered to the City Employees' Retirement System.

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

INDEX OF 1966 OPINIONS BY NUMBER

5169 Coaxial cable franchise grantee entitled to permit to extend service.

5170 Liability on bail bond — escaped prisoner.

5171 Responsibility of Chief of Police and subordinates limited to law enforcement within City limits and duties incident thereto.

5172 Telephone company may not use streets for CATV facilities without City's consent.

5173 Chap. 119, Laws of Extraordinary Session, 1965 — officer and operator accident reports.

5174 Requirement that licensed Motor-Vehicle Wrecker obtain "Second Hand Dealer's License."

5175 Waiver of statutory firemen's disability benefits in anticipation of employment, unenforcible.
5176 Council not presently authorized to reconsider its final decisions on appeals from Board of Adjustment.
5177 Necessity of certain Seattle-King County Department of Health officials to comply with "Code of Ethics" Act.
5178 Police pension fund contribution rates for military and provisional service.
5179 Grant or denial of pending amusement arcade and panoram licenses applications must be in accord with Ordinance 94505.
5180 Conditions or agreements in connection with rezonings.
5181 Ch. 125, Laws of 1965 (Ex. Sess.) limits use of City funds for urban renewal relocation expense reimbursement.
5182 Police pension contributions not refundable by reason of member's death.
5183 Petition of Washington Natural Gas Company for utility reservation in street vacation ordinances.
5184 Civil service examinations — veteran's charter preference.
5185 Ordinance 88522 sick leave benefits do not accrue to Supt. of Buildings but accumulated credits are preserved while on leave from regular civil service appointment.
5186 Relief from bail forfeitures.
5187 Second Hand Dealer's License for sale of imported antiques.
5188 Abatement of "Skagit Belle" as a public nuisance.
5189 Surviving spouse's share of Police pension not payable to child upon spouse's remarriage.
5190 Application of Business Tax Ordinance to Federal Housing Administration approved mortgagees.
5191 Municipal Court Judges' salaries.
5192 Duplicate bridge club may be a "Public Card Room" under § 65, Ordinance 48022.
5193 Deceased employee's death benefit payable even though assessments therefor were not collected.
5194 Authority to impound unauthorized vehicles in watershed areas.
5195 Firemen — pension contributions and benefits in connection with temporary and voluntary additional work assignments.
5196 Retired police officer may qualify for and be appointed to a "civilian" civil service position.
5197 1960 Park Bond moneys — fieldhouses not physically attached to school gymnasia.
5198 Retirement system — pension of widow of member who died while on military leave.
5199 Peddler's License required for retail sale of food, etc. from motor vehicles.

5200 Deductions for police pension fund from salary of officer eligible for retirement.
5201 Title to Magnolia Manor Naval Housing Project sewers.
5202 Neighborhood Youth Corps — Non-city work assignments for employees.
5203 Claimed exemption as export sales from Business and Occupation Tax.
5204 Effect of election to receive a police pension under 1915 legislative formula.
5205 Chap. 201, Laws of 1941 — veterans' rights thereunder subject to reemployment application within 40 days of separation from active duty.
5206 City's authority to regulate housing rentals.
5207 Heating Equipment Dealers License for electricians under Sections 332-335 of Ordinance 48022 as amended by Ordinances 89418 and 90659.
5208 Newsstands in public street areas.
5209 Applicability of Cabulance license to Private School Buses.
5210 Proposed zoning restrictions on certain waterfront properties.
5211 Municipal Judge's term of office continues until successor elected and qualified.
5212 "Housing allowance" may be paid watershed inspectors who do not reside in city-owned facilities.
5213 Applicability of Fair Labor Standards Act 1966 Amendments to Transit System.
5214 Issuance of new taxicab permits under Ordinance 59866, § 3-A.

IV.

PROSECUTION OF CRIMINAL ACTIONS

1. *Municipal Police Court*

During the year 1966 Assistant James G. Leach, acting as City Prosecutor, handled a calendar of 17,187 cases other than traffic in the Municipal Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $140,089.00.

2. *Municipal Traffic Court*

In the Municipal Traffic Court for the year 1966 Assistant Robert M. Elias, acting as City Prosecutor, handled a docket of 43,702 traffic cases resulting in fines and forfeitures amounting to $641,966.00. Traffic bureau forfeitures amounted to $2,445,288.00 for a total of $3,087,254.00 for the year 1966.

3. *Municipal Court Appeals*

749 convictions in the Municipal Courts (464 Traffic, 285 Police) were disposed of on appeal in 1966, as follows: 155 appeals (103 Traffic, 52 Police) were abandoned by the defendants and remanded to the Municipal Courts for the enforcement of the original convictions. In 360 cases (213 Traffic, 147 Police) convictions on pleas of guilty were entered. In 127 cases (91 Traffic, 36 Police) the court or jury found the defendants guilty after trial. In 85 cases (50 Traffic, 35 Police) the appellants were acquitted. In 22 cases (7 Traffic, 15 Police) all charges were dismissed for insufficiency of evidence, witnesses moving away or other causes. A total of $29,711.20 in fines and forfeitures and Superior Court costs in the amount of $985.60 were collected by this department in connection with these appeals and transmitted to the City Treasurer.

Mr. William B. Anderson was detailed by the Chief of Police on a part-time basis to assist by way of service of process, commitments of defendants, interviewing of witnesses, receiving their statements and keeping detailed records of the appeals. Mr. Anderson'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 1966, 489 ordinances and 41 resolutions; an additional 106 ordinances were prepared for the settlement of 207 claims.

1283 bonds of officials, bidders, contractors, depositaries and others totaling in excess of $59,000,000.00, were examined and approved.

Legal papers served and filed during 1966, including condemnation suits, summons and petitions, answers, judgments, notices of appearance and subpoenas, totaling 1,663 in all, were handled by Process Servers T. Guy Warren and Forest A. Roe.

VI.

CONDEMNATIONS

During 1966 the condemnation section, headed by Assistant G. Grant Wilcox, continued to process the Monorail condemnation under Ordinance 93917 in which the City seeks to ascertain the damages, if any, resulting from maintenance of the Monorail in 5th Avenue and 5th Avenue North. The condemnation action was filed in 1965 following a series of 23 "plaintiff" actions brought by abutting owners

against the City asking a total of approximately Two Million Dollars in damages allegedly resulting from the existence of the Monorail.

During 1966 the independent real estate appraisers appointed by the City in this case were able to complete their appraisals and reported to the City that in but three instances did the real estate market demonstrate that there had been any such damage. Meanwhile the condemnation suit had been pre-assigned to the Honorable Solie M. Ringold, Judge of the King County Superior Court, for trial, and the "plaintiff cases" have also been assigned to him. Judge Ringold has now scheduled a series of pre-trial hearings in an effort to define the issues to be litigated in the trial of the action to be held in September 1967.

A condemnation (Ordinance 92961) for the necessary property and property rights to permit construction of the Columbia Street ramp to the Alaskan Way Viaduct was concluded in 1965 except for disposition of the single parcel over which the ramp passes. Counsel for all parties recognized that the appraisal problem was extremely difficult and that it would be much easier to visualize the "after situation" and avoid speculation as to possible damages to the property if the ramp were to be constructed before trial. This supposition proved correct and the appraisers for both parties concurred in a recommendation that the court fix compensation in the sum of $15,000 for the taking of a permanent aerial easement for the construction and maintenance of said ramp approach together with restrictive easements limiting the height and establishing the setback line for any buildings which may be constructed on the parcel, currently used as a parking lot. This is one of the few instances in which the City has obtained immediate possession through the cooperation of the owner and deferred disposition of the question of compensation until the project has been constructed.

Under Ordinance 93354 the City acquired certain property rights necessary to make a smoother curve at the southeast corner of Northeast 42nd Street and 8th Avenue Northeast.

Pursuant to Ordinance 94665 a home at 1515 North 35th Street was condemned for the refuse transfer station to be located in the Fremont District north of Lake Union.

On June 17, 1966 judgment was entered in the amount of $28,145 as total just compensation for the City's acquisition of a substantial portion of the property at the northeast corner of Northeast 75th Street and Roosevelt Way previously occupied by a tavern and used furniture store and which was sought to permit a smooth free right turn for westbound traffic at the intersection.

City v. Roger and Clifton Evans, 67 Wn.2d 714.

This case involved an altercation in which the defendant brothers were charged and convicted in Seattle Municipal Court of disturbing the peace by making loud and disturbing noises when two Seattle police officers investigating a car theft questioned them.

On appeal to King County Superior Court they were again convicted after a trial by jury. They then appealed to the State Supreme Court, contending that they were entrapped by the police officers into committing the acts which ultimately led to their arrest.

The Supreme Court disagreed and affirmed the conviction, noting that "in order to assert the defense of entrapment, the accused must show that the officer in question originated the idea of committing the crime involved." The Court agreed with the City's argument that it was not entrapment, but rather *provocation* which was the gist of the Evans' defense. Since the jury had been properly instructed on this theory "it was justified in rejecting the defense and in returning a verdict of guilty."

This case was tried and argued by former Assistant Richard C. Nelson.

City v. Stone, 67 Wn.2d 886.

The defendant in this case was convicted in Municipal Traffic Court of twenty violations of overtime parking. He appealed to King County Superior Court where he was again convicted after it was established that the defendant owned the automobile in question and that on twenty separate occasions it had been ticketed for overtime parking. However, on appeal to the State Supreme Court this conviction was reversed, the Court holding that one sentence of the Seattle ordinance regulating overtime parking (§ 21.66.180 of Ordinance 91910) was unconstitutional because it purported to make the owner of a vehicle responsible for a parking violation regardless of whether he had actually parked the car, thereby depriving him of due process of law. The Court then interpreted the remainder of § 21.66.180 "to establish only a prima facie responsibility upon the registered owner, which he has the right to rebut, if he can." The Court further stated that this interpretation "in nowise interrupts the city's exercise of its police power or its right and power to enforce its parking ordinances."

This case was tried and argued by former Assistant William L. Parker.

City of Tukwila v. City, 68 W.D.2d 600.

In 1958 the City of Seattle, Department of Lighting, accepted a 50 year franchise granted by the City of Tukwila to distribute electric

energy to customers within such city. In 1962 Tukwila passed two ordinances which by establishing "exclusive service areas" in effect limited the service area served by City Light to an area comprising only about 15% of the city. In 1964, after the Department of Lighting had undertaken upon request to serve a customer in an area within the "exclusive service area" of Puget Sound Power and Light Co., the City of Tukwila secured an injunction in Superior Court to prevent such service. The City of Seattle contended that such ordinances insofar as they limited Seattle's right to distribute energy throughout the city were unconstitutional impairments of Seattle franchise rights granted by the 1958 franchise ordinance.

On appeal the State Supreme Court reversed the King County Superior Court's action in granting the City of Tukwila an injunction to prevent such service. The Supreme Court agreed that the two Tukwila ordinances passed in 1962 were invalid and of no effect in that they constituted an unconstitutional impairment of Seattle's contract rights.

This case was tried and argued by Assistant Arthur T. Lane.

King County v. City of Seattle, City of Tacoma, et al., 68 W.D.2d 682.

King County had 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 trial court granted summary judgment in favor of The City of Seattle and dismissed it from the action upon the grounds that King County was neither authorized by express statutory provisions to condemn property owned by a city, nor to condemn property devoted to a public use. It also held that the present public use of the property (as a watershed) was superior to the proposed public use by the County (as a road). A similar ruling was made by the trial court in favor of The City of Tacoma as to property located in its Green River Watershed.

The State Supreme Court, sitting en banc, affirmed the trial court's ruling upon the ground "that in the absence of express or necessarily implied legislative authorization . . . counties do not have the power to acquire by condemnation property owned by the state or a subdivision thereof, regardless of the use to which that property is put."

This case was tried and argued by Assistants G. Grant Wilcox and E. Neal King.

Nave v. City, 68 W.D.2d 714.

In this case the plaintiff alleged that he had been falsely arrested and falsely imprisoned when he was arrested in December 1963 on an alleged minor traffic violation and sought damages in the amount of $3,500,000. He was convicted of the minor traffic violation in the Municipal Court and on his appeal to the Superior Court he was again

convicted. His appeal to the State Supreme Court resulted in the charges against him being dismissed.

Following the Supreme Court decision which exonerated him, plaintiff initiated the above mentioned damage action. Before this suit came to trial, the City successfully moved for summary judgment dismissing the case on the grounds that plaintiff's claim against the City had not been filed within 90 days after the injury was sustained as required by statute, and on appeal this ruling was affirmed by the State Supreme Court.

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

Seattle v. King County, 68 W.D.2d 802.

This case involved an attempt by the County to require payment of moneys "in lieu of taxes" covering certain City properties including the Seattle Center Parking Facility pursuant to a provision of the off street parking act (RCW 35.86.070) which requires such payments "upon real property condemned pursuant to this chapter." The City in this declaratory judgment action asked that the County Treasurer's tax statements purporting to require the payments in question be declared null and void, and the trial court granted such relief upon the City's motion for summary judgment. On appeal, the State Supreme Court, in an en banc decision, affirmed the ruling of the trial court, holding that the City's property in question is specifically excluded from the operation of RCW 35.86.070 inasmuch as such property was not condemned pursuant to the provisions of the off street parking act, Chapter 302, Laws of 1959.

This case was tried and argued by former Assistant John A. Hackett.

Seattle v. Reel, 69 W.D.2d 232.

After being convicted in Municipal Traffic Court and on a trial *de novo* in Superior Court of the charge of driving while intoxicated, the defendant in this case appealed to the State Supreme Court contending that the traffic citation which had been served upon him was defective in the following particulars:

1. It failed to state the day of the month the violation occurred;
2. It did not bear the date of its issuance;
3. It did not advise him of the amount of bail required for the charged offense;
4. It did not state the time or date on which Mr. Reel was to appear in court or at the Traffic Violations Bureau.

Notwithstanding the said defects in the traffic citation, the trial court held that under the circumstances of the defendant's arrest, his posting of bail and being given a date to appear for trial at the time of

his release from jail, the defendant was in no way prejudiced. Since the trial court had entered findings of fact establishing lack of prejudice and since no exception was taken to said findings, the State Supreme Court concluded that the appeal was "entirely without merit."

This case was tried in Superior Court by Assistant James B. Howe, Jr. and was prepared and argued in the Supreme Court by Assistant J. Roger Nowell.

Corporation of the Catholic Archbishop of Seattle v. City, et al., 69 W.D.2d 569.

Pursuant to Resolution 18168 and Ordinance 92714, the City Council of The City of Seattle created Local Improvement District 6284 to pay the cost of constructing a sanitary sewer system to serve property surrounding Lake Union. After completion of the improvement the Corporation of the Catholic Archbishop filed objections to the proposed assessment (St. Vincent de Paul Salvage Bureau property) and, without pursuing the prescribed procedures, secured an injunction from the Superior Court forbidding the City from holding hearings on its objections or attempting to assess the property. The City appealed and the State Supreme Court reversed the trial court and vacated the injunction, holding that the City Council of Seattle under the controlling statutes still has jurisdiction over the objections filed and that the Corporation could follow prescribed statutory procedures with regard thereto. The Archbishop's petition for a rehearing was denied.

This case was tried and argued by Assistants G. Grant Wilcox and Jorgen G. Bader.

Seattle v. Rohrer, 69 W.D.2d 858.

In this case the petitioner, Philip Rohrer, who was charged in Municipal Traffic Court with operating a motor vehicle while under the influence of intoxicants or drugs, and with operating a vehicle in a reckless manner, applied directly to the State Supreme Court for a writ of prohibition to prohibit the Municipal Court from proceeding with his trial without providing a jury. Petitioner contended that the State statute which provides that no jury shall be allowed in criminal cases involving violations of City ordinances in Municipal Court is violative of state and federal constitutional provisions guaranteeing the right to jury trial.

The Supreme Court, sitting en banc, denied the application for a writ of prohibition and held that "the legislative enactment granting an accused person a trial before a magistrate only, with a trial de novo on appeal to the superior court where a jury trial is afforded the accused, is not violative of the constitution of the state of Washington."

The Court further held that "The municipal court act of this state is not violative of the sixth amendment of the United States Constitution" since in a recent case "the Supreme Court of the United States held that an individual charged with a 'petty' offense has no constitutional right to a trial by jury", a petty offense having been defined by federal statute as a misdemeanor for which the penalty does not exceed a $500 fine or six months imprisonment, or both.

This case was argued by Corporation Counsel A. L. Newbould.

State ex rel Perry v. City, 69 W.D.2d 822.

This case involved the scope of judicial review of the action of the Civil Service Commission in reviewing the dismissal of a City employee. The employee, a patrolman, had been removed for cause by the Chief of Police and after investigation by the Commission and hearings held pursuant to Charter Article XVI, Sec. 12, the Commission sustained the dismissal upon the ground that the Chief of Police had not been arbitrary in dismissing the patrolman. The Superior Court reversed and directed reinstatement. The City appealed from this ruling and in a prior decision the State Supreme Court abrogated the reinstatement order but directed that the Commission hold a new hearing and exercise its independent judgment. After so doing, the Commission again sustained the dismissal. The Superior Court again ordered reinstatement and the City again appealed. The State Supreme Court, sitting en banc, held that neither the Superior Court nor the Supreme Court could substitute its judgment for that of the Civil Service Commission, and that in sustaining the dismissal, the Commission had not acted in an arbitrary and capricious manner.

Three judges dissented, contending that "while his conduct warranted disciplinary action, it did not justify such a severe penalty."

A petition for rehearing is pending. The case was tried and argued by former Assistant Jerry F. King (now City Attorney for Vancouver, Washington).

Seattle v. De Austria (unreported).

In this case the defendant had appealed to Superior Court from a conviction in Municipal Traffic Court on a charge of failure to yield the right of way. Her primary contention was that she had been improperly issued a traffic citation because her violation had not been witnessed by a police officer; also, she argued that the issuance of the citation, which was mailed to her rather than delivered personally, violated the procedure contemplated by the Traffic Rules for the Courts of Limited Jurisdiction. These contentions were rejected in Superior Court and after a trial *de novo* she was again convicted as charged.

The defendant then appealed to the State Supreme Court which affirmed her conviction on the basis of *State v. Doolittle*, a case involving identical issues that had been decided only a few days before oral argument in *Seattle v. De Austria*.

This case was tried in Superior Court by Assistant Robert G. Wallace and was prepared and argued in the Supreme Court by Assistant J. Roger Nowell.

Thymian v. Massart, et al., 69 W.D.2d 813.

In this case the City appealed from the issuance of a writ of prohibition divesting the City of jurisdiction to proceed with the Broadview project, L.I.D. 6314. Protests had been filed by property owners bearing 60.19% of the assessed cost but, due to municipal contributions, only 49.90% of the total cost of the project. RCW 35.43.180 specifies that the City Council shall be divested of jurisdiction upon filing of protests signed "by the owners of the property within the proposed improvement district subject to 60% or more of the *total cost of the improvement* . . ." The Supreme Court affirmed issuance of the writ, ruling that the term "total cost of the improvement" refers to the assessed cost as borne by the property owners whose property is benefited.

This case was tried and argued by Assistants G. Grant Wilcox and Jorgen G. Bader.

Seattle v. Muldrew, 69 W.D.2d 882.

In this case the defendant was convicted in Municipal Police Court of agreeing to commit an act of prostitution and resisting arrest. On appeal to Superior Court the defendant was again convicted of these offenses.

Appeal to the State Supreme Court followed, defendant's contention being that the evidence against her was legally insufficient to sustain the charges. The high court disagreed however, and affirmed the convictions, pointing out that defendant had failed to take exception to the trial court's findings of fact which amply supported the conclusion that she was guilty of both charges.

This case was tried and argued by Assistant J. Roger Nowell.

Apostle, et al. v. Seattle, 70 W.D.2d 57.

On December 29, 1966 the State Supreme Court rendered a decision in the above case commenced by 23 property owners in the "Northlake" urban renewal project area to enjoin the taking of their property by eminent domain proceedings.

The court reaffirmed its decision in *Miller v. Tacoma*, 61 Wn.2d 374, 378 P.2d 464 (1963) upholding the state urban renewal law (RCW 35.81) and rejected the property owners contention that they had a

right to have their property condemned by the University of Washington rather than the City, or that they were denied due process of law in connection with the public hearing on the urban renewal plan. However, the court did accept the contention of the property owners that the City did not make an adequate finding that the area was "blighted." In this connection the court said:

> "It is our view that the City Council, having been vested with a special and limited jurisdiction by statute, *i.e,* to determine whether an area is blighted, it must affirmatively appear that it acted within the limits of its jurisdiction just as in the case of any other tribunal of limited jurisdiction. Certainly, some facts must be found which indicate that the Council knows what constitutes 'blight' and which support the ultimate finding that the area is blighted, hence subject to condemnation and resale under the Urban Renewal Act."

The cause was remanded to the Superior Court "with instructions to set aside its order of dismissal and to grant the property owners' motion to send the case back to the Seattle City Council to enable it, if it can, to make a specific finding of the existence of conditions within the area having an effect on public health, safety, morals or welfare that are sufficient to constitute 'blight'."

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

NOTEWORTHY SUPERIOR COURT PROCEEDINGS IN 1966

This past year was marked by the trial of a number of interesting and complex cases in Superior Court, including the following cases which were prepared and tried by Assistants G. Grant Wilcox and Jorgen G. Bader:

State ex rel. Duvall v. City Council, et al.

By Ordinance 94320, enacted November 8, 1965, the City Council selected a route for the proposed R. H. Thompson (Empire) Expressway along the westerly edge of the Arboretum. At the limited access hearings held May 27 and May 28, 1965 and June 18, 1965, several owners of homes in the path of the Expressway had proposed an elevated structure through the Arboretum. Pursuant to RCW 47.52.195, these owners appealed to the Superior Courts of both King and Thurston County, claiming errors in the hearing process and that the route selection was arbitrary and capricious. Causing further complications, Chap. 75, Laws of 1965, Extraordinary Session, took effect on August 6, 1965, about midway between the limited access hearings and the adoption of findings, changing and then repealing without savings clause portions of the previous statutes governing limited access hear-

ings. After hearing argument in May 1965, the Superior Court of King County declared that the newly enacted statute rendered proceedings after August 6, 1965 void, and remanded the matter to the City Council and the City has appealed from said decision to the State Supreme Court. No further action has been taken in the Thurston County case pending the decision on said appeal, which was argued before the Supreme Court, sitting en banc, on January 30, 1967.

Rainier Avenue Corporation v. City.

This case involved the effort of plaintiff corporation to quiet title in itself to a sizable portion of Columbia Park lying northerly of the Columbia Branch Library. The corporation alleged that its predecessors and not the City (Park Department) had been the owner of the abutting property to whom vacated street areas should have reverted as a result of partial vacations of Rainier Avenue in 1914 and Edmunds Place in 1957. Plaintiff had acquired for nominal sums from the residents in the area real property interests which provided the basis of its lawsuit.

Upon trial it quickly became evident to the court that plaintiff had not only failed to produce sufficient evidence to sustain a judgment in its favor but had inadvertently pointed up the strength of the City's title. Upon the City's motion the court dismissed the case for insufficiency of the plaintiff's evidence.

The following case was prepared and tried by Assistant Arthur T. Lane:

Yelland v. Lyle F. Wilson and other Individual Members and Superintendent of the Seattle Transit Commission.

In August of 1966, after having been notified of the presence of certain objectionable advertising matter of a political nature on City vehicles, the Transit System ordered removal of the same pursuant to its contract with the advertising agency handling such matter. Subsequently, the Transit Commission was sued *(Heavey v. The City of Seattle)* for libel by reason of such incident, and this case is still pending in King County Superior Court. The individuals who had arranged for such advertising matter then brought an action against individual members of the Transit Commission and the superintendent, seeking injunctive relief requiring the continued display of such advertisements, together with a request for money damages. This office represented such individuals upon their request, and at the hearing on said requested injunctive relief the Honorable Eugene A. Wright of the King County Superior Court held that members of the Commission were under no obligation to accept all advertisements and that its action in refusing the particular advertisements involved did not

constitute arbitrary or capricious action. The suit was later dismissed on stipulation.

The following case was prepared and tried by Assistants Arthur T. Lane and Denny E. Anderson:

Pend Oreille Public Utility District No. 1 v. City.

In 1956 The City of Seattle and Pend Oreille Public Utility District No. 1 entered into a 50 year contract by which the District undertook to deliver and the City to purchase certain amounts of power and energy from the Box Canyon Hydroelectric generating plant on the Pend Oreille River in northeastern Washington. Shortly thereafter disputes arose as to the rates and charges billed to the City by the P.U.D. Starting in 1962 the City withheld certain amounts of money from the monthly payments under such contract, contending that certain District practices constituted unreasonable and discriminatory practices to the detriment of the City and to the benefit of the District's own distribution division. In 1965 the District brought an action in Pend Oreille Superior Court to recover the amounts previously withheld by the City. By stipulation, venue of such action was changed to Spokane County where trial of such action commenced on April 10, 1966. In May, after a three and one-half week trial, the court decided the matter in favor of the P.U.D., holding that, after taking into account certain offsets, the P.U.D. was entitled to judgment of $101,410.87 together with interest against the City. In so doing, the court held that there is no state law which requires establishing or maintaining fair and non-discriminatory rates in connection with wholesale power contracts between public agencies in this state. This matter is presently on appeal to the State Supreme Court.

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

National Construction Co. v. City.

National Construction Co. bid on a sewer construction contract, which called for the bidder to state unit prices for the various classes of work and materials needed. The bidder inadvertently failed to state a unit price for one item, but contended that the missing item could be determined by mathematical computation from its total bid. National's total bid as so computed was lower than the total bid of any other bidder. The Board of Public Works refused to consider the bid and proposed to award a contract to the next bidder. Because of the urgent nature of the work, the case was decided in record time. The bids were opened on March 9, 1966; National commenced suit on March 15; the City answered the complaint on March 17 and the case was tried on March 18 and decided on March 21. The Court held that the Board's decision to regard the omission of a unit price as a fatal

defect was within its lawful discretion and that the omission could not be supplied by mathematical computation from the total bid, which was to be used only to determine the apparent low bidder.

Northwest Cablevision, Inc. v. City.

This action was commenced by a holder of one of the two community television antenna (CATV) system franchises to prohibit the City from considering the granting of further competing franchises. Plaintiff contended that Article IV, Section 16 of the City Charter, which provides in part that —

> "The city council shall not consider or grant any application for extension of the period of any franchise, *nor any new franchise covering all or any substantial part of the rights or privileges of any existing franchise,* until within three years of the expiration of the existing grant, . . ."

prohibited the granting of additional franchises, notwithstanding Article IV, Section 18 which prohibits the granting of exclusive franchises. As the case was commenced prior to final action by the City Council on the petitions for new franchises, which action was legislative in nature, the court dismissed the action as premature.

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

Seattle Housing Authority v. City.

In this case the Seattle Housing Authority alleged that two of its apartment buildings in the Yesler Terrace Housing Project were damaged in the amount of $225,000 and rendered unfit for occupancy by reason of an earth slide caused by the City's 1956 improvement of 6th Avenue between Yesler Way and James Street. Trial of the case was delayed at the request of the Authority because of the pending acquisition of the property in question by the State for Freeway purposes. At the trial the City presented evidence that the improvement of 6th Avenue which allegedly damaged the Authority's buildings constituted the original grading of that portion of 6th Avenue. At the close of all the evidence the trial court granted the City's motion to dismiss the Housing Authority's case for the reason that it was not shown that the City was in any way negligent in the way in which it had improved 6th Avenue, under the rule that there can be no liability on the part of a municipality for damages resulting from the non-negligent establishment of an original grade.

The following case was prepared and tried by Assistant E. Neal King:

Finch v. Mathews, City, et al.

This was an action brought by plaintiffs to quiet title to certain

property in the vicinity of Northeast 95th Street and Sandpoint Way Northeast which they purportedly purchased from King County after the County had acquired the same in tax foreclosure proceedings. The City contended that the property in dispute was located completely within Indianapolis Street, dedicated in 1905 in the plat of Lake Shore View Addition to City of Seattle, and could not therefore be subject to or sold for taxes. At the time of purchase from the County in 1952, plaintiffs signed a contract upon which they completed payments ten years later, at which time they received a deed from the King County Treasurer. In the meantime the City had annexed the area north of 85th Street, including the property involved in this action. While making payment on the contract, plaintiffs had also paid all taxes. The court held that because of the acts of King County and the resultant hardship to plaintiffs, the City should be estopped to claim the property as part of a dedicated street, except for a small strip being used as part of Northeast 95th Street. The City has appealed the ruling to the State Supreme Court.

The following case was prepared and tried by former Assistant John A. Hackett and by Assistant E. Neal King:

Elfbrandt v. Erlandson and City.

In this action the trial court entered an order restraining the City Comptroller and the City from accepting or processing challenges of registrations of voters made pursuant to RCW 29.59.070, or from removing any registered voters challenged pursuant to said law. RCW 29.59.070 was enacted during the 1965 regular legislative session as a part of the recodification of the election laws of this state, and provides a process whereby any voter may challenge the registration of any other voter for lack of actual residence at the address given on the permanent registration record. During the 1965 extraordinary legislative session the legislature enacted new legislation creating a new procedure for challenging the registration of voters upon this ground (RCW 29.10.130 and .140). However, the new procedure is limited to precinct committeemen, precinct election officers, and registration officers.

The trial court held that RCW 29.59.070 had been repealed by implication by said RCW 29.10.130 and .140, and it also held that that statute conflicted with a section of the state constitution which provides that voters do not gain or lose a residence while engaged in certain activities (such as in the service of the state or federal government, or while a student at an institution of learning, or confined in prison, etc.). For these reasons it entered an order enjoining the processing of challenges made under RCW 29.59.070. The City has appealed said decision to the State Supreme Court.

In an action related to the *Elfbrandt* case, plaintiff in *Martin v. Erlandson and City* sought to require the establishment of a separate system of voting for voters in the 34th Legislative District who had been challenged pursuant to RCW 29.59.070 in order that such votes could be later segregated in the event the challenges were upheld. Because of the order entered in the *Elfbrandt* case, such challenges would (and in fact, did) remain unprocessed on election day. The King County Superior Court held that it had no jurisdiction to issue such an order in the absence of any arbitrary and capricious action, or violation of law by the City or the City Comptroller.

The following case was prepared and tried by former Assistant John A. Logan and Assistant James B. Howe, Jr., in 1965 but by reason of post trial motions, was finally concluded in 1966:

Lewandowski v. Maiers and City, Gerlach v. Lewandowski and City.

Plaintiffs were passengers in separate automobiles which collided head-on in Renton Avenue near Holden Street. Plaintiff Richard Lewandowski suffered injuries to his face and shoulder with some residual scarring and sued for $80,000. Plaintiff Shirley Gerlach, a 26 year old woman suffered severe injuries with severe residual scarring and other injuries and sued for $182,000.

Both plaintiffs alleged the City was negligent in the eradication of the old center-line in Renton Avenue, and in the signing and marking of Renton Avenue, thereby creating the appearance that Renton Avenue was a three-lane highway. At the close of both plaintiffs' cases, Judge Henry granted the City's challenge to the legal sufficiency of their evidence upon the grounds that the negligence of the City, if any, was not a proximate cause of this accident inasmuch as the driver of the car in which plaintiff Gerlach was a passenger had negligently failed to look ahead when he changed lanes, crossed the new center-line and attempted to pass a car ahead of him. Neither plaintiff appealed from the dismissal of the City. Plaintiff Lewandowski recovered a $25,000 verdict against the City's co-defendant and plaintiff Gerlach did not submit her case to the jury.

The following cases were prepared and tried by Assistants Thomas J. Wetzel and James B. Howe, Jr.:

Meixner v. City.

In this case the plaintiff, an elderly woman, suffered severe injuries when the Transit coach on which she was a passenger was engaged in an intersection collision with another vehicle. At the trial the City offered evidence that the other vehicle had run a red light and that the transit operator had no opportunity to avoid the collision. The jury found in favor of the City and awarded plaintiff a $25,000 verdict against the other driver only.

Brown v. City.

The plaintiff in this case sued for $75,000 for back injuries and property damage allegedly suffered in a collision between his automobile and a City transit coach in the Northgate Parking area. The trial court instructed the jury that in privately owned parking areas both drivers were under a duty to use reasonable care. The jury found for the City.

STAFF CHANGES

Retirements:

GEORGE T. MCGILLIVRAY:

At the close of the year Assistant George T. McGillivray retired upon the conclusion of an outstanding career of fifty years public service in this office under five Corporation Counsels.

Mr. McGillivray was appointed Law Clerk and Process Server in 1916 and Assistant Corporation Counsel in 1930, in which capacity he ably represented the City in the defense of personal injury and property damage cases and in the prosecution of criminal cases, and more recently efficiently and effectively fulfilled his assignment as officer manager of the Law Department.

Mr. McGillivray's ability, dedication, integrity, outstanding character and personal charm earned him the respect and affection of his associates and friends in City service, and of countless citizens of the City. By reason of his sound judgment and extensive personal background and experience in the office, Mr. McGillivray rendered invaluable assistance and will be missed.

JOHN F. COOPER:

John F. Cooper, Claim Agent, retired in May after a long and distinguished career in the Claim Division of this department. Mr. Cooper came to the Claim Division in 1919 when Seattle took over the operations of the former Puget Sound Traction, Light & Power Co. with whom he was formerly employed, and was appointed Claim Agent in 1933, a position he held until his retirement. As Claim Agent, Mr. Cooper was responsible for making recommendations regarding the settlement or rejection of claims against the City for personal injuries and property damage, including claims involving the operation of the Transit System, and achieved a wide reputation as an authority in the field of claims adjusting. Mr. Cooper was highly effective in the discharge of his responsibilities, and the firm, but courteous and fair manner in which he approached claims negotiations, his extensive experience and background, particularly in transit operations, and his mature judgment, have earned him the respect of his associates in

City service, and of the claimants and attorneys with whom he came into contact during his career.

Resignations:

Assistants John A. Hackett and William L. Parker resigned in August to enter private practice. Mr. Hackett had been on the staff since 1960, and during that time had specialized in the preparation of legal opinions and the drafting of legislation as well as handling numerous other assignments as required. Mr. Parker joined the staff in 1962 and handled municipal court appeals to King County Superior Court until his assignment in 1963 to the defense of personal injury and property damage actions. Also, Senior Claim Adjuster James R. Henry, who had been with the Claim Division since 1953, resigned to accept an executive position in the transportation industry. Mr. Henry had previously been a bailiff in Municipal Police Court from 1946 to 1953. All of these gentlemen made significant contributions through the effective performance of their assignments and were a credit both to the City and the office during their periods of service.

Appointments and Promotions:

Five additions to the staff were made during 1966: Assistants Robert G. Wallace; Thomas J. Wetzel, former defense counsel for Great Northern Railway; James M. Taylor, former Vice-President and Editor in Chief of the Book Publishing Company; Process Server Forest Roe, who formerly was supervisor of the Police Department's Court Unit; and Bert L. Marriott, Claim Adjuster I, who formerly was with the Transit and Engineering Departments.

Following Mr. Cooper's retirement, Vincent L. Porter was appointed Claim Agent, Lido DiLuck was promoted to the position of Senior Claim Adjuster, James L. Baughman was promoted to the position of Claim Adjuster II, and T. Guy Warren to the position of Claim Adjuster I.

The City of Seattle--Legislative Department

MR. PRESIDENT:

Date Reported and Adopted
NOV 20 1967

Your Committee on Judiciary
to which was referred the within 1966 Annual Report of the Law Department of the City of Seattle,

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

THE SAME BE PLACED ON FILE.

..... Chairman	Massari ..... Chairman
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