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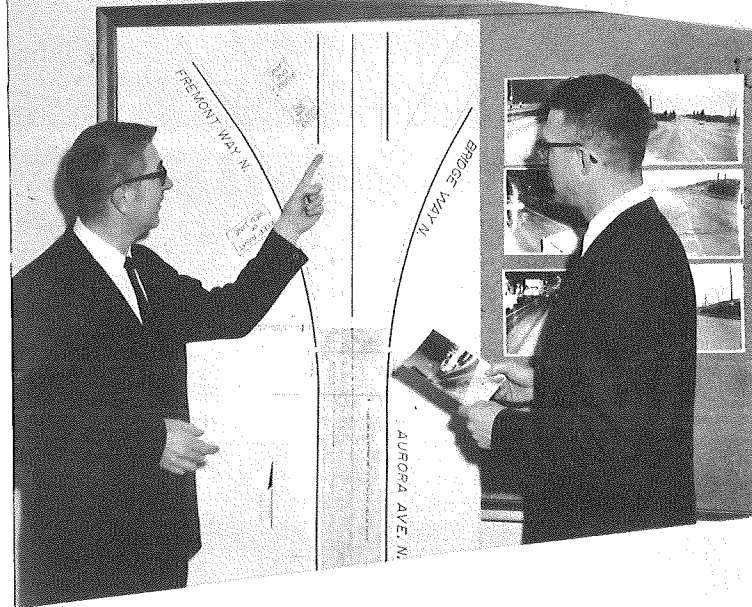
SEATTLE CITY COUNCIL

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CITY OF SEATTLE
LAW DEPARTMENT

1968 Annual Report

MAR 31 1969

Judiciary and Personnel

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A. L. NEWBOULD
Corporation Counsel

CITY OF SEATTLE
LAW DEPARTMENT
Annual Report

1968

A. L. NEWBOULD, *Corporation Counsel*

JOHN P. HARRIS, *Chief Assistant Corporation Counsel*

Assistants Corporation Counsel

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ROBERT M. ELIAS	JACK B. REGAN
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Cover Picture: Assistants Corporation Counsel Thomas J. Wetzel
and James B. Howe, Jr.

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 City of Seattle for the year ending December 31, 1968, as required by Section 12, Article XXII of the City Charter.

The statistics and case summaries which follow are indicative of a highly successful year for the department in those areas which represent the routine legal services expected of a municipal legal office. In addition there were significant accomplishments in new areas which deserve special comment.

There was increasing concern in 1968 that civil disorders similar to those which have occurred in other parts of the nation might occur in this City. Accordingly we recommended to and prepared for the Mayor a proposed ordinance authorizing the Mayor to proclaim the existence of a civil emergency, and by proclamation to impose curfew, restrict travel, and regulate the conduct of businesses and individuals during any such civil emergency. This ordinance was enacted by the City Council on April 8, 1968. In addition we assisted the Police Department in formulating procedures for the expeditious processing of persons arrested during a period of civil disorder, with particular reference to the matters of police report, identification and handling techniques to provide for speedy arraignment and where appropriate, an immediate trial or release on citation, bail, or personal recognizance for subsequent trial. To insure adequate protection of the constitutional rights of such arrestees, members of the staff worked closely with the local Bar Association in adopting procedures to guarantee that bar representatives would have early access to all such arrestees, and police reports concerning each arrest, to provide legal representation where requested and to relay information concerning arrestees through an information center to those making inquiries. A plan was also made for the detail of Assistants to various field assignments during any period of civil disorder in order to promptly provide necessary legal advice on all levels of operation. This plan was partially implemented on several occasions during the year. In addition, a number of former Assistants Corporation Counsel were contacted and necessary arrangements were made for their appointment as Special Assistants in the event additional help is needed in any such emergency. To further assist the Police Department in the performance

of its most difficult tasks, this office was instrumental in placing on the Police Department staff a Police Legal Advisor. Even though serving only in a part time capacity, the present advisor has in my view performed an outstanding service for the public and assisted this office in more effectively discharging its duties.

The 1967 Public Employees' Collective Bargaining Act (Chap. 108, Laws of 1967 Ex. Sess.) came into gradually increased utilization in 1968 and accordingly we were called upon to provide advisory assistance in this highly specialized field. Such assistance was particularly required in connection with a work stoppage by certain Lighting Department employees in May and a threatened strike of City employees in December.

Advisory assistance was also provided to the City's Human Rights Commission in connection with the implementation of the City's Open Housing Ordinance which was adopted by the City in April. Such assistance included attendance at Commission hearings concerning alleged violations and the department secured the first conviction under said ordinance in Seattle Municipal Court on a charge of unlawful discrimination in the offering of apartment units for rent.

In the area of ordinance modernization, the Seattle-King County Bar Association representative reports that progress is being made on the Association's municipal criminal code revision project.

Sidewalk solicitation by a large number of prostitutes in the central business district area was of increasing concern during 1968 and in response to a request for additional legislation designed to help control this increasingly serious police problem, the department prepared and on November 29, 1968, forwarded to the City Council an ordinance making it unlawful for known prostitutes to loiter in or near a public place in a manner (e.g. repeatedly beckoning to or stopping male passers-by) manifesting the purpose of engaging in prostitution. This ordinance was subsequently enacted by the City Council, upheld by the Municipal Court, and is now being enforced. We are advised that the ordinance is proving to be an effective means of suppressing on-the-street solicitation.

The City has been joined as an additional defendant with increasing frequency in motor vehicle accident cases upon allegations that traffic engineering design, traffic signs, signals or warning devices have caused, or contributed to the cause of such accidents. We were successful however in securing favorable rulings dismissing the City as a defendant upon motions for summary judgment in a number of such cases. Assistants Thomas J. Wetzel and James B. Howe, Jr. are to be particularly commended for their success here and in the defense

of other personal injury actions and are recognized by appearing on the cover of this year's report.

The matters mentioned above and covered elsewhere in this report illustrate the challenge presented and the response made by this department in the rapidly changing field of municipal law. In meeting this challenge during 1968 the members of my staff have again demonstrated their high legal competence and dedication to the task at hand. However, no small measure of our success must be attributed to our ability to attract and retain a career staff of specialists in the field of municipal law and I wish to express my appreciation to the City Council for providing a salary schedule which has made this possible.

Respectfully submitted



A. L. NEWBOULD

Corporation Counsel

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, Justice, Superior, Federal and Appellate courts during the year 1968.

	Pending Dec. 31, 1967	Commenced during Year 1968	Ended during Year 1968	Pending Dec. 31, 1968
Condemnation suits	5	4	4	5
Damages for personal injuries ...	106	66	79	93
Damages for other than personal injuries	38	24	40	22
Injunction suits	8	10	9	9
Mandamus proceedings	0	1	1	0
Habeas Corpus	0	9	7	2
Certiorari writs	3	4	3	4
Miscellaneous proceedings	64	71	57	78
Monorail property damage	22	0	22	0
Sub-Total	246	189	222	213
Appeals from Municipal and Traffic Courts	184	598	458	324
Grand Total	430	787	680	537

2. Segregation — Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1967	106	\$5,446,292.96
Commenced Since January 1, 1968	66	2,981,667.85
Total	172	\$8,427,960.81
Tried and concluded since January 1, 1968	79	4,748,257.36
Actions pending December 31, 1968	93	\$3,679,703.45*

*Includes 8 cases in which amount of damages is unspecified.

Of the 79 personal injury actions concluded in 1968, 23 involving \$2,811,478.71 were won outright. In 16 cases in which \$441,189.82 was claimed, plaintiffs recovered \$53,914.02. Of the remaining 57 cases in which plaintiffs claimed \$3,174,873.54, 9 involving \$179,797.31 were covered by insurance and the other 31 cases, involving \$1,315,791.52 were settled or dismissed without trial for a total of \$137,675.00.

3. Segregation — Damages Other Than Personal Injuries:

	Number	Amount Involved
Pending December 31, 1967	38	\$1,066,581.89
Commenced since January 1, 1968	24	44,707.20
Total	62	\$1,111,289.09
Tried and concluded since January 1, 1968	40	655,596.02
Pending December 31, 1968	22	\$ 454,157.78*

*Includes 2 cases in which amount of damages is unspecified.

Of the 40 cases involving damages other than personal injuries concluded in 1968, 15 involving \$272,982.50 were won outright. In 12 cases involving \$49,156.22 plaintiffs recovered \$19,338.30. The remaining 13 cases involving \$333,457.43 were settled or dismissed without trial for a total of \$73,666.56.

The above actions concluded in 1968 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	41	\$ 65,674.40
Executive Department	1	0.00
Engineering Department		
Sidewalk (1 case covered by insurance)	13	8,925.00
Street	17	12,357.50
Miscellaneous (1 case covered by insurance)	7	5,750.00
Park Department (1 case covered by insurance)	7	2,891.00
Light Department (1 case covered by insurance)	11	176,096.48
Fire Department (covered by insurance)	2	0.00
Police Department (3 cases covered by insurance)	7	0.00
Sewer Utility	13	18,707.00

4. Appeals and Extraordinary Writs:

At the close of 1967, twenty-two appeals involving the City were pending in the State Supreme Court and one in the United States Supreme Court. Eleven new appeals were filed in the State Supreme Court and one in the United States Supreme Court in 1968.

The City prevailed in three of the six appeal cases involving the City in which the Supreme Court rendered a decision in 1968. In addition appeals in seven cases in which the City had prevailed in lower court were dismissed for want of prosecution and one such case was voluntarily dismissed by appellant.

On December 31, 1968, nineteen appeals were pending in the State Supreme Court, and one in the United States Supreme Court.

5. Miscellaneous Cases:

Fifty-seven miscellaneous cases were completed in King County Superior Court during 1968, of which the City lost 6 and won or otherwise disposed of 51; 78 cases are still pending. Twenty-two cases involved in the Monorail acquisition were disposed of.

In addition, 9 injunctive actions were tried, the City winning 8 and losing 1; 9 actions are pending. One mandamus action was tried and won by the City; none are pending. Three writs of certiorari were completed and won during 1968; four others are pending. Seven habeas corpus writs were processed; two are 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.

107 garnishments were handled during 1968. 68 were completed without court action; 39 were answered by the City and the costs collected were transmitted to the City Treasurer.

6. Antitrust Damage Actions:

In 1961 the City joined with the State and other municipalities in actions for damages arising out of alleged conspiracies to fix prices and rig competitive bids for electrical utility equipment. Similar actions were commenced by many other cities and public utilities across the country, and after several years of intensive preparation the cases were settled by agreement with the defendants, Seattle receiving a total amount of \$4,478,982. Because of the special nature of the action and the high costs involved in preparing for trial, substantial economies were realized by sharing costs with the State and other affected cities and employing special counsel.

Subsequent to the inception of the electrical case, suspected conspiracies were uncovered in other products purchased by Seattle, and in 1964 the City joined again with the State and other municipalities in an action for damages against the manufacturers of steel and concrete pipe. The final settlement of that case was made in 1968, the City to receive a total of \$665,759.93.

At the present time The City of Seattle is a plaintiff in joint actions with other cities and/or the State, using special counsel, to recover damages for alleged conspiracies involving chlor-alkali products, children's library books, brass mill tube and pipe products, and is studying possible actions involving prescription drugs, water meters and liquid asphalt.

**II.
CLAIMS IN 1968**

The Claim Division of the Law Department investigates all claims filed against the City, and in the event of litigation assists the legal staff pending ultimate disposition of the case. The following tabulation reflects the Claim Division's activities during 1968.

	Number	Amount Involved
On file January 1, 1968	1,603	\$84,634,751.62
Referred for investigation	1,365	9,036,556.40
Closed without payment	406	47,976,628.41
Suit filed	91	4,337,793.92
Claims paid	596	25,144,833.73 (Asked) 6,605,696.12 (Paid)
On file December 31, 1968	1,875	16,212,051.96

Payment of \$6,605,696.12 in settlement of 596 claims involving the various departments of the City was effectuated by 90 ordinances which were prepared and presented to the City Council or through the Transit System. Following is a tabulation showing in detail the department involved, the fund from which the settlement was appropriated and the amount paid:

	Number of Claims	Amount Paid
DEPARTMENT (Fund)		
Seattle Transit System*	273	\$ 69,383.50
Engineering:		
Sewerage Utility Fund	82	22,280.39
Garbage Collection & Disposal Fund	1	24.03
LID Funds	3	1,215.46
Emergency Fund (Engineering Dept.)		
Sidewalk	11	2,419.76
Street	20	4,488.01
Storm Sewer	8	2,172.43
Sanitary Sewer	1	400.00
Sewer (Reimbursable)	55	5,903.69
Construction	3	2,307.10
Traffic	4	124.18
Miscellaneous	1	50.00
Emergency Fund (Other Depts.)		
Police	4	262.19
Park	5	171.36
Fire	1	15.47
Lighting Department:		
"Other Miscellaneous Expense"	101	10,858.62
Boundary Dam Construction Contract Claim	1	6,475,000.00
Water Department	22	8,619.93
Total	596	\$6,605,696.12

*The Transit System computed the cost of claims and suits to be 1.57% of the gross revenue of the system for the year.

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 45 written legal opinions on close

questions of law submitted by the various department of City government, and involving considerable legal research.

In addition, 21 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 1968 OPINIONS BY NUMBER

- 5265 "Easement Agreement" will not qualify properties separated by alley for special consideration under zoning bulk regulations.
- 5266 City (Lighting Department) property may be dedicated to street use upon payment of "True and full value."
- 5267 Exemption of transit drivers from special licensing and examination requirements of Ch. 20, Laws of 1967, Extraordinary Session.
- 5268 Former wife of deceased employee named as beneficiary prior to divorce from deceased is entitled to receive deceased employee's contributions.
- 5269 Police Pension — Application of Laws of 1961, Ch. 191 to certain retired policemen and widows.
- 5270 Establishment of "Youth Patrol" and "Teen-Age Advisory Jury."
- 5271 Proposed ordinance authorizing arrests for misdemeanors not committed in officer's presence of doubtful validity — City may implement State regulation of firearms sales.
- 5272 Payment of pension to widow of police officer married to such officer subsequent to his retirement.
- 5273 Collection of debts incident to suit and garnishment is "practice of law" and not regulated by License Code.
- 5274 Membership of Superintendent of Parks and Recreation on Planning Commission — effect of amended City Charter Article XI.
- 5275 Establishment of separate "Special Fund" by Firemen's Pension Board not authorized; alternatives available.
- 5276 Apportionment not required under business tax ordinance (72630) for cartage originating and terminating in City.
- 5277 Open space required for planned unit development need not be exclusively for occupants.
- 5278 Validity of employment agency provisions of License Code.
- 5279 Application of §§ 3 & 6 of Ordinance 72630 (B & O Tax) in view of *Lone Star Cement Corp. v. Seattle*.
- 5280 Registration of Felons (Ordinance 74125).

- 5281 Ordinance 96232 creating City Negotiating Committee has no effect on Library Board's statutory duty to fix the compensation and conditions of employment of library employees and engage in collective bargaining.
- 5282 Request for permit for access driveway across "park, drive and boulevard" property to Lake Washington Boulevard.
- 5283 Right of daughter to death benefit under police pension system where police officer was killed by his wife, who subsequently was charged and pleaded guilty to manslaughter.
- 5284 Rezoning petitions can be held in abeyance pending new land use plan, but not variance applications.
- 5285 Whether "vehicle rental agency operator's license" is required where vehicles are leased solely to corporations substantially owned or otherwise controlled by lessors of said vehicles.
- 5286 Offer to remove "Skagit Belle" upon City authorization.
- 5287 Proposed ordinance relating to fluoridation of City water supply.
- 5288 Prohibition of "inflammatory and subversive" speeches.
- 5289 Agreement to provide retroactive compensation of doubtful validity.
- 5290 Claim statute (RCW 35.31.020) applies to damages arising out of contract.
- 5291 Proposed "Official Street Map" ordinance would constitute taking of property without compensation.
- 5292 Sections 11-A and 90 of License Code relating to felony and misdemeanor convictions not applicable to Private Guard license applicants.
- 5293 Council may rezone and grant variances for public housing "turnkey" projects without following Zoning ordinance procedure.
- 5294 Use of proceeds of fire protection facility general obligation bonds.
- 5295 City cannot deny use of public golf facilities to private clubs absent unlawful discrimination.
- 5296 "Condition and Reservation" in deed to County of Firlands property of doubtful enforceability.
- 5297 Employee entitled to fifteen days of military leave of absence with pay.
- 5298 Sale, lease or transfer of jurisdiction of Transit's Mercer Street property.
- 5299 Joint Planning Commission-City Council hearings on zoning matters would require ordinance amendments.
- 5300 CATV franchise regulation not affected by decision of U.S. Supreme Court in *U.S. v. Southwestern Cable Co.*, 20 L.Ed. 1001.

- 5301 Franchise grants to City must be accepted by ordinance.
- 5302 Determination of death as to missing retired employee.
- 5303 City business tax not applicable to "Travel Center of Seattle" operated by a national bank.
- 5304 Common law dedication of easement for public travel at South Rose Street crossing of railroad rights of way.
- 5305 Licensing of Charter bus services and sightseeing tours originating at points outside the City.
- 5306 Only children in "legal custody" of fireman at time of death entitled to benefits under RCW 41.18.100.
- 5307 Application of State Business & Occupation Tax to Local Improvement District assessments for extensions of the City's water and sewage systems.
- 5308 S. L. Denny trust fund for disabled firemen not available for payment to widow of deceased fireman.
- 5309 Former Transit employee not granted accumulated sick leave by Ordinance 88522 on transfer to Engineering Department.

IV.

PROSECUTION OF CRIMINAL ACTIONS

1. Municipal Court — Department No. 1

During the year 1968 Assistant James G. Leach, acting as City Prosecutor, handled a calendar of 16,359 cases other than traffic in Department No. 1 of the Municipal Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$151,687.

2. Municipal Court — Department No. 2

Assistant Robert M. Elias handled a docket of 24,697 traffic cases for the year 1968 resulting in fines and forfeitures amounting to \$336,803. Traffic Bureau forfeitures for the year amounted to \$2,783,109.50, for a total of \$3,119,912.50.

3. Municipal Court — Department No. 3

Assistant Robert B. Johnson handled a docket of 23,978 traffic and other cases for the year 1968 resulting in fines and forfeitures amounting to \$276,836.

4. Municipal Court Appeals

458 convictions in the Municipal Courts (307 Traffic, 151 Police) were disposed of on appeal in 1968, as follows: 121 appeals (49 Traffic, 72 Police) were abandoned by the defendants and remanded to the Municipal Courts for enforcement of the original fines and sentences. In 205 cases (164 Traffic, 41 Police) convictions on pleas of guilty were entered. In 92 cases (68 Traffic, 24 Police) the court

or jury found the defendants guilty after trial. In 26 cases (17 Traffic, 9 Police) the defendants were acquitted. In 14 cases (9 Traffic, 5 Police) all charges were dismissed for insufficiency of evidence, witnesses moving away or other causes. A total of \$25,519.33 in fines and forfeitures and Superior Court costs in the amount of \$579.64 were collected by this department in connection with these appeals and transmitted to the City Treasurer.

Mr. William B. Anderson was again 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.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

This department prepared during the year 1968, 525 ordinances and 69 resolutions; an additional 90 ordinances were prepared for the settlement of 323 claims.

1,102 surety bonds totaling in excess of \$44 million, and other miscellaneous instruments, were examined and approved.

Legal papers served and filed during 1968, including condemnation suits, summons and petitions, answers, judgments, notices of appearance and subpoenas, totaling 1,797 in all, were handled by Process Server Forest A. Roe.

U.S. SUPREME COURT — 1968

City v. Hill, 21 L.Ed 2d 142

This case involved a 62-year-old chronic, addictive alcoholic who had been arrested 98 times for public drunkenness since 1946. Following his 99th arrest on May 4, 1966, when appellant was found sprawled on a public sidewalk in downtown Seattle, the American Civil Liberties Union undertook the defense of appellant and argued, as more fully reported in this department's 1967 Annual Report, that it was unconstitutional to criminally convict and punish a chronic alcoholic for being drunk in a public place.

The State Supreme Court rejected appellant's contentions, affirmed the conviction and upheld the City's ordinance forbidding drunkenness in public, and on October 14, 1968, the United States Supreme Court denied Mr. Hill's request that it review said State Supreme Court decision, thus ending the case. This case was handled by Assistant J. Roger Nowell.

NOTEWORTHY STATE SUPREME COURT CASES — 1968

E. M. Greenwood v. City, 73 W.D. 2d 746

In this state court action Mr. Greenwood alleged that the City was indebted to him in the amount of \$241,578 for loss and expenses sustained in connection with the termination of certain contracts, at the request of the City, for the construction of an office building on his property at 4th Avenue and James Street. Governmental acquisition of the property was under consideration at this time and said property was subsequently acquired by King County for \$325,000.

The Superior Court had entered summary judgment dismissing plaintiff's case and this ruling was affirmed on appeal by the Supreme Court which held that under the applicable rule a property owner is free to improve his property prior to entry of a decree of appropriation and that therefore "the city did not incur liability for appellant's loss arising out of his failure to complete his plans with respect to his property."

The court further pointed out that if a condemnation had been commenced by the City, Mr. Greenwood would not in any event have been entitled to compensation "for his expenses in procuring architectural and engineering services preliminarily to construction of his proposed building."

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

Finch v. Matthews and The City of Seattle, 74 W.D.2d 163.

This was a quiet title action involving a tract of land lying within a portion of Indianapolis Street. Said street was dedicated "to the use of the public forever" in the plat of Lake Shore View Addition on May 6, 1906. In 1928 King County purported to exchange said platted street for some land held by John G. Matthews. In 1935 the property was placed upon the tax rolls of the County. As the result of nonpayment of taxes the County purported to obtain title in tax foreclosure proceedings in October 1951, and on November 6, 1952, purported to sell the tract in dispute to the Finches upon a real estate contract. On March 1, 1953, the City annexed the area north of 85th Street, within which annexed area the disputed tract was located. On November 6, 1952, having completed payments upon their real estate contract the Finches received a Treasurer's deed purporting to convey to them the disputed property. In the trial court the City contended that since the tract in dispute was wholly located within a dedicated street which had never been vacated, the property could neither be taxed nor sold for taxes, or otherwise conveyed or sold, and that the Finches therefore never acquired anything from the County, because the Treasurer's deed could convey only what the

County had a right to convey. The Finches contended that the various acts of King County in connection with said property before the area north of 85th Street was annexed to the City equitably estopped the City from asserting that the property was still a dedicated street, and it was this reasoning that the trial court accepted. The Supreme Court affirmed, stating in part that:

"The overwhelming equities in favor of the plaintiffs, under the facts of this case, are such that the city must be deemed estopped to assert that its claim to the property is superior to that of the plaintiffs . . ."

The case was tried and argued by Assistant E. Neal King.

Fine Arts Guild, Inc., Paramount Film Distributing Corp., et al. and Sterling Theatres v. City, 74 W.D.2d 510.

Fine Arts Guild, corporate owner of the Ridgemont Theatre, commenced this action against the City in which it sought to have Ordinance 83099 as amended, and Ordinance 93227 pertaining to obscenity in motion pictures declared unconstitutional. By the time of trial, nearly all the major motion picture producers and distributor's doing business in the City had started similar actions and the cases were consolidated for trial.

Ordinance 83099, among other things, made unlawful the wilful exhibition of obscene movies and authorized the establishment of a Board of Theater Supervisors to aid in enforcement by previewing showings, making recommendations concerning such movies, and filing reports with the Mayor and City Council and its License Committee as to its activities.

Ordinance 93227 provided for the classification of certain motion pictures as those suitable for showing to those under 21 years of age and to those under 18 years of age after review by said Board, and for criminal penalties for the wilful showing of unpermitted films.

From the trial court's judgment that said ordinances were unconstitutional in their entirety, the City appealed.

With respect to Ordinance 83099 the court held that provisions for reports as to recommendations by the Board of Theater Supervisors to the Mayor and City Council and its License Committee constituted an impermissible system of administrative license regulation relating to free speech without the "safeguards" of the criminal process, and the court observed that under Ordinance 83099 the Board was not required to hold a hearing or give notice to the exhibitors beyond the initial demand that the proposed exhibit be submitted for preview, nor did said ordinance place upon the Board the burden of "proving"

that the proposed exhibit was constitutionally unprotected, nor was there any "assurance" of "prompt final judicial decision" as to the correctness of Board determinations. As to Ordinance 93227, the court held that it contained no requirement for judicial review of any determination by the Board within a "specified brief period." By a 7-1 decision the State Supreme Court affirmed the judgment of the trial court and held that by reason of these procedural defects "both ordinances must be declared in violation of the pertinent guarantees of the federal constitution."

In view of such decision, and on the recommendation of this department, Ordinances 83099 and 93227 together with Ordinance 94600, an "interim ordinance" adopted by the City to provide regulation during the pendency of the appeal, were repealed and a new ordinance regulating the dissemination of material deemed harmful to minors was adopted.

NOTEWORTHY SUPERIOR COURT PROCEEDINGS — 1968

Monorail.

The condemnation of permanent rights for the Monorail system in 5th Avenue, 5th Avenue North, and in the Westlake Mall pursuant to Ordinance 93917 was completed in 1968. These proceedings determined the "total just compensation" to be paid the owners of the 85 abutting properties, retroactive to the date of construction of the Monorail in 1961, in the amount of \$818,072.45, including accrued interest and almost \$100,000 paid as respondents attorneys and expert witness fees pursuant to Chapter 137, Laws of 1967. The amount of damages determined in these proceedings, with certain exceptions, was approximately equivalent to 3.75% of the land value of the abutting properties. An adjudication of public use and necessity as to such condemnation had previously been entered on April 13, 1966, and sustained by the State Supreme Court on March 2, 1967, in the case of *State ex rel. Devonshire v. Superior Court*, 70 Wn.2d 630.

Murphy, et al. v. City, et al.

In this case plaintiff taxpayers requested injunctive and declaratory relief precluding the proposed purchase of 70 new buses under a Federal project grant contract under the theory that such purchase could not be effected in the absence of an ordinance of the legislative authority of the City determining the method or methods of transportation to be used in the City's transportation system pursuant to RCW 35.92.060. The City answered, contending among other things, that Article XXIII of the Seattle City Charter grants authority for equipment selection and authorization of system additions and betterments to the Transit Commission. On July 2, 1968, a judgment was

entered in Superior Court enjoining the City and its Transit Commission from the purchase of such buses in the absence of such an ordinance. The City immediately filed a notice of appeal to the State Supreme Court, and the case was scheduled for hearing before said court on September 23, 1968.

Subsequent to the entry of final judgment and because of the impossibility of an immediate hearing on appeal before the State Supreme Court and the necessity for immediate execution of the Federal grant contract, Ordinance 96902 of the City was enacted on July 17, 1968. Such ordinance provided the methods of carrying passengers on the City's transportation system to be "motor buses and trolley buses." Following the enactment of such ordinance the Supreme Court, on July 24, 1968, on its own motion, moved to dismiss the City's appeal by reason of the mootness of the question due to the enactment of the above ordinance.

The City resisted such motion on the grounds, among others, that the subsequent filing of the *Freedman* case (infra) made it apparent that the controversy was still viable. The Court's motion to dismiss was heard on September 13, 1968 and granted on September 17th and a remittitur transmitted to the Superior Court.

Freedman, et al. v. City, et al.

In this action filed on August 28, 1968, plaintiff taxpayers contended that Ordinance 96902 of The City of Seattle which was enacted in response to the injunction entered in the *Murphy* case and which specified the methods of carrying passengers on the transportation system, was invalid as constituting an "unlawful delegation of legislative power to the Seattle Transit Commission," and therefore requested an order enjoining the purchase of buses on such basis. The City moved to dismiss the case and on September 9, 1968, the Superior Court granted the motion and entered an order dismissing the action with prejudice. This case is presently being appealed by plaintiffs to the State Supreme Court.

Asia, et al. v. City of Seattle

Plaintiffs were the owners of property located directly above the portal of the tunnel leading from downtown Seattle to the Lacey V. Murrow floating bridge and had leased the west 33 feet of their property to an advertising firm which erected thereon an electrical advertising sign. This sign became nonconforming when the property was zoned for neighborhood business in 1957, but was permitted to continue as a nonconforming use. In 1962 Section 5.33 of the Zoning Ordinance was amended to provide for the termination of nonconforming advertising signs in residential and neighborhood business

zones.

In this action brought to enjoin the enforcement of said Section 5.33, the Superior Court held for the City, upholding the application of the Zoning Ordinance to the subject property. The court said:

“. . . While the construction and maintenance of the advertising sign structure on plaintiff's property was lawful, and the use of the property for such purposes was a legal nonconforming use, plaintiffs did not thereby acquire a perpetual vested right to continue such use.”

The Court held that Section 5.33(b) of the Zoning Ordinance was a valid exercise of the City's legislative authority under its police powers as applied to plaintiff's property, and did not constitute a taking of private property without just compensation in violation of the provisions of the State and Federal constitutions.

An appeal from said judgment is pending before the State Supreme Court.

Anderson v. Carroll, et al.

The plaintiff in this case, claiming standing to sue as a taxpayer, alleged that the members of the Washington State Stadium Commission appointed by Governor Daniel J. Evans pursuant to RCW Chapter 67.28 and including two City Councilmen, had not been appointed according to law, that the acts of that body were null and void and that the funds expended should be returned. This Commission was charged with the duty of evaluating sites for a public stadium facility for King County and making recommendations thereon to the Board of County Commissioners.

On November 8, 1968, the Superior Court granted the City's motion for summary judgment of dismissal, stating that in essence the complaint was an attempt to "try title" to public office, which under the law may be commenced only by the prosecuting attorney or by a person claiming the office as an action in *quo warranto*.

Edwards, et al. v. City Council of Seattle.

Seven property owners in the Yesler-Atlantic Neighborhood Improvement Project contended that the action of the City Council in passing Ordinance 96123 approving the urban renewal plan for the project was invalid because (1) the City Council had not adopted rules of procedure under the State Administrative Procedure Act (RCW 34.04), (2) the notice and hearing requirements of RCW 35.81.060(3) were unconstitutional, (3) notice of the public hearing was not given as required by law, (4) the criteria of blight adopted

did not support a public use, (5) the evidence presented to the City Council did not support the finding of blight, and (6) because plaintiffs were not given special notice of the adoption of Ordinance 96635, amending Ordinance 96123. The Superior Court rejected all of plaintiff's contentions, stating that:

"The court does not find any error in the proceedings of the Seattle City Council which would compel the court to nullify the adoption of the urban renewal plan for the Yesler-Atlantic Neighborhood Improvement Project . . ."

The court held that the facts which the City Council is required to find under the urban renewal law prior to approval of an urban renewal plan are "legislative" rather than "adjudicative" in nature, and that the hearing is an "argument-type" hearing rather than a "trial-type" hearing of a "quasi-judicial" nature. Plaintiffs have appealed the decision to the State Supreme Court.

Green v. City.

In this case the executor of a deceased member of the Police Department claimed that the policeman's estate was entitled to a refund of 75 per cent of the contributions paid by deceased into the Police Relief and Pension Fund because RCW 41.20.150 provides that:

"Whenever any member affected by this chapter terminates his employment prior to the completion of twenty-five years of service he shall receive seventy-five percent of his contributions made after the effective date of this act and he shall not receive any contributions made prior thereto."

The City moved for summary judgment contending that the phrase "Whenever any member . . . terminates his employment . . ." did not include termination by death. The City pointed to the benefits provided for widows and children of policemen by the statute relating to the police pension system and contended that it would be inconsistent to pay substantial benefits to such persons and at the same time refund a substantial portion of the contributions made to help finance such benefits. The Court agreed, and granted the City's motion for summary judgment and dismissed the action.

State ex rel. Warner v. City.

By its Rule 2.04 the Civil Service Commission provided that "The Secretary and Chief Examiner, in addition to acting as Secretary of the Commission, shall: . . . supervise the conduct of the examinations, appointing such experts, *special examiners*, and other persons as he may deem necessary. . . ."

Plaintiffs were seven employees who at the time of the commence-

ment of this action had recently taken an examination for one of the positions in the classified civil service. Part of the examination was oral, and the oral portion was administered and graded by special examiners appointed pursuant to said rule. Plaintiffs contended that the appointment of the special examiners by the Secretary and Chief Examiner was invalid because Article XVI, § 6 of the City Charter provides in part that:

"The commission shall control all examinations, and may, whenever an examination is to take place, designate a suitable number of persons, either in or not in the official service of the city, to be examiners . . ."

The court held that the City Charter gave the power to appoint special examiners exclusively to the Civil Service Commission, and in the absence of specific Charter language, the Commission could not delegate this power to the Secretary and Chief Examiner, notwithstanding Article XVI § 4. Accordingly, the court further held that said appointment of special examiners was invalid, that the oral portion of the examination in question was therefore void, and that the appointment made on the basis of said examination was also void.

*Anderson, et al. v. City, et al., and
Brizendine, et al. v. City, et al.*

These cases involved the same issues and the City's motions for summary judgment were argued together. In *Anderson*, plaintiffs were forty-four policemen who were retired prior to the effective date of Laws of 1961, Ch. 191, §2. In *Brizendine*, plaintiffs were twelve widows of policemen who lost their lives while engaged in the performance of duty. Each of said policemen lost his life prior to the effective date of Laws of 1961, Chapter 191 § 3. It was the contention of all of the plaintiffs in the two cases that subsequent to the effective date of Laws of 1961, Chapter 191 they were entitled to the pensions provided by law at the time of retirement, or in the case of the widows, at the time their respective husbands lost their lives in the line of duty. The City contended that the provisions of Laws of 1961, Chapter 191 applied only to persons who retired or otherwise became eligible for pension benefits subsequent to the effective date of such legislation. The Court granted a summary judgment in each case in favor of the City, and these cases have been appealed to the State Supreme Court.

Holert Electric Inc. v. City.

The Plaintiff, an electrical contractor, brought this action alleging that Sections 332 - 335 of the License Code, requiring a license and

bond of all persons engaged in the business of selling at retail, installing, altering, repairing or servicing heating equipment, including devices "designed to use electricity," were invalid as applied to plaintiff and other electrical contractors licensed pursuant to RCW Chapter 19.28 on the grounds that the ordinance was in conflict with said statute and that the state had, by providing in RCW 19.28.120 that the license issued pursuant to said statute granted to the holder the right to engage in business, etc. ". . . in any and all places in the state of Washington.", preempted the field of licensing and bonding electrical contractors.

Pursuant to motions for summary judgment made by both parties, the Superior Court resolved both contentions in favor of the City, holding that Sections 332 - 335 of the License Code are a valid exercise of the City's power to license for regulation and revenue and not in conflict with RCW Chapter 19.28, and that this statute does not preempt the field of licensing and bonding electrical contractors so as to preclude the City from enforcement of the ordinance.

STAFF CHANGES

Retirements:

On June 1, 1968, Mrs. M. Josephine Kelley, Stenographer-Clerk II, retired after 22 years of dedicated service in the Law Department. Mrs. Kelley began her public service with the Light Department on June 25, 1945 and one year later, on July 1, 1946, came to work in the Law Department. For the efficient and pleasant performance of her assignment as receptionist, Mrs. Kelley earned the high personal regard of her associates in the Law Department and other City departments.

Resignations:

Assistants James G. Leach, George S. Martin and M. Wayne Blair resigned during the year — Mr. Martin and Mr. Blair to enter military service as officers in the Judge Advocate General Corps of the United States Navy and Air Force respectively, and Mr. Leach to assume the position of Administrator for the Lawyers Committee for Civil Rights Under Law, Urban Area Project.

Mr. Martin, who joined the staff in September 1967, and Mr. Blair who started in March 1968, had both recently been admitted to the Bar upon graduation from law school and joined the staff on a temporary basis pending entry into military service. Both were principally assigned to the trial of Municipal Court appeals in King County Superior Court where their personal demeanor and professional competence were a credit both to the City and this office. Mr. Leach first

joined the staff in August 1961, resigning in 1963 to enter private practice and returning in January 1965 to serve as City Prosecutor in Department No. 1 of the Municipal Court. In representing the City in the prosecution of cases before the Municipal Court, Mr. Leach combined a high degree of professional competence with courteous and efficient treatment of both witnesses and persons accused, to earn the high regard of his associates in the Law Department and Municipal Court and the respect of all those with whom he came in contact.

Appointments and Promotions:

Two additions to the staff were made in 1968: Assistant H. Joseph Coleman, formerly engaged in private practice in Seattle; and Larry B. Alexander upon his graduation from law school and admission to the Bar.

Following Mr. Leach's resignation, Assistant Jack B. Regan was assigned as City Prosecutor in Department No. 1 of the Municipal Court.

The City of Seattle--Legislative Department

MR. PRESIDENT:

Your Committee on
to which was referred the within

JUDICIARY AND PERSONNEL

Date Reported
and Adopted

APR 21 1969

Annual Report of City of Seattle Law Department for 1968,

RECOMMENDS THAT THE SAME BE PLACED ON FILE.

Chairman

J & P
Chairman