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CITY OF SEATTLE LAW DEPARTMENT

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1971 ANNUAL REPORT



SEATTLE CITY COUNCIL
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A.L. NEWBOULD, CORPORATION COUNSEL

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The City of Seattle-Legislative Department

MR. PRESIDENT:

Your Committee on HUMAN RESOURCES AND JUDICIARY
to which was referred Comptroller's File 272477
City of Seattle Law Department 1971 Annual Report,

Date Reported
and Adopted
MAY 8 1972

RECOMMENDS THAT THE SAME BE HELD FOR TWO WEEKS AND PLACED ON FILE.

..... Chairman

HR & J
..... Chairman

A handwritten signature in dark ink, appearing to be "Samuel Williams".

CITY OF SEATTLE
LAW DEPARTMENT
ANNUAL REPORT

1971

A. L. NEWBOULD, *Corporation Counsel*
JOHN P. HARRIS, *Chief Assistant Corporation Counsel*

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*Cover Art: by Mr. Samuel McJunkin and
Mr. Tony E. Koski of the Lighting Department.*

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, 1971, as required by Section 12, Article XXII of the City Charter.

The City's vehicle fleet insurance coverage was not continued in 1971 due to a large proposed premium increase and the Law Department undertook the defense of the City and its employees on claims arising out of the operation of the vehicle fleet. Vehicle fleet claim payments made in 1971 and estimated liability on 1971 claims which are still pending indicate that this self-insurance program has resulted in substantial savings to the City.

Beginning last June this office, in conjunction with the University of Washington Law School, undertook the sponsorship of a "legal intern" program for minority law students. The primary purpose of this program is to assist minority law students during their law school career by providing professional motivation and orientation as well as financial support during this critical phase of their legal training. This program has been an outstanding success and it is my hope that it will be continued indefinitely, with two new candidates for the intern positions to be selected each June.

The Monorail crash at Seattle Center on July 25, 1971 brought into focus a concern for the financial circumstances of wage earner claimants who are disabled by reason of negligent conduct of the City's employees for which the City is clearly liable. The time required for the settlement of such claims, or the litigation sometimes required to determine the amount of the City's liability, often forces the claimant into dire financial circumstances. In my view the City has a social as distinguished from a legal responsibility to alleviate such hardship and I accordingly proposed legislation which would authorize payment of interim financial assistance in appropriate cases, to be credited against the final settlement made or judgment entered against the City. I wish to express my appreciation to the City Council for acceptance of my recommendation and prompt enactment of said proposed legislation as Ordinance 100501. This ordinance will provide the Law Department with an additional tool in handling its responsibility for claims.

Another effort to improve and expedite claims processing procedures was my request for a Charter amendment which will provide for the payment of claims of \$2500 or less without the necessity of an ordinance authorizing each such payment, and which will allow the payment of all other claims immediately upon passage and approval of the authorizing ordinance. This proposed amendment will be placed on the fall 1972 ballot and it is hoped that it will be approved by the electorate.

The City's need for legal services has steadily increased over the past several years. The only increase in the legal staff in 1971 was the addition of an assistant to handle the increased trial load resulting from vehicle fleet claims but it is anticipated that an addition to the staff will also be required to help meet the increased demand for advisory and drafting services.

On July 30, 1971 the City Council voted 7 to 0 against a recommendation by the Seattle Charter Review Committee that Article XIII of the City Charter relating to the Law Department be deleted and that the office of Corporation Counsel be changed from an elective to an appointive position.

Another step was taken toward promulgation of a modern criminal code on November 10, 1971 when the Seattle King County Bar Association submitted to the Mayor and City Council a proposed revised Seattle Criminal Code prepared by the Bar's Municipal Criminal Code Revision Project. It is hoped that this important project will now be carried forward to completion.

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 1971.

	Pending Dec. 31 1970	Commenced during year 1971	Ended during (1961)year 1971	Pending Dec. 31 (1961) 1971
Condemnation suits	13	9 (13)	8 (17)	14
Damages for personal injuries	115	132 (69)	96 (71)	151
Damages for other than personal injuries	36	28 (30)	34 (35)	30
Injunction suits	23	25 (6)	15 (3)	33
Mandamus proceedings	8	12 (3)	9 (1)	11
Habeas Corpus	4	38 (1)	38 (1)	4
Certiorari Writs	5	3 (-)	1 (-)	7
Miscellaneous proceedings	<u>118</u>	<u>139</u> (<u>17</u>)	<u>74</u> (<u>21</u>)	<u>183</u>
Sub-total	322	386 (139)	275 (149)	433
Appeals from Municipal and Traffic Courts	<u>430</u>	<u>970</u> (<u>420</u>)	<u>699</u> (<u>456</u>)	<u>701</u>
Grand Total	752	1,356 (559)	974 (605)	1,134

2. Segregation - Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1970	115	\$10,237,118.42
Commenced since January 1, 1971	<u>132</u>	<u>12,353,586.56</u>
Total	247	\$22,590,704.98
Tried and concluded since January 1, 1971	96	6,490,204.02
Actions pending December 31, 1971	151	\$16,100,500.96*

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

Of the 96 personal injury actions concluded in 1971, 10 involving \$1,055,566.15 were won outright. In 8 cases in which \$1,668,125.00 was claimed, plaintiffs recovered \$38,850.00. Of the remaining 78 cases in which plaintiffs claimed \$3,766,512.87, 26 involving \$1,705,275.38 were covered by insurance and the other 52 cases, involving \$2,061,237.49 were settled or dismissed without trial for a total of \$97,441.61.

3. Segregation - Damages Other Than Personal Injuries:

	Number	Amount Involved
Pending December 31, 1970	36	\$1,438,832.79
Commenced since January 1, 1971	<u>28</u>	<u>223,751.62</u>
Total	64	\$1,662,584.41
Tried and concluded since January 1, 1971	34	206,160.51
Pending December 31, 1971	30	\$1,456,423.90

Of the thirty-four cases involving damages other than personal injuries concluded in 1971, six involving \$28,945.47 were won outright. In nine cases involving \$50,681.95 plaintiffs recovered \$27,158.77. The remaining nineteen cases involving \$126,533.09 were settled or dismissed without trial for a total of \$16,046.30.

The above actions concluded in 1971 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	36	\$59,618.60
Engineering Department—		
Sidewalk	15	12,995.00
Street	9	10,250.00
Miscellaneous—(1 case covered by insurance) ...	15	34,570.83
Park Department—(1 case covered by insurance) ...	4	0
Light Department—(1 case covered by insurance) ...	7	20,438.95
Fire Department—(2 cases covered by insurance) ...	3	0
Police Department—(18 insurance cases)	22	5,850.00
Sewerage Utility—(2 cases covered by insurance) ...	8	0
Seattle Center	1	3,000.00
Building Department—(1 case covered by insurance) .	2	17,500.00
Water Department	8	15,273.30

4. Appeals and Extraordinary Writs:

At the close of 1970, six appeals involving the City were pending in the State Supreme Court, and sixteen in the State Court of Appeals.

In 1971, eight new appeals were filed in the State Supreme Court, thirty-three appeals were filed in the Court of Appeals, and three in the United States Court of Appeals. One appeal was transferred from the State Supreme Court to the Court of Appeals, and the Supreme Court accepted referral of four cases from the Court of Appeals and denied review in one case in which the City had prevailed in the Court of Appeals. The City prevailed in one of the five cases involving the City in which the State Supreme Court rendered a decision in 1971 and in four of the six cases in which the State Court of Appeals rendered a decision in 1971. In addition appeals in twenty-two cases before the State Court of Appeals and one case before the Supreme Court in which the City had prevailed in lower court were dismissed by agreement of the parties or for want of prosecution.

On December 31, 1971, eleven appeals were pending in the State Supreme Court, seventeen in the State Court of Appeals, and three in the United States Court of Appeals.

5. Miscellaneous Cases:

Seventy-four miscellaneous cases were completed in the King County Superior Court during 1971, of which the City lost three and won or otherwise disposed of seventy-one; one hundred eighty-three cases are still pending.

In addition, fifteen injunctive actions were tried, of which the City won fourteen and lost one; thirty-three injunctive actions are pending. Nine mandamus actions were tried, eight were won by the City and one was lost; eleven are pending. One writ of certiorari was completed and won during 1971; seven others are pending. Thirty-eight habeas corpus writs were processed; four are pending.

6. Antitrust Damage Actions:

Three cases alleging damages to the City from violations of federal antitrust laws were pending at year's end, involving water meters, liquid asphalt and automobiles. In addition, the City has filed claims in class actions involving antibiotic drugs and accredited central station protection services, and has been invited to file a claim in a class action filed by the Attorney General of Washington involving cast iron pipe and fittings.

II.

CLAIMS IN 1971

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 1971:

	Number (1961)	Amount Involved (1961)
On file January 1, 1971 ...	1,738 (1284)	\$24,886,393.92 (\$3,557,725.37)
Referred for investigation	1,606 (964)	60,845,711.03 (5,557,124.72)
Closed without payment ..	444 (614)	4,160,762.41 (3,722,408.19)
Claims paid	666 (571)	(Asked) 403,853.99 (3,226,740.82)
		(Paid) 155,204.59 (390,911.91)
On file December 31, 1971	2,066	\$69,025,802.11

Payment of \$155,204.59 in settlement of 666 claims involving the various departments of the City was effectuated by 97 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:

DEPARTMENT (Fund)	Number	Amount Involved
Seattle Transit System*	191	\$ 49,824.21
Building	1	13.65
Engineering:		
Sewerage Utility	91	22,273.71
Storm Sewer	14	2,696.43
Sidewalk	19	7,077.20
Construction	11	11,667.29
Sanitary Sewer	2	4,957.00
Street	23	3,139.77
Traffic	2	173.49
Fire Department	2	78.00
General Services	1	35.70
Library	1	18.55
Lighting Department	120	16,193.49
Water Department	22	6,655.49
Emergency Fund (Other Departments)		
Police Department	28	1,620.55
Seattle Center	8	3,431.96
Parks and Recreation Department	12	3,060.01
Vehicle Fleet (All Departments)**	118	22,288.09
Total	666	\$155,204.59

*The functions of the Seattle Transit Commission were transferred to the Department of Transportation in August, 1971. The cost of claims and suits was reported to be 1.32% of the gross revenue for the year.

**The City undertook self-insurance of its vehicle fleet of approximately 3,628 vehicles on January 1, 1971. 777 accidents were evaluated and 209 claims were filed. The estimate of ultimate claims cost for the first year of operation is \$57,583.09.

On July 25, 1971 a monorail passenger train collided at the Seattle Center terminal. As a result of the many injuries, twenty-three claims involving \$1,621,011.20 and six claims for unspecified amounts were filed.

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

In addition, forty 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 1971 OPINIONS BY NUMBER

- 5470 Garfield and Jefferson Neighborhood Code Enforcement Project not an urban renewal project.
- 5471 Payment of "excess" benefits under the Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act. (RCW 41.26.040(2)).
- 5472 Application of "transit tax" imposed by Ordinance 98776 as to certain "persons" and "business activities."
- 5473 Contract between City and police officer for performance of other occupation in violation of Article VI, Sections 5, 6 of City Charter.
- 5474 Fifteen mile limit on Transit System's operations in unserved areas outside City.
- 5475 City may not permit "drag racing" on streets.
- 5476 City may contract with other public agencies to provide contract compliance services.
- 5477 City may provide for sale or destruction of abandoned floating objects.
- 5478 Proceeds of fire protection facilities general obligation bonds may be used for construction of fire apparatus maintenance shop in new structure and existing building at Charles Street service center maintenance shop.
- 5479 Whether permit required for T.V. on licensed premises.
- 5480 1960 Street Improvement excess levy bond proceeds, including remainder from completed projects, may be expended for the "Mercer Connection" portion of the Bay Freeway.
- 5481 City Council without authority to suspend valid rule of Civil Service Commission.
- 5482 "Filing" notice of appeal with Citizens Housing Board under Section 27.32.050 of Housing Code.
- 5483 Vacation ordinance not applicable to officers elected or appointed to a term of office.
- 5484 Interpretation of Zoning Ordinance is duty of Superintendent of Buildings and not subject to administrative review.
- 5485 Exemption of position of Secretary of Board of Public Works from classified Civil Service in accordance with Charter Article XVI, Section 11.
- 5486 One-day air show at Sand Point Naval Air Station would not prevent rezoning thereof by City.
- 5487 Scope of regulations for transfers between budget allowances under RCW 35.32A.050.
- 5488 Proposal to extend sick leave benefits to officers and employees not in classified civil service - Grant of initial accumulation based on "prior service."
- 5489 Chairman of Board of Public Works may sign first sheet of plans bound together.
- 5490 Loan of Library materials for a fee could be deemed a "loan for monetary consideration" under Ordinance 97201.

- 5491 Charter and License Code provisions relating to the issuance of licenses.
- 5492 RCW 41.20.090 provides a one-half salary widow's pension only when police officer killed in line of duty held salaried position in Police Department at time of death.
- 5493 Suggestion Awards to employees of other cities not authorized by Ordinance 86927.
- 5494 Applicability of City's business tax to The Humane Society, Inc.
- 5495 Councilman abstaining from voting on matter involving possible "conflict of interest."
- 5496 FICA Assessments on certain City employees.
- 5497 Police officer ordered to active training duty entitled to fifteen days of military leave of absence with pay under RCW 38.40.060 and to further military leave without pay under Ordinance 69816.
- 5498 Vacation ordinance may under certain circumstances be amended to permit disabled firemen to carry over unused vacation in excess of the limitation applicable to other City employees.
- 5499 Use of Neighborhood Improvement and Sewer Improvement Bond proceeds.
- 5500 Woodland Park off-street parking.
- 5501 Sick leave benefits available to Transit employees transferring to proposed new Department of Transportation.
- 5502 Two percent annual increase under RCW 41.26.250 of patrolman retired twice for disability should be computed from date of second retirement.
- 5503 City Planning Commission may include public officials in its membership.
- 5504 Confidentiality of Health Department medical records information.
- 5505 Application of "escalator" pension provisions to pensions based on Police Department civilian positions.
- 5506 Control of campaign contributions and expenditures by ordinance supplementary to Charter Article XVIII §§ 4, 5.
- 5507 Proposed sale of Lighting Department "Tukwila Receiving Substation Site."
- 5508 Proposed modifications of 1960 Arterial Bond Issue program; Highway improvements – Public Transit improvements.
- 5509 Limitation of campaign expenditures.
- 5510 Application for permit to fill Square Lake.
- 5511 Interim Report by Citizens Solid Waste Committee.
- 5512 Third Year Action Plan – Seattle Model City Program.
- 5513 Employee entitled to maintain Death Benefit System membership after qualifying for retirement.
- 5514 Statutory requirement that a declaration of candidacy be timely filed is mandatory.
- 5515 Application of "Open Meeting Law" (Chapter 250, Laws of 1971 Extraordinary Session).

- 5516 Right to jury trial in Municipal Court under RCW 35.20.090 applicable to "minor traffic violations."
- 5517 City may allow for declaration of intent to conduct bingo, etc. under Ch. 280, Laws of 1971.
- 5518 Salmon Bay plat – proper location of street monumentation.
- 5519 Board of Public Works may under certain circumstances consider bid not "accompanied by" bid bond.
- 5520 Application of "Open Meeting Law" (Chapter 250, Laws of 1971 Extraordinary Session) to labor negotiations, budget deliberations, and Legislative Committee meetings.
- 5521 Appeal of Scottish Rite Temple from Board of Adjustment.
- 5522 Wage rates in public works contracts.
- 5523 Inconsistency between Sections 267 and 268 of License Code should be resolved by appropriate amendment.
- 5524 Corrective non-disabling dental work not covered by LEFF Retirement System Act.
- 5525 Westlake Mall.
- 5526 Eligibility of person less than age twenty-one to receive license under RCW Chapter 9.41 to carry concealed pistol.
- 5527 Effect of Shoreline Management Act on pending building permits.
- 5528 Firemen hired under Emergency Employment Act should be included in LEFF Retirement System.
- 5529 Liability of City for Industrial Insurance premiums in connection with Timber Sale Contracts.
- 5530 Imposition of costs in Municipal Court.
- 5531 Police disability leave and disability retirement administrative procedures.
- 5532 Zone extension privilege of Sec. 4.13(d) of Zoning Ordinance.
- 5533 Effect of agreement for and payment of deferred compensation as to applicable rates of pay in computing retirement and other benefits.
- 5534 City officers and employees engaging in political activities.
- 5535 City may not authorize unlawful activity.
- 5536 Authority of City to impose "payroll tax."
- 5537 Statute of limitations not applicable to collection of utility license taxes under Ordinance 62662.
- 5538 Special fund for payment of firemen's disability leave allowances under RCW 41.26.120.
- 5539 Regulation of advertised price of gasoline.
- 5540 Police pensions – no credit for prior cadet service as to police officers appointed after March 1, 1970.
- 5541 Amendment of Business Tax Ordinance (Ord. 72630) to impose "general regulations" and provide for revocation of business license.
- 5542 B & O tax allocation for transit subsidy properly budgeted.
- 5543 Membership of Fair Campaign Practices Commission and Board of Ethics the same.
- 5544 Establishing of minimum qualifications for police officer candidates.

- 5545 Civil Service Commission without authority to limit open, competitive examination to a specified number of applicants on a "first come, first serve" basis.
- 5546 Civil Service Commission not obligated by its Rule 5.20 to remove from eligible register name of fireman applicant who failed physical examination administered by Firemen's Pension Board physician.
- 5547 Liability of the City in event of injury to law enforcement officer or fire fighter not meeting minimum medical and health standards established pursuant to Laws of 1971, extraordinary session, Chapter 257, §§ 1-5.
- 5548 Intergovernmental Transfers of real property.
- 5549 Replacement of Dentures included in statutory definition of "Medical Services" (RCW 41.26.030).

IV.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

During the year 1971, this department prepared 639 ordinances and 78 resolutions; and an additional 97 ordinances were prepared for the settlement of 666 claims.

Advisory assistance was provided to the Civil Service Commission as requested with regard to 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.

173 writs of garnishment against City employees were served upon the City. Of these garnishments 28 were released before any action was required on the part of the City and 21 were released after being answered. A total of 145 first answers were filed on these garnishments and 78 additional answers to 30-day continuing lien garnishments were filed.

1111 surety bonds, deeds and other miscellaneous instruments totaling in excess of \$35 million were examined and approved.

Legal papers served and filed during 1971, including condemnation suits, summons and petitions, answers, judgments, notices of appearance and subpoenas, totaling 2655 in all, were handled by the Process Server.

V.

PROSECUTION OF CRIMINAL ACTIONS

1. Municipal Court – Department No. 1

During the year 1971 Assistant Jack B. Regan handled a calendar of

15,776 cases in Department No. 1 of the Municipal Court, resulting in the imposition and collection of fines and forfeitures in the amount of \$107,136.00.

2. Municipal Court – Department No. 2

Assistant Robert M. Elias handled a docket of 15,906 cases for the year 1971 resulting in fines and forfeitures amounting to \$535,544.00

3. Municipal Court – Department No. 3

Assistant Robert B. Johnson handled a docket of 16,628 cases for the year 1971 resulting in fines and forfeitures amounting to \$532,455.00.

Traffic Violations Bureau forfeitures for the year amounted to \$2,860,495.00.

4. Municipal Court Appeals

Appeals from 699 convictions in the Municipal Court (459 Traffic, 240 Police) were disposed of in King County Superior Court in 1971, as follows: 137 appeals (62 Traffic, 75 Police) were abandoned by the defendants and remanded to the Municipal Courts for enforcement of the original fines and sentences. In 322 cases (246 Traffic, 76 Police) convictions on pleas of guilty were entered. In 131 cases (97 Traffic, 34 Police) the court or jury found the defendants guilty after trial. In 59 cases (32 Traffic, 27 Police) the defendants were acquitted. In 50 cases (24 Traffic, 26 Police) all charges were dismissed for insufficiency of evidence, witnesses moving away, or other causes. A total of \$36,565.00 in fines and forfeitures and Superior Court costs in the amount of \$1,025.60 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.

STATE SUPREME COURT CASES – 1971

Diamond Parking, Inc. v. City of Seattle, 78 Wn.2d 778.

In October 1966, Diamond Parking, Inc., United Parking, Inc. and City Parking, Inc. merged, with Diamond Parking, Inc. becoming the surviving corporation. Prior to the merger each of such corporations held public garage licenses issued pursuant to Ordinance 48022.

Subsequent to the merger the City claimed that Diamond Parking, Inc. was obligated to obtain new licenses for the remainder of the license year for locations which had been operated prior to the merger by United Parking, Inc. and City Parking, Inc., since Ordinance 48022 provided that licenses issued under its provisions are not transferable or assignable. Diamond Parking, Inc. successfully contended in the trial court that such provision of Ordinance 48022 conflicted with RCW 23.01.500, which provided that upon such a merger the surviving corporation possesses "all the rights, privileges and franchises possessed by each of the former corporations so merged." The Washington Supreme Court upheld the trial court's decision.

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

Seattle v. Alexander, 79 Wn.2d 4

The defendant in this case, a truck driver employed by Goodwill Industries to pick up donated articles and merchandise, stole a pair of binoculars owned by Goodwill and was charged with violation of Section 1, Ordinance 16046, which prohibits disorderly conduct. The Superior Court rejected defendant's contention that the ordinance does not cover the offense of larceny, and upheld his Municipal Court conviction, adhering to the decision in *Seattle v. Franklin*, 191 Wash. 297 (1937) which sustained a prosecution under said ordinance for shoplifting. On appeal the Supreme Court rejected the rationale of the Franklin case and held that:

"Petit larceny by embezzlement or otherwise, committed by stealth and surreptitiously and with no attendant hue and cry or public disturbance generated by conspicuous flight to avoid detection or arrest, or unaccompanied by physical violence to the person of another trying to effect detention, arrest or recovery, is not an offense defined or included in the general disorderly conduct ordinance, No. 16046 of the City of Seattle, Seattle Code 12.11.020."

On May 17, 1971 the City Council enacted Ordinance 99927 making it unlawful to wrongfully obtain the property of another.

This case was tried by former Assistant Christopher M. Egan and argued on appeal by Assistant Lawrence K. McDonell.

In Re Seattle, 79 Wn.2d 490

After a two-and one-half week condemnation trial in Spring, 1970, resulting in a verdict which was rejected by the City pursuant to RCW 8.12.530, respondents moved for an award of attorney and expert witness fees and costs in the amount of \$443,973.38 under RCW Ch. 8.25. The trial court granted respondents' motion and entered a supplemental judgment awarding the same to respondents.

On appeal, the Supreme Court affirmed the trial court decision and permitted the award of fees in the amount set out above. In its

decision, the Court held that fee awards based upon a percentage by which a verdict exceeds the condemning authority's offer may constitute a "reasonable" fee, that the fee in the instant case was not unreasonable and that RCW Ch. 8.25 contemplated making condemnees whole or nearly whole.

In the First Extraordinary Session of the 1971 Legislature, RCW 8.25.070 was amended to limit the fees which must be paid by condemning authorities in appropriate situations to the minimum standard hourly rate allowed by the Bar Association in the County in which the trial is held. Ch. 39, § 3, Laws of 1971, 1st Ex. Sess.

This case was tried and argued by Assistants G. Grant Wilcox and Donald H. Stout.

Hsieh v. Civil Service Commission, 79 Wn.2d 529

In this case a number of aliens who had been temporarily employed by the City as engineers challenged the validity of the Seattle Charter requirement that all applicants for admission to the classified civil service of the City be citizens of the United States. The Superior Court upheld the validity of this Charter provision but on appeal the State Supreme Court reversed, holding that "the citizenship restrictions . . . as applied in areas of general public employment, are invalid obstructions to the execution of the comprehensive federal scheme for immigration and naturalization" and therefore that the plaintiffs were entitled to take the civil service examination.

This case was tried and argued by Assistants John P. Harris and James M. Taylor.

City v. Jones, 79 Wn.2d 626

This was an appeal from a decision of the Court of Appeals upholding the constitutionality of the City's "prostitute-loitering" ordinance enacted in 1969 to combat an increasing incidence of "streetwalking." Appellant contended the ordinance 1) was vague, 2) did not require proof of unlawful intent, 3) created an invalid presumption of guilt, 4) shifted the burden of proof, 5) violated the protection against self-incrimination and, 6) denied equal protection of the law to a specific class of persons. The Supreme Court rejected each contention, sustained the constitutionality of the ordinance and affirmed appellant's conviction thereunder.

This case was tried and argued by Assistants J. Roger Nowell and Philip M. King.

STATE COURT OF APPEALS - 1971

Alfred K. Fridell, et al. v. Seattle Civil Service Commission, et al., 4 Wn.App.227

Appellants were sergeants in the Seattle Police Department in April

1969 when two new positions of Lieutenant were created in said department. They had taken and passed for later eligibility the civil service examination for Lieutenant, but were not yet eligible for appointment to the rank of Lieutenant because they had not completed two years of service as sergeant. The Chief of Police requested that the secretary of the Civil Service Commission waive the two-year requirement and the secretary granted such waiver. Appellants were then appointed as Lieutenants in the Police Department, and the only other Sergeant eligible for appointment to Lieutenant timely appealed to the Commission the action of its secretary in granting such waivers. After holding hearings the Civil Service Commission reversed its secretary and ordered the appointments rescinded. The Commission's action was upheld by the trial court. Appellants contended 1) that once they were appointed by the Chief of Police their appointments were complete and could not be set aside by the Commission, 2) that the Commission was estopped by the action of its secretary from vacating the appointments, and 3) that in reversing its secretary the Civil Service Commission acted in an arbitrary and capricious manner. All three contentions were rejected by the Court of Appeals. The court reasoned that the appointments had not become fully completed because of the appeal procedure contained in the Commission's rule. The court also found that estoppel did not apply because the secretary had no power to grant irreversible waivers, and that there was no evidence that the Civil Service Commission acted in an arbitrary and capricious manner.

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

Asia v. City of Seattle, 4 Wn.App. 530

Plaintiffs, owners of property located directly above the southerly tunnel leading from downtown Seattle to the Lacy V. Murrow Floating Bridge over Lake Washington, sued to prevent the City from terminating a nonconforming advertising sign on the property which was highly visible from the roadway leading to the tunnel. Plaintiffs contended that enforcement of the City's zoning ordinance to terminate the use completely eliminated the parcel's economic value.

The City established that the land on which the sign was located was part of a larger parcel which was occupied by two apartments and four stores, and the Court of Appeals concluded, as did the trial court, that the effect of enforcement was to reduce, but not eliminate, the value of the total parcel. The court concluded that the loss of value to the property owner was outweighed by the public benefit obtained by enforcing the ordinance.

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

City v. Appleget, 5 Wn.App. 202

This case arose out of the riot at the United States Courthouse on February 17, 1970. The defendant was charged with disturbing the

peace as a result of shouting an obscene remark toward Seattle Police Officers who were attempting to quell the riot. The principal issue was whether or not the defendant's actions came within the protection of the first amendment to the United States Constitution. The Court of Appeals affirmed defendant's conviction, held that the "circumstances under which speech is uttered controls the constitutional protections afforded it," and set forth the following statement of the U.S. Supreme Court:

"When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious."

This case was tried and argued by Assistant Philip M. King.

Eddy v. Chief of Police, 5 Wn.App. 334

Plaintiff in this action sought a writ of mandamus in Superior Court directing the Seattle Police Department to return all photographs and fingerprints it had of plaintiff in its official files as a result of an arrest some years earlier. Plaintiff showed that she had subsequently been tried and acquitted of the charge on which she had been arrested and she contended that the retention of her identification records violated her constitutional right of privacy. The Superior Court denied the relief sought, but the Court of Appeals reversed said decision and ordered the records returned. The appellate court held that absent a "compelling showing" by the police department as to why the records should be retained, following plaintiff's acquittal of the charge against her the department had a duty to return the records upon request. The State Supreme Court denied a petition to review such decision and the Supreme Court of the United States refused to grant a stay of proceedings to allow the City to file a petition for certiorari.

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

City v. Arensmeyer, 6 Wn.App. 116

On February 17, 1970 the defendant, who worked for the City as a surveyor, was traveling in a truck with a surveying crew and asked to be let out as the truck approached the Federal Courthouse in downtown Seattle where a demonstration was then taking place.

A police officer testified that the defendant faced the officer and chanted "Get the pig, get the pig." The officer ordered defendant to move, and defendant then jumped at the officer, grabbed his baton and swung at his face. Defendant was subdued and arrested for hindering a police officer and was convicted after a trial in Superior Court. On appeal, defendant contended that the trial court had committed error by commenting upon the evidence.

The Court of Appeals held that the trial court did comment on the evidence when he interrupted the attorney for defendant who was

arguing to the jury that the police witnesses were young and inexperienced, not even "rookie cops." The trial court indicated that that was not the testimony and that the record indicated how long each had been on the force. The Court of Appeals held that the attorney was making an inference which could be drawn from the evidence. A new trial was ordered.

This case was tried and argued by Assistant Myron Cornelius.

State ex rel. Morrison, et al. v. City (Safeway Stores, Inc., Intervenor), 6 Wn.App. 181

The City here had granted conditional use permits and related variances to allow the use of residentially-zoned property as an accessory off-street parking lot for a supermarket to be constructed in the Broadway area of Seattle.

Plaintiffs contended that the City Council was prohibited by the City Charter from hearing appeals from decisions of the Board of Adjustment. The Court of Appeals held, however, that the Charter did not preclude the City Council from exercising such administrative authority. The court also held that such permits could be authorized on appeal by resolution rather than by ordinance, that a hearing by a committee of the City Council was a Council hearing, that written findings of fact to support the decision were not required by the Zoning Ordinance, and that the City Council was not bound by the findings of the Board of Adjustment. The Court of Appeals also concluded that the decision of the City Council was not arbitrary and capricious, and that a delay of 50 days between the granting of the permits and the commencement of the action would have justified denial of the writ of certiorari.

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

NOTEWORTHY SUPERIOR COURT PROCEEDINGS – 1971

Moen et al. v. Erlandson et al., No. 742364

This case involved a significant issue of constitutional law regarding the constitutionality of residency requirements for voting. The plaintiffs had attempted to register to vote with the City Comptroller, but were not permitted to do so because they had not resided for one year in the state immediately preceding the election at which they sought to vote, as required by Article VI, Section 1 of the Washington State Constitution. They then brought this action, contending that the one year residency requirement of the State Constitution violated several provisions of the United States Constitution including the equal protection clause of the Fourteenth Amendment thereof. The trial court found that plaintiffs had been denied equal protection because of such state constitutional provision, and declared it to be invalid. Defendants then petitioned for a writ of certiorari to obtain early

review by the Washington Supreme Court. The Chief Justice of the Washington Supreme Court granted such writ and stayed the effect of the trial court's decision except as to the six plaintiffs. Arguments were heard pursuant to the writ of certiorari on January 10, 1972.

Lake Union Association, Inc. et al., v. City, No. 729721

This action was commenced by property owners on Lake Union and Portage Bay against whom the City had commenced Municipal Court prosecutions under the Harbor Code (Ordinance 87983) for occupying or obstructing certain submerged streets and waterways. Plaintiffs contended for various reasons that such prosecutions were unauthorized. The Superior Court held, after trial, that:

- (1)The waterways platted in Lake Union were validly and legally established.
- (2)The City of Seattle is authorized to adopt and enforce police regulations relating to the use of waterways in Lake Union, and statutes authorizing adoption of similar regulations by the Port of Seattle and the State Department of Natural Resources do not preempt the City's authority, at least in the absence of the adoption of such regulations.
- (3)Waterways in Lake Union are "fairway" under the Harbor Code, and can be occupied by vessels, watercraft and other obstructions only under permit.
- (4)The Harbor Code establishes sufficient guidelines for The Chief of Police in determining when and under what conditions the use of waterways in Lake Union should be permitted.
- (5)The waterways of Lake Union are public ways for watercraft established for the convenience of commerce and navigation and are subject to the control of the City consistent with such purposes.

The court also declared specifically that plaintiffs were not to occupy waterways in Lake Union without complying with the Harbor Code. The cases in Municipal Court were then resumed.

Steinbrueck v. City, No. 741015

This was an action to compel the City to place an initiative proposition on the ballot of a primary election. A petition for an ordinance creating a Pike Place Market Historical District was filed with the City, supported by sufficient signatures, and the City Council voted to reject the petition. The City Charter provides that in such case the petition shall be "submitted to the qualified electors for approval or rejection at the next regular election . . .," and plaintiff contended that the September primary election was such an election. The City pointed out that as defined in RCW 29.01.050 and 29.01.130 a primary election was not an "election" at all, and that the proposition should be submitted to the voters at the November election.

The Superior Court held that the relief prayed for could not be

granted because, regardless of the question whether the proposition belonged on the primary or final ballot, the matter would not reach the county election official within the time required for submission at the primary election, and that he could not be required to place the proposition on the primary ballot in any event because he was not a party to the action. The proposition was submitted to and adopted by the voters at the November election.

Bagdade v. City, No. 743936

Plaintiff, a taxpayer, sought to enjoin the City and several of its officials from expending any money or making any public appearances, statements or comments advocating defeat of the Pike Place Market Historical District initiative, referred to in the previous case of *Steinbrueck v. City*. The City contended that it had a duty under RCW 35.81.070(1) to provide information to the public concerning a pending urban renewal project, that in any event the expenditures had already been made and that plaintiff had no standing to commence the action.

The Superior Court denied plaintiff's request for a temporary injunction and the Chief Justice of the Supreme Court denied plaintiff's petition for certiorari. Subsequent to the election the case was dismissed.

Broadway Neighborhood Council v. Safeway Stores, Inc., et al.,
No. 739210

In this case, plaintiffs contended that the City's Superintendent of Buildings in issuing a building permit for a supermarket building in the Broadway area failed to require off-street parking spaces in the number required by the Zoning Ordinance, and also failed to require that the building be set back 10 feet from the street and screened on the side opposite a residential zone. The City had classified the portion of the store open to the public as "food market," and the areas devoted to meat processing, bakery, storage, lunch room, restrooms and machinery space as "manufacturing," and added the off-street parking requirements for each use together. The City also allows a property developer on a through lot to determine for himself which street is the "principal frontage of the building or premises," which is exempt from set-back and screening requirements when opposite a residential zone.

The trial court held that under the language of the Zoning Ordinance, the entire area of the supermarket was to be classified as "food market" for computing the number of off-street parking requirements thereby increasing the required number of spaces, and disallowed the developer's selection of principal frontage. The court concluded that a writ of mandamus should issue requiring the City to revoke the building permits, unless the plans were promptly revised in accordance with law. Entry of judgment was stayed, however, to give

Safeway Stores, Inc. an opportunity to make appropriate revisions in its plans or to seek appropriate administrative or legislative relief which would entitle it to proceed in accordance with law, and Safeway was enjoined from doing any construction work pending further order of the court.

Seattle Invitational Indoor Track Meet v. City, No. 743920

In this action the plaintiff sought to compel the City to enter into a lease for the use of the Coliseum at the Seattle Center for the Seattle Invitational Track Meet on February 5, 1972. The City had declined to lease the Coliseum to plaintiff on that date for the reason that the 1972 Boat Show had been previously scheduled for the use of the Coliseum from January 26, 1972 through February 9, 1972 and none of the other dates which the City had offered to plaintiff had been acceptable.

The City asserted its position that it is vested with authority to lease the Coliseum to various tenants for such uses and purposes and upon such terms and conditions as it deems appropriate and that its determinations in such regard may be set aside by the courts only where there is a palpable abuse of discretion. This position was upheld by the court after a hearing on plaintiff's motion for an injunction. The plaintiff's action was dismissed without prejudice to the bringing of an action for damages on an "oral implied contract" alleged by plaintiff but denied by the City.

STAFF CHANGES

Retirements:

Mrs. Faye M. Forde, Law Secretary, retired on March 31, 1971. Mrs. Forde began employment with the City as a secretary for the City Council on January 1, 1943, and joined the Law Department on September 16, 1944. She served as the secretary for Mr. Newbould as well as his predecessor in the office of Corporation Counsel, Mr. A. C. Van Soelen, and in addition handled many of the ongoing details of departmental administration. Mrs. Forde was invariably prompt, efficient and cheerful in the performance of her duties and made a significant, continuing contribution throughout her career to the successful operation of the Law Department.

Appointments and Promotions:

There were six additions to the staff in 1971:

Mr. Seaton M. Daly, Jr. was appointed Assistant Corporation Counsel upon his recent graduation from law school and admission to the bar; Mr. Curtis E. Jacobs was appointed Claim Adjuster I; Mr. Ronald E. Cox and Mr. Wilbert E. Maez, University of Washington Law Students, were appointed to one year terms as Legal Interns.

Mrs. Irene Walling was appointed Administrative Legal Secretary; Mrs. Shirley A. Geiger was appointed Secretary; Mrs. Virginia M. Fields was appointed Senior Secretary, and Mrs. Patricia Harrigan was promoted to Legal Secretary.