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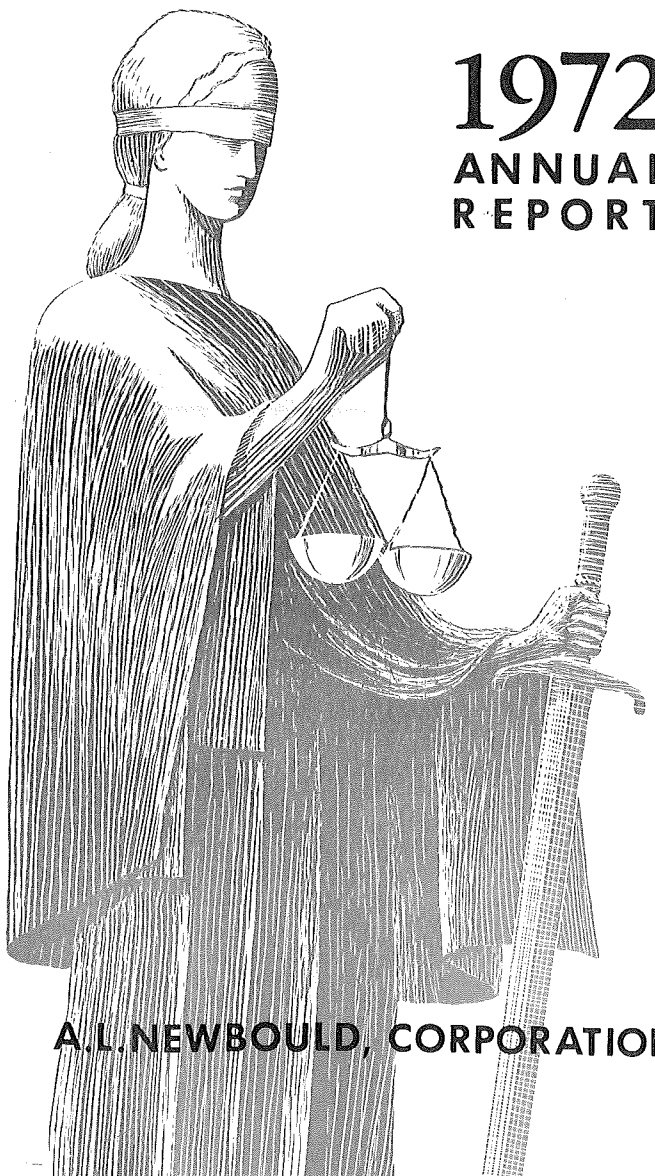
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CITY OF SEATTLE LAW DEPARTMENT

HUMAN RESOURCES & JUD.

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FILE

1972 ANNUAL REPORT



A.L. NEWBOULD, CORPORATION COUNSEL

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CSS 20.14

The City of Seattle--Legislative Department

MR. PRESIDENT:

Your Committee on
to which was referred the within report,

HUMAN RESOURCES & JUDICIARY

APR 16 1973

Date Reported
and Adopted

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

THE SAME BE PLACED ON FILE.

Chairman

HR&J
Chairman

CITY OF SEATTLE

LAW DEPARTMENT

ANNUAL REPORT

1972

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

ASSISTANTS CORPORATION COUNSEL

G. GRANT WILCOX	ROBERT M. ELIAS
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LEGAL INTERNS

FREDDIE BONNER
PLUMMER E. LOTT

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, 1972, as required by Section 12, Article XXII of the City Charter.

At an election on September 19, 1972, the Municipality of Metropolitan Seattle (Metro), was authorized to assume public transportation responsibilities within its boundaries. Subsequently this department assisted in negotiations leading to the execution of an agreement providing for the disposition of Seattle Transit assets, properties and responsibilities to Metro, as of January 1, 1973. An agreement was also negotiated and executed between the Corporation Counsel and Metro providing for interim administrative and legal services by the Law Department staff covering claims for personal injury and property damage which involve Metro by reason of its operation of vehicles and facilities, whether the claims occur inside or outside the City limits.

The number of written legal opinions prepared and issued during the year in response to requests for advice from various City officers as well as the number of ordinances prepared for enactment by the City Council rose to an all time high. The number of appeals to King County Superior Court from Municipal Court convictions of ordinance violations also reached a record high. In addition, substantial new commitments were undertaken with respect to a number of administrative proceedings in which the City was a party or had an interest, including the I-90 Review Board hearing, a number of matters before the Shorelines Hearing Board, the Federal Power Commission Application for a federal license to raise the height of Ross Dam, and the Interstate Commerce Commission proceedings regarding the proposed abandonment of certain railroad right-of-way between Fremont and Kenmore. These proceedings, which are discussed in greater detail elsewhere in this report, serve to illustrate the City's rapidly increasing need for legal services in the field of administrative law.

The Law Department has now completed its second full year of defending the City and its employees on claims arising out of the operation of the vehicle fleet. The City's vehicle fleet insurance coverage was not continued in 1971 due to a large proposed premium increase. The results achieved in 1972 continue to indicate that the City is realizing substantial savings through the successful conduct of this "self-insurance" program.

Still another all time high reached in 1972, in the number of claims for damages filed against the City, again points up the need to improve and expedite claims processing procedures. In 1971 I requested a Charter amendment which would provide for the payment of claims of \$2500 or less without the necessity of an ordinance authorizing each payment, and which would allow the payment of all other claims immediately upon passage and approval of the authorizing ordinance. Unfortunately this proposed amendment was not placed on the fall 1972 ballot as originally anticipated and I now urge that it be submitted for the consideration of the electorate on the fall 1973 ballot.

Late in 1971 the City Council enacted Ordinance 100501 which I had proposed and which authorizes payment of interim financial assistance in appropriate claims cases, to be credited against the final settlement made or judgment entered against the City. This ordinance was utilized during 1972 to provide such assistance for a man and wife injured in the 1971 Monorail crash who would otherwise have been in dire circumstances.

Also this past year the City received recognition in that the Corporation Counsel served as President of the National Institute of Municipal Law Officers, a national organization of city attorneys which has been most effective over the years in serving as a focal point for dissemination of information and joint action in critical areas of municipal concern.

In closing, I wish to acknowledge and express my appreciation for the professional competence and personal dedication demonstrated by the entire staff of the Law Department in 1972.

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.

	Pending Dec. 31 1971	Commenced during 1972	(1962)	Ended during 1972	(1962)	Pending Dec. 31 1972
Condemnation suits	14	8	(6)	5	(6)	17
Damages for personal injuries	151	109	(83)	98	(73)	162
Damages for other than personal injuries	30	60	(17)	28	(30)	62
Injunction suits	33	24	(13)	22	(11)	35
Mandamus proceedings	11	4	(4)	5	(4)	10
Habeas Corpus	4	12	(-)	15	(-)	1
Certiorari Writs	7	5	(5)	5	(-)	7
Administrative proceedings	3	9	(-)	2	(-)	10
Municipal Court Civil Actions	32	24	(-)	7	(-)	49
Miscellaneous proceedings	148	162	(20)	89	(19)	221
Sub-total	433	417	(148)	276	(143)	574
Appeals from Municipal and Traffic Courts	701	1,002	(511)	959	(414)	744
Grand Total	1,134	1,419	(659)	1,235	(557)	1,318

2. Segregation - Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1971	151	\$16,100,500.96
Commenced since January 1, 1972	109	18,684,508.99
Total	260	\$34,785,009.95
Tried and concluded since January 1, 1972	98	15,992,414.11
Actions pending December 31, 1972	162	\$18,792,595.84*

*Includes 10 cases in which amount of damages is unspecified.

Of the ninety-eight personal injury actions concluded in 1972, thirteen involving \$193,286.75 were won outright. In eight cases in which \$1,080,058.27 was claimed, plaintiffs recovered \$140,803.60. Of the remaining seventy-seven cases in which plaintiffs claimed \$14,719,069.09, nineteen involving \$9,714,758.25 were covered by insurance and the other fifty-eight cases, involving \$5,004,310.84 were settled or dismissed without trial for a total of \$77,517.81.

3. Segregation - Damages Other Than Personal Injuries:

	Number	Amount Involved
Pending December 31, 1971	30	\$ 1,456,423.90
Commenced since January 1, 1972	60	4,048,548.04
Total	90	\$ 5,504,971.94
Tried and concluded since January 1, 1972	28	169,182.20
Pending December 31, 1972	62	\$ 5,335,789.74

Of the twenty-eight cases involving damages other than personal injuries concluded in 1972, four involving \$666.18 were won outright. In ten cases involving \$1,614.26 plaintiffs recovered \$1,241.48. The remaining fourteen cases involving \$166,901.76 were settled or dismissed without trial for a total of \$19,500.

The above actions concluded in 1972 involving both personal injuries and damages other than personal injuries are further classified as to department or activity involved, as follows:

	Number	Amount Paid
Building Department/Fire Department.....	8	\$ -
Engineering Department:		
Sewer Utility.....	4	17,500.00
Sidewalk.....	9	4,875.00
Street.....	13	7,177.81
Miscellaneous.....	11	87,650.80
Executive Department:		
Office of Human Resources (Youth Div.).....	1	1,750.00
Fire Department.....	1	-
Health Department.....	1	-
Light Department.....	2	500.00
Parks and Recreation Department.....	5	-
Police Department--(20 cases covered by insurance)..	30	20,573.44
Seattle Center.....	1	1,250.00
Transportation Department.....	36	89,185.84
Water Department.....	4	8,600.00

4. Appeals and Extraordinary Writs:

At the close of 1971, eleven appeals involving the City were pending in the State Supreme Court, seventeen in the State Court of Appeals, and three in the United States Court of Appeals.

In 1972, eight new appeals were filed in the State Supreme Court, twenty-seven appeals were filed in the Court of Appeals, one was filed in the United States Court of Appeals, and two petitions for Writs of Certiorari were filed in the United States Supreme Court. Three appeals were transferred from the State Court of Appeals to the State Supreme Court, and the Supreme Court accepted petitions for review of the Court of Appeals' decision in two other cases.

The City prevailed in three of the five cases involving the City in which the State Court of Appeals rendered a decision in 1972. An additional eight cases before the State Court of Appeals in which the City had prevailed in lower court were dismissed by agreement of the parties or for want of prosecution. One case which the City had appealed to the State Court of Appeals was settled and the appeal dismissed.

In appeals before the State Supreme Court, the City prevailed in four of the nine cases involving the City in which the Supreme Court rendered a decision in 1972. Two petitions before the Supreme Court for Writs of Prohibition were denied, the City's position prevailing; the City also prevailed in one of the two petitions for Writs of Certiorari before the Supreme Court. One case in which the City had prevailed in

lower court was dismissed for want of prosecution.

The City also prevailed in one of the two cases involving the City decided by the U.S. Court of Appeals and in both cases in which petitions for Writs of Certiorari were filed in the United States Supreme Court.

At the close of the year there were ten appeals pending in the State Supreme Court, twenty-five in the State Court of Appeals, and two in the United States Court of Appeals.

5. Miscellaneous Cases:

Eighty-nine miscellaneous cases were completed in the King County Superior Court during 1972, of which the City lost nine and won or otherwise disposed of eighty; two hundred twenty-one cases are still pending.

In addition, twenty-two injunctive actions were tried, of which the City won sixteen and lost six; thirty-five injunctive actions are pending. Five mandamus actions were tried, four were won by the City and one was lost; ten are pending. Five writs of certiorari were completed and won during 1972; seven others are pending. Fifteen habeas corpus writs were processed; one is 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 pending claims in class actions involving antibiotic drugs, accredited central station protection services, cast iron pipe, and milk products.

II. CLAIMS IN 1972

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 1972:

	Number	(1962)	Amount Involved	(1962)
On file January 1, 1972...	2,066	(1063)	\$69,025,802.11	(\$2,165,701.08)
Referred for investigation.....	1,738	(1048)	41,556,295.16	(6,436,382.19)
Closed without payment..	569	(647)	8,164,289.55	(3,544,940.24)
Claims paid.....	894	(626)		
			(Asked) 2,069,955.98	(2,475,711.47)
			(Paid) 429,357.37	(402,554.15)
On file December 31, 1972...	2,152		\$81,262,028.79	

Payment of \$429,357.37 in settlement of 894 claims involving the various departments of the City was effectuated by 122 ordinances

which were prepared and presented to the City Council. Following is a tabulation showing in detail the departments involved and the amounts paid:

Department	Number	Amount Paid
Building	3	\$ 279.07
Engineering:		
Construction	13	5,468.53
Sanitary Sewer	2	605.59
Sewer Utility	136	51,825.24
Sidewalk	14	4,603.94
Solid Waste Utility	1	21.59
Storm Sewer	36	18,812.01
Street Maintenance	31	7,636.22
Traffic	7	6,922.86
Fire	1	13.84
General Services	1	21.43
Parks and Recreation	10	2,495.04
Library	1	6.00
Lighting	117	165,558.99
Police	23	898.90
Seattle Center	21	33,596.32
Transportation*	245	61,975.37
Water	36	21,250.57
Vehicle Fleet (All Departments)**	196	47,365.86
Totals	894	\$429,357.37

*The Cost of claims and suits was reported to be 1.73% of the gross revenue of the Department of Transportation.

**The City undertook self-insurance of its vehicle fleet on January 1, 1971. During 1972, 748 accidents were evaluated and 290 claims were filed. The estimate of ultimate claims cost for the year is \$63,606.25.

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

In addition, 44 opinions on L.I.D. bond issue were requested by and rendered to the City Employee's 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 1972 OPINIONS BY NUMBER

- 5550 Pension of Police Captain receiving a special incumbent salary rate at time of retirement is limited to one-half the regular Police Captain rate.
- 5551 Filing financial declaration under Code of Ethics (Ordinance 100435)
- 5552 Proposed sale of Mountain View Substation Site.
- 5553 Control and management of property of public Transportation System subject to Charter authority of the Superintendent of Buildings as to buildings and land.
- 5554 Eligibility of Transportation Department employees for disability benefits under Ordinance 90881.
- 5555 Interpretation of term "community club" under Zoning Code.
- 5556 Meetings and deliberations of Seattle Design Commission not subject to "Open Meeting Law" (Chapter 250, Laws of 1971).
- 5557 Eligibility to vote in election for employee member of Civil Service Commission.
- 5558 Application of "Open Meeting Law" (Chapter 250, Laws of 1971) to meetings of Human Rights Commission.
- 5559 Death benefit not payable for employee entering military service prior to six months of continuous City service where death benefit assessments were unpaid.
- 5560 Authority of Market Historical Commission.
- 5561 Application of "Open Meeting Law" (Chapter 250, Laws of 1971, Extraordinary Session) to various City Boards, Commissions, and Committees.
- 5562 Application of "Open Meeting Law" to meetings attended by a majority of City Council.
- 5563 Letter of Opinion re Waiver of Claim for Damages for Construction in R/W leased from Puget Sound Power and Light.
- 5564 Application of "Open Meeting Law" to various "examination boards and advisory bodies."
- 5565 Effect of enactment of Engrossed House Bill 199, 1972 extraordinary session.
- 5566 Establishment of reduced taxi fares for elderly.
- 5567 Reimbursement of utility relocation expenses in Operation Breakthrough Project.
- 5568 C.F. 269954—Application of "one man, one vote" doctrine to Metro Council.
- 5569 Increase in compensation of Mayor during his term of office authorized by State Constitution Article 30 § 1.
- 5570 CATV Charges — N.E. 65th Street Underground LID Project.
- 5571 Limiting classified civil service residency appointment preference to point preference contrary to Sections 6 and 8 of Article XVI of the City Charter.
- 5572 RCW 10.31.100 Does Not Authorize Arrests for Ordinance Violations.
- 5573 Criteria for granting Variance under Zoning Code.

5574 Inspection of private buildings incident to housing rehabilitation programs.

5575 Guidelines regarding retention/destruction of Building Department Records.

5576 North Shore Viewpoint Park.

5577 Use of Neighborhood Bond Proceeds for bus shelters and street parks.

5578 Application of Pioneer Square Historic District requirements to "window" signs.

5579 Applicability of initiative or referendum procedure to location of site of public viewing aquarium pursuant to King County Resolution 34571.

5580 Grant application – Blue Streak park-ride lot.

5581 Waiver of "informalities" in bids on public works.

5582 Pension benefits under RCW Ch. 41.26 and 41.20 of widow of police officer who "vested" after 20 years of service, but dies before age fifty.

5583 Projects authorized by King County Resolution 34571 must be carried out unless it has become impractical to do so by reason of changed conditions.

5584 Civil Service Commission is without power under its rules to change after sixty days a resignation into a leave of absence.

5585 Use of 1968 Highway Bond funds for West Seattle Freeway.

5586 Rights of officers and employees as to whom membership in City Employees' Retirement System is "optional."

5587 Substantial development permit under Shoreline Management Act of 1971 cannot be refused because of racial discrimination by applicant.

5588 Use of 1960 General Obligation Street Improvement Bonds for West Seattle Freeway.

5589 C.F. 272536 – Revocation of Bail Bondsman License.

5590 Adequacy of waiver of claims and confidentiality of information obtained through Office of Economic Development Entrepreneurial Assistance program.

5591 Validity of statutory form for declaration of candidacy.

5592 Police Officers engaging in "off-duty" private occupations.

5593 Proposed sale of "Tukwila Substation Site."

5594 City may not exempt residents from admission fees to zoo facilities financed with "Forward Thrust" funds pursuant to King County Resolution 34571.

5595 Effect of amended Civil Rights Act of 1964 on citizenship requirement of Charter Article XVI § 6 and Civil Service Rule 4.01(b)1.

5596 Charge for microfilming Building Department Records and Plans.

5597 Convertibility of LID Installment Notes to Interest-Bearing Coupon Bonds.

5598 Ordinance 90881 providing compensation for certain disabled employees, not applicable to employees on sick leave.

5599 Property acquired with proceeds of revenue bond issue (Ordinance 79165) may only be disposed of in accordance with the covenants of the bond ordinance.

5600 Application of "Open Meeting Law" (RCW Chapter 42.30) to Civil Service Commission consideration of dismissal of City employee.

5601 Third-Year Action Plan Planned Variations Expansion.

5602 Highlands Easement Agreement.

5603 Enforcement of Subpoenas issued by Director of Human Rights under Ordinance 97971.

5604 Loan to Neighbors in Need.

5606 Proposed Initiative Petition establishing a Transportation Division as part of the Department of Lighting.

5606 Whether salaried employees may contract with the City to perform additional services for additional compensation; distinction between employee and independent contractor.

5607 Noise Ordinance (Ordinance 90007) can be constitutionally enforced against church carillons.

5608 Relocation of telephone lines in urban renewal project.

5609 Street use permits for soldier piles.

5610 No legal "deadline date" for filing initiative petitions.

5611 Retention of Canadian Architectural Firm for work upon West Seattle Freeway project.

5612 Items includable as "medical services" under RCW 41.26.150 and RCW 41.26.030 (22).

5613 Proposed submission to voters of Initiative Petition establishing Transportation Division as part of the Department of Lighting.

5614 City may agree to pay leasehold taxes on exempt property.

5615 Application of "escalator" pension provisions to person retired from position of "Identification Supervisor."

5616 Results of heroin tests on jail inmates – Physician-patient privilege.

5617 C.F. 272710 – Set back requirements for "uncovered porches."

5618 Payment for utility services by labor in lieu of money by members of Church of Armageddon.

5619 City's legislative authority to determine "Central Area" playfield location under King County Resolution 34571.

5620 Discrimination as to sex; Model Cities Contractors.

5621 Issuance of duplicate warrant conditioned on filing of bond.

5622 Acquisition of Greenbelt Acreage authorized by King County Resolution 34571.

5623 Westlake Park.

5624 Release of utility easements.

5625 Reimbursement for use of private automobiles – Effect of collective bargaining agreement with Professional and Technical Engineers Local 17.

5626 Employee not employed by City at commencement of military service not entitled to retirement credit for such service.

5627 Elements of offense under False Advertising Ordinance (No. 43475).

- 5628 Validity of Ordinance 100642 prohibiting discrimination in employment or in advertisements therefor.
- 5629 Fire Inspection Warrants – Police Commission required for service.
- 5630 Referendum petitions must be actually received prior to effective date of ordinance, and mailing on last day insufficient.
- 5631 Effect of added transportation function as to application of “one-man-one-vote doctrine” to Metro Council.
- 5632 Application for Charter; Seattle Indian Services Commission.
- 5633 Agreement for mutual quitclaim deeds.
- 5634 Superintendent of Buildings responsibility for Zoning Code interpretation.
- 5635 Appropriation of Model City funds.
- 5636 Payments from proceeds of bingo games.
- 5637 Status of veterinarian member of Animal Control Commission.
- 5638 Possible Queen Anne Swimming Pool Sites Near Interbay Playfield and Catherine Blaine Junior High School.
- 5639 Building in street area – Connecticut Street.
- 5640 Control of prices during disaster.
- 5641 Effect of Section 4, Chapter 118, Laws of 1972, Ex. Sess. upon authority of City to license and/or regulate certain contractors.
- 5642 Overtime compensation for firemen under Fire Department scheduling “practices.”
- 5643 C.F. 271934 – Proposed Revised Seattle Criminal Code.
- 5644 Port of Seattle generally subject to police power regulations of City.
- 5645 City may enforce Electrical Code pursuant to RCW 19.28.210.
- 5646 Computation of vacation benefits – Effect of disability leave on years of service.
- 5647 Liability for reinjury of police officer returned to duty by the Police Pension Board after sustaining a disability.
- 5648 Definition of “floating homes.”
- 5649 Planting and maintenance of street trees – Application of LID program.
- 5650 Effect of assumption of public transportation function by “Metro.”
- 5651 City precluded from funding rehabilitation loans.
- 5652 Charges of discrimination as to Police Department employment application forms.
- 5653 Portion of City’s sick leave ordinance restricting sick leave benefits for pregnancy conflicts with laws barring discrimination in employment on account of sex.
- 5654 Proposed utilization of proceeds remaining in 1960 General Street Improvement Bond Fund and 1954 General Arterial Improvement Bond Fund.
- 5655 Effective date of dismissal of Police Officer Ross Roddam.
- 5656 University use of Arboretum.
- 5657 Duties and authority of Superintendent of Buildings under Charter Article VII, Section 10.

- 5658 Proposal that elected City officer be required to resign when running for elective office, other than to succeed himself, may not be effected by ordinance.
- 5659 Proposed Administrative Procedures Ordinance.
- 5660 Establishment of Office of Hearing Examiner.
- 5661 Effect of tax foreclosure sale on City’s interest in property after LID foreclosure.
- 5662 Development of Central Waterfront Park; changing the 14-foot sidewalk and 6 to 10 feet of the parking lane along the west side of Alaskan Way (between Pier 55 through Pier 61) to Park Drive and Boulevard.
- 5663 High Ross Dam Project.
- 5664 Meaning of term “doing business with the City” under Code of Ethics (Ord. 100435).
- 5665 Effect of so-called “ratifying and confirming clause” in ordinance authorizing particular action.
- 5666 Financial disclosures by members of Seattle Design Commission.
- 5667 RCW 41.20.080 provides a widow’s pension only when police officer who dies of injuries sustained in line of duty holds a salaried position in Police Department at time of death.

IV. ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

During the year 1972, this department prepared 734 ordinances and 74 resolutions; and an additional 122 ordinances were prepared for the settlement of 894 claims.

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.

222 writs of garnishment against City employees were served upon the City. A total of 173 first answers were filed on writs of garnishments and 89 second answers to 30-day continuing lien garnishments were filed during the year. 50 garnishments were released during the year before any action was required on the part of the City.

734 surety bonds, deeds and other miscellaneous instruments totaling in excess of \$19 million were examined and approved.

Legal papers served and filed during 1972, including condemnation suits, summons and petitions, answers, judgments, notices of appearance and subpoenas, totaling 2,998 in all, were handled by the Process Server.

V.

PROSECUTION OF ORDINANCE VIOLATIONS

Municipal Court

During the year 1972 Assistants Robert M. Elias, Robert B. Johnson, and Jack B. Regan handled calendars which totaled 58,174 cases in the three departments of Municipal Court, resulting in the imposition of fines and forfeitures in the amount of \$1,284,507.

Traffic Violations Bureau forfeitures for the year amounted to \$3,543,049.

Municipal Court Appeals

Appeals from 959 convictions in Municipal Court (611 Traffic, 348 Police) were disposed of in King County Superior Court in 1972, as follows: 259 appeals (137 Traffic, 122 Police) were abandoned by the defendants and remanded to Municipal Court for enforcement of the original fines and sentences. In 331 cases (240 Traffic, 91 Police) convictions on pleas of guilty were entered. In 224 cases (143 Traffic, 81 Police) the court or jury found the defendants guilty after trial. In 108 cases (74 Traffic, 34 Police) the defendants were acquitted. In 37 cases (17 Traffic, 20 Police) all charges were dismissed for insufficiency of evidence, witnesses moving away, or other causes.

STATE SUPREME COURT CASES – 1972

Hanson v. City, 80 Wn.2d 242.

Plaintiff brought this action on behalf of her minor children in an effort to obtain certain benefits she claimed were due her children under the provisions of the 1955 firemen's pension act, RCW Ch. 41.18. The deceased father of said children had been retired for disability from the Seattle Fire Department prior to his death. Subsequent to his retirement he and plaintiff were divorced and she was awarded "the care, custody and control" of the two children of said marriage. Said pension act provided certain monthly benefits for the children of a retired fireman when there is no surviving spouse. However, the same act defined "child" or "children" as "a fireman's child or children under the age of eighteen years, unmarried, and in the legal custody of such fireman at the time of his death." The City's firemen's pension board denied plaintiff's claim, and this decision was affirmed by the King County Superior Court. However, the Washington Supreme Court reversed. The court concluded that the surviving children of a divorced father, who was paying child support pursuant to the divorce decree, came within the statutory definition of "child" or "children."

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

Seattle Police Officers' Guild v. City, 80 Wn.2d 307.

In this case the State Supreme Court held that the Chief of Police may properly discipline or discharge any officer who, during an investigation into his official conduct as a police officer, 1) refuses under the 5th Amendment to the United States Constitution to answer questions or 2) refuses to submit to polygraph test in connection with such investigation.

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

The Rainier Avenue Corporation v. City, 80 Wn.2d 362, rehearing denied; Certiorari denied U.S. , 34 L.Ed. 2d 247.

The plaintiff in this case asserted title to portions of Columbia Park (i.e., portions of Edmunds Place vacated by Ordinance 86469 and portions of Rainier Avenue vacated by Ordinance 33601), through a quitclaim deed from the successors of the parties who dedicated both the park and the streets within the park in Plat of Columbia Supplement No. 1, King County. Plaintiff contended that upon vacation of the streets by ordinance the public lost all rights in the property and title reverted to the "successor in interest to the dedicator." In the first trial plaintiff's claim was dismissed on a challenge to the sufficiency of plaintiff's evidence. The Supreme Court reversed that ruling and ordered a new trial (76 Wn.2d 800). In the second trial the Superior Court ruled that the title did revert to the dedicators and their successors in interest. On the second appeal the Supreme Court rejected plaintiff's contention and ruled –

" . . . plaintiff's fee in the former street areas remains subject to the unabandoned and unvacated easement for park purposes which the City of Seattle holds for the benefit of the public."

Plaintiff's Petition for Writ of Certiorari to United States Supreme Court was denied November 6, 1972.

This case was tried and argued by Assistant G. Grant Wilcox; the Response to Petition for Rehearing in the State Supreme Court and the Brief in Opposition to Writ of Certiorari were prepared by Assistant James B. Howe, Jr.

Seattle Times Co. v. Tielsch, 80 Wn.2d 502.

This action was brought by The Seattle Times against the Chief of Police for a declaratory judgment that its Guest Guesser contest does not violate the Seattle ordinance forbidding lotteries. The City of Seattle was joined as a defendant and asked for judgment that the contest also violated state laws against lotteries and gambling as well as City ordinance.

The trial court found the contest did violate City and State laws against lotteries and gambling. On appeal, the State Supreme Court affirmed the trial court's judgment that the contest was a lottery and in violation of City ordinance and State law.

The case was tried and argued by Assistant Lawrence K. McDonell.

Moen v. Erlandson, 80 Wn.2d 775.

Article VI § 1 of the Washington State Constitution imposes a one year durational residency requirement in order to be eligible to vote. Plaintiffs brought this action against the City Comptroller, the King County Director of Records and Elections, and the Secretary of State, contending that such requirement conflicted with the United States Constitution. The trial court agreed with plaintiffs, and enjoined the enforcement of such residency requirements. Defendants obtained review by the State Supreme Court by a Writ of Certiorari and were also granted a stay of the decision of the trial court pending appellate review. Subsequent to the case being argued in the State Supreme Court the United States Supreme Court handed down its decision in *Dunn v. Blumstein* 405 U.S. 330, 92 S. Ct. 995, 31 L.Ed. 2d 274 (1972), which held that a similar residency requirement for eligibility to vote in the State of Tennessee was unconstitutional. Upon the basis of the *Dunn v. Blumstein* decision the Washington Supreme Court affirmed the trial court.

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

Herriott v. City, 81 Wn.2d 48.

In this case two aliens "provisionally" employed by the City as transit operators challenged the validity of the Seattle Charter requirement that all applicants for admission to the classified civil service be citizens of the United States. The Superior Court upheld the validity of the Charter provision but on appeal the State Supreme Court reversed, holding that "application of the citizenship requirement to these appellants violates their constitutionally guaranteed right to equal protection of the laws" and plaintiffs must therefore be permitted to take civil service examination.

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

Leonard v. City, 81 Wn.2d 479.

The plaintiff in this declaratory judgment action was a retired Seattle Police Officer whose police pension was terminated because of his conviction of a federal felony some four years after his retirement pursuant to a requirement of the Policemen's Pension Statute (RCW 41.20.110).

Plaintiff contended that said statute was unconstitutional as applied to him under the provisions of State Constitution Article I, Section 15 which provides that "No conviction shall work . . . a forfeiture of estate." The City contended that the statutory provision requiring pension termination upon a felony conviction became part of the public pension contract between plaintiff and the City at the time he joined the department, and thus its application could not be termed a "forfeiture of estate." The Supreme Court upheld the decision of the

King County Superior Court in the case that the above statute was unconstitutional under the theory that plaintiff's pension rights became fully vested upon retirement, and therefore were not subject to termination upon a felony conviction in view of the above constitutional provision.

This case was argued by Assistant Arthur T. Lane.

In Re Seattle, 81 Wn.2d 652.

This case was the second appeal to reach the Supreme Court arising from an attempted City condemnation of Magnolia Tidelands properties. In this action the respondents successfully contended in the trial court that they were entitled to interest on condemnation award rejected and abandoned by the City pursuant to RCW 8.12.530. The State Supreme Court agreed with the property owners and held that the trial court had properly imposed such interest upon the City and that such interest award is in the nature of the damages suffered by the property owner during the time period in question.

This case was tried and argued by Assistant Donald H. Stout.

STATE COURT OF APPEALS – 1972

Nakamura and Garrett v. Jeffrey and City, 6 Wn.App. 274.

This case arose from a right angle collision at an uncontrolled intersection. The allegations of negligence against the City were for failure to post warnings, yield or stop signs at or approaching an intersection alleged to be inherently dangerous because of restricted visibility. In the trial court the primary basis for defense was that there was no mandatory duty to post or make changes in the intersection and that decisions involved in the engineering of the intersection were discretionary and not subject to tort liability. The trial court agreed and so stated in his memorandum decision, in which he also held that there was no evidence that the City's alleged negligence caused the accident. The Court of Appeals affirmed the trial court on the basis of failure of proof of proximate cause and did not rule on or discuss the issue of discretionary immunity. Petition for review by the State Supreme Court was denied.

This case was tried and argued by Assistants Thomas J. Wetzell and James B. Howe, Jr.

Citizens for Underground Equality v. City, 6 Wn.App. 338.

An unincorporated association, "Citizens for Underground Equality" and fifteen of its constituent members, sued to enjoin the improvement of Ann Arbor Avenue and other streets in the Hawthorne Hill section of Seattle by installation of underground wiring and ornamental street lighting pursuant to L.I.D. No. 6411 and Ordinance

98265. The complaint alleged that Ordinance 98265 and its enabling legislation were both unconstitutional as sanctioning an improper loan of credit by the City's contribution to the total cost of the project and through the installment payment system for assessments; as special taxation; as violating "due process" by allowing the City to define ("gerrymander") boundaries; as creating "special privileges and immunities" since some neighborhoods may be unable to afford underground wiring; as non-uniform flat-rate taxation; and as confiscation of property since special benefits were denied. The City moved for Summary Judgment of dismissal, which was granted November 12, 1969. On appeal, the Court of Appeals, Division I, upheld the judgment, ruling that RCW 35.43.040(11) and (12), RCW 35.96.030, and Ordinance No. 98265 were all constitutional, and that the other issues in the appeal should be raised by the regular L.I.D. appeal process. Within a week of this decision, the Superior Court in an appeal from the confirmed assessment roll by many of the same plaintiffs under a different cause number sustained the assessments levied and the assessment roll for L.I.D. No. 6411.

This case was tried and argued by Assistant Jorgan G. Bader.

Pleuss v. Seattle, 8 Wn.App. 133.

In this case a fireman who had resigned filed suit against the City and the Firemen's Pension Board to pay him a disability pension, to invalidate his resignation (as being coerced) and to restore him to his position as fireman. The trial court held that the plaintiff was entitled to reimbursement for any medical expenses arising out of his on-the-job injury before and after his resignation but held that, because plaintiff had resigned, he was not a fireman and therefore not entitled to a disability pension under RCW 41.18.060; and the court further found that his resignation was not in fact coerced. On appeal the Court of Appeals affirmed the trial court, and held that under the City Charter, Article XVI, Section 12, the question whether plaintiff was unlawfully removed is a matter exclusively for determination by the Civil Service Commission, and that such review must be demanded "within ten days after his removal."

This case was argued by Assistant Donald H. Stout.

NOTEWORTHY SUPERIOR COURT PROCEEDINGS — 1972

Dieterle v. Wiederkehr and the City, et al. (consolidated Ozark Hotel fire cases) was a case arising from 20 fatalities, many injuries and heavy property damage when the Ozark Hotel was destroyed by fire. Plaintiffs alleged that the City was negligent in knowingly permitting violation of various of its ordinances relating to health, safety and welfare of occupants of such premises, in permitting the maintenance of a public nuisance, and in failing to remedy dangerous conditions, or in the alternative to prohibit occupancy while such conditions existed, or to

post notices such as might warn the occupants of the premises. On the opening day of trial, after previously denying similar motions by the City, the trial court granted the City's motion for summary judgment of dismissal, based on the theory of discretionary immunity as expressed in the case of *Evangelical Church of Adna v. State*, 67 Wn.2d 243.

Peden v. City, et al. No. 746869.

In this action plaintiff sought to enjoin the City from limiting private vehicles access to the Columbia-Cherry Street entrance and exit ramp of the Seattle freeway. This ramp is presently restricted exclusively to transit buses in connection with the "Blue Streak" project. The Superior Court denied the relief sought and dismissed the suit, principally on the basis that regulation of the use of the ramp was within the City's police power. Plaintiff has appealed this decision to the Court of Appeals which has certified the case to the Supreme Court where the matter is still pending.

Medica v. City, No. 744125.

Plaintiff was a Seattle fireman who was suspended for two days for failure to comply with orders concerning the length of his hair. The trial court found upon disputed evidence that at the time of plaintiff's suspension his hair complied with the Fire Department's operating standards on hair styles, and the trial court also found that an order given plaintiff to get his hair cut before the commencement of the plaintiff's next shift was unfair because no union barbershop would be open during the time between shifts as it was a Sunday. However, the court nevertheless upheld the suspension upon the grounds that "Provisions giving a superior officer the right to suspend an employee, without pay for not to exceed thirty days, without the filing of charges or a hearing of any kind violates no constitutional rights" and that thus plaintiff was not entitled to any legal relief concerning such suspension.

14,766 Seattle Voters, et al. v. Erlandson, et al., No. 758474.

Plaintiffs here sought to require the City Clerk to accept referendum signatures which were mailed prior to but received after the effective date of an ordinance authorizing a special building permit for the King County Stadium. Plaintiffs contended that referendum signatures could be filed by mail, relying on RCW 1.12.020 which authorized such filing for "any report, claim, tax return, statement or other document required to be filed with, or any payment made to the state or to any political subdivision thereof. . . ." The trial court held that said statute applied only to documents "required to be filed," which excluded referendum petitions, and that the rule of *ejusdem generis* also supported this conclusion. The complaint was dismissed and the case is now on appeal to the Court of Appeals.

Mutual Real Estate Investors v. City, No. 749697.

Building permits have a life of one year under the Building Code, and may be renewed as a matter of right for an additional year. Further renewals are authorized only if the work has started and is progressing at a rate approved by the Superintendent of Buildings. In this case the permit was renewed for one year in December 1969 and for another year in December 1970, but in November 1971 a further renewal was denied, there having been little or no work done during the previous year. The building would have been nonconforming due to changes in zoning.

Upon review of the City's return to a Writ of Certiorari, the Superior Court concluded that the Superintendent of Buildings had acted within his authority, and was not arbitrary or capricious in refusing to further renew the permit. Plaintiffs have appealed the judgment of dismissal to the Court of Appeals.

Eastlake Community Council, Inc. and Floating Homes Assn., Inc. v. Roanoke Associates, Inc., et al., No. 742868.

Plaintiffs, two nonprofit corporations, unsuccessfully sought to enjoin construction of an apartment house on submerged, privately-owned shorelands in Lake Union.

The Superior Court ruled on plaintiffs' contention as follows: (1) the decision in *Wilbour V. Gallagher* did not affect a project in an urban, zoned lake; (2) the Shoreline Management Act of 1971 was not applicable because work on the project had commenced prior to the effective date of that act; (3) the defendant developers by their application for a building permit had obtained a vested right to develop the property unaffected by zoning changes subsequent to the application; (4) the action of the Superintendent of Buildings in renewing the permit the second time was authorized by the Building Code and was not arbitrary, capricious or contrary to law; and (5) the State Environmental Policy Act of 1971 was not applicable to the project, which had commenced prior to the effective date of that act. An appeal from the judgment dismissing the complaint is now pending in the Supreme Court.

King v. City, No. 735914.

This was an action for damages by contract purchaser of submerged shorelands in Lake Union who alleged that the City's refusal to issue a street use permit to fill and improve Fairview Avenue, until so ordered by the Superior Court, constituted tortious interference with their legal rights and business expectancies. Plaintiffs sought to recover out of pocket costs and anticipated profits, urging that a Superior Court decision in a mandamus case was *res judicata* on the question of tort liability. The City argued that it was immune from liability for damages

resulting from discretionary, governmental acts, even when later held to be unlawful by a court, and in any event that the damages were not caused by the City's action, nor were they foreseeable.

The Superior Court concluded that the City intended to harass and discriminate against plaintiffs and prevented them from constructing a commercial building on their property, and entered Judgment in the amount of \$365,542.38 against the City. An appeal is pending in the Court of Appeals.

NOTEWORTHY ADMINISTRATIVE PROCEEDINGS – 1972

I-90 Board of Review Proceedings

From July, 1972, through December, 1972, a Board of Review, convened pursuant to RCW 47.52.139.160, heard testimony and received other evidence bearing upon objections of The City of Seattle (Resolution 23353, Ordinance 100586) to a plan for Interstate 90 in Seattle adopted by the State Highway Commission on November 3, 1971. The issues were narrowed to two: (1) replacement of certain lost access within and between communities; and (2) covering or "lidding" the proposed facility between Empire Way South and 23rd Avenue South. Most evidence of the City bore upon the need for the lidding and was based upon the following objectives: (a) minimizing adverse environmental impacts of the proposed facility; (b) minimizing the physical separation of communities and neighborhoods; and (c) retrieving as much land as possible for community use. Local and state political leaders, community leaders and residents testified on behalf of the City. Many expert witnesses, some from out of state, testified for the City on a wide variety of subjects: civil and traffic engineering, land economics, banking, medicine, psychiatry, air quality, acoustics, social science and urban planning. In all, approximately sixty witnesses were presented by the City and over one hundred exhibits were produced. Over four thousand five hundred pages of transcribed testimony resulted from the hearings. As of the writing of this report, the Board of Review has not announced its decision.

Interstate Commerce Commission Intervention – Abandonment of Burlington Northern Track Right of Way between Fremont and Kenmore.

During 1972, proceedings continued in connection with the City's intervention in the Burlington Northern Railroad's proposed abandonment of the above right of way. The City contended that any I.C.C. abandonment order should be preceded by compliance with the provisions of the National Environmental Policy Act and appropriate consideration given to acquisition of such right of way by a public agency for park and recreational use. During the year the I.C.C. granted

the City's petition to intervene and required the commission staff to file a draft environmental impact statement. In November the I.C.C. filed its final impact statement together with an order authorizing disposition of the right of way subject to certain limited acquisition rights on behalf of public agencies. Upon a petition for rehearing by the City and the Puget Sound Group of the Sierra Club, the I.C.C. extended the effective date of its previous order, and right of way acquisition negotiations are continuing between the City and the Railroad.

Federal Power Commission Application.

During the year work continued on the City's administrative preparations in connection with its application for an amendment to Skagit Hydroelectric Project License No. 553 to raise the height of Ross Dam.

Shorelines Hearing Board.

The Shorelines Hearing Board was created by the Shoreline Management Act of 1971 to hear appeals from the grant or denial of substantial development permits on shorelines and associated wetlands. The Corporation Counsel has undertaken to assist the Director of Community Development in presenting the City's evidence in such matters, and in 1972 four such appeals were filed: a permit issued to the Washington State Highway Commission for the third Lake Washington Bridge, a permit issued to the Ballard Elks Lodge for their new clubhouse at Shilshole Bay, denial of a permit to Roanoke Associates, Inc. for a boat moorage in Lake Union and denial of a permit for a fill for boat storage and launching on Beach Drive Southwest in West Seattle.

Civil Service Commission

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

STAFF CHANGES

Retirements:

Mrs. Grace Clampett, Legal Secretary, retired March 31, 1972. Mrs. Clampett first began as a secretary in the Law Department on January 25, 1929, working intermittently until February 1, 1955, and continuously from that date until her retirement. Mrs. Clampett was a highly competent legal secretary but will be best remembered for the unfailingly cheerful and outgoing manner in which she performed her duties. She enriched the lives of us all and we mourn with great sadness her untimely passing on October 6, 1972.

Bert L. Marriott, Jr., Claims Adjuster, retired on March 31, 1972. Mr. Marriott began employment with the City as a Seattle Transit System Trainman on September 13, 1939, and joined the Claims Division of the Law Department on May 25, 1966. His thorough knowledge of Transit and Engineering Department operations was a valuable contribution to the Law Department.

Appointments, Promotions, Transfers, and Resignations:

There were ten additions to the staff in 1972: Mrs. Helen Wilson, Mr. Richard S. Oettinger, Mr. Joseph T. Schlosser, Mr. James G. Blair, and Mr. W. Frederick Greenlee, recent law school graduates, were appointed Assistants Corporation Counsel. Mr. Plummer E. Lott and Mr. Freddie Bonner, University of Washington Law Students, were appointed to one year terms as Legal Interns.

Mr. David L. Day, who transferred from the Department of Transportation, was appointed Claims Adjuster; Mrs. Virginia M. Fields, Senior Secretary, transferred from the Legislative Department; Mrs. Shirley Ann Geiger was promoted to Senior Secretary; Miss Mary Lou Keefe, Secretary, transferred from the Department of General Services; Mr. Terence W. Liston was appointed Senior Claims Adjuster from provisional status in that position; Mrs. Kathleen L. Meegan was promoted to Legal Secretary.

Assistant Philip L. Bleyhl resigned to enter private practice, and Assistant Seaton M. Daly, Jr. resigned to accept a position with the King County Prosecutor.