

JOHN P. HARRIS
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 ended December 31, 1974, as required by Section 12, Article XXII of the City Charter.

The statistics and resumes in this report summarize the activities of the Law Department during the first year of my term as Corporation Counsel. Generally such statistics and resumes reflect a greatly increased work load shouldered by this department when contrasted with statistics for 1964. During the decade, the number of lawyers on the staff increased from 18 to 26. The staff increase in that period (50%) was greatly exceeded by increases during the same period in, for instance, the number of formal legal opinions rendered (from 56 to 164—192%); the number of ordinances and resolutions drafted, excluding ordinances drafted in settlement of various claims (from 409 to 882—116%); the number of suits and other civil proceedings concluded through suit and other means (from 165 to 341—106%); the continuing case load borne by litigation personnel as reflected in the number of suits and other civil proceedings pending at year's end (from 228 to 744—226%); and, finally, a category not in existence in 1964—civil actions in Municipal Court (57 cases concluded and 120 pending at year's end). Similar and even greater increases occurred in virtually every other Law Department function.

To help meet the growing work load as indicated in such statistics, the staff reorganization, which I had reported planning in the 1973 Annual Report, is being implemented as rapidly as permitted by funding levels and the need to meet current commitments. As authorized under CETA employment, there will be a growing use of and integration of para-professionals into Law Department operations. The duties of such para-professionals will include aiding in the preparation of pleadings and other legal documents, review of deeds, bonds, and the like, and participation in such activities as garnishment and collection proceedings.

With the cooperation of the City Council we have begun a program for obtaining early information as to matters presented to and pending before the Council so that timely advice can be made available while matters are in the formative stage.

New and additional responsibilities are being undertaken particularly in the advisory function, due to the phasing out of a number of

federally funded programs and their replacement with different programs. For instance, while the Model Cities Program and Urban Renewal Projects are phasing out, new and complex legal issues are presented by programs such as Community Development Revenue Sharing ("Block Grants") and General Federal Revenue Sharing Programs designed, in part, to take the place of the previous programs. Further, increasing use of public corporations, (e.g., historic district development authorities) to provide services to the public, particularly under recent amendments to State law drafted by this office, have presented novel and interesting legal issues requiring additional legal services.

The City's new Criminal Code went into effect on December 3, 1974, and while insufficient information exists at this time to fully evaluate the impact on the Law Department, it is clear that increasing amounts of staff time will be devoted to prosecution of cases and collection of civil penalties under such Code as well as the Housing Code and the City's various Consumer Protection ordinances.

Administrative proceedings requiring legal advice and representation are also commanding an increasing amount of staff time. During 1974 there were cases before the Federal Power Commission and the Federal Equal Employment Opportunities Commission; a variety of matters before the State's Shorelines Hearing Board, the Washington State Board of Industrial Insurance Appeals, and the Washington State Board of Health; and other matters requiring advice and assistance before the Civil Service Commission, the Planning Commission, the Board of Public Works, the Board of Adjustment, the State and City Human Rights Commissions, the City Retirement and Pension Boards and other such boards and commissions. While many of such boards and commissions have been created to assume jurisdiction of matters previously addressed to courts of law, many were established to provide a forum for newly established rights and obligations.

The Law Department is undertaking the supervision of an Ordinance Codification project, which when complete will provide an accurate reference for all the City's ordinances of a general and permanent nature. We anticipate that this project will be followed by a similar compilation and codification of the City's administrative rules and regulations. In this and other areas, the Law Department will continue to extend its services so that legal advice and assistance will be available on a fast, accurate, and timely basis.

I wish to express my gratitude to the City Council for maintaining the departmental budget at an acceptable level for 1975, and particularly for funding two additional positions of Legal Secretary who

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will supply much needed assistance to the Law Department's professional staff.

On the threshold of a major expansion of services, the Law Department is prepared, organized and committed to providing the full range of legal advice and assistance which will be necessary to help the City meet the challenges of the future.

Finally, I wish to express my appreciation to all members of the Law Department for the dedicated and professional way in which they carried out their respective assignments during the past year.

Respectfully submitted,



JOHN P. HARRIS
Corporation Counsel

I.
GENERAL STATEMENT OF LITIGATION

I. 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 1973	Commenced during 1974	(1964)	Ended during 1974	(1964)	Pending Dec. 31 1974
Condemnation suits	5	2	(22)	1	(6)	6
Damages for personal injuries	166	109	(83)	133	(78)	142*
Damages for other than personal injuries	125	49	(32)	40	(25)	134**
Damages—City as plaintiff	93	14	(-)	22	(-)	85
Contract actions	11	9	(-)	2	(-)	18
Extraordinary writs (injunctions, Mandamus, Certiorari, habeas corpus)	66	51	(24)	37	(24)	80
Administrative proceedings Municipal Court	9	16	(-)	3	(-)	22
Civil Actions	101	76	(-)	57	(-)	120
Miscellaneous proceedings	127	56	(43)	46	(32)	137
Sub-total	703	382	(204)	341	(165)	744
Appeals from Municipal Courts (Traffic and other violations)	728	1,007	(625)	772	(558)	963
Grand Total	1,431	1,389	(829)	1,113	(723)	1,707

*Including 36 Metro cases.

**Including 9 Metro cases.

2. Segregation—Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1973	166	\$25,101,644.22
Commenced since January 1, 1974	109	14,551,432.83
Total	275	39,653,077.05
Tried and concluded since January 1, 1974	133	12,543,259.82
Actions pending December 31, 1974	142*	27,109,817.13

*Includes 9 cases in which amount of damages is unspecified.

Of the 133 personal injury actions concluded in 1974, 4 involving \$211,999.99 were won outright. In 5 cases in which \$185,300.00 was claimed, plaintiffs recovered \$86,269.15. Of the remaining 124 cases in which plaintiffs claimed \$12,145,959.83, 34 involving \$2,242,881.20 were covered by insurance, 89 cases involving \$9,403,078.63 were settled or dismissed without trial for a total of \$275,556.49, and one case with claimed amount of \$500,000 was returned to Metro.

3. Segregation—Damages Other Than Personal Injuries:

	Number	Amount Involved
Pending December 31, 1973	125	\$ 9,106,793.02
Commenced since January 1, 1974	49	7,981,239.31
Total	174	17,088,032.33
Tried and concluded since January 1, 1974	40	3,355,705.64
Pending December 31, 1974	134*	13,732,326.69

*Includes 7 cases in which amount of damages is unspecified.

Of the 40 cases involving damages other than personal injuries concluded in 1974, 11 involving \$2,496,856.63 were won outright. In 5 cases involving \$33,055.60 plaintiffs recovered \$11,407.20. The remaining 24 cases involving \$825,793.41 were settled or dismissed without trial for a total of \$45,511.31.

The above actions concluded in 1974 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	6	\$ 0
Engineering Department:		
Sewer Utility	12	37,904.73
Sidewalk	8	14,394.75
Street	16	19,240.00
Miscellaneous	2	600.00
Fire Department	1	625.00
Licenses and Consumer Affairs:		
Animal Control Division	1	0
Lighting Department	9	4,314.47
Municipality of Metropolitan Seattle	17	41,991.49
Parks and Recreation Department	8	124,837.15
Police Department (32 cases covered by insurance)	51	45,499.31
Seattle Center (2 cases covered by insurance)	9	50,856.00
Transportation Department	29	76,981.25
Water Department	4	1,500.00

4. Appeals and Extraordinary Writs:

At the close of 1973, four appeals involving the City were pending in the State Supreme Court, thirty-one in the State Court of Appeals, one in the United States Court of Appeals, and one in the United States Supreme Court.

In 1974, eight new appeals were filed in the State Supreme Court, thirty-five appeals were filed in the Court of Appeals, one was filed in the United States Court of Appeals, and two petitions for a Writ of Certiorari were filed in the United States Supreme Court. Two 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' decisions in three other cases.

The City prevailed in thirteen of the fifteen cases involving the City in which the State Court of Appeals rendered a decision or denied review in 1974. An additional fourteen 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.

In appeals before the State Supreme Court, the City prevailed in eight of the eleven cases involving the City in which the Supreme Court rendered a decision or denied review in 1974. One case in which the City had prevailed in lower court was dismissed for want of prosecution.

The City's position was upheld and the U.S. Supreme Court denied petition for a Writ of Certiorari in all three cases before that court. The City also prevailed in part in one of the two cases involving the City decided by the United States Court of Appeals.

At the close of the year there were five appeals pending in the State Supreme Court and thirty-five in the State Court of Appeals.

5. Miscellaneous Cases:

The Miscellaneous Proceedings pending at the close of 1973 and commenced in 1974 are segregated as follows:

Ninety-three cases filed by the City for recovery of damages were pending at the close of 1973; 14 cases were commenced in 1974. Of this total, 22 were completed in which the City recovered \$15,042.56 and 3 involving \$2,931.12 were dismissed; 85 cases are pending.

Eleven contract actions were pending at close of 1973; 9 were commenced during 1974. Two involving the City were dismissed and 18 are still pending.

Of the other miscellaneous proceedings, the City lost 8 and won or otherwise disposed of 38; 137 cases are pending.

In addition, 23 injunctive actions were tried, of which the City won 18 and lost 5; 49 injunctive actions are pending. Of the 6 mandamus actions tried, 4 were settled by the parties and 2 were lost; 16 are pending. Four writs of certiorari were completed during 1974; 3 were won and 13 are pending. Two habeas corpus writs were processed; 2 are pending. One writ of prohibition was granted and one denied.

II.
CLAIMS IN 1974

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 1974:

	Number	(1964)	Amount Involved	(1964)
On file January 1, 1974	2,170	(1176)	\$93,672,675.66	(8,138,236.23)
Referred for investigation	1,268	(1283)	45,692,124.29	(12,685,864.38)
Closed without payment	600	(380)	39,208,906.50	(2,457,197.44)
Claims paid	475	(566)		
			(Asked) 350,456.53	(2,449,759.87)
			(Paid) 146,309.89	(469,080.86)
On file December 31, 1974	2,231		\$76,898,827.73	

Payment of \$146,309.89 was made in settlement of 475 claims involving various departments of the City as follows:

Department	Number	Amount Paid
Building	9	\$ 496.47
Community Development	1	94.15
Engineering:		
Construction	8	4,255.06
Sanitary Sewer	1	275.00
Sewer Utility	29	11,563.34
Sidewalk	28	8,345.56
Storm Sewer	19	6,381.68
Street Maintenance	31	6,088.19
Traffic	5	547.54
Miscellaneous	1	142.68
Fire	1	228.08
General Services	1	37.36
Health	1	25.78
Licenses & Consumer Affairs	1	345.90
Lighting	58	17,494.96
Parks & Recreation	8	877.95
Police	45	1,826.17
Seattle Center	2	1,100.42
Transportation	8	10,525.82
Treasurer	1	47.47
Water	38	19,354.57
Vehicle Fleet (All Departments)*	179	56,255.74
Totals	475	\$146,309.89

*During the year 578 accidents were evaluated and 231 claims were filed. The estimate of ultimate claims cost for the year is \$67,615.33.

With the assumption by Metro Transit of the services formerly provided by the Department of Transportation, effective January 1, 1973, the City entered into an agreement with the Municipality of Metropolitan Seattle to provide claims service on a contract basis. The agreement was terminated effective December 31, 1974. The Law

Department, however, will complete the investigation of accidents which took place on or before that date, and dispose of related claims and litigation.

During the year, 1,739 reports of Metro Transit accidents were investigated, 759 claims were filed, 410 claims involving \$359,159.60 were settled for \$128,640.31, and reserves for the settlement of unpaid and outstanding claims were established in the amount of \$349,305.00.

In accord with an amendment to the City Charter approved by the voters on November 6, 1973, the City Council passed an ordinance which authorizes the Corporation Counsel to approve the payment of any claim in an amount of not more than \$2500.00. This legislation has expedited the payment of meritorious claims.

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

In addition, 49 opinions on L.I.D. bond issues 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 1974 OPINIONS BY NUMBER

- 5840 Initiative measure to be submitted at next regular municipal election unless special election provided by City Council.
- 5841 Use of certain proceeds of Arterial Development Bonds for street tree planting and underground wiring.
- 5842 Storage of vehicles, boats and similar equipment in rear yards of corner lots.
- 5843 Eligibility of Freeholders.
- 5844 Application of Initiative 276 and Code of Ethics (Ordinance 100435) to members of Building Code Advisory Board.
- 5845 Application of "disclosure" requirements to Citizens Housing Board.
- 5846 Proposed lidding of Seattle water reservoirs.
- 5847 Millage levy for maintenance of Seattle Center facilities.
- 5848 Filing fee and withdrawal of declaration of candidacy for office of "freeholder".
- 5849 Rights of Milwaukee R.R. under Cedar River Watershed R/W deed.
- 5850 Electrical transmission line easements, use of underlying land for pipelines by Olympic Pipeline Company.
- 5851 Revenue Bond Restrictions upon disposal of certain City Light property.
- 5852 Rental of Seattle Center facilities at reduced rate or under special lease.
- 5853 Deferred Compensation plans for City employees.
- 5854 City employee not precluded from serving on Seattle Women's Commission.
- 5855 RCW 41.08.075 requires that residents and nonresidents employed in the Seattle Fire Department be treated alike for purposes of layoffs.
- 5856 Veterans' preferences under RCW 41.04.010.
- 5857 Charter residency preference as to employment in the classified civil service is applicable to promotional examinations.
- 5858 Applicability of Code of Ethics and Fair Campaign Practices Ordinances to "freeholders".
- 5859 Effect of West Seattle Freeway Referendum upon work of City Engineer pending said referendum.
- 5860 Authority of Fair Campaign Practices Commission and Board of Ethics with respect to office of "freeholders".
- 5861 Question as to possible conflict of interest of outside employment activities of member of Fire Department should be addressed to Board of Ethics.
- 5862 Budget item "Community Service Review".
- 5863 Proposed amendment to Section 22.41(d) of Zoning Ordinance would allow storage of boats in interior portions of rear yards of corner lots.

- 5864 Special endorsement required on driver's license of operators of certain vehicles .
- 5865 Civil Service Commission hearing foreclosed where unreasonable delay in making request.
- 5866 "West Seattle Freeway Fact Sheet".
- 5867 Request for refund by Water District No. 75.
- 5868 Relocation payments determined by City official responsible for implementation of project.
- 5869 Computation of contributions for military service for persons transferring pension credit under Laws of 1973, Chapter 143 —No termination date for "Viet Nam era" established.
- 5870 Marine Fire Protection Compact.
- 5871 City support of non-profit organizations.
- 5872 Provisions of Ordinance 102562 prohibiting discrimination in employment because of age.
- 5873 Trainee Selection Criteria.
- 5874 RCW 41.26.140 no longer differentiates between disabilities incurred in line of duty, and disabilities not incurred in line of duty.
- 5875 Fire Fighters in Seattle Fire Department are covered by the provisions of the Washington Industrial Safety and Health Act of 1973.
- 5876 RCW 66.08.120 does not preempt the City from including gross sales of liquor in the computation of the gambling tax authorized by RCW 9.46.110.
- 5877 C.F. 278464, Petition for reconsideration of Council action upholding conditional use permit for accessory parking.
- 5878 Section 8.07 of Standard Plans and Specifications precludes claim for damages for delay, and time extension is exclusive remedy.
- 5879 The amount of monetary awards for adopted suggestions under Ordinance 86927, Section 1(8).
- 5880 Possession of alcoholic beverages in Seattle Center facilities.
- 5881 Contract for supplying temporary clerical services would conflict with Article XVI of the Seattle City Charter.
- 5882 Police officer may not receive a pension under RCW 41.20.050 as "excess" benefits pursuant to RCW 41.26.040(2) while employed by another law enforcement agency in a position covered by the Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act.
- 5883 Formation of public corporation pursuant to RCW 35.21.725, et seq.
- 5884 Bank Trust Department as "Investment Counsel" under RCW 35.39.040.
- 5885 Legal status, necessary permits and possible abatement of unfinished Roanoke Reef project in Lake Union.
- 5886 City cannot waive all or any portion of its right of subrogation under RCW 41.26.150(3).
- 5887 Designation and observance of "legal holidays".

- 5888 "Opening" of alley west of Brook Avenue Southwest.
- 5889 Railroads—responsibility for maintenance of bridges required as condition of franchise grant—Union Station area.
- 5890 Employees not protected from potential liability arising from use of private autos on City business.
- 5891 Acquisition of a portion of the Home of Good Shepherd property for Meridian Playground.
- 5892 Confidentiality of returns and information pertaining to occupation license or tax under Section 19 of Ordinance 72630.
- 5893 LID 6591 (19th Avenue Southwest Sanitary Sewers).
- 5894 Seattle Human Rights Rule 40-021; Practice by non-attorney representatives before Human Rights Commission and Director of Human Rights.
- 5895 Solicitor's provisions of License Code (Ordinance 48022) applicable to door-to-door activities of insurance salesmen, securities salesmen and real estate agents.
- 5896 City Charter not applicable to vacancy in office of "freeholder".
- 5897 Environmental impact of alternative proposals must be discussed, but no new statement is necessary if such alternative adopted.
- 5898 Computation of pension increases under Laws of 1974, 1st Ex. Sess. Chapter 190 (Substitute Senate Bill No. 3194).
- 5899 Request by Architects already under contract for increase in fee from City must be accompanied by promise of additional services.
- 5900 Public Record Inspection and Copying—Vital Statistics.
- 5901 City options in transportation planning; Moving sidewalks.
- 5902 State preemption precludes imposition of City business tax upon computer rental income of insurance company.
- 5903 Applicability of Initiative 276 to computerized court records.
- 5904 City may provide retirement plan for a person hired as Chief of Police who is not eligible for membership in Washington Law Enforcement Officers' and Fire Fighters' Retirement System.
- 5905 Authority of Purchasing Agent to dispose of "surplus property".
- 5906 Regulation of Public Parking Garages.
- 5907 Eligibility for appointment as "resident" member of Pike Place Market Historical Commission.
- 5908 Responsibility for bridge maintenance—King Street Railroad Station complex.
- 5909 Public inspection of Engineering records.
- 5910 Left turn on red light into one way street.
- 5911 Article IV, Section 16 of City Charter precludes extension of term of CATV franchise except within three years of expiration of existing grant and after approval of voters.

- 5912 Reimbursement of Head Librarian for cost of meals for Library Board and library employees at business meeting authorized.
- 5913 Whether proposed physical fitness program for Seattle Firefighters is a proper expense of Firemen's Pension Fund.
- 5914 Legal requirements for control over tape recordings of City Council meetings.
- 5915 Interlaken Drive.
- 5916 Application of Section 4 of Ordinance 59866 to taxicab hauls which originate or terminate outside the City limits.
- 5917 New election required for Police Pension Board because of irregularities occurring during prior election.
- 5918 No authority to exempt nearby residents from overtime parking requirements.
- 5919 City may prohibit the prepayment of fees to rental agencies under police power.
- 5920 Time limit for passage of "substitute measure" after rejection of initiative bill.
- 5921 Acquisition funds of certain Interbay property.
- 5922 Effect of amendment of Article VII § 12 of the Seattle City Charter upon Board of Appeals.
- 5923 Adoption of proposed amended Rule 7.03j of Civil Service Rules.
- 5924 Veterans' competitive exam preference points may be used until appointment secured.
- 5925 City cannot "force" LID for sidewalks, street paving.
- 5926 Validity of proposed agreement with visiting nurse service.
- 5927 Use of juvenile records in connection with employment.
- 5928 Initiative petition limiting development of Woodland Park Zoo under King County Resolution 34571.
- 5929 Use of I.A.C.P. "Assessment" in Police Chief Selection process.
- 5930 West Seattle Freeway—Use of funds appropriated by referred Ordinance 102766.
- 5931 Confirming advice with respect to agreement with Senior Services and Centers, Inc.
- 5932 Power of City to impose admissions and business taxes upon amusement and entertainment activities.
- 5933 Potential Seattle Center Bond Issue.
- 5934 Person holding elective City office from January 10, 1972 through January 2, 1974 not eligible under Ordinance 86799 to be paid for "accumulated" days of vacation.
- 5935 Use of "unprogrammed and uncommitted" 1968 Forward Thrust Bond Funds for redesign and construction of West Seattle Freeway, Phase I.
- 5936 Authority of City to prohibit or tax "social card games" constituting gambling.
- 5937 "Seattle Center Booking Memo" regarding 1975 "Outdoor Living Show".

- 5938 City defense of claims against employees using their own cars on City business.
- 5939 Validity of in lieu leasehold tax imposed by RCW 82.29.030.
- 5940 Application of sales tax exemption to purchases of prescription drugs by the City.
- 5941 Assessments under Ordinance 102812 for contract compliance services.
- 5942 Liability of City as Trustee in a Deferred Compensation Plan.
- 5943 Westlake Park Project.
- 5944 Initiative No. 3 (Sand Point Naval Air Station).
- 5945 Legislative authority of City can regulate rates of cable television franchise grantee, and hearing may be delegated to any competent, impartial person or board.
- 5946 Initiative No. 3 (Sand Point Naval Air Station).
- 5947 Revenue Sharing appropriations to public corporations under Ch. 37, Laws of 1974 (1st Ex. Sess.).
- 5948 Reserved reverse transit lanes on Second and Fourth Avenues.
- 5949 Acquisition of property for street purposes—Neighborhood Improvement Bond Fund.
- 5950 Imposition of fees for use of Medic One and Air Car Services.
- 5951 Validity of Agreement with Skid Road Community Council.
- 5952 Forest Ridge Conversion Interlaken Drive Access.
- 5953 Taxation of offstreet parking facilities and business taxation generally.
- 5954 Senior Fire Prevention Inspector is a “rank” and not a “special duties assignment” under RCW 41.18.010(4).
- 5955 Records of examination in Chief of Police selection process under Charter Article VI Secs. 2, 3.
- 5956 Statement of nonsalaried officers to Board of Ethics not required to be made under oath, and no penalty for nonsalaried officer’s failure.
- 5957 City Charter precludes acceptance of reward for performance of official duties.
- 5958 Railroads required to construct new bridge at Lucille Street.
- 5959 Validity of business tax which imposes different rates on different categories of businesses, and validity of graduated rate business tax.
- 5960 Women’s Commission without authority to direct Civil Service Commission to order reexamination.
- 5961 Confidentiality of identity of complainants and information received by the Board of Ethics in investigations pursuant to Ordinance 100435.
- 5962 Taxation of certain gambling activities; scope and applicability of admission tax to certain activities.
- 5963 State Building Code Act applies to State-owned property.
- 5964 Environmental decisions of Superintendent of Buildings ancillary to building permit not subject to appeal to Mayor under Standard Operating Procedure 100-004.

- 5965 Authority of the Municipal Court of Seattle to accept traffic cases from the Juvenile Court which were declined and transferred without a hearing.
- 5966 Computation of "excess" benefits pursuant to RCW 41.26-040(2) where a police officer dies in active service leaving a spouse and two children.
- 5967 Economic feasibility of preservation of landmark not relevant to designation process; Public property subject to landmarks preservation ordinance.
- 5968 Right of retired fire fighter's former spouse to pension benefits under RCW 41.18.100 if she and such retired fire fighter remarry.
- 5969 City without authority to "regulate" bingo games.
- 5970 Massage operator whose license was previously revoked is entitled to apply for new license after one year.
- 5971 Superintendent of Lighting may not delegate authority to remove employees in the classified civil service.
- 5972 Medic One reports not subject to inspection.
- 5973 Ordinance No. 102562—Retrospective Effect.
- 5974 Termination of non-conforming signs authorized.
- 5975 Civil Service Commission not authorized to provide for new probationary period for employees transferred subsequent to completion of probationary period.
- 5976 EEA employee should be deemed under Civil Service Rule 6.04a to have been laid off from department to which he had been assigned.
- 5977 Inspection and copying of public records.
- 5978 Whether technical consultants and departmental representatives who assist in examination planning and preparation must be appointed as special examiners.
- 5979 Resolution of deadlocked Civil Service Commission where one commissioner has disqualified self.
- 5980 Application of Laws of 1974, Ch. 148, § 1, which authorizes upon certain conditions transfer of membership from city employees' retirement system to firemen's pension system.
- 5981 Application of State "Litter Tax" to Seattle Center Concessionaires.
- 5982 Projects eligible for expenditure of remaining 1954 Bond Fund Money.
- 5983 South End Pole Yard Storage Site Availability for Disposal as Surplus Property.
- 5984 Parking meter rates.
- 5985 Disability retirement may be discontinued only upon the basis of medical examination.
- 5986 Direct telephonic fire alarm connection with Fire Department violates Ordinance 87178.
- 5987 Repair of Pioneer Square areaway sidewalks.
- 5988 Projects eligible for expenditure of remaining Municipal Sewerage Revenue Bonds 1959 Construction Fund.

- 5989 City may require CATV grantees to exchange facilities as condition of new franchise, but may not increase burdens on existing grantees.
- 5990 Whether alcoholism treatment provisions in City's health care contracts conform to Ch. 119, Laws of 1974 (1st Ex. Sess.) is question for Insurance Commissioner.
- 5991 Political activity by City employees.
- 5992 Encroachment on Park property by Hindquarter Restaurant.
- 5993 Proposed policy of Fire Chief concerning selection of candidates from civil service certifications for Lieutenant and Captain.
- 5994 Seattle fire fighter not injured "in line of duty" while acting as a volunteer fireman in another city.
- 5995 Preferential Treatment for High Occupancy Vehicles.
- 5996 Mayor may remove Fire Chief without confirmation by City Council.
- 5997 RCW 66.08.120 prohibits municipal business and occupation tax on gross sales of liquor.
- 5998 Employees dancing with Patrons in Cabarets during working hours.
- 5999 Validity of proposed tax on wholesalers of pet food.
- 6000 Power of arrest of Special Policemen.
- 6001 Names of persons investigated by Police Department not subject to inspection.
- 6002 Artist-in-residence program in parochial schools.
- 6003 Right of an employee to view own personnel file.

IV.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

During the year 1974, this department prepared 827 ordinances and 55 resolutions; an additional 66 ordinances were prepared for the settlement of 475 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.

172 writs of garnishment against City employees were served upon the City. A total of 150 first answers were filed on writs of garnishments and 97 second answers to 30-day continuing lien garnishments were filed during the year. 23 garnishments were released during the year before any action was required on the part of the City and one garnishment action was quashed. In addition, 4 orders of the Department of Social and Health Services to withhold and deliver were served and answered.

718 surety bonds, deeds and other miscellaneous instruments totaling in excess of \$40 million were examined and approved.

Legal papers served and filed during 1974, including condemnation suits, summons and petitions, answers, judgments, notices of appearance and subpoenas, totaling 3,897 in all were handled by the Process Server.

V.

PROSECUTION OF ORDINANCE VIOLATIONS

Municipal Court

During the year 1974, Assistants Robert M. Elias, Robert B. Johnson, Jack B. Regan, and Joseph T. Schlosser handled calendars which totaled 55,679 cases in the four departments of Municipal Court resulting in the imposition of fines and forfeitures in the amount of \$1,213,113.00.

Traffic Violations Bureau forfeitures for the year amounted to \$3,021,198.00.

Also during the year 1974, Assistant Richard S. Oettinger processed and presented 66 cases involving violations of the Minimum Housing Code and 14 cases involving violations of the False Alarm Ordinance.

Municipal Court Appeals

Appeals from 772 convictions in Municipal Court (446 Traffic, 326 Other Violations) were disposed of in King County Superior Court in 1974 as follows: 234 appeals (120 Traffic, 114 Other Violations) were dismissed and remanded to Municipal Court for enforcement of the original fines and sentences. In 271 cases (170 Traffic, 101 Other Violations) convictions on pleas of guilty were entered. In 142 cases (98 Traffic, 44 Other Violations) the court or jury found the defendants guilty after trial. In 54 cases (27 Traffic, 27 Other Violations) the defendants were found not guilty. In 4 cases (0 Traffic, 4 Other Violations) the sentencing of defendants was deferred. In 67 cases (31 Traffic, 36 Other Violations) all charges were dismissed for insufficiency of evidence, witnesses moving away, or other causes.

STATE SUPREME COURT CASES—1974

City v. Marshall; City v. Verdon, 83 Wn.2d 665.

Defendants Marshall and Verdon, performer and manager, respectively, of the New Paris Theater, consolidated appeals to the State Supreme Court from separate convictions in Municipal and Superior Courts for violating § 21 of Ordinance 16046:

"It is unlawful for any person to appear in a state of nudity, or in any indecent or lewd dress, or make any indecent exposure of his person or to expose his private parts to public view, or be guilty of any lewd act or behavior in any place exposed to public view."

Defendants challenged application of the ordinance to conduct on the stage of a theater on the grounds that such conduct was "speech" and "expression" protected by the First Amendment and contended also that the ordinance related to public view of conduct in the streets and was therefore inapplicable to such conduct on a stage before paying, consenting adults. Verdon, charged with "aiding and abetting" on the basis of hiring performers, directing performances and deciding whether and when "G-strings" would be removed, contended no Seattle ordinance defined "aiding and abetting".

The State Supreme Court held that the conduct in the theater was obscene *per se*; that the ordinance prohibited "obscene" conduct; that the ordinance was not limited in its application to the "streets"; and that conduct on the stage of a theater is conduct exposed to public view. The Court also held that RCW 9.01.030, defining "aiding and abetting", applied to City ordinances and found that Ordinance 16046 § 60, defining "persons" to include natural persons, whether acting by themselves or through an "agent or employee", applied to Verdon. Defendants' petition for rehearing was denied, and their petition for writ of certiorari to U.S. Supreme Court, raising the same issues, was also denied.

The cases were tried and argued by Assistant Helen Wilson.

P. Lorillard Co. v. City, 83 Wn.2d 685.

P. Lorillard Co., a distributor of cigarettes, sued for refund of taxes paid under protest pursuant to the City's Business Tax Ordinance (Ordinance 72630). It contended, and the Court of Appeals had agreed (8 Wn. App. 510), that RCW 82.02.020 which provides that—

"The state preempts the field of imposing taxes upon . . . cigarettes, and no . . . municipal subdivision shall have the right to impose taxes of that nature."

prohibited the City for considering gross proceeds derived from the sales of cigarettes in calculating the amount of taxes due for the privilege of doing business within the city. The Supreme Court analyzed "who is being taxed, what is being taxed and how the tax is measured" and concluded that the City's Business Tax is different from the state cigarette tax. The preemption of RCW 82.02.020 did not therefore apply, and the decision of the Court of Appeals was reversed.

This case was tried by Assistant E. Neal King and argued on appeal by Assistant Jorgen Bader.

Monroe v. Tielsch, 84 Wn.2d 217.

This was an action by four juveniles to compel the Chief of Police to expunge the records of their arrest following a hearing in Juvenile Court at which the complaining witness chose not to testify. The Juvenile Court denied relief and, on certiorari to the State Supreme Court, its decision was affirmed. "In dealing with juveniles", the court held, "law enforcement officials should have the assistance of the past involvement of the juvenile with offenses as reflected by arrests."

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

John P. King et ux. v. City, 84 Wn.2d 239.

Plaintiffs, contract purchasers of submerged shorelands in Lake Union, alleged in this case that the action of the Board of Public Works on April 22, 1970 denying street use and building permits to fill Fairview Avenue East to provide access to their property, when coupled with the change of regulations by the U.S. Corps of Engineers on May 26, 1970 requiring permits for work in navigable waters inside the U.S. Pierhead line and repossession of the property by their contract vendor, prevented them from using their property for construction of an office building. The City argued that it was immune from tort liability in such cases, that no building permit could issue until street access was established, and that in any event the City's action, although held by the trial court in a prior related case to be "arbitrary and capricious", was not the proximate cause of plaintiffs' losses. The trial court found that the actions of the City did not involve the exercise of any discretion, and were intended to harass and discriminate against plaintiffs and to prevent plaintiffs from constructing a commercial building upon their property. The City was held liable for all of plaintiffs' costs and expenses in connection with their proposed development of the property in the amount of \$54,524.36, and for loss of anticipated profits from the construction of the office building in the amount of \$311,018.02, for a total judgment of \$365,542.38.

On appeal, the Supreme Court held that the City was not immune from tort liability under the facts as established and that the prior judgment estopped the City from contending that it had not acted wrongfully, but held that the City's acts were not the proximate cause of plaintiffs' losses, and reversed the judgment of the trial court.

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

Massie v. Brown et al., 84 Wn.2d 490.

Four warrant servers for Municipal Court, sued to enjoin the City from extending the regulations of its civil service system to their positions.

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On the City's petition for review of a Court of Appeals' decision upholding a Superior Court decision in favor of plaintiffs (reported 1973 Annual Report), the State Supreme Court held that the City's Civil Service System may not be extended to include personnel directly connected with the operation of the Municipal Court, for the same would be "an invasion of the independence of the judiciary" and violate the separation of powers doctrine.

The Supreme Court concluded that RCW Ch. 35.20 (authority for Municipal Courts) did not grant power to the City, expressly or by implication, to extend the Civil Service laws and rules to warrant servers, and held that "when the interest of the State is paramount to or joint with that of the municipal corporation, the municipal corporation has no power to act absent a delegation from the legislature."

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

Sonitrol Northwest, Inc. v. City, 84 Wn.2d 588.

This action was commenced by a firm engaged in the business of electrically or electronically monitoring sounds at customers' places of business and notifying police when detected sounds appeared to indicate unauthorized activity. Plaintiff contended that the ordinance (No. 62662) under which it is taxed violates constitutional requirements of equal protection of the laws because it is taxed at a substantially higher rate than installers of local burglary alarm systems and merchant patrol agencies with which it must compete. Plaintiff additionally contended that the reference in Ordinance 62662 to "operating or conducting a . . . burglary and police alarm system for hire" is void for vagueness. These contentions were rejected by the Washington Supreme Court, which sustained the trial court's dismissal of Sonitrol's action.

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

STATE COURT OF APPEALS CASES—1974

Deering v. City et al., 10 Wn.App. 842.

Henry R. Deering, dismissed as a fireman after a department "trial board" recommendation to the Fire Chief, appealed the dismissal to the Civil Service Commission under Art. XVI, § 12 of the City Charter; the Commission sustained the dismissal after a hearing. Deering next sought a writ of mandamus from Superior Court contending the Commission acted in an arbitrary and capricious manner; the Court denied the prayer. On his appeal from the Superior Court decision, Deering contended that the hearing before the Fire Department's "trial board" was unfair, did not comply with Fire Department rules, and was a denial of due process tainting all subsequent proceedings. The Court of Appeals, in sustaining the trial court, held

that, because the Commission hearing was *de novo* and the Commission's decision independently made, any error occurring at the prior "trial board" hearing was "cured" and further found that the Commission's decision was supported by substantial evidence. The Washington Supreme Court denied Deering's subsequent petition for review, and his petition to the United States Supreme Court for a Writ of Certiorari was likewise denied.

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

City v. Fettig, 10 Wn. App. 773.

Defendant was convicted in Municipal and Superior Courts of driving while under the influence of intoxicants. On appeal to the Court of Appeals the question presented was whether the inadvertent erasure of a video tape of defendant after the Municipal Court trial and before trial *de novo* in Superior Court was cause to require the case to be dismissed. The Court held such erasure was good cause for dismissal under the reasoning of *Brady v. Maryland*, 373 U.S. 83, 10 L.Ed.2d 215, 83 S.Ct. 1194 (1963) that, regardless of the good faith of the prosecution, the same amounted to a "suppression . . . of material evidence favorable to" the defendant, potentially exculpatory, violating the due process clause of the Fifth and Fourteenth Amendments, even though other evidence tended to support the conviction. The Court of Appeals stated that to affirm a conviction the reviewing court "must find that the trial court would have given no weight to such evidence," and found that there was sufficient evidence to establish that there was a "reasonable possibility that the suppressed video tape tended to rebut the police testimony." The Court held that the tape was "favorable" to the defendant under the *Brady* case and reversed the decision of the trial court.

This case was tried and argued by Assistant Myron L. Cornelius.

City v. Heath, 10 Wn. App. 949.

Defendant was charged and convicted in Municipal and Superior Courts of negligent driving, leaving the scene of an accident with an attended vehicle and driving without a valid operator's license. On appeal, defendant challenged the admission as evidence of an abstract of defendant's driving record and license status stored in a computer and transmitted from Olympia by teletype machine. The Court of Appeals held such evidence was properly admitted as a "business record" under RCW 5.45.020.

This case was tried and argued by Assistant Myron L. Cornelius.

City v. Sage, 11 Wn. App. 481.

After defendant's conviction in Municipal Court for negligent driving and driving under the influence of alcohol, the two charges were dismissed in Superior Court on the grounds that there was no

valid arrest (defendant was in custody, but unconscious), that there was no signed complaint (the signature was typed) and that the breathalyzer test was inadmissible (defendant was not informed of his "rights" before test). The City appealed and the Court of Appeals, in voiding the dismissal order and reversing the trial court and remanding for trial, held that the entry of a dismissal order, after an *ex parte* hearing for which the City received no notice, voided the order under Civil Rule 54(f)(2) requiring notice to opposing counsel. In its decision the Court also held that the arrest was legal, the signature was valid, and the results of the breathalyzer test were admissible because informing defendant of his "rights" while unconscious would have been a "useless act" not intended by the legislature in enacting the "implied consent" law.

The case was tried and argued by Assistant James G. Blair.

City v. P. B. Investment, 11 Wn. App. 653.

In order to open the street for traffic and complete a necessary paving project, the City sued for and secured an injunction requiring the defendant to discontinue its use of certain buildings which had been erected in the right-of-way pursuant to Ordinance 41622, approved November 27, 1920. Ordinance 41622 had settled a damage claim made by an abutting owner, in part by granting the abutter use of the southerly twenty-five feet of street area "for a period of years coincident with the life of the existing brick building situated upon the . . . abutting real property." The existing brick building was still standing.

The defendant secured a stay of the injunction, arguing that it should be allowed to continue in possession until condemnation damages were paid; the City maintained that Ordinance 41622 could not authorize a private obstruction in street area needed for public travel.

The Court of Appeals affirmed the issuance of the injunction, but remanded to the trial court "for determination of whether the elements of equitable estoppel are present and, if so, the amount of damages . . . based upon the value of the balance of the term of use . . . granted by the 1920 ordinance."

This case was tried and argued by Assistant Jorgen Bader.

Talbot v. Gray, 11 Wn. App. 807.

This action was commenced by plaintiffs to enjoin The City of Seattle from authorizing, and Gordon M. Gray and Heli J. Gray from constructing a dock on a five-foot strip of shoreland on Lake Washington connected to an upland lot at 3115 West Laurelhurst Drive Northeast. The trial court denied the requested injunctive relief and awarded damages to the Grays occasioned by issuance of a temporary injunction.

Plaintiffs appealed to the Court of Appeals which affirmed the

trial court's judgment. Plaintiffs' principal contention was that because of the rear lot line of an irregularly shaped lot is "a line ten (10) feet in length within the lot, parallel to and at a maximum distance from the front lot line," such rear lot line cut off the five foot corridor where the lot narrowed to less than ten feet, and the dock was therefore constructed outside of the area of the lot.

The Court of Appeals held that the corridor was part of the Gray's lot, even though outside the rear yard, because it was within the "property lines bounding the lot," and as a dock is an accessory use or structure on the lot and permitted outright, the permit and construction were lawful.

Plaintiffs also contended that the Grays did not give the notice of their application for a substantial development permit as required by the Shoreline Management Act of 1971, implemented by Seattle Ordinance 100423. The Grays gave notice as required by the State Act, but not as required by the implementing ordinance. The Court of Appeals ruled that the Grays had a vested right to develop their property in accordance with the law in effect on the date of their application, which was prior to the effective date of the implementing ordinance, and held the notice to be adequate. The Court of Appeals also affirmed the judgment for damages.

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

State ex rel. Brennan v. City, (unpublished decision).

Raymond Brennan resigned his position as a police officer before completing his probationary period and, over two years later, requested that the Civil Service Commission find such resignation involuntary and void, and to order his reinstatement. The Commission, limiting its hearing to the questions whether Brennan's resignation was coerced and his request for relief timely, denied the application for such relief. The King County Superior Court ordered retroactive reinstatement and the City appealed.

The Court of Appeals held that Brennan's long delay in seeking relief barred the action because of the serious damage and prejudice to the City caused by such delay.

Mr. Brennan's petition for review to the Washington Supreme Court was subsequently denied.

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

City v. State of Washington, 12 Wash. App. 91

Seattle residential neighborhoods may obtain an underground electric distribution system either by negotiated contracts with the City or by the formation of local improvement districts to pay a portion of the City's underground network construction costs. Prior to an amendment of State law in 1969, the State assessed a 3.6% public utility tax on such payments on the basis that they were revenues

accruing from "the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale; . . ." RCW 82.16.010(5). The City brought this action for a refund or credit of \$32,000 of previously assessed public utility taxes and contended that such payments from residential owners were not operating revenues, but capital contributions necessary to construct or establish a new distribution system in the first instance and were therefore taxable at a 1% rate under the provisions of RCW Ch. 82.04.

The Court of Appeals upheld the City's contention and reversed a decision of the Thurston County Superior Court which had affirmed an order of the Board of Tax Appeals denying such refund.

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

NOTEWORTHY SUPERIOR COURT DECISIONS—1974

Georges et al v. City et al., No. 766603.

This was an action by the owners and tenants of three historic buildings, known as the Olympic Block in Pioneer Square, for damages sustained when the buildings collapsed on March 22, 1972. The buildings were undergoing renovation at the time and plaintiffs claim the City had been negligent in issuing permits for such work. Also, plaintiffs claimed the City was negligent in maintaining certain water and drainage facilities in the area which contributed to the weakening of the buildings' foundation. Following a lengthy trial of four weeks, a King County Superior Court jury found in favor of the City on all claims and held that the party remodeling the buildings was solely responsible for their collapse.

City v. State Board for Community College Education et al., No. 781367.

The above case was commenced by the City to obtain a declaratory judgment that old Broadway High School was subject to the City's Landmark Preservation Ordinance, and that designation of such building by Ordinance 103459 would prohibit demolition thereof except pursuant to a certificate of approval of the Landmarks Preservation Board. The defendants argued that the landmark designation was in conflict with state law, particularly RCW Ch. 28B.50 and Section 17 and 27 of Chapter 114, Laws of Washington 1973 (1st Ex. Sess.) appropriating funds to remove and replace the building.

The Superior Court granted summary judgment to defendants upon the ground that specific state legislation authorized demolition of the building, and that such legislation was in conflict with the City ordinance and therefore controlling. The court found it unnecessary to answer the broader question whether the City's Landmarks Preservation Ordinance is applicable to State properties.

Zylstra v. City, No. 763136.

This case was commenced to enjoin the City from forfeiting plaintiff's bid bond because of his refusal to enter into a contract to rehabilitate Colman Pool. Plaintiff had claimed that his bid contained two errors of omission and that he had not received two addenda, but the claim of error had been rejected by the Board of Public Works.

In enjoining the City from forfeiting the bid bond, Superior Court Judge *pro tem* Eugene Cushing found that plaintiff's mistakes of omission had been made honestly and without gross negligence, that he gave prompt notice of the errors to the City, that the loss to plaintiff would be substantial if he were required to accept the contract, that the City was not greatly prejudiced by plaintiff's refusal to enter into the contract, and that the Board of Public Works therefore acted arbitrarily and capriciously in ordering forfeiture of plaintiff's bid bond. In addition, the court held that the bid proposal was nonresponsive because it indicated that no addenda had been received, although two had been issued and one of the addenda affected the price of the work.

City v. Shoemaker, No. 68937; *City v. Royster*, No. 69447; and *City v. Mathews*, No. 68017.

In the above cases defendants were convicted in Seattle Municipal Court for violation of the City's "prowling" ordinance (No. 16046 § 29) which makes it—

" . . . unlawful for anyone to loiter or prowl in a place, at a time, or in a manner, and under circumstances that manifest an unlawful purpose or warrant alarm of the safety of persons or property in the vicinity. Examples of circumstances which may be considered in determining whether such unlawful purpose is manifested or such alarm is warranted include but are not limited to the following: flight by the actor upon appearance of a peace officer, refusal to identify himself, or manifestly endeavoring to conceal himself or any object. * * *"

All defendants appealed from Municipal Court convictions and trials *de novo* were held in King County Superior Court. The *Shoemaker* case was tried before the Honorable Janice B. Niemi and the *Royster* and *Mathews* cases were tried before the Honorable Donald J. Horowitz in a consolidated proceeding. In all cases, prior to scheduled trial date, defendants moved to dismiss the City's complaint on the grounds that the ordinance was "unconstitutionally vague on its face." In all three cases the trial court agreed with defendants' contention and held the City's ordinance to be invalid. The City has filed notice of appeal in the State Supreme Court and has moved for and obtained consolidation of all three cases.

Gellatly et al. v. Chelan County et al., No. 43521.

Plaintiffs brought a class action seeking on behalf of all taxpayers of the state a refund of one mill on regular property taxes collected in 1972, to be apportioned ratably amongst the cities, counties, school districts, etc., receiving funds from the 1972 regular property tax. Plaintiffs contended that Amendment 7 to the State Constitution prevented the Legislature from raising the millage levy from existing levels (21 mills to 22 mills) while there was on file with the Secretary of State an Initiative to the Legislature (No. 44) on the same subject, which would have limited the level to 20 mills, unless the alternative was also submitted to the voters. The trial court held that neither the Supreme Court, in *Dept. of Revenue v. Hoppe*, 82 Wn.2d 549 (1973) (which had lowered 1973 taxes and ordered a ratable refund), nor Initiative 44 to the Legislature, nor the provisions of the 7th Amendment supported plaintiffs' contentions. Plaintiffs have filed notice of appeal to the State Supreme Court.

Bjorseth et al v. City et al., No. 780006.

This was an action by a number of civil service employees challenging the validity of a Civil Service Rule requiring layoffs of non-resident employees prior to layoff of resident employees. The action also challenged the validity of residence preference in promotional examinations. After plaintiffs and the City moved for summary judgment, the Court held invalid the Civil Service Rule requiring layoff of non-resident employees prior to layoff of resident employees because it conflicted with the portion of RCW 35.21.200 providing that "residence of an employee outside the limits of such city or town shall not be grounds for discharge of any regularly appointed civil service employee otherwise qualified . . ." The case is now on appeal to the Court of Appeals.

Sigurdson v. City, No. 758296.

Steven Louis Sigurdson died of gunshot wounds following an altercation at a tavern on West Marginal Way and South Michigan Street, May 23, 1971. Plaintiff sought \$500,000 damages from the City claiming that the police, who had been notified of an earlier disturbance at the tavern, had failed properly to maintain order and close the tavern and claiming also that the Fire Department failed to give proper treatment at the scene and negligently took deceased to a West Seattle hospital improperly equipped to treat such emergency even though Harborview Hospital was equipped for such emergency. On the City's motion, the trial court entered a summary judgment of dismissal, on the grounds that enforcement of ordinances by law enforcement officers acting within the scope of their official duty and providing of emergency treatment and/or transportation to injured persons by government employees are "discretionary" governmental acts and therefore neither tortious nor actionable at law.

Mason v. City et al., No. 752530.

City and State police commenced a high speed (up to 140 mph) chase northbound on Interstate 5 after the driver of a vehicle refused to stop for a State trooper. After eluding police, the vehicle crossed the median near 165th Street hitting another vehicle head-on, killing both drivers. Plaintiff sued for \$500,000 damages contending that the pursuit of the speeding car caused its driver to continue speeding and resulted in the collision.

The trial court granted the City's and State's motion for summary judgment on the grounds that: (1) no unfulfilled duty was owed to plaintiff's deceased by the City or the State; (2) there was no evidence of proximate cause relating any police actions to plaintiff's damages; and (3) the City and State were immune from tort liability for such actions inasmuch as the same were purely governmental functions, and discretionary. Plaintiff has appealed to the State Supreme Court.

U.S. DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON

Stephens v. Tielsch, No. 73-3580

This case involved the constitutionality of provisions of the City's Traffic Code requiring payment of towing and storage charges before release of an impounded vehicle. Plaintiff refused to pay such charges and brought this action under the United States Civil Rights Act of 1871, alleging that without a prior hearing on the legality of such charges, imposition of storage and towing charges as a pre-condition to obtaining his automobile was a deprivation of property without due process of law. The District Court upheld plaintiff's challenge and declared unconstitutional those provisions of the City's Traffic Code requiring the payment of storage and towing charges, before hearing on the legality of the imposition of such charges. Proposed amendments to the City Traffic Code to provide for appropriate hearings in vehicle impound cases are pending before the City Council.

This case was tried by Assistant C. R. Nelson.

SIGNIFICANT CONSUMER PROTECTION CASES

City v. Home Locaters, Inc. dba Rentex and Rodney Molzahn.

Defendants placed classified ads in local newspapers describing certain properties purportedly available for rent but without information as to location and required customers to pay an advance fee of \$20 to \$30 to become a subscriber to the service. An investigation by the Consumer Protection Division of the Department of Licenses and Consumer Affairs disclosed that during a 5 week period, 733 of

1449 of defendants' ads described properties not available on the date of publication of the newspaper. Thereafter, charges of false advertising against the firm (45 charges) and its owner/operator, Rodney Molzahn (5 charges) were filed in Municipal Court under Ordinance 43475, as amended, which provides that it is unlawful to advertise for sale to the public goods, securities, services, real estate or other thing, by making any assertion, representation or statement of fact which is untrue, deceptive or misleading. Defendant firm and its owner/operator were found guilty on all charges for a total fine of \$475. Defendants filed notice of appeal to the Superior Court for trial *de novo*, but later stipulated to dismissal of the appeals and a remand to Municipal Court for execution on the judgment.

City v. Paul Bleicher and Tracy Judd.

Defendant Bleicher, manager, and defendant Judd, an employee, of Southwest Programming, Inc., a door-to-door encyclopedia sales company, were charged with failing to procure a peddler's or solicitor's license, failing to disclose at the outset the company's name or product during sales visits, and making a variety of misrepresentations in connection with their encyclopedia sales endeavors. Additionally, defendant Bleicher was charged with using a plan, scheme or ruse misrepresenting the purpose of his sales visits. The charges, in turn are based upon allegations that attempts to sell the encyclopedia by defendants involved representations to customers that a set of the books would be placed in their home free of charge in return for testimonial letters, and that while defendants purportedly limited the offer to two or three families in an area, it was available only to those who would contract for purchase of a set for \$300. It is also alleged that, while the books retailed elsewhere for \$149, defendants told customers they were worth \$500 to \$1800. Defendants failed to appear for trial forfeiting approximately \$1800 in bail bonds posted when they were arrested and bench warrants in the total amount of \$24,000 have been issued by Municipal Court, although the defendants are believed to have left the State of Washington.

City v. Michael Kelly and Edward Wood.

Defendants Kelly and Wood, part-owner/manager and employee, respectively, in the Kelly Co., a door-to-door vacuum cleaner sales business, were charged with misrepresenting the purpose of telephone sales calls, failing to display copies of the City's Peddler's and Solicitor's License, failing to disclose at the outset the name and the person and company or product represented, and failing to disclose cancellation procedures allowed after the so-called "cooling off period". The allegations were that defendants engaged in door-to-door soliciting and distribution of cards with enticements of gifts and participation in a drawing for free groceries; in follow-up telephone calls defendants asked for appointments to deliver the "gift" and, stating the

endeavor was an "advertising campaign", asked for an opportunity to demonstrate "Rainbow", a vacuum cleaner which defendants refused to identify as such on the telephone; demonstrations lasted 45 minutes to one hour and only persons allowing a demonstration received the "gift" they had "won"; the drawing for free groceries was conducted so that only a purchaser of a vacuum cleaner could win. Defendants were found guilty of using a plan, scheme or ruse to misrepresent their purpose and a failure to display copies of their peddler's license to prospective customers. The charges of failing to disclose the seller's identity "at the outset" and of failing to include notice and cancellation language required by the City ordinance ("cooling off period") were dismissed in Municipal Court. The case is presently on appeal for trial *de novo* in Superior Court.

NOTEWORTHY ADMINISTRATIVE PROCEEDINGS—1974

Petition for repeal or amendment of State Board of Health Rule for Reservoir covers. By Washington Administrative Code Rule 248-08-590 the State of Washington Board of Health adopted a requirement that every public water supply system submit to the State Department of Health proposed plans for covering open water distribution reservoirs.

Seattle took issue with the rule on the basis that environmental and other alternatives to such action had not been appropriately considered. Although such rule had been adopted just prior to the enactment of the State Environmental Policy Act in 1971, the City contended that enforcement activity should be subject to the requirements of SEPA, including the preparation of an environmental impact statement.

Following a hearing on the City's petition to repeal or amend the Rule, the Board directed its staff to develop new reservoir protective criteria including elements of flexibility which might provide for protection by means other than covering and further directed that any such proposed criteria must involve the assessment of environmental aspects. At year's end personnel of the State Board of Health and a special committee including City representatives were continuing efforts toward the accomplishment of this goal.

Federal Power Commission—Proposed Raising of Ross Dam.

Public interest and evidentiary hearings commenced in April before an Administrative Law Judge of the Federal Power Commission in Bellingham and Seattle. Subsequent hearings relating to geologic, construction, environmental, economic and power supply matters took place in Washington, D.C. and continued intermittently during the balance of the year. By year's end it appeared that the testimonial phase of the hearings was nearing an end. At the conclusion of evidentiary hearings and following the submission of briefs the matter

will be taken under advisement for decision by the Administrative Law Judge. This decision will be then transmitted to the full Federal Power Commission for final administrative decision.

Shorelines Hearings Board

During 1974, the Law Department continued to represent the Director of Community Development before the Shorelines Hearings Board, successfully defending issuance of permits under the Shoreline Management Act of 1971 to Harry Low to enlarge an apartment house on Beach Drive Southwest and to New England Fish Company for fish processing, warehouse, office and parking structures at Pier 89. Substantial public access to the shoreline was required as a condition to granting the latter permit. Pending are appeals by Hugh Benton, III from conditions imposed upon construction of two apartment houses on Beach Drive Southwest.

ANTITRUST DAMAGE ACTIONS

Three cases alleging damages to the City from violations of federal laws were still pending in 1974, involving water meters, liquid asphalt and automobiles and, under State antitrust laws, baseball franchises. In addition, the City has pending claims in class actions involving accredited station protection services and milk products.

STAFF CHANGES

Assistants Helen Wilson and Parayil K. Abraham resigned during the year—Ms. Wilson to enter private practice and Mr. Abraham to accept a position with the U.S. Department of Health, Education and Welfare. Both were principally assigned to the trial of Municipal Court appeals in King County Superior Court where their personal demeanor and professional competence were a credit both to the City and this office.

Three additions to the staff were made in 1974: Assistants Elizabeth A. Huneke and Charles D. Brown upon their graduation from law school and admission to practice; and Assistant Walter L. Williams, former legal counsel to the Housing Listening Post.

The Legal Intern Program continued through 1974 with Ms. Hattie M. Sewell and Mr. Ernest J. Ishem appointed to one year terms to replace Ms. Sophie M. Johnson and Mr. Phillip Aaron.

The City of Seattle Legislative Department

MR. PRESIDENT:

Your Committee on HUMAN RESOURCES AND JUDICIARY

to which was referred Comptroller File #281275, City of Seattle Law Department,
1974 Annual Report,

Date Rep
and Ado
APR 14

RECOMMENDS THE SAME BE PLACED ON FILE.

..... Chairman

Jeanette Williams