

**CITY OF SEATTLE
LAW DEPARTMENT**

Annual Report

1975

JOHN P. HARRIS, Corporation Counsel

ASSISTANTS CORPORATION COUNSEL

**JAMES M. TAYLOR
GORDON F. CRANDALL
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LEGAL INTERNS

**JEANETTE PFOTENHAUER
WILLON A. LEW**

Cover photograph of Assistant Richard S. Oettinger (right) and new Assistants Phillip Aaron, Marianna S. Cooke and Harriet M. Cody by Jack W. Crider, Lighting Department Photographer.

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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, 1975, as required by Section 12, Article XXII of the City Charter.

As has been the case in recent years, the statistics in this report reflect the greatly increased volume of work performed by this department, particularly when contrasted with work levels ten years ago. For instance, in the period 1965-1975 the number of formal legal opinions written annually increased from 49 to 178 (263%); the number of ordinances and resolutions drafted (excluding ordinances in settlement of claims) increased from 424 to 787 (85.8%); and the number of suits and other civil proceedings increased from 247 to 972 (294%).

This dramatic increase in the number of civil damage cases filed against the City in turn imposed critically heavy case loads on the Assistants in the Litigation Section. In response to our request for additional trial lawyers to meet this impact, the City Council created one additional position in August, and in December authorized two more trial assistants in our 1976 budget. The vital importance of this part of the Law Department's operation is amply illustrated by verdicts totaling 3.5 million dollars entered against the City in the Roanoke Reef and West Waterway cases, which are now on appeal, and by the case of *United Association of the Plumbing and Pipefitting Industry, Local No. 32 v. City* in which the Court of Appeals reversed an adverse trial court decision, with the result of an immediate saving to the City of approximately 2.1 million dollars as well as a favorable future financial impact which has yet to be calculated. These cases are discussed elsewhere in this report in greater detail.

Another important challenge for the Law Department in 1975, in addition to resolving current legal issues, has been the early identification of emerging problems so as to provide legal advice in the planning process in all City departments and thereby to establish the soundest possible basis for the implementation of future programs and policies. To this end we have engaged in necessary research, served on task forces, provided legal advice, or assisted in the preparation of appropriate legislation concerning such diverse subjects as the Shoreline Master Program; a proposal to process solid waste into methanol or ammonia; a program to provide for the defense of City officers and employees who are sued as a result of acts or omissions in the performance of their duties; the prohibition of so-called "body painting studios" and the control of prostitution; a program to pro-

vide utility rate reductions for low income elderly; compensation for volunteers aiding crime victims; hand gun control; the prohibition of no-deposit, no-return containers and flip-top cans; the implementation of SEPA; the use of City vehicles in a car pool program; the Westlake Park Project; and a myriad of other matters listed in this report.

A vigorous and highly successful effort has been instituted to collect debts owed to the City, including fines and civil penalties from Municipal Court, past due accounts, damages to City property, and the like; one Assistant has been assigned full-time to such collection efforts.

Increased emphasis has been placed on a cooperative effort with the Building Department for the prosecution of actions to impose civil penalties under the Minimum Housing Code. As detailed elsewhere in this report, such prosecutions increased from 76 in 1974 to 244 in 1975, an increase of 220%.

The consumer protection law enforcement program of the City has involved a close working relationship between the Law Department and the Department of Licenses and Consumer Affairs. Together, this effort has demonstrated that the City can provide effective limitations in situations once thought to involve strictly individual problems to be solved by private civil actions. This program, some of the results of which are summarized elsewhere in this report, will hopefully lead to a better understanding of the rights of the consuming public and the deterrence of potential offenders who would transgress those rights.

In the final analysis, effective legal services are measured by the availability and application of a lawyer's time, knowledge and experience, and I wish to express my appreciation to the members of my staff who, in accepting increased responsibilities, have demonstrated a high level of professional competence and a personal commitment to the successful completion of their respective assignments.

Finally, I wish to express my appreciation to the City Council which has continued to provide the budgetary support essential to the Law Department's purpose of providing the full range of legal advice and assistance which is necessary to enable the City to meet the challenges of the future.

Respectfully submitted,



JOHN P. HARRIS

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 1974	Commenced During 1975	(1965)	Ended During 1975	(1965)	Pending Dec. 31 1975
Condemnation suits	6	4	(2)	3	(12)	7
Damages for personal injuries	142	116	(78)	90 ^a	(65)	168 ^b
Damages for other than personal injuries	134	45	(42)	32 ^c	(35)	147 ^d
Damages—City as plaintiff	85	24	(—)	20	(—)	29
Contract actions	18	7	(—)	7	(—)	18
Collections on Municipal Court Judgments	—	88	(—)	21	(—)	67
Extraordinary writs (injunctions, mandamus, certiorari, habeas corpus)	80	55	(18)	18	(22)	117
Administrative proceedings Municipal Court	22	24	(—)	8	(—)	38
Civil Actions	120	244	(—)	195	(—)	169
Miscellaneous proceedings	137	55	(45)	40	(32)	152
Sub-total	744	662	(185)	434	(166)	972
Appeals from Municipal Courts (Traffic and other violations)	963	1,116	(672)	750	(841)	1,329
Grand Total	1,707	1,778	(857)	1,184	(1,007)	2,301

a Including 19 Metro cases.
b Including 38 Metro cases.

c Including 3 Metro cases.
d Including 9 Merto cases.

2. Segregation—Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1974	142 ^a	\$27,109,817.13
Commenced since January 1, 1975	116 ^b	25,399,030.38
Total	258	52,508,847.51
Tried and concluded since January 1, 1975	90	17,906,672.11
Actions pending December 31, 1975	168 ^c	34,602,675.40

a Includes 9 cases in which amount of damages is unspecified.
b Includes 11 cases in which amount of damages is unspecified.
c Includes 12 cases in which amount of damages is unspecified.

Of the 90 personal injury actions concluded in 1975, 6 involving \$673,880.79 were won outright. In 2 cases in which \$95,000 was claimed, plaintiffs recovered \$36,800. Of the remaining 82 cases in which plaintiffs claimed in excess of \$17,137,291.32, thirty-six cases involving in excess of \$11,112,962.00 were covered by insurance, forty-four cases involving in excess of \$5,999,329.32 were settled or dismissed without trial for a total of \$239,106.97, and two cases with total claimed amount of \$25,000 were returned to Metro.

3. Segregation—Damages Other Than Personal Injuries:

	Number	Amount Involved
Pending December 31, 1974	134 ^a	\$13,732,326.69
Commenced since January 1, 1975	45 ^b	2,970,192.32
Total	179	16,702,519.01
Tried and concluded since January 1, 1975	32	288,051.33
Pending December 31, 1975	147 ^c	16,414,467.68

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

b Includes 1 case in which amount of damages is unspecified.

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

Of the 32 cases involving damages other than personal injuries concluded in 1975, 6 involving \$11,830.72 were won outright. In 8 cases involving in excess of \$87,793.25 plaintiffs recovered \$33,043.73. The remaining 18 cases involving \$188,427.36 were settled or dismissed without trial for a total of \$39,703.63.

The above actions concluded in 1975, 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	2	\$ 4,000.00
Engineering Department:		
Sewer Utility (includes 1 case covered by insurance)	11	56,800.00
Sidewalk	4	21,900.00
Street	16	22,484.00
Fire Department	1	0
General Services	1	8,500.00
Licenses and Consumer Affairs	2	501.00
Lighting Department	4	100,786.56
Municipality of Metropolitan Seattle	22	82,798.82
Parks and Recreation Department	5	2,585.95
Police Department (33 cases covered by insurance)	45	9,063.00
Public Health Department	1	0
Seattle Center (1 case covered by insurance)	1	0
Transportation Department	5	39,150.00
Water Department	2	85.00

4. Appeals and Extraordinary Writs:

At the close of 1974, five appeals involving the City were pending in the State Supreme Court, and thirty-five in the State Court of Appeals.

In 1975 4 new appeals were filed in the State Supreme Court, 23 appeals were filed in the Court of Appeals, 2 were filed in the United States Court of Appeals, and one petition for a Writ of Prohibition was filed in the State 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 two other cases. One case was trans-

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ferred from the Supreme Court to the Court of Appeals. The Supreme Court and the Court of Appeals each accepted one petition for review from Superior Court decisions.

The City prevailed in eleven of the fifteen cases involving the City in which the State Court of Appeals rendered a decision or denied review in 1975. An additional five cases before the State Court of Appeals, in which the City had prevailed in lower court, were dismissed for want of prosecution.

In matters before the State Supreme Court, the City prevailed in four of the eight cases involving the City in which the Supreme Court rendered a decision or denied review in 1975.

The City's position was upheld in the case decided by the United States Court of Appeals.

At the close of the year there were 6 appeals pending in the State Supreme Court, 36 in the State Court of Appeals and 1 before the United States Court of Appeals.

5. Miscellaneous Cases:

Miscellaneous cases pending at the close of 1974 and commenced in 1975 are segregated as follows:

Eighty-five cases filed by the City for recovery of damages were pending at the close of 1974; 24 cases were commenced in 1975. Of this total, 12 were completed in which the City recovered \$7,025.39 and 8 involving \$4,618.32 were dismissed; 89 cases are pending. 88 cases for collection of Municipal Court imposed civil penalties for Housing Code violations were filed in 1975 and of that total, 21 cases were completed in which the City recovered \$23,726.04; 67 collection cases were pending at the close of 1975.

Eighteen contract actions were pending at the close of 1974; 7 were commenced during 1975. Two cases involving the City were dismissed without payment by the City. In 5 cases involving \$768,177.02 plaintiffs recovered \$136,668.66.

Of the other miscellaneous proceedings, the City lost 15 and won or otherwise disposed of 25; 152 cases are pending.

In addition, 11 injunctive actions were concluded, of which the City won 10 and referred one to an insurance carrier; 70 injunctive actions are pending. One writ of certiorari was concluded in favor of the City during 1975; 18 are pending. One habeas corpus writ was processed; 4 are pending. One writ of mandate was denied; 22 are pending. Two cases involving requests for declaratory relief were completed in 1975 and of such cases the City won one and lost one; 2 are pending. Two cases involving writs of review were dismissed in the City's favor. One writ of prohibition is pending.

II. CLAIMS IN 1975

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 1975:

	Number	(1965)	Amount Involved	(1965)
On file January 1, 1975	2231	(1513)	\$76,898,827.73	(15,917,143.30)
Referred for investigation	1,336	(1036)	32,577,661.35	(52,658,270.94)
Closed without payment	643	(513)	933,856.54	(7,174,380.94)
Claims paid	488	(651)		
			(Asked) 753,545.99	(5,514,096.73)
			(Paid) 204,517.68	(294,860.40)
On file December 31, 1975	2,251		\$85,086,321.62	

Payment of \$204,517.68 was made in settlement of 488 claims involving various departments of the City, and was effectuated as follows:

15 claims involving \$81,536.24 were paid pursuant to specific ordinances passed by the City Council for such purpose;

473 claims involving a total of \$122,981.44 were paid pursuant to Ordinance 103167 which authorizes the Corporation Counsel to approve payment of individual claims of not more than \$2,500.00.

Following is a tabulation showing in detail the departments involved and amounts paid:

	Number	Amount Paid
Building	6	\$ 3,955.78
Board of Public Works	1	750.00
Engineering		
Construction	5	2,300.63
Sanitary Sewer	1	169.72
Sewer Utility	28	14,074.71
Sidewalk	23	9,876.91
Solid Waste	1	62.00
Storm Sewer	5	2,356.95
Street Maintenance	27	3,537.35
Traffic	6	1,534.36
Fire	1	56.86
Lighting	85	51,005.84
Parks & Recreation	11	3,345.16
Police	60	3,021.13
Seattle Center	8	1,343.94
Water	23	34,554.97
Vehicle Fleet (All Departments)*	197	72,571.37
Totals	488	\$204,517.68

* During the year 486 vehicle fleet accidents were evaluated and 260 claims were filed. The estimate of ultimate vehicle fleet claims cost for the year is \$130,786.42.

With the assumption by Metro Transit of the services formerly provided by the Department of Transportation, 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, how-

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

During the year, 19 reports of Metro Transit accidents were investigated, 86 claims were filed, and 111 claims involving \$541,127.10 were settled for \$89,866.23. Reserves for the settlement of unpaid and outstanding claims total \$302,355.00.

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

In addition, 64 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 1975 OPINIONS BY NUMBER

- 6004 Exercise of disciplinary authority in Lighting Department by review committee.
- 6005 Unemployment compensation payments generally within amount of garnishment exemption.
- 6006 Charges for services of Design Commission in review of Broadview Branch Library Project.
- 6007 Responsibility for lateral support—Block D, A. A. Denny's (Fourth) Addition, 1st Avenue and University Street.
- 6008 Potential City liability for tax obligation of sub-contracting agency.
- 6009 *Monty J. Nikon v. Charles Coffman, et ux. and Joe Sherman, et ux., et al.* King County Superior Court No. 789584.
- 6010 Superintendent of Buildings has discretion as to demolition permits under State Environmental Policy Act.
- 6011 Georgetown Playfield.
- 6012 Directory of products for disabled persons by Department of Human Resources.

- 6013 Retention of office of "freeholder" by person selected to fill vacancy on City Council.
- 6014 Working capital advances.
- 6015 Application of Ordinance 101838 (Charitable Solicitations) to P.T.A.
- 6016 Decision as to eligibility for Athletic Massage Operator's License is responsibility of Director of Licenses and Consumer Affairs.
- 6017 Payment of pension contributions not required under 1955 Firemen's Pension Act (RCW Ch. 41.18) to obtain credit for military service.
- 6018 Lease of former Harbor Patrol/Public Loading Dock, So. Washington Street.
- 6019 Possible liability for relocation assistance upon revocation of street use permits.
- 6020 Six months service required for membership in City Employees' Retirement System.
- 6021 Request of Police Pension Board for legal action to set aside order granting disability pension to Harvey Noot.
- 6022 Authority for the operation of plant to convert solid waste into methanol or ammonia and sale of products thereof.
- 6023 RCW 35.21.710 requires that City business tax be imposed at a single uniform rate upon retail sales of tangible personal property.
- 6024 Financing of solid waste methanol/ammonia facility with Federal, State and Private Funds.
- 6025 Disclosure of Reasons for Employment Decision.
- 6026 Section 14-A of the License Code (Ordinance 48022) has effect of removing limitation upon the number of panoram location and operators licenses.
- 6027 Unemployment Benefits under Ordinance 104083 not subject to withholding and social security taxes.
- 6028 Responsibility for maintenance railroad-related bridges—Interbay—Shilshole Bay vicinity.
- 6029 Coordination of benefits payable under industrial insurance, time loss, sick leave and disability retirement.
- 6030 Use of Volunteer Labor in Park and Recreation Activities.
- 6031 Firemen may assist Building Superintendent in Housing Code inspections and enforcement.
- 6032 City may prohibit "body painting studios."
- 6033 Certain exemptions from Utility Rate Increases for low income elderly.

- 6034 City Purchasing Agent not authorized to consider whether bidder will be paying City business tax in determining who is the "best bidder."
- 6035 State Building Code and Zoning Ordinance applies to public property.
- 6036 Civil Service Commission is empowered to provide by rule for reinstatement after layoff of probationary employees.
- 6037 Legality of issuance of advance refunding bonds to refund certain general obligation bonds prior to first maturity date.
- 6038 Landmark Preservation Ordinance applicable to state property—factors for designation.
- 6039 Intention to subdivide land "for purpose of sale or lease" cannot be presumed—whether building is "multiple dwelling" is for Superintendent of Buildings.
- 6040 C.F. 280374—Poole v. Seattle Lighting Department, Case No. A-E-2 (#022).
- 6041 Selection of retirement options under Section 4 of 1955 Firemen's Pension Act must be made prior to retirement and may not be changed thereafter.
- 6042 Trade of zoo animals must be authorized by ordinance.
- 6043 Notice Requirements for Rezones over 10 acres.
- 6044 Fireman not entitled to service credit for time on inactive status where alleged wrongful lay-off not appealed to Civil Service Commission.
- 6045 Computation of "excess" benefits under RCW 41.26.040(2).
- 6046 Liability of City—Bellevue fireman training with Seattle Fire Department.
- 6047 Director of Human Rights not authorized to delegate duty to enter orders under Fair Employment Practices Ordinance (104095).
- 6048 City-State relationships in planning I-90 highway project.
- 6049 Argo-Airport Way Bridge.
- 6050 Civil Penalty under Ordinance 99112.
- 6051 Review of Shoreline Master Program, Draft 4; Shorelines Management Act, application of Environmental Classifications.
- 6052 Competitive Bidding required for Circle Park Construction.
- 6053 C.F. 280666, Appeal of Robert E. Miller from approval of application of Dillis W. Knapp for short subdivision.
- 6054 Lander Street Pedestrian Trestle.
- 6055 First and Fourth Avenue South Bridges over Argo railroad yards.
- 6056 Police towing and impoundment contract.

- 6057 Marion Street pedestrian viaduct, First Avenue to west through Alaskan Way.
- 6058 Members of the City Council may not engage in private discussions with parties seeking or opposing Certificate of Approval in Pike Place Market Historical District (Ordinance 100475).
- 6059 Disposition of property purchased by Department of Licenses and Consumer Affairs for evidentiary purposes.
- 6060 Enforcement of Uniform Fire Code in Fire Districts.
- 6061 Negotiated Collection of Debt to City.
- 6062 *Greenwood Properties, Inc. v. City*; and *Feida Morrow v. City*.
- 6063 LID 6608---Assessment of Harbor Area Leaseholds.
- 6064 Duty of motor vehicle operator approaching an intersection when traffic signal changes to a yellow light.
- 6065 Interests of Coldwell Banker Management Corporation, Inc. in Westlake Park project area.
- 6066 RCW 36.71.090 prevents the City from imposing its business tax upon farmers, gardeners or other persons selling their own produce.
- 6067 Persons requesting public records not required to furnish identity.
- 6068 Jurisdiction over existing signs in special districts under sign control ordinances.
- 6069 City Council should not prejudge questions requiring environmental impact statements by providing "direction."
- 6070 Liability for YSB Restitution Clients.
- 6071 LID 6594---LID benefits must be based on highest and best use of property.
- 6072 Appeal to Electrical Code Review Board.
- 6073 Public corporations created pursuant to RCW 22.21.730 and Ordinance 103387 are required to obtain a business license under Ordinance 72650 and to pay the applicable taxes thereunder.
- 6074 Civil Service Commission has no jurisdiction to hold hearing upon validity of resignation of probationary employee.
- 6075 Facilities Management Contract to supply City's data processing needs.
- 6076 Use of Collection Agency to collect unpaid Municipal Court fines.
- 6077 Payment of arbitration award made pursuant to arbitration clause of a collective bargaining agreement does not conflict with Charter Article XXII, § 5.

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- 6067 Persons requesting public records not required to furnish identity.
- 6068 Jurisdiction over existing signs in special districts under sign control ordinances.
- 6069 City Council should not prejudge questions requiring environmental impact statement by providing "direction."
- 6070 Liability for YSB Restitution Clients.
- 6071 LID 6594---LID benefits must be based on highest and best use of property.
- 6072 Appeal to Electrical Code Review Board.
- 6073 Public corporations created pursuant to RCW 37.21.730 and Ordinance 103387 are required to obtain a business license under Ordinance 72630 and to pay the applicable taxes thereunder.
- 6074 Civil Service Commission has no jurisdiction to hold hearing upon validity of resignation of probationary employee.
- 6075 Facilities Management Contract to supply City's data processing needs.
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- 6070 Liability for YSB Restitution Clients.
- 6071 LID 6594—LID benefits must be based on highest and best use of property.
- 6072 Appeal to Electrical Code Review Board.
- 6073 Public corporations created pursuant to RCW 35.21.730 and Ordinance 103387 are required to obtain a business license under Ordinance 72630 and to pay the applicable taxes thereunder.
- 6074 Civil Service Commission has no jurisdiction to hold hearing upon validity of resignation of probationary employee.
- 6075 Facilities Management Contract to supply City's data processing needs.
- 6076 Use of Collection Agency to collect unpaid Municipal Court fines.
- 6077 Payment of arbitration award made pursuant to arbitration clause of a collective bargaining agreement does not conflict with Charter Article XXII, § 5.

- 6078 Application of "appearance of fairness" principle to hearings upon proposed local improvements, objections to local improvement assessment rolls, and proposed street vacations.
- 6079 Recognition of additional lower related class to the classification of Police Officer cannot affect results of examination already in progress.
- 6080 Members of Women's Commission appointed to short term when Commission was established and reappointed to three year term not eligible for another consecutive appointment.
- 6081 Police Cadets for less than one year not entitled to preference in eligibility for appointment under Charter Article XVI § 10.
- 6082 Position of confidential secretary to Board of Ethics.
- 6083 Investment of certain utility funds for benefit of the General Fund.
- 6084 Neighborhood Improvement bond funds under Ordinance 96329 can be utilized only for necessary street improvements in deteriorating areas of the City.
- 6085 Proposal to change name of Yesler Branch Library.
- 6086 Validity of City ordinance prohibiting no-deposit, no-return beverage containers and prohibiting flip-top cans.
- 6087 Post Office Redi Carts.
- 6088 C.F. 281339--Fixed fees for Street Vacation not authorized by RCW 35.79.030.
- 6089 Effect of Ordinance 104561 authorizing certain increased compensation for supervisory and administrative employees.
- 6090 City Employees' Retirement System not obligated under RCW 26.09.130 to honor assignment of benefits not awarded by court for maintenance and support.
- 6091 Establishment of "Historic Zone" in Zoning Ordinance limited to existing uses would be invalid.
- 6092 Protest regarding Police Sergeant examination.
- 6093 Compensation for volunteers assisting criminal victims.
- 6094 Use of surplus moneys in Fire Protection Facilities Fund (Forward Thrust).
- 6095 Procedural questions regarding proposed Seattle Center GO bond issue and "excess levy."
- 6096 Environmental consideration and timing of City Council action in connection with Seattle Center bond issue.
- 6097 Final Environmental Impact Statement must precede Council committee decision.
- 6098 New application for commercial kennel license previously denied.
- 6099 Chapter 280, Laws of 1975 (1st Ex. Sess.) does not preempt authority of City to license and regulate massage and physical culture therapists.

- 6100 Three year statute of limitations applicable to refund of firemen's pension contributions erroneously paid for periods of military service.
- 6101 Ordinance 97185—Extra Pay for work at locations other than normal work locations requiring overnight absences.
- 6102 Confidentiality of investigatory files after the investigation has terminated.
- 6103 Coverage of City employee using private automobile on City business under Ordinance 104526.
- 6104 Additional vacation days must be provided on a "uniform basis" but carry over privileges may vary under differing circumstances.
- 6105 Application of RCW 35.22.620—630.
- 6106 Use of City-owned cars for car pooling by commuting city employees.
- 6107 Relocation Assistance Obligations on Proposed Acquisition—Nile Temple.
- 6108 Authority of Library Board to transfer funds within Library budget.
- 6109 Urban Homestead Grant Application.
- 6110 Municipal Court not required by Charter Article VI, § 5 to direct process to Chief of Police.
- 6111 Proposed vacation of portion of South Main Street west of Lakeside Avenue South.
- 6112 Amending Section 12A.08.080 of Ordinance 102843 to expressly allow for exercise of Constitutional freedoms.
- 6113 Reallocation of Forward Thrust Funds designated for "new youth camp in County" ("Red Barn Ranch").
- 6114 Municipal Firemen's Pension Board authorized to expend money from the Firemen's Pension Fund for staff survey.
- 6115 Imposing charges and fees, and securing services from a telephone utility as a condition of doing business.
- 6116 Article VIII § 7 of Washington Constitution forbids donation of land to private hospital for health care to persons in need.
- 6117 Building plans are public records under Initiative 276 (RCW Ch. 42.17).
- 6118 State Building Code Act (RCW 19.27) does not supersede administrative provisions of Building Code (Ordinance 85500).
- 6119 Solid waste processing facility.
- 6120 Disposal of surplus property.
- 6121 Elimination of departmental evaluation (constituting 30% of final grade) from Police Sergeant's examination would require giving new examination.

- 6122 Access to certain police records under 28 CFR § 1.
- 6123 Kandolph Carter Industrial Workshop.
- 6124 Non-competitive examination must be justified solely by nature and duties of position.
- 6125 Police Pension Board lacks statutory authority to purchase insurance to provide funds for the payment of benefits under RCW Ch. 41.20.
- 6126 Street area may not be reserved for car pool parking.
- 6127 Local Improvement District Hearing Procedures.
- 6128 City obligations under Forward Thrust Resolution for Parks.
- 6129 Computation of benefits under RCW 41.20.050 as to member of Police Department who completed three years in position higher than Captain subsequent to September 1, 1969.
- 6130 Vehicle identification requirements of RCW 46.08.065 as amended by Laws of 1975, 1st ex. sess. Ch. 169, § 1.
- 6131 Findings resulting from hearings on appealed dismissals or suspensions.
- 6132 Ordinance 104095.
- 6133 Effect of the State Building Code Act on enforcement of Seattle Fire Code.
- 6134 Fireman's widow who married him after his disability retirement in 1935 is not eligible for pension benefits under Laws of 1929, Ch. 86 and Laws of 1935, Ch. 39.
- 6135 Fireman who resigned in 1953 not entitled to refund of pension contributions under applicable statutes.
- 6136 Authority of Police Department to return "found" property to finder.
- 6137 Business and Occupation Tax classifications and rates.
- 6138 Admission tax is not due on deposits made to Seattle Seahawks where cost of season tickets is yet to be determined.
- 6139 Bidding process for selection of City data processing Facilities Management Operator.
- 6140 Unemployment compensation under the Seattle Unemployment Compensation Program for employees whose salaries are funded by state or federal grants.
- 6141 Street Walls.
- 6142 Easement prior to vacation of street valid without after acquired title recital.
- 6143 Leases by abutters of arcaways subject to paramount rights of public.
- 6144 Application of RCW Chapter 35.86, as amended by Chapter 221, Laws of 1975, 1st Ex. Sess. to the Freeway Park Garage.

- 6145 Inspection of plans, specifications, etc. under Article 7, Section 6 of the City Charter.
- 6146 Assessment of repair and demolition costs under RCW 35.80.030(1)(h).
- 6147 Environmental Policy Act, compliance for Operating and Capital Budgets.
- 6148 Computation of "excess" benefits under RCW 41.26.040(2) as to survivors of Officer Eugene E. Ray.
- 6149 Contingency budgeting of General Fund.
- 6150 City authorized to direct all garbage and rubbish to specific disposal facilities if necessary for public health, safety or welfare.
- 6151 Medical services under RCW 41.26.150 may not be reduced as to retired member who elects while in other employment to receive life insurance rather than medical insurance.
- 6152 C.F. 282430—Hand Gun control.
- 6153 Proposed adoption and amendment of Uniform Building Code and Uniform Mechanical Code pursuant to RCW Chapter 19.27.
- 6154 Investment of Sewer and Solid Waste Funds for benefit of the General Fund.
- 6155 Ordinance 86799, § 3 requires that employees be given earned vacation prior to severance from payroll.
- 6156 Military service but not disability included in computing longevity pay.
- 6157 Reduction of work week.
- 6158 Member of City Council should not hear rezoning petition in which confidential assistant is interested.
- 6159 Ordinance 103667 prohibits erection of posts and ornamental gate on Arboretum Drive.
- 6160 Proposed New Rule—Unemployment Compensation Program.
- 6161 Metered parking spaces are lawful, though within ten feet of fire hydrant.
- 6162 Proposed Standard Operating Procedures of Charges for the Department of Human Rights Contract Compliance Activities.
- 6163 Seniority credit for service in armed forces limited to service in time of war; Civil Service Commission bound by rule which establishes seniority on departmental basis.
- 6164 Preference in Contracting under the Housing and Community Development Act of 1974.
- 6165 Lease or purchase of building for City office space.
- 6166 Establishment of Enterprise Fund for Seattle Center Department.

- 6167 Prepaid Health Care Program—Application of Article VIII, § 7 of State Constitution.
- 6168 Requirement of Ordinance 73223, § 7 that holders of Fumigator's Certificate work "as an agent or employee of a Master Fumigator."
- 6169 Expenditure for City Christmas card.
- 6170 Resolution 24957; Downtown Parking Policy.
- 6171 Minor and her sureties may be sued where duplicate warrant was obtained and original warrant was later cashed.
- 6172 Preference in contracting under the Housing and Community Development Act of 1974.
- 6173 Fire Department Policy and Procedure Safety Regulations.
- 6174 Use of Public Place and Southerly Waterway at 51st Avenue N.E. by Laurelhurst Beach Club.
- 6175 Added cost of trucks due to federal safety regulations must be borne by seller.
- 6176 Chapter 272, Laws of 1975, 1st Ex. Sess.
- 6177 Civil Service Commission without authority to grant special seniority to Japanese Americans interned during World War II.
- 6178 Financial feasibility appropriate factor in Council landmarks designation hearing.
- 6179 Application of provisions of Vacation Ordinance (86799) to striking employees.
- 6180 Proposed contract between City and Nordstrom, Inc. for mutual back-up computer services.
- 6181 Interstate 90; Opinion 6176.
- 6182 Changes in Marine Fire Fighting Assistance Agreement proposed by Matson Navigation Company.

IV.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

During the year 1975, this department prepared 720 ordinances and 67 resolutions; an additional 13 ordinances were prepared for the settlement of 15 claims exceeding \$2500.

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 in excess of \$37,000 on such claims and forwarded the same to the City Treasurer.

188 writs of garnishment against City employees were served upon the City. A total of 168 first answers were filed on writs of

garnishments and 116 second answers to 30-day continuing lien garnishments were filed during the year. 25 garnishments were released during the year before any action was required on the part of the City. In addition, 26 orders of the Department of Social and Health Services to withhold and deliver were served and answered.

607 surety bonds, deeds and other miscellaneous instruments totaling in excess of \$29,000,000 were examined and approved.

Legal papers served and filed during 1975, including condemnation suits, summons and petitions, answers, judgments, notices of appearance and subpoenas, totaling 4,513 in all, were handled by the Process Server.

V.

PROSECUTION OF ORDINANCE VIOLATIONS

Municipal Court

During the year 1975, Assistants Robert M. Elias, Robert B. Johnson, Ross A. Radley, Jack B. Regan, and Joseph T. Schlosser, handled calendars which totaled 63,795 cases in the five departments of Municipal Court resulting in the imposition of fines and forfeitures (including penalty assessments) in the amount of \$1,493,675.75.

Traffic Violations Bureau forfeitures (including penalty assessments) for the year amounted to \$3,413,041.81.

Also during the year 1975, Assistants Richard S. Oettinger, W. Frederick Greenlee and Elizabeth A. Huneke processed and presented 244 cases involving violations of the Minimum Housing Code.

Municipal Court Appeals

Appeals from 750 convictions in Municipal Court (472 Traffic, 278 Other Violations) were disposed of in King County Superior Court in 1975 as follows: 282 appeals (183 Traffic, 99 Other Violations) were dismissed and remanded to Municipal Court for enforcement of the original fines and sentences. In 156 cases (103 Traffic, 53 Other Violations) convictions on pleas of guilty were entered. In 153 cases (128 Traffic, 25 Other Violations) the court or jury found the defendants guilty after trial. In 49 cases (21 Traffic, 28 Other Violations) the defendants were found not guilty. In 12 cases (5 Traffic, 7 Other Violations) the sentencing of defendants was deferred. In 98 cases (32 Traffic, 66 Other Violations) all charges were dismissed for insufficiency of evidence, witnesses moving away, or other causes.

STATE SUPREME COURT CASES—1975

Citizens Interested in the Transfusion of Yesteryear et al. v. Board of Regents of University of Washington et al., 86 Wn.2d 323

In this action, four individual plaintiffs sought injunctive relief against the University of Washington, owner of University Tract, and the City, alleging failure by both bodies to comply with the State Environmental Policy Act in authorizing demolition of the White-Henry-Stuart Building and construction of the Rainier Square Project in downtown Seattle.

Defendants moved to dismiss the case on four grounds: plaintiff's lack of standing, failure to join an indispensable party (UNICO Properties, Inc., the developer), statute of limitations, and mootness. The motion was denied by the trial judge, and defendants were granted a writ of certiorari by the Supreme Court to review such ruling.

The Supreme Court reversed the trial court upon the ground that the action had not been commenced within the 60-day statute of limitations established by RCW 43.21C.080(2) (State Environmental Policy Act), and ordered the action dismissed.

The case was argued for the City by Chief Assistant Gordon F. Crandall.

Gellatly et al. v. Chelan County et al., 85 Wn.2d 314

In this case 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 (approximately \$26,000,000), to be apportioned ratably amongst the cities, counties, school districts, etc., receiving funds from the 1972 regular property tax (approximately \$1,600,000 for Seattle). 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 plaintiff's contentions. The Supreme Court affirmed the Superior Court.

This case was argued by Assistant James B. Howe.

Mason, as Administrator v. Bitton, as Administrator, State of Washington and City, 85 Wn.2d 321

In this case 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.

The State Supreme Court reversed the Superior Court and held that there were factual issues of negligence present for the finder of fact. The Court found that a duty was owed to plaintiff's deceased under RCW 46.61.035 authorizing certain actions by operators of emergency vehicles "so long as he does not endanger life or property; . . ." In force also were formal departmental policies of Seattle and Washington State Police to the same effect. The Court also held that concurrent negligent actions may be the proximate cause of tortious injury and the chase by police should be submitted to the jury on such basis. Finally, the Court held that "hot pursuit" by police officers is not the kind of "basic policy discretion" or "governmental function" still protected by the doctrine of governmental immunity. The case was returned to Superior Court for trial.

This case was argued by Assistants Thomas J. Wetzel and Philip M. King.

City v. Grundy, 86 Wn.2d 49

Defendant petitioned the State Supreme Court for a writ of certiorari to review the decision of the Superior Court dismissing his appeal from a conviction in Municipal Court for violation of the City's prowling ordinance (prohibiting "prowling" in a manner, at a time and under circumstances manifesting an unlawful purpose or warranting alarm for the safety of persons or property). The dismissal was based on a contention by the City that there was no appeal from the deferred sentence given defendant because the same was not a "final judgment."

While this case was pending, the Court held in *Bellevue v. Miller*, 85 Wn.2d 539, that the Bellevue prowling ordinance similar to Seattle's, was unconstitutionally vague and therefore void and, on that basis, the Court dismissed *Grundy* without hearing argument on the merits of the case.

The City has filed a petition for rehearing in this case, as in *City v. Shoemaker* (reported herein), on the ground that the constitutional issue must be addressed directly by the Court after argument.

This case was argued by Assistant W. Frederick Greenlee.

City v. Hopkins (No decision, dismissed by order)

The City petitioned the State Supreme Court for a writ prohibiting the Superior Court from proceeding with a de novo "appeal" from Municipal Court on defendant's conviction for driving while under the influence of intoxicating liquor.

The City argued that: (1) Since Superior Court had previously dismissed the appeal and remanded the case to Municipal Court for imposition of sentence, it lacked jurisdiction to hear the case and was without authority to set aside the remand; and (2) the Superior Court lacked jurisdiction of the case because defendant had failed to note the case for trial and had failed to serve a copy of the Notice of Appeal upon the prosecutor.

The Supreme Court declined jurisdiction of the petition after a hearing in said Court and a subsequent factual hearing in Superior Court on the affirmative defense of estoppel and waiver.

This case was argued by Assistant Richard S. Oettinger.

STATE COURT OF APPEALS—1975

City v. Haugland (unpublished decision) #2929-1

Defendant, convicted of driving while under the influence of an intoxicant and failing to obey a traffic control device, appealed to the Court of Appeals, alleging that statements made by him and video tape of his behavior at the arrest scene were inadmissible because no proper foundation had been laid.

The Court of Appeals held that the video tape was admissible because defendant failed to be specific in his general objection and, further, defendant had waived his right to such objection because he had used the video tape for his own defense. Statements made to police on the video tape, and otherwise, by the defendant were held admissible because the same were voluntary and not the result of an interrogation. The conviction was sustained but the case was remanded to Superior Court for entry of formal findings pursuant to CrR 3.5.

This case was tried in Superior Court by Assistant W. Frederick Greenlee and argued in the Court of Appeals by Assistant Elizabeth A. Huncke.

Tri-State Construction Co. v. City, 14 Wn. App. 476

The City awarded the contract for the North Greenwood-West Storm Drains Contract No. 3 to West Coast Construction, Inc., a Model Neighborhood Contractor, as provided by Ordinance 101315 and the City's Grant Agreement with the United States for a Comprehensive City Demonstration (Model Cities) Program and as au-

thorized by RCW 35.21.660. Having submitted a lower bid, Tri-State Construction sued to enjoin the project, alleging violation of competitive bidding requirements of the City Charter. The City prevailed in Superior Court, and while the case was pending on appeal, construction was completed and the Model Cities Program was merged into the Community Development Block Grant program. After hearing argument, the Court of Appeals dismissed the appeal as moot.

This case was tried and argued by Assistants Charles R. Nelson and Jorgen G. Bader.

Burgess v. Towne, 13 Wn. App. 954

This was an action for false imprisonment brought against a judge of the Seattle Municipal Court. Plaintiff alleged that during her trial for a traffic violation the judge ordered her from the courtroom without justification and compelled her to wait in an anteroom for a hour before disposing of her case. The judge asserted that plaintiff had become disruptive to the point that it was necessary to exclude her to maintain order in the court.

The City obtained summary judgment dismissing plaintiff's action which was affirmed by the State Court of Appeals. The court held that the trial judge was immune from civil liability under the circumstances alleged regardless whether plaintiff's allegations were correct.

The case was argued by Assistant J. Roger Nowell.

City v. Shoemaker, Court of Appeals No. 3786-1

This appeal involved a trial court ruling that Section 29 of Ordinance 16046 (prohibiting "prowling" in a manner, at a time and under circumstances manifesting an unlawful purpose or warranting alarm for the safety of persons or property) was "unconstitutionally vague." After appeal thereof by the City to the State Supreme Court, said Court transferred *Shoemaker* to the Court of Appeals. The latter Court affirmed the holding of the Superior Court, basing its decision on *City v. Grundy*, 86 Wn.2d 49, recently decided by the State Supreme Court (reported herein), and *Bellevue v. Miller*, 85 Wn.2d 539, holding a Bellevue prowling ordinance "unconstitutional." *City v. Grundy*, while involving a conviction under the City's "prowling ordinance," was decided on a procedural point; the constitutional issue was not raised and therefore not argued.

Contending that the constitutional issue must be directly addressed, the City has filed petitions for rehearing in *City v. Grundy*, in the Supreme Court, and in *Shoemaker*, in the Court of Appeals, on such point.

The case was argued by Assistant Walter L. Williams.

The United Association of the Plumbing and Pipefitting Industry, Local No. 32 v. City,
Court of Appeals No. 2748-I (unpublished decision)

In 1968, after passage of RCW Ch. 41.56, the Public Employees Collective Bargaining Act, the plaintiff entered into collective bargaining with the City concerning wages, hours, and conditions of employment. On December 13, 1968, the City's Negotiating Committee promised Local 32 by letters on City Council and Mayor's stationery, to achieve 87% of construction wage pay scale within a three-year period and the Union by return letter, "accepted" such "promises." Such "promises" were not fulfilled under ensuing salary ordinances through the end of said three-year period (January 1, 1972). After the City denied a claim for damages for alleged breach of contract, Local 32 filed suit alleging that the letters constituted a binding contract between the City and the Union. The trial court agreed with Local 32 and entered a judgment on December 19, 1973 ordering the City to cease and desist from such breach of contract and to pay the wage rate pleaded for retroactive to January 1, 1972.

On appeal to the Court of Appeals the City argued there was no contract obligating the City to pay such wage scale inasmuch as the Negotiating Committee alone, without the sanction of an ordinance, had no power to bind the City; and, further, such alleged contract was never thereafter ratified by ordinance as required by the City Charter.

The Court agreed with the City, reversed the lower court and ordered that the action filed by Local 32 be dismissed.

The case was argued by Assistant Donald H. Stout.

Schiffman et al. v. Hanson Excavating Co. Inc. et al., City of Seattle
Court of Appeals No. 1890-I (unpublished decision)

This was a complex case involving the City, a subcontractor supplying concrete on a paving and patching project, the prime contractor and the latter's bondsman.

Suing the prime contractor and the City on its statutory retained percentage for payment for concrete supplied under a subcontract requiring payment by the cubic yard for concrete delivered in place, the subcontractor was successful at trial and, on appeal, the Court affirmed, holding that payment to the subcontractor was determined solely by the subcontract requiring the prime contractor to prepare the subgrade for the concrete which alone determined the necessary quantity of concrete and that such matter was not at all dependent, as the prime contractor alleged, upon disputes between the prime contractor and the City regarding how the prime contract was to be performed.

The prime contractor's cross-claim against the City included a claim for whatever was owed the subcontractor, a claim that the City

should pay for replacement of "native" fill and claims for certain "extras." While finding that the City did owe the prime contractor for certain "extras" and incidentals, the Court of Appeals, as did the trial court, rejected and dismissed the claim that the contract called for payment for "native" fill material, noting the contract only called for payment for "bank run gravel." The Court also dismissed the claim that the City was required to reimburse the prime contractor for the subcontractor's claim noting that the same was determined by the subcontractor.

The Supreme Court has denied a petition for review filed by the prime contractor.

The case was argued by Assistant James B. Howe.

Schreiber et al. v. City, and L.I.D. 6587,

Court of Appeals No. 2488-1 (unpublished decision);

and King County No. 782512 (LID assessment appeal)

The owners of a shopping center sought, in the alternative, to compel the City to install a traffic signal and left turn lanes as part of a Local Improvement District (LID) project to pave and widen an abutting street, or to cancel the pending LID assessment on their property. In an unpublished opinion, the Court of Appeals rejected such demands and held that the City was not required, as a matter of law, to install such traffic controls, that the City had not acted arbitrarily, capriciously or without regard for facts and circumstances when it determined not to install such signals, and that the assessment challenge was premature.

The property owners also appealed their final assessment to Superior Court, where it was confirmed in its entirety. For the first time in such final assessment appeal, the City was awarded much of the actual expenses it incurred in preparation for and trial of the case.

The cases were tried and argued by Assistant James B. Howe.

Great American Insurance Co. v. City and Allied Stores,

Court of Appeals No. 3876-1 (unpublished decision)

Great American Insurance Company, the City's insurer for damages arising from issuance of Street-use permits, declined tender of defense of *Allied Stores, Inc. v. City et al* (Bon Marche fire case) claiming the insurance policy did not cover the damages prayed for in said latter case. Great American appealed a judgment dismissing its action for declaratory relief on such point and the Court of Appeals held that the insurer's duty to defend must be determined from the terms of the insurance policy and the allegations of the complaint, the defense of which was tendered. The complaint in *Allied Stores v. City* only alleged City negligence in designing and installing in an arway vault electrical equipment which failed, allegedly causing the fire, and the insurance policy specifically excluded cover-

age in the event the permit issued was for work to be performed by or on behalf of the insured (the City). The Court reversed and remanded the case with instructions to grant the relief prayed for.

This case was argued by Assistants Thomas J. Wetzel and Philip M. King.

City of Seattle v. Fred Galeno, Jr.

Court of Appeals No. 2976-I (unpublished decision)

The defendant was convicted of violating Section 300-A of the License Code by placing for public use two amusement devices without having valid amusement device sub-licenses attached thereto. On appeal, defendant argued that the License Code unconstitutionally deprived him of equal protection of the law and due process by establishing different fees for an "operators license," required of persons leasing or renting such devices and a "location license," required of persons owning or purchasing such devices for use in their own place of business. The Court held that there was substantial evidence to support the trial court's finding on the failure to have a "sub-license" and declined consideration of constitutional issues raised as to other types of licenses not involved in such conviction.

The case was argued by Assistant Myron L. Cornelius.

NOTEWORTHY SUPERIOR COURT CASES—1975

Water District No. 75 v. City No. 779669

This is a rate case by one of Seattle's water utility wholesale customers, alleging that the rates charged to it were excessively high and therefore unlawful. The District contended that it should be granted certain preferential treatment by reason of certain storage facilities which it installed and which were of benefit to the City and that the wholesale rate of the City should not include or reflect the payment by Seattle's Water Department of an excise tax to the City.

At the trial of this matter, the Court rejected District's contention that the water rate cannot reflect the payment of the City's excise tax, but held, however, that the City's rate to all wholesalers should reflect the construction by Water District No. 75 of certain water storage facilities, which it considered to be of benefit to the City. The parties have filed appeals in the Court of Appeals as to portions of the judgment adverse to themselves.

City v. Janice Fay Jackson and Deborah Margaret Miskowicz
Nos. 69171 and 70871

Defendants, convicted in Municipal Court of offering and agreeing to commit an act of prostitution, moved to dismiss their cases, alleging discriminatory enforcement of the prostitution laws. After a fact-finding hearing, the trial court found that during the time of

the defendants' arrest, the Police Department failed to enforce said prostitution law against male customers. The Court held that failure to arrest male customers of prostitutes was caused by "conscious indifference to institutionalized sexism" which resulted in discriminatory enforcement against a "suspect classification," i.e. women. The cases were dismissed.

Haslund et. al. v. City No. 776371

In 1969 the City Building Department issued a permit to plaintiff's for the construction of an 89-unit condominium on Lake Union. Said permit was irregularly issued and was ultimately declared void by the State Supreme Court, preventing plaintiffs from completing their project.

Plaintiffs sued the City for damages resulting from the void permit and a King County Superior Court jury awarded judgment to plaintiffs of \$2,889,534. The City appealed to the State Supreme Court where the case is pending. One of the several issues involved in said appeal is whether a municipal corporation is immune from liability at law for damages suffered as a result of an invalid or void permit which the City had issued.

Cascade Community Council et al. v. Alfred Petty and Seattle Times Company No. 799613

Plaintiffs here sought a writ of mandate to compel the Superintendent of Buildings to issue an environmental impact statement prior to issuing demolition permits for buildings of the Seattle Times Company at 116, 118 and 120 Fairview Avenue North. A declaration of "no significant impact" had been issued and the Superintendent was prepared to issue the permits. No construction on the site was contemplated.

After trial on August 11, 1975, the trial court concluded that the cumulative effect of such demolitions upon the low-income housing supply in the Cascade Community was not adequately considered by the City and that an environmental impact statement was required, limited to the cumulative effect of granting such permits. Judgment to such effect was entered, and both the Seattle Times Company and the City have filed notice of appeal, which is now pending.

Parkridge v. City No. 783462

This was a certiorari action by property owners to set aside the "downzoning" of their property. The property in question had been rezoned from the single-family, high density zone (RS 5000) to the multiple residence, low density zone (RM 800) in 1959, purchased by plaintiffs in 1966 and 1967 for construction of an apartment house, and subsequently "downzoned" to the RS 5000 classification. The Comprehensive Plan of Seattle indicates that the property should

be used for one and two-family dwellings and, although zoned for apartments for 15 years, no such development occurred.

The case was consolidated with *Parkridge v. City and Petty*, No. 792863. After considering the record of the City Council in adopting Ordinance 103510 "downzoning" the property, the trial court concluded that the "downzoning" was unsupported by credible evidence and was "therefore unreasonable, arbitrary and capricious." Upon such holding the court entered judgment declaring Ordinance 103510 to be "void and of no effect," and that "The zoning of the above described real property accordingly remains RM 800." The judgment has been appealed to the Court of Appeals.

Parkridge v. City and Alfred Petty No. 792863

In this case, which involves the same property and parties as *Parkridge v. City*, No. 783462, also reported herein, plaintiffs alleged they had obtained a vested right to construct a 50-unit apartment on such property, notwithstanding that it had been downzoned to "single-family" from "multiple family" after the permit application was filed. This case was consolidated for trial with *Parkridge v. City* (No. 783462).

In late 1973 plaintiffs were ordered to bring a structure at 1238 15th Avenue East into compliance with the Housing Code, board it up or demolish it; the Building Department demanded environmental assessments and data prior to issuing a demolition permit. In February, 1974, plaintiffs applied for a permit to construct an apartment house on the site and were again required by the Building Department to supply certain environmental information. On December 4, 1974, following notice on August 2, 1974, application for the building permit was cancelled after the passage of several months and no action by plaintiffs regarding such Building Department order.

In their action to reverse the permit cancellation, plaintiffs contended that they had been discriminated against because they were required to submit the required environmental assessment and data while petitioners for the "downzone" had not been required to do so and that special treatment was accorded the Capitol Hill Community Council and Capitol Hill Land Use Review Board by allowing said groups to comment on plaintiffs' permit applications.

The court found that plaintiffs had pursued the application processes diligently and in good faith and that the Building Department's permit cancellation was "improper."

This case has also been appealed to the Court of Appeals.

Cohn et al. v. City and State of Washington No. 769178

This was a quiet title action by plaintiffs, who asserted fee-simple title to the southerly one-half of Columbia Street west of Alaskan Way in submerged tidelands. Portions of Seattle Tidelands were re-

platted pursuant to Chapter 28, Laws of Washington 1897, which, as to the disputed property here, created Columbia Street from tidelands previously conveyed to plaintiffs' predecessors in interest. While the statute in question purported to authorize payment, none was made to plaintiffs' predecessors, although owners of the area which is now the northerly half of Columbia Street were paid.

Evidence introduced by the City and the State showed that the disputed area had been considered and used as though it were any other street in submerged tidelands, including use thereof by ships, official maps designated the area as street; and participation by abutting owners in local improvement districts.

With such evidence, the City and the State cross-claimed that a 100 foot-wide street had been established by implied dedication through prescriptive user.

The trial court quieted title to the underlying fee in plaintiffs but additionally held that the City had established an easement for street purposes in the disputed area by implied dedication.

West Waterway Lumber Co. v. City No. 776634

This was an action to recover expenses for salvage and scrapping of plaintiff's ship to the extent such expenses were increased by the alleged negligence of the Seattle Fire Department in allowing the ship to sink while putting out a fire aboard it. The jury found that while the negligence of both parties contributed to the injury, only 7% of such negligence was attributable to the plaintiff. Pursuant to said verdict, judgment was entered in favor of plaintiff in the sum of \$516,417. Said judgment is now on appeal in the Court of Appeals.

Platt Electric Supply, Inc. v. City No. 790378

~~This was an action to enjoin the City from implementation of a~~ Purchasing Agent's contract for its electric lamp requirements for 1975. The complaint alleged that the City's Purchasing Agent illegally failed to award the bid to plaintiff as the lowest bidder, under Ordinance 102151, which provides for award of contracts to the "lowest and best" bidder. After a hearing on the merits, the Court denied the injunction and plaintiff has appealed this judgment to the Court of Appeals.

Homes Unlimited, et al. v. City No. 792243

This was an action by three rental agencies doing business in the City to have Ordinance 104214 declared unconstitutional. Said Ordinance, enacted in January, 1975, regulates the business of residential rental agencies, requires a surety bond in the sum of \$5,000 as a condition for a license, and makes it unlawful to require the payment of a fee prior to the customer actually entering into a lease. The

Court held that the bond provision was not enforceable but that the ordinance, including the prepayment regulation, was otherwise constitutional. Plaintiffs have appealed this judgment to the Court of Appeals.

In Re Election of Members of The City Council et al. No. 804837

This was an action contesting the election held on November 4, 1975 of five members of the Seattle City Council on the grounds that the voting devices used in the City ("punch cards") did not record all votes cast as required by state law. The trial court denied the relief requested and held that the Council members were properly elected. The contestant has appealed this judgment to the State Supreme Court.

**U.S. DISTRICT COURT, WESTERN DISTRICT
OF WASHINGTON**

*Washington State Aeronautics Commission v.
United States & The City of Seattle*
(Western District of Washington, Northern Division,
Cause No. C 75-818)

The State Aeronautics Commission, having applied for such property for aircraft purposes, sued to enjoin the United States from transferring certain surplus property at the former Sand Point Naval Air Station to The City of Seattle for park purposes, and for a restraining order and temporary injunction. The land transfer was anticipated within thirty days. The State one year previously had failed in a similar action to enjoin transfer of adjoining property to the National Oceanic and Atmospheric Administration. The property was transferred and the lawsuit was voluntarily dismissed after the District Court denied the temporary injunction and requests for a stay.

CONSUMER PROTECTION CASES

Again in 1975, this office with the Department of Licenses and Consumer Affairs continued active prosecution of violations of several City ordinances involving consumer protection. Among significant cases successfully prosecuted in Seattle Municipal Court, are the following:

City v. Rainbow Ambulance Service Inc.

Defendant was convicted of violation of record keeping and inspection requirements of the Ambulance Licensing Ordinance (Ordinance 90952).

City v. Roger Scott

Defendant was convicted on four counts of using false, deceptive or misleading statements in advertising of certain household consumer appliances (e.g. stereos, sewing machines, etc.).

City v. Robert Tinner

Defendant was convicted under the criminal code of hindering a law enforcement officer following an incident in which he gave false information to a Consumer Affairs investigator, and aided in the escape of the person charged in *City v. Scott*.

City v. Herman Schmidt and Katherine Schmidt

Defendants, vendors of chicken manure, were convicted of 44 separate counts of failing to provide customers with receipts containing their address, failing to give cancellation forms to and informing customers of right to cancel contracts, and failing to refund money requested by customer under peddlers and solicitors provisions of the License Code (Ordinance 48022, Section 194-4). Defendants were also convicted of four counts of theft and three counts of theft by deception under Section 12A.08.220 of Seattle Criminal Code (first application of theft by deception provision of Criminal Code to a consumer transaction).

City v. Opportunity Service, Inc. et al.

The defendant corporation, operator of an itinerant magazine subscription solicitation business using traveling crews of solicitors, and nine solicitors were charged with 121 counts of soliciting without a license, failure to give customers required receipts, cancellation notices and forms, soliciting on posted premises and using a plan, scheme or ruse to misrepresent purpose, in violation of the License Code (Ordinance 48022, Sections 190, 194, 194-2 and 194-4.) While individual solicitors have left the jurisdiction, the corporation's license application was denied by the Department and the firm has not appealed the same.

City v. Safeway Stores, Inc.

Defendant corporation was charged with and pleaded guilty to offering approximately 70 varieties of commodities without displaying unit price as required by Ordinance 100708, Section 2.

City v. Standard Oil Co. of California

Defendant corporation was charged with and pleaded guilty to selling gasoline from pumps which had been rejected by a weights and measures inspector for delivering less gasoline than indicated.

This office and the Department of Licenses and Consumer Affairs also cooperated in proceedings before the City's Hearing Examiner to revoke or suspend various licenses issued by the City. Said revocation proceedings included the following:

City v. Roger Scott

Defendant was convicted on four counts of using false, deceptive or misleading statements in advertising of certain household consumer appliances (e.g., stereos, sewing machines, etc.).

City v. Robert Tinner

Defendant was convicted under the criminal code of hindering a law enforcement officer following an incident in which he gave false information to a Consumer Affairs investigator, and aided in the escape of the person charged in *City v. Scott*.

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Defendants, vendors of chicken manure, were convicted of 44 separate counts of failing to provide customers with receipts containing their address, failing to give cancellation forms to and informing customers of right to cancel contracts, and failing to refund money requested by customer under peddlers and solicitors provisions of the License Code (Ordinance 48022, Section 194-4). Defendants were also convicted of four counts of theft and three counts of theft by deception under Section 12A.08.220 of Seattle Criminal Code (first application of theft by deception provision of Criminal Code to a consumer transaction).

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City v. Safeway Stores, Inc.

Defendant corporation was charged with and pleaded guilty to offering approximately 70 varieties of commodities without displaying unit price as required by Ordinance 100708, Section 2.

City v. Standard Oil Co. of California

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This office and the Department of Licenses and Consumer Affairs also cooperated in proceedings before the City's Hearing Examiner to revoke or suspend various licenses issued by the City. Said revocation proceedings included the following:

In re Rainbow Ambulance Service, Inc.

Here, the City revoked an ambulance license for submission of false bills to the State Department of Social and Health Services, false representation that welfare patients had been transported and refusal to allow inspectors to inspect records. The case is presently on appeal to Superior Court.

In Re Michael C. Kelly, d/b/a Rainbow Sales & Service

This was a license revocation hearing following the conviction of defendant for use of deceptive plans, scheme or ruse in violation of the License Code in the door to door sale of vacuum cleaners. It was ultimately disposed of in an agreed Superior Court judgment, wherein defendant pleaded guilty to three counts of license code violations, and agreed to a fine. Defendant also agreed to rescind the "contract" in issue and voluntarily terminate his licensed business.

NOTEWORTHY ADMINISTRATIVE PROCEEDINGS—1975

*Federal Power Commission Amendment Application No. 553—
(Application to raise height of Ross Dam)*

Testimony before Federal Power Commission (FPC) Administrative Law Judge on the City's application for an FPC permit to raise the height of Ross Dam was completed in March, 1975. Sixty-seven days of hearings, commencing in April, 1974, produced a record almost 10,000 pages in length. Other participants included, as active intervenors, American and Canadian environmental groups and the Washington State Departments of Game, Fisheries & Ecology. The Administrative Law Judge has now rendered his decision recommending to the FPC that the permit be granted.

STAFF CHANGES

During 1975, Shirley Geiger, Legal Secretary, resigned to enter the Seattle Police Academy.

There are four additions to the staff in 1975: Assistants Ross A. Radley, formerly with the State Department of Social and Health Services; Dona M. Cloud upon graduation from law school and admission to practice; Diana F. Thompson, formerly on the University of Washington Law School Faculty; and Arlene Y. McMillan, Secretary, formerly with the Engineering Department.

The Legal Intern Program continued through 1975 with Jeanette Pfothenauer and Willon A. Lew appointed to one year terms to replace Hattie M. Sewell and Ernest J. Ishem.

At the beginning of 1976 four new positions established in the 1976 Budget were filled by appointment of Assistants David S. Admire, former Director of the Legal Aid Office of Walla Walla County; Harriet M. Cody; Marianna S. Cooke; and Phillip Aaron.

