

THE CITY OF SEATTLE

LAW DEPARTMENT

ANNUAL REPORT 1977

DOUGLAS N. JEWETT

CITY ATTORNEY

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CITY OF SEATTLE

TO: The Mayor and City Council of The City of Seattle

Submitted herewith is the annual report of the Law Department for the year ending December 31, 1977 as required by Section 12, Article XXII of the City Charter.

During 1977 the Law Department provided advisory assistance on a wide range of City issues. The Law Department provided assistance in: developing City Charter Amendments; Forward Thrust Reprogramming; review of State legislation; the acquisition of the major City computer; review of various draft Standard Operating Procedures; the analysis of revised Westlake Project; various analyses of intergovernmental agreements; and in a wide range of personnel-related issues.

The Department continued to review and draft ordinances and resolutions for consideration by the City Council and Mayor.

Special emphasis continued to be placed on collections of fines, civil penalties, past-due accounts and damages to City property, with total collections during 1977 amounting to \$174,274 as compared to \$145,353 in 1976.

At the end of 1977 one position of Assistant City Attorney in the Criminal Division was vacated leaving an extraordinary work load for the remaining prosecuting attorneys.

The Law Department was reorganized in early 1978 to reflect the units required to fulfill the objective of the Department to provide timely and accurate advice to City departments. Early involvement of the Advisory, Land Use and Utilities Divisions in formative stages of projects, programs and issues should not only improve the quality of such programs, etc., but also reduce the likelihood of legal problems later in the process.

The Department's Criminal Division will continue to provide effective prosecution of cases in Municipal Court, Superior Court, the Court of Appeals and the State Supreme Court. In addition, the Division will pursue several objectives, including: the establishment of a Citizens' Dispute Settlement Program in cooperation with the courts and Police Department; the potential revision of certain sections of the Criminal Code; and the development of standard guidelines for attorneys in the Division.

The Law Department's newly constituted Litigation Division will represent the City in tort claim actions, construction contract disputes and other litigation involving damages. This Division is also responsible for: investigation and taking timely action on all claims made against the City; and workmen's compensation actions.

1978 promises to be a successful and productive year for the Law Department.

ASSISTANT CITY ATTORNEYS

ADVISORY DIVISION

DONALD H. STOUT -  
Director  
JORGEN G. BADER  
CHARLES D. BROWN  
DONA M. CLOUD  
MARIANNA S. COOKE  
GORDON B. DAVIDSON  
SUSAN RAE SAMPSON

LAND USE DIVISION

GORDON F. CRANDALL -  
Director  
JAMES B. HOWE  
E. NEIL KING  
ROSS A. RADLEY  
G. GRANT WILCOX  
ANDRE S. WOOTEN

CRIMINAL DIVISION

PAUL J. BERNSTEIN -  
Director  
MARY BRENNAN  
MYRON L. CORNELIUS  
DENNIS DeFELICE  
P. STEPHEN DIJULIO  
DARCY C. GOODMAN  
ROBERT B. JOHNSON  
ROD P. KASEGUMA  
R. JAMES PIDDUCK, JR.

LITIGATION DIVISION

THOMAS J. WETZEL -  
Director  
JAMES G. BLAIR  
ELIZABETH A. HUNEKE  
PHILIP M. KING  
RICHARD E. MANN  
LAWRENCE K. McDONELL  
J. ROGER NOWELL

UTILITIES DIVISION

ARTHUR T. LANE -  
Director  
WALTER L. WILLIAMS

CLAIMS DIVISION

VINCENT L. PORTER -  
Manager  
JAMES L. BAUGHMAN  
LIDO DiLUCK  
RASHAD EL-AMIN  
WILLIAM HEURION  
CURTIS JACOBS  
WILLIAM LISTON  
MAURICE QUALE  
  
AL MASAR -  
Process Server

ADMINISTRATION

DICKSY WINTERS -  
Director  
ANTIONETTE BROOKS  
AMELIA ESMELE  
VIRGINIA FIELDS  
PATRICIA HARRIGAN  
FRANCESCA HICKS  
JUDITH LACKSTROM  
ROBIN LYONS  
MARSHA MARCH  
ARLENE McMILLAN  
KELLY MEEGAN  
RUTH WOO

MICHAEL HURTADO -  
Legal Intern

## FORMAL OPINIONS

Two-hundred and ten Formal Opinions were written in response to requests from the City Council, Mayor and City departments and agencies. The Formal Opinions issued during 1977 are organized below by subject matter for quick reference. During 1977 the Law Department also informally advised various City agencies.

In January 1978 the Law Department's opinion process was reorganized to more adequately reflect the needs of the City. In the future four levels of opinions will be available. Formal Opinions of the City Attorney; Informal Opinions of the City Attorney; Memorandum of counsel and oral advice. This will allow the Law Department to be much more responsive to the needs of the City and should assure adequate attention to major issues of Law.

BORROWING

4/12/77 Capitalization of interest in limited levy, non-voted general obligation bond issues permissible. 61-6484

4/13/77 Protection of subordinated revenue bond holders - authority. 61-6487

5/10/77 Analysis of Substitute House Joint Resolution No. 30 - Tax Increment Financing. 61-6497

7/13/77 Analysis of Seattle Center Bond Issue, Seattle Police Department Bond Issue, and Maintenance Levy for Public Safety Building. 61-6529

8/5/77 Validity of loans from various sewer funds to Engineering Operating Fund. 61-6542

11/30/77 City must complete projects authorized in 1960 Park Bond Issue and may expand list if designated projects completed. 61-6607

CITY CHARTER

7/14/77 Analysis of Four Proposed Charter Amendments. 61-6530

8/11/77 Analysis of Proposed Amendments to City Charter. 61-6549

CONTRACTS

3/1/77 Impracticability of submitting data processing contract to bids. 61-6454

3/18/77 Analysis of breach of Seattle Center catering and concession contract by Continental Hosts - remedies. 61-6470

3/23/77 Section 12 of Purchasing Ordinance (102151) has no application to expert and consultant services. 61-6479

3/23/77 Competitive bidding required for construction of the Hutchinson Playground fieldhouse; control over its operation by concessionaire. 61-6476

5/3/77 Data processing contract conforms substantially to previous specifications. 61-6494

5/17/77 Insurance requirements for towing contracts. 61-6503

6/15/77 Analysis of City's position - IFS Project. 61-6511

7/28/77 Effect of R.C.W. 35.22.620 on City's authority to construct public works. 61-6534

7/28/77 General Services Department may not participate in competitive bidding; surcharges for services and processing of requisitions unauthorized. 61-6536

8/23/77 Payment for "on-call" security and evidentiary impounds and "remedial" laws under police impound contract. 61-6559

CONTRACTS

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7/11/77 Analysis of Seattle Center Bond Issue, Seattle Police Department Bond Issue, Miscellaneous Bond for Public Safety Building. 61-6529

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6/15/77 Analysis of City's position - IFS Project. 61-6511

7/28/77 Effect of R.C.W. 35.22.020 on City's authority to construct public works. 61-6534

7/28/77 General Contract for Public Works, including participation in general contracting and construction services, including construction of the Hutchinson Playground. 61-6536

8/2/77 Agreement for the purchase of the Hutchinson Playground. 61-6537

BORROWING

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7/28/77	General Services Department may not participate in competitive bidding; surcharges for services and processing of requisitions unauthorized.	61-6536
8/23/77	Payment for stolen/recovery and evidentiary impounds and "secondary" tows under police impound contract.	61-6559

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8/23/77 Payment for stolen/recovery and evidentiary impounds and "secondary" tows under police impound contract. 61-6559

8/31/77 Insurance and indemnity clauses for joint use agreements for parks and schools. 61-6565

9/7/77 Analysis of proposed contract for litter collection. 61-6567

DEPARTMENTS, BOARDS AND COMMISSIONS

6/1/77 "Closed sessions" of Seattle Firemen's Pension Board - public inspection and copying of Seattle fire fighters' medical records in the possession of said Board. 61-6507

6/16/77 Public inspection and copying of law enforcement officer's medical records - findings of fact and minutes of meetings of Seattle Police Pension Board. 61-6512

7/1/77 Majority of all appointed members of Women's Commission needed to elect fifteenth member. 61-6519

7/6/77 Proposed method of appointment of members of reconstituted Fair Campaign Practices Commission does not violate doctrine of separation of powers; Buckley v. Valeo inapplicable. 61-6521

7/28/77 General Services Department may not participate in competitive bidding; Surcharges for services and processing of requisitions unauthorized. 61-6536

8/23/77 Hearing record and procedures in review of certifications of approval by the Pioneer Square Historic Preservation Board, the Landmarks Preservation Board, the Pike Place Market Historical District Commission, and Special Review District Boards; Disqualification of members for conflict of interest. 61-6560

8/30/77 Analysis of Standard Operating Procedure for Seattle Arts Commission. 61-6564

10/18/77 Criteria for Civil Service Commission to reconsider determinative actions. 61-6584

10/18/77 Library Board of Trustees has authority and responsibility to contract for construction of library projects. 61-6586

10/28/77 Responsibility for wages, hours and working conditions of Municipal Court employees - divided between city legislative authority and Supreme Court. 61-6591

11/7/77 Analysis of authority of City Council and Comptroller to select automated accounting and reporting system. 61-6598

ELECTIONS

10/31/77 Reenacted Fair Campaign Practices Ordinance intended to operate retroactively. 61-6595

EXPENDITURES

1/10/77	Application of Accountancy Act to appropriation for Office of Energy Conservation in 1976.	61-6423
1/12/77	Reimbursement for use of private automobile on city business under Ordinance 95751, as amended.	61-6425
2/3/77	Investment of Housing Rehabilitation Trust Fund in certificates of deposit of out-of-state bank.	61-6439
2/4/77	Zoo fee revenues may not be used for capital improvements at Woodland Park Zoo.	61-6450
2/17/77	Analysis of proposed "reprogramming" Forward Thrust Bond Funds for parks.	61-6445
3/1/77	Analysis of proposed single appropriations for NIP projects - environmental compliance.	61-6453
3/15/77	Analysis of Revised Westlake Project - public use - public corporation loan of credit - air pollution - parking policy - councilmanic bonds - referendum - delays.	61-6467
3/17/77	Advertising Seattle Center in free tabloid authorized.	61-6469
3/23/77	Assistance to Seattle Chinatown - International District Preservation and Development Authority for community center (Bush Hotel) project authorized.	61-6475
4/13/77	Mayor has no authority to require other department heads to spend less than amounts budgeted.	61-6488
7/5/77	Transfer of expenditure allowances in the operating budget and appropriations under the capital improvement program budget.	61-6520
7/28/77	General Services Department may not participate in competitive bidding; surcharges for services and processing of requisitions unauthorized.	61-6536
8/23/77	Payment for stolen/recovery and evidentiary impounds and "secondary" tows under Police Impound contract.	61-6559
9/2/77	Use of Community Development Block Grant Funds for smoke detector program for the low-income elderly in the Mann-Minor Neighborhood and for revolving fund for sale of smoke detectors at fire stations.	61-6566
9/15/77	City may fund abatement of Milfoil aquatic weed.	61-6569
9/29/77	Analysis of proposed use of Community Development Grant Funds to pay local assessments against certain properties within two proposed projects.	61-6573
9/30/77	Payment of expense for dinner session of Lighting Department Energy Management Seminar not a gift.	61-6574

10/12/77 Conservation Investment Assistance Program for low income persons established by Ordinance 106651 requires asset as well as income test for participants. 61-6581

10/25/77 Discussion of proper allocation of accrued interest from investment of 1968 Forward Thrust Arterial Highway fund proceeds. 61-6589

10/31/77 Funds deposited in "Animal Population Control Clinic" account in the general donations and gift trust fund account are conditional donation. 61-6594

11/7/77 Analysis of authority of City Council and Comptroller to select automated accounting and reporting system. 61-6598

11/30/77 City must complete projects authorized in 1960 Park Bond Issue and may expand list if designated projects completed. 61-6607

12/19/77 Unencumbered assets of Transit Funds may be transferred to General Fund. 61-6617

#### EXTRATERRITORIAL POWERS

1/18/77 Extraterritorial operation of Vanpool project. 61-6428

2/1/77 Regulation of operations of City-licensed taxicabs at Port of Seattle facilities outside of City limits. 61-6436

4/21/77 Review of proposed interlocal Cooperation Act Agreement for Restructured Puget Sound Council of Governments. 61-6491

#### FEDERAL-CITY RELATIONS

8/10/77 City can accept jurisdiction over retroceded surplussed federal property. 61-6548

#### LICENSING

2/18/77 Enforcement of Meat Ordinance (94465) by License and Standards Inspectors authorized. 61-6449

3/21/77 City ambulance regulation partially superseded by state statute. 61-6472

4/22/77 State action against "auto flea market" does not affect City's responsibility to require used automobile dealer's license. 61-6492

5/11/77 Section 379(7) of License Code valid and does not violate Federal Privacy Act (rental agencies) 61-6499

8/1/88 Cabaret licenses and fees therefor may be classified on basis of service or nonservice of alcoholic beverages. 61-6538

8/4/77 Effect of RCW Ch. 16.49A and RCW Ch. 16.74 on City regulation of the sale of meat, poultry, rabbit and fish under Ordinances 94465 and 80028

- after federal preemption of wholesale meat and poultry inspection. 61-6541
- 10/27/77 City may require driving record abstracts for Seattle for-hire driver's license. 61-6590
- 11/15/77 City can refuse business license for unlawful activity; no procedures for review of license denials; fortune telling is lawful activity. 61-6602

CITY COUNCIL

- 8/11/77 Meetings of City Council on dealings with British Columbia re High Ross Dam must be open and public - attorney-client exception. 61-6550

OFFICERS AND EMPLOYEES

Generally

- 3/9/77 Review of Opinion No. 6255 regarding the contracting out of water meter reading services. 61-6464
- 6/8/77 Proposed fee for use of municipal garage parking by city officers and employees. 61-6508

Eligibility, Etc.

- 2/16/77 Mayor not authorized to appoint "acting" directors prior to confirmation by Council. 61-6443
- 2/17/77 Membership of Parks and Recreation Superintendent not incompatible with his Charter duties. 61-6446
- 3/21/77 Effect of bona fide occupational qualification (BFOQ) ruling upon the City's maximum age requirements for the hiring of police officers and fire fighters. 61-6474
- 8/23/77 Hearing record and procedures in review of certifications of approval by the Pioneer Square Historic Preservation Board, the Landmarks Preservation Board, the Pike Place Market Historical District Commission, and Special Review District Boards; Disqualification of members for conflict of interest. 61-6560

Compensation and Leave

- 1/19/77 Vacation days "carried over and/or accumulated" may be cashed out under Section 3(6) of Ordinance 86799. 61-6431
- 2/17/77 Withholding tax from employee allowances disability payments, and reimbursements. 61-6447
- 3/3/77 Employee entitled to incumbency pay rate when position she held was reclassified from Administrative Specialist II to Administrative Specialist I. 61-6458
- 3/24/77 Requested form for disabled fire fighter to indicate intentions upon recall to duty. 61-6480
- 5/2/77 Employee's right to use sick leave, accrued vacation and compensatory time before drawing temporary disability pay under RCW 51.32.909 - RCW 51.32.095. 61-6493

5/13/77 Legal holidays for library employees. 61-6502  
5/19/77 City employment benefits after disability compensation under Ordinance 90881 has been exhausted. 61-6505  
8/9/77 City will defend and pay proper claims and judgments against employees for errors and omissions committed within scope of employment. 61-6545  
8/15/77 Payment for personal holiday not taken by City Light employees who resigned, retired or were laid off after the effective date of amendment of RCW 1.16.050, but before the effective date of Ordinance 105961 implementing said statute. 61-6555

8/22/77 Vacation pay for department heads and others exempted from the classified civil service. 61-6555

10/12/77 Excess compensation of City representatives to WPPSS should be recovered. 61-6580

11/14/77 Fees paid for baggage handling not reimbursable as travel expense. 61-6600

11/16/77 Analysis of conditions under which "time loss" and "supplementary compensation" may be paid to City officers and employees pursuant to Ordinances 101715 and 90881. 61-6603

11/17/77 Discussion of employment benefits for intermittent employees. 61-6605

11/23/77 Deductions from salary allowable to offset overpayment of salary because of vacation time taken by officer not eligible for such vacation. 61-6606

#### Rights, Duties and Liabilities

4/1/77 Public disclosure of Personnel Director's "Confidential" memorandum regarding resolution of grievances. 61-6483

9/21/77 Proposed Code of Ethics for Water Department employees must conform with Ordinance 100435. 61-6571

9/28/77 Federal regulation of Lobbying Act does not apply to lobbying or testimony of City employees in U. S. Congress. 61-6572

#### Demotion, Removal, Etc.

3/7/77 Termination of fireman recruits following disability - medical coverage responsibilities of City for such recruits following termination. 61-6463

5/12/77 Definition of "Officer" as used in Charter Article XVI, § 12 regarding suspension of civil service employees. 61-6501

#### Civil Service

1/19/77 Temporary exemption of positions from classified civil service - repeal of exemption. 61-6430

3/9/77 Civil Service Commission should investigate suspected release of civil service test information. 61-6465

3/16/77 Non-competitive civil service examinations permitted if competitive examination impractical. 61-6468

5/5/77 Civil Service Commission should conduct George Edgley hearing. 61-6496

7/8/77 Approval of performance auditors by Civil Service Commission in Police Captain's examination process unnecessary. 61-6544

12/19/77 Order of layoff of employee appointed from register vis-a-vis employee later acquiring standing under Civil Service Rule 3.05b. 61-6416

### Pension and Retirement

1/6/77 Pension of D. C. Norton should not be paid to Veteran's Administration. 61-6420

1/6/77 Semi-month retirement payments must be continued as to firemen retiring under 1929 amendments to 1919 firemen's pension act but monthly payments may be made to firemen retiring under 1947 and 1955 acts. 61-6418

1/19/77 Benefits under LEFF Act (RCW Ch. 41.26) cannot be assigned; services of physicians to persons retired under 1955 firemen's pension act (RCW Ch. 41.18) are to be provided by pension board physicians, but hospital and nursing care may be provided through Family Health Protection Plan. 61-6429.

4/15/77 Seattle Fire Fighters' Pension Board has no authority to adopt medical and health standards more stringent than those adopted by State Retirement Board pursuant to RCW 41.26.040. 61-6489

4/18/77 Fire Fighters' Pension Board should deny application of K.A. Roney for change in pension status from "service retirement" to "in line of duty disability retirement." 61-6490

3/22/77 Guidelines for making adjustments to pensions provided under RCW 41.20.050 and .085 following reclassification of position upon which pension amount is based. 61-6557

8/25/77 Necessary proof to establish "insurable interest" in Retirement Ordinance (78444). 61-6561

9/30/77 Members of fire fighter training class may become members of LEFF System immediately if not appointed as fire fighter recruits. 61-6575

10/24/77 Ward under guardianship not precluded from changing death benefit beneficiary if he has testamentary capacity. 61-6587

10/25/77 Retiree need not serve in a position higher than the rank of captain for three consecutive years immediately prior to retirement in order to qualify for "excess" benefits provided under RCW 41.20.050. 61-6588

11/8/77 Police and firefighters disability pensions must be reported to Internal Revenue Service on Form W-2P. 61-6599

Workmen's Compensation

6/30/77 Subrogation expense advance lawful in industrial insurance third party case. 61-6518

Particular Offices

12/30/77 Design commission members are not "salaried officers" of city under Code of Ethics (Ordinance 100435). 61-6624

ORDINANCES

6/29/77 Ordinance adopting annual budget authority for city to engage in lobbying. 61-6517

12/13/77 General ordinance for acceptance or release of easement inadvisable. 61-6613

PARKING AND PARKING FACILITIES

3/15/77 Analysis of revised Westlake Project - public use - public corporation loan of credit - air pollution - parking policy - councilmanic bonds - referendum - delays. 61-6462

3/4/77 Parking time limits not in effect on holidays designated in Traffic Code. 61-6462

7/28/77 Collection of voluntary contributions at City Park during Seafair permissible - accessory parking lot authorized. 61-6535

8/1/77 Traffic Code parking prohibition applicable to infrequently used railroad track. 61-6537

9/15/77 Directional signs on City streets to encourage use of Freeway Park Garage authorized. 61-6568

PARKS, STADIUMS, AUDITORIUMS

3/21/77 Seacrest site may be developed as marine. 61-6473

3/23/77 Competitive bidding required for construction of the Hutchinson Plyaground fieldhouse; control over its operation by concessionaire. 61-6476

7/28/77 Collection of voluntary contributions at City park during Seafair permissible - accessory parking lot authorized. 61-6535

8/29/77 Analysis of offer of Seattle Supersonics Corporation to lease Coliseum. 61-6563

8/31/77 Insurance and indemnity clauses for joint use agreements of parks and schools. 61-6565

7/8/77 Analysis of abutting owner's rights in Viretta Park. 61-6524

POLICE POWER

Enforcement

- 1/14/77 Searches of automobiles at watershed. 61-6427
- 2/16/77 Analysis of State laws controlling sentencing in Municipal Court. 61-6444
- 3/23/77 Service of notices and orders pursuant to Housing Code. 61-6478
- 3/30/77 Promissory note and mortgage may be used to secure housing repair lien deferred pursuant to Housing Code. 61-6482
- 4/12/77 Law enforcement in King County Jail. 61-6486
- 8/1/77 Citations for ordinance violations must be signed by officer observing violation. 61-6539
- 7/13/77 Procedure for early surrender of defendant by bail bondsman. 61-6527
- 10/14/77 Police may seize stolen property in pawn shops and second hand stores under some circumstances; proprietor may not demand compensation for return of stolen property. 61-6582
- 11/7/77 Traffic Code inapplicable to Broadmoor as streets are private and not open to public; vehicle in front of fire hydrant may be removed under Fire Code. 61-6596
- 12/9/77 Enforcement of minimum fire safety standards under new Housing Code (Ordinance 106319) 61-6612
- 12/22/77 Fire Chief not authorized to permit alternate fire alarm system under Ordinances 106107 and 105886. 61-6621

Nuisances

- 3/4/77 Possible removal of unfinished Roanoke Reef Project as nuisance or Shoreline Management Act violation. 61-6459
- 9/15/77 City may fund abatement of aquatic weed Milfoil. 61-6569

Regulation of Private Property and Business

- 2/17/77 City's power to compel disclosure of lending and deposit information by state banks and credit unions. 61-6448
- 7/6/77 City's authority to regulate fees and evictions from houseboat moorages. 61-6522
- 7/11/77 Fire Chief cannot accept other tank vehicle inspections in lieu of local inspection absent amendment of the Fire Code. 61-6528
- 7/13/77 Form of "Thermal Performance Standards for New Dwellings" compliance card prepared. 61-6527A

POWERS AND FUNCTIONS OF MUNICIPAL CORPORATIONS

Generally

- 1/26/77 Analysis of House Bill No. 119 establishing economic development authority. 61-6433
- 1/26/77 Analysis of House Bill 118 relating to economic development. 61-6434
- 3/9/77 Review of Opinion No. 6255 regarding the contracting out of water meter reading services. 61-6464
- 3/15/77 Analysis of revised Westlake Project - public use - public corporation loan of credit - air pollution - parking policy - councilmanic bonds - referendum - delays. 61-6467
- 3/23/77 Assistance to Seattle Chinatown - International District Preservation and Development Authority for Community Center (Bush Hotel) project authorized. 61-6475
- 3/23/77 Rights and responsibilities of Aid Car personnel in attempted suicide - liability for forced entry. 61-6477
- 7/7/77 Legality of charges by University of Washington Urban Data Center for use of Geoprocessing System. 61-6523
- 7/11/77 Effect of Ch. 141, Laws of 1977 (1st Ex. Sess.) on existing sign control ordinances. 61-6526
- 7/28/77 Effect of RCW 35.22.620 on City's authority to construct public works. 61-6534
- 9/2/77 Use of Community Development Block Grant Funds for smoke detector program for the low-income elderly in the Mann-Minor Neighborhood and for revolving fund for sale of smoke detectors at fire stations. 61-6566
- 10/18/77 Legal questions relating to Seattle Fire Department Relief Association Annual Ball. 61-6585
- 12/7/77 Analysis of authority of the Board of Ethics to enforce orders over officers and employees of the Pike Place Market Preservation and Development Authority and to render advisory opinions. 61-6611
- 12/30/77 Fire Department may support Explorer Scout Post to promote interest in fire service careers and community service. 61-6623

Public Records

- 1/28/77 Access to Human Resources project client records by DSHS permitted. 61-6435
- 3/1/77 News media entitled to examine and copy Seattle Center catering records not exempt under RCW 42.17.310. 61-6452
- 7/8/77 City inspection of medical records of health care provider under City contract, for purpose of monitoring contract performance, may violate patient's right to privacy. 61-6525

8/22/77 Transmittal of VETS questionnaire to  
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## REVIEW OF SIGNIFICANT COURT CASES 1977

## STATE SUPREME COURT

Judith Halverson, et al. v. The City of Seattle, et al.  
89 Wn.2d 673

Plaintiff in this case is seeking \$1.75 million in damages for the death of her husband who died in a fire at the Airport Way Inn Apartments in May 1976. The City was dismissed on its motion on the complaint and plaintiff appealed directly to the Washington Supreme Court, where the case was argued on October 4, 1977. The decision reversing the dismissal of the City and remanding the case for trial was entered on February 16, 1978.

Huntley et al. v. Pacesetter Construction and City of Seattle  
89 Wn.2d 203

In this action a developer obtained a permit from the City to build a single family residence on Lake Washington in a well-established area where the neighboring houses were all set back from the lakeshore by 100 feet. The new home was obtrusively placed in front of the others on the lake's edge.

The neighbors filed suit to have construction halted, the house torn down and the land restored to its original grade. They alleged that the building permit was void as having been issued in violation of the State Shorelines Management Act. The developer cross-claimed against the City claiming if the permit was void the City was liable for all damages sustained as a result thereof.

The trial court, which was ultimately affirmed on appeal by the State Supreme Court, held the Shorelines Management Act had not been complied with, the building permit was void, and the new house had to be torn down. Additionally, the claim against the City was dismissed on a showing that the City had acted in good faith in issuing the permit and in reliance upon representations by the developer which later proved to be false.

Parkridge v. City of Seattle  
Parkridge v. City of Seattle and Alfred Petty  
89 Wn.2d 454

These consolidated actions were commenced by property owners to set aside the "down zoning" of their property, and to establish a vested right to construct an apartment house. The cases were consolidated and after considering the record of the City Council the trial court concluded that the "down-zoning" was unsupported by credible evidence and was therefore "unreasonable, arbitrary and capricious" and that plaintiffs had a vested right to construct a 50-unit apartment house. The judgments were appealed to the Court of Appeals which certified the cases to the Supreme Court.

The judgments were affirmed early in 1978. In its opinion the court held that there is no presumption of validity favoring the action of rezoning a specific area, that the proponents

had the burden of proof in demonstrating that conditions had substantially changed since the original zoning, and that the rezone must be shown to bear a substantial relationship to the public health, safety, morals or welfare. "Since the City did not carry the burden of demonstrating such a change in this neighborhood as would justify a rezone for the public health, safety, morals or general welfare," the court said, "we affirm the holding below that the rezoning was void." The court reiterated the requirement of a verbatim record of rezone proceedings (see Barrie v. Kitsap County, 84 Wn.2d 579 (1974)), and added a new requirement that findings of fact and conclusions or reasons based thereon be given for such action by the City Council.

STATE COURT OF APPEALS - 1977

Margaret Coughlin v. City of Seattle and Lockview Rest Home  
18 Wn. App. 285 (1977)

This case was an action for Writ of Certiorari to review a decision of the City of Seattle's Board of Adjustment, which had granted a Zoning Code variance to a rest home to allow it to build a small addition to its facilities and to increase by five the number of patients in residence. The primary issue involved was whether or not the Seattle Zoning Code permitted the granting of a variance to expand a non-conforming, but existing, use. The trial court ruled that the Zoning Code did permit such a variance and ordered the writ quashed. Upon appeal, the Court of Appeals affirmed the trial court. Appellants' petition to the Washington State Supreme Court to review the Court of Appeals' decision was denied.

William Vance v. The City of Seattle, et al.  
18 Wn. App. 418, 569 P.2d 1194 (1977)

This case involved a claim by a former city employee who alleged that he had been improperly discharged. Plaintiff appealed the dismissal of his action on a summary judgment motion. The Court of Appeals affirmed the order, holding that plaintiff had failed to properly and timely pursue his legal remedies, thereby establishing an important rule for the necessity of filing a legal action on an administrative decision within 20 days of the ruling.

Seattle v. Dyad Construction  
17 Wn. App. 501

In this case the City sued its contractor for construction of a sewer system for an overpayment, and the contractor counterclaimed for damages for interfering with its work and for delay. The trial court held that the City was entitled to recover its overpayment and that the City was liable to Dyad for interfering with its work. The City had stopped the work and required protective measures to be taken to protect private property in the vicinity. The trial court also found that the City was at fault for refusing to relocate a portion of the work, but that recovery of damages for delay was barred by the rule of Goss v. Northern Pacific Hospital Association, 50 Wash. 236 (1908).

The Court of Appeals affirmed the trial court except as to the latter point and awarded damages for delay, because "The delay was not contemplated by the parties at the time of the entering into of the contract, the delay was unreasonable in duration and it resulted in part from the active interference of the owner with the work of the contractor." A petition for review is pending in the Supreme Court.

STATE COURT OF APPEALS (Cont'd)

Bjorseth et al. v. City of Seattle et al.  
(Rehearing) 17 Wn. App. 521

In this case, reported in our 1976 annual report, plaintiffs, who were nonresident employees, contended that the City could not use residency as a criterion in determining the order of layoff or for preference in promotional examinations. As we stated in our 1976 report, the Court of Appeals held that RCW 35.21.200 barred the City from laying off nonresidents prior to laying off residents, but held that residency could be considered in ranking eligibles in promotional examinations. 15 Wn. App. 797. Upon rehearing, the court reversed itself as to promotional examinations and stated that it could find no charter provisions which authorize such preferences, notwithstanding the City's contention to the contrary and the City's admitted practice of giving such preferences.

SUPERIOR COURT CASES - 1977

The City of Seattle v. Stuart N. Donaldson  
King County Cause No. 819240  
Court of Appeals No. 5819-I.

Defendant, who previously had been found guilty of possessing stolen property in the largest "fence" arrest in the state, sought the return of the unclaimed property. The City of Seattle filed an interpleader action. The trial court determined that the property was stolen property, that the owners of the property were not ascertainable, that defendant did not own the property, and that defendant had waived any right or claim to the property.

This case is on appeal.

Allied Stores Corporation, d/b/a The Bon Marche v.  
The City of Seattle, Holert Electric, Inc., John  
Graham & Company & Square D Company  
King County Cause No. 777903

This action arose out of the electrical fire which occurred at the downtown Seattle Bon Marche on September 20, 1977. Allied Stores sought almost \$2.5 million in damages from the designer, manufacturer and installer of its own electrical system and against the City from whose transformer vault the power was supplied. Prior to trial the case was settled by all defendants, with the City contributing \$374,000 to an undisclosed total settlement figure.

Buckley Nursery Company v. The City of Seattle  
King County Cause No. 770370

This case arose out of an alleged breach of contract for wrongful rejection of trees grown by plaintiff for City "Street Tree" projects. At trial the City was found to have properly rejected most of the trees in question but to have accepted 89 of one variety worth a total of \$2,900. Ultimately the parties agreed to a compromise and no appeal was filed.

Richard R. West v. City of Seattle  
King County Cause No. 805708

Plaintiff collided with the rear of a City Light truck which was stopped on the Aurora Bridge for the purpose of

replacing street lamps. Plaintiff suffered severe personal injuries and brought suit for \$100,000, alleging that the City was negligent for failure of its employees to set out traffic cones, flags and warning lights required by Washington State highway regulations. The City counterclaimed for damage to the City Light truck. The jury returned its verdict in favor of the City and also awarded the City judgment on its counterclaim.

The Polygon Corporation v. City  
King County Cause No. 818290

In 1976 the City Council "down zoned" an area of several blocks on the southwest slope of Queen Anne Hill from multiple residence-high density use to multiple residence-low density use. The action was immediately challenged in court by a corporate developer on four grounds: 1) the environmental impact statement considered by the Council was inadequate; 2) the Council's decision to rezone the area was arbitrary and capricious; 3) the Council proceedings in approving the rezone lacked an appearance of fairness; and 4) the rezone constituted a taking of property without compensation.

The Superior Court, on review of the entire Council proceedings by writ of certiorari, rejected each contention and declared the rezone ordinance valid and enforceable in all respects.

John Mahoney et al. v. City et al.  
King County Cause No. 777973

Several property owners whose premises were not connected to the City sewerage system challenged the right of the City to impose its sewerage service charge against them. The suit was certified as a class action on behalf of all City residents whose premises were not connected to the sewer and were not required to be connected as provided by City ordinance. An estimated 1,000 parcels were affected.

On motions for summary judgment the trial court ruled that the City-wide sewerage system provided certain benefits to all residents, but that those persons whose premises are connected to the system receive greater benefits than those whose premises are not connected. The court further ruled it was a question of fact to be decided at trial as to the percentage of benefits received by both the users and non-users of the system.

The case was disposed of by negotiated settlement pursuant to which the City agreed to discontinue the sewerage charge on unconnected premises and to refund approximately 34% of the sewer charges it had collected from members of the class during the previous six years.

Apple Theater v. City of Seattle  
King County Cause 817845  
Northend Theater et al. v. City of Seattle  
King County Cause No. 817741  
Gaiety Theater v. City of Seattle  
King County Cause No. 817742

In May of 1976, The City of Seattle passed an amendment to its zoning ordinance classifying and defining "adult theaters", confining their location to metropolitan zones (BM, CM, CMT zones), and terminating non-conforming uses in

other zones. The three theater operators affected by the termination provisions of the ordinance immediately brought declaratory and injunctive actions alleging the zoning act violated their rights of free speech, equal protection and due process. They sought and received a temporary injunction preventing the City from enforcing the ordinance while the suits were pending. After consolidation for trial and at an expedited trial on the merits in February, 1977, the City's zoning amendment was upheld as appropriate to further the City's interests in preserving the character and quality of its residential communities and in regulating its commercial parts, as a reasonable regulation of place which only incidentally affected First Amendment rights and the court held that no taking of property or other deprivation of due process or equal protection had occurred. The injunctions were dissolved; however, on appeal, the theater operators were again successful in obtaining injunctions preventing enforcement of the Ordinance during the appeal process. The cases are currently before the State Supreme Court.

Maehren et al. v. City of Seattle et al.  
King County Cause No. 797468  
Church et al. v. City of Seattle et al.  
King County Cause No. 820122

These were consolidated cases tried in March of 1977 and decided in favor of The City of Seattle and its affirmative action program. Plaintiffs in each were white male employees of the Seattle Fire Department who objected to selective certification and appointment of minorities from registers for promotional examinations for Fire Lieutenant and Battalion Chief positions, alleging such practices violated their rights under Title VII of the Civil Rights Act of 1964 as amended and denied them equal protection and due process under the U.S. and State Constitutions. These practices were justified by the City as necessary to meet the needs of its affirmative action program necessitated by the underrepresentation of minorities in the department's work force. Specific important legal issues presented were whether statistics alone establishing underrepresentation could justify affirmative action; whether the minorities benefited need establish they had suffered personally by past discrimination; whether the City of Seattle was the appropriate geographical area for statistical comparison of the labor market; and whether compensatory motives justified denial of an employment opportunity because of race.

Salmon Bay Waterway Association v. City et al.  
King County Cause No. 785734

This was an action for injunctive relief from the decision of the Superintendent of Buildings to issue a building permit for the construction of a restaurant next to the Government Locks. The case was filed September 20, 1974 and dismissed on the City's motion on March 14, 1977. At issue was the Superintendent's compliance with SEPA and the administrative procedures in the issuance of an Environmental Impact Statement and the building permit.

Electric Contractors Association v. City, State and Port of Seattle, King County Cause No. 777614

This was an action challenging the authority of the City to make electrical inspections of installations on State and Port of Seattle property within the corporate limits of the City. The State and the Port of Seattle were in effect cross-complainants against the City. The case was dismissed on March 22, 1977.

SUPERIOR COURT CASES - 1977 (Cont'd)

Marvin Furniture v. City  
King County Cause No. 790190

This was an action for \$850,000 damages on the grounds of negligence against the Seattle Fire Department. The case was dismissed on November 28, 1977.

Alexander v. City  
King County Cause No. 797779

This was an action for injunctive relief against compulsory payment of union dues by City employees to charitable or religious institutions in lieu of payment to the union. A temporary restraining order was denied. The case was later dismissed on March 24, 1977.

Durham v. Vickery  
King County Cause No. 802219

This was an action for mandamus and damages against the Seattle Fire Department on grounds of discrimination for failure to retain female firefighters. A temporary injunction was denied after hearing. The case was dismissed on December 19, 1977 and later settled at an administrative level.

CASE IN U. S. DISTRICT COURT

Seattle Police Guild et al. v. City of Seattle et al.  
U.S. District Court No. C77-278S

Affirmative action challenge by white male Police Department employees and their union under Title VII of the Civil Rights Act as amended. The Association of Black Police Officers has intervened. The specific practice complained of is appointment out of rank order from a register for Police Sergeant to reach a minority to increase minority representation in the Police Department in promotional positions. The original complaint sought to challenge the hiring practices of the Police Department as well; however, portions of the complaint were struck and certain parties dismissed from the suit on motion of the City because they lacked standing or had failed to meet the jurisdictional prerequisites for suit under Title VII. The order limiting the suit to police officers and the union representing them on the specific promotional practice employed is on appeal currently in the 9th Circuit Court of Appeals. The case otherwise is pending in federal court and no trial date has been established.

## SIGNIFICANT ADMINISTRATIVE PROCEEDINGS

## FEDERAL ENERGY REGULATORY COMMISSION (FERC)

## 1. Application to Raise Height of Ross Dam

Following seven years of administrative proceedings, on July 5, 1977 the Federal Power Commission (since changed to Federal Energy Regulatory Commission) issued an order authorizing the raising of the height of Ross Dam in order to provide substantial amounts of additional power and energy to Seattle. Shortly thereafter, the Department of Interior filed a motion to intervene and for a stay of proceedings. In September FERC granted both such motions. By the end of the year it had taken no further action in connection with the City's application.

## 2. Application to Relicense the City's Skagit Project

All the City's hydroelectric facilities on the main stem of the Skagit River (Ross, Diablo and Gorge Dams) are licensed as a unit by the Federal Energy Regulatory Commission. The original license was issued in 1927 for a fifty-year period, and, accordingly, the City in 1977 filed an application for a new license for these facilities, which supply approximately 35% of the City's total power supply. Administrative proceedings associated with this application are expected to continue through all of 1978.

## 3. Application for Preliminary Permit for Copper Creek Project

The City filed an application in 1977 for a preliminary permit from the Federal Energy Regulatory Commission to undertake studies to determine whether or not the proposed Copper Creek Project is environmentally and economically warranted for future hydroelectric development. This site is located immediately downstream of the City's existing facilities on the main stem of the Skagit River.

To date, interventions have been filed by the State Departments of Game and Fisheries, National Marine Fisheries Service, the Department of Interior, and several Indian tribal communities. Extensive studies are currently underway to determine the environmental and social effects of the proposed project on the Skagit Valley.

## 4. Bonneville Power Administration (BPA) Application to Increase Transmission Rates

In addition to purchasing a supply of firm power from BPA, the City transmits (or "wheels") all the output of its Boundary plant on the Pend Orielle River in Eastern Washington to Seattle over facilities of BPA, together with amounts purchased from the Box Canyon and Priest Rapids Projects. Seattle would be substantively impacted by BPA's proposal to the Federal Energy Regulatory Commission to confirm and approve higher transmission rate schedules. This proceeding, which commenced in 1976, resulted in interim rate approval in 1977 subject to readjustment and change should such new rate levels be found to be not justifiable.

During 1977 the Department of Energy was reorganized and jurisdiction over such proceedings was transferred from the independent Federal Energy Regulatory Commission to the Economic Regulatory Administration. The Economic Regulatory Administration is a newly formed agency which is subject to the direct administrative control of the Secretary of Energy.

#### STATE ENERGY SITE EVALUATION COUNCIL

##### Northern Tier Oil Pipeline's Application

Northern Tier has proposed to construct an oil off-loading facility for crude Alaskan oil at Port Angeles and a transmission pipeline to the Mid-West. The proposed pipeline would loop around Puget Sound and commence its crossing of the Cascade Range through a portion of the City's Cedar River Watershed. The City has actively opposed this route proposal because it threatens the purity of the City's water supply with a potential oil pipeline leakage. During 1977 the applicant disclosed alternate plans to cross the Cascades and avoid both the City of Tacoma's and the City of Seattle's watershed areas. Further proceedings during 1978 will be monitored by the City.

#### ARMED SERVICES BOARD OF CONTRACT APPEALS

City of Seattle v. United States (Department of the Army)  
U.S. Court of Claims No. 393-77  
Armed Services Board of Contract Appeals No. 22486

On July 11, 1977 The City of Seattle filed a petition in the U.S. Court of Claims (Case No. 393-77) for loss of electric revenues resulting from the Fort Lawton facility having been charged for a number of years at a lower rate than that properly applicable. The claim was for approximately Three Hundred Seventy Thousand Dollars (\$370,000).

On September 27, 1977 the Army Contracting Officer issued a final decision adverse to The City of Seattle and, at the request of the U.S., the City and the U.S. jointly moved to suspend proceedings pending the City's appeal to the Armed Services Board of Contract Appeals (Case No. 22486). The case is now in the discovery process and no date has been set for hearing.

## IV

### SPECIAL PROJECTS

#### Codification Project

During 1977 the Law Department negotiated a contract with Book Publishing Company of Seattle for recodification of the City's ordinances. After the contract was approved by the City Council, the Law Department prepared a list of all of those laws of the City which were ever passed and which are still on the books, starting with number 1 and running past number 107095 to date. Copies of each general ordinance still in effect will be sent to the contractor, who will organize them by subject matter into a new code.

The Law Department will supervise the organization, editing and printing of the new code, which is projected to take two years to complete. The new code which will be the first one compiled since 1958 and will be published in large paperback format similar to the present Revised Code of Washington. Its entire text will be preserved on a computer tape which can be readily supplemented or amended from year to year.

A major achievement of the recodification project will be the production of an accurate, complete book of laws for day-to-day use by the City and the local legal community.

#### Computer Acquisition

The Law Department during late 1976 and 1977 provided in depth assistance to the Purchasing Agent and the Office of Management and Budget Management Information Services in the procurement/negotiation of a lease for the Sperry Univac 98/80 large scale city computer. This procurement, the procedures used and ultimately the contract developed provide the bases for future acquisition of data processing hardware and software.

## STATISTICS

Claims in 1977

The Claims 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.

During 1977 \$209,759 was paid for claims involving various departments. \$127,611 was paid pursuant to Ordinance 103167, which authorizes the City Attorney to approve payment of individual claims of not more than \$2500; \$82,148 was paid pursuant to specific ordinances passed by the City Council.

Tabulation of Cases:

During 1977 the following cases were filed in other than Municipal Court:

<u>Type</u>	<u>Number</u>
- Condemnation	4
- Damages for personal injury and other	103
- Contract actions	21
- Extraordinary writs and miscellaneous filing	69
- Housing abatements	8
- Lien foreclosures filed	16
- Miscellaneous administrative proceedings	42

At the end of 1977 the following cases were pending:

- Administrative Proceedings	48
- District Court	82
- Court of Appeals	15
- Supreme Court	13
- Superior Court	286
- Federal District Court	11
- U.S. Appellate Court	11

Prosecutions in Municipal Court

During 1977 the Criminal Division handled calendars involving 78,060 defendants in Municipal Court resulting in the imposition of fines and forfeitures (including penalty assessments) in the amount of \$1,920,698.

Magisterial Hearing fines and ordinance violation forfeitures (including penalty assessments) for the year 1977 amounted to \$5,031,688.

During 1977 legal action was completed on 126 cases involving violations of minimum Housing Code.

## Municipal Court Appeals

Appeals from 1089 convictions in Municipal Court were disposed of in King County Superior Court as follows: 401 appeals were dismissed and remanded to Municipal Court for enforcement of the original sentences; in 238 cases convictions on pleas of guilty were entered; in 227 cases, the court or the jury found the defendant guilty after trial; in 68 cases the defendants were found not guilty; and in 155 cases all charges were dismissed for insufficiency of evidence.