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Annual report
of the
Corporation Council
for
1908

City of Seattle

Washington

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LAW DEPARTMENT

MUTUAL LIFE BUILDING

December 31, 1908.

Hon. John F. Miller,
Mayor of The City of Seattle,
Seattle, Washington.

Dear Sir:-

In accordance with your request, I beg to herewith submit a report of the business transacted in the Law Department of The City of Seattle since the 24th day of January, 1908, on which date I filed a report with the Hon. William Hickman Moore, then Mayor of The City of Seattle, for the work done in this department from the 22nd day of December, 1905, to January 24, 1908. My last report, therefore, covered a period of two years and one month; this report covers the business of this department for approximately eleven months.

On the 24th day of January, 1908, the following suits were pending and undisposed of in this department:

Condemnation suits, original proceedings, - - - -	34
" " supplementary " - - - -	14
Damages for personal injuries, - - - -	22
" to property, - - - -	12
" other than damages to property and personal injuries, - - - -	4
Actions to set aside and restrain collection of assessments, - - - -	20
Appeals from assessments levied by the City Council, - - - -	19
Injunction suits, - - - -	16
Forward,	<u>141</u>

	Brought forward,	141
Mandamus proceedings, - - - - -		4
Miscellaneous suits, - - - - -		10
Suits to quiet title, - - - - -		11
Suits to recover over against owners of property or franchises on account of personal injury judgments paid by city, - - - - -		6
Actions to recover on street grade warrants, - - - - -		6
	TOTAL,	<u>178</u>

Since the 24th day of January, 1908, there have been begun the following suits and proceedings in which the city was a party in interest:

Condemnation suits, original proceedings, - - - - -	34
" " supplementary " - - - - -	15
Damages for personal injuries, - - - - -	26
" to property, - - - - -	16
Damages other than damages to property and personal injuries, - - - - -	3
Actions to set aside and restrain collections of assessments, - - - - -	10
Appeals from assessments levied by the City Council, - - - - -	10
Injunction suits, - - - - -	24
Mandamus proceedings, - - - - -	16
Miscellaneous suits, - - - - -	14
Suits to quiet title, - - - - -	11
Suits to recover over against owners of property or franchises on account of personal injury judgments paid by city, - - - - -	1
Actions to recover on street grade warrants, - - - - -	3
	TOTAL
	<u>183</u>

Actions pending January 24, 1908, - - - - -	<u>178</u>
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Total actions pending during period covered by this report, - - - - -	361
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The following is a statement of actions still pending and of those ended since January 24, 1908:

1908
 1907
 1906

Blowing Rock, N.C.

17
 10
 7
 187

	<u>Still Pending</u>	<u>Ended</u>
Condemnation suits, original proceedings,	37	31
" " supplementary "	19	10
Damages for personal injuries, - - - - -	31	17
Damages to property, - - - - -	19	9
Damages other than damages to property and personal injuries, - - - - -	5	2
Actions to set aside and restrain collection of assessments, - - - - -	30	-
Appeals from assessments levied by City Council, - - - - -	28	1
Injunction suits, - - - - -	22	18
Mandamus proceedings, - - - - -	10	10
Miscellaneous suits, - - - - -	20	4
Suits to quiet title, - - - - -	16	6
Suits to recover over against owners of property or franchises on account of personal injury judgments paid by city,	7	-
Actions to recover on street grade warrants,	<u>2</u>	<u>7</u>
TOTAL,	246	115

PERSONAL INJURY CLAIMS.

	<u>No.</u>	<u>Amount.</u>
Claims for personal injuries pending January 24, 1908, - - - - -	111	\$458,650.39
Claims for personal injuries filed since January 24, 1908, - - - - -	<u>76</u>	<u>307,938.30</u>

Total claims pending during
 period covered by this report, 187

Total amount, - - - - - \$766,588.69

There has been an increase in the number of personal
 injury claims filed during the year 1908 of, approximately, 200%
 over 1906, and, approximately, 8% over the year 1907. The amount
 claimed during 1908 is, approximately, 200% over that claimed in
 1906, and 4% less than that claimed during the year 1907.

PERSONAL INJURY ACTIONS.

	<u>No.</u>	<u>Amount.</u>
Pending January 24, 1908,	22	\$173,697.00
Commenced since January 24, 1908,	<u>26</u>	<u>335,729.85</u>
Total covering period of this report, - - - - -	48	\$509,426.85

Of the forty-eight actions pending during the period of this report, twenty-two have been tried, involving amounts claimed in the sum of \$160,111.25. In sixteen of these cases a verdict was entered in favor of the city. The total recovery against the city for the balance of the cases tried was \$12,326.00.

I beg to advise you that during two years and one month previous to January 24, 1908, the total amount of actions brought in the Superior Court for personal injuries was \$251,103.47. This report covers a period of eleven months, during which personal injury actions were brought against the city, in which the amount claimed was \$335,729.85, which is an increase in the amount of personal injury litigation amounting to over 300% during the past year.

DAMAGES TO PROPERTY.

	<u>No.</u>	<u>Amount.</u>
Suits pending January 24, 1908, - - - -	12	\$24,258.32
Commenced since January 24, 1908, - - -	<u>16</u>	<u>42,321.65</u>
Total during period of this report, 28		\$66,579.97

Nine of these cases have been tried, in which the amount claimed as damages was \$7,906.67. The total amount of judgments rendered in these cases was \$350.00.

These cases arise through the breaking of water mains, defective sewers, changes of grade without eminent domain proceedings, etc.

The amount claimed during the past eleven months is approximately the same as has been claimed during the past two previous years, although the recovery during the past eleven months has been about 100% less than the recovery during the two preceding years.

MUNICIPAL COURT.

All of the proceedings in the municipal court have been handled exclusively by Mr. Ellis De Bruler, City Attorney, who, by reason of his long experience and peculiar fitness for such work, has been able to handle the work in that department with entire satisfaction. Although the municipal court is connected with the law department, it is in fact a branch of the executive and administrative arm of the city government, and the results obtained in the police court reflect credit and discredit on the general administration of the city.

Cases disposed of in municipal court in 1907,	9,151
" " " " " " " " 1908,	8,768
Fines and forfeitures in 1907,	- - - \$106,656.50
" " " " " " " " 1908,	- - - 101,447.80

EMINENT DOMAIN PROCEEDINGS.

The total number of original and supplementary condemnation proceedings ended and still pending during the period of this

report aggregates ninety-seven cases. The number of Eminent Domain proceedings instituted during the past year is approximately the same as for 1906 and 1907, although the numbers of persons haled into court in such proceedings is somewhat less, owing to the fact that the Jackson Street, Denny Hill and Fourth Avenue cases were all tried during the preceding period.

All of the large regrade and street widening improvements inaugurated during the past three years are well under way, or completed. This fact is almost a miracle, when one takes into consideration the crude legal weapons placed in the hands of the city for this purpose. The present Eminent Domain Act is unjust and inequitable in principle. In a regrade case it is absolutely impossible for the jury to render equitable verdicts when the law requires the off-setting of benefits against damages. I suggest that the legislature should amend the present act by providing that the jury shall fix the compensation and damages irrespective of benefits; this would then allow the Eminent Domain Commissioners to assess the property, giving damages on the basis of special benefits over the amount of such award. The City Council could also assess the property awarded damages on the same basis, taking into consideration, however, the assessment for benefits levied by the Eminent Domain Commission.

In the case of Schuchard vs. The City of Seattle, the Supreme Court sustained the case of Smith vs. The City of Seattle rendered some years ago, in which it was held that neither the Eminent Domain Commissioners nor the City Council could assess property receiving a jury award for damages in the same proceeding.

On the theory that the cost to any lot for the actual improvement of the street was an element of damage to be considered by the jury in making the award, the city has assessed such property, and only during the past few months has this question been taken to the Supreme Court. Now that the Supreme Court has denied the city the right to so proceed, it is absolutely essential that the Eminent Domain Act be amended to meet the new legal condition.

I have prepared such an amended act, and will immediately forward the same to each of the legal advisors of cities of the first class in this state, soliciting the aid of their home delegations in securing its passage by the legislature.

Thirty-seven original proceedings in eminent domain are now pending and ready for trial. Although this class of litigation is given statutory preference over all the litigation except extraordinary writs and contempt cases, it would be unjust to demand the entire time of the various departments in the Superior Court; it has, therefore, been our custom to share the time of the courts as nearly as possible with other litigants. Property owners have not been so insistent during the past year that these cases be tried at an early date, and as a result the courts are now approximately eight months behind this department.

INITIATIVE AND REFERENDUM.

No initiative legislation has been attempted since the taking effect of the charter amendment of 1908 on this subject. The referendum has been invoked against several ordinances. In the case of Miles P. Benton vs. The Seattle Electric Company, the

with the approval of the Board of Public Works and the Board of Supervisors
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Supreme Court has held that the initiative and referendum does not apply to the granting of street railway franchises. In the case of Hartig vs. the City, involving the application of the referendum to the granting of liquor licenses, the Superior Court of King County has held that the referendum provision of the charter does not apply to the granting of liquor licenses. This case is now on appeal to the Supreme Court, and will be argued during the January term, 1909.

The present initiative and referendum provision of the charter is defective, and in my judgment as now constructed it is against public policy. It has placed in the hands of business competitors and cranks a weapon that can be unjustly used against persons receiving the benefit of an ordinance passed by the City Council and signed by the Mayor. It is a well known fact that practically all of the signatures on the referendum petitions filed under this amendment have been secured by paying solicitors at the rate of ten cents and more a name to secure them. Although the broad principle of the referendum is to vest legislation in the people, that result is not secured under such a vicious system. In order to avoid this practice, the petitions should be placed on file in the office of the City Comptroller, and every person desiring to sign the petition should be compelled to call at the office of the City Comptroller to do so, and only those persons who are registered voters in the city should be allowed to sign the petition. Each name should be checked as the signature is placed on the petition. This is certainly no greater hardship than the requirement that all persons shall call at the City Hall and register before they are allowed to vote in this city.

In the personal injury damage suit of Hase vs. The City of Seattle, the Supreme Court denied the right of the city to require the residence of the claimant for one year preceding the filing of the claim. It is impossible to tell from a reading of the decision whether the Supreme Court would allow the city to make such a requirement even if the legislature passed an act authorizing it.

Your Honor will probably recall the case of Mayer vs. The City of Seattle, in which the plaintiff was allowed for personal injuries \$2,000.00 about nine years ago. Mr. J. H. Dennis, then, and now, the City Claim Agent, thereafter discovered that Mayer was prosecuting a claim for the same injury against the City of Astoria, Oregon, under a different name, and that he also filed a claim against the City of Portland on August 18, 1900. As a matter of fact, this man was never injured in any of the cities named. He buncoed \$2,000.00 out of The City of Seattle, was scared away from Portland by an honest doctor, and received a verdict for \$2,000.00 against the City of Astoria, and was about to receive the money from Astoria when the city discovered he was a fraud and fakir. He was arrested, convicted, and in State vs. Smith, 83 Pac., 865 (Or.), the Supreme Court of Oregon sustained a sentence of ten years imprisonment in the Oregon Penitentiary. If the City of Astoria had required the statement of residence of this party for a year preceding the filing of his claim, its officials could easily have learned whether this man was a fakir or not. The City of Seattle at that time had no such provision in its charter, and could

not trace the past history of this man. Every city in this state, under the recent decision of the case of Hase vs. The City of Seattle, stands in constant jeopardy of personal injury frauds.

WATER AND LIGHT COLLECTIONS.

In my last report I called attention to the fact that the Supreme Court has denied the right of cities, without statutory authority, to make municipal water and light bills a lien against the property served. An attempt was made to have such a bill passed by the last legislature, and a like bill will be presented to the legislature at the approaching session.

DEVELOPMENT OF HARBOR FRONT.

Perhaps the most important legislation to come before the approaching session of the legislature will be the passage of the law extending the powers of cities of the first class and the state itself in the development of the water front and harbor areas. This important question has been apparently overlooked during the past few years, owing, probably, to the fact that all things could not be done at once, and the city was busy in cutting down hills, widening streets, constructing a comprehensive sewer system, light system, water system, paving and sidewalks. It is impossible at this time to determine what legislation is necessary until the specific character of the contemplated improvements is determined by competent engineers.

CIVIL SERVICE.

The civil service provision in the city charter is defective in that the powers of the civil service commission are so

Its' average in comparison with the average of the other departments.
The average of the departments of the city is 1000 per cent. The average of the
other departments is 1000 per cent. The average of the other departments is

abridged as to deny it the power to prescribe or enforce penalties. The heads of the departments may suspend an employe under civil service not to exceed thirty days, and the employe has no right of appeal. The only other power given the heads of departments is to expel the employe from the service of the city upon filing his reasons with the Commission. The expelled employe then has a right of appeal, and the Commission determines to sustain the head of the department in his action, or to reinstate the employe. The charter should be amended to authorize the Civil Service Commission to fix penalties of suspension. As the charter now stands, an employe can be suspended not to exceed thirty day, or he must be expelled altogether.

Yours truly,

John W. Calhoun
Corporation Counsel.