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A N N A L R E P O R T

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T H E L A W D E P A R T M E N T

of

T H E C I T Y O F S E A T T L E

For the year 1918.

FILED

At o'clock M.

DEC 23 1918

H. W. CARROLL

CITY COMPTROLLER

AND EX-OFFICIO CITY CLERK

ANNUAL REPORT OF THE LAW DEPARTMENT
CITY OF SEATTLE.

TO THE MAYOR AND CITY COUNCIL
OF THE CITY OF SEATTLE.

Gentlemen:-

Although the City Charter does not require the law department to make an annual report, it has become a custom to do so. Pursuant to this custom, I submit herewith the following report of the work of the law department covering the period from December 1, 1917, to December 1, 1918:

I.

GENERAL STATEMENT OF LITIGATION.

1. TABULATION OF CASES.

	Pending Dec. 1, 1917	Pending Dec. 1, 1918	Commenced Dec. 1, 1917	Ended since Dec. 1, 1917
Condemnation suits	25	18	7	14
Condemnation suits, supplementary proceedings	9	7	4	6
Damages for personal injuries	35	20	14	29
Damages to property	42	45	22	19
Damages other than damages to property and personal injuries	2	2		
Actions to set aside and restrain collections of assessments	2	2		
Appeals from assessments levied by city council	3	2	3	4
Injunction suits	17	21	14	10
Mandamus proceedings	5	4	1	2
Miscellaneous proceedings	86	85	68	69
Suits to quiet title	3	3	2	2
Public Service Commission proceedings	5	6	5	4

	<u>Pending Dec. 1, 1917</u>	<u>Pending Dec. 1, 1918</u>	<u>Commenced Dec. 1, 1917</u>	<u>Ended since Dec. 1, 1917</u>
Suits to recover over against contractors, owners of property or franchises on account of personal injury judgments paid by city	7	1	0	6
Actions against police, health and other officers	12	10	3	5
T O T A L	253	226	143	170

Total actions pending during period of this report - - - - - 396

<u>2. PERSONAL INJURY ACTIONS.</u>	<u>Number</u>	<u>Amt. involved</u>
Pending November 30, 1917,	35	\$230,653.95
Commenced since November 30, 1917	<u>14</u>	<u>64,401.75</u>
T O T A L	49	\$295,055.70
Tried and concluded since December 1, 1917	29	186,783.75
Actions pending November 30, 1918	20	108,271.95

It appears from the foregoing tabulation that twenty-nine personal injury cases involving \$186,783.75 were tried since November 30, 1917. Sixteen of such cases resulted in judgments in favor of the city and in the remaining thirteen cases there were recoveries aggregating \$20,334.50. There were twenty cases pending in the superior court on November 30, 1918. There were no personal injury cases pending in the supreme court on said date.

3. <u>DAMAGE TO PROPERTY SUITS</u>	<u>Number</u>	<u>Amt. Involved</u>
Suits pending November 30, 1917	42	\$ 230,289.45
Commenced since November 30, 1917	22	66,827.89
Total covering period of this report	64	297,117.34
Tried and concluded since Dec. 1, 1917	19	39,346.11
Pending November 30, 1918	45	259,771.23

In the nineteen cases involving damage to property which were disposed of between November 30, 1917, and November 30, 1918, judgments were sought in the sum of \$39,346.11. In seven of these cases there were judgments entered in favor of the city, and in the remaining twelve cases judgments against the city were entered to the aggregate amount of \$10,054.01.

4. <u>ACTIONS FOR DAMAGES OTHER THAN DAMAGES TO PROPERTY AND PERSONAL INJURIES.</u>	<u>Number</u>	<u>Amt. Involved</u>
Pending November 30, 1917	2	\$ 26,500.00
Commenced since November 30, 1917	0	
	TOTAL	\$ 26,500.00
Tried and concluded to November 30, 1918	0	
Pending November 30, 1918	2	\$ 26,500.00

5. MISCELLANEOUS CASES.

Of sixty-nine miscellaneous actions tried and concluded during the period of this report, forty-eight were habeas corpus proceedings instituted since December 1, 1917. In all such habeas corpus hearings, with the exception of one, the persons applying for the writs were remanded to the custody of the several officials having such persons in charge. During the year there were fifteen cases pending against police officers, firemen, and other city officials, five of such cases having been tried and concluded, and in no instance was there any recovery of a money judgment against the defendants therein.

6. <u>DAMAGE CLAIMS FILED AGAINST CITY.</u>	<u>Number</u>	<u>Amt. involved</u>
Claims for damages pending November 30, 1917	31	\$37,038.00
Claims for damages referred to this department for investigation, from November 30, 1917, to November 30, 1918	<u>121</u>	<u>361,621.00</u>
T O T A L	152	398,659.00
Claims for damages investigated and disposed of as follows:		
Between November 30, 1917, and November 30th, 1918:		
Settled - - - - -	14	46,530.00
Rejected - - - - -	86	280,503.00
Total personal injury claims pending November 30, 1917	<u>31</u>	<u>71,626.00</u>
T O T A L	131	398,659.00

7. GARNISHMENTS.

During the period of this report, we made seventy-four answers in garnishment cases, forty of which were for the garnishment of wages of city employes and thirty-four for miscellaneous subjects. Twenty of the cases involving garnishment of city employes' wages came to trial on questions of exemptions or assignment.

II.

PUBLIC UTILITIES, MUNICIPALLY OWNED.

1. LIGHT AND POWER.

During the year, at the request of the city council, this department has drawn two ordinances relating to the issuance of bonds in connection with additions and betterments to the light and power plant and system of the city. The first of such ordinances increased the bond issue authorized for the construction of a hydro-electric plant from five million to five million five hundred thousand dollars. The second ordinance authorizes a bond issue in the amount of one million seven hundred fifty-five thousand for the purpose of making necessary extensions for service; con-

structing an interconnection between the light and power plants of the Puget Sound Traction, Light & Power Company and the City; the construction of two new substations, the sealing of the Cedar River Dam and the equipping of the power plant used in connection therewith in order to permit the full development of power thereat. In connection with the issuance of bonds for the construction of a hydro-electric plant, this department prepared the application to the Capital Issues Committee for the sale of such bonds, and thereafter the Corporation Counsel, in company with the Mayor and Chairman of the Finance Committee of the City Council appeared before the District Committee on Capital Issues at San Francisco, and subsequently before the Capital Issues Committee at Washington, D.C., for the purpose of sustaining such application. As a result of the application referred to, the Capital Issues Committee issued its formal opinion approving the sale of One million five hundred thousand dollars for the initial work upon such hydro-electric plant.

Fifty-one actions were commenced for the lighting department of the City involving unpaid light and power bills in which recoveries aggregating \$1,128.55 were sought. Judgments, including costs, were entered in the sum of \$1,163.42, and of this amount \$753.99 has been collected. Seven claims were filed for the light department in either estates in bankruptcy or probate proceedings. Two actions for damages were instituted against the city or its employes in connection with matters of the light department, which actions resulted in judgments favorable to the city.

2. WATER.

At the request of the city council this department drew an ordinance making certain amendments to an ordinance which had been previously drawn providing for the issuance of three million seven hundred thousand of utility bonds for the extension of the water supply of the city. In order to secure funds for the purpose of paying the awards made in the Swan Lake condemnation case, and to begin the construction of the necessary improvements in connection with such system, this department prepared an application to the Capital Issues Committee for the approval of the sale of Five hundred thousand dollars of such bonds. As a result of such application, said committee authorized the issuance and sale of bonds to the extent of Three Hundred Thousand dollars for the purpose of paying said awards, but withheld its approval as to any additional bonds until the city should submit to the committee complete plans showing the contemplated improvements in connection with the water system.

3. STREET RAILWAY.

For the purpose of making additions and betterments to the municipal street railway system of the city, this department prepared during the year the necessary ordinances to submit to the people the question of issuing three hundred fifty thousand dollars of general bonds, the proceeds of which were to be used in the construction of the elevated municipal railway. Also an ordinance authorizing the issuance and sale of one million two hundred thousand of utility bonds for the construction of a municipal street railway on Tenth Avenue Northeast, on East Marginal Way, and on Admiral Way.

4. FISH MARKET

Early in 1918 the question was raised as to whether the city had authority to establish and operate a municipal fish market. From an examination of the provisions of the statute, and cases construing the same, this department reached the conclusion that the provisions of Chapter 150 of the Laws of 1919, as amended, gave the city the power to establish and operate such a market by complying with the provisions of said act. Prior to the submission of the question to this department the city had undertaken to establish such a market without the adoption of a plan or system as required by law, as a result of which a suit was instituted by a local fish dealer to enjoin the city from the operation of a municipal fish market. In order to successfully resist said suit, this department prepared an ordinance specifying and adopting a plan for the establishment of a municipal fish market, and authorizing the issuance of utility warrants in the sum of \$16,000.00, which ordinance was duly passed by the city council and approved by the mayor. In the case referred to, the court sustained the right of the city to establish and operate a municipal fish market in accordance with the plan or system specified in such ordinance.

III.

PUBLIC UTILITIES PRIVATELY OWNED

1. PUGET SOUND TRACTION, LIGHT & POWER COMPANY.

During the year the department has conducted several important pieces of litigation involving questions arising under the franchises of the Puget Sound Traction, Light & Power Company:

(a) FOUR CENT TICKET CASE.

In the case involving the power of the Public Service Commission to eliminate four cent tickets provided for in the franchises of the Puget Sound Traction, Light & Power Company, which was on appeal to the supreme court at the time of the making of the last annual report, it was held that the Public Service Commission Law of 1911 invested the Public Service Commission with jurisdiction of all matters relating to rates, and consequently, with authority to direct a discontinuance of the use of commutation tickets required by franchises.

(b) FREMONT BRIDGE CASE.

The suit instituted to compel the company to pay its just proportion of the cost and expense of the Fremont Avenue Bridge was duly brought on for trial, in which case the court awarded judgment in favor of the city in the sum of \$60,197. This case is now on appeal to the supreme court.

(c) MANDAMUS TO COMPEL PAVING.

The two suits which had been instituted prior to the making of the last annual report to compel the company to pave certain streets in accordance with franchise requirements have, since November 30, 1917, been disposed of in the superior court by the entry of judgment awarding to the city peremptory writs of mandate to compel the company to pave. From these judgments the company has prosecuted appeals to the supreme court of the state and stayed the execution of such writs by supersedeas bonds.

(d) TWO PER CENT. GROSS EARNINGS.

At the time of the last annual report there was pending in the supreme court an appeal from the judgment theretofore rendered in favor of the city and against the company for the

amount of its gross earnings tax for the year 1916. Subsequent to the making of such report, this department, pursuant to the request of the council, instituted suit to recover the gross earnings tax for the year 1917. During the year the judgment rendered in the former case was affirmed by the supreme court, and prior to the coming on for trial of the second case, the company paid to the city treasurer the gross earnings tax for both 1916 and 1917, aggregating \$144,304.22 in addition to the costs accruing in the two proceedings.

(e) RATES OF FARE AND GENERAL FRANCHISE PROVISIONS.

During the year the Stone & Webster interests, which control the Puget Sound Traction, Light & Power Company as well as the Tacoma Railway & Power Company, caused to be instituted in the supreme court of the state, a proceeding for the purpose of obtaining a writ of mandate to compel the Public Service Commission to raise the rate of fare in the City of Tacoma above the limit of five cents fixed by Section 25 of the Public Service Commission Law of 1911, and generally to relieve the Tacoma Railway & Power Company of its franchise obligations relating to paving, contribution to the cost and expense of bridges, and the payment to the City of Tacoma a percentage of its gross earnings. At the request of the city council this department appeared in said proceeding and presented to the supreme court an exhaustive brief upon the questions involved, and likewise participated in the oral argument before that court. It was held by the supreme court that the Public Service Commission had neither the power to raise the rate of fare above the five cent limit fixed by the

state law, nor to relieve the street railway company of other franchise provisions which did not relate to fares or service.

2. SEATTLE LIGHTING COMPANY.

During the year there have been two proceedings before the Public Service Commission involving proposed increases of rates for gas to be charged in the City of Seattle.

(a) FIRST GAS CASE.

At the time of the rendition of the last annual report there was pending before the Public Service Commission an application by the Seattle Lighting Company to establish what is known as a "readiness to serve" charge. Against this application this department, pursuant to direction of the city council, had filed a complaint. Although prior to any hearing the Public Service Commission indicated in no unmistakable manner its intention of granting to the Gas Company an increase of rates, after an extended hearing an order was entered raising the rates, although denying to the company the right to make any charge for "readiness to serve". Proper proceedings were taken to test the validity of the order entered by the public service commission, and the matter is now pending on appeal to the supreme court and will probably be heard at the January, 1919, term.

(b) SECOND GAS CASE.

In the early part of October, 1918, the Seattle Lighting Company filed with the Public Service Commission an amendment to its rate schedule, the effect of which was to eliminate

all discount for prompt payment for bills rendered for gas consumed. It was estimated that the elimination of such discounts would increase the revenues of the gas company to the extent of approximately \$120,000 a year. Against this proposed increase of rates this department filed a complaint. Hearing upon this complaint was set for November 25, 1918, but prior to that date, the Public Service Commission continued the hearing to December 27, 1918, although at the time of such continuance the company indicated that it probably would abandon its attempt to increase its rates in the manner indicated.

3. PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

On July 16, 1918, there was approved a joint resolution of Congress authorizing the President by proclamation to assume control of telephone and telegraph companies as a war measure. Pursuant to this resolution, the President, on July 22, 1918, issued his proclamation assuming such control and providing that the possession and operation of such telephone and telegraph system should be undertaken by and through the Postmaster General, Albert S. Burleson. Thereafter, on or about the 5th day of November, 1918, the Pacific Telephone and Telegraph Company, purporting to act pursuant to authorization by the Postmaster General, filed with the Public Service Commission a proposed new tariff and schedule of rates to become effective as of November 15, 1918. This matter, having been called to the attention of the city council, this department was requested to determine whether the city had any redress against the action sought to be taken by the company. Upon examining the resolution and proclamation referred to, this department concluded that the Postmaster General was without authority to authorize the company to increase its rates in the manner proposed.

Thereafter, pursuant to the direction of the city council, a complaint was filed with the Public Service Commission against the company and Postmaster General Burleson, in which the city challenged the legal right of the company and the Postmaster General to ignore the provisions of the state law which required thirty days' notice before a new schedule of rates should become effective, unless the Public Service Commission for good cause prescribed a shorter notice. In marked contrast with the position taken by the Public Service Commission of Oregon, the Public Service Commission of Washington sought to disclaim jurisdiction in the premises and caused to be published in the press numerous statements to the effect that only the Postmaster General had authority to control the matter of rates since the assumption of control by the Postmaster General pursuant to the President's proclamation issued on July 22, 1918. In anticipation that there might be an attempt on the part of the company, with the acquiescence of the Public Service Commission, to put the new rate into effect without complying with the state law, this department prepared for the institution of a suit to restrain the company from making any charge in excess of the rates specified in the schedules on file with the Public Service Commission and which had been theretofore duly and regularly approved by such Commission. In the meantime, the complaint of the City of Seattle had been served upon the company and the Postmaster General, and on November 27th the Postmaster General, by telegram, requested the Public Service Commission to strike out from the rate schedule filed on November 6th the provision proposing to put the same into effect on November 15th, and to substitute December 6th as the effective date, and thereafter to proceed to hear complaints against the same in accordance with the state law. December 26, 1918, was then fixed by said Commission as the date for hearing such complaint.

IV.

WORK OF CITY ATTORNEY.

1. PROSECUTIONS FOR VIOLATIONS OF CITY ORDINANCES.

During the year the city attorney has disposed of 13,424 cases in the police court resulting in the imposition of fines and forfeitures to the amount of \$106,023.34, which is a gain in receipts over the previous year of \$12,472.39. In the cases involved, 2471 were prosecutions for violation of the liquor ordinances and proceedings upon search warrants. 97 cases have been appealed to the superior court and tried and disposed of therein, resulting in the collection of fines in the sum of \$5,114.85. No appeals were taken from the superior court to the supreme court. At the time of the last annual report there were five cases pending in the supreme court, three of which have, during the current year, been disposed of.

2. LITIGATION CONCERNING QUARANTINE.

During the year the city attorney was called upon to appear for the city in numerous proceedings instituted to obtain release of persons who were quarantined under the provisions of Ordinance No. 15957, providing for the quarantine of persons affected with dangerous, contagious and infectious diseases, which ordinance, early in the year, had been amended so as to provide for the quarantine of persons affected with venereal diseases. Some of these habeas corpus proceedings were instituted in the superior court for King County while others were brought in the United States District Court for the Western District of Washington, but in all such proceedings judgments of dismissal were entered except in four cases begun in the superior court and in which the trial judge undertook to appoint a commission of physicians to make medical examination of the petitioners for the purpose of testing the correctness of the decisions reached by the local commissioner of health and the state board of health on the question of whether such petitioners were affected with venereal diseases.

In these four proceedings this department took the position that, under the provisions of the state law, the finding of the local commissioner of health on the question of whether a person was affected with a dangerous, infectious or contagious disease was, in the absence of a reversal thereof by the state board of health, binding and conclusive upon the courts. In order to determine the matter finally, however, it became necessary to apply to the supreme court for writs of prohibition to restrain the trial court from proceeding to an enforcement of its order. Upon the hearing in the supreme court, the construction of the law as made by this department was fully sustained. The opinion written by the supreme court in the matter is unique, in that it is the only case, as far as diligent research reveals, which passes upon, and sustains, the right to quarantine persons affected with venereal diseases.

V.

OPINIONS

During the year, in addition to innumerable conferences concerning municipal affairs, with city officials, of which no formal record is kept, this department has rendered 118 written legal opinions upon various questions submitted by the several departments of the city government.

VI.

ORDINANCES AND RESOLUTIONS

The members of the city council, and other municipal officials, have, from time to time, requested this department to prepare ordinances and resolutions. Complying with such requests, the department has drawn, during the period from December 1, 1917, to November 30, 1918, 179 ordinances and resolutions.

VII.

MISCELLANEOUS WORK.

1. SELECTIVE DRAFT WORK.

This department has continued to handle a vast amount of work in connection with the selective draft for the United States army. One assistant continued to act as an executive officer of one of the local draft boards, and another continued his work as appeal agent for the Government, while at various times other assistants rendered service to persons subject to the selective draft act by acting as members of the legal advisory board for King County in the preparation of answers to questionnaires.

2. APPLICATIONS TO CAPITAL ISSUES COMMITTEE.

In addition to the applications to the Capital Issues Committee for the approval of the issuance and sale of bonds hereinbefore specifically enumerated in connection with the report concerning the light and water departments, this department prepared applications to that Committee for the approval of the following bond issues:

- (a) \$300,000 general bonds to pay the cost and expense incident to the condemnation for the street and other purposes on Beacon Hill, under Ordinance No. 37320.,
- (b) \$110,000 general bonds to pay the deficiency arising in Local Improvement District No. 2601 for the improvement of Shilshole Avenue pursuant to Ordinance No. 30389.,
- (c) \$270,000 general bonds to pay the cost and expense of the condemnation for the improvement of Shilshole Avenue, et al, under Ordinance No. 29834.,
- (d) \$245,000 general bridge bonds, Series "B", to pay the cost and expense of improving the bridge being constructed across the Lake Washington Canal at Eastlake Avenue and Tenth Avenue Northeast, provided for in Ordinance No. 34220.

(e) \$120,000 condemnation bonds to pay the cost and expense on account of the condemnation for Empire Way pursuant to Ordinance No. 30673.

All of the foregoing applications were approved by the Capital Issues Committee.

VIII.

RECOMMENDATIONS.

By reason of the approaching session of the state legislature, it is deemed proper to call your attention to certain matters that have suggested themselves to this department by requests for opinions by municipal officers and by litigation conducted for the city.

1. MUNICIPALLY OWNED UTILITIES. SALE OF SURPLUS.

In the annual report of this department for the year ending December 1, 1916, it was recommended that in the event the City desired authority to sell its surplus water or electric energy for use beyond the city limits, an effort should be made to obtain the passage of an act by the legislature granting authority to do so. This recommendation is now renewed. The importance of the recommendation is magnified by reason of the proposal of the city to construct a hydro-electric plant on the Skagit River in the Washington National Forest. There will no doubt be an opportunity for the city to sell, as well as a great desire on the part of cities through, or near, which the power line from such hydro-electric plant to The City of Seattle will pass, to buy electric current for light and power. Such a condition would offer a splendid opportunity for the city to sell any surplus electric energy produced by such plant, and at the same time offer such cities an opportunity to obtain electric current at a rate which would probably be much lower than could be obtained from any private company.

2. PUBLIC SERVICE COMMISSION LAW.

The experience that the city has had during the past year with reference to matters under the control of the Public Service Commission emphasizes the desirability of amendments being made to the Public Service Commission Law which would permit cities of the first class to control matters relating to public service companies operating within their respective corporate limits. In the event that it is the desire of the city to have a bill prepared proposing such amendments, this department will be glad to undertake the preparation of the same. While heretofore this department has recommended the submission of amendments to the state constitution which would have the effect of granting to cities of the first class a greater degree of home rule, it appears that no substantial progress toward such amendments has in fact been made in the Legislature, and it is doubtful whether any greater success would be attained by attempting to secure the coming Legislature to submit such amendments. For this reason we are confining our recommendation concerning public utilities to the matter of securing amendments to that law which more than any other seems to have deprived the cities of the first class of their control over matters which vitally concern the inhabitants of such cities.

3. RENICK LAW.

There has been considerable discussion from time to time as to the desirability of seeking a repeal of the so-called Renick law, which was passed in 1915. The criticism voiced against this law is, that, as to certain funds under the control of the city, no use thereof may be made even temporarily of moneys in such fund, when to do so would relieve the city of the necessity of issuing general fund warrants drawing five per cent interest, while such moneys remain

deposit in the banks of the city drawing but two per cent interest. It is conceived that the city might obtain relief from what appears to be a drastic provision by securing the enactment of a statute which would authorize the city to make temporary loans from these funds in anticipation of the collection of taxes in substantially the same manner as the state is now authorized to do under and pursuant to the provisions of Chapter 15 of the Laws of 1915. In the event that it is the desire of the city to foster the enactment of such a statute, this department will be glad to cooperate in the preparation of the same.

4. ANNEXATION OF UNINCORPORATED AREA.

We renew the recommendation made in the annual report of this department for 1916 concerning the desirability of the submission of a bill to the next legislature authorizing the City of Seattle to annex a small tract of land to the north of the old city limits of Georgetown which is not now a part of the territory of the City of Seattle. The effect of such incorporation would be to eliminate some questions that have given rise to undesirable situations in the past, and if it is the desire of the city that such a bill be drawn, we shall be glad to prepare the same.

5. BONE DRY LAW.

Ordinance No. 36242, commonly known as the "dry ordinance" was drawn to conform to, and went into effect at the same time as, "Initiative Measure No. 3", which was the first state wide prohibition act. Initiative Measure 3 was amended by Chapter 19, Laws of 1917, commonly known as the "bone dry law", but such law was prevented from going into effect by the filing of a referendum petition. By reason of the vote upon such petition at the general election held on the 5th day of November, 1918, this law upon proper proclamation became operative. Said

Ordinance No. 36242 not only does not conform to the present provisions of the state law, but also conflicts with the same in several particulars. This situation, in our opinion, should be remedied by the passage of an appropriate ordinance.

6. AMENDMENTS TO CITY CHARTER.

By reason of the enactment of a number of laws relating to municipal affairs, as well as decisions rendered by the supreme court, certain matters provided for in the city charter have been rendered inoperative. This matter became a subject of discussion when this department was requested to prepare the copy for a new edition of the city charter. Upon recommendation of this department, charter amendments are being prepared which will eliminate from the charter all such provisions. Such elimination will have a tendency to remove any confusion that now arises in the popular mind because of certain departments of the city government proceeding in a manner which would appear to be in violation of the provisions of the city charter, when in fact such action is in strict accord with the express provisions of the state law. This department recommends the submission at the general municipal election to be held on March 4, 1919, of appropriate amendments to accomplish the elimination referred to.

DATED at Seattle, Washington, December 21, 1918.

Respectfully submitted,

Walter F. Meier
Corporation Counsel