

ANNUAL REPORT
OF THE LAW DEPARTMENT
OF
THE CITY OF SEATTLE
FOR 1920.

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ON FILE

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H. W. CARROLL
CITY COMPTROLLER
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ANNUAL REPORT OF THE LAW DEPARTMENT

OF

THE CITY OF SEATTLE

FOR 1920.

To the Mayor and City Council of The City of Seattle:
Gentlemen:-

Pursuant to the provisions of Section 16,
Article XXIV of the City Charter, I herewith submit
the annual report of the Law Department for the year
ending December 31, 1920:

I.

GENERAL STATEMENT OF LITIGATION.

1. TABULATION OF CASES.

	Pending Dec. 31, 1919.	Commenced since Dec. 31, 1919.	Ended since Dec. 31, 1919.	Pending Dec. 31, 1920.
Condemnation suits	25	13	13	25
Condemnation suits, sup- plementary proceedings	6	7	11	2
Damages for personal in- juries	63	74	73	64
Damages other than person- al injuries	71	50	41	80
Actions relating to col- lection of assessment rolls	3	2	0	5
Injunction suits	22	32	19	35
Mandamus proceedings	7	14	10	11
Miscellaneous proceed- ings	105	20	27	98
Public Service Commission proceedings	7	3	7	5
	<u>309</u>	<u>215</u>	<u>201</u>	<u>333</u>
Total actions pending during period of this report				524

2. <u>PERSONAL INJURY ACTIONS.</u>	<u>Number</u>	<u>Amount Involved</u>
Pending Dec. 31, 1919	63	\$375,838.10
Commenced since Dec. 31, 1919 . .	<u>74</u>	<u>682,350.01</u>
Total	137	1,058,188.11
Tried and concluded since Dec. 31, 1919	73	471,742.75
Actions pending Dec. 31, 1920 . .	64	586,445.36

It appears from the foregoing tabulation that seventy-three personal injury cases involving \$471,742.75 were tried since December 31, 1919. Twenty-eight of such cases resulted in judgments in favor of the city, and in the remaining forty-five cases there were recoveries aggregating \$75,068.48. There were sixty-four cases pending in the Superior Court on December 31, 1920. Of the seventy-four cases begun since December 31, 1919, sixty-three cases involving \$460,079.51 were occasioned by accidents occurring in connection with the operation of the municipal street railway.

3. DAMAGES OTHER THAN PERSONAL INJURIES.

	<u>Number</u>	<u>Amount Involved</u>
Suits pending December 31, 1919	71	\$868,856.63
Commenced since December 31, 1919	<u>50</u>	<u>126,249.32</u>
Total covering period of this report	121	995,105.95
Tried and concluded since Dec- ember 31, 1919	<u>41</u>	<u>119,251.52</u>
Pending December 31, 1920 . . .	80	875,854.43

In the forty-one cases involving damages other than Personal Injuries which were disposed of between December 31, 1919,

and December 31, 1920, judgments were sought in the sum of \$119,251.52. In thirty-six of these cases there were judgments entered in favor of the city, and in the remaining fifteen cases judgments against the city were entered to the aggregate amount of \$10,193.75.

4. MISCELLANEOUS CASES.

The twenty-seven miscellaneous actions tried and concluded during the period of this report embraced numerous actions growing out of the jitney and liquor questions, quarantine regulations, condemnations by the Seattle School District and other matters not involving monetary recoveries.

Of twenty-seven hearings conducted by the department before the Civil Service Commission twenty-two decisions were rendered sustaining dismissal of employees from service. The other proceedings resulted in a reinstatement of the civil service employees concerned.

Fifteen minor actions were commenced for the lighting department of the city involving unpaid light and power bills in which recoveries aggregating nine hundred forty and fifty one-hundredths dollars were sought. Judgments, including costs, were entered in the sum of eight hundred seventy-five dollars and of this amount five hundred and eight dollars has been collected. Nine claims were filed for the light department in either estates in bankruptcy or probate proceedings.

5. STATEMENT AND INVESTIGATION OF DAMAGE CLAIMS FILED AGAINST CITY.

	<u>Number</u>	<u>Amount Involved</u>
Claims for damages under investigation December 31, 1919	259	\$548,689.45
Claims for damages referred to this department for investigation January 1, 1920, to December 31, 1920	<u>747</u>	<u>1,450.976.44</u>

Total covering period of this report . . 1008 2,001,740.89

CLAIMS DISPOSED OF AS FOLLOWS:

	<u>Number</u>	<u>Amount Claimed</u>	<u>Amount Paid</u>
Settled	309	\$170,821.57	\$78,660.96
Rejected	<u>456</u>	<u>1,324,176.66</u>	
Total	<u>765</u>	<u>1,494,998.23</u>	

Claims pending December 31,
1920 243 506,742.66

15 cases in suit, settled in con-
formity with recommendations of
City Claim Agent

	<u>Amount Involved</u>	<u>Amount Paid</u>
	\$105,560.55	\$26,699.50

Number of street railway accident reports received from
Department of Public Utilities and investigated,
Jan. 1, 1920, to Dec. 31, 1920 6,512

Number of circulars and letters mailed in connection
with the investigation of foregoing claims and reports 14,240

6. GARNISHMENTS.

During the period of this report, one hundred and six-
teen writs of garnishment which were served on the city were
answered. Ninety-one of these writs were against the wages of
city employees and twenty-five were for miscellaneous subjects.

7. PENDING CASES.

A large number of the remaining cases reported as
pending are cases instituted against the city and which the
attorneys for the plaintiffs have never pushed energetically.
Since those cases can in time be dismissed for want of pros-
ecution, it has been deemed the best policy to let them lie
dormant until it is certain that the court will entertain
the city's motion to dismiss the same.

8. SUPREME COURT.

During the period of this report there were pending in the State Supreme Court thirty-three cases on appeal. Of these, fifteen were decided during the year. Ten cases were decided favorably to the city, four against the city and in one case the judgment was modified. There are eighteen cases still pending in that court.

II.

PUBLIC UTILITIES, MUNICIPALLY OWNED.

1. LIGHT AND POWER.

During the year there have been a number of matters relating to the municipal light and power plant pending in this department. At the request of the City Council an ordinance was drawn providing for an amendment to Section 4 of Ordinance No. 36852, as amended, to fix the denominations of the so-called Skagit River Bond Issue at not less than one hundred nor more than one thousand dollars, as the Council might, by resolution, determine. This amendment was desired to enable the sale of bonds by the City Comptroller to others than bond-buying firms. There were also drawn the necessary resolutions to authorize the City Comptroller to offer said bonds for sale.

The most important matter, however, in connection with the municipal light and power plant handled during the year was that pertaining to the acquisition of a right of way for transmission line and railroad purposes from the town of Rockport to Newhalem Creek, together with a tract of land consisting of approximately one hundred and twenty-six acres at the site where it is proposed to con-

struct the Skagit River power plant. To acquire these properties it was necessary to institute condemnation proceedings in both Skagit and Whatcom Counties. A serious contest arose in Whatcom County relative to the value of the one hundred and twenty-six acre tract referred to. A jury impaneled in the condemnation proceedings fixed such value at the sum of \$27,500. The city having interposed its motion for a new trial, the court entered an order directing the granting of a new trial, unless the property owners would accept one-half of the amount of the verdict. Upon the failure of the respondents to accept such reduced award, an appeal was taken to the Supreme Court, where the matter is now pending. In the event of an affirmance of the order granting a new trial, the cause must then be retried to ascertain the value of the property, unless the respondents should finally conclude to accept the reduced award.

Incidental to the proceedings taken to acquire the right of way above referred to, this department approved the plans and specifications prepared by the Board of Public Works for the construction of the railroad necessary in connection with the installation and operation of the proposed power plant at Gorge Creek.

2. STREET RAILWAY.

While there have been many questions concerning the municipal street railway system submitted to this department during the year covered by this report, in most instances such questions only called for the determination of matters of law. During the year there was instituted a suit against the city to restrain the construction of

of a proposed extension from the present terminus of the street railway on East Fifty-fifth Street, between Twenty-ninth Avenue Northeast and Thirtieth Avenue Northeast to Thirtieth Avenue Northeast, and thence north on Thirtieth Avenue Northeast to East Sixty-second Street, together with a wye near the intersection of Thirtieth Avenue Northeast and East Sixty-second Street. At the time the city passed Ordinance No. 39492, approved May 21, 1919, as a part of the plan or system for the making of certain improvements to the municipal street railway system, it was proposed to construct a single track on East Fifty-fifth Street, between Twenty-ninth Avenue Northeast and Thirty-fifth Avenue Northeast, together with a wye near the intersection of East Fifty-fifth Street and Thirty-fifth Avenue Northeast. Subsequent to the passage of said Ordinance No. 39492, the City Council proposed to abandon said last mentioned extension and to construct in lieu thereof the extension on Thirtieth Avenue Northeast, and passed an ordinance directing such latter construction. The suit referred to was brought to test the power of the City Council to modify the plan or system specified in said Ordinance No. 39492. As soon as the framing of the issues can be completed, the cause will be tried and an appeal prosecuted to the Supreme Court, in the event of a decision adverse to the position taken by the municipal authorities.

3. WATER.

At the request of the City Council an ordinance was drawn amending Ordinance No. 37520, approved July 13, 1917, as amended, in order to increase the bond issue proposed for the so-called Swan Lake development from

\$3,700,000. to \$6,000,000.

III.

PUBLIC UTILITIES, PRIVATELY OWNED.

1. PUGET SOUND TRACTION, LIGHT & POWER COMPANY.

At the time of making the last annual report we called attention to the fact that we had refrained from satisfying the judgment in the Fremont Bridge case, awaiting notice from the City Council that all covenants of the Traction Company (now Puget Sound Power & Light Company), under the contract executed pursuant to Ordinance No. 39069, had been fully performed. We asked to be advised by the City Council concerning the performance or non-performance of said covenants under our communication of June 19, 1919 (Comptroller's File No. 73486). We have received no response to said communication and have not therefore satisfied said judgment.

Shortly before the beginning of the period covered by this report, the Puget Sound Traction, Light & Power Company instituted a suit against the City of Seattle and King County, the County Assessor, County Auditor and County Treasurer, seeking to declare invalid a tax assessment made against the company's street railway system in the City of Seattle, prior to its transfer to the City of Seattle. The matter was finally submitted to the Superior Court on June 7, 1920, and taken under advisement until December 10, 1920, when a decree was entered dismissing the suit of the company and specially reserving for determination and adjudication the rights of the company and the city relative to the apportionment of taxes under the contract, pursuant to which the City of Seattle acquired said street railway system. An appeal

to the Supreme Court from said decree has been taken by the company, as well as the city.

2. SEATTLE & RAINIER VALLEY RAILWAY COMPANY.

In the last annual report reference was made to the filing of a tariff by Seattle & Rainier Valley Railway Company, whereby the company sought to avoid its franchise obligations by inserting in said tariff a clause eliminating free transportation of policemen and firemen. Pursuant to authority granted by ordinance, this department instituted a proceeding in mandamus (Superior Court No. 140309), to compel compliance with said franchise obligations, which came on for trial on the alternative writ of mandate on the third day of February, 1920. Judgment having been entered in favor of the city, this department caused a peremptory writ of mandate to be served upon the company in accordance with the terms of the judgment. The street railway company, however, served notice of appeal and filed a supersedeas bond, under the terms of which it was obligated, pending appeal, to give receipts for all fares paid by policemen and firemen entitled to free transportation under the terms of the franchise, and in case of affirmance of said judgment to redeem such receipts on presentation thereof. The case on appeal came on for argument before the Supreme Court on the 8th day of November, 1920, and an opinion was subsequently filed sustaining the city's contention and affirming the judgment of the lower court. Upon filing of the remittitur in the Superior Court an alias peremptory writ will be issued requiring compliance with the franchise obligations.

3. SEATTLE LIGHTING COMPANY.

During the year one issue before the Public Service Commission, arising during the preceding year, has been disposed of and three new cases involving rates and service filed and brought on for hearing.

(2) First Gas Case. At the time of the last report the Public Service Commission had under advisement in its Cause No. 4901, the question of ordering reparations to consumers by reason of the inefficient service rendered during the strike of September, 1919. The Commission finally determined not to enter a "blanket reparation order", a matter wholly within its discretion, by reason of which the question of reparation for over-charge became the subject of an individual claim before the Commission in each instance where any particular person claimed to be damaged. This of course involved prosecution of claims by the individuals concerned, instead of by the city.

(b) Second Gas Case. On December 26, 1919, the Seattle Lighting Company issued and filed a tariff to be effective February 1, 1920, whereby gas rates were increased on the thousand cubic foot base to \$1.50 net to the consumer. On being authorized by ordinance so to do, we prepared a complaint against said tariff and instituted Public Service Commission case No. 4961 directed against the same. We secured an order suspending the operation of the tariff pending a hearing, and the matter came on for trial before the Commission on February 20, 1920. The Commission entered, and on April 1, 1920, served the city with, an order approving said tariff to be effective on said date. The city thereupon sued out a writ of review in Cause No. 7586 of the Thurston County Court, and from an adverse judgment by said court prosecuted

an appeal to the Supreme Court of the State of Washington, where the matter is now pending.

(c) Third Gas Case. The Public Service Commission, in the Spring of 1920, filed a complaint on its own motion, complaining of the plant facilities and equipment of the Seattle Lighting Company. The city joined in the proceedings filing a complaint on its part, and the matter came on for hearing before the Public Service Commission in its Cause No. 4978 on the first day of July, 1920. The evidence was ample to the effect that the manufacturing plant facilities of the Gas Company were of an old and expensive type. The Commission took the case under advisement but no decision has as yet been rendered.

(d) Fourth Gas Case. The evidence in the case next above referred to, established that the manufacturing plant of the Seattle Lighting Company was top heavy with water gas equipment, producing at greater expense a leaner gas than that produced by up to date equipment of any other type. In other words, the water gas was of such a low B.T.U. quality that it was necessary to enrich the same by the use of gas oil which was rapidly increasing in price and becoming harder to obtain in the open market. The Public Service Commission authorized the Seattle Lighting Company, for experimental purposes, to reduce its standard temporarily from the 600 B.T.U. authorized by the rules, to a minimum of not less than 450. This order and the experiments in connection therewith, were conducted with considerable degree of secrecy. Eventually, however, the Public Service Commission called for a State wide hearing on the question of reduction of the B.T.U. standard provided for by the existing rule. The matter came on for hearing on December 20, 1920, in the Assembly room of the Press Club, Seattle,

Washington. Evidence was presented on behalf of the City of Seattle and of various other cities including Spokane, Everett, etc. The Commission thereupon took the matter under advisement, and on the 27th day of December, 1920, entered an order requiring the Seattle Lighting Company to increase the heating value of its protect to not less than 500 British Thermal units, nor more than 530 British Thermal units. A lower standard was fixed for the Tacoma Gas & Fuel Company. Said order is by its terms temporary and requires certain reports and follow-up work before a final order shall be eventually entered.

4. PACIFIC TELEPHONE & TELEGRAPH COMPANY.

Two cases were pending against the Telephone Company at the time of the last report, one before the Supreme Court and one before the Public Service Commission.

(a) First Telephone Case. This case involved a tariff filed by the Post Master General during the period of Federal wire control. This department contended before the Commission, and before the Superior Court of Thurston County (in its Cause No. 7180-7182), that the Public Service Commission had no jurisdiction to enter upon a hearing and pass upon the merits of a tariff filed by the Post Master General during war-time control over telephones. The case was pending at the time of last report on our appeal to the Supreme Court from an adverse judgment in the Superior Court for Thurston County. The appeal was argued before the Supreme Court during the January, 1920, term and an opinion was subsequently rendered sustaining the city's contention and reversing the Thurston County court and the Public Service Commission.

(b) Second Telephone Case. There was pending before the Public Service Commission at the time of last report a complaint arising out of the inadequate exchange service in the City of Seattle. A hearing was had (in Public Service Commission Cause No. 4902), and a temporary order was issued directing the company to improve service and facilities and to make bi-weekly reports to the Commission. Although by its terms the temporary order was to be effective for sixty days only, no further order has ever been entered by the Commission. The company, however, has been installing the improvements and facilities ordered by the Public Service Commission.

IV.

MISCELLANEOUS BOARD HEARINGS.

1. LAND PORT RATE DIFFERENTIAL.

At the time of last report, the Interstate Commerce Commission had under advisement the cases of the Port of Portland, et al. v. Walker D. Hines, et al., and Inland Empire Shipper's League v. Walker D. Hines, et al., being proceedings instituted with a view to securing for the City of Portland a rate differential in its favor and against Puget Sound cities on transportation from that portion of Eastern Washington commonly known as the Inland Empire. The Interstate Commerce Commission, during the past year entered an order denying in part the relief sought by the complainants, but allowing a differential of ten per cent. in favor of Portland in the territory south of the Snake River. The City of Seattle, the Port of Seattle and the Seattle Chamber of Commerce and Commercial Club have asked for a re-hearing before the Interstate Commerce Commission. A petition for rehearing and a brief

in support of the same will be placed before the Commerce Commission.

2. ZONING COMMISSION.

By the terms of Ordinance No. 40407 the Corporation Counsel is made the legal adviser to the Zoning Commission created by that ordinance. An assistant has been delegated to this particular work. The Zoning Commission meets on the second Tuesday in each month and at such other times as the Commission deems advisable.

V.

WORK OF CITY ATTORNEY.

1. PROSECUTIONS FOR VIOLATIONS OF CITY ORDINANCES.

During the year the City Attorney has disposed of 20,475 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures to the amount of \$206,404.70, which is a gain in receipts over the previous year of \$39,995.80. The total here shown is of cash receipts and does not include fines imposed in cases where defendants were confined in the city jail in lieu of payment of the fine. In the cases involved, 1,647 were prosecutions for violation of the liquor ordinances and proceedings upon search warrants. Twenty-four cases have been appealed to the Superior Court, of which ten were tried and disposed of, resulting in the collection of fines in the sum of \$715.00.

2. GROWTH OF WORK IN POLICE COURT.

In connection with the preparation of this report, I have caused an examination to be made of the official reports of the Bureau of Inspection and Supervision of Public Offices, from which it appears that during the past five and one-half years there has been a marked increase in the business handled in the Police Court.

For instance, the number of cases docketed during the years in question, is as follows:

1915	10,336
1916	8,594
1917	----- not shown
1918	13,477
1919	19,101
1920 (first five months)	8,186

The monthly average number of cases docketed during the same years is as follows:

1915	861
1916	716
1917 (during last five months)	1,171
1918	1,123
1919	1,592
1920 (during first five months)	1,657

For your information, in connection with this matter, the reports in question show that the following average sums were collected monthly in the Police Court during the period referred to:

1915	\$ 7,025.00
1916	19,885.00
1917	48,776.00
1918	39,417.00
1919	33,910.00
1920 (during first five months)	36,953.00

It was on account of the growth of the work as indicated that caused me heretofore to recommend to you that appropriate authority be secured to permit the appointment of an associate or assistant police judge.

O P I N I O N S.

During the year, in addition to innumerable conferences concerning municipal affairs with city officials, of which no formal record is kept, this department rendered 173 written legal opinions upon various questions submitted by the several departments of the city government.

VII.

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 31, 1919, to December 31, 1920, 184 ordinances and resolutions.

VIII.

MISCELLANEOUS MATTERS.

1. RE-CODIFICATION OF MUNICIPAL ORDINANCES.

For many years there has been a crying need for a recodification of municipal ordinances. The Municipal Code of 1908 has long since become obsolete, by reason of the amendment and repeal of ordinances contained therein and the enactment of new ordinances relative to matters not previously covered by municipal legislation. At the present time there is no adequate means of determining what ordinances of a public nature are in full force and effect, since to make such determination it is necessary to make an examination of a large number of ordinances, and when such examination is completed, there is frequently a doubt left as to whether there might not be still other ordinances pertaining to the matter under consideration. This situation has prompted me to undertake the work of recodification of the municipal ordinances, notwithstanding the fact that to accomplish such recodification it will be necessary to devote an enormous amount of time of myself and members of my department outside of office hours to such work. Since the publication of the 1908 Municipal Code, there have been enacted in the neighborhood

of twenty-five thousand ordinances which, together with such ordinances as are set forth in said 1908 Code, must be carefully examined to determine what ordinances are now in full force and effect. I hope to complete the recodification work during the year 1921, and upon such completion, the matter will be submitted to the legislative authorities of the city with a view of having the same published.

In this connection, I deem it proper to suggest the propriety of the submission of a charter amendment authorizing the legislative authorities of the city to adopt an official code. Provision should be made in such charter amendment to require the submission to the Corporation Counsel of all ordinances of a public nature, in order that an appropriate assignment in the code might be made. There should also be a provision requiring the keeping by both the City Comptroller and the Corporation Counsel in their respective offices of a code brought down to date and appropriately indexed. In this way it will be possible for municipal officers, as well as the public, to advise themselves as to the existing state of municipal legislation. The task of keeping such code up to date when once made would entail but little time and effort as compared with the great advantage that would accrue therefrom. I would respectfully recommend that this matter be given careful consideration by you, and if the same be approved, I shall be glad to prepare the necessary resolution to carry the recommendations into effect.

2. CHARTER AMENDMENTS.

During the year this department prepared a number of charter amendments, resolutions for the submission of five of which, at the municipal election to be held March 8, 1921, were adopted by the City Council.

3. SHILSHOLE AVENUE BOND LITIGATION.

I deem it proper to call special attention to a legal situation that has arisen in connection with the Shilshole Avenue improvement. This improvement has been a source of litigation for many years. In the litigation relating to the assessment roll to pay the awards made in the condemnation proceeding instituted to acquire the right to change the grade of the streets to be improved in connection with Shilshole Avenue, certain properties were exempted by judicial decree from liability to any assessment. Because of the determination made in this regard in subsequent litigation it was determined that the property so exempted from the condemnation assessment must likewise be exempt from an assessment proposed to pay the cost of making the physical grade. A deficiency arose in the assessment roll prepared to pay the condemnation awards and also in the local improvement assessment roll, such deficiency aggregating about \$270,000. in the former, and \$110,000. in the latter. It thereupon became necessary for the city to endeavor to raise the necessary funds to meet such deficiencies in some other manner than by local assessments. The plan adopted was to issue general bonds of the city in the several amounts referred to. Because of certain legal questions that had never been determined by the Supreme Court of this State relative to the proposed issues, a suit was instituted to test the validity of the bonds. This suit went to the Supreme Court

and on April 22, 1920, an opinion was rendered in which the bonds proposed to pay the deficiency in the condemnation assessment roll were sustained as valid, and those proposed to meet the deficiency in the local improvement roll were declared invalid. The theory upon which the first issue was sustained was that the constitution of the State required compensation to be made before public property could be taken or damaged for a public use. Hence there remained the legal obligation on the part of the city to meet the deficiency occurring in the roll. As to the bonds proposed for paying the deficiency arising in connection with the physical improvement, the court held that the contractor undertaking the work, having agreed with the city to accept obligations payable solely from special assessments upon private property specially benefited in payment for his work, no legal obligation rested upon the city to assume a liability in connection with such improvement. Consequently, there has arisen the anomalous situation where the city has received the benefit of local improvement work to the extent of approximately \$110,000. for which no compensation can be made, because the property specially benefited has been assessed to its fullest extent, and the Supreme Court has held that the city cannot assume a liability therefor.

In concluding this annual report, I desire to make public expression of my appreciation of the services rendered by municipal employees in the city's Law Department. The work during the past year has been unusually heavy, and all members of the department have cooperated to the end that the public business might not only be expedited, but handled in an efficient and satisfactory manner. It has been our constant endeavor to facilitate the conduct of

municipal business, and the consideration and cooperation shown by other departments toward this department has been of a high and gratifying nature. It has been the policy of the department to cultivate this feeling of consideration and cooperation, in order that the efforts of all departments of the city government might attain to the highest degree of efficiency and service.

Respectfully submitted,

Walter F. Meier

Corporation Counsel.