ANNUAL REPORT

OF

THE LAW DEPARTMENT OF THE

CITY OF SEATTLE

FOR 1921

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To the Mayor and City Council of The City of Seattle,-

Gentlemen:

Section 16 of Article XXIV of the City Charter requires that the head of every department of the government of The City of Seattle, except the Mayor and President of the City Council, make an annual report on or before the 1st day of April, showing the amount of business transacted in his department, the condition thereof, and containing recommendations as to any municipal legislation by him deemed necessary or advisable to improve the service rendered by his department, such annual report to be for the year ending December 31st preceding the making thereof.

Pursuant to this provision, I herewith submit the annual report of the Law Department for the year ending December 31st, 1921:

I.

GENERAL STATEMENT OF LITIGATION

1. Tabulation of Cases:

The following is a general tabulation of suits and other proceedings pending in the Superior Court and before the Public Service Commission (now succeeded by

the Department of Public Works of Washington) during the year:

	Pending Dec. 31, 1920.	Commenced During the Year 1921.	Ended During the Year 1921.	Pending Dec. 31, 1921.
Condemnation suits ...	25	12	16	21
Condemnation suits, supplementary proceedings	2	11	9	4
Damages for personal injuries	64	50	70	44
Damages other than personal injuries ...	80	39	71	48
Actions relating to collection of assessment rolls	5	5	6	4
Injunction suits.....	35	43	46	32
Mandamus proceedings..	11	4	7	8
Miscellaneous proceedings	98	54	94	58
Public Service Commission proceedings..	3	1	2	2
	323	219	321	221

Total actions pending during period of this report -- 542

The full import of the foregoing tabulation does not appear upon its face and can only be determined from an analysis and comparison.

While the average number of cases pending in the department during any year of the last five years is 468, it is to be noted that the number of such cases pend-

ing during 1921 is 542. This increase in litigation, however, does not reflect the gratifying result deducible from the figures submitted. At the commencement of the year, there were 323 pending suits; at the end of the annual period there were pending 221 suits. In other words, although there has been an increased amount of litigation pending in the office during the year, the department has not only absorbed this increase, but has actually tried and disposed of 321 suits, as against a final disposition of 201 proceedings during the preceding year. In comparison with the preceding year, this is an increase, in round numbers, of 60 per cent. in the volume of litigation finally disposed of.

2. Personal Injury Actions:

	Number	Amount Involved
Pending December 31, 1920	64	$586,445.36
Commenced since Dec.31,1920 ..	50	562,364.25
Total ----------	114	$1,148,809.61
Tried and concluded since December 31, 1920	70	$755,207.82
Actions pending Dec. 31, 1921..	44	393,601.79

Of the personal injury actions pending in the department during the year, seventy, involving $755,207.82, were tried and finally disposed of. Thirty-four of these cases resulted in judgments in favor of the City, and in the remaining thirty-six cases there were recoveries aggregating $77,155.16 In comparison with the year 1920,

this represents an increase of six cases, resulting in judgments of dismissal, and a decrease of nine cases in which recoveries were had.

Of the fifty personal injury actions begun during the year, forty-two, involving $416,448.95, were occasioned by accidents occurring in connection with the operation of the municipal street railway system.

3. Damages Other Than Personal Injuries:

	Number	Amount Involved
Suits pending December 31, 1920	80	$875,854.43
Commenced since December 31, 1920 ...	39	63,392.82
Total covering Period of this Report - - - - - - - - - -	119	$939,247.25
Tried and concluded since December 31, 1920	71	$190,894.90
Pending December 31, 1921	48	748,352.35

Of the total of one hundred nineteen cases involving damages other than personal injuries, seventy-one cases, involving $190,894.90, were disposed of during the year. In comparison with the year 1920, this is an increase of thirty cases. In forty-nine cases there were judgments entered in favor of the City, and in the remaining twenty-two cases, judgments were entered against the City in the aggregate amount of $7,632.88.

4. Injunction Suits:

Of injunction suits maintained against the City, there are three classes deserving of mention.

The first of these relates to the enforcement of the liquor ordinance of the City. At the beginning of the period covered by this report, there was pending in the local Federal Court a suit seeking to enjoin the City from interfering in the sale of Jamaica ginger to customers without prescription, and from causing the plaintiff's arrest for making such sales. This suit was bottomed upon the claim that the Eighteenth Amendment and the regulations prescribed under the National Prohibition Act overrides the police power of the State with relation to intoxicants. The court denied the relief asked, sustaining the position of the City that the prohibition by national legislation of traffic in liquor containing a percentage of alcohol by volume does not prevent the State, or the City within the granted police power, from enforcing measures that are needful for the protection of the people by prohibiting possession or delivery of intoxicants fit for beverage purposes, under the guise of innocent preparations not within the National Prohibition Act. Thus was the City's ordinance sustained. For a more detailed discussion of this case, reference is made to the opinion of the court set out in 270 Federal Reporter, 315. Other cases involving allied questions were tried in the Superior Court, resulting in decisions sustaining the right of the City to enforce its police power regulations prohib-

iting traffic in liquor.

The second relates to the suppression of gambling devices. Late in 1920, the Superior Court entered an order, at the suit of Dwyer & Company, enjoining the City and its officers, from interfering with the operation of a certain device known as the "Silent Salesman." The manner of operation of the device is best described by quoting from the decision of the Supreme Court, found in 16 Washington Decisions, 343:

> "Each machine has five compartments or 'slots,' in each of which is placed a roll containing 600 tickets, numbered from 1 to 600, consecutively, but in inverse order, so that the first ticket drawn from each roll is numbered 600, and the last is numbered 1, and anyone can determine at a glance how many tickets remain upon each roll. Title to the machine remains at all times in Joseph F. Dwyer. Dwyer & Company place the machine with the local merchant, sell him three thousand tickets, and what purports to be $150 worth of merchandise, for $105, and the merchant's profit thereon is $45, or the difference between the $150 obtained from the sale of the three thousand tickets, at five cents each, and the $105 which he pays for the tickets and for the merchandise which is to be delivered to the players of the machine as the tickets are drawn. Each ticket has printed on its face:
>
> 'POST CARD 5c
>
> 'Purchaser agrees before sale that the complete transaction is for 5 cts. and that no option on, nor interest in the following offer is involved or implied. No agent has authority to change this agreement. Drawing sales tickets accepts the condition. Copyright 1920.'
>
> 'Joseph F. Dwyer.'
>
> "As the machine stands ready for operation, the first ticket on each roll is in plain view of the one about to operate the device,

but all subsequent tickets are concealed from view. As a ticket is drawn from either roll, the next succeeding ticket upon that roll is brought into view, and at irregular intervals, in addition to the printed matter quoted, there is printed with a rubber stamp upon a ticket the name of some article of merchandise worth much more than five cents, such as 'electric heater,' 'camera,' 'briar pipe,' 'robe,' and the like, and these articles or prizes are listed and displayed in proximity to the machine where they will attract the attention of the public and convey the idea that, by operating or playing the machine, one may obtain much more than the worth of his money. Needless to say that, as one approaches the machine, he sees exposed to view five tickets, each in a separate compartment, and each or either of which entitles him, by the payment of five cents, to a post card worth one cent (no prize ticket ever being left in view by the preceding player), but the suggestion is held out that by drawing one of these tickets, he may thereby bring into view, subject to immediate withdrawal upon the payment of another five cents, a ticket calling for a camera, or some article of considerable value; and the record reveals that, in actual operation, it is the custom of each player to buy not one, but three, five or more tickets before beginning to operate the device, in the hope that by buying one or more post cards, at five cents each, he may thereby gain an opportunity to obtain an expensive camera or a handsome pipe, or some other article of considerable value, for a like nominal sum."

In reversing the judgment of the lower court, and sustaining the position taken by the City in this litigation, the Supreme Court said:

"The facts as stated supply their own argument, and demonstrate beyond question that, in its practical operation, this ingenious device is intended to, and does, appeal to the gambling instinct or habit, and were there none inclined to take chances in the hope of getting 'something for nothing' there would be no tickets sold, and the machine would never be operated.

"In no reported case from a court of last resort, so far as we are advised, has this par-

> ticular device been passed upon, but it is so plainly a gaming device, and as such so clearly falls within the inhibition of our statute, and the ordinance of the city of Seattle, that no authorities are necessary to support the conclusion we here reach."

Another case of similar nature related to the distribution of merchandise to patrons of theatres by means of "a drawing by lot," a thing that was forbidden by ordinance. In this case the Superior Court enjoined the City and its officers from interfering with the practice referred to, provided the theatres in question should not be permitted to "advertise said drawings as a means of increasing the patronage of said theatres." An appeal to the Supreme Court was taken, and the case argued. Although the decision of the Supreme Court was handed down a few days after the close of the period covered by this report, I deem it proper to say the cause was reversed, the court reiterating its holding in a number of other cases, "that ordinances of this character may be enforced, even though they be broader and more inclusive than statutes upon the same general subject."

The third relates to the limit of local improvement assessments. The local improvement law provides that the estimated cost and expense of a local improvement which may be assessed against property within any proposed district shall "not exceed fifty per cent. of the valuation of the real estate, exclusive of the improvements thereon, within such district, ac-

cording to the valuation last placed upon it for the purpose of general taxation." Another statute in force at that time, relating to valuation proceedings for general taxation purposes, required that all property should be assessed at its true and fair value. Thereafter, this latter statute was amended to require property valued for the purpose of general taxation to be assessed at fifty per cent. of such value, which is now the law. The question at issue was whether the fifty per cent. limitation provided in the local improvement statute should be determined with reference to the full value of the property to be assessed or upon the "assessed value." The Supreme Court, in affirming the decision of the lower court, held, in consonance with the position taken by this department, that such fifty per cent. limitation must be determined with reference to the full value of the property to be assessed.

5. Miscellaneous Cases:

The ninety-four miscellaneous actions tried and concluded during the period of this report embraced numerous actions growing out of the jitney and liquor questions, quarantine regulations, condemnation proceedings by the Seattle School District, tax foreclosures, and other matters not involving monetary recoveries. The miscellaneous actions disposed of during the year 1920 aggregated but twenty-seven.

Of fourteen hearings conducted by the depart-

ment before the Civil Service Commission, eleven decisions were rendered sustaining dismissal of employees from service. The other proceedings resulted in a reinstatement of the civil service employees concerned.

Seventeen minor actions were commenced for the Lighting Department of the City, involving unpaid light and power bills in which recoveries aggregating $1050.00 were sought. Judgments, including costs, were entered in the sum of $930.00, and of this amount $605.00 have been collected. Twelve claims were filed for the Lighting Department in either estates in bankruptcy or probate proceedings.

Among the matters classed as "Miscellaneous Cases" is a class of proceeding not heretofore conducted in this department, namely, the foreclosure of delinquent local improvement assessments. Heretofore, all proceedings of this character have been conducted by, or under the direction of, the City Treasurer, pursuant to a provision of the local improvement law authorizing summary foreclosure. However, due to difficulties encountered by the City Treasurer, which he thought would interfere with the ability of the City to convey good title in the event the City should bid in the property involved, he requested of the City Council the enactment of an ordinance providing for foreclosure through court procedure. Because of the great amount of time and expense involved in these fore-

closures in court, other cities, I am advised, are abandoning them, for the summary foreclosure authorized by the statute. During the year, twenty-five of such tax foreclosures have been filed in court, involving twenty-two hundred fifty-three separate parcels of land. The abstracting expense alone in connection with these proceedings aggregates the sum of $3198.50

6. Statement and Investigation of Damage Claims filed against the City:

	Number	Amount Involved
Claims for damages under investigation December 31, 1920	243	$506,742.66
Claims for damages referred to this department for investigation during 1921	623	895,069.27
Total covering period of this report ----------	866	$1,401,811.93

Claims disposed of as follows:

	Number	Amount Claimed	Amount Paid
Settled	207	$155,219.15	$34,176.78
Rejected	275	534,553.67	
TOTAL - - - - -	482	$689,772.82	

Claims pending December 31, 1921:

384 $712,039.11

Fourteen cases in suit, settled in conjunction with Claim Agent:

Amount Involved	$157,582.00
Amount of settlement	11,661.60

Number of street railway accident reports received from Department of Public Utilities and investigated, December 31, 1920 to December 31, 1921	5,748
Number of circulars and letters mailed in connection with the investigation of foregoing claims and reports	11,030

7. Garnishments:

During the period of this report one hundred fifty-four writs of garnishment which were served on the City were answered. One hundred fifteen of these writs were against the wages of city employees and thirty-nine were for miscellaneous subjects.

8. Supreme Court:

During the period of this report there were pending in the State Supreme Court forty-eight cases on appeal. Of these, twenty-six were decided during the year. Eleven cases were decided favorably to the City; fifteen against the City.

There were twenty-two cases still pending in that court at the close of the period covered by this report.

For the purpose of comparison, certain tables are herewith submitted, showing data concerning litigation handled in the department during the past six years:

ACTIONS TRIED AND FINALLY DISPOSED OF

Year	Condemnations	Personal Injuries	Other Damage Suits	City Assessment Rolls	Injunctions	Mandamus	Miscellaneous	Public Service	Garnishments	Police Court
1916	58	24	43	17	14	3	63	5	121	9261
1917	37	32	13	1	14	7	136	7	107	13044
1918	20	29	19	4	10	2	82	4	74	13424
1919	31	63	71	3	22	7	105	7	97	20304
1920	27	64	80	5	35	11	98	3	116	20475
1921	25	70	71	6	46	7	94	2	154	18610

MISCELLANEOUS COMPARISONS

Subject Matter	1916	1917	1918	1919	1920	1921
Cases pending at commencement of year	359	346	253	226	309	323
Cases commenced during year	220	136	143	199	215	219
Total cases pending during year	579	482	396	425	524	542
Cases ended during year	*233	*229	170	116	201	321
Cases pending at end of year	346	253	226	309	323	221
Police Court Cases tried	9261	13044	13424	20304	20475	18610
Opinions written	158	153	118	163	173	169
Damage Claims						
Claims pending at commencement of year	9	16	31	31	258	243
Claims filed during year	155	154	121	830	747	623
Total pending during year	164	170	152	861	1005	866
Disposed of during year	148	139	121	603	762	482
Claims pending at end of year	16	31	31	258	243	384

*Estimated

II.

PUBLIC UTILITIES MUNICIPALLY OWNED

1. Light and Power:

A number of matters relating to the municipal light and power plant have been before this department during the past year.

The litigation touching the acquisition of the necessary property and property rights on the Skagit River for use in connection with the Gorge Creek Power Plant, which was in progress a year ago, has been substantially completed. The order granting the City's motion for a new trial in the condemnation proceedings, from which the property owners took an appeal, was affirmed by the Supreme Court. Preparations were under way for a retrial of this cause when an agreement was reached, and in due time the whole matter will be closed without further controversy.

In connection with the Skagit River Project, this department drafted Ordinance No. 42495, providing for an additional bond issue of $5,500,000.00 for the purpose of completing the additions, betterments and extensions specified and adopted in Ordinance No. 36852, as amended by Ordinances Numbered 38065 and 38469, and to cover the cost of purchasing or constructing six additional substations and connecting them with the present municipal system for distributing electric energy. Some of these bonds have been sold in connection with a certain contract entered into between the City and R. C. Storrie & Company for certain construction work on the

Gorge Creek plant. Considerable time of the department has been required to pass upon questions arising in connection with this matter, and the future promises many questions that must be solved by the City before this project is completed.

Ordinance No. 42825, providing for the condemnation of a transmission line right of way, approximately one hundred miles in length, from the Gorge Creek plant to the north line of King County, was also prepared in this department. Likewise there was prepared by the department Resolution No. 6962, providing for the calling for bids on $1,005,000.00 Light Bonds, authorized by Ordinance No. 38920, being the last of an authorized issue of $1,755,000.00 provided for extension purposes in the City.

It seems appropriate to mention in connection with the Light Department matters the status of litigation arising in connection with the Boxley Creek disaster, occurring on December 23rd, 1918, in view of the contention made by litigants that such disaster resulted from the impounding of water behind the Cedar River masonry dam. At the time of the rendition of the last annual report the case of North Bend Lumber Company against the City had been tried in the Superior Court. The verdict returned in favor of the City had been set aside and a new trial granted on account of claimed error in instructions. Upon appeal to the Supreme Court the order granting a new trial was affirmed, and it will therefore be necessary to re-try the cause. In the meantime, an action brought in the United States District

Court, for the Western District of Washington, Northern Division, to recover damages claimed to have been sustained by the Chicago, Milwaukee & St. Paul Railway Company, on account of the destruction of a portion of its track by reason of the disaster, was set for trial during the month of January, 1922. The two suits referred to involve approximately a half million dollars, and, no doubt, both actions will be disposed of in the trial courts during the year 1922. A number of minor actions growing out of the same disaster are also awaiting trial.

2. Street Railway:

The ownership of the municipal street railway system has given rise to a great deal of controversy during the period of this report. For some time during the year 1920 the matter of the purchase by the City of the street railway system of the Puget Sound Traction, Light & Power Company (now Puget Sound Power & Light Company) was the subject of investigations by the Mayor and a King County Grand Jury. The burden of the reports made upon the conclusion of such investigations was that, while no irregularities had been disclosed thereby, it appeared to the investigators that the City had entered into an "impossible" contract, and that, therefore, it should seek equitable relief therefrom. A few days after the rendition of these reports, and, seemingly, as a direct result thereof, two actions were instituted in the Superior Court: One by S. B. Asia and thirteen others, hereinafter designated as the "14 taxpayers," as

plaintiffs, against The City, its Treasurer and its City Comptroller as defendants, wherein it was sought to have the purchase of said street railway system declared illegal and the bonds delivered therefor void; the other by E. E. Rhodes, as plaintiff, against the City and the Puget Sound Power & Light Company, as defendants, seeking substantially the same results. The latter suit was subsequently dismissed by the plaintiff on his own motion, and over the objection of this department.

In the "14 taxpayers" case, a restraining order was issued at the time of the filing of the complaint, whereby the City and its officers were temporarily prevented from setting aside out of the gross revenues of the street railway system sufficient moneys to meet the semi-annual installment of interest maturing March 1st, 1921, on, and as required by the provisions of, the bonds delivered in payment for the system. As a direct consequence of the suit brought by the "14 taxpayers," and in which the restraining order had been issued, a suit was instituted in the local United States District Court by the Puget Sound Power & Light Company against the City, its Treasurer and its City Comptroller, seeking a decree of the court requiring the City to specifically perform the obligations assumed by it in the bonds issued in exchange for the street railway system. Subsequently, the court sustained a demurrer to the complaint of the "14 taxpayers," thereby automatically revoking the restraining order referred to, and permitting the setting aside and payment of the interest on the bonds. It was

unfortunate that the "14 taxpayers" did not make the Puget Sound Power & Light Company a party defendant in their suit in the first instance, so that there might have been an adjudication made therein of the rights of the City as well as of the Company with reference to the bonds in question. This department made every possible effort, in court and out, to get the "14 taxpayers" to make the Company a party since it was the only plan by which a full and proper adjudication of such rights and the claims of the "14 taxpayers" could be obtained, but to no avail. The Superior Court at one stage of the proceedings entered an order requiring the Company to be brought in as a party defendant, but the "14 taxpayers," by abandoning their original plan of attacking the validity of the purchase and the bonds, in an amended complaint sought only an injunction to prevent the City from using General Fund moneys for the payment of any part of the cost of the maintenance and operation of the system, or of any expense incidental thereto. On this theory, the court permitted them to proceed in the absence of the Company owning the bonds, and the case was set for trial for an early date in January, 1922. Although the trial of this cause was had subsequent to the period covered by this report, yet I deem it proper to say that, upon submission to the court of all the evidence produced by the "14 taxpayers" and the City, a decree was entered to the effect that not only was there no showing of any intention on the part of the City to levy a tax to maintain or operate the street railway system, but also that the evidence affirmatively showed that the

system was being operated in such a manner as to pay all of the necessary expense in connection therewith. Consequently, the injunction sought by the taxpayers was denied by the court. In connection with the entry of the decree referred to, and in harmony with the view of the law advanced on behalf of the City, the court stated that, although there was an absence of any showing of intention to tax for the purpose of maintaining or operating the street railway system, yet, in his opinion, the City had ample legal authority to levy a tax for such purpose, so long as its debt incurring power was not thereby exceeded.

With reference to the suit for specific performance, brought in the Federal Court, the proceedings progressed to trial upon the issues involved and the decree of specific performance was entered therein, notwithstanding the fact that the pleadings and evidence showed not only that the City was fulfilling its every obligation assumed in the street railway bonds, but also that the City had enacted ordinances for the express purpose of insuring compliance therewith. Believing that the decree entered was not justified, under the evidence, this department will seek a rehearing and, in the event of a denial thereof, or an adverse determination, if granted, the necessary steps will be taken to secure a review in the Circuit Court of Appeals.

It is to be hoped that before the time for rendering another annual report arrives, these suits will have been finally determined by the courts of

last resort, in order that the City may center its attention upon the working out of the problems arising in connection with the efficient operation and maintenance of its street railway system, instead of having that attention distracted by the pendency of such litigation. Every endeavor will be made by this department to expedite such final determination.

At the time of the making of the preceding annual report, there was pending in court a proceeding to enjoin the City from extending the Ravenna carline, from its present terminus on East 55th Street, between 29th Avenue Northeast and 30th Avenue Northeast, to 30th Avenue Northeast, and thence north on 30th Avenue Northeast to East 62nd Street, and to compel the construction of an extension from said present terminus, on East 55th Street, to 35th Avenue Northeast. Upon the issues being framed in that suit, the cause was tried and a decree entered, enjoining the construction of the proposed extension on 30th Avenue Northeast, but denying a writ of mandate to compel the extension on East 55th Street. From this decree, the plaintiff, as well as the City, took an appeal, and no doubt a determination of the questions involved may be secured from the Supreme Court before long.

There was also pending at the beginning of the period covered by this report the suit brought by the Puget Sound Power & Light Company (formerly Puget Sound Traction, Light & Power Company) against the City and King County, in which a judgment was sought adjudicating the invalidity of the proceedings taken to levy a tax for the year 1919 upon the street railway system transferred by that company to the City on March 31st, 1919. This department was directed by the City Council to join the company in its effort to secure a cancellation of said tax, notwithstanding the submission of figures by the City Comptroller showing that the City would derive a greater benefit in the event that the tax were sustained because a portion of such tax would be directly chargeable to the company. A decree having been entered on December 10th, 1920, in favor of the county sustaining the tax, an appeal was taken by the company and the City, and on October 15th, 1921, the Supreme Court handed down an opinion affirming the judgment entered by the Superior Court. However, upon the filing of a petition for a rehearing before the court en banc, an order was entered, directing that the cause be re-argued. This re-argument will be had at some time to be fixed by the court during the year 1922.

At the request of the City Council, Ordinance No. 42870, providing for a bond issue of $680,000.00 for street railway additions, betterments and extensions was prepared in this department, and near the close of

the year a resolution was drawn, authorizing the issue and sale of said bonds, the date set for the opening of the bids being the 7th day of January, 1922.

There has been considerable litigation which, not having a direct connection with the municipal street railway system, had such a relation thereto that it seems proper to mention the same at this point.

This litigation concerned the right to operate jitneys within the corporate limits, in competition with the municipal street railway system, without complying with municipal regulations prescribed by Ordinance No. 40886. This ordinance requires, as a prerequisite to the operation of a jitney, that an application shall be made for a permit authorizing such operation, which application shall be referred to the Superintendent of Public Utilities for a report to the City Council thereon. Upon the receipt of such report, the City Council may either grant or reject the application.

During the year 1920 applications for permits had been made under this ordinance, some of which were granted, while others were denied. Because of such denials, a suit was instituted to restrain the City from arresting operators of jitneys who had not obtained permits for such operation. Upon the trial of this cause, the court refused to grant a permanent injunction, but, by reason of the fact that a temporary injunction had theretofore been issued in the cause, those seeking to

enjoin the City were enabled, by filing a bond in accordance with the provisions of the statute, to continue their operation until final disposition of the matter in the Supreme Court. The opinion of the Supreme Court sustaining the action of the trial court in refusing to grant an injunction was handed down on July 20th, 1921. A petition for rehearing was denied, and, upon the coming down of the remittitur, the temporary injunction, which had theretofore been kept in force, was wholly dissolved. In the meantime, an attempt was made to carry the proceedings to the Supreme Court of the United States. An application for a writ of error, which would have taken the cause to that court, was first made to the Supreme Court of the State. This department was represented at the hearing of such application, and by oral argument, as well as by the filing of written memoranda, opposed the granting thereof. The State Supreme Court denied the application. Subsequently, an application for such a writ was made to Mr. Justice McKenna, of the Supreme Court of the United States, and this department opposed that application, with the result that the same was denied. Thereupon a further application was made to Chief Justice Taft, with a similar result.

Having been defeated at every turn in their efforts to operate jitneys in defiance of the ordinances of the City, an application was made to the State Director of Public Works by the Sound Transit Company for a

certificate of public convenience and necessity, under the provisions of Chapter 111, Laws of 1921. Such a permit was granted but the State Director inserted therein a provision to the effect that it was subject to the ordinances of the City of Seattle relating to the operation of motor vehicles. Upon an attempt being made to operate under the authority of this certificate, the Superintendent of Public Utilities caused the operators to be arrested and charged with the violation of said Ordinance No. 40886. The Sound Transit Company thereupon instituted a suit in the Superior Court, seeking to enjoin the City from enforcing such ordinance, and obtained a restraining order without notice to the City. The City filed an answer and cross-complaint, and secured a restraining order, based thereon, whereby the Sound Transit Company was prevented from operating jitneys until the hearing could be had upon the City's application for a temporary injunction. Upo n the hearing of the applications for temporary injunctions, the court entered an order denying both. The plaintiff's application was denied on the ground that it had no lawful authority to operate without complying with the City ordinance. The City's application was denied, without prejudice to a renewal, upon the ground that it had authority to enforce the ordinance by arrest and prosecution. No further steps have been taken in this suit. However, the Sound Transit Company applied for, and secured, a writ of review in the Superior Court of Thurston County for the purpose of ascertaining the authority of the

State Director of Public Works to insert in the certificate of public convenience and necessity granted to it the provision requiring operation thereunder to be subject to the ordinances of the City of Seattle. Pursuant to direction of the City Council, we appeared in this case as friends of the court. Upon a consideration of the matters brought before it by such writ of review, the Superior Court of Thurston County held the entire certificate void. This matter, no doubt, will ultimately go to the Supreme Court for final determination.

One other case is deserving of mention in this connection. On November 29th, 1921, Albert Adams and twenty-nine others, as plaintiffs, filed in the Superior Court for King County an affidavit for a writ of mandamus directed to the Sound Transit Company, ordering and directing it immediately after the receipt of such writ to operate its motor propelled vehicles upon and over the route mentioned and described in the application for a certificate of necessity and convenience made by it, on November 1st, 1921, to the Director of Public Works. An alternative writ of mandamus was issued and served upon the company. The answer of the company was filed on December 2nd, 1921. The object of this proceeding was to secure from the court an order directing the company to operate its jitneys notwithstanding it was prohibited from so doing without first complying with the City ordinance. The City, as such, was not a party to this proceeding. However, two judges

of the Superior Court requested, and the City Council directed, that the Corporation Counsel appear in the cause as a friend of the court. Thereafter, the proceedings came on to be heard, this department appearing as a friend of the court and, after the taking of testimony, and on December 9th, 1921, the court denied the application for a peremptory writ of mandate.

3. Water:

There have been but very few matters arising in connection with the operation of the municipal water system requiring the attention of this department during the past year. Two suits, however, deserve mention.

The first concerned the construction of an additional reservoir in Volunteer Park. By the provisions of Ordinance No. 38506, as amended by Ordinance No. 40634, the City adopted a plan or system for certain improvements to the municipal water system. As a part of such improvement the City proposed an enlargement of, and addition to, the Volunteer Park Reservoir, by the addition of a second basin thereto, of sufficient size to increase the total storage capacity to approximately 60,000,000 gallons. The Board of Public Works, after adopting appropriate plans and specifications for such reservoir, called for bids for the construction thereof, as a result of which a suit was instituted by certain persons living in the vicinity of Volunteer Park, claiming that the construction of the reservoir at said point would constitute a nuisance interfering with the

quiet enjoyment of their respective properties. Trial was had in the Superior Court, where a decree was entered, enjoining the City from effecting such construction. Upon an appeal being taken, Department No. 2 of the Supreme Court, on August 29th, 1921, handed down an opinion reversing the action of the Superior Court, and directing a dismissal of the action. This opinion adhered to the rule that seemed to be well established, that a mere apprehension of future injury is not enough to warrant the issuance of a permanent injunction, and many cases were cited by the department to sustain that rule. However, upon the filing of a petition for rehearing, the court set the cause down for re-argument before the court en banc, and, although the decision by the court resulting from such rehearing was rendered a few days after the close of the period covered by this report, to-wit: January 3rd, 1922, it is deemed proper to refer thereto. The court en banc reversed the ruling of the department, held that the construction of the reservoir in the place and in the manner contemplated would constitute a nuisance, and directed that the judgment of the lower court be affirmed. Whether the City can now, in view of this decision, conduct condemnation proceedings to acquire the right to construct the reservoir upon the site as originally contemplated, if it should be deemed advisable to adhere to the original plan, is a matter which can only be determined by a proceeding in court.

The second suit involved the sale of water bonds. On November 21st, 1921, the City Council passed Resolution No. 6943, accepting a joint bid submitted by Carstens & Earles, Inc., John E. Price & Co., and R. M. Grant & Co., for $2,000,000.00 of bonds, authorized by Ordinance No. 38506, as amended by Ordinance No. 40634. Thereafter, a suit was instituted by a taxpayer and patron of the municipal water system, seeking to enjoin the sale and delivery of said bonds, upon the ground that certain bond companies named as defendants in the cause had "persuaded the common council of said City of Seattle to sell said bonds to said defendant bond companies by a resolution passed at a secret session of said common council, and at a price far below the true value of said bonds, contrary to Article IV, Section 18, subdivision 3, of the Charter of said City." It was also alleged that the bonding companies had persuaded the City Council to sell the bonds in question by falsely and fraudulently representing that the price offered therefor was a fair price; that a sale of said bonds was approved and desired by the Superintendent of Water; and that the proceeds of said sale were needed at once to carry on the improvements for which said bonds were issued. Upon an examination of the proceedings leading up to the sale of the bonds in question, this department concluded that however undesirable it may have been for the City to dispose of such bonds at the time, and under the conditions, specified, from a purely legal standpoint the court would not entertain the grounds of complaint alleged. After

the joining of issue, the case came on for trial, and on December 16th, 1921, the court entered a decree finding that no fraud of any kind or character was practiced by the defendants, or any of them, in the sale of the bonds; that the sale of said bonds occurred in open regular session of the City Council, by unanimous vote of all the councilmen; and that the bonds were not sold at any secret session, or at a price below their true value; that there were no fraudulent representations of any kind made by reason of which the City Council was persuaded to sell said bonds; and that said bonds were sold in the manner followed by the City of Seattle for a long time past, and was in strict accordance with the statutes and provisions of the City Charter. The prayer for an injunction was denied and the suit dismissed.

III.

PUBLIC UTILITIES PRIVATELY OWNED

1. Seattle & Rainier Valley Railway Company:

In the last annual report reference was made to a mandamus proceedings against the Seattle & Rainier Valley Railway Company, seeking to compel said company to carry the City's policemen and firemen free of charge as provided by its franchise, the cause at that time having been decided by the Supreme Court in the City's favor, but the remittitur not having as yet been filed

in the Superior Court. The remittitur was sent down shortly after the first of the year 1921, whereupon an alias peremptory writ directing compliance with the franchise provisions was secured. The alias writ was made returnable March 25th, 1921, and the company filed a return showing that it intended to comply with the franchise provisions and to reimburse the policemen and firemen who had been paying their fares pending the appeal of the cause. The company is now carrying policemen and firemen free, and the issue is closed.

2. Seattle Lighting Company:

During the past year no new cases against the Gas Company were filed. There were, however, three cases pending at the beginning of 1921, which have been disposed of as follows:

(a) First Gas Case:

A year ago there was pending in the State Supreme Court, but undecided, an appeal taken from the decision of the Thurston County court, affirming an order of the Public Service Commission in the Commission's Cause No. 4961, sustaining the Gas Company's tariff establishing a net base rate of $1.50 per thousand cubic feet for gas. The appeal was argued before the Supreme Court on January 10th, 1921, and a decision rendered February 28th, 1921, (114 Wash. 646), affirming the lower court, and holding in principle that the Supreme Court will not disturb the findings of the Public Service

Commission if there is any evidence to support such findings, regardless of other errors or improper evidence that may be considered by the Commission.

(b) Second Gas Case:

There was pending before the Public Service Commission at the time of last report a cause instituted in the Spring of 1920, under the Commission's File No. 4978, complaining of the inadequate plant facilities and equipment of the Seattle Lighting Company. Although the case was heard on July 1st, 1920, and the matter taken under advisement, no decision has been as yet rendered, and the cause may properly be regarded as dead, by reason of the inaction of the Commission.

(c) Third Gas Case:

In the 1920 report, reference was made to the so-called B. T. U. Case, in which the City complained of the low standard and quality of the gas being furnished in the City. This was Cause No. 5162 of the files of the Public Service Commission, and was pending at the time of last report under what the Commission referred to as a temporary order, increasing the heating value standard and fixing for the City of Seattle a minimum of 500 and a maximum of 530 British thermal units, but fixing lower standards for Tacoma and Everett. No final order has been received in said cause and it would appear from the inaction of the Public Service Commission that it had decided to

let its so-called temporary order stand as the final order in the case. This may therefore be considered as a closed cause of action.

3. Pacific Telephone & Telegraph Company:

No new cases were filed against the telephone company during the past year. There was pending, however, at the timeof the last report under a temporary order of the Public Service Commission, in its Cause No. 4902, the matter of inadequacy of the service and plant facilities of the telephone company. The company was ordered to commence the installation of improvements and facilities and the improvement of its service, and to make bi-weekly reports to the Commission. No final order has been served upon us, and it is assumed that the Commission has allowed this cause to die, on the theory that the service and facilities of the telephone company have been brought up to the required standards.

4. Jitneys -- Certificates of Public Convenience and Necessity:

One W. J. McCurdy, during the Fall of 1921, filed with the State Department of Public Works (successor to the Public Service Commission), an application for a certificate of public convenience and necessity, with a view to the operation of a stage and jitney service between Seattle, Burien City, Seahurst and Three Tree Point, in competition with the Lake Burien line of the municipal street railway system. This depart-

ment, pursuant to Ordinance No. 42737, filed a complaint and protest with the Department of Public Works, concerning McCurdy's so-called Route No. 404, which has been given Cause Number 68 by the Department of Public Works. The cause was set for hearing early in February, 1922.

As pointed out elsewhere in this report, the matter of jitney competition with the street railway system under certificates of necessity and convenience has been the subject of considerable litigation in the courts.

IV.

MISCELLANEOUS BOARD HEARINGS

1. Portland Rate Differential:

At the time of last report there was pending before the Interstate Commerce Commission the cases of Port of Portland, et al., v. Walker D. Hines, et al., and Inland Empire Shippers' League v. Walker D. Hines, et al., being certain proceedings having in view a rate differential in favor of Portland as against Puget Sound in respect to certain Eastern Washington territory. Such differential was allowed by the Commission in respect to the territory south of the Snake River by an order entered during the year 1920. A state-wide conference, attended by representatives of the various Puget Sound cities, was held on January 25th, 1921, in the offices of the Public Service Commission at Olympia.

It was there decided that it would be advisable to petition for a rehearing before the Interstate Commerce Commission. Petitions for rehearing and briefs were filed by the various bodies, including a petition and joint brief filed by the City of Seattle, the Port of Seattle and Seattle Chamber of Commerce and Commercial Club. The various petitions for rehearing were denied by the Interstate Commerce Commission on the 12th day of April, 1921, and the railroads directed to file tariffs putting the rate differential into effect. The State Department of Public Works thereupon suspended the railroad tariffs, in so far as they related to traffic, exclusively between intrastate points. This resulted in the institution of an injunction proceedings in the Federal Court by the Oregon-Washington Railroad & Navigation Company, the Spokane, Portland & Seattle Railway and the Northern Pacific Railway Company, being Cause No. 141 in the District Court of the United States for the Western District of Washington, Southern Division. At the request of the Attorney General, this department was represented with him in this litigation. An application for a temporary injunction was heard on November 29th, 1921, and a temporary injunction issued. The Attorney General advises that he intends to pursue this litigation further.

2. Zoning Commission:

By the terms of Ordinance No. 40407, the Corporation Counsel is the legal adviser of the Zoning Commission, which meets regularly every second Tuesday in

each month, and at such other times as the Commission may deem advisable. An assistant has been assigned to this work, which has taken considerable time, in view of the fact that the Commission has been holding numerous special meetings during the past year.

3. Building Code Commission:

During the year, the Building Code Commission, which was organized pursuant to a resolution of the City Council, has been meeting regularly, endeavoring to reconstruct the Building Code in such a manner as to meet present conditions in the City. An assistant from this department has been a member of that Commission, and has devoted an enormous amount of time to the consideration of the problems presented by such revision.

What is now designated as "Part IV" of the present code (Ordinance No. 31578) has been revised and enacted into law through the passage and approval of Ordinance No. 42990. One of the chief difficulties encountered in the preparation of this ordinance was the prescribing of necessary standards with sufficient definiteness to meet the legal requirements, and yet retain that degree of flexibility that is deemed necessary by the Building Department and those engaged in the erection of buildings in the City.

V.

WORK OF THE CITY ATTORNEY

1. Prosecutions for Violations of City Ordinances:

During the year the City Attorney disposed of eighteen thousand, six hundred ten cases in the police court, resulting in the imposition and collection of fines and forfeitures to the amount of $175,908.55 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, eleven hundred six were prosecutions for violation of the liquor ordinances and proceedings upon search warrants. Appeals to the Superior Court were taken in one hundred three cases, of which nineteen were tried and disposed of, resulting in the collection of fines in the sum of $545.00 By reason of appealed cases remaining over from the preceding year, there are ninety-eight appeals still pending.

VI.

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 one hundred sixty-nine 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 31st, 1920, to December 31st, 1921, one hundred fifty-five ordinances and resolutions.

VIII.

SERVICES OF PROCESS

During the period of this report, twenty-seven hundred personal services of legal papers were made by the department's witness clerk, in addition to assisting in six hundred services made by the Sheriff of King County for the department.

IX.

MISCELLANEOUS MATTERS

1. 1921 Legislature:

In accordance with the direction of the City Council, this department kept in touch with matters pending before the 1921 Legislature for the purpose not only of being able to advise the Mayor and City Council concerning pending legislation affecting the City of Seat-

tle, but also to assist, as far as it lay within our power, in advising members of the Legislature on the needs, as well as the desires, of the City. To that end, a representative of the department was kept in Olympia the greater portion of the period during which the Legislature was in session. In addition, every bill, whether directly or remotely, affecting the City, was carefully analyzed and a written report concerning the same sent not only to the City Council but also to the Mayor. To the end that the City of Seattle might have the co-operation and assistance of other cities of the first class wherever common interests existed, a copy of such report was sent to the Corporation Counsel of Spokane and the City Attorneys of Tacoma, Bellingham and Everett. I am glad to say in this connection that these other cities, through their respective officers mentioned, at all times took a comprehensive view of proposed legislation in which the City of Seattle was interested, demonstrating a full appreciation of the fact that laws seemingly affecting only our City in reality had a state-wide influence.

While it would be impossible, within reasonable compass, to analyze all legislation enacted which in any wise affects the City, those acts which are directly applicable are noted, the reference in each case being to the Session Laws of 1921.

(a) Chapter 12, relating to competitive bidding upon public works:

This act, which carried an emergency clause, makes it unlawful to suppress or eliminate competitive bidding upon public work within the State of Washington, a violation of the act being a gross misdemeanor.

(b) Chapter 21, relating to the closing of streets:

This act provides for the closing of city streets, or parts thereof, whenever their use will greatly damage the same. If the prescribed notice has been given, it is a misdemeanor for any person, firm or corporation to disregard such closing, and to use such streets with any vehicle to which the same is closed.

(c) Chapter 61, relating to elections held in cities located in Class A and first class counties:

This act provides that all city, town, township, school district, port district, park district, irrigation district, dike district, drainage district, drainage improvement district, diking improvement district, river improvement district, commercial waterway district, and all other municipal and district elections, whether general or special and whether for the election of municipal or district officers or for the submission to the voters of any city, town, township or district of any question for their adoption or approval or rejection, shall be held in Class A counties and counties of the first class on the first Tuesday after

the first Monday in May in the year in which such elections may be called. Exception is made in the case of the holding of elections for the recall of city, town or district officers. Primary elections are required to be held two weeks prior to the general election. Further provision is made to the effect that the term of every officer elected under the provisions of the act shall begin on the first Monday in June following his election, except that the persons elected to office at the first election held under the act shall not take office until the expiration of the term of office of their predecessors, and any person whose term of office shall expire prior to the holding of such election under said act shall continue to hold office until his successor is elected and qualified.

A radical departure from existing procedure is made in the method of preparing for the holding of such elections, in so far as the City is concerned, in that it is made the duty of the Chairman of the Board of County Commissioners, the County Auditor and the Prosecuting Attorney to provide places for holding elections, to appoint the election officers, to provide for their compensation, to provide ballot boxes and ballots or voting machines, poll books and tally sheets, and deliver them to the election officers at the polling places, to publish and post notices of the calling of such elections in the manner provided by law, and to apportion to each city, town or district its share of the expense of such election. It is also provided

that there shall be but one set of election officials in each precinct.

(d) Chapter 68, relating to the display of the United States Flag at polling places:

This act provides that at all state, county or municipal elections the flag of the United States shall be conspicuously displayed in front of each polling place, and it is made the duty of the officers charged by law with the duty of furnishing election supplies to make provision therefor.

(e) Chapter 80, relating to franchises on state highways outside of incorporated cities and towns:

This act makes it unlawful for any person or corporation to construct, on, over, across or along any state highway any water pipe, gas pipe, telegraph, telephone or electric light or power lines, without having first obtained a franchise so to do from the State Highway Board or Committee, which board or committee is authorized to enter an order granting a franchise for not to exceed fifty years, under such rules, regulations and conditions as it may prescribe, and to require any such utility, and its appurtenances, to be placed in such location on, over, across or along the state highway as it finds shall cause the least interference with other uses thereof. While ordinarily the words "persons" and "corporations" would not include a municipal corporation, there is a possibility that the act may be construed to embrace the latter.

(f) Chapter 96, relating to the use of motor vehicles on public highways:

This act constitutes the new Motor Vehicle Code. Section 20 makes it unlawful for any person, firm or corporation to operate any vehicle of four wheels or less over andalong the roads in this state whose gross weight, including load, is more than 24,000 pounds, or any vehicle having a greater weight than 22,400 pounds on one axle, or any vehicle having a combined weight of over 800 pounds per inch width of tire upon any wheel concentrated upon the surface of the highway (said width of tire in the case of solid rubber tires to be measured between the flanges of the rim), except that in special cases vehicles whose weight, including loads, exceeds those specified may operate under special written permits, which must be first obtained, and under such terms and conditions as to time, route, equipment, speed and otherwise as shall be determined by the City Council, if it is desired to use a city street, but in no case shall a motor truck or trailer be driven over or on a public highway with a load exceeding the licensed capacity.

Section 41 prohibits the City Council from passing or enforcing any ordinance, rule or regulation requiring a slower rate of speed than that specified in the code at which vehicles may be operated over the public streets or regulating the use of such streets contrary to, or inconsistent with, the provisions of said act, except that on any portion of a street where, on account of sharp curvature, highway construction or repairs, excessive traffic or other permanent or temporary

causes, it is deemed inadvisable for vehicles to operate at the maximum speed allowed by the act, the governing authorities of such city may regulate such speed by order, rule or regulation, provided that such order, rule or regulation shall regulate all vehicles alike and shall not limit the speed in any case to less than ten miles per hour. Such governing authorities shall cause to be posted at either end of such portion of such highway signs, of sufficient size to be easily readable, setting forth the speed allowed and stating by whose order such regulations are made.

Section 43 provides that all fines and forfeitures collected for violation of the act within the limits of incorporated cities and towns shall be paid by the County Treasurer to the Treasurer of such incorporated city or town and by him placed to the credit of the street repair and maintenance fund of such incorporated city or town.

Section 46 directs that the Mayor and Council or other governing authorities of every city shall erect and maintain at the corporate limits of the city on all paved highways crossing such limits substantial wood or metal signs, placed at right angles to the highway and painted white and having thereon, in black letters four inches high and on the side nearest the city or town, the following words:

"City limits of _____ 30 miles per hour,"
(name of city or town)

and on the side away from the city, the following words:

"City limits of _____, speed limit 20 miles per hour."
(name of city or town)

(g) Chapter 99, relating to newspaper publication of legal and official notices:

This act defines what shall be considered a "legal newspaper for the publication of any advertisement, notice, summons, report, proceeding or other official document now or hereafter required by law to be published."

Section 6 of the act provides that where any law or ordinance of any incorporated city or town in this state makes provision for the publication of any form of notice or advertisement for consecutive days in a daily newspaper, the publication of such notice on legal holidays and Sundays may be omitted without in any manner affecting the legality of such notice or advertisement, provided that the publication of the required number of days is complied with.

(h) Chapter 107, relating to parks and public camps:

By this act the City, acting through its City Council or its Board of Park Commissioners when authorized by charter or ordinance, may, acting independently or in conjunction with the United States, the State of Washington, or any county, city or park district, or any number of such public organizations, acquire any land within the state for parks, park-ways, bathing beaches, roads or public camping purposes and roads leading therefrom to nearby highways, by donation, purchase or condemnation, and to care for, control, supervise, improve, operate and maintain such parks, park-ways, bathing beaches, roads and public camps upon any such land, with power to enact and enforce such police regulations not inconsistent with the Constitution and laws of the

State as are deemed necessary for the government and control of the same. Under this act, the City is authorized to establish public camps within or without the City, make and enforce the necessary rules and regulations in reference thereto, and make such charges therefor as might be deemed expedient.

(i) Chapter 108, relating to the licensing of persons to operate motor vehicles:

This act requires that every operator of a motor vehicle shall have a license therefor. While Section 2 of the act provides generally that no person under fifteen years of age shall operate or drive any motor vehicle unless acompanied by parents or guardian, there is a proviso that, upon recommendation of the school directors of any district and the consent of the parents of any minor, a special permit may be issued by the Director of Licenses permitting any child to drive an automobile for the purpose of attending school, "provided, that this shall not permit children to drive an automobile within cities of the first class."

Section 14 of the act provides that all fines and forfeitures collected for violation of its provisions in cities and towns of the first, second, third and fourth classes shall be paid by the County Treasurer to the treasurer of such city or town and by him placed to the credit of the street repair and maintenance fund of such city or town.

(j) Chapter 123, relating to indebtedness of taxing districts:

This act relates to the computation of the indebtedness of taxing districts and provides that taxes levied for the

current year and cash on hand for the purpose of carrying on the business of such taxing district for the current year shall be considered as an asset in connection with the computation of the indebtedness of such taxing district for bonding or other indebtedness purposes only as against indebtedness incurred during such current year which is payable from such taxes or cash on hand, except that all taxes levied for the payment of bonds, warrants or other public debts of such taxing district shall be deemed a competent and sufficient asset of the taxing district to be considered in calculating the constitutional or statutory debt limit. The provisions of the act are not applicable in computing the debt limit of a taxing district in connection with bonds authorized pursuant to a vote of the electors at any election called prior to March 1st, 1917.

(k) Chapter 125, relating to publicly owned motor vehicles:

This act makes it the duty of every public officer and department having charge of any automobile or other motor vehicle owned by any county, city, town or other public body in the state, and used in the public business, except automobiles used by the sheriff's office, police department, constables and game wardens, and except automobiles engaged in police duty, to cause to be painted upon such automobile or other motor vehicle, in letters of contrasting colors, not less than two by two and one-half inches in size, the name of such county, city, town or other public body, together with the name of the department or office upon the business of which said auto-

mobile or other motor vehicle is used. A failure to comply with the provisions of the act or the driving or using of any automobile or other motor vehicle required to be marked thereunder which is not so marked is made a misdemeanor.

(l) Chapter 151, relating to unincorporated areas within certain first class cities:

By this act any unincorporated area now lying wholly within the limits of any city of the first class having a population of 250,000 or upwards is declared to be incorporated in, and to become a part of, the territorial limits of such city, and the same is made subject to the jurisdiction, laws and ordinances relating thereto, except that no property so situated and so incorporated shall ever be taxed or assessed to pay any portion of any indebtedness of such city contracted prior to, or existing at the effective date of such act.

(m) Chapter 166, relating to public improvement contracts:

This act requires that contracts for public improvements or work by the state, or any county, city, town, district, port, or other public body, shall provide that there shall be reserved from the moneys earned by the contractor or estimates during the progress of the improvement or work a sum equal to fifteen per cent. of such estimates, such sum to be retained as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions or

supplies for the carrying on of said work. Said fund is to be retained for a period of thirty days following the final acceptance of the improvement or work as completed, and every person performing labor or furnishing supplies towards the completion of such improvement or work has a lien upon such fund so reserved if notice of the lien be given in the manner and within the time provided in Section 1161 of Remington & Ballinger's Annotated Codes and Statutes of Washington. Where the contract price exceeds $200,000., only ten per cent. shall be reserved on estimates in excess of said sum, or when the aggregate of previous estimates equals or exceeds said amount.

In connection with legislative matters, I call attention to Chapter 59, which, as originally passed, amended the Public Service Commission Law (Chapter 117, Session Laws of 1911), by adding thereto a new section to be known as Section 74a, requiring that a certificate of public necessity and convenience be obtained from the Director of Public Works before any public service company or prospective public service company (and by definition a municipal corporation was included within said terms) could construct, extend or thereafter maintain or operate any part of its plant, system or facilities for the purpose of rendering service in a locality where similar service is then being rendered by any other public service company in the State. A proviso attached thereto specified that such provisions should not be construed as requiring a certificate for the extension of the physical property or

service of any privately or municipally owned or operated plant within a locality in which such public service company may now be furnishing similar service to the public, or for the construction of additional plants or extensions of existing plants outside the limits of such locality for making such service within such locality.

Section 2 of the act repealed Section 105 of the Public Service Commission Law, which exempts municipally owned street railways, telephone lines, gas plants and electrical plants or water systems from the making or enforcement of any order by the Public Service Commission affecting rates, tolls, rentals, contracts or charges or service rendered, or the safety, adequacy or sufficiency of the facilities, equipment, instrumentalities or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied or enforced.

The City requested the Governor for a hearing upon this bill before he should approve the same. Subsequent to such hearing, which was granted, the Governor vetoed Section 2, which would have made municipally owned plants subject to regulation by the State Department of Public Works, but Section 1, relating to the certificate of public necessity and convenience requirement, was approved. Thereafter, at the request of the City Council, this department prepared all instruments necessary for the circulation of a referendum petition with respect to said Section 1, because, if permitted to stand, the provisions thereof might have been enforced to the detriment of the utilities owned and operated by the City.

I also deem it proper to refer to Chapter 111, which provides that auto transportation companies operated for hire over any public highway in the State between fixed termini or over a regular route and not operating exclusively within the incorporated limits of any city or town, shall obtain from the Director of Public Works a certificate declaring that public convenience and necessity require such operation, to which is attached a provision that such a certificate must be granted when it appears to the satisfaction of the director that the person, firm or corporation, making application therefor was actually operating in good faith over the route for which such certificate shall be sought on January 15th, 1921.

Under the provisions of this act, it is contended that a certificate may be issued by the Director of Public Works authorizing the operation of vehicles by any transportation company within the corporate limits of the city, provided such auto transportation company was operating in good faith over a route partially within such city on January 15th, 1921. Before that question can be finally determined, it must be presented to, and passed upon by, the Supreme Court of the State.

There were several bills drawn at the request of City officials, or in which the City was interested, that failed of passage, including the following:

House Bill No. 130, providing that a certificate of delinquency issued in connection with a local improvement assessment should be notice to the world of the interest of the holder.

House Bill No. 212, which would have licensed air pilots.

House Bill No. 113, authorizing the sale of electric energy by the City outside of its corporate limits.

House Bills No. 35 and No. 102, both of which were designed to relieve the congestion in our police court by providing for an assistant or additional police judge.

Senate Bill No. 19, providing for the refunding of utility bonds.

Senate Bill No. 46, authorizing the operation of motor busses by the City in connection with its street railway system.

Senate Bill No. 153, which would have relieved the Mayor of the necessity of signing all bonds issued by the City.

2. Charter Amendments:

At the request of the City Council, this department drew a number of proposed amendments to the City Charter. Of such proposed amendments, at the annual election held March 8th, 1921, the people ratified that one which fixed the time for holding of the annual municipal election on the first Tuesday following the first Monday in May instead of in March, as was formerly the case.

Every year the City enacts a large number of ordinances of a general public nature, by which some act or omission is required or prohibited. To comply with

the present requirement of the City charter, every such ordinance must impose a penalty for the violation thereof or non-compliance therewith. The state law (Section 7521 Remington & Ballinger's Code) provides that no greater penalty than a fine of one hundred ($100) dollars, or imprisonment not to exceed thirty (30) days, or both such fine and imprisonment, shall be imposed. These are matters that must be set out in each ordinance under present provisions. Occasionally, I have noted that ordinances of a general public nature have been enacted without compliance therewith. To avoid all such occurrences and the necessity of constantly repeating such penal provisions, I make the following recommendation:

That Section 30 of Article IV of the City Charter of the City of Seattle be amended to read as follows:

"Section 30. Every person violating any general public ordinance heretofore or hereafter enacted prohibiting or requiring any act or omission, and every person counselling, aiding or abetting such violation, whether present or absent, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall, unless otherwise provided in such ordinance, be punished by a fine not exceeding One Hundred ($100) Dollars, or imprisonment in the City Jail for a period not exceeding thirty (30) days, or by both such fine and imprisonment, and any such ordinance hereafter enacted need not contain any provision in reference to penalties but the provisions of this section shall be applicable thereto as fully as if the same had been contained in such ordinance."

A resolution providing for the submission of a charter amendment in the respect mentioned is herewith transmitted.

3. Re-codification of Municipal Ordinances:

In the preceding annual report the need of a re-codification of the ordinances of the City was suggested, and reference made to the fact that the work of such recodification had been undertaken, and the hope expressed that the same might be completed during the year 1921. Due to the enormous increase in the amount of business completed in the department, as already shown in this report, this hope has not been fully realized. The task of examining upwards of twenty-five thousand ordinances, when such examination is limited to "spare moments," was too vast to be accomplished. However, the matter has now progressed to the point where it is expected that tangible results can be shown before the current year is over. Hence I have drawn, and herewith submit, a resolution providing for the submission of a charter amendment which will specifically authorize the City Council to provide for the codification and re-codification of the municipal ordinances, and to adopt, from time to time, a municipal code. The specific provision recommended is as follows:

That Section 18 of Article IV of the City Charter be amended by adding thereto a new subdivision, to be known as "Forty-fourth," which shall be in words and figures as follows, to-wit:

"Forty-fourth. To provide for the codification and re-codification of the ordinances of the City, and to adopt from time to time an official municipal code; Provided, that every ordinance and part thereof which is of a general, public nature, enacted prior to such adoption, shall be deemed repealed, unless the same shall be contained in such code; Provided, further, that the ordinance adopting such code may impose upon

the Corporation Counsel the duty of assigning to every section of any ordinance of a general, public nature thereafter enacted its proper position and section number therein; and requiring the City Comptroller and ex-Officio City Clerk to keep in his office a copy of such code, properly brought down to date, and fully indexed, which shall be a public record."

C O N C L U S I O N

In concluding this report, it is but proper that appreciation of the industry, efficiency, and unswerving loyalty to the interests of the City of those who have assisted in carrying on the work of this department should be publicly expressed. The hours prescribed by the City Charter have not been the measure of their devotion to the service. They have, at all times, been anxious and willing to do everything possible to bring success to the cause and interests of the City.

Likewise, public expression of appreciation should be given for the uniform courtesy and consideration extended by other departments of the City government to members of the City's legal staff. The relationship with such other departments thus established has resulted in that spirit of cooperation so essential to an effective administration of public affairs, and without which the greatest efficiency cannot be maintained.

Respectfully submitted,

Walter F. Meier

Corporation Counsel.