

88808 ✓

FILE NO.

Annual Report

OF

Law Department

for 1922.

FILED APR 2 1923

BY \_\_\_\_\_

ADDRESS \_\_\_\_\_

H. W. CARROLL  
CITY COMPTROLLER AND EX-OFFICIO CITY CLERK

BY C. M. Scott DEPUTY

**ACTION OF THE COUNCIL**

REFERRED <u>APR 2 1923</u>	TO <u>ON FILE</u>
REFERRED	TO
REPORTED	REPORT ADOPTED
REPORTED	REPORT ADOPTED
REF. FOR ORD.	C. B. ORD.
	DISPOSITION

**REPORT OF COMMITTEE**

Mr. President:

Your \_\_\_\_\_

Committee

to which was referred the within \_\_\_\_\_

would respectfully report that we have considered the same and respectfully recommend that \_\_\_\_\_

CHAIRMAN

CHAIRMAN

1922 reports ANNUAL REPORT OF THE LAW DEPARTMENT Works of  
Washington during OF THE CITY OF SEATTLE

FOR 1922

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, on behalf of my predecessor in office, the annual report of the Law Department for the year ending December 31st, 1922.

-1-

GENERAL STATEMENT OF LITIGATION.

1. Tabulation of Cases:

The following is a general tabulation of suits and other proceedings pending in the Superior, Federal and appel-

-1-

late courts and before the Department of Public Works of Washington during the year:

	Pending Dec. 31 1921.	Commenced During year 1922	Ended Dur- ing year 1922	Pending Dec. 31, 1922
Condemnation Suits,	21	10	8	23
Condemnation Suits, supplementary, ....	4	6	5	5
Damages for Personal Injuries, .....	50	55	44	61
Damages other than Personal Injuries, .....	52	34	30	56
Actions relating to collection of as- sessment rolls, ...	5	1	2	4
Injunction Suits, ..	39	21	29	31
Mandamus Proceedings, ..	11	8	13	6
Miscellaneous pro- ceedings, .....	58	44	50	52
Public Service pro- ceedings, .....	2	1	2	1
	242	180	183	239
Total actions pending during period of this report, ...				422

2. Personal Injury Actions:

	<u>Number</u>	<u>Amount Involved</u>
Pending December 31, 1921, .....	50	\$445,222.40
Commenced since December 31, 1921, .....	55	324,097.00
Total, .....	105	\$769,319.40
Tried and concluded since Dec. 31, 1921, ..	44	287,141.00
Actions pending December 31, 1922, .....	61	482,178.40
Pending December 31, 1922, .....	55	796,152.00

(Note:- In the previous reports, there were carried as "Concluded Cases" those cases tried in the Superior Court but pending on appeal to the Supreme Court. The sending back of such cases for retrial has always confused the tabulations concerning pending cases. In this report, we are carrying as pending cases all cases not finally disposed of, whether in the lower or appellate courts. We have therefore added to the cases pending as of December 31, 1921, six cases then on appeal. Five of the cases noted as pending December 31, 1922, are pending on appeal.)

Of the personal injury actions pending in the department during the year, forty-four, involving \$287,141.00, were tried and finally disposed of. Twenty of these cases resulted in judgments in favor of the City, and in the remaining twenty-four cases there were recoveries aggregating \$22,318.00, as against \$77,155.16 for the preceding year.

Of the fifty-five personal injury actions begun during the year, thirty-seven, involving \$230,431.00, were occasioned by accidents occurring in connection with the operation of the municipal street railway system.

3. Damages Other Than Personal Injuries:

	<u>Number</u>	<u>Amount Involved</u>
Suits pending December 31, 1921, .....	52	\$875,472.48
Commenced since December 31, 1921, .....	<u>34</u>	<u>61,621.19</u>
Total covering period of this report, ..	86	\$937,093.67
Tried and concluded since December 31, 1921, ..	30	<u>140,941.67</u>
Pending December 31, 1922, .....	56	796,152.00

(Note:- Four cases pending on appeal to the Supreme Court have been added to the number of suits pending as of December 31, 1921.)

Of the total of eighty-six cases involving damages other than personal injuries, thirty cases, involving \$140,941.67, were disposed of during the year. In sixteen cases, there were judgments entered in favor of the City, and in the remaining fourteen cases, judgments were entered against the City in the aggregate amount of \$9,922.70

#### 4.21 Injunction Suits:

Of the injunction suits maintained against the City, those classes particularly worthy of note relate to gambling devices, pool halls, cabarets, jitneys, licenses, and the proposed Volunteer Park reservoir.

A decision was handed down by the Supreme Court early in the year in the case of Society Theatre v. Seattle, 118 Wash. 258, in which drawings by lot as a means of increasing patronage was held to be unlawful, even though the ordinance penalizing the same was broader in its scope than the State law covering the subject matter and right to participate in the drawing involved no extra charge over or above the admission fee.

In the case of Sayles v. Seattle, 119 Wash. 12, the Supreme Court, in sustaining our contention, held that the City Council might exercise its discretion in respect to persons to whom pool hall licenses should issue.

A number of cabarets have secured orders restraining the City officials from interfering with their operation by reason of the City Council arbitrarily denying licenses without a report from the Chief of Police and a hearing, as contemplated by the "cabaret ordinance." In a couple of instances, mandatory orders were issued directing the City Council to refer applications to the Chief of Police, with a view to the securing of such reports and then proceeding with such hearings.

In the case of H. E. Knowles v. Seattle, a suit prosecuted on the theory that Chapter 111, of the Laws of 1921 (Motor Vehicle Certificate of Necessity Law), had superseded Sub-section 7, of Rem. Code, Section 7507, in so far as the City's control of its own streets was concerned, the U. S. District Court held that the police power of the City in respect to such control of its streets under said Section 7507 was unimpaired.

In the case of Ferry v. Seattle, 116 Wash. 648, the Supreme Court sustained the Superior Court in enjoining the City from building a proposed reservoir in Volunteer Park, on the theory that the same would constitute a nuisance if built on the site proposed.

In the case of Asakura v. Seattle, 21 Wash. Dec. 508, the Supreme Court held that the City, under its police power, could deny pawnbrokers' licenses to aliens, including Japanese. This matter is now pending on writ of error to the U. S. Supreme Court.

In the case of Cornelius v. Seattle, 23 Wash. Dec.

375, the right of the City to provide, by ordinance, for the disposition of swill without compensation to the persons from whom the swill was taken, was upheld as within the police power.

Claims for damages under investigation, December 31, 1921, .....	384	\$714,039.11
--	-----	--------------

Claims for damages referred to this department, December 31, 1921, to December 31, 1922, .....	502	168,654.21
--	-----	------------

5. Miscellaneous Cases:

The fifty miscellaneous actions tried and concluded during the period of this report include numerous actions growing out of police regulations, condemnation proceedings, tax foreclosures, habeas corpus proceedings, proceedings to quiet title, and other matters not involving monetary recoveries.

Of eleven hearings conducted by the department before the Civil Service Commission, ten decisions were rendered sustaining dismissal of employes from service. The other proceeding resulted in the reinstatement of the civil service employe concerned.

Nineteen minor actions were commenced for the Lighting Department of the City, involving unpaid light and power bills in which recoveries aggregating \$1125.00 were sought. Judgments, including costs, were entered in the sum of \$980.66, and of this amount \$543.00 has been collected. Thirteen claims were filed for the Lighting Department in either estates in bankruptcy or probate proceedings.

During the year, eight new tax foreclosure cases were filed in court, twenty cases were tried, and twelve cases remain yet to be tried.

7. Expenditures:

During the period of this report, one hundred  
 6. Statement and Investigation of Damage  
Claims Filed Against the City:

City were answered. One hundred twenty-five of these  
 were directed against the wages of

	<u>Number</u>	<u>Amount Involved</u>
Claims for damages under investigation, December 31, 1921, .....	384	\$712,039.11
Claims for damages referred to this de- partment for investigation, December 31, 1921, to December 31, 1922, .....	<u>608</u>	<u>763,664.81</u>
	992	\$1,475,703.92

During the year, there were argued and submitted  
 Claims disposed of as follows:

	<u>Number</u>	<u>Amount Claimed.</u>	<u>Amount Paid</u>
Settled, .....	213	\$108,721.98	\$31,957.38
Rejected, .....	<u>391</u>	<u>576,850.62</u>	
	604	\$685,572.60	
Claims pending December 31, 1922,	388	\$790,131.32	

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

Amount Involved, .....	\$45,041.25
Amount of Settlement, .....	7,200.50

1. Liability Cases:

Number of street railway accident reports received  
 from Department of Public Utilities and investi-  
 gated, December 31, 1921, to December 31, 1922, .....5,635

Number of circulars and letters mailed in connec-  
 tion with the investigation of foregoing claims  
 and reports, .....12,863

of the Skagik plant. The condemnation for the Gorge Creek  
 power plant, which had been appealed to the Supreme Court,  
 was settled by compromise on being returned to the Superior  
 Court for a new trial. The condemnation of a right of way  
 across Washemish County, which had been brought on for trial,  
 was temporarily abandoned for the purpose of taking an appeal.

7. Garnishments:

During the period of this report, one hundred forty-eight writs of garnishment which were served on the City were answered. One hundred twenty-five of these writs were directed against the wages of city employes, and twenty-three were for miscellaneous articles.

In addition to actual litigation in respect to this project, we have rendered numerous opinions.

8. Supreme Court:

During the year, there were argued and submitted to the State Supreme Court twenty-four cases on appeal. Of these, eighteen cases were decided favorably to the City and six against the City.

The litigation arising out of the Boxley Creek disaster of December 23, 1914, of which mention was made in our previous report, is still pending. The remittitur in the North Bend Lumber Company - II - case has been transmitted to the Superior Court, but the case is not noted for trial and is not being prosecuted by the plaintiffs. PUBLIC UTILITIES MUNICIPALLY OWNED.

1. Light and Power:

This department has attended to numerous matters connected with the administration of affairs relating to the municipal light and power plant, particularly in connection with the acquisition of rights of way for transmission lines of the Skagit plant. The condemnation for the Gorge Creek power plant, which had been appealed to the Supreme Court, was settled by compromise on being returned to the Superior Court for a new trial. The condemnation of a right of way across Snohomish County, which had been brought on for trial, was temporarily abandoned for the purpose of taking an appeal

...of ... on the  
... of ... one ...

1\* Government:

... from a decision in the Snohomish County Court which would have required us to condemn the entire fee of the proposed right of way instead of condemning only such easements as would be required for our purposes. This matter is on appeal to the Supreme Court in its Cause No. 17727, entitled, Seattle v. Faussett. In addition to actual litigation in respect to this project, we have rendered numerous opinions, have sat in on numerous conferences, and have drawn numerous resolutions, ordinances, deeds, easements, franchises (county and state), and other instruments pertaining to the subject matter.

The litigation arising out of the Boxley Creek disaster of December 23, 1918, of which mentioned was made in our previous report, is still pending. The remittitur in the North Bend Lumber Company case has been transmitted to the Superior Court, but the case is not noted for trial and is not being pressed by the plaintiffs. The case of the Chicago, Milwaukee & St. Paul Railway Company in the District Court is set down for trial for January 23, 1923.

2. Street Railway:

Numerous damage suits arising out of accidents in connection with the municipal street railway system have been tried during the year.

The litigation arising out of the purchase of the lines of the Puget Sound Traction, Light & Power Company has ...

favorably progressed. The case of Asia, et al., v. Seattle (Fourteen Taxpayers' suit) was pressed to a final conclusion, judgment being entered in the lower court January 26, 1922, and judgment of reversal in the Supreme Court April 29, 1922. The decision of the Supreme Court (119 Wash. 674) is to the effect that the municipal authorities cannot resort to taxation for the purpose of operating a public utility acquired by the City Council without submitting the proposition to popular vote.

The so-called specific performance case (mentioned in our previous report) instituted by the Puget Sound Power & Light Company against the City as a result of the pendency of the Asia case in the Superior Court, resulted in an adverse decree against the City being entered by the U. S. District Court on January 24, 1922. An appeal was taken to the Circuit Court of Appeals and argued in that court September 19, 1922. The Circuit Court of Appeals reversed the District Court, and on December 4, 1922, entered a decree (284 Fed. 659) directing the dismissal of the Company's complaint. A petition for rehearing has been presented by the Company, evidently with a view to suing out a writ of certiorari in the U. S. Supreme Court.

We noted in our previous report the pendency of a suit brought by the Puget Sound Power & Light Company to set aside the tax for 1919 levied on the traction lines and property purchased from the Company pursuant to Ordinances No. 39025 and No. 39069. This case, previously decided by the State Supreme Court adversely to the contentions of the Company, was reargued en banc during the year and, after such

rehearing, the original decision adhered to in the final opinion. This matter having been taken to the U. S. Supreme Court by the Company by writ of error, the City joined in the writ in order to protect its interests in case the Company should secure a reversal in the Federal Supreme Court.

3. Water:

On behalf of the municipal water system, this department handled the injunction case of Ferry v. Seattle, hereinabove referred to. We have also rendered numerous opinions and acted in various advisory capacities in respect to the Department of Water Works. Among other things, we negotiated for several months with a view to settling on behalf of the department the controversy with the Northern Pacific and Great Northern Railway Companies arising out of the bursting of a watermain over the Fourth Avenue tunnel. It has been impossible to effect a compromise and we expect to institute an action for the recovery of the (approximately) \$12,000 involved.

-III-

PUBLIC UTILITIES PRIVATELY OWNED.

1. Seattle Lighting Company:

During the year, no new cases have been filed against the "Gas Company," but there is pending the matter the issuance to one W. J. Maturdy of a certificate of public convenience and necessity -11-

of filing a complaint against the existing tariffs. Pursuant to ordinance authorizing the same, we will file such complaint as soon as the Department of Public Utilities advises us that it has completed its investigation and secured the necessary evidence and is ready to proceed with the case.

2. Pacific Telephone and Telegraph Company:

Early in the year 1922, the State Department of Public Works, on its own motion, filed a complaint against the existing rates and tariffs of the Pacific Telephone and Telegraph Company. Having been directed by ordinance so to do, we intervened in said cause on behalf of the City of Seattle. A preliminary state-wide valuation hearing was had at Olympia during December, 1922. Further valuation and rate hearings are scheduled for the early part of 1923. In our complaint we have asked for a "blanket reparation order" by reason of the Company charging rates based on the Burleson war tariff instead of its own last lawful tariff on file. Since the matter of entering a "blanket" reparation order rests in the final discretion of the Department of Public Works, we will have no right of review in the event of an adverse decision in respect to the same.

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

This department appeared before the State Department of Public Works with a complaint and protest against the issuance to one W. J. McCurdy of a certificate of public convenience and necessity with a view to the operation of

stage and jitney service in competition with the Lake Burien street railway line. Our complaint was sustained and the said certificate denied.

Mention was made in our last annual report of an action pending in the Thurston County Court instituted by the Sound Transit Company to review the action of the State Department of Public Works in attaching a clause to its certificate of public convenience and necessity whereby the Company was required to operate in compliance with city ordinances. From an unfavorable decision in the lower court, the Company took an appeal to the Supreme Court. The Department of Public Works took a cross-appeal and we appeared as amici curiae. The Supreme Court (119 Wash. 684) sustained the action of the Department in attaching said limiting clause to the certificate and upheld our contentions concerning our right to control the streets under Subsection 7, of Section 7507, of Remington's Code, a matter which was involved in the Federal case of H. E. Knowles v. Seattle, hereinabove referred to.

-IV-

#### MISCELLANEOUS BOARD HEARINGS.

##### 1. Zoning Commission:

As legal advisers to the Zoning Commission under Ordinance No. 40407, we have acted in said capacity and have detailed an assistant corporation counsel to sit in at the

numerous regular and special meetings of the Commission. A tentative draft of a zoning ordinance has been prepared for submission to the City Council.

2. Building Code Commission:

The Building Code Commission, organized during the preceding year, has been functioning during the year 1922. An assistant corporation counsel has been detailed to sit in with, and to advise, said Commission.

1. Prosecutions for Violations of City Ordinances:

3. War Department -- Board of Engineers:

Pursuant to direction of the City Council in respect to Comptroller's File No. 83505, we conferred with the District Engineer of the War Department concerning the possibility of securing maintenance appropriations from the Federal Government for the Lake Washington Canal. At this conference, joint action was agreed upon by representatives of this department, of the Chamber of Commerce, and of various commercial organizations. It was decided to send a representative to Washington, D. C., at the expense of the Chamber of Commerce, which was done. Favorable action has been secured, the Federal Government is taking care of the necessary maintenance charges, and the matter may be regarded as a closed incident.

4. County Commissioners -- Watershed Road:

Pursuant to direction, we appeared before the Board

of County Commissioners on March 6, 1922, with a formal protest against the location of a county road across the Cedar River watershed. We interposed an objection that, under the existing law, the County Commissioners had no jurisdiction to locate a road across said watershed. This objection was sustained.

ORDINANCES, RESOLUTIONS AND BONDS.

The members of the City Council and the Mayor have, from time to time, requested the City Attorney to prepare ordinances and resolutions. Complying with such requests, the

1. Prosecutions for Violations of City Ordinances:

During the year, the City Attorney disposed of eighteen thousand, five hundred seventy-five cases in the Police Court, resulting in the imposition and collection of fines and forfeitures to the amount of \$150,731.81. 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, five hundred eighty-three were prosecutions for violation of the liquor ordinances and proceedings upon search warrants. Appeals to the Superior Court were taken in seventy cases, of which sixty-five were tried and disposed of, resulting in the collection of fines in the sum of \$950.00.

and sixteen hundred sixty were in general office practice. In making these services, our witness clerk travelled eleven thousand three hundred twenty-six miles by automobile, at an expense of approximately \$1,000.00. The cost per case

O P I N I O N S .

During the year, in addition to innumerable conferences with city officials concerning municipal affairs, of

which no formal record is kept, this department rendered one hundred twenty-four written legal opinions upon various questions submitted by the several departments of the city government.

month were, on request of the City Council, drawn by this

office. Of these, one was adopted May 1, 1922, which, ex-

-VII-

ORDINANCES, RESOLUTIONS AND BONDS.

The members of the City Council and the Mayor 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, 1921, to December 31st, 1922, one hundred ninety-one ordinances and resolutions.

During the year, nine hundred twenty-one bonds of officials, bidders, depositaries and others were examined and approved. The bonds provided for by the City Charter have not

been the means of their devotion to the service. They have,

in all cases, been subject to the same scrutiny as by everything else

-VIII-

SERVICE OF PROCESS.

During the year, two thousand seven hundred forty services of process were made by this department. Of these, one thousand fifty were in the Skagit River power project, and sixteen hundred ninety were in general office routine.

In making these services, our witness clerk travelled eleven thousand three hundred twenty miles by automobile, at an expense of approximately \$.0428 per mile. The cost per service approximates eighty-five cents, and the total cost re-

presents a saving of over three thousand dollars compared with

the cost of the same service if performed by the County Sheriff.

Respectfully submitted,  
Corporation Counsel.

-IX-

MISCELLANEOUS MATTERS.

1. Charter Amendments:

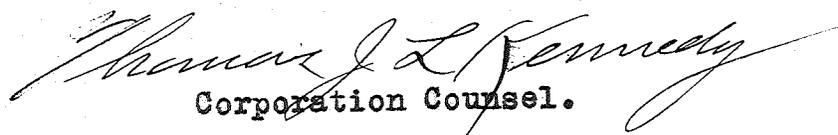
A number of resolutions proposing charter amendments were, on request of the City Council, drawn by this office. Of these, one was adopted May 2, 1922, which, except in emergency cases, restricts expenditures from tax funds to those specified in the levy and in the official estimate upon which the same is based.

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 co-operation so essential to an effective administration of public affairs and without which the greatest efficiency cannot be maintained.

Respectfully submitted,

  
Corporation Counsel.