

FILE NO. 93855

Report
OF
Corporation Counsel

For Year 1923.

FILED MAR 28 1924 MAR 28 1924
BY _____
ADDRESS _____
H. W. CARROLL
CITY COMPTROLLER AND EX-OFFICIO CITY CLERK
BY *C. Marshall* DEPUTY

ACTION OF THE COUNCIL

REFERRED MAR 31 1924	TO ON FILE
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

ASSISTANT CORPORATION COUNSEL

WALTER B. BEALS
EDWIN C. EWING
GEO. A. MEAGHER
ARTHUR R. GRIFFIN
FRANK M. PRESTON
HUGH R. FULLERTON
J. AMBLER NEWTON

CITY ATTORNEY
RAY DUMETT

THE CITY OF SEATTLE

LAW DEPARTMENT

THOMAS J. L. KENNEDY, CORPORATION COUNSEL

CHIEF CLERK
R. B. McCLINTON

LAW CLERKS
A. C. VAN SOELEN
W. D. COVINGTON
W. L. BAUMGARTNER
J. B. MACDOUGALL

CLAIM AGENT
J. H. DENNIS

March 28th, 1924.

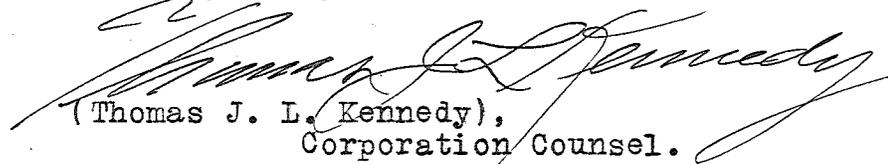
Re: Transmittal of Annual Report
of Law Department for 1923.

The City Council,
Seattle, Washington.

Gentlemen:

Pursuant to the requirements of Section
16, Article XXIV, of the Charter, we have prepared,
and herewith transmit, the Annual Report of the
Law Department for the year 1923.

Yours very truly,


(Thomas J. L. Kennedy),
Corporation Counsel.

TJLK:G
Enc.
cc. Mayor.

parties during the year, however, involving \$115,876.00,
late courts and before the Department of Public Works of Wash-
ington during the year:

ANNUAL REPORT OF THE LAW DEPARTMENT
OF THE CITY OF SEATTLE
FOR 1923.

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 and 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, 1923.

-I-

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

	Pending Dec. 31 1922	Commenced During Year 1923	Ended Dur- ing Year 1923	Pending Dec. 31 1923.
1. Condemnation Suits,	23	15	15	23
Condemnation Suits, Supplementary,	5	12	10	7
Damages for Personal Injuries,	61	58	46	73
Damages other than Personal Injuries,	56	36	37	55
Actions relating to collection of as- sessment rolls,	4	2	5	1
Injunction Suits,	31	20	20	31
Mandamus Proceedings,	6	7	4	9
Miscellaneous Pro- ceedings,	52	22	36	38
Public Service Pro- ceedings,	<u>1</u>	<u>3</u>	<u>2</u>	<u>2</u>
	239	175	175	239

Total actions pending during period of this report, 414

2. <u>Personal Injury Actions:</u>	<u>Number</u>	<u>Amount Involved</u>
Pending December 31, 1922,	61	\$482,178.40
Commenced since December 31, 1922,	<u>58</u>	<u>496,895.25</u>
Total,	119	\$979,073.65
Tried and concluded since Dec. 31, 1922,	<u>46</u>	<u>315,276.20</u>
Actions pending December 31, 1923,	73	\$663,797.45

Of the personal injury actions pending in the department during the year, forty-six, involving \$315,276.20, were tried and finally disposed of. Twenty-three of these

cases resulted in judgments in favor of the City, and in the remaining twenty-three cases, there were recoveries aggregating \$43,835.00, as against \$22,318.00 for the preceding year.

Of the fifty-eight personal injury actions begun during the year, thirty-nine, involving \$353,607.00, were occasioned by accidents occurring in connection with the operation of the municipal street railway system.

3. <u>Damages other than personal injuries:</u>	<u>Number</u>	<u>Amount Involved</u>
Suits pending December 31, 1922,	56	\$796,152.00
Commenced since December 31, 1922,	<u>36</u>	<u>1,146,418.46</u>
Total covering period of this report,	92	\$1,942,570.46
Tried and concluded since Dec. 31, 1922,	<u>37</u>	<u>102,447.61</u>
Pending December 31, 1923,	55	\$1,840,122.85

Of the total of ninety-two cases involving damages other than personal injuries, thirty-seven cases, involving \$102,447.61, were disposed of during the year. In twenty-three 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 \$37,312.41, a \$20,000 judgment being entered in one case, Rainier Heat & Power Co. v. Seattle, involving damages to real property.

4. Injunction Suits:

Of the injunction suits maintained against the City, those classes particularly worthy of note relate to

vacation of streets, gambling devices, dance halls, cabarets, and licenses. One injunction case maintained against the State Department of Public Works, involving telephone rates, was participated in by the City. This case is discussed under Sub-division III.

The Supreme Court, in the case of Taft v. Washington Mutual Savings Bank, et al., 27 Wash. Dec. 412, upheld a city ordinance vacating that portion of an alley over an imaginary horizontal plane sixteen feet above alley grade.

In the case of Real Silk Hosiery Mills, Inc., v. Seattle, et al., the United States District Court for the Western District of Washington, Northern Division, held that the city ordinance regulating peddlers, being a purely revenue measure, could not be constitutionally enforced as against persons engaged in interstate commerce only. Since the existing peddlers' ordinance is in no sense a police power measure, an appeal would have been a useless proceeding.

The case of Ketcham v. Seattle, et al., was instituted in the Superior Court for the purpose of restraining the city officials from interfering with the so-called "gum machines." The case was continued from time to time, but was immediately forced to a hearing upon the present Corporation Counsel assuming office. The machine was so clearly a gambling device that the plaintiff, upon being forced to a hearing, abandoned his suit.

The case of Asakura v. Seattle, 122 Wash. 81, in which our Supreme Court held that the City, under its police

power, could deny pawnbrokers' licenses to aliens, including Japanese, mentioned in our last report, is still pending on writ of error to the United States Supreme Court.

5. Mandamus Proceedings:

One mandamus case, State ex rel. Seattle v. Northern Pacific Railway Company, et al., was of more than ordinary importance, involving the power of the City to compel joint construction by several railroads of a viaduct over their tracks, and to apportion the cost among the companies concerned. From a favorable decision on the City's application, an appeal was taken to the Supreme Court by the "Milwaukee Company," which is still pending.

Another mandamus case, State ex rel. Weyant v. Seattle, was maintained by a city employee, laid off by reason of reduction in force, in order to test the "Veterans' Preference" provision of the Charter and the Civil Service Commission rule providing for lay-offs in the inverse order of efficiency ratings. This case is still pending in the Supreme Court but an early decision is expected.

6. Miscellaneous Cases:

The thirty-six 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 four hearings conducted by the department before the Civil Service Commission, one decision was rendered sustaining dismissal of the employee from service. The other proceedings resulted in the reinstatement of the civil service employee concerned.

Twenty-five minor actions were commenced for the Lighting Department of the City, involving unpaid light and power bills, in which recoveries aggregating \$4,848.67 were sought. Judgments, including costs, were entered in the sum of \$4,250.63, and of this amount \$3,863.75 has been collected. Six claims were filed for the Lighting Department in either estates in bankruptcy or probate proceedings.

During the year, two tax foreclosure cases were filed in court, fourteen cases were tried, leaving no cases pending. As a result of the policy of pressing these tax foreclosure suits, many delinquent tax rolls are being paid up in full.

7. <u>Statement and Investigation of Damage Claims Filed Against the City:</u>	<u>Number</u>	<u>Amount Involved</u>
Claims for damages under investigation December 31, 1922,	388	\$790,131.32
Claims for damages referred to this department for investigation, Dec. 31, 1922, to Dec. 31, 1923,	<u>870</u>	<u>1,328,902.60</u>
	1,258	\$2,119,033.92

Claims disposed of as follows:

	<u>Number</u>	<u>Amount Claimed</u>	<u>Amount Paid</u>
Settled,	287	\$170,959.94	\$44,067.27
Rejected,	<u>379</u>	<u>779,899.55</u>	
	666	\$950,859.49	
Claims pending Dec. 31, 1923,	592	\$1,168,174.43	

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

Amount Involved, \$60,995.00
Amount of Settlement, 6,225.00

Number of street railway accident reports received from Department of Public Utilities and investigated, December 31, 1922, to December 31, 1923, 5,962

Number of circulars and letters mailed in connection with the investigation of foregoing claims and reports, 13,517

8. Garnishments:

During the period of this report, ninety-three writs of garnishment were served upon the City, which were answered. Eighty-five of these writs were against the wages of city employees, and eleven were for miscellaneous articles.

9. Supreme Court:

During the year, there were argued and submitted to the State Supreme Court twenty cases on appeal. Of these, ten cases were decided favorably to the City and nine against the City, and in one case the judgment was modified.

-II-

PUBLIC UTILITIES MUNICIPALLY OWNED.

1. Light and Power:

The department has handled many matters connected

with the affairs of the municipal light and power plant and conducted considerable litigation in its behalf.

In the case of O. L. Willett v. George F. Russell, et al., the plaintiff sought to enjoin work on a substation at Eighth Avenue Northeast and East Seventy-fifth Street, which was being constructed as a part of the Skagit project. The complaint was based upon alleged non-compliance with Chapter 183, Laws of Washington, 1923, requiring published cost estimates to be made in connection with municipal enterprises not constructed under contract. A decree favorable to the City was entered, and the plaintiff has taken the case to the Supreme Court, where the matter is now pending.

We mentioned in the last report that the condemnation of the right of way for the transmission line of the Skagit project across Snohomish County had been temporarily abandoned, pending an appeal from a decision of the Snohomish County Court which would have required us to condemn the entire fee instead of an easement along the proposed right of way. This matter was determined by the Supreme Court in the case of Seattle v. Faussett, 123 Wash. 613, said court holding that the City need not condemn the entire fee but only such easement as might be necessary for its purposes. Following this decision, the condemnation of a right of way across Snohomish County was completed by this department in all cases involving contests. In respect to certain tracts where easements had been secured by deed stipulating that the City might procure the entry of dollar verdicts in re-

spect to the particular property mentioned in the deeds, the Snohomish County Court held that we could not pursue the condemnation proceeding for the purpose of perfecting title to the perpetual easements granted. This matter is on appeal to the Supreme Court in the case of Seattle v. Fritsch.

Condemnation proceedings have been instituted in Skagit County for the purpose of securing a right of way therein. Summons and petitions have been served and trial will be had at an early date.

In addition to actual litigation in respect to this project, we have rendered numerous opinions, attended numerous conferences and drawn numerous resolutions, ordinances, resolutions, deeds, easements, franchises and other instruments pertaining to the subject matter.

The litigation arising out of the Boxley Creek disaster of December 23, 1918, mentioned in previous reports, is still pending. Although the remittitur in the North Bend Lumber Company case has been on file for more than a year, the plaintiffs have not pressed the case to trial.

The case of the Chicago, Milwaukee & St. Paul Railway Company in the District Court came on for hearing in January, 1923, and, after a six weeks' trial, resulted in a disagreement of the jury. No re-setting of the case has been had.

2. Street Railway:

Numerous damage suits arising out of accidents in

connection with the municipal street railway system have been tried during the year.

It was noted in our previous reports that the so-called "specific performance" case, which was instituted by the Puget Sound Power & Light Company as a result of the pendency of the "Asia" case in the Superior Court, had been reversed by the Circuit Court of Appeals and a favorable decree entered for the City. The Company applied to the Supreme Court of the United States for a writ of certiorari in order to review said decision. We interposed a brief opposing the issuance of said writ. The United States Supreme Court, on April 16th, 1923, handed down an opinion in which the said writ was denied. This concluded the "specific performance" case.

We also noted in our last report the pendency in the Supreme Court of the United States of a writ of error directed to the State Supreme Court in the case brought by the Puget Sound Power & Light Company to set aside the tax for 1919 levied on the street railway system purchased pursuant to Ordinances Nos. 39025 and 39069. This matter is still pending and is noted on the United States Supreme Court calendar for February 19th, 1924. The City has little interest in this matter, except its own protection in case the Company should secure a reversal in the Federal Supreme Court.

3. Water:

On behalf of the municipal water system, we have filed, and are serving, Summons and Petition in Cause No.

170523, entitled, "In re Petition of the City of Seattle to condemn, * * a right of way for a pipe line, * * for the diversion of the waters of Honey Creek." This is a condemnation proceeding, having in view the protection of the municipal water supply from pollution, by diverting the waters of Honey Creek away from Lake Youngs, which is intended as an impounding basin for the municipal water supply.

We noted in our last report the institution of a suit to recover damages from the Great Northern and Northern Pacific Railway Companies by reason of the bursting of a watermain over the Fourth Avenue Tunnel as a result of the subsidence of the soil above the same. A compromise agreeable to the interested departments was effected and said suit dismissed.

-III-

PUBLIC UTILITIES PRIVATELY OWNED.

1. Seattle Lighting Company:

Pursuant to ordinance passed during the preceding year, we filed a complaint before the State Department of Public Works complaining of the rates, plant facilities and heating content of the gas furnished by the Seattle Lighting Company. A report was made by an engineer secured by the Department of Public Utilities covering matters involved in the complaint. Since we did not consider the evidence secured sufficient for our purposes, we are endeavoring to se-

cure further evidence in support of our cause of action. This case, which is entitled Seattle v. Seattle Lighting Company, No. 5527, will be heard by the Department of Public Works some time in May, 1924.

2. The Pacific Telephone and Telegraph Company:

Mention was made in our last report of the pendency before the State Department of Public Works of the case of Seattle v. The Pacific Telephone and Telegraph Company, No. 5344, involving the rates and tariffs of the Telephone Company. This case, which involved demands by the City for a reduction in rates and demands by the Company for increased rates in Seattle, Tacoma and Spokane, was decided by the Department of Public Works on March 31st, 1923. Lengthy hearings concerning state-wide telephone conditions were had. A reduction in rates, as well as a blanket reparation order, was denied. The Company's prayer for an increase in rates was also denied. The Telephone Company, instead of suing out a writ of review in the Thurston County Court, as required by the Public Service Commission Law, resorted direct to the Federal Courts, filing its bill of complaint in the United States District Court for the Western District of Washington, Southern Division, in Cause No. 167-E, entitled, The Pacific Telephone and Telegraph Company v. Kuykendall, et al., seeking thereby to restrain interference with its proposed increase in rates. A hearing was had before the statutory "three-judge court," with a view to the securing of a temporary injunction. The temporary injunction having been denied,

the Company appealed to the United States Supreme Court. A motion to dismiss having been interposed as against the Company's bill, the same came on for hearing on December 21st, 1923, and the court at that time made an order dismissing the complaint and rendering judgment for the defendants. From this order the Telephone Company likewise appealed to the Supreme Court of the United States, where both such appeals are now pending and, having been advanced upon the calendar, will be subject to argument early in 1924.

At the time of the commencing of said Federal suit, the Company filed a tariff conformable to one suggested by Mr. Cleland, who wrote a dissenting opinion in the Department of Public Works Cause No. 5344, which necessitated our filing a complaint against said tariff. This was done and the cause, entitled, Seattle v. The Pacific Telephone and Telegraph Company, No. 5547, having come on for hearing, the company withdrew its tariff and an order dismissing the "Cleland Tariff" was entered on behalf of the plaintiff, The City of Seattle. The Company having failed to sue out a writ of review in the main rate case and having gone into the Federal Courts, we sued out a writ of review, entitled, State ex rel. Seattle v. Kuykendall, et al., and The Pacific Telephone and Telegraph Company, Cause No. 8972 of the Thurston County Court. This matter is still pending. Said writ of review case having been made, in part, the basis of an order requiring the Telephone Company to litigate its rates in the State courts, the Company sued out a writ of mandamus before the Circuit Court of Appeals in its Cause No. 4070, entitled,

The Pacific Telephone and Telegraph Company v. Cushman, in order to compel the local District Court to proceed to hear certain motions and to proceed to trial. Pursuant to the writ of mandate, the District Court heard the motion to dismiss above referred to. Conceiving ourselves to be aggrieved by the said writ of mandate, we proceeded to take the same, by writ of certiorari, to the Supreme Court of the United States, where the same was docketed as Cause No. 669 and entitled, Cushman v. The Pacific Telephone and Telegraph Company. The dismissal of the Company's bill of complaint having rendered the certiorari proceedings a moot cause, the same was withdrawn.

In a number of said cases, The City of Seattle is not named as a party, the State Department of Public Works being named as the party to the action, but, in view of the fact that the City was one of the real parties in interest, we appeared in all of said cases of counsel with the Attorney General.

The Telephone Company's franchise expired on July 19th, 1923, and, notwithstanding the pendency of said litigation, the Company made application to the City Council for a new franchise and submitted a franchise ordinance practically unlimited in its terms and without any provision for rates, service or other safeguards of the public interests. We submitted to the City Council a resolution notifying the Company, in substance, that its franchise application would not be considered until its rate litigation was dismissed. This resolution was adopted by the City Council. Just before

the expiration of its "Sunset" franchise, the unexpired franchise secured by the Telephone Company from the old Independent Company, which had approximately three years to run, was assigned by the Pacific Company for the evident purpose of "unloading."

3. Seattle & Rainier Valley Railway Company:

During the early part of the year, a complaint was filed by the Department of Public Works, entitled, Department of Public Works, ex rel. Hugo Kelley, et al., v. Seattle & Rainier Valley Railway Company, Cause No. 5486, involving the rates and service of said company. Although the City was not a party to this action, we were directed by the City Council to appear of counsel for the complainants. This matter came on regularly for hearing and was stormy enough to suit all parties concerned, and thereafter nearly all of the matters in issue were adjusted by conference between the State Department of Public Works and the Company.

-IV-

MISCELLANEOUS BOARD HEARINGS.

1. Zoning Commission:

The Corporation Counsel being constituted legal adviser to the Zoning Commission created by Ordinance No. 40407, an Assistant Corporation Counsel has been detailed to sit in at the numerous regular and special meetings of the

Commission and to advise it from time to time.

2. Building Code Commission:

The Building Code Commission, organized during 1921, continued to function during the year 1923, and an Assistant Corporation Counsel has been detailed to sit in with and to advise said Commission.

-V-

WORK OF THE CITY ATTORNEY.

1. Prosecutions for Violations of City Ordinances:

During the year, the City Attorney disposed of 27,101 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures to the amount of \$216,401.70. In the cases involved, 538 were prosecutions for violation of the liquor ordinances and proceedings upon search warrants, resulting in fines and forfeitures amounting to \$190,586.70. Appeals to the Superior Court were taken in sixty-one cases, of which forty were tried and disposed of, resulting in the collection of fines in the sum of \$3,876.40.

-VI-

O P I N I O N S

During the year, in addition to innumerable con-

ferences with city officials concerning municipal affairs, of which no formal record is kept, this department rendered one hundred fifty-eight written legal opinions upon various questions submitted by the several departments of the city government.

-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, 1922, to December 31st, 1923, one hundred eighty-three ordinances and resolutions.

During the year, 1150 bonds of officials, bidders, depositaries and others were examined and approved.

-VIII-

SERVICE OF PROCESS.

During the year, 2040 services of process were made by our witness clerk, who travelled 12,820 miles by the Ford automobile assigned to this department, making such service at an expense of approximately \$.02½ per mile, practically cutting in two the mileage expense shown by the previous year. The cost of such service of process represents

a saving of thousands of dollars as compared with the cost of the same service if performed by the County Sheriff.

-IX-

MISCELLANEOUS MATTERS.

1. Charter Amendments:

A number of resolutions proposing charter amendments were, on request of the City Council, drawn by this department. Two of these, intended for submission at the general municipal election of 1923, were not adopted by the City Council. Two others, having in view the granting of authority to the Chief Deputy City Comptroller and the First Assistant City Treasurer to act in behalf of their respective principals during their absence or disability, were adopted by the City Council and will appear on the ballot at the general municipal election to be held March 11th, 1924.

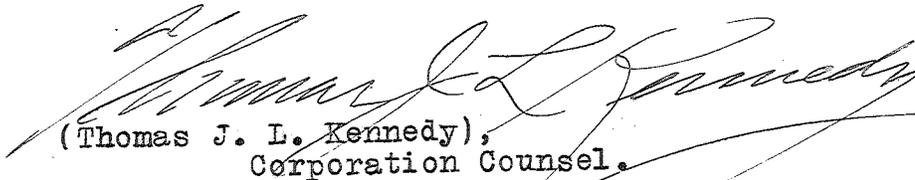
C O N C L U S I O N

In concluding this report, it is proper to express a high degree of appreciation of the industry, efficiency and loyalty of the personnel of this department. The measure of their devotion to the service is not prescribed by the office hours designated in the City Charter. They have

at all times been anxious and willing, during office hours and after office hours, to do anything and everything necessary to the success of the cause and the interests of the City.

Public expression of appreciation is also due the other department heads and the personnel of their departments for their uniform courtesy and consideration in their dealings with this department. They have all shown a commendable spirit of help and co-operation.

Respectfully submitted,


(Thomas J. L. Kennedy),
Corporation Counsel.