

Eighty-Eighth Regular Session

WEDNESDAY, August 17, 1988

The chief clerk makes the following entries under the above date.

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Legislative Council

August 12, 1986

To the Honorable, the Senate:

Enclosed is a copy of the Digest of Council Bills - 1987 Session. I would appreciate it if you would note in the next Senate Journal that this report has been filed in your office.

BONNIE REESE
Secretary

State of Wisconsin
Claims Board

August 8, 1988

To the Honorable the Senate

Enclosed is the report of the State Claims Board covering claims heard on July 19, 1988.

The amounts recommended for payment under \$1000 on claims included in this report have, under the provisions of s. 16.007, Wisconsin Statutes, been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$1,000, and will submit such to the Joint Finance Committee for legislative introduction.

This report is for the information of the Legislature. The Board would appreciate your acceptance and spreading of it upon the Journal to inform the members of the Legislature.

Sincerely,
EDWARD D. MAIN
Secretary

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin on February 29, 1988 upon the following claims:

Claimant	Amount
Joseph Radtke	\$ 4,133.19
Town of Norway	1,356.21
Sealtite Corporation	6,671.37
Allen Kleckner	4,777.13

In addition, the following claims were considered and decided without hearings:

Brown County	27,438.57
Roger Black	322.00
Bobby Dobbs	200.00
James Dugal	432.50
Jeff Fure	58.00
Harry Fisker	58.50

Robin Berg	392.19
John Shanklin	24.68
Horst Lobe	60.00
Kendall Karst	48.30
Jacalyn Bosanac	33.60
Linda Dachel	298.53
Gary Geisler	650.00

THE BOARD FINDS:

1. Joseph Radtke of Milwaukee, as agent for Stephen Murray, who is the assignee of a judgment against William U. Burke in Milwaukee County filed a garnishment against Burke, an attorney who accepts State Public Defender appointments, in the amount of \$105,740.57, on April 25, 1985, naming the state as a garnishee. The Department of Administration admits the state owes Mr. Burke \$4,133.19, but claims the court has no jurisdiction as the state is immune from suit and Mr. Burke is a contractor, not a state employe. The Board concludes this claim should be denied without prejudice. There has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable, not one which the state should assume and pay based on equitable principles. (Member Main not participating.)

2. The Town of Norway in Racine County claims \$1,356.21 in state aids for its municipal water safety patrol unit for 1987. Under s. 30.79, Stats., state aids are available for up to 75% of the net costs directly attributable to the operations and maintenance of municipal water safety patrol units and as a condition of receiving aids, a representative of the town water patrol unit is required to attend boating safety enforcement patrol training sessions. Although the town was notified by the Department of Natural Resources of the schedule for the required training sessions, no representative of the town's water patrol unit attended the required training. Funding authorized by the Wisconsin legislature for payment of state aids for municipalities for water safety patrols operated during 1987 have been disbursed. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles. (Member George dissenting.)

3. The Sealtite corporation of Waukesha claims \$6,671.37 as the balance allegedly due on a contract with the Department of Administration to remove asbestos from the Janesville School for the Visually Handicapped in 1984 and legal fees on the case related to that project. The contract with the Department of Administration was for removal of acoustical gypsum plaster, containing chrysotile asbestos. The state contends that the claimant did not properly satisfy all the contract requirements for the project. Claimant did the basic work of removal, but did not use proper removal and clean up as evidenced by

the asbestos laden dust remaining. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. (Members Main and Wilker not participating.)

4. Allen Kleckner of Platteville, claims \$4,777.13 for crop damage, loss of pasture and replacement cost of fencing allegedly destroyed during the construction of Hwy. 151 in Grant County in 1986 and 1987. The Department of Transportation agreed to pay for the temporary fence which the claimant installed and the permanent fence; however, it is not state policy to pay for maintenance of privately-owned fence, temporary or permanent. The pasture was acquired as temporary limited highway easement; the cattle pass was closed approximately 10 days during construction and the pasture was not restricted for use after construction work ended. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. (Member Schneider dissenting).

5. Brown County claims reimbursement for stand-by legal counsel and legal research by a law clerk which they provided in compliance with the order of the circuit court judge presiding over the cases of State v. Gerald Newman (Case No. 86CR282) and James Newman (Case No. 86CR284). Counsel was appointed to assist the court because neither defendant was represented. Both defendants were not found to be eligible for state compensated counsel because they did not meet the indigency requirements of the State Public Defender. The Board concludes that this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

6. Roger Black, of Gordonville, Texas claims \$322 as reimbursement of his 1986 tax refund withheld by the Wisconsin Department of Revenue for an erroneous assessment against claimant for the 1983 tax year. Subsequently, the Department of Revenue determined the assessment was in error, but can no longer issue a refund due to the two-year statute of limitations. The Board concludes the claim should be paid in the amount of \$307.60, which was the amount of the refund applied as payment. The Board further concludes, under authority of s. 16.007(6m), Stats., the claim should be paid from the Claims Board appropriation s. 20.505(4)(d), Stats.

7. Bobby Dodds, of Elkhorn claims \$200 for uninsured damages to his vehicle allegedly resulting from the road construction on Hwy. 11 near Elkhorn on July 7, 1986. The Department of Transportation maintains that the contractor was responsible at all times for the upkeep of the road for use by local traffic. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officer, agents or employes and this claim is not one for which the state is

legally liable, nor one which the state should assume and pay based on equitable principles.

8. James Dugal, of Cadot claims \$432.50 for repairs to his vehicle, allegedly damaged when a Department of Transportation fleet vehicle backed into his car while it was parked in his driveway on November 10, 1987. The Board concludes the claim should be paid in the amount of \$432.50, based on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., the claim should be paid from the Department of Transportation appropriation s. 20.395(4)(er), Wis. Stats.

9. Jeff Fure, of Madison claims \$58 for replacement of his boots allegedly stolen on February 2, 1988, from the area of his desk at the Department of Administration, State Records Center where he is employed as a motor vehicle operator. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

10. Harry Fisker, of Madison claims \$58.50 for replacement of his eyeglass lens which was damaged on April 14, 1988, when he walked into a mirror mounted on the door of a Department of Transportation van. As a result, the lens received a nonrepairable scratch. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. (Member Main not participating).

11. Robin Berg, Jr., claims \$392.19 as medical expenses incurred resulting from an injury he allegedly sustained on January 12, 1988, when he fell down the stairs in front of Ray Hall on the UW-Stout campus. On the date in question, maintenance staff at UW-Stout took necessary precautions to clear walks and building entrance areas, including those around Ray Hall. Extra checks of these areas were made and appropriate ice and snow-melting materials were applied. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

12. John Shanklin, of Madison claims \$24.68 for replacement of his bicycle lock allegedly damaged by a lawn mower which ran over the lock on April 25, 1988, while his bicycle was locked to a fence on the UW-Madison campus. The Board concludes the claim should be paid on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the Claims Board appropriation s. 20.505(4)(d), Stats.

13. Horst Lobe, of Madison claims \$60 for replacement of his trousers allegedly damaged on May 4, 1988, while he was attending a meeting in connection with his employment at the UW-Madison. The claimant

tore his trousers on a protruding screw while entering a UW fleet vehicle. Due to the Board's change in policy in August, 1987, it will no longer award payment for this type of claim. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

14. Kendall Karst, of Oshkosh claims \$48.30 for replacement of a hood ornament allegedly stolen from his car on March 23, 1988, while it was parked at the Winnebago Correctional Center, where he is employed. The lot is not supervised and there were no witnesses to the incident. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

15. Jacalyn Bosanac, of West Allis claims \$33.60 for repair to her typewriter which was damaged on February 15, 1988, when she allegedly slipped and fell on a patch of ice in the parking lot outside of Cottage 13 at the Southern Wisconsin Center where she is employed. On the day in question, the center's road crew was out sanding and salting. Claimant is a teacher at the center and is not required to bring her typewriter to work. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

16. Linda Dachel, of Cadott claims \$298.53 for damage to her vehicle, allegedly incurred on March 27, 1988, while it was parked in the lot at the Northern Wisconsin Center where she is employed. As the driver of another car backed out of its space, a rope between support posts became caught under that vehicle, causing one of the support posts to rock back and forth and fall onto claimant's vehicle. The driver of the other car left the scene. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

17. Gary Geisler, of Madison claims \$650 for damages to his vehicle on October 9, 1987, allegedly caused by two juveniles on escape status from the Mendota Mental Health Institute. The juveniles have admitted that they broke into claimant's residence and stole his car keys and vehicle. The Board recommends that the claim be paid in the reduced amount of \$500 based on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats. payment should be made from the Department of Health and Social Services appropriation s. 20.435(2)(gk), Wis. Stats.

THE BOARD CONCLUDES:

1. The claims of the following claimants should be denied:

Joseph Radtke
Town of Norway
Sealtite Corporation
Allen Kleckner
Brown County
Bobby Dobbs
Jeff Fure
Harry Fisker
Robin Berg
Horst Lobe
Kendall Karst
Jacalyn Bosanac
Linda Dachel

2. Payment of the following amounts to the following claimants is justified under s. 16.007, Stats.

Roger Black	307.60
James Dugal	432.50
John Shanklin	24.68
Gary Geisler	500.00

GARY R. GEORGE
Senate Finance Committee

MARLIN D. SCHNEIDER
Assembly Finance Committee

RAYMOND P. TAFFORA
Representative of Governor

EDWARD D. MAIN
Representative of Secretary of Administration

WILLIAM H. WILKER
Representative of Attorney General

SENATE CLEARINGHOUSE ORDERS

Senate Clearinghouse Rule 88-57

Relating to variance procedures.
Submitted by Department of Industry, Labor and Human Relations.
Report received from agency, August 15, 1988.
Referred to committee on Labor, Business, Insurance, Veterans' and Military Affairs, August 17, 1988.

Senate Clearinghouse Rule 88-103

Relating to arbitration.
Submitted by Waste Facility Siting Board.
Report received from agency, August 10, 1988.
Referred to committee on Urban Affairs, Energy, Environmental Resources and Elections, August 17, 1988.

Senate Clearinghouse Rule 88-129

AN ORDER to create a shoreland-wetland zoning ordinance for the City of New Berlin.
Submitted by Department of Natural Resources.

JOURNAL OF THE SENATE [August 17, 1988]

Report received from agency, August 16, 1988.

Referred to committee on Urban Affairs, Energy, Environmental Resources and Elections, August 17, 1988.

The committee on Labor, Business, Insurance, Veterans' and Military Affairs reports and recommends:

Senate Clearinghouse Rule 87-129

Relating to establishing uniform methods of determining a cigarette wholesaler's cost of doing business under the state unfair sales act.

No action taken.

Jerome Van Sistine
Chair

The committee on Transportation, Tourism and Conservation reports and recommends:

Senate Clearinghouse Rule 88-35

Relating to sport fishing in inland waters, outlying waters, Wisconsin-Iowa boundary waters, Wisconsin-Minnesota boundary waters and Wisconsin-Michigan boundary waters.

No action taken.

Senate Clearinghouse Rule 88-36

Relating to 1988-89 hunting regulations.

No action taken.

Senate Clearinghouse Rule 88-62

Relating to prohibiting possession of an untagged bear.

No action taken.

Lloyd Kincaid
Chair

The committee on Agriculture, Health and Human Services reports and recommends:

Senate Clearinghouse Rule 87-86

Relating to unprofessional conduct by psychology applicants and licensees.

No action taken.

Senate Clearinghouse Rule 88-12

Relating to standards for the administration of anesthesia by dentists.

No action taken.

Senate Clearinghouse Rule 87-92

Relating to poultry disease control.

No action taken.

Senate Clearinghouse Rule 87-148

Relating to procedures for investigation and hearing and evaluation of foreign physical therapy education.

No action taken.

Senate Clearinghouse Rule 88-49

Relating to denial or termination of medical assistance provider certification.

No action taken.

Senate Clearinghouse Rule 87-176

Relating to examination of chiropractic applicants.

No action taken.

Senate Clearinghouse Rule 87-125

Relating to bottled drinking water and soda water beverages.

No action taken.

Senate Clearinghouse Rule 86-244

Relating to the determination of need for new or expanded placement resources in child care institutions.

No action taken.

Senate Clearinghouse Rule 88-43

Relating to aid to counties for administration of public assistance programs and claims by counties and municipalities for general relief.

No action taken.

Senate Clearinghouse Rule 87-105

Relating to program approval for schools of nursing.

No action taken.

Rodney C. Moen
Chair