

JOURNAL OF THE SENATE

Eighty-Fifth Regular Session

WEDNESDAY, October 20, 1982.

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

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Department of State

October 18, 1982

To the Honorable, the Senate:

I have the honor to transmit to you the following information pursuant to s. 13.695(8):

Yours very truly,
VEL PHILLIPS
Secretary of State

Lobbyist Terminations:

Wheeler, Floyd E., for Vernon Telephone Cooperative, effective July 30, 1982.

State of Wisconsin
Claims Board

October 6, 1982

Don Schneider
Senate Chief Clerk
State Capitol
Madison, Wisconsin

Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering claims heard on September 20, 1982.

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.

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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 September 20, 1982, upon the following claims:

Claimant	Amount
Baraboo Sysco Food Services, Inc.	\$3,294.87
Robert Belongia	1,927.90
Humiston-Keeling, Inc.	5,882.00
Robert Gold	1,386.13
Richard Dommershausen	432.88
Madeline Trotter	9,930.00
Bank of Deerfield	592.00
Rosalie Roh	8,193.00

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

Arthur Beckmark	\$1,260.00
Damon Richardson	115.00
Jacobson's Moving & Storage, Inc.	31.29
Darrell Vaillancourt	4,693.50
Jon Wallace	1,000.00
Ana Dalton Del Fa	530.00
W.H. Pugh Coal Co.	187,250.00
Debra Marx	10.40
Michelle O'Reilly Small	19.97

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THE BOARD FINDS:

1. Baraboo Sysco Food Services, Inc., claims \$3,294.87 for damage to their trailer on February 5, 1982. Damage was sustained when the vehicle of claimant struck a bridge girder in the underpass of the C. & N.W. Railroad on State Highway 136 in Sauk County. The 13' posted clearance at the bridge was inaccurate. The road in that area had heaved due to frost causing a reduction in the clearance by two inches. While there is no showing of negligence on the part of the state, the claim is one which upon equitable principles the state should assume and pay in the reduced amount of \$1,000. The Board further concludes under the authority of s. 16.007(6m), Stats., payment of this claim should be made from the Department of Transportation appropriation s. 20.395(3)(hq), Stats.

2. Robert Belongia, Madison, claims \$1,927.90 for legal expenses incurred for processing his appeal to the State Personnel Commission and the Dane County Circuit Court, relating to the reclassification of his position in 1982. On January 27, 1978, claimant filed a request for reclassification of his position to Personnel Specialist 6, which was denied by the Administrator of the Division of Personnel. Claimant appealed the denial to the State Personnel Commission which issued an order dated June 30, 1981, rejecting the administrator's denial. The Administrator advised the Personnel Commission that he intended to comply with the Order, making claimant's reclassification effective July 15, 1979. Claimant then brought an action for a Writ of Mandamus in the Dane County Circuit Court. On May 17, 1982, the Court issued the Writ of Mandamus. The Board finds that employees who prefer to be represented by counsel when appearing before the Personnel Commission choose to do so at their own expense. The Board further concludes this claim is not one for which the state is legally liable, however, because of the unique situation regarding the issuance of a Writ of Mandamus, the Board finds that the attorney fees incurred in the action before the Circuit Court should be reimbursed at a rate of \$45 per hour, including disbursements in the amount of \$27.90, for an award of \$927.90, based on equitable principles. The Board further concludes that under the authority of s. 16.007(6m), Stats., payment of this amount shall be made from the Department of Employment Relations appropriation s. 20.512(1)(a), Stats. The Court proceedings were unique because they involved an action for the Writ of Mandamus which is not issued by a court except where it is clearly required as a matter of law. Consequently, this decision should not be taken as a precedent indicating the the Claims Board will look favorably on future claims by state employees for attorney

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fees in connection with the court action even where the court finds in favor of the employe. An example would be the review of an administrative decision by a Court pursuant to chapter 227, Stats. A Chapter 227 review would differ from a Writ of Mandamus in that a favorable decision need not be based on a clear legal right in the plaintiff.

3. Humiston-Keeling, Inc., Chicago, Illinois, claims \$5,882.00 as the result of an overpayment in filing articles of incorporation to transact business in the State of Wisconsin pursuant to s. 180.87, Stats. Claimant, an Illinois corporation, filed an application for Certificate of Authority of Foreign Corporation with the Secretary of State which contained incorrect financial information. As a result, claimant paid \$6,110.00 to the state when the correct fee should have been \$228.00. Pursuant to s. 16.007(6)(b)3, Stats., the Board recommends, as an advisory opinion, that the representative of the Department of Administration order payment to claimant in the reduced amount of \$5,682.00, the amount of overpayment less \$200 for state administrative costs, without approval of the Board and without submission of the claim in the form of a bill to the legislature.

4. Robert Gold, Milwaukee, claims \$1,386.13 as the amount of an overpayment made to the Department of Revenue as a result of an assessment issued against him by that agency on September 24, 1979. Claimant had failed to file timely tax returns for the years 1974, 1975 and 1976 and the Department of Revenue issued claimant an estimated assessment for those years. Under section 71.10 (10) (e), Stats., a claim for refund may be made within two years of the date of the assessment notice issued by the Department of Revenue. Claimant filed his tax returns for the years 1974, 1975 and 1976, by October 6, 1981, which was 12 days after the filing deadline of September 24, 1981. There is no showing that negligence by the state caused the damages for which reimbursement is claimed, and the Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

5. Richard Dommershausen, Waupun, claims reimbursement of an apartment security deposit in the amount of \$200; moving expenses in the amount of \$50; and 16 hours overtime pay in the amount of \$182.88, incurred as a result of his alleged illegal termination as an officer at Oakhill Correctional Institute. On June 8, 1981, claimant transferred from Dodge Correctional Institute in Waupun to Oakhill Correctional Institute in Oregon. On July 21, 1981, claimant was terminated from the position at Oakhill Correctional Institute as a probationary employe, for alleged failure

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to meet standards required for an officer. Claimant was restored to his previous position at Dodge Correctional Institute on July 23, 1981. The alleged charges against claimant were never formally proved. Claimant was given the opportunity to be reinstated to his position at Oakhill Correctional Institute effective August 24, 1981, which he declined to accept. The Board concludes that claimant should be reimbursed \$200 for his apartment security deposit, based on equitable principles. The Board further concludes that under authority of s. 16.007 (6m), Stats., payment of this amount shall be made from the Department of Health and Social Services appropriation s. 20.435 (3) (a), Stats.

6. Madeline Trotter, Wauwatosa, claims \$9,930.00 for hospital expenses incurred for her daughter, Laura's, hospitalization in 1979. Laura was admitted to Milwaukee Psychiatric Hospital on an emergency basis in May, 1979. At that time claimant and her husband signed a contract with the hospital concerning payment of the hospital bill. On July 11, 1979, Laura was discharged from the hospital. The hospital and clinic bills amounted to approximately \$12,000, \$2,500 of which was paid by claimant's husband's private insurance. On June 8, 1979, claimant applied for Medical Assistance benefits for Laura which was denied on July 23, 1979. On July 17, 1979, claimant applied for Social Security Income benefits for Laura which was also denied on November 10, 1979. However, based on additional medical information, the Bureau of Social Security Disability Income approved benefits for Laura on February 22, 1980. On August 4, 1980, claimant appealed the denial of Medical Assistance benefits and was advised by letter dated November 25, 1980, from a Department of Health and Social Services hearing examiner that the Wisconsin Medical Assistance program does not cover service for inpatient psychiatric hospital services for individuals between the ages of 21 and 65, except ongoing services may be provided for one between the ages of 21 and 22. Laura's date of birth is August 8, 1957. In 1981, the Milwaukee Psychiatric Hospital sued claimant and her husband for payment of Laura's hospital expenses. Claimant alleges that during the application process for benefits she was never informed that inpatient hospital stays in psychiatric hospitals are not reimbursable under Medical Assistance for those over age 21 and was never advised as to the appropriate agency to seek mental health services for Laura. There is no showing that negligence by the state caused the damage for which reimbursement is claimed, and the Board concludes 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.

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7. Bank of Deerfield claims \$592.00 for a check it cashed on April 4, 1980, but which was returned to it because payment had been stopped on the check approximately April 15, 1980. The original check was dated March 1, 1980, and a duplicate check was issued after the original check was reported as lost. Payment on the original check was stopped when the duplicate check was issued. The Board concludes 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. Rosalie Roh, Madison, claims \$8,193.00 for expenses incurred to develop a group home for Cuban youths for the Department of Health and Social Services in October, 1980. Claimant was advised to have the home ready by December 10, 1980. On December 4, 1980, claimant was informed by the Department of Health and Social Services that the home was no longer needed. By that time, however, claimant had incurred expenses including hiring of personnel for the home and the resignation of her previous employment at Briarpatch. The Board finds that the amount claimed is reasonable and further finds that it would be appropriate for the Department of Health and Social Services to pay the claim from the relevant federal funds.

9. Arthur Beckmark, Siren, claims \$1,260.00 for deer damages to his standing corn crop during early 1982. Section 29.595, Stats., previously authorized the Department of Natural Resources to pay damages caused by deer to crops on agricultural lands provided proper notice was given to the Department. However, the statutory provision enabling payment was repealed by the state legislature by Chapter 34, Laws of 1979, which provided no payment can be made for damages occurring after March 31, 1980. Therefore, the Board feels it cannot honor claims of this type and concludes 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. Damon Richardson, Spring Green, claims \$115.00 for attorney fees, traveling expenses, and a deposit made to Sauk County Court regarding a citation he received from the Department of Natural Resources. The citation alleged that claimant filed an improper application for a hunter's choice permit during 1981. An application was submitted by Damon T. Richardson in 1981, which indicated a hunter's choice permit had been applied for but not received in 1980. A hunter's choice permit had been issued to Damon Richardson the previous year. The 1981 application gave the same address and telephone number as the 1980 application; therefore, a citation was mailed to Mr. Richardson. When the local warden was

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aware that there were two persons with the same name at the same address, he telephoned Mr. Richardson to indicate there would be no prosecution and that the matter would be dropped. Mr. Richardson informed the warden he would not accept that. The Board concludes there is no 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.

11. Jacobson's Moving & Storage, Inc., LaCrosse, claims \$31.29 for damages caused by a wild deer which jumped through a plate glass window on May 24, 1982. Even though legal title to all wild animals in Wisconsin is vested in the state pursuant to s.29.02(1), Stats., mere ownership does not create legal liability for damages done by wild animals. There is no showing of negligence on the part of the state, its officers, agents or employes and the Board concludes 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. Darrell Vaillancourt, Mason, claims \$4,693.50 for damages allegedly inflicted by wild bears to his domestic livestock in July, 1981. Damages include veterinarian expenses, loss of calves, and loss of milk production. Even though legal title to all animals in Wisconsin is vested in the state pursuant to s.29.02 (1), Stats., mere ownership does not create legal liability for damages done by wild animals. There is no showing of negligence on the part of the state, its officers, agents, or employes and the Board concludes 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.

13. Jon Wallace, Madison, claims \$1,000.00 for medical expenses incurred as a result of an injury allegedly sustained while attending a concert of the Shakedown Band at the University of Wisconsin-Madison Memorial Union on October 27, 1978. Claimant alleges that while dancing in the area in front of the stage where the band was performing, he tripped on an electrical cord running from the stage and fell, fracturing his left fibula. There is an insufficient showing of negligence on the part of the state and its employes, and the Board concludes the 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. Ana Dalton Del Fa, Madison, claims \$530.00 for dental expenses incurred in May, 1981, due to incorrect information she was allegedly given by the state regarding insurance. Claimant was employed by the Department of Transportation and on May 4, 1981, became an employe of the University of Wisconsin-Madison Spanish

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Department. At the time claimant began employment with the University she inquired about insurance coverage. Based upon information provided by the Department of Transportation claimant was informed by the University that she had insurance coverage in May, 1981. Claimant made a dental appointment and when the bills were submitted for payment they were rejected because, according to insurance records, claimant's coverage did not begin until June 1, 1981. The Board concludes the claim should be paid in the reduced amount of \$518.63, which reflects the amount of medical expenses less \$11.37, the amount of the May insurance premium, based on equitable principles. The Board further concludes under authority of s. 16.007 (6m), Stats., payment of this amount should be made from the Department of Transportation appropriation s. 20.395 (5) (aq), Stats.

15. W.H. Pugh Coal Company, Racine, claims \$187,250.00 for the rental value of a one-acre tract of land located north of the point where the Root River empties into Lake Michigan from September 1, 1977 to February 15, 1982, at the rate of \$3,500 per month. A claim was previously filed by claimant with the Claims Board for the same matter covering the period of September, 1972 through September, 1977. On April 19, 1982, the Claims Board denied payment of that claim. 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.

16. Debra Marx, Burlington, claims \$10.40 for repair of a necklace which was damaged by a resident of Southern Wisconsin Center, where claimant is employed. On April 14, 1982, a resident of the Center grabbed claimant from behind and caught her chain necklace, which broke when pulled by the resident. The Center's policy warns against wearing necklace type jewelry and during training sessions all new aides are instructed that this type of jewelry will not be reimbursed if damaged by residents. The Board concludes 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. Michelle O'Reilly Small, Racine, claims \$19.97 as the replacement cost of her necklace which was damaged by a patient at the Southern Wisconsin Center where she is employed as an aide. On January 28, 1982, claimant was escorting a patient to his classroom at the Center when he became aggressive and ripped off claimant's necklace, breaking it into several unbound pieces. The Center's policy warns against wearing necklace type jewelry and during training sessions all new aides are instructed that this type of jewelry will not

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be reimbursed if damaged by residents. The Board concludes 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.

THE BOARD CONCLUDES:

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

Robert Gold	Darrell Vaillancourt
Madeline Trotter	Jon Wallace
Bank of Deerfield	W.H. Pugh Coal Co.
Arthur Beckmark	Debra Marx
Damon Richardson	Michelle O'Reilly Small
Jacobson's Moving & Storage, Inc.	

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

Baraboo Sysco Food Services, Inc.	\$1,000.00
Robert Belongia	927.90
Humiston-Keeling, Inc.	5,682.00
Richard Dommershausen	200.00
Rosalie Roh	8,193.00
Ana Dalton Del Fa	518.63

Dated at Madison, Wisconsin, this 6th day of October, 1982.

GERALD D. KLECZKA
Senate Finance Committee

VIRGIL D. ROBERTS
Assembly Finance Committee

MARGARET S. LEWIS
Representative of Governor

EDWARD D. MAIN
Representative of Secretary of
Administration

WILLIAM H. WILKER
Representative of Attorney
General

SENATE CLEARINGHOUSE ORDERS

Clearinghouse Rule 82-39

AN ORDER to repeal NR 110.27, 110.28, 110.29 and 110.30; to renumber NR 110.03 (3) to (20); to amend NR 110.03 (25) and

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(29), as renumbered, 110.08 (1) and (2) and 110.09 (1) (b) 4 and (2) (h); to repeal and recreate NR 110.10 (2), 110.13 to 110.26 and 210.12; and to create NR 110.03 (3) to (7), (9), (16), (17) and (20), 110.06 (4), 110.08 (6) and 110.09 (2) (n), (o), (p) and (q) and (5) (d), relating to the design of sewerage systems.

Submitted by Department of Natural Resources.

Report received from agency, October 13, 1982.

Referred to committee on Agriculture and Natural Resources, October 20, 1982.

Clearinghouse Rule 82-95

AN ORDER to create Ins 6.25 (2) (f), relating to joint underwriting and joint reinsurance associations.

Submitted by Office of the Commissioner of Insurance.

Report received from agency, October 18, 1982.

Referred to committee on Insurance and Utilities, October 20, 1982.

Clearinghouse Rule 82-135

AN ORDER to amend ch. PI 11 (title) and PI 11.01 (1), 11.02 (1) (b) 5, 11.05 (2) (intro.) and (e) 1 and 6, 11.16 (6) (a), 11.17 (6) and 11.19 (1), relating to rules implementing subch. V of ch. 115, Stats.

Submitted by Department of Public Instruction.

Report received from agency, October 15, 1982.

Referred to committee on Education and State Institutions, October 20, 1982.

Clearinghouse Rule 82-142

AN ORDER to amend Ind 9.06 (4); to repeal and recreate Ind 9.02; to create Ind 9.01 (7), 9.07 and 69.10 (3), relating to key/card/code dispensing units and container and associated equipment inspections of the liquefied petroleum and liquefied natural gases code and inspection fees for containers and associated equipment in the fee schedule.

Submitted by Department of Industry, Labor and Human Relations.

Report received from agency, October 13, 1982.

Referred to committee on Labor, Government, Veterans Affairs and Tourism, October 20, 1982.

Clearinghouse Rule 82-157

AN ORDER to amend and revise chs. SEC 3, 4, 5, 7, 32, 35 and 36 and to make diverse other changes in the rules of the office of the commissioner of securities, relating to the operation of ch. 551,

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Stats., the Wisconsin uniform securities law, and ch. 553, Stats., the Wisconsin franchise investment law, with respect to registration exemptions, registration requirements and procedures, securities broker-dealer and investment adviser licensing requirements and procedures, fees and administrative procedure.

Submitted by Office of the Commissioner of Securities.

Report received from agency, October 18, 1982.

Referred to committee on Aging, Business and Financial Institutions and Transportation, October 20, 1982.

Clearinghouse Rule 82-169

AN ORDER to repeal chs. Grp 2 to 14; to create ETF 10.01 and ch. ETF 60, relating to definitions, survivor benefits under the Wisconsin retirement system and group life insurance plans administered by the Department of Employee Trust Funds.

Submitted by Department of Employee Trust Funds.

Report received from agency, October 14, 1982.

Referred to committee on Insurance and Utilities, October 20, 1982.

The committee on State and Local Affairs and Taxation reports and recommends:

Clearinghouse Rule 82-59

AN ORDER to repeal Tax 11.01 (1) (d); to renumber Tax 11.87 (1) (b); to amend Tax 11.01 (1) (a), 11.05 (title), (2) (e), (g) and (i) and (3) (b), 11.08 (1), (2) and (3), 11.10 (4) (b) and (c), 11.16 (3) (b) 1, 11.17 (4) (title) and (4) (a) 1, 11.26 (2) (d) and (e), 11.38 (title), 11.49 (title) and (1) (a), 11.57 (title), 11.66 (title) and (2), 11.69 (5) (a), 11.84 (2) (b) 1 and 2, 11.85 (1) (d) and (2) (a) and (b), 11.87 (3) (a), (b) and (c), 11.97 (title), (2) (b) and (c); to create Tax 11.01 (1) (m), 11.05 (2) (r) and (3) (q), 11.17 (4) (b) 5, 11.26 (2) (f), 11.49 (2) (f), 11.57 (2) (L), 11.87 (1) (b), (c), (d), (e) and (f) and 11.93 (4), relating to interpretation of subch. 3 of ch. 77 of the statutes.

No action taken.

JAMES P. MOODY
Chair