

JOURNAL OF THE SENATE [February 5, 1971]

STATE OF WISCONSIN

Senate Journal

Eightieth Session

FRIDAY, February 5, 1971.

9:00 o'clock A.M.

The senate met.

The senate was called to order by the president pro tempore.

The senate stood for a moment of silent prayer.

The calling of the roll was dispensed with, upon motion of Senator Roseleip, with unanimous consent.

BILLS INTRODUCED

Senate Bill 148

Relating to county permits for junked automobiles accumulated outside city or village limits.

By Senator Steinhilber.

Read first time.

Referred to committee on Transportation.

Senate Bill 149

Relating to state purchase of recycled paper products.

By Senator Risser.

Read first time.

Referred to committee on Natural Resources.

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Senate Bill 150

Relating to distribution of Wisconsin public documents to the library of congress.

By Senators Keppler and Risser; co-sponsored by Representatives Froehlich and Huber, by request of Commission on Interstate Cooperation.

Read first time.

Referred to committee on Interstate Cooperation.

Senate Bill 151

Relating to the membership of the interstate cooperation commission.

By Senators Keppler and Risser; co-sponsored by Representatives Froehlich and Huber, by request of Commission on Interstate Cooperation.

Read first time.

Referred to committee on Interstate Cooperation.

Senate Bill 152

Relating to the duties of the Commission on Interstate Cooperation.

By Senators Keppler and Risser; co-sponsored by Representatives Froehlich and Huber, by request of Commission on Interstate Cooperation.

Read first time.

Referred to committee on Interstate Cooperation.

Senate Bill 153

Relating to the membership of the Interstate Cooperation Commission.

By Senators Keppler and Risser; co-sponsored by Representatives Froehlich and Huber, by request of Commission on Interstate Cooperation.

Read first time.

Referred to committee on Interstate Cooperation.

Senate Bill 154

Relating to disposal of abandoned motor vehicles.

By Senator Kendzierski.

Read first time.

Referred to committee on Transportation.

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Senate Bill 155

Relating to legal responsibility for abandoned vehicles.
By Senator Kendzierski.

Read first time.

Referred to committee on Transportation.

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Claims Board

February 3, 1971.

Mr. William P. Nugent
Senate Chief Clerk
State Capitol
Madison, Wisconsin

Dear Mr. Nugent:

The State Claims Board is submitting the attached report to you in accordance with the provisions of Section 16.007 of the statutes covering claims heard by it.

The amounts recommended for payment under \$500 on claims included in this report have, therefore, under the provisions of the statutes, been paid directly by the Board. The Board is preparing a bill on the award made under the provisions of s. 16.007, Wisconsin Statutes, and will submit it to the Joint Finance Committee for legislative introduction. The award made under the provisions of s. 16.008 has been paid directly to the City of Whitewater.

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 as to the nature of the claims which come before the Board for its consideration.

Sincerely,

DONALD STERLINSKE,
Secretary.

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BEFORE THE CLAIMS BOARD OF WISCONSIN

<i>Name of Claimant</i>	<i>Amount of Claim</i>
1. Mary Kobrzycki -----	\$ 51.00
2. Lillian Cooper -----	
3. Marjorie R. Sylvester -----	2,283.48 + interest
4. Ferdinand Glojek -----	25,000.00
5. Sandra Engelman -----	30.46
6. Moen Photo Service -----	25.00
7. Merrill Walling -----	17.42
8. City of Whitewater -----	5,059.90
9. Monroe County Telephone Company -----	682.33
10. Northern States Power Co. -----	55.25
11. Donald Rudolph -----	390.00
12. Robert D. Lubecke -----	122.37
13. Jeffrey Kroening -----	301,808.90
14. Harold E. Koth -----	50.00
15. William S. White -----	99.84
16. N. M. Isabella, Inc. -----	14,183.15

THE BOARD FINDS:

1. *Mary Kobrzycki*

Mary Kobrzycki claims \$51.00 for loss of wages in the amount of \$18.00 and medical bills not covered by insurance in the amount of \$33.00 resulting from a commercial tent in which she was working falling down upon her at State Fair Park on August 11, 1969. This is a claim which, on equitable principles, the State should assume and pay, but damages of only \$33.00 have been shown.

2. *Lillian Cooper*

Lillian Cooper claims damages resulting from her husband being incorrectly advised by a state employee concerning his retirement benefits. Her husband elected to join the "formula group" of the State Teachers Retirement System under sections 42.244 (1) (a), (2) and 42.246, Stats. Thereafter, on November 1, 1965 Mr. Cooper also elected to transfer to the "combined group" under section 42.241 (12a), Stats. Accordingly, the required deductions for social security were required to begin on January 1, 1966. Deductions erroneously taken in 1964 and 1965 were repaid to

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Mr. Cooper by the Social Security Administration on March 3, 1966. Mr. Cooper applied for a 15-year guaranteed annuity effective July 1, 1966, which was erroneously computed due to the failure of the agency to take sec. 42.246 (e) into account. The error was discovered after Mr. Cooper's demise, and Mrs. Cooper was offered two alternatives by which the overpayment in benefits could be rectified. Mrs. Cooper did not select either alternative, and the overpayment of \$885.96 was subtracted from the "money purchase" value of the correct annuity resulting in reduced payments to her under the 180 payment term at \$323.09.

Mr. Cooper's benefits under the choice he made, even if made on the basis of erroneous information, were determined by the applicable statutory provisions, and this claim is one which the state should not pay.

3. *Marjorie R. Sylvester, as Executrix of the Estate of Selmer A. Sylvester, Deceased*

Marjorie R. Sylvester as Executrix of the Estate of Selmer A. Sylvester, deceased, claims \$2,283.48 plus 5% interest for overpayment of Wisconsin inheritance taxes. Included in the taxable assets of the deceased's estate was a retirement annuity valued at \$35,451.27, on the erroneous understanding that this was not a qualified plan. The fact that this was a qualified plan was not discovered until after the period for amending the Notice and Order Determining Inheritance Tax had terminated (s. 72.15 (11), Stats.). The Board concludes that the claim is one which on equitable principles the State should assume and pay, except for the interest. Of the allowed claim of \$2,283.48, the county's share is \$131.74 and should be charged back against Dane County.

4. *Ferdinand Glojek*

Ferdinant Glojek claims \$25,000 in damages for medical expenses, disability, loss of earnings and pain and suffering resulting from a fall on the grounds of the Peninsula State Park golf course. The claimant was contributorily negligent by failing to use the walk provided, and by using a short cut over a slippery grassy area which the State had not made available for use by the public as a pathway. The surrounding area had been sprinkled by state employees prior to the fall. State employees took claimant to the hospital.

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There is insufficient evidence of any causal negligence on the part of the State, its employees or officers, and the Board concludes the claim is not one which, on equitable principles, the State should assume and pay. The accident occurred on August 27, 1969.

5. *Sandra Engelman*

Sandra Engelman claims \$30.46 damages resulting from water damage to her books and supplies while stored in the University of Wisconsin residence halls. The damage to the claimant's books would have been minimized if the flooded basement storage area made available to the claimant had been mopped up sooner. The claim is one which, on equitable principles, the State should assume and pay, but damages of only \$20.00 have been shown. The loss occurred sometime between August 15–September 23, 1970.

6. *Moen Photo Service, Inc.*

Moen Photo Service, Inc. claims \$25.00 because of the loss by theft on or about July 7, 1970 of a phonograph from the School of Nursing Delivery Room of the University of Wisconsin at Madison where it had been shipped in error. There is no evidence of causal negligence on the part of any officer or employee of the State, and the Board concludes that the claim is not one which, on equitable principles, the State should assume and pay.

7. *Merrill G. Walling*

Merrill G. Walling claims \$17.42 for damages to a pair of shoes caused by inspecting the damaged areas and supervising the cleanup crews after the bombing of the Mathematics Research Building of the University of Wisconsin on August 24, 1970. The claimant is an area custodial supervisor with the University of Wisconsin assigned to that area of the campus, and there is no showing that his duties required the use of special shoes. The Board concludes that the claim is not one which, on equitable principles, the State should assume and pay.

8. *City of Whitewater*

The City of Whitewater claims \$5,059.90 for extraordinary police services provided to Wisconsin State Univer-

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sity-Whitewater during the Burrows Incident, Cambodian-Kent Incident and the Old Main Fire on February 27, March 2-3, and May 5-9, 1970. The Board is satisfied that the services were performed as claimed, and the statement of charges is proper under sec. 16.008, Wis. Stats.

9. *Monroe County Telephone Co.*

The Monroe County Telephone Co. claims \$682.33 in damages caused by a truck of the Wisconsin National Guard on July 18, 1970 at Kent and East Division Streets in Sparta, Wisconsin which caught the claimant's cable while coming from the roadway through the field. The Board concludes that the claim is not one which, on equitable principles, the State should assume and pay.

10. *Northern States Power Co.*

The Northern States Power Co. claims \$55.25 in damages caused on July 18, 1970 when a Wisconsin National Guard truck struck a telephone pole near Kent and East Division Streets, Sparta, Wisconsin. This pole and cable in turn struck Northern States Power Co. pole number 21BB33 causing damage to the street light unit located on this pole. The Board concludes that the claim is not one which, on equitable principles, the State should assume and pay.

11. *Donald G. Rudolph*

Donald G. Rudolph claims damages of \$925.45 consisting of \$645.45 in medical bills and \$280.00 for 7 workdays lost because of an appendectomy on February 20, 1969. Insurance paid \$535.45 of his medical bills. On February 19, 1969, while on Wisconsin National Guard duty the claimant had an appendicitis attack which the Board finds was unrelated to an earlier incident of the same day when the claimant lost his footing and fell on his rifle butt. The Board concludes that the claim is not one which, on equitable principles, the State should assume and pay.

12. *Robert D. Lubecke*

Robert D. Lubecke, an employee of the Wisconsin Department of Military Affairs, claims damages of \$122.37 to his automobile on August 27, 1970 while parked in the

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Richards Street Armory Parking Lot, Milwaukee, Wisconsin caused by an unknown hit and run vehicle. There is no evidence of any causal negligence on the part of the State, its employees or officers, and the Board concludes the claim is not one which, on equitable principles, the State should assume and pay.

13. *Jeffrey Kroening*

Jeffrey Kroening, a minor, by His Guardian Ad Litem, Anthony J. Dentici and Marvin W. Kroening claims \$301,-808.90 in damages arising out of an auto accident on July 25, 1969 at the intersection of State Highways 13-73 and State Highway 80. Said minor was a guest passenger in the vehicle of Wesley J. Felice which was involved in an accident with a vehicle driven by Walter R. Semenok, who was not within the scope of his duties with the Wisconsin National Guard at the time of the accident. The claim is not one which the State should assume and pay.

14. *Harold E. Koth*

Harold E. Koth claims damages of \$50.00 for a line that was cut through his property at Route 1, Tomahawk, Wisconsin in a mapping survey operation by the Division of Highways in the summer of 1970. The claim is one which the State should assume and pay.

15. *William S. White*

William S. White claims damages of \$99.84 to his automobile on March 31, 1970 on the North-South Highway 41 Expressway near West State Street, Milwaukee, Wisconsin. Claimant's 1967 Chevrolet was following a State Highway Department truck which was painting a white stripe down the highway. As claimant drove over the wet paint, some of it sprayed unto the lower part of his automobile. This is a claim which, on equitable principles, the State should assume and pay, but damages of only \$35.00 have been shown.

16. *N. M. Isabella, Inc.*

N. M. Isabella, Inc. claims additional compensation of \$14,183.15 because of highway project work occurring between November 6-23, 1968 on the West Madison Beltline

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near Mineral Point and Gilbert Roads. The claimant had no contract with the State. The State's contract was with Wingra Stone Co., Inc. and the State did not agree to any assignment of rights to the claimant. The claim is not one which the State should assume and pay.

THE BOARD CONCLUDES:

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

Lillian Cooper
Ferdinand Glojek
Moen Photo Service, Inc.
Merrill G. Walling
Monroe County Telephone Co.
Northern States Power Co.
Donald G. Rudolph
Robert D. Lubecke
Jeffrey Kroening
N. M. Isabella, Inc.

2. Payment of the following amounts to the following claimants, respectively, is justified under the provisions of sec. 16.007 (6), Wis. Stats.:

Mary Kobrzycki -----	\$33.00
Sandra Engelman -----	20.00
Harold E. Koth -----	50.00
William S. White -----	35.00

3. Payment of \$5,059.90 to the City of Whitewater is proper under the provisions of sec. 16.008, Wis. Stats.

THE BOARD RECOMMENDS:

That payment of \$2,283.48 be made to Marjorie R. Sylvester, as Executrix of the Estate of Selmer A. Sylvester, deceased.

Dated at Madison, Wisconsin, this 28th day of January, 1971.

WALTER G. HOLLANDER,
Chairman, Senate Committee on
Finance

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GEORGE MOLINARO,
Chairman, Assembly Committee on
Finance

DONALD STERLINSKE,
Representative of Commissioner of
Administration

ALLEN WILLIAMS,
Representative of Governor

ALLAN P. HUBBARD,
Representative of Attorney General

MESSAGE FROM THE ASSEMBLY

By Thomas P. Fox, chief clerk.

Mr. President:

I am directed to inform you that the assembly has concurred in:

Senate Bill 21,
Senate Bill 22,
Senate Bill 24,
Senate Bill 25,
Senate Bill 26,
Senate Bill 64 and
Senate Bill 65.

Upon motion of Senator Kendziorski the senate adjourned until 10:00 A.M., Tuesday, February 9, 1971.