

JOURNAL OF THE SENATE [January 3, 1977]

STATE OF WISCONSIN

Senate Journal

Eighty-Second Regular Session

MONDAY, January 3, 1977.

11:00 A.M.

The senate met.

The senate was called to order by the president of the senate.

Prayer was offered by Reverend Elmer A. Neitzel, Pastor of Mount Calvary Lutheran Church, Milwaukee.

The senate remained standing and the president of the senate led the senate in the pledge of allegiance to the flag of the United States of America.

The roll was called and the following senators answered to their names:

Senators Bablitch, Berger, Bidwell, Braun, Chilsen, Dorman, Flynn, Frank, Goyke, Harnisch, Hollander, Keppler, Kleczka, Knowles, Krueger, LaFave, Lorge, McKenna, Martin, Maurer, Morrison, Murphy, Parys, Petri, Risser, Sensenbrenner, Swan, Theno and Thompson -- 29.

Absent -- Senators Cullen, Knutson and Peloquin -- 3.

Absent with leave -- None.

INTRODUCTION OF RESOLUTIONS

Senate Joint Resolution 74

Relating to the life and public service of Kenneth S. White.

By Senator Knowles cosponsored by Representative Early.

Read.

Considered as privileged.

Adopted by unanimous rising vote.

Ordered immediately messaged.

COMMITTEE REPORTS

The committee on Senate Organization acting under Senate Rule 20 (1) reports and recommends the following nominations to committee for appointment by the Senate:

To the Rural Area and Community Development Council
Senators Harnisch and Chilsen.

FRED A. RISSER
Chairman

The question was: Adoption of the committee report?
Adopted.

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Department of State

December 27, 1976.

To the Honorable, the Senate

Senators:

The following lobbyist was reported as having cancelled his registration for the duration of the 1975-1976 legislative session. These terminations were transmitted to you in my letters of October 12, 1976 and November 30, 1976. The terminations are listed on pages 2523 and 2524 of the Senate Journal. A review of our records has revealed that these cancellations were transmitted to you in error. Please retract both of the following:

Hanson, Darryl, Negative Aids Coalition, as of October 12, 1976.

Hanson, Darryl D., Negative Aids Coalition, as of September 30, 1976.

Thank you for your assistance in this matter.

Sincerely,
DOUGLAS LAFOLLETTE
Secretary of State

JOURNAL OF THE SENATE [January 3, 1977]

State of Wisconsin
Claims Board

December 21, 1976

Glenn Bultman
Senate Chief Clerk
State Capitol
Madison, Wisconsin 53702

Dear Mr. Bultman:

Enclosed is the report of the State Claims Board covering claims heard on November 12, 1976.

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.

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

BEFORE THE
CLAIMS BOARD OF WISCONSIN

The Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin, on November 12, 1976, upon the following claims:

<i>Claimant</i>	<i>Amount</i>
1. William Rothwell-----	\$ 8,000.00
2. Alfred Ferguson-----	1,800.00
3. Laurence Standridge-----	3,000.00
4. Classified Insurance-----	2,307.98
5. Louise Cooper-----	65,000.00

In addition, the following claims were considered without a hearing:

6. Louise Simonek-----	700.00
7. Richard Gosling-----	211.13
8. Loretto Winiarski-----	240.00
9. Gerhard Starck-----	33.98
10. Timothy J. Willis-----	39.00

JOURNAL OF THE SENATE [January 3, 1977]

In addition, the following claim, previously heard on October 12, 1976, was decided:

11. Concordia College of Milwaukee, Inc.
& Badger Mutual Insurance Co. ----- 36,730.15

1. *William Rothwell*

William Rothwell, formerly of Madison, Wisconsin, claims \$8,000.00 for five months salary from the University of Wisconsin-Madison at the rate of \$1,600.00 per month from June through October, 1976. Claimant was employed as acting head hockey coach from August 1, 1975, through May 31, 1976, under the terms of a written contract signed by the claimant and director of intercollegiate athletics on October 6, 1975, and approved by the vice-chancellor of the Madison campus on December 10, 1975. Claimant received \$1,600.00 per month for ten months under the terms of the contract, which specifically provided that the appointment was temporary and that notice of termination be given at least 30 days prior to May 31, 1976, if the contract was not to be renewed. Proper notice of termination was given at the end of April, 1976. Claimant received other employment on August 15, 1976. The grounds upon which the claimant seeks recovery are based upon rules adopted by the University of Wisconsin System, effective on November 1, 1976, and set forth in U.W.S. 10.05(1)(a) and (2) of the Administrative Code. These rules provide for the termination of a fixed appointment upon six months notice, and failure to give proper notice extends the fixed appointment for the period required under the notice provisions. It is the position of the Claims Board that these rules were not applicable to the claimant's appointment, because he was in the category of employees (coaches and specialists) the new rules were not intended to cover. These rules did not amend the specific terms of his contract. The claim is denied.

2. *Alfred R. Ferguson*

Alfred R. Ferguson, Oshkosh, Wisconsin, claims \$1,800.00 for services performed above and beyond those for which he received a salary as an associate professor of English at the University of Wisconsin-Oshkosh. Claimant alleges he was promised \$1,800.00 for his services on the special project in February, 1975. In June, 1975, before claimant had begun any work on the project, he was offered a written contract of \$1,028.00 for the project. Under the circumstances, the most claimant could be expected to receive for the project would be the \$1,028.00 tendered in June, 1975, before he performed any services. However, claimant did not perform the

JOURNAL OF THE SENATE [January 3, 1977]

services which were called for under the terms of the proposed contract. Claimant's teaching assignments during the fall term were compensated through his regular salary payments. If those teaching assignments were "above and beyond" those normally accepted, it appears that claimant performed those services because he was motivated by a desire to achieve improved academic status. Claimant has not made a showing that he performed services which would entitle him to additional compensation. The claim is denied.

3. *Laurence Standridge*

Laurence Standridge, Madison, Wisconsin, claims \$3,000.00 for damages and expenses arising from an incident at Mendota Mental Health Institute on August 30, 1974. Claimant was in an auto accident on July 5, 1972, and since that time has had recurrent spells of depression and bizarre behavior. He developed a dependency on drugs and alcohol and was admitted to Mendota Mental Health Institute on August 23, 1974, under heavy sedation to alleviate violent tendencies. He was given tranquilizers and released from seclusion on August 27, 1974. On August 30, 1974, he was sitting in the day room at Mendota when he stood up, yelled and fell flat on his face to the floor with convulsions lasting several seconds. He was given immediate medical attention. As a result of the fall he broke five front teeth, and needed extensive dental care which subsequently was performed at his own expense at a cost of \$576.00. Claimant never had a seizure before or since this incident, and there is no showing that the State was responsible for the seizure resulting in this injury. The State used reasonable care and diligence in the treatment of the claimant. The facts are not clear as to whether the claimant could have or would have received the required dental care at the State's expense. Under the circumstances, the Board concludes the expense of \$576.00 should be paid on equitable principles. The balance of the claim, including an additional \$50.00 dental expense subsequently incurred when the claimant removed the dental plate and damaged it, is denied.

4. *Classified Insurance*

Classified Insurance, Milwaukee, Wisconsin, claims \$2,307.98 subrogation damages resulting from a fire at a building of its insured at 10628 W. Dakota #111, West Allis, Wisconsin, on February 17, 1975. The fire was started by a 17 year old foster child on runaway status. The child was properly placed by the State in a hospital for the mentally disturbed. The facility was not operated by the State. The child escaped from a locked ward and was absent for three days. Every reasonable effort was made to find him. He started the fire because he was cold. There is no showing

JOURNAL OF THE SENATE [January 3, 1977]

of negligence by the State, and the Board concludes the claim is not one for which the State is legally liable, nor one the State should assume and pay on equitable principles.

5. *Louise Cooper*

Louise Cooper, Lodi, Wisconsin, claims \$65,000.00 for fifteen years of service between 1946-1961 improving the State of Wisconsin within a 150 mile radius of Rice Lake, Wisconsin. Claimant and her husband completed various projects for which they were paid in full. However, it is the position of the claimant that the services she performed were worth much more than what she received under the terms of the original contracts. Since the claim relates to services performed 15-30 years ago, which services were fully compensated for at that time, the Board concludes the claim is not one for which the State is legally liable nor one which the State should assume and pay on equitable principles. The claim is denied.

6. *Louise C. Simonek*

Louise C. Simonek, West Allis, Wisconsin, claims \$700.00 for medical expenses, pain and inconvenience resulting from an alleged incident on August 13, 1974, when she tripped and fell on the sidewalk at State Fair Park's Greenfield Avenue exit. The incident is not reported in the files of the State Fair Park Police Department or those of the West Allis Police Department. The general area does not have any defective sidewalks. The claimant's medical expenses have been paid by her insurance company. The Board finds there is no showing of negligence on the part of the State, and concludes that the claim is not one for which the State is legally liable nor one which the State should pay on equitable principles. The claim is denied.

7. *Richard A. Gosling*

Richard A. Gosling, Green Bay, Wisconsin, claims \$211.13 for personal articles lost in a fire on February 20, 1976, at his cell at the Wisconsin State Reformatory. There is no allegation the State was responsible for starting the fire, but only that the State was negligent in putting it out. However, the Board finds the State acted in a prudent and reasonable manner to put out the fire. The Board concludes the claim is not one for which the State is legally liable, nor one which the State should assume and pay on equitable principles. The claim is denied.

8. *Loretto Lee Winiarski*

Loretto Lee Winiarski, Madison, Wisconsin, claims \$240.00 for services performed from April 26, 1976, through June 18, 1976, as

JOURNAL OF THE SENATE [January 3, 1977]

a public information specialist. She was hired at \$860.00 per month, but later she was informed that she would be paid only \$740.00 per month for the two months. The individual who employed her did promise her the higher rate, but misquoted the salary through inadvertence and without authority. Claimant already had performed substantial services for some time when she was informed of her employer's mistake. Although the State may not be legally liable for the claim, the Board concludes the claim should be paid on equitable principles.

9. *Gerhard Starck*

Gerhard Starck, Sheboygan, Wisconsin, claims \$33.98 for damages to his windows at 1802A North Ninth Street on February 24, 1976, when a foster child placed in a foster home nearby threw ice balls through the windows. The Board's position is that the State is not an insurer for damages caused by the negligent acts of children placed in foster homes. There is no showing of negligence on the part of the State, 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 on equitable principles. The claim is denied.

10. *Timothy J. Willis*

Timothy J. Willis, Racine, Wisconsin, claims \$39.00 for broken glasses damaged while cutting grass where he was employed at Southern Colony, on June 28, 1976. The lawn mower stuck, and this caused the claimant to stumble and fall and break his glasses. There was no personal injury to the claimant, and thus he was not entitled to workmen's compensation benefits under sec. 102.01(2)(d), Stats., and sec. 102.03(1)(c) 2., Stats., nor is payment authorized under sec. 46.062, Stats. The Board concludes the claim is not one for which the State is legally liable, nor one the State should assume and pay on equitable principles.

11. *Concordia College*

Concordia College of Milwaukee, Inc. claims \$20,055.15, and its insurer, Badger Mutual Insurance Co., claims \$16,675.00 for damages to a building owned by the college resulting from a fire on January 1, 1973, at 3117 W. Highland Blvd., Milwaukee, Wisconsin. The college has received the \$16,675.00 from its insurer. An action has been commenced in the Milwaukee County Circuit Court relating to this matter, and it is the State's position in that action that the Circuit Court is without jurisdiction to hear the matter. At the time of the fire, the college had leased the building to Clinicare Corporation, which in turn had subleased the building to the Wisconsin Department of Health and Social Services for use as a "half way" house.

JOURNAL OF THE SENATE [January 3, 1977]

Because of a misunderstanding concerning working assignments on January 1, 1973, four persons were left unsupervised for a four hour period from 11:30 a.m. to 3:30 p.m. on the premises of the building. Three of the persons were just under 18 years of age, and the fourth person was just over 18 years of age. The 18 year adult was taken to the police station after the fire for questioning concerning the possibility of arson, but no charges were brought and he was released. It is not known how the fire started.

It is suggested that because empty beer and liquor bottles were found on the premises that unsupervised drinking could have contributed to the fire being started. However, this is only speculation, and there is evidence that the empty bottles were part of a collection and used for decoration. There is no evidence that drinking contributed to the fire being started.

The building was insured for a lesser amount than its full value because the owner only wanted to insure the mortgaged indebtedness of the building. Although there were no immediate plans to tear the building down, the building was earmarked for destruction as funding became available under the college's long range planning program.

The building was known as McKinley House and was used as a licensed group foster home. The persons in the home were being prepared to accept adult responsibilities. They were not delinquents. Consequently, even though they were normally supervised, they were not in as much need of constant supervision as other children placed in other foster homes. Their need was more for group counselling services rather than strict supervision.

The Board finds the State had no contractual obligation which would require payment of the claim. Nor is there a showing of negligence on the part of the State, its officers, agents or employees, which would require payment of the claim. The Board concludes the claim is not one for which the State is legally liable, nor one which the State should assume and pay on equitable principles. The claim is denied.

JOURNAL OF THE SENATE [January 3, 1977]

THE BOARD CONCLUDES:

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

**William Rothwell
Alfred Ferguson
Classified Insurance
Louise Cooper
Louise Simonek
Richard Gosling
Gerhard Starck
Timothy J. Willis
Concordia College of Milwaukee, Inc.
and Badger Mutual Insurance Co.**

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

**Laurence Standridge ----- \$576.00
Loretto Winiarski ----- 240.00**

Dated at Madison, Wisconsin, this 15th day of December, 1976.

**GERALD D. KLECZKA
Senate Finance Committee**

**GEORGE MOLINARO
Assembly Finance Committee**

**EDWARD M. PARSONS
Representative of Governor**

**EDWARD D. MAIN
Representative of Secretary of
Administration**

**ALLAN P. HUBBARD
Representative of Attorney
General**

**State of Wisconsin
Elections Board**

To All To Whom These Presents Shall Come:

I, Gerald J. Ferwerda, Executive Secretary of the State Election Board of the State of Wisconsin, do hereby certify that at a special election held on the second day of November, A.D., 1976, Warren D. Braun (Democratic), whose post office address is 4904 West

JOURNAL OF THE SENATE [January 3, 1977]

Woodlawn Court, Milwaukee, was duly elected a State Senator in the Eleventh Senate District, to succeed Wayne F. Whittow, resigned for the residue of the unexpired term ending on the first Monday of January, 1979, as appears from the official certificates of the Board of State Canvassers, on file in this office.

**IN TESTIMONY WHEREOF, I
have hereunto set my hand and
affixed the official seal. Done in
the City of Madison, this 10th day
of December, A.D., 1976.**

**GERALD J. FERWERDA
Executive Secretary**

On Wednesday, December 8, 1977, Senator Braun took and subscribed the oath of office which was administered by Judge Robert W. Landry.

MOTIONS UNDER SENATE RULE 96

A certificate of congratulation by Senator Berger for the **CUSTER HIGH SCHOOL DEBATE TEAM** on the occasion of placing second in the varsity division of the Milwaukee public schools debate tournament.

A certificate of commendation by Senator Lorge and Representatives Conradt and Roth for **EARL O. WOLFF**, on the occasion of his retirement.

A certificate of congratulation by Senator Berger and Representative Wahner for the members of the **JOHN MARSHALL HIGH SCHOOL DEBATE TEAM** on the occasion of placing first in the junior varsity division of the Milwaukee public schools debate tournament.

JOURNAL OF THE SENATE [January 3, 1977]

A certificate of commendation by Senator Thompson for **BOB HALVERSON** on the occasion of his retirement from legislative service.

A certificate of congratulation by Senator Berger and Representative Kirby for the members of the **JAMES MADISON HIGH SCHOOL DEBATE TEAM** on the occasion of taking third place in the junior varsity division, and second place in the senior novice division in the Milwaukee Public schools debate tournament.

A certificate of commendation by Senator Hollander for **ELSIE KOCH** on the occasion of her retirement from legislative service.

A certificate of congratulations by Senator Lorge and Representative Byers for Oscar Wiesman on the occasion of his being named Weyauwega's Outstanding Businessman of the Year.

The above motions under senate rule 96 were read and adopted enmasse.

Upon motion of Senator Bablitch the senate adjourned sine die.

11:30 A.M.