

JOURNAL OF THE SENATE

Eighty-Third Regular Session

FRIDAY, December 29, 1978.

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

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Claims Board

December 22, 1978.

Don Schneider

Senate Chief Clerk

State Capitol

Madison, Wisconsin 53702

Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering claims heard on December 14, 1978.

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

2545

JOURNAL OF THE SENATE
BEFORE THE
CLAIMS BOARD OF WISCONSIN

The Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin, on December 14, 1978, upon the following claims:

<i>Claimant</i> -----	<i>Amount</i>
1. Melvin Jarchow-----	\$4,362.47
2. Wayne L. Turks-----	6,290.07
3. Gerald Schiefelbein-----	150.00
4. Donald Amacher-----	558.05
5. M.P. Marion-----	1,000.00
6. Jim LaRose-----	2,337.58
7. Joseph Orlando-----	800.00
8. Steven Janczak-----	6,258.00

In addition, the following claims were considered and decided without a hearing at an executive session on December 14, 1978:

9. Larry Dole-----	356.88
10. Donald & Debra Norman-----	123.50
11. Ramona Ofstie-----	46.80
12. Patricia Fellner-----	46.61
13. James Matthews-----	57.35
14. William Shepard-----	15.90
15. Virginia Artibee-----	400.00
16. Richard Gussert-----	155.00
17. Linda Ross-----	128.56
18. Gail Thompson-----	50.00
19. Frank Parise-----	159.57
20. Steve Meyerson-----	60.00
21. David Gervais-----	41.34
22. Marie Schutz-----	540.72
23. Democratic Party of Wisconsin-----	92.00

In addition, the claim of John Moses, previously heard on September 25, 1978, was decided at the executive session of December 14, 1978.

THE BOARD FINDS:

1. *Melvin Jarchow*

Melvin Jarchow, Madison, claims \$4,362.47 for attorney fees and disbursements related to his representation at hearings of the Senate Committee on Agriculture, Aging and Labor. The hearings were on

JOURNAL OF THE SENATE

the subject of unemployment insurance compensation adjudication and held on January 4, 5, 6, 10, 19, 20, 23, and 31, and February 8, 1978. Claimant, who was the former chief of hearings for unemployment compensation and approximately thirty examiners appeared at the hearings at the chairman's request. Approximately ten of the examiners testifying at the hearings were represented by a member off the staff of the Attorney General's Office at the request of the Department of Industry, Labor and Human Relations, because of threatened civil action against them by claimant. Claimant also requested representation, but his request was denied by DILHR. The final report of the Senate Committee does not mention the claimant by name, essentially exonerating him. An action also was commenced in circuit court and appealed to the state supreme court to obtain affidavits containing charges against the claimant. The Board recommends the claim should be paid on equitable principles, particularly in view of the fact that the hearing examiners involved in the hearings received legal counsel at state expense. Member Main did not participate.

2. *Wayne L. Turks*

Wayne L. Turks, West Allis, claims \$6,290.07 for damages to his property at 8200 West National Avenue, West Allis, for a new driveway (\$2,500), new sidewalks put in by the City of West Allis (\$1,495.12 \$257.45 \$1,037.50) and miscellaneous flood damages (\$1,000.00). The alleged damages occurred in 1975 in relation to a state highway project. The state acknowledges responsibility for a change in grade resulting in damages of \$2,500 to claimant for his new driveway. Claimant has received \$1,3775 from the state for damages to date, and the Department of Transportation will pay him an additional \$635. The Claims Board will pay him the balance of \$490. However, the Board finds the state is not responsible for the assessments by the City of West Allis for new sidewalks, and that any flood damage should be the responsibility of Zignego Contractors for improper installation of drain tiles.

3. *Gerald Schiefelbein*

Gerald Schiefelbein, Kewaskim, claims \$150 for damage to his car on February 15, 1978, when traveling on Highway 28 just west of St. Michaels. The road has been settling around a culvert in that area for some time and creates a bump of varying degree depending on the maintenance. Although the state took immediate steps to repair the bump, the condition of the highway at that location has been a continuing problem. Claimant asserts that its condition has

JOURNAL OF THE SENATE

deteriorated again since the last repair. The Board concludes the claim should be paid on equitable principles.

4. *Donald Amacher*

Donald Amacher, Monroe, claims \$558.05 for legal services and disbursements defending a criminal warrant for criminal defamation issued by the Green County District Attorney on January 27, 1977, upon the complaint of a state trooper. When the state trooper approached the district attorney in this regard, hee was not acting in accordance with instructions from, or policies of, the state, but only in his own individual capacity. These criminal charges were dismissed. Prior to the filing of the criminal complaint, the state trooper had arrested the claimant for speeding, and after the speeding charges were dismissed, the claimant complained about the trooper's enforcement methods to the trooper's superiors who concluded he had not misbehaved. 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.

5. *M.P. Marion*

M.P. Marion, Racine, claims \$1,000 for fifty color slides and a slide carousel lost by the University of Wisconsin-Parkside on or about August 3, 1977, when applying for a job. Claimant is an artist, and these slides were the basis for her continuing professional progress, obtaining employment, and represented the personal record of her career. A supporting affidavit from a third-person expert supports a value in excess of the amount claimed. The Board concludes the claim should be paid on equitable principles.

6. *Jim LaRose*

Jim LaRose, Milwaukee, claims \$2,337.58 for legal expenses incurred in a discharge action resulting in his reinstatement by the State Personnel Board on July 3, 1974. The majority of the Board finds that ordinarily, and in this case, there is no urgent need for legal representation when appearing before the State Personnel Board. Employees who prefer to be represented by counsel chose to do so at their own expense. In this action twelve charges were brought against claimant, four of which were sustained but found to be insufficient for discharge purposes. There was no finding of bad faith for bringing the charges. 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. Hubbard, dissenting; Fox, not participating.

JOURNAL OF THE SENATE

7. *Joseph Orlando*

Joseph Orlando, Crivitz, claims \$800 for deer damage to his hay crop in 1977. Claimant was misled by a letter from the DNR which turned down a request for damages first occurring on April 1, 1977, because not filed in the required ten days. The letter could be interpreted to foreclose the claimant from filing a claim for other damage in 1977. The Board finds that all of claimant's damages were not related to his first claim, and that he should receive 80% of his claim on equitable principles.

8. *Steven Janczak*

Steven Janczak, Beaver Dam, claims \$6,258 for deer damage to his Christmas tree crop. Claimant's damage occurred in January-March 1978, but he did not file his claim until June 30, 1978. Claimant believes the ten-day notice requirement should not apply to Christmas tree crops, although his suggestion to extend the requirement to thirty days would not have enabled him to file a timely claim in this instance where his claim was more than six months late. The purpose of timely notice is to enable the DNR to take curative actions to minimize the deer damage. There do not appear to be any equitable considerations distinguishing this case from others where the statutory ten-day requirement was not met. 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. Members Kleczka and Fox, dissenting.

9. *Larry Dole*

Larry Dole, Tomahawk, claims \$356.88 for car damage occurring on April 24, 1978, when two students on escape status from Lincoln Hills School stole claimant's car and damaged same. The Department of Health and Social Services exercised reasonable care for the juveniles at the school and notified the authorities immediately after discovering the escape. There is no showing of negligence on the part of the state, its employes or agents. 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. Member Fox, dissenting.

10. *Donald A. Norman*

Donald A. Norman, Irma, claims \$123.50 for damage to his daughter's car and charges for towing his van on April 9, 1978, caused by five students on escape status from Lincoln Hills School. There is no showing of negligence on the part of the state, its employes or agents. The escaped juveniles physically overpowered two counselors who reported the escape to the authorities

JOURNAL OF THE SENATE

immediately. 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. Member Fox, dissenting.

11. *Ramona Ofstie*

Ramona Ofstie, Kansasville, claims \$46.80 for tire damage to her car on July 14, 1977, resulting from the strike at Southern Wisconsin Center. The Board determines the depreciated value of the tire was \$43.44 and concludes payment in that amount is justified on equitable principles.

12. *Patricia Fellner*

Patricia Fellner, Union Grove, claims \$4666.61 for car damages while driving on the back road at Southern Wisconsin Center on April 25, 1978. The general state of disrepair of the back road was common knowledge, and the defects plainly visible to claimant. 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.

13. *James Matthews*

James Matthews, Milwaukee, claims \$57.35 to reimburse his travel costs for returning to work two days early from vacation on July 6, 1977. Claimant was 370 miles from his work headquarters at the time. Claimant would have incurred such costs under any circumstances. Prior to leaving on vacation he was aware of the possibility of returning early because of the threatened strike. 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.

14. *William Shepard*

William Shepard, Burlington, claims \$15.90 for a broken car antenna. Damages were caused by a resident of Southern Wisconsin Center on February 1, 1978, while under the direct supervision of the state. The Board concludes the claim should be paid on equitable principles.

15. *Virginia Artibee*

Virginia Artibee, Milwaukee, claims \$400 because the title issued by the Department of Transportation indicated a 1970 Toyota was a 1972 Toyota. Claimant is being sued by the purchaser of the car. Because Toyotas have no key in the VIN numbering sequence, a check for consistency could not be made. The 1970 Toyota had been registered in another state as a 1972 Toyota, and the application for registration in Wisconsin certified the vehicle a 1972 Toyota.

JOURNAL OF THE SENATE

The previous title accompanied the application. There is no basis for holding the state liable under these circumstances, 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.

16. *Richard Gussert*

Richard Gussert, Clintonville, claims \$155 for personal property destroyed when he parked his squad cruiser to assist another trooper making an arrest on June 17, 1978. Claimant's cruiser was vandalized and burned to the ground, destroying claimant's personal items in the cruiser. The Board concludes claimant should be reimbursed for items helpful to claimant in the performance of his work such as sunglasses, a magnetic case for glasses, magnetic clips and a plug-in spotlight. However, the Board concludes claimant's CB radio and a box of carbine shells were personal items which were not sufficiently helpful to claimant in the performance of his duties to merit reimbursement by the state. The Board concludes the claim in the reduced amount of \$40 should be paid on equitable principles.

17. *Linda L. Ross*

Linda L. Ross, Salute St. Marie, Michigan, claims \$128.56 for car damages to her 1971 Cricket and a motel bill on March 11, 1978, while traveling on Highway 8 between Princeton and Headford Junction. The highway was adequately posted as being under construction with loose gravel and construction signs, contrary to claimant's assertions. 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.

18. *Gail Thompson*

Gail Thompson, Sun Prairie, claims \$50 for a pantsuit which claimant asserts obtained a streak of grease on it when she used a restroom on Highway 51 south of Westfield on May 16, 1978. The restroom was posted with a "Do Not Enter" sign because it was being repaired on that date. Claimant entered the restroom through a door from which a "Do Not Enter" sign had been removed, although she had seen another door posted with a sign not to enter the room. The state took reasonable steps to protect the claimant from damaging her clothing, 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.

19. *Frank Parise*

Frank Parise, Madison, claims \$159.57 for a guitar case, phonograph records and a shag carpet damaged on September 23,

JOURNAL OF THE SENATE

1978, when a water pipe broke and caused his room in Ogg Hall to become flooded. There is no evidence of negligence on the part of the state, its employees or agents indicating prior knowledge that the break would occur. The Board concludes the depreciated value of the property is \$100 and that said amount should be paid to claimant on equitable principles.

20. *Steve Meyerson*

Steve Meyerson, Brown Deer, claims \$60 for auto damages on April 15, 1978, when a malfunctioning gate fell on his car at the University of Wisconsin-Milwaukee union parking lot. The lowest estimate for damages was \$56.16, and the Board recommends payment of this amount on equitable principles.

21. *David Gervais*

David Gervais, Plover, claims \$41.34 for damages to his home on May 5, 1978, caused by fifteen kindergarten children who were invited guests from the Gesell Institute at UW-Stevens Point. The damage was to a patio screen door through which the children were going in and out. There is no evidence of adequate supervision of the children, including the claimant's three-year old son, 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.

22. *Marie Schutz*

Marie Schutz, Wauwatosa, claims \$540.72 for an overpayment of inheritance taxes in her husband's estate due to the overvaluation of the taxable estate. The mistake was discovered after the probate court had jurisdiction to correct the error. The Department of Revenue agrees that the amount involved is correct, and the Board concludes the claim should be paid on equitable principles.

23. *Democratic Party of Wisconsin*

The Democratic Party of Wisconsin claims \$92.00 for damage caused by vandalism to its property at the State Fair Park during the 1978 fair. Claimant asserts there is not adequate police protection provided. The police patrol the grounds twenty-four hours per day, give reasonable protection, but cannot be everywhere at the same time. The Board finds there is no showing of negligence on the part of the state, its agents or employes, and concludes that the claim is not one for which the state is legally liable, nor one which the state should assume and pay on equitable principles.

24. *John R. Moses*

John R. Moses, Madison, claims \$12,360.73 for reimbursement of legal expenses arising from his unlawful removal from office by the

JOURNAL OF THE SENATE

Board of Veterans Affairs on May 20, 1977. As the result of claimant's legal actions, the state supreme court ordered claimant reinstated to his office of Secretary of the Department of Veterans Affairs. Friends of the claimant voluntarily paid for \$4,778.99 of the claimed expenses. Claimant's out-of-pocket legal expenses were \$7,581.74, and the Board recommends this amount be paid to him on equitable principles. Member Main, dissenting.

THE BOARD CONCLUDES:

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

Donald Amacher
Jim LaRose
Steven Janczak
Larry Dole
Donald and Debra Norman
Patricia Fellner
James Matthews
Virginia Artibee
Linda Ross
Gail Thompson
David Gervais
Democratic Party of Wisconsin

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

Wayne L. Turks	\$490.00
Gerald Schiefelbein	150.00
M.P. Marion	1,000.00
Joseph Orlando	640.00
Ramona Ofstie	43.44
William Shepard	15.90
Richard Gussert	40.00
Frank Parise	100.00
Steve Meyerson	56.16
Marie Schutz	540.72

THE BOARD RECOMMENDS:

1. Payment of \$4,362.47 to Melvin Jarchow, Madison, for legal expenses related to his representation at hearings of the Senate Committee on Agriculture, Aging and Labor held in January and February of 1978.

JOURNAL OF THE SENATE

2. Payment of \$7,581.74 to John R. Moses, Madison, for reimbursement of his out-of-pocket legal expenses related to being reinstated as Secretary of the Department of Veterans Affairs after his unlawful removal from office on May 20, 1977, by the Board of Veterans Affairs.

Dated at Madison, Wisconsin, this 22nd day of December, 1978.

GERALD D. KLECZKA
Senate Finance Committee

VIRGIL D. ROBERTS
Assembly Finance Committee

THOMAS P. FOX
Representative of Governor

EDWARD D. MAIN
Representative of Secretary of
Administration

ALLAN P. HUBBARD
Representative of Attorney
General

CHIEF CLERK'S REPORT

The chief clerk records:

Senate Bill 91
Senate Bill 409
Senate Bill 688

No further action pursuant to **Assembly Joint Resolution 12**.