

JOURNAL OF THE SENATE

Eighty-Fourth Regular Session

WEDNESDAY, October 22, 1980.

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

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Claims Board

October 20, 1980.

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 September 22, 1980.

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

BEFORE THE
CLAIMS BOARD OF WISCONSIN

The Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin, on September 22, 1980, upon the following claims:

<i>Claimant</i>	<i>Amount</i>
Carl Jacobsen	\$30,811.00

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City of Neenah	4,692.74
Richard & Mildred Campbell	775.38
W.M. Montgomery	5,983.76
Dorothy Witte	60,000.00

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

Irvin Clemmens	1,196.00
Roger Teske	1,205.84
Ervin Martens	409.38
George Kruschke	243.80
George Kruschke	83.80
Carl Orlando	2,250.00
Henry Schlecht	135.72
Carolyn Morrisett	428.00
Andrew Lind	111,000.00
Donald Crockett	226.03
Robert Seelig	307.00
Dr. Dell Kaiser	124.00
Carol Batcher	29.00
Randall Grimm	19,794.77
Harry Johnson	1,575.00
Ave Marie Bie	72.58
John Beswick	85.00
Jeffrey Fuller	98.28
Roy Mita	40.00
Bank of Luxemburg	2,110.80

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THE BOARD FINDS:

1. Carl Jacobsen, of Neenah, claims \$30,811.00 for damages resulting from contamination of his drinking water well which claimant alleges was caused by two licensed landfills owned by Bergstrom Paper Company and Allied Chemical Company. Extensive scientific testing of the well water was performed by the Department of Natural Resources, the U.S. Environmental Protection Agency, the State Laboratory of Hygiene and private consultants, which indicated that the water was not contaminated and did not exceed any state or federal drinking water standards nor was there any other proof of contamination from landfills. The claimant has provided no further expert testimony to substantiate his speculations or to refute the Department the Natural Resources' evidence. The Board concludes there has been 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.

2. City of Neenah, claims \$4,692.74 for payment of state aid for its municipal water safety patrol. State statutes require that a statement of costs and receipts incurred in the operation of a water safety patrol unit must be filed with the Department of Natural Resources on or before January 31 of the year following the year in which they are incurred in order to qualify for the state aid. The Department of Natural Resources' records indicate that a set of forms for filing for state aid was sent to the City of Neenah on August 31, 1978; however, the forms for the 1978 boating season were not submitted by the City of Neenah until February 13, 1979. The Claims Board recommends that all future forms for state aid for municipal water safety patrol be sent out by the Department of Natural Resources by certified mail. The Board concludes there has been 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.

3. Richard and Mildred Campbell, of Madison claim \$775.38 for refund of Wisconsin state income taxes for the years 1973 and 1974. Mr. Campbell's Wisconsin State Teachers Retirement income was incorrectly included in income for the years commencing with 1973 and claimant met the qualifications whereby this income would be exempt from Wisconsin income taxation under the provisions of s.71.03(2) (d), Wis. Stats. However, the years 1973 and 1974 are closed to adjustment in accordance with s.71.10(10)(bn), Wis. Stats., which provides that no refund may be made of income taxes

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paid unless claim therefor was filed within 4 years of the date such return is due. The Board concludes there has been 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.

4. Mr. and Mrs. Edward Gagnon, of Luxemburg, claim \$396.48 for an assessment of Wisconsin sales tax plus interest due on a mobile home they purchased in March, 1978. The bank where the mobile home was registered did not inform claimants that a sales tax was due when they purchased the mobile home. The Department of Revenue did not discover Mr. and Mrs. Gagnon had failed to pay the Wisconsin sales tax on their mobile home until early 1980, at which time an assessment of \$396.48, which included interest, was sent to claimants. The Board recommends the Department of Revenue, through administrative actions, consider some relief with respect to the two years interest as claimants had no knowledge that a sales tax was due until 1980. 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.

5. Ward Montgomery, of Minnetonka, Minnesota claims \$5,983.76 for cost overruns during the course of a contract with a maximum amount of \$167,600.00 he had with the Wisconsin Council on Criminal Justice from October, 1974 through September, 1979. Further increased payments were not provided for in the contract; however, claimant's total billing exceeded the amount of the contract by \$5,983.76. The Board concludes there has been 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.

6. Dorothy Witte, of Burnett, claims \$60,000.00 for one-third of her lost salary for 10 years, in order to provide care for her husband who is severely disabled caused by injuries he received during the riot at the Waupun State Prison in July, 1976, where he was employed. Claimant's husband currently qualified for \$685.22 per month from Worker's Compensation, \$511.51 per month under S.66.191, Wis. Stats., and also Social Security Disability payments. 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.

7. Irvin Clemmens, of New Richmond, claims \$1,196.00 for deer damage to his corn crop and hay bales during February, 1980. Damages amounted to 285 bushels of corn at \$2.25 per bushel and six 1200 pound bales of hay at \$25.00 each. The Department of Natural

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Resources determined the claimant failed to harvest the crops in accordance with normal agricultural procedures for that area pursuant to s.29.595, Wis. Stats., and also had his land posted against hunting and trespass contrary to s.29.595, Wis. Stats. 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. Roger Teske, of Algoma, claims \$1,205.84 for damages to his drain tile system due to an increased water level control structure which was constructed by Robert Claussen, of Alaskan Motor Inn, pursuant to a permit issued by the Department of Natural Resources. The permit was issued on February 5, 1973 after a 2-day hearing was held to discuss the effect of the diversion of the lake levels. 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.

9. Ervin Martens, of West Bend, claims \$409.38 for reimbursement of the difference between the regular property tax for the year 1978 and the 40c per acre which would have been due if claimant's land had been entered under the Woodland tax law. Claimant did not apply to have his land entered under the Woodland tax law until January 1978. Section 77.16 Wis. Stats., requires that all applications for real estate entered under the Woodland tax law be received prior to May 1 of each calendar year in order to be processed for entry and become effective the following January 1. The Claims 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. With respect to the claim for reimbursement for the difference between the regular property tax for the year 1979 and the 40c per acre which would have been due had the Department of Natural Resources not erred in entering the eligible land under the Woodland tax law, the Board recommends this claim should be paid in the reduced amount of \$177.10 based on equitable principles.

10. George Kruschke, of Camp Douglas, claims \$83.80 and \$243.80 for deer damages to his soybean and corn crops. Claimant failed to furnish timely notice to the Department of Natural Resources pursuant to s.29.595, Wis. Stats. The Board concludes these claims are not claims for which the state is legally liable, nor ones which the state should assume and pay based on equitable principles.

11. Carl Orlando, of Crivitz, claims \$1,100.00 for deer damages to his hay field during April 30, 1979 through July 14, 1979 and \$1,150.00 deer damage to his hay field from July 16, 1979 through

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October 22, 1979. Each claim involves a loss of the equivalent of 1,000 bales of hay. Claimant filed notice of continuing deer damage for the first claim on May 8, 1979. Wildlife management personnel from the Department of Natural Resources investigated the damage on several occasions to determine the actual amount of deer utilizing the fields at night. The Board concludes the claimant should receive \$41.04 in full settlement of his first claim, based on equitable principles. With regard to the second claim, claimant failed to file a damage claim and notice of continuing damage required by s.29.595, Wis. Stats. 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. Henry Schlecht, of Minocqua, claims \$135.72 for reimbursement for the difference between the regular property taxes for 1979 and the amount that would have been due had the eligible land been properly entered under the forest tax law with the Department of Natural Resources. The Board concludes the difference between the amount which was actually paid by the claimant, or \$127.72, should be paid based on equitable principles.

13. Carolyn Morrisette, of St. Paul, Minnesota, claims \$428.00 for recording fees, an unspecified amount for phone calls and reimbursement for the difference between the regular property tax for 1980 and the amount which would have been due had claimant's land been entered under the woodland tax law. Claimant's contract under the woodland tax law expired at the end of 1979. The Department of Natural Resources sent a renewal notice to claimant; however, because the Department was not informed of claimant's change of address the renewal card was not received in time and the land was declassified from the woodland tax law. 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.

14. Andrew Lind, of Nebagamon, claims \$10,000.00 for loss of earnings; \$1,000.00 for medical expenses and \$100,000.00 for personal injuries for a total claim of \$111,000.00 for damages claimant sustained on January 11, 1978 when his vehicle collided with a car being driven by an employe of the Department of Health and Social Services. The Board concludes this claim should be denied and recommends that the Attorney General's Office and the Office of Risk Management continue to handle this matter, charging any settlement against the Risk Management liability fund.

15. Donald Crockett, of Neillsville, claims \$226.03 for the loss of personal property from the Mendota Mental Health Institute.

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When a patient comes into the institution a record is kept in his file of all the clothing he brought with him. Patients are encouraged to check their valuables or other personal property with the institute's business office. However, there is no record of the items claimant alleges to have lost since he did not check them in with the business office. 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.

16. Robert Seelig, of Winnebago, claims \$307.00 for the loss of his stereo at the Winnebago Mental Health Institute. Claimant loaned his stereo to another patient, Mr. Paul Thomas, at the institute and on May 5, 1980 claimant learned that Mr. Thomas had taken the stereo off the ward as his property. The Institute does not assume the responsibility for items retained by the patients, and the stereo was never turned over to the institution staff for safekeeping. 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. Dr. Dell Kaiser, of Horicon, claims \$124.80 for the loss of a coat from the Waupun State Prison Dental Clinic Locker room. The incident was reported to the prison security office on July 7, 1978. There is insufficient evidence showing negligence by the state, its agents, officers 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.

18. Carol Batcher, of Milwaukee, claims \$29.00 for damage to her slacks caused by an exposed spring in a chair in the Department of Health and Social Services, Probation and Parole Office on August 8, 1979. The Board concludes this claim should be paid based on equitable principles.

19. Randall Grimm, of Reedsville, claims \$19,794.77 for damages arising from an auto accident on September 19, 1979 on U.S. Highway 10 in Calumet County. The claim is composed of \$9,794.77 for damages to the truck, \$2,500.00 for cost of labor and installation of truck parts, and \$7,500.00 for loss of profit. Claimant was driving west on Highway 19. A state trooper vehicle pulled over another vehicle ahead of claimant and parked the patrol car crosswise on the highway, an acceptable procedure authorized under s.346.03(2)(a), Wis. Stats. Claimant veered off the road to avoid the patrol car and the truck in which claimant was driving overturned in the ditch. A complete title history according to the Department of Transportation files, does not show the truck as being owned by the claimant. The Board concludes there has been no showing of

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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.

20. Harry Johnson, of Neenah, claims \$1,575.00 for loss of a sign which was removed from his property by the Department of Transportation. The Board recommends payment of this claim in the reduced amount of \$900, based on equitable principles.

21. Ave Marie Bie, of Madison, claims \$72.58 for damages to a leather travel bag and contents which were burned in the trunk of a State Trooper vehicle on September 21, 1979 when she was traveling on official business to Milwaukee. The burning was caused by a tar-like substance that was sprayed in the trunk of the vehicle at the factory. This substance apparently heated enough to cause the damage to the garment bag and its contents. The Board voted 3 to 2 in favor of paying this claim. However, section 16.007(6), Stats., provides that such claims can be paid only upon a unanimous vote of the Board. Consequently, this claim is denied upon failure of a unanimous vote.

22. John Beswick, of King, claims \$84.00 for the loss of a radio from his dormitory room at the University of Wisconsin-Oshkosh on April 15, 1980. The Board concludes there has been 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.

23. Jeffrey Fuller, of Brookfield, claims \$98.28 for the loss of his down-filled winter parka from the University of Wisconsin Memorial Union basement locker room on October 26, 1979. There is insufficient evidence showing 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.

24. Roy Mita, of Madison, claims \$5 for the loss of money on October 31, 1978, and \$10 for the loss of money and \$25 for the loss of a calculator on January 22, 1980, which claimant left in his desk at the Department of Justice in the Loraine Building. The Board concludes there has been no showing of negligence on the part of the state, its agents, officers or employes and 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.

25. The Claims Board originally heard the claim of the Bank of Luxemburg on May 22, 1978, which claim was denied. Claimant has now petitioned the board for re-hearing. The Board concludes that the petition for re-hearing should be denied.

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THE BOARD CONCLUDES:

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

Carl Jacobsen
City of Neenah
Richard and Mildred Campbell
Mr. and Mrs. Edward Gagnon
W.M.Montgomery
Dorothy Witte
Irvin Clemmens
Roger Teske
George Kruschke
George Kruschke
Carolyn Morrisette
Andrew Lind
Donald Crockett
Robert Seelig
Dr. Dell Kaiser
Randall Grimm
John Beswick
Jeffrey Fuller
Roy Mita
Bank of Luxemburg
Ave Maria Bie

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

Ervin Martens	\$177.10
Carl Orlando	41.04
Henry Schlecht	127.72
Carol Batcher	29.00
Harry Johnson	900.00

Dated at Madison, Wisconsin this 20th day of October, 1980.

GERALD D. KLECZKA
Senate Finance Committee

VIRGIL D. ROBERTS
Assembly Finance Committee

LAURIE ANN McCallum
Representative of Governor

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EDWARD D. MAIN
Representative of Secretary of
Administration

WARD L. JOHNSON
Representative of Attorney
General

SENATE CLEARINGHOUSE RULES

Clearinghouse Rule 80-125

A rule to create Chs. Pers 1 to 32 and 34, relating to the rules of the Division of Personnel of the Department of Employment Relations.

Submitted by Department of Employment Relations.

Report received from agency, October 17, 1980.

Referred to committee on Agriculture, Labor and Local Affairs, October 22, 1980.

Clearinghouse Rule 80-137

A rule to renumber Phar 3.04(2)(a) and (b); and to create Phar 3.04(2) (a), relating to the active practice of pharmacy.

Submitted by Department of Regulation and Licensing.

Report received from agency, October 20, 1980.

Referred to committee on Human Services, October 22, 1980.

Clearinghouse Rule 80-209

A rule to create PI 11.32(7) and 11.345, relating to the M-team procedures specific to suspended learning disabled children and the learning disabilities definition and identification criteria.

Submitted by Department of Public Instruction.

Report received from agency, October 21, 1980.

Referred to committee on Education and Revenue, October 22, 1980.

The committee on Natural Resources and Tourism reports and recommends: proposed
referred

Clearinghouse Rule 80-101

A rule to create Ch. NR 28, relating to wild plants.

No action taken.

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Clearinghouse Rule 80-121

A rule to repeal NR 20.04(8)(a) 1 a, 26.05(51)(a) and 26.06(26) (a) 3; to renumber and amend NR 20.02(1)(d); to amend NR 20.03(1) (intro.), (1)(f) 1 and 3 and (1)(q) 2, 20.06(1)(b) 21, 24 and 64, 20.07(1)(a) and 20.09(3)(e); and to create NR 20.03(1)(f) 5, 20.04 (7)(e), 26.12(59)(b), 26.16(51)(a) and 26.27(1)(16)(a), relating to 1981 fishing regulations.

No action taken.

THOMAS W. HARNISCH
Chair