

Eighty-Sixth Regular Session

WEDNESDAY, July 25, 1984

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

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Department of Natural Resources
July 9, 1984

To the Honorable the Legislature

The enclosed Findings of Fact, Conclusions of Law and Order, and Report to the Legislature, are submitted to you pursuant to sections 59.971 and 87.30, Wisconsin Statutes, which require the Department to refer to each house of the Legislature, under section 227.108, Wisconsin Statutes, and Order by which the Department proposed to adopt shoreland zoning regulations for a county.

The proposed Order was not submitted to the Legislative Council Rules Clearinghouse for review because the Order is, under the terms of section 87.30, Wisconsin Statutes, to be treated as an administrative rule only for the purpose of review of by standing committees, and not for any other purpose.

C.D. BESADNY

Secretary

Read and referred to committee on Energy and Environmental Resources.

State of Wisconsin
Claims Board

July 17, 1984

Don Schneider
Senate Chief Clerk
Madison, Wisconsin

Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering claims heard on June 28, 1984.

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

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin on June 28, 1984, upon the following claims:

Claimant	Amount
Helen Becker	\$??
Barneveld State Bank	7,103.49
Ruby Markham	5,480.00
James Behr	5,292.50
Jennifer Behr	15,000.00
Jackie Williams	25,000.00
Wis. Private Sector Initiative Program, Inc.	300,000.00
Catherine & Lawrence McDonald	170,718.68

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

George Reynolds	\$ 142.72
Carol Stollenwerk	82.00
Brian Roherty	133.25
Dale Hawkinson	19.50
Michael Stevenson	979.42

THE BOARD FINDS:

1. Helen Becker of Madison claims an undetermined amount of interest on her retirement benefit which had been incorrectly computed by the Department of Employee Trust Funds from April 23, 1976 to October 1, 1981. In 1981, the Department of Employee Trust Funds discovered that an error had been made in the computation of claimant's annuity. Claimant is entitled to a money purchase annuity rather than a formula benefit because the purchase annuity is the larger formula amount. The Department of Employee Trust Funds sent claimant a check for the amount withheld for the period of error. The Board concludes the claim should be paid in the amount of \$200, based on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., payment should be made from the Claims Board appropriation s. 20.505(4)(d), Stats.

2. Barneveld State Bank claims \$7,103.49 for attorney fees and expenses incurred as the result of a counterclaim filed against them on December 2, 1981. Claimant sued Jerry and Marcia Wenger for the foreclosure of a real estate mortgage on January 12, 1981. The Wengers counterclaimed against claimant alleging negligence in the processing of a Wisconsin Department of Veterans Affairs loan and also breach of the Federal Truth in Lending Act in the processing of that same loan. Claimant alleges under s. 45.79(1), Stats., it was acting as an agent of the State while processing the loan and therefore the state should have provided legal counsel to claimant upon notice of the counterclaim. The Wengers did not receive a loan from the Department of Veterans Affairs and therefore, the

Department of Veterans Affairs did not have any involvement with the mortgage presented to the Wengers by claimant. 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. Ruby Markham of Madison claims \$5,480.00 in dental expenses and for pain and suffering resulting from a fall in the Capitol rotunda on April 13, 1978. Claimant alleges falling as a result of a slightly concave floor surface whereby she turned her ankle and fell to the floor striking her face. The area was inspected by State Protective Services and found to have a 3/16" depression with no sharp edges. The Board concludes there is an insufficient 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 & 5. James and Jennifer Behr of South Milwaukee claim \$5,292.50 for past and future medical expenses and \$15,000.00 for past and future pain, suffering, disability and disfigurement relating to an injury which occurred on October 2, 1983, at a wayside rest area on Interstate I-94 near the Lake Mills exit. The injury occurred when claimant, Jennifer, tripped over a three inch diameter pipe sticking out of the ground approximately one and one-half feet, causing a serious cut to her leg requiring 18 sutures. The Board concludes there is an insufficient 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. Jackie Lee Williams of Milwaukee claims \$25,000.00 as compensation for his alleged wrongful arrest and imprisonment in the Milwaukee County Jail from February 16, 1983 to July 14, 1983, on the charge of armed robbery. Claimant was released when another individual admitted to committing the offense. Claimant alleges that the state should have investigated his claimed innocence which would have resulted in his earlier release from wrongful incarceration. Section 775.05, Stats., provides for the relief for a person for wrongful conviction and imprisonment. It is conceded by the claimant that his claim does not fall within the requirements of s. 775.05, Stats., in that he was not convicted of the crime for which he was imprisoned. Based on the current state law, the Board concludes that his 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. Wisconsin Private Sector Initiative Program, Inc., of Madison, Wisconsin, claims \$300,000.00 for damages arising out of contracts and agreements made under the Comprehensive Employment and Training Act with the Department of Industry, Labor and Human Relations. Claimant alleges the breach of a fiscal year 1983 1.1 million dollar contract by the Department of Industry, Labor and Human Relations. The claimant

and the state agree that the claim should more appropriately be dealt with in circuit court and the claim is denied by the Claims Board so that it may be litigated in circuit court.

8. Catherine and Lawrence McDonald of Darlington, Wisconsin, claim \$170,718.68 for uninsured medical expenses, loss of income, pain and suffering, loss of society and companionship, future loss of income, cost of hired help and other miscellaneous expenses incurred as the result of a surgical procedure performed on Catherine at University Hospital on June 24, 1981. During the course of the surgery, a surgical sponge was left in Catherine's back and was not discovered until December, 1981. Following the first surgery claimant complained of back pain and numbness. When the sponge was discovered, claimant underwent another operation for removal of the sponge. Claimants allege that the sponge was and still is the cause of numbness and pain experienced by Mrs. McDonald. Claimants filed a claim under s. 893.82, Wis. Stats., which was denied because it was not filed within the 120 day time limit. The 120 day time limit bars this claim from being brought in court. The University of Wisconsin has paid the cost of the surgery for removal of the surgical sponge from the claimant's back. The Board recommends that the claim be paid in the reduced amount of \$100,000.00 based on equitable principles. The Board further recommends under authority of s. 16.007(6m), Stats., payment should be made from the Department of Administration Risk Management appropriation s. 20.865(1)(fm), Stats.

9. George Reynolds of Oregon, Wisconsin, claims \$142.72 for vehicle damage on March 15, 1984, when a piece of ice fell from the transmitter tower onto his truck at the WERN transmitter site where he is employed by the Educational Communications Board. The Board concludes the claim should be paid based on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., payment should be made from the University of Wisconsin appropriation s. 20.285(1)(a), Stats.

10. Carol Stollenwerk of Waukesha, Wisconsin, claims \$82.00 for the alleged theft of her coat and gloves on April 9, 1984, from a coat rack at her place of employment, the Department of Industry, Labor and Human Relations. 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. Brian Roherty of Madison, Wisconsin, claims \$133.25 for damages to his car incurred on January 31, 1984, when entering the parking garage at the state office building, General Executive Facility 3, (GEF 3). The garage door drive chain was broken and hanging down from the ceiling and hit claimant's car as he entered the garage. The Board concludes the claim should be paid on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., payment should

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be made from the Department of Administration appropriation s. 20.505(1)(i), Stats.

12. Dale Hawkinson of Fox Lake, Wisconsin, claims \$19.50 for a bill incurred when a medical bill was delayed payment by worker's compensation. Claimant was injured on August 7, 1980, at the Waupun State Prison where he is employed. The procedure used by the claimant in subduing an inmate was questioned as to the appropriateness and worker's compensation delayed payment of his medical bill until a final hearing determination. The bill was eventually paid by worker's compensation but in the meantime the Hospital had turned the medical bill over to a collection agency. The Board concludes the claim should be paid based on equitable principles. The Board further concludes under authority of 16.007(6m), Stats., payment should be made from the Claims Board appropriation s. 20.505(4)(d), Stats.

13. Michael Stevenson of Irma, Wisconsin, claims \$979.42 for damages incurred to his property on September 23, 1982, allegedly caused by juveniles on escape status from Lincoln Hills School. The juveniles entered claimant's home damaging and stealing property. There is no evidence that the Department of Health and Social Services failed to exercise reasonable care in holding the juveniles and in notifying authorities immediately after their escape. 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.

THE BOARD CONCLUDES:

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

- Barneveld State Bank
- Ruby Markham
- James Behr
- Jennifer Behr
- Jackie Williams
- Wis. Private Sector Initiative Program, Inc.
- Carol Stollenwerk
- Michael Stevenson

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

Helen Becker	\$200.00
George Reynolds	142.72
Brian Roherty	133.25
Dale Hawkinson	19.50

THE BOARD RECOMMENDS:

1. Payment of \$100,000.00 be made to Catherine and Lawrence McDonald for expenses incurred as a result of a surgical sponge that was left in Mrs. McDonald's back during surgery at the University Hospital on June 25, 1981.

Dated at Madison, Wisconsin this 17th day of July, 1984.

- JOHN J. MAURER
Senate Finance Committee
- MARLIN D. SCHNEIDER
Assembly Finance Committee
- JUAN B. COLAS
Representative of Governor
- EDWARD D. MAIN
Representative of Secretary of Administration
- WILLIAM H. WILKER
Representative of Attorney General

SENATE CLEARINGHOUSE ORDERS

Clearinghouse Rule 83-212

AN ORDER to repeal and recreate HSS 55.01 to 55.44, relating to day care centers for children.

Submitted by Department of Health and Social Services.

Report received from agency, July 23, 1984.

Referred to committee on Health, Education, Corrections and Human Services, July 25, 1984.

Clearinghouse Rule 84-55

AN ORDER to repeal and recreate HSS 306.08 and Note, relating to the use of chemical agents in adult correctional institutions.

Submitted by Department of Health and Social Services.

Report received from agency, July 18, 1984.

Referred to committee on Health, Education, Corrections and Human Services, July 25, 1984.

The committee on Higher Education and Economic Development reports and recommends:

Clearinghouse Rule 83-181

AN ORDER to repeal and recreate ch. A-V 6, relating to travel and expense reimbursement, procurement and personnel in vocational, technical and adult education districts.

No action taken.

JOSEPH J. CZARNEZKI
Chair

The committee on Labor, Business, Veterans Affairs and Insurance reports and recommends:

Clearinghouse Rule 84-39

AN ORDER to amend Ins 17.28 (6) (intro.) and (i), relating to fees for podiatrists participating in the patients compensation fund.

No action taken.

JEROME VAN SISTINE
Chair

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The committee on Energy and Environmental Resources reports and recommends:

Clearinghouse Rule 83-158

AN ORDER to create ch. PSC 116, relating to electric rate changes due to changes in cost of fuel.

No action taken.

Clearinghouse Rule 84-34

AN ORDER to create NR 154.01 (95m) and 154.12 (8), relating to establishment of emission limits for certain existing sources of sulfur dioxide located in Peshtigo, Marinette county.

No action taken.

Clearinghouse Rule 83-218

AN ORDER to renumber ch. NR 3 and NR 203.01 (4) and (5); to amend NR 203.02 (1) and (4) (d), 203.03 (1),

203.04, 203.05 (1) and (3), 203.10, 203.13 (2) (b) and (c) and (3) (a), (f), (g) and (L), 203.15 (1) (a) and 203.18 (3); and to create NR 203.01 (4), relating to the Wisconsin pollutant discharge elimination system public participation procedures.

No action taken.

Clearinghouse Rule 83-219

AN ORDER to repeal and recreate ch. NR 205; and to create NR 102.03 (4) (h), relating to the general provisions of the Wisconsin pollutant discharge elimination system and water quality standards for pH.

No action taken.

JOE STROHL

Chair