

Eighty-Ninth Regular Session

WEDNESDAY, October 17, 1990

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

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Department of Natural Resources

October 9, 1990

To the Honorable the Legislature:

I am pleased to submit the attached "Feasibility Study - for a State Recreation area in the Menomonee River Valley - Milwaukee County." This report is intended to satisfy the mandate given the Department of Natural Resources in 1989 Wisconsin Act 31.

While this report was due June 29, 1990, submission was delayed until now with the blessing of Senator Brian Burke (author of the amendment).

Any questions on the content of the plan should be directed to Gloria McCutcheon, at our South East District Headquarters, phone (414) 263-8510.

Sincerely,
C. D. BESADNY
Secretary

State of Wisconsin
Ethics Board

October 9, 1990

To the Honorable the Senate

At the direction of s. 13.685(7), Wisconsin Statutes, I am furnishing you with recent changes in the Ethics Board's registry of principals and lobbyists.

AUTHORIZATION TO LOBBY IS GRANTED:

Peter Christianson, 411 East Wisconsin Ave., #2550, Milwaukee, WI 53202-4497 (414) 277-5745

- 1) Newspaper Association, Wisconsin

Brian Mitchell, 660 E. Mason St., Milwaukee, WI 53202 (414) 271-5900

- 1) Johnson Controls, Inc.

Sharon Cook, 660 E. Mason St., Milwaukee, WI 53202 (414) 271-5900

- 1) Johnson Controls, Inc.

Deanna M. Kilen, 2 East Mifflin, #400, Madison, WI 53707 (608) 283-2593

- 1) Economic Development Association, Wisconsin
- 2) Mortgage Bankers Association, Wisconsin

Christian M. Richter, 802 W. Broadway, #308, Madison, WI 53713 (608) 266-6480

- 1) Counties Association, Wisconsin

AUTHORIZATION TO LOBBY IS WITHDRAWN:

Charles L. Buss terminated as of October 5, 1990 for Professional Fire Fighters of Wisconsin.

Statements that identify state agency officers and employes whose job duties include attempting to influence legislation s. 13.695 and principal expense statements s. 13.68 are available for review at the Wisconsin Ethics Board.

Sincerely,
R. ROTH JUDD
Executive Director

State of Wisconsin
Claims Board

October 11, 1990

To the Honorable the Senate

Enclosed is the report of the State Claims Board covering claims heard on September 25, 1990.

The amounts recommended for payment under \$2000 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 \$2,000, if any, 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 September 25, 1990, upon the following claims:

| Claimant | Amount |
|----------------------|----------|
| Linda Miller | 772.00 |
| Gregory Duckert | 2,879.00 |
| Rev. Marvin Knighton | 900.00 |

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

| | |
|-----------------------|----------|
| Dorothy Wetzel Estate | 6,265.95 |
| Fred Holm | 136.10 |
| Amy Diamond | 1,099.55 |
| Betty Neusel | 48.00 |
| David Andrews | 620.50 |
| Daniel Imig | 5,688.00 |
| Kevin Wise | 1,580.25 |
| Schroedl Brothers | 1,890.98 |
| Robert Boehnen | 174.42 |

| | |
|--------------------|--------|
| Gary Vitse | 167.58 |
| Marie Anderson | 326.70 |
| Diane Meschefske | 75.00 |
| Ronald Cork | 140.00 |
| Red Barn Tree Farm | 490.91 |
| Richard Kroll | 310.00 |

THE BOARD FINDS:

1. Linda Miller of Kenosha, Wisconsin, claims \$772.00 for dental expenses denied by Medical assistance, including related miscellaneous expenses. Claimant's medical assistance extension expired after July, 1989. In May, 1989, claimant's dentist requested medical assistance's prior authorization for extraction of claimant's teeth and immediate dentures. In June, 1989, medical assistance responded that the teeth must be extracted six weeks prior to receiving the dentures. On June 13, 1989, claimant's dentist informed medical assistance that he would be responsible for any extra costs incurred if immediate dentures were approved for claimant; no further response was received from medical assistance. On July 26, 1989, claimant filed an appeal under s. 49.45(5), Wis. Stats., regarding the extension of her medical assistance benefits. A hearing was held by the Department of Health and Social Services on August 31, 1989, and claimant's appeal was denied as untimely. Claimant had the dental work completed on December 27, 1989. On February 5, 1990, the Office of Administrative Hearings held a second hearing and denied medical assistance coverage for claimant's dental expenses because immediate dentures are not covered under Wisconsin's Medical Assistance Program, the dental service was performed prior to receiving authorization and claimant was not eligible for medical assistance at the time of the service. The Board concludes the claim should be paid in the reduced amount of \$625.00, the check issued jointly to claimant and Dr. Richard P. Jones. The Board further concludes, under authority of s. 17.007(6m), Stats., payment should be made from the Department of Health and Social Services appropriation s. 20.435(1)(a), Stats.

2. Gregory Duckert of Sun Prairie, Wisconsin, claims \$2,879.00 plus interest for reimbursement of his 1989 income tax refunds withheld by the Department of Revenue for an estimated assessment issued to him in 1985. In 1982, claimant moved from Wisconsin to Florida. As a result of a divorce in 1983, claimant's wife was awarded the entire interest in the proceeds of the sale of property at 720 Crooks Street in Green Bay, Wisconsin. The property had been owned jointly by claimant, his wife and her parents. In 1985, claimant received the Department of Revenue's notice of assessment of taxes for failure to file a tax return in 1983. Claimant appealed the assessment, however, the Department of Revenue denied the appeal because it did not receive a response regarding any gain upon the disposition of the Crooks Street property. Claimant contends that because he received no proceeds from the sale of the Crooks Street property, he was under no obligation to file a return for 1983. In 1989, the

Department of Revenue intercepted two of claimant's income tax refunds, totaling \$2,879.00, to apply to his tax delinquency. In February 1990, the Department of Revenue attempted to collect the remaining balance of the tax assessment through claimant's employer; claimant subsequently provided the cost and selling price of the Crooks Street property. Based on that information, it was determined that claimant's tax liability amounted to \$68.00 plus interest. Because of the two-year statute of limitations, s. 71.75(5), Wis. Stats., the Department of Revenue is without authority to return any of the amount collected on the estimated assessment. The Board concludes there has been 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.

3. Rev. Marvin Knighton of Wauwatosa, Wisconsin, claims \$900.00 for accounting fees allegedly incurred during a Department of Revenue audit for the years 1985 through 1987. Claimant was also audited by the Internal Revenue Services (IRS) for the same years. On May 8, 1989, the Department of Revenue issued claimant an estimated assessment in the amount of \$3,882.12. In March, 1990, when the Department of Revenue received claimant's 1986 IRS audit report, adjustments were made to claimant's taxable income and it was determined that his taxes amounted to \$26.29. The Board concludes the claim should be paid, based on equitable principles, by check issued jointly to claimant and Ronald G. Bartsch, CPA. 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.

4. Paul A. Wetzel, Personal Representative of the Estate of Dorothy Wetzel, Milwaukee, Wisconsin, claims \$6,265.95 plus interest for overpayment of inheritance taxes allegedly resulting from the overstatement of the value of the Estate. An over statement of \$113,491.05 was based on erroneous information provided by broker A.G. Edwards and Son, Inc., when reporting the decedent's property which they were holding for investment purposes. The error was discovered on April 5, 1990, when the attorney for the Estate was preparing the final account. The inheritance tax was determined on August 23, 1989 and the tax became final on February 20, 1990, under s. 72.30(4), Stats. The Board concludes, as an advisory opinion, that the claim in the amount of \$6,265.95 should be paid under the provisions of s. 16.007(6)(b) 2, Stats.

5. Fred Holm, III, of Manitowoc, Wisconsin, claims \$136.10 for lost wages when his hourly pay for participation in a study program as an inmate at the Waupun Correctional Institute was reduced from 33 cents per hour to 28 cents per hour. Claimant was paid for 2722 hours of school attendance from February 1, 1988 to June 6, 1989. The school student payment rating was range 3 (33 cents per hour) until September 13, 1987.

after which it became range 3 B (28 cents per hour) based on the Department of Corrections Internal Management procedure (IMP) #5. Claimant alleges IMP #5 is invalid because it contradicts HSS 309.55(5) and (5m), Wisconsin Administrative Code, and exceeds the authority of HSS 309.55(6), Wisconsin Administrative Code, by creating two ratings out of the statutory authorized "three rating." In 1987, HSS 309.55, Wisconsin Administrative Code, authorized the Division of Corrections (which became the Department of the Corrections on January 1, 1990) to rank each of its work or study programs and set the hourly pay for each rank. The Board concludes there has been 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. Amy Diamond of Appleton, Wisconsin, claims \$1,099.55 for medical expenses, lost wages, pain and suffering, and miscellaneous expenses allegedly resulting from an injury she sustained on February 4, 1990, when she fell on some ice on the side at the Green Bay Correctional Institution. As a result of the fall, claimant chipped a bone in her left shoulder. Claimant alleges the resulted from the negligent maintenance of the walkway. On the date of this incident, the Institute performed its usual snow and ice removal procedures. The Board concludes there has been 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.

7. Betty Neusel of Janesville, Wisconsin, claims \$48.00 for replacement of her slacks allegedly damaged on February 26, 1990, while she was attending a class at the University of Wisconsin-Madison. Claimant's slacks were torn when she arose from a broken chair in a classroom at the University. 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.

8. David Andrews of Watertown, Wisconsin, claims \$620.50 for medical expenses allegedly resulting from an injury he sustained on November 28, 1989, while participating in a sculpture course at the University of Wisconsin-Whitewater. Claimant was using a table saw when a piece of wood became bound between the saw blade and the rip fence. Claimant released his hold on the wood and the wood "kicked back," striking him in the head. As a result, claimant suffered a scalp wound requiring medical treatment. Claimant received insurance coverage in the amount of \$302.80 for his medical expenses. The saw claimant was using was in good operating condition and claimant signed a form agreeing to accept responsibility for his own safety while using the tools. The Board concludes there has been 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.

9. David Imig of Oconto, Wisconsin, claims \$5,688.00 for extra mileage, labor and loss of crops allegedly resulting from the construction on the Little River Bridge on CTH A in Oconto County in October 1989. Due to the bridge construction, claimant had to find an alternate route to transport his corn from the field to his barn, resulting in extra labor, fuel and wear on his equipment. The construction project was delayed until August 21, because there was a provision prohibiting disturbances of stream beds in which bass spawn between May 15 and June 15 and it was discovered that swallows nested under the old bridge, and according to the Migratory Bird Act, these nests may not be disturbed between May 15, and August 20. As a result, the bridge was closed during the time claimant transported his crop from the field to the barn. Highway construction often causes temporary inconvenience and losses for business but this alone is not grounds for the state to compensate those who are damaged. The Board concludes there has been 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.

10. Kevin Wise of Oconomowoc, Wisconsin, claims \$1,580.25 for the cost of repairing his vehicle, allegedly damaged in a traffic accident on Highway 16 in the Town of Oconomowoc on October 31, 1989. The accident occurred during sandblasting of pavement markings on the road. Claimant alleges the sandblasting impaired visibility resulting in his vehicle rear-ending another vehicle stopped in front of him. The sandblasting operations were being performed by James Peterson and Sons Construction Company, contractor for the state construction project. The Board recommends claimant pursue any claim for damages or injuries against the state's contractor for the project. The Board concludes there has been 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.

11. Robert Schroedl on behalf of Schroedl Brothers of Jefferson, Wisconsin, claims \$1,890.98 for two steer which were condemned by the Department of Agriculture, Trade and Consumer Protection (DATCP). A steer examined ante-mortem by DATCP veterinarian Eugene Killam on September 5, 1989, was condemned for alleged miscellaneous infectious diseases. Claimant contends the animals were not diseased and he should have been allowed to obtain a second opinion from a veterinarian of his choice. The Board concludes the claim should be paid in the reduced amount of \$1000, based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be

made from the Department of Agriculture, Trade and Consumer Protection appropriation s. 20.115(1)(g), Stats.

12. Robert Boehnen of Black Earth, Wisconsin, claims \$174.42 for a pig which was condemned by the Department of Agriculture, Trade and Consumer Protection (DATCP) on April 9, 1990. When claimant took the pig for slaughter, the post-mortem examination of the animal indicated probable pathologic conditions. The carcass should have been tagged as suspect and held pending further laboratory testing, however, the DATCP veterinarian immediately condemned the animal. The pathology report did not support the diagnosis used as the basis for condemnation. 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 Department of Agriculture, Trade and Consumer Protection appropriation s. 20.115(1)(g), Stats.

13. Gary Vitse of Madison, Wisconsin, claims \$167.58 for the cost of repairing his vehicle allegedly damaged by a security officer at the Mendota Mental Health Institute on May 1, 1990. Claimant had called the security officer for assistance in starting his vehicle. While attempting to jump start the vehicle, the officer incorrectly connected the cables to claimant's vehicle causing the damage. Providing emergency services, including utilization of jumper cables, is part of the duties required to be performed by the security officer at Mendota Mental Health Institute. 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 Department of Health and Social Services appropriation s. 20.435(2)(gk), Stats.

14. Marie Anderson of Chippewa Falls, Wisconsin, claims \$326.70 for repairs to her vehicle allegedly damaged while parked at the Northern Wisconsin Center, where she is employed. On the morning of December 13, 1989, claimant parked her car in the Northern Wisconsin Center parking lot. Upon returning to her car after work, she discovered damage to the left front corner of the vehicle. Claimant contends the damage was caused by another vehicle backing into her car, although there were no witnesses and there is no evidence as to how the damage actually occurred. The Board concludes there has been 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.

15. Diane Meschefske of Neenah, Wisconsin claims \$75.00 for replacement of three rolls of stamps allegedly stolen from a locked mailbox in the lobby of Kempster Hall at the Winnebago Mental Health Institute, where she is employed. On May 23, 1990, the stamps were delivered to the Institute and put into claimant's mailbox, however, the stamps were gone the following

morning. The stamps were purchased by the Mental Health Association of Winnebago County, not by claimant. The Board concludes there has been 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.

16. Ronald Cork of Durand, Wisconsin, claims \$140.00 for the replacement of his fishing equipment allegedly lost while he was working as an undercover conservation warden for the Department of Natural Resources on May 5, 1990. At the time of the loss, claimant was working in plain clothes checking on illegal fishing activities in the Chippewa River. Claimant's watercraft hit a submerged rock causing submersion of his watercraft and the loss of all his fishing equipment. The fishing equipment was required to perform the law enforcement operation and department-owned equipment was not available. 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 Department of Natural Resources appropriation s. 20.370(8)(mu), Stats.

17. Jon Puls on behalf of Red Barn Tree Farm of Shiocton, Wisconsin, claims \$490.91 for the difference between its property taxes for 1989 and the amount that would have been due if its land in Outagamie County had been correctly entered under the managed forest law. During 1987, John Tackman submitted two managed forest law applications to the Department of Natural Resources. One application was made by Mr. Tackman solely and the other was made by Mr. Tackman, et al. The latter application applied to property held by Mr. Tackman jointly with Jon Puls and other owners of Red Barn Tree Farm. Mr. Tackman subsequently requested withdrawal of his application. The Department of Natural Resources in correctly assumed the request applied to both applications and cancelled claimant's application also. 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 Department of Natural Resources appropriation s. 20.370(1)(mu), Stats.

18. Richard Kroll of Egg Harbor, Wisconsin, claims \$310.00 for the difference between his property taxes for 1987 and 1988, and the amount that would have been due if his land in Door County had been properly entered under the managed forest law. On March 10, 1987, claimant applied for managed forest designation for 27 acres of property in Door County. The Department of Natural Resources forester approved entry of 28 acres, however, claimant's file was mistakenly placed with applications withdrawn, rather than with the group to be punched for entry. The error was not discovered until the spring of 1988. Since claimant's application was not submitted until 1987, it would have first affected the 1988 taxes even if it had been properly processed. The

concludes the claim should be paid in the reduced amount of \$282.95, based on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(1)(mu), Stats.

THE BOARD CONCLUDES:

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

- Gregory Duckert
- Fred Holm
- Amy Diamond
- David Andrews
- Daniel Imig
- Kevin Wise
- Marie Anderson
- Diane Meschefske

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

| | |
|----------------------|------------|
| Linda Miller | \$625.00 |
| Rev. Marvin Knighton | \$900.00 |
| Betty Nuesel | \$48.00 |
| Schroedl Brothers | \$1,000.00 |
| Robert Boehnen | \$174.42 |
| Gary Vitse | \$167.58 |
| Ronald Cork | \$140.00 |
| Red Barn Tree Farm | \$490.91 |
| Richard Kroll | \$282.95 |

3. Payment of the following amount to the following claimant is justified under s. 16.007(6)(b)2, Stats.

| | |
|-----------------------|------------|
| Dorothy Wetzel Estate | \$6,265.95 |
|-----------------------|------------|

Dated at Madison, Wisconsin this 9th day of October, 1990.

GARY R. GEORGE
Senate Finance Committee

WALTER J. KUNICKI
Assembly Finance Committee

RAYMOND P. TAFFORA
Representative of Governor

EDWARD D. MAIN
Representative of Secretary of Administration

WILLIAM H. WILKER
Representative of Attorney General

SENATE CLEARINGHOUSE ORDERS

Senate Clearinghouse Rule 90-105

Relating to telecommunication and CATV service. Submitted by Department of Revenue. Report received from agency, October 16, 1990. Referred to committee on Aging, Banking, Commercial Credit and Taxation, October 17, 1990.

Senate Clearinghouse Rule 90-129

Relating to school district standards. Submitted by Department of Public Instruction. Report received from agency, October 11, 1990. Referred to committee on Education, Economic Development, Financial Institutions and Fiscal Policies, October 17, 1990.

Senate Clearinghouse Rule 90-156

Relating to alcohol and other drug abuse programs. Submitted by Department of Public Instruction. Report received from agency, October 11, 1990. Referred to committee on Education, Economic Development, Financial Institutions and Fiscal Policies, October 17, 1990.

Senate Clearinghouse Rule 90-177

Relating to injury prevention and control grants. Submitted by Department of Health and Social Services. Report received from agency, October 16, 1990. Referred to committee on Agriculture, Corrections, Health and Human Services, October 17, 1990.

The committee on Transportation, Conservation and Mining reports and recommends:

Senate Clearinghouse Rule 90-144

Relating to operator licenses and identification cards. No action taken.

Senate Clearinghouse Rule 90-149

Relating to the employee notification program. No action taken.

Senate Clearinghouse Rule 90-150

Relating to commercial motor vehicle 24-hour, out-of-service orders. No action taken.

Rodney C. Moen
Acting Chair