

TITLE XXVII.

Actions and Proceedings in Special Cases.

CHAPTER 285.

ACTIONS AGAINST STATE.

<p>285.01 Actions against state; bond. 285.04 Judgment, how paid. 285.05 Compensation for innocent convicts. 285.06 Payment toward state employe judgments.</p>	<p>285.10 State party defendant; judgment. 285.11 Payment of state employe attorney's fees in certain cases.</p>
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285.01 Actions against state; bond. Upon the refusal of the legislature to allow a claim against the state the claimant may commence an action against the state by serving the summons and complaint on the attorney-general or by leaving copies at his office and by filing with the clerk of court a bond, not exceeding \$1,000, with two or more sureties, to be approved by the attorney-general, to the effect that he will indemnify the state against all costs that may accrue in such action and pay to the clerk of court all costs, in case he shall fail to obtain judgment against the state.

In view of the abrogation of the rule section to tort claims is reserved for later granting governmental immunity in tort, determination, *Holytz v. Milwaukee*, 17 W the question of the applicability of this (2d) 26, 115 NW (2d) 618.

285.04 Judgment, how paid. No execution shall issue against the state on any judgment, but whenever a final judgment against the state shall have been obtained in any such action the clerk shall make and furnish to the department of administration a duly certified transcript of such judgment; and the department of administration shall thereupon audit the amount of damages and costs therein awarded, and the same shall be paid out of the state treasury.

285.05 Compensation for innocent convicts. (1) The governor and the director of the state department of public welfare constitute a commission for the relief of innocent persons who have been convicted of crime.

(2) Any person who after May 10, 1913 shall serve a term of imprisonment under conviction for a crime against the state, of which crime he claims to be innocent, or any person who has been pardoned on the ground of innocence and whose imprisonment shall thereby be shortened, may petition the commission for compensation for such wrongful imprisonment.

(3) After hearing the evidence on the petition, the commission shall find either that it is clear beyond a reasonable doubt that the petitioner was innocent of the crime for which he suffered imprisonment, or that it is not clear beyond a reasonable doubt that he was innocent. Upon the hearing the record of the trial in which the conviction was had may be presented to the commission for the purpose of enabling it to understand the situation, but the finding of the commission shall be based only on such evidence or circumstances as have been discovered or have arisen since conviction.

(4) If the commission shall find that the petitioner was innocent and that he did not by his act or failure to act contribute to bring about the conviction and imprisonment for which he seeks compensation, the commission shall find the amount which will compensate him for his wrongful imprisonment but not to exceed five thousand dollars and at a rate of compensation not greater than fifteen hundred dollars per year for the imprisonment. If the commission shall find that the amount it is able to award will not be an adequate compensation it shall report an amount to the legislature which it shall deem adequate.

(5) The commission shall keep a complete record of its proceedings in each case and of all the evidence. The findings and the award of the commission shall be subject to review as provided in chapter 227.

285.06 Payment toward state employe judgments. (1) The governor, the chairman of the senate finance committee, the chairman of the assembly finance committee and the director of public welfare shall constitute a commission for the relief of law enforce-

ment officers employed by the state who have judgments against them for damages caused while in their line of duty where they acted in good faith and who have incurred charges for counsel fees and costs in defending said action.

(2) Any such judgment debtor may petition the commission, setting forth the amount of the judgment, fees and costs which he must pay, the facts and circumstances causing the damages resulting in the judgment and the reasons for claiming relief under this section. The petition may be filed in the executive office.

(3) Upon receipt of such petitions the commission shall fix a time and place for hearing the matter and give notice thereof to the petitioner.

(4) Upon the hearing the record of the trial in which the judgment was had may be presented to the commission but the findings, conclusions and determination and the award of, or the denial thereof by the commission, shall be based on all the evidence and circumstances submitted to it which bear on the petition.

(5) If from its findings of fact the commission concludes that the petitioner was in line of duty as a law enforcement officer of the state and acted in good faith at the time of the transaction in question, the commission shall award and certify to the petitioner the amount of the judgment which the petitioner must pay; if the commission further finds that the counsel fees and costs claimed by the petitioner are reasonable and that the contract of employment was in accordance with law and was not made with any other state officer, employe, or agent, the commission shall further award and certify to the petitioner the amount of said counsel fees and costs; the entire award shall be from the appropriation made by s. 20.550 (9), but not to exceed \$5,000.

(6) If the commission shall find that the amount it is able to award will not be adequate it shall report the amount of the difference to the legislature for its action.

(7) The commission shall keep a complete record of its proceedings in each case and of all the evidence. The findings, conclusions, determination and award shall be subject to review as provided in ch. 227.

History: 1965 c. 433 s. 121.

285.10 State party defendant; judgment. The state may be made a party defendant in any action to quiet title under the provisions of s. 281.01 or between other parties, when necessary to the proper determination of their rights. The complaint shall set forth with particularity the nature of the interest or lien of the state. But no judgment for the recovery of money or personal property or costs shall be rendered in any such action against the state.

In an action to set aside a sale of land in the land, and the action will be dismissed by the university regents, the state was not as to it. *Glendale Development v. Board of Regents*, 12 W (2d) 120, 106 NW (2d) 430.

285.11 Payment of state employe attorney's fees in certain cases. (1) Any state employe against whom charges are filed under s. 940.29, and who is subsequently found not guilty, shall be reimbursed by the state for reasonable attorney's fees and costs in defending such action.

(2) Claims against the state under this section shall be filed with the commission as provided in s. 285.06.

(3) On receipt of such a claim the commission shall determine whether the claim is authorized by this section and if so shall determine the amount of attorney's fees and costs incurred and shall allow such attorney's fees and costs as in its judgment are reasonable.

History: 1965 c. 413.