

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

The meeting was called to order by Senator August "Gus" Bogina at
Chairperson

4:30 a/m/p.m. on April 8, 1985 in room 123-S of the Capitol.

All members were present except:
Senator Talkington

Committee staff present:

Research Department: Bill Wolff, Robin Hunn
Revisor's Office: Bill Wilson
Committee Office: Judy Bromich, Doris Fager
Legislative Counsel: Robert Coldsnow

Conferees appearing before the committee:

Rick von Ende, University of Kansas

SPECIAL CLAIMS AGAINST THE STATE

Senator Winter, Chairman of the Special Claims Committee, explained that a bill has not yet been introduced to take care of the claims. He indicated it was the intention of that committee to have the Senate Ways and Means Committee introduce the bill following their review of the claims.

Mr. Wolff explained the bill, section by section, and he and Mr. Wilson answered questions from committee members.

In connection with Section 16, Mr. Wolff explained that Sarah Emery has filed a lawsuit against the state. He suggested that the committee has two options: (1) authorize \$800 payment; (2) withdraw Ms. Emery's name and allow her to proceed with the lawsuit.

Motion was made by Senator Winter and seconded by Senator Werts to remove Section 16 (a) from the bill. In answer to a question from Senator Harder, Senator Winter stated that a payment of \$800 as listed in the bill before the committee would not be admissable in a lawsuit as evidence that the state is negligent.

Mr. von Ende explained that Ms. Emery's attorney has admitted she was reading a book when she was walking, and didn't see the manhole.

Mr. von Ende suggested that it may be well to consider the fact that, when cases are decided by the Special Claims Committee during the summer, and the actual payment is not processed until the following year (probably sometime in May), interest is due on the claim. He noted he felt there should be a law stating that interest is not applicable until the following May 1.

The above motion carried by voice vote.

There was concern about Section 16 (b) and 16 (c). It was explained by Mr. Wolff and Mr. Wilson that both cases had been through the Courts. In both cases the state was found not to be negligent.

Senator Winter explained that he supported both claims. He said his understanding of the Supreme Court decision was that the Court did not address itself to the issue of whether the officer in question was negligent. The Court said that once a police officer turns on the siren, there is no authority to decide whether his actions are proper or improper. Senator Winter said the Claims Committee looked at the conduct of the officer and found that his conduct was inappropriate, and that it is not equitable to deny the claim.

Senator Gaines questioned why the state should have a different set of standards than anyone else. He stressed that, since the Court made a determination that the state was not liable, the claim should be denied.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS,
room 123-S, Statehouse, at 4:30 AM/p.m. on April 8, 1985

SPECIAL CLAIMS AGAINST THE STATE - Continued

Motion was made by Senator Gaines and seconded by Senator Doyen to delete the two \$15,000 claims in Section 16 (b) and (c). The motion failed on a vote of 4-5.

During the explanation of the remainder of the bill by Mr. Wolff and Mr. Wilson, there were questions from committee members concerning the background of specific claims.

Mr. Wolff called the committee's attention to Section 25, noting that future similar claims may represent a significant change to the state. He said that, in 1984, the Claims Committee denied a subrogation claim in a case where a telephone pole collapsed on a car at Fort Hays State University. The insurance company involved asked for an Attorney General's opinion. The Attorney General decided that, if the case were taken to Court, the state would have been liable. Mr. Wolff said there were two or three other cases which were denied by the Claims Committee last year, and nothing has come of any of those actions. He stated, however, that it is possible there will be subrogation claims in the future based on the Attorney General's opinion of last summer. He explained that the claim of Malone Motors, Inc., in Section 25 is a claim such as this, and the \$1,090.84 is for the deductible. The insurance company paid the remainder of the claim.

At this point, Mr. Wolff explained two additional claims:

- (1) Leota P. Albright, \$200.39 for personal injury while attending the Kansas State Fair. The claimant fell and broke her elbow. The State Fair Board is recommending that the claim be paid.

Motion was made by Senator Feleciano and seconded by Senator Kerr to approve the above claim. The motion carried by voice vote.

- (2) Savin Corporation, \$406.00 for services provided by the corporation for the University of Kansas, but not billed in time for payment. This involved the Kansas Law Enforcement Training Center.

Motion was made by Senator Winter and seconded by Senator Gannon to approve the above claim. The motion carried by voice vote.

Motion was made by Senator Kerr and seconded by Senator Winter to add a proviso to Section 29, as follows: "Provided, That a written release and satisfaction of all claims and rights against the state of Kansas and any officers and employees of the state of Kansas regarding this claim shall be secured prior to payment of this amount." The motion carried by voice vote.

Senator Gaines asked if (1) there is any consideration given to not granting a claim in the Special Claims Committee when it has been adjudicated; and if (2) there is any statute of limitations within the Special Claims Committee. The answer was "no" to both questions. However, Senator Winter noted it would be well to consider those questions.

Motion was made by Senator Winter and seconded by Senator Johnston to introduce the Special Claims Bill and request that it be referred to Committee of the Whole. The motion carried by voice vote.

APPROVAL OF MINUTES

Motion was made by Senator Gaines and seconded by Senator Feleciano to approve committee minutes for April 1, 2 and 3. The motion carried by voice vote.

The meeting was adjourned by the Chairman.