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STATE COURT OF CLAIMS*

WALTER M. ELSWICK**

THE State Court of Claims was created by chapter fourteen, article two of the Acts of the Legislature of 1941, stipulating that the purpose of the law is to provide a simple and expeditious method for the consideration of claims against the state that because of the provisions of section thirty-five, article six of the constitution of the state, and of statutory restrictions, inhibitions or limitations, cannot be determined in a court of law or equity; and to provide for proceedings in which the state has a special interest. Section four of the act provides that there is hereby created a "State Court of Claims" which shall be a special instrumentality of the legislature for the purpose of considering claims against the state, which because of the provisions of section thirty-five article six of the constitution of the state, and of statutory restrictions, inhibitions or limitations, cannot be heard in a court of law or equity, and recommending the disposition thereof to the legislature. It provides that the court shall consist of three judges, and makes provision for service of alternate judges whenever a regular judge is unable to serve or is disqualified.

Section six provides that the court shall hold at least four regular terms each year, on the second Monday in January, April, July and October. Special meetings may be called by the clerk at the request of the presiding judge whenever the number of claims awaiting consideration, or any other pressing matter of official business, makes such a term advisable. By section seven it is provided that the regular meeting place of the court shall be the offices of the secretary of state at the state capitol. When deemed advisable, in order to facilitate the full hearing of claims arising elsewhere in the state, the court may convene at any county seat.

By section twelve it is provided that the court shall, in accordance with this article, consider claims which, but for the constitutional immunity of the state from suit, or of some statutory restrictions, inhibitions or limitations, could be maintained in the regular courts of the state. It further provides that no liability shall be imposed upon the state or any of its agencies by a determination of the court of claims approving a claim and recommending

* Address delivered at the fifty-eighth meeting of the West Virginia Bar Association at Wheeling, West Virginia. Introductory remarks omitted.

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an award, unless the legislature has previously made an appropriation for the payment of a claim subject only to the determination of the court.

The act provides that a claim shall be instituted by the filing of notice with the clerk. Such notice shall be in writing and shall be in sufficient detail to identify the claimant, the circumstances giving rise to the claim, and the state agency concerned, if any. The claimant shall not otherwise be held to any formal requirement of notice.

The state agency concerned may deny the claim, or may request a postponement of the proceedings to permit negotiations with the claimant. If, before or after the claim is formally filed with the clerk, the state agency concerned and the attorney general finds the claim to be just and proper to be paid and the claim does not exceed one thousand dollars and otherwise meets with the requirements of section seventeen, it may be submitted to the court with all papers, stipulations and evidential documents to be considered informally upon the record submitted under the shortened procedure authorized by this section. If the court, under such procedure, determines that the claim should be entered as an approved claim and an award made, it shall order and file its statement with the clerk. If the court finds that the record is inadequate, or that the claim should not be paid, it shall reject the claim. The rejection of a claim under said section seventeen shall not bar its re-submission under the regular procedure.

It is likewise provided that the court shall adopt and may from time to time amend rules of procedure, in accordance with the provisions of the act governing proceedings before the court. Rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims.

Under its rules, the court shall not be bound by the usual common law or statutory rules of evidence. The court may accept and weigh in accordance with its evidential value any information that will assist the court in determining the factual basis of the claim. The court shall so conduct the hearing as to disclose all material facts and issues of liability.

The law provides that each claim shall be considered by three judges. Any judge may examine or cross-examine witnesses. The court may call witnesses or require evidence not produced by the parties; may stipulate the questions to be argued by the parties;

and may continue the hearing until some subsequent time to permit a more complete presentation of the claim.

If, after consideration, the court finds that a claim is just and proper, it so determines and files with the clerk a statement of its reasons. If the determination of the court is not unanimous, the reasons of the dissenting judge are separately stated. A claim filed which is found to be just and proper shall be an approved claim. The court also determines the amount that should be paid to the claimant, and itemizes this amount as an award, with the reasons therefor, in its statement or opinion filed with the clerk.

It is provided by section thirteen that the jurisdiction of the court, except for the claims excluded by section fourteen, extends to claims and demands, liquidated and unliquidated, *ex contractu* and *ex delicto*, against the state or any of its agencies, as well as such claims or demands which may be asserted in the nature of set-off or counterclaim on the part of the state or any of its agencies. Under section eighteen, the governor or the head of a state agency may refer to the court for an advisory determination the question of the legal or equitable status or both, of a claim against the state or one of its agencies, which procedure applies only to such claims as are within the jurisdiction of the court.

Section fifteen provides that the court shall adopt and may from time to time amend rules pertaining to persons appearing as representatives of claimants. Rules shall permit a claimant to appear in his own behalf, or to present his claim through a qualified representative. A representative shall be a person who, as further defined by the rules of the court, is competent to present and protect the interest of claimant.

Rule twelve formulated by the court provides that any claimant may appear in his own behalf or have his claim presented through a duly qualified representative. The representative may be either an attorney at law, duly admitted as such to practice in the courts of the state of West Virginia, or one who has the qualification in the judgment and opinion of the court, to properly represent and present the claim of a claimant. Where the representative is not an attorney at law, then such representative must have the written authority of the claimant to act as such. At this time I am in position to state that the majority of the claimants who have filed claims with the clerk under the regular procedure have been represented by attorneys at law. Some claimants have appeared in their own right, but none have prosecuted a claim through a repre-

sentative who was not an attorney at law licensed to practice in this state.

Some attorneys actuated by conscientious and ethical motives toward their client, the state and the good of the profession have asked the court to fix their compensation for services rendered their client, in event awards are found in favor of their clients, but so far we have not felt justified in endeavoring to fix such fees or compensation. Some attorneys are also concerned with reference to the particularity of allegations required in the notice. Of course it is always wise and proper for the notice to give a clear and succinct statement in sufficient detail to disclose the circumstances giving rise to the claim. In a few cases, upon motion of the attorney general, claimants have been ordered to file a bill of particulars.

From the time of its organization the court of claims has had up for consideration a number of claims appearing upon each regular term docket. By September twenty-ninth of this year one hundred and twenty-four claims had been filed under the regular procedure and seventy-two claims had been submitted under the shortened procedure. The court had determined the rights of fifty-seven claimants under the regular procedure and filed opinions assigning the court's reasons for its determination on each claim. Twenty-one claims were dismissed for lack of jurisdiction, and four were withdrawn by claimants, as settled and so forth, and the others were continued at the request of parties. At the regular July 1942 term the court had twenty-nine contested claims for hearing and determination on its regular docket. The April term also had a similar number of claims. Due to the numerous cases which the court had to hear and determine during its first year of performance the members of the court were each compelled to work more days than the statute would permit compensation to be paid. We have now before us for review and determination the records of six cases which have been heard, but await final determination, and preparation of opinions to be filed with same. For our October term we have on our regular docket nineteen cases set for hearing at Charleston and twelve cases set for hearing at Clarksburg.

One explanation for the heavy dockets is the accumulation over a long period of years of claims coming within the court's jurisdiction which the legislature had not time or opportunity to investigate and consider. Another is the extra jurisdictions which the state has acquired by extending its powers over matters formerly governed by counties, such as the state highway system. Form-

erly, many of these claimants could have availed themselves of remedies then provided for against the fifty-five county courts of the state.

We cannot emphasize too clearly that the large number of claims against the road commission are occasioned, of course, by the fact that since 1933, when the state took over the roads, it in effect placed itself in the same position that the various counties had been in before the act of 1933 went into effect; and consequently, all tort cases since then arising against the road commission, which otherwise would have been against the individual counties, must now be heard in the court of claims. I make this assertion because of the fact that some laymen may be of the opinion that we are unduly liberal in making awards, since same have not previously been known to them, and they may not quite understand how so many cases have arisen and are presented.

Some persons may think that the work of the court is merely that of an accounting board. But if one will only take time to examine the records in the many cases which have been before us he will find that the work is more than just adding, subtracting or multiplying. We have many claims involving large sums of money and complicated problems of law. We may be called upon in one instance to determine the rights of a claimant on a claim say involving only one hundred dollars and after it is disposed of learn that other claims of the same kind aggregating many thousands of dollars are involved. Hence, the importance of giving even the smallest claims most careful consideration in making awards and assigning our reasons for same. I once heard a distinguished lawyer say that he had never had an easy case to prosecute or defend. He said that his experience had been that the cases which he first thought were easy turned out to be most difficult. This is often true with the work of the court.

After the court has had a full hearing of a claim, it is generally found to be advisable for the members to wait for the record to be transcribed and briefs filed for consideration of the court before a conference is had. It is to be borne in mind that it is one thing to hear the evidence on a claim and to be fully and rightfully satisfied that the record and evidence either discloses that a claim is just and proper or that there is not justification from the evidence to support the basis of an award, and quite a different thing to express in writing, in such a way as to be useful as an authority and for review by the legislature, the reasons for such conclusion. A

great amount of care must be exercised in the statement of even the most settled and familiar principles of law as applied to the facts of any particular case.

I may say too, that it is not always an easy task for us to reach a determination as triers of fact and to formulate a statement of reasons applicable to a case. We must confess that we realize that human judgments are not infallible. Judges, like juries, cannot always know what to do, but they are obliged to make some disposition of every case which comes before them. In a trial before a distinguished trial judge of one of our sister states, the judge in passing upon a warmly contested point said: "Gentlemen, I do not know what to do with this question, and I wouldn't do anything with it if I didn't have to." This describes the situation in which every court often finds itself, and we who are endeavoring to do the work before us do not represent ourselves to be infallible. We have few decisions to guide us since there are only four states of the union which possess courts of claims. The framework of their constitutions and statutes are found to be different from ours. The court of claims of the United States is barred from considering all claims "sounding in tort." Hence, we have been limited in the consideration of the opinions of these courts. But I can assure you that each member of the court seriously and conscientiously considers every claim presented before it.