

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



ENROLLED

SENATE BILL No. 221

(By Mr. Bowling & Mr. Reed)



PASSED March 8. 1947

In Effect from Passage



221

ENROLLED

Senate Bill No. 221

(By MR. BOWLING and MR. REED, by request)

[Passed March 8, 1947; in effect from passage.]

AN ACT providing for the payment by the state of six death claims to Roy H. Adkins, J. P. Burgess, Edward D. Burdette, C. J. Jones, E. W. Lively and Joe Surber, administrators, the payment of which was recommended by the state court of claims and included in the budget bill of one thousand nine hundred forty-five, regular session, (Chapter eleven, acts of the legislature, regular session, one thousand nine hundred forty-five), and setting forth a legislative finding of fact that the payment of said claims is a moral obligation of the state of West Virginia.

WHEREAS, In August, one thousand nine hundred forty-three, the state court of claims of West Virginia recommended to the legislature that the sum of three thousand five hundred dollars each, or a total of twenty-one thousand dollars be paid to Roy H. Adkins, J. P. Burgess, Edward D. Burdette,

C. J. Jones, E. W. Lively and Joe Surber, administrators, claimants, in six consolidated claims against the state road commission of West Virginia; and

WHEREAS, As a result of such recommendation, the legislature of the state of West Virginia embraced within the one thousand nine hundred forty-five act of the legislature, regular session, known as the budget bill a general appropriation in the amount of three thousand five hundred dollars in favor of each of said claimants; and

WHEREAS, The Honorable Edgar B. Sims, auditor of the state of West Virginia, refused to honor a requisition addressed to him by the state road commission based on said general appropriation; and

WHEREAS, The supreme court of appeals of West Virginia, on June twenty-sixth, one thousand nine hundred forty-five, in a mandamus proceedings therein pending on the petition of Roy H. Adkins, administrator, one of said claimants, in case No. 9725, styled "State ex rel Adkins v. Sims, Auditor", reported in 34 S. E. (2d) 585, refused to grant said writ of mandamus for the assigned reason that it did not "Affirmatively appear that the legislature in making the appropriation has found

that it was necessary in order to discharge a moral obligation of the State", and in the opinion written by said court in said case, suggested the necessity of a declaration of such consequence by the legislature, preferably in an enactment separate and distinct from the appropriation bill carrying the grant; therefore

Be it enacted by the Legislature of West Virginia:

Section 1. The legislature affirms and approves the
2 recommendation of the court of claims that there should
3 be paid the awards listed below; and it likewise affirms
4 the appropriations made by the legislature at its one
5 thousand nine hundred forty-five session (contained in
6 chapter eleven, acts of the legislature, regular session,
7 one thousand nine hundred forty-five) to pay said awards
8 as claims against the state road commission. The legis-
9 lature therefore makes the following awards:
10 To Roy H. Adkins, Administrator, for the death of Roy
11 Herbert Adkins, Jr., the sum of three thousand five
12 hundred dollars;
13 To J. P. Burgess, Administrator, for the death of Edward
14 Sinclair Burgess, the sum of three thousand five hun-
15 dred dollars;

16 To Edward D. Burdette, Administrator, for the death of
17 Edward D. Burdette, Jr., the sum of three thousand
18 five hundred dollars;

19 To C. J. Jones, Administrator, for the death of Esther
20 Jones, the sum of three thousand five hundred dol-
21 lars;

22 To E. W. Lively, Administrator, for the death of Ruth
23 Ann Lively, the sum of three thousand five hundred
24 dollars;

25 To Joe Surber, Administrator, for the death of Marguer-
26 ette Francis Surber, the sum of three thousand five
27 hundred dollars;

28 and authorizes the payment of each of said awards from
29 funds in the state treasury pursuant to a valid appropria-
30 tion bill separate and apart from this act.

Sec. 2. The legislature hereby declares, as a finding of
2 fact, that each of the foregoing awards, and the pay-
3 ment thereof, under the circumstances involved in each
4 claim, constitutes a moral obligation of the state of West
5 Virginia.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Forest L. McNeer
Chairman Senate Committee

R. L. Matthews
Chairman House Committee

Originated in the Senate

Takes effect from passage.

Thomas M. Mays
Clerk of the Senate

Joseph
Clerk of the House of Delegates

Arnold M. Vickers
President of the Senate

John E. Amos
Speaker House of Delegates

The within Approved this the 13
day of Mar, 1947.

Glenn M. Mason
Governor.



Filed in the Office of the Secretary of State
of West Virginia **MAR 13 1947**
WM. S. O'BRIEN,
SECRETARY OF STATE