

AUSTIN PEAY STATE UNIVERSITY
POLICIES AND PROCEDURES MANUAL

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Date: May 6, 1999	Dated: June 4, 1998
Subject: Travel	
Initiating Authority: Vice President for Finance and Administration	TBR Policy/Guideline Reference: 4:03:03:00
Approved:  President	

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II. General Provision

1. The General Travel Policies and Procedures issued by Austin Peay State University are based upon the Travel Policy and Procedures of the Tennessee Board of Regents

as adopted for the State University and Community College System of Tennessee. Authorization for travel will not be granted and expenses will not be reimbursed unless the travel is made and reimbursement claimed in accordance with this policy and any approved exceptions hereto.

No authorization for travel by any employee shall be granted, and no reimbursement for travel expenses shall be made, except in accordance with the provisions of these policies and procedures. Reimbursement for travel expenses shall be limited to expenses incurred upon travel authorized in advance in accordance with Section III.

2. Travel which may be authorized, and pursuant to which expenses may be reimbursed, shall be limited to the following:
 - a. Travel which is necessary for the proper execution of official APSU educational, research, or other institutional objectives.
 - b. Travel to and from meetings and conferences of a professional nature which will increase the attending employee's usefulness to the University.
 - c. Travel by prospective employees may be reimbursable based on the provisions of APSU Policies 5:010, 5:005 and 4:017. Persons who incur travel expenses as a faculty recruit should request reimbursement based on this policy and in the amounts authorized in the referenced policies.
3. Travel shall not include, and no reimbursement for expenses shall be made for, transportation in connection with an employee's official station of employment. The employee's "official station" is his or her regular area of employment activity, e.g., Main Campus or Fort Campbell.

The official station of an employee shall be designated by the appointing authority. It is normally expected that the official station is that location at which the employee spends the major portion of his or her working time. For an employee required to be on call (as determined by his or her job description), either overnight or on weekends, the official station of the employee while on call becomes his or her residence, or the location at which the employee receives the call. Reimbursable mileage begins at the location at which the employee receives the call.

4. The employee is considered to be on official travel status, and as such, eligible for reimbursement of travel expense, at the time of departure from the employee's official station or residence, whichever is applicable, when traveling on University business. Expenses for meals will be allowed when overnight travel or occasional excessive hours of work are required outside the county of the employee's official station or residence. En route lodging will be allowed for only one day each way on trips of long duration. Expenses for lodging will only be allowed in cases where the approved and most direct or expeditious mode of travel will require more than ten (10) hours of continuous travel for trips of long duration. The lodging expense will not be considered en route lodging if it does not add an additional day of lodging expense. For example: An employee has a 9:00 a.m. meeting in Atlanta, GA. Assume the employee needs to work a full day prior to the trip. It would be less expensive and more convenient to drive rather than fly. The employee leaves the night before and drives to within two hours of Atlanta. The employee spends the night, continues the drive the next morning and arrives for the 9:00 a.m. meeting. This will be reimbursed but is not considered en route lodging as it did not add an additional day of lodging expense to the normal travel expenses.
5. The limitations on travel expenses contained herein are maximum amounts above which reimbursement shall not be made. Employees are expected to be as conservative as possible in incurring travel expenses.
6. Reimbursement for travel expenses shall only be allowed for actual expenses incurred, subject to the maximum limitations shown on Addendum I. Receipts must accompany claims for reimbursement for all expenses cited on Addendum I. The exceptions to this rule are for meals, taxi fares, tolls, and ferry fees with no receipt required. Lodging receipts are required and must itemize room charges and taxes.

III. Authorization of Travel

1. Authorization - A completed and fully approved travel authorization form must be on file in the Business Office two weeks prior to planned departure for all out-of-state and in-state travel for which estimated reimbursable expenses are expected to exceed \$100. The form must be signed by the person traveling, the department head,

dean, and vice president, as applicable, for all personnel except senior administrators. The President's signature is required on travel authorizations for senior administrators. If the proposed travel is to be funded from an external grant, approval must also be obtained from the Office of Grants and Sponsored Programs. No reimbursement can be made without a properly completed and approved authorization.

2. Student Travel - Authorization for travel by a student, regardless of the destination, shall be approved by the President of APSU, or the President's designee.
3. In-State Travel - All employees must obtain prior authorization for in-state travel by the employee's appropriate approving authority. Written authorization may not be necessary for in-state travel where the expected expenses will not exceed \$100, or when there is no advance notice of the circumstances necessitating the travel, and such travel is approved orally by the appropriate approving authority. Employees whose employment requires frequent in-state travel may obtain blanket authorization in writing for such travel. All other in-state travel should be authorized in writing as outlined in paragraph 1 of this section.
4. Out-of-State Travel (except Hawaii and Alaska) - All employees must obtain prior written authorization for out-of-state travel as outlined in paragraph 1 of this section. If, in the normal course of official business, the employee must routinely travel into another state and back in the same day, such travel will be considered in-state travel and shall be subject to the in-state travel provisions. This exception applies for trips which do not exceed 50 miles into another state.
5. Canada Travel - Authorization for travel by an employee to Canada shall be approved by the President of APSU.
6. All Other Travel - Authorization for travel by an employee to Alaska, Hawaii, and out-of-country, (except Canada) shall be subject to recommendation by the President of APSU, and written advance approval by the Chancellor.

IV. Transportation

1. General - All travel must be by the most direct or expeditious route possible, and any employee who travels by an indirect route must bear any extra expense occasioned thereby. When work is performed by an

employee en route to or from the official station, reimbursable mileage is computed by deducting the employee's normal commuting mileage from the actual mileage driven in performing the work en route to or from the official station. For example, if an employee normally commutes 10 miles (20 miles round trip), and performs work on the way home from the official station which results in 12 miles driven, the mileage reimbursement will be for 2 miles only, as that is the amount of mileage in excess of the employee's normal commute. In no instance shall mileage claimed for reimbursement exceed actual miles traveled.

2. Mode of Transportation - Transportation for employees traveling singly should be by common carrier (air, train, or bus) whenever practical. The use of air travel is recommended when time is an important factor or when the trip is so long that other methods of travel would increase the subsistence expense. Automobile transportation may be used to save time when common carrier transportation cannot be satisfactorily scheduled, or to reduce expenses when two or more employees are making the trip. Reimbursement for personal vehicle use may be claimed at the standard mileage rate provided that the cost of such reimbursement is less than comparable cost of commercial transportation including taxi fares and/or limousine charges.
3. Common Carrier Travel - When travel is by common carrier, the fare must not exceed the regular tourist fare charged the general public, and advantage must be taken of round trip rates when available. The employee's copy of the ticket must be submitted for reimbursement of common carrier expenses.

Arrangements have been made with certain travel agencies to bill the University direct for airline tickets. For this to occur, an approved airline authorization form must be obtained from the Business Office and presented to the travel agency prior to obtaining the ticket. The Business Office can provide the names of the travel agencies who have agreed to this arrangement. A copy of the ticket must be submitted with the travel claim, even if the ticket was paid for by the University.

4. Automobile Travel - When travel by automobile is appropriate, employees should use APSU motor pool vehicles whenever available. However, motor pool vehicles may be used only on official business.

a. APSU Motor Pool Vehicles - When transportation is

by a motor pool vehicle, tolls, parking, gasoline and storage expenses are allowable. Any expenses charged to APSU at a state garage should be excluded from the travel claim. Emergency out-of-pocket expenses, such as towing or emergency repairs, will be reimbursed but must be accompanied by proper receipt identifying the automobile and itemizing the services. Such expenditures must be of an emergency nature where immediate service is required and access to a state facility is not possible. Major repairs should be approved by campus officials prior to work being performed. Such expenditures are allowed but should be filed for reimbursement separately.

- b. Courtesy Vehicles - When transportation is by a courtesy vehicle, the provisions of APSU Policy 4:026 apply.
- c. Personally-Owned Automobiles - When use of an employee's personal vehicle is required in the daily performance of an employee's official duties, reimbursement for business mileage will be at a rate provided in Addendum I. This rate will apply to mileage (not to exceed 20 miles on any one round trip to the Fort Campbell Center) claimed by regular University faculty and staff, including those whose official station is the Fort Campbell Center.

Employees involved in automobile accidents that occur in the course of employment are protected from liability and may, under certain circumstances, recover personal losses associated with the accident. (See Addendum III to this policy.) Employees should immediately report any accident to the Assistant Director of Benefits in the APSU Human Resources Office. The Assistant Director of Benefits will provide the employee with assistance in notifying the Tennessee Commission on Claims for the purposes of avoiding personal liability and/or recovering personal losses if applicable. In case of legal action, employees should follow APSU Policy No. 5:007.

If an employee uses a personally-owned vehicle for personal convenience in the performance of official duties, reimbursement for business mileage will be at the rate provided in Addendum I.

- d. The travel claim must indicate the employee's itinerary and must show the official business mileage. Business mileage as indicated by the

official state map, and that published by Rand-McNally for out-of-state routes will be regarded as official. Vicinity mileage must be reported on a separate line and not included with point-to-point mileage. Only mileage for official business may be claimed.

5. Limousine and Taxi Service - When travel is by common carrier, reasonable limousine and taxi fares will be allowed for necessary transportation. Bus or limousine service to and from airports will be used when available and practical. After arrival at destination, necessary taxi fares for traveling between hotel or lodging and meeting or conference will be allowed. No receipt is required for reimbursement of reasonable taxi fares.
6. Vehicle Rental - Charges for automobile rental shall be allowed whenever it is more economical than alternative methods of transportation or it is the only practical means of transportation. Charges for insurance for rental automobiles are not reimbursable. Whenever possible, employees should refuel before returning vehicles.

Employees involved in automobile accidents that occur in the course of employment are protected from liability and may, under certain circumstances, recover personal losses associated with the accident. (See Addendum III to this policy.) Employees should immediately report any accident to the Assistant Director of Benefits in the APSU Human Resources Office. The Assistant Director of Benefits will provide the employee with assistance in notifying the Tennessee Commission on Claims for the purposes of avoiding personal liability and/or recovering personal losses if applicable. In case of legal action, employees should follow APSU Policy No. 5:007.

7. Tolls and Ferry Fees - Reasonable tolls and ferry fees will be allowed when necessary. No receipt is required for reimbursement of tolls and ferry fees.
8. Unnecessary meals and lodging expenses which are occasioned by the use of an automobile for reasons of the employee's personal convenience, or which are due to travel by an indirect route, will not be allowed.
9. If travel is by common carrier, the employee will be reimbursed for expenses in traveling to and from the common carrier including but not limited to the reasonable cost of one of the following options, whichever is less:
 - a. one round trip taxi fare,

- b. or parking of the employee's personal car at the location of the common carrier, plus mileage of one round trip,
- c. or mileage of two round trips in the employee's personal car (subject to a 220 mile maximum for two round trips).

Receipts must be furnished on airport and hotel parking exceeding maximum parking allowance in Addendum I.

V. Lodging

1. In-State Lodging - Lodging expenses incurred within the state while on authorized travel will be reimbursable to the maximum shown on Addendum I.
2. Out-Of-State Lodging - Lodging expenses incurred out of the state while on authorized travel will be reimbursable to the maximum shown on Addendum I. The maximum reimbursement rates for out-of-state travel are the same as those maintained by the US General Services Administration for federal employees within the continental United States (CONUS). The CONUS list, available on the General Services Administration web site, contains a standard reimbursement rate for lodging and meals and incidentals, and several pages of exceptions. Most destinations for out-of-state travel fall within the list of exceptions. En route lodging will be allowed for only one day each way on trips of long duration. En route lodging will only be allowed in cases where the approved and most direct or expeditious mode of travel will require more than ten (10) hours of continuous travel. (Refer to Section II.4 for explanation of en route lodging expenses.)
3. Additional Lodging Expenses - Sales taxes on lodging costs will be reimbursable.

Higher rates for lodging at the location of a convention or conference will be allowed, without special approval, up to the amount indicated in the convention or conference brochure. If more than one rate is indicated, the lowest rate is the amount which will be reimbursed. However, the employee should attempt to receive a government rate for the lodging. If the lowest rate indicated in the convention or conference brochure is unavailable, advance approval of the higher rate must be obtained from the appropriate approving authority. The convention or conference brochure which indicates the lodging rates must be included with the travel claim. Otherwise, reimbursement will be limited to the

applicable lodging rate as provided in these regulations.

4. Shared Lodging - When employees share a hotel room, each employee should claim a proportionate share of the room cost, and include an explanation with his or her travel claim detailing dates and other employees with whom the room was shared.

If a room is shared with other than an APSU employee, actual cost subject to the maximum above will be allowed. The receipt for the entire amount should be submitted with the expense claim.

VI. Meals

1. In-State and Out-of-State Meals - Meals while on authorized travel will be reimbursed, subject to the meal allowance provided on Addendum I and the conditions in item 4 below. The maximum per diem rates include a fixed allowance for meals and for incidental expenses (M & I). The M & I rate, or fraction thereof, is payable to the traveler without itemization of expenses or receipts. Incidentals are intended to include miscellaneous costs associated with travel such as tips for baggage handling, phone calls home, etc. Employees on overnight travel status not claiming lodging must include an explanation to claim meal allowances (e.g., staying with friends).

The M & I rates for out-of-state travel are the same as those for federal employees, and are available on the General Services Administration's web site. As with lodging, there is a standard rate for the continental United States (CONUS), and a list of exceptions. Reimbursement for meals and incidentals for the day of departure shall be three-fourths of the appropriate M & I rate (either the in-state rate or CONUS rate for out-of-state travel) at the rate prescribed for the lodging location. Reimbursement for M & I for the day of return shall be three-fourths of the M & I rate applicable to the preceding calendar day. To assist in this calculation, the following table lists partial per diem rates for meals and incidentals for in-state and out-of-state travel.

Per Diem Rates - Three-fourths Calculations

\$30	\$22.50
34	25.50
38	28.50

42	31.50
46	34.50

The following table may be used to determine reimbursement for a single meal, when appropriate. Reimbursement may be made for an occasional meal for employees on travel status working beyond their 7.5 hour workday who leave home on or before 6 a.m. or do not return home until on or after 7 p.m.

In-state and Out-of-state
Meals and Incidental - Allocated By Meal

Per diem	30	34	38	42	46
Breakfast	6	7	8	9	10
Lunch	8	9	10	11	12
Dinner	14	16	18	20	22
Incidentals	2	2	2	2	2

2. Official Banquets - When the expenses for an official banquet of a meeting or conference are in excess of the meal allowance, the excess will be allowed provided a receipt or proper explanation of the charge is submitted.
3. Meals Included in Registration Fees - If meals are included in the registration fee of a conference, convention, seminar, etc., an allowance for the corresponding meal cannot be claimed.
4. Time Schedule - The following time schedule for departure from and return to an employee's official station shall determine eligibility for reimbursement for meals when overnight travel is not involved:

	<u>Departure on or Before</u>	<u>Return on or After</u>
Breakfast	6:00 a.m.	8:00 a.m.
Lunch	11:00 a.m.	1:30 p.m.
Dinner	5:00 p.m.	7:00 p.m.

Reimbursement of the lunch meal will not be made unless the employee is also eligible for reimbursement of the dinner meal.

VII. Miscellaneous Expenses

1. Personal Expenses - Expenses for entertainment (employee or others), laundry, valet service, tips and gratuities, etc., are personal expenses and will not be reimbursed in excess of the incidental portion of the M & I rate.

2. Telephone, Telegram and Fax Expenses - Charges for long distance telephone calls, telegrams, and/or faxes on official business will be allowed provided a statement is furnished showing the date, the name and location called, and the nature of the business. Charges for necessary local calls on official business will be allowed.
3. Registration Fees - Registration fees for approved conferences, conventions, seminars, meetings, etc., will be allowed including cost of official banquets and/or luncheons, if authorized in advance by the appropriate approving authority, and provided receipts are submitted with the travel claim.

Registration fees that have been given appropriate approval may be submitted to the Business Office for prepayment at least two weeks prior to their due date. The approved Travel Authorization with a completed Request for Advanced Registration Payment and evidence of the amount of the fee will accomplish this process. Forms are available in the Business Office.

4. Handling Fees - Fees for the handling of equipment or promotional materials will be allowed up to the maximum indicated (see Addendum I).

VIII. Claims

The standard form for claims for travel expenses approved by the President shall be used for reimbursement of expenses. The form must show movement and detail of expenses on a daily basis, be completed and signed in ink by the employee, and be approved by the appropriate approving authority prior to reimbursement. All signatures on travel claims must be original. Receipts for appropriate expenses must be attached to the form. Expenses for books, supplies, postage, and other items that do not constitute actual traveling expenses should not be included on the claim form but should be handled through normal purchasing procedures. Claims for reimbursement for travel expenses should be submitted no later than thirty (30) days after completion of the travel. Claims submitted after this period must provide written explanation for the delay.

IX. Travel Advances

1. General - Normally, travel expenses should be paid when incurred by an employee, with reimbursement made to the employee for actual expenses upon proper submission of a claim for travel expenses. Advances to employees for anticipated travel expenses may be made under the circumstances hereinafter described as (1) permanent travel advances and (2) temporary travel advances except

as provided in Section X.3. All travel advances must be approved by the President or his designee.

2. Permanent Travel Advances - When an employee has blanket travel authorization and is expected to travel the major portion of each month, the employee may be placed upon permanent travel status. Upon determination of the employee's estimated monthly expenses, if such expenses exceed \$100, the employee may be provided with a single advance in an amount sufficient to cover such expenses for one month, provided such amount may not exceed the semi-monthly salary of the employee. Subsequent to the initial advance, the employee shall submit appropriate claims and be reimbursed as heretofore provided, with any unused portion of the advance to be returned upon termination of the employee's permanent travel status.
3. Temporary Travel Advances - When temporary travel is authorized, the employee may receive an advance, provided a request for the advance, including estimated expenses, is submitted to the appropriate approving authority with the request for written authorization for the travel, and is approved. An amount equal to 80% of the estimated expenditures will be allowed as an advance, however, no advance less than \$100 will be made. Students traveling under individual authorizations or an employee traveling with a student or students who is responsible for disbursing all funds for the trip may be advanced 100% of the amount of the authorization. Advance checks will not be issued until three working days prior to scheduled departure. No additional travel advances shall be made until the prior advance claim has been reviewed by the Business Office. Exceptions may be made for unusual circumstances by the Vice President for Finance and Administration, Assistant Vice President for Finance or the Director of Accounting Services.
4. Payroll Deduction Authorization - Each employee receiving a permanent or temporary travel advance must sign a travel authorization with the statement "I understand that a payroll deduction will be made by the State for a travel advance if a claim is not filed in a reasonable length of time or upon termination of employment" which will allow the State to recover the advance from any salary owed the employee in the event of termination of employment or failure to submit a travel claim. This deduction from payroll should be used as a last resort only in the event all other efforts to collect the advance have failed.
5. Expense Claim - Upon return, the employee should submit an expense claim detailing the actual expenditures. This claim should show the total expenses incurred. The advanced amount should be subtracted from this total. No

advance should exceed actual expenses. If this does happen, however, the excess should be returned by the employee to the Business Office for deposit as a credit against the original advance with proper distribution being made of the actual expenses incurred. In the latter instance, the expense account claim should be forwarded to the Business Office with notification to file it with the advance request.

X. Moving Expenses

1. Authorization

- a. Payment of moving expenses must be approved in advance by the President or designee.
- b. Approval of moving expenses may be made when considered in the interest of APSU and when such payment is a part of the employment negotiation with a new employee or the relocation of a current employee.
- c. No moving expenses will be authorized or paid which would not qualify for a deduction under Section 217 - Moving Expenses - of the Internal Revenue Code.
- d. Expenses and allowances as provided in these regulations shall not be allowed unless and until the employee agrees in writing to remain in the service of APSU for a period of twelve (12) months following the effective date of move, unless separated for reasons beyond his/her control and acceptable to APSU. For faculty on an academic or modified fiscal year basis, the employment service shall be one regular academic year of two semesters or the normal work period associated with a modified fiscal year appointment. The service agreement statement should be maintained in the employee's personnel file. In case of a violation of such an agreement, including failure to effect the transfer, any funds expended by APSU for such expenses and allowances shall be recoverable from the employee concerned as a debt due APSU.

2. Expenses Subject to Payment/Reimbursement

- a. Possible expenses subject to payment or reimbursement will be actual cost of moving household goods and personal effects, travel expenses directly associated with the movement of

household goods and effects, and temporary storage of goods and effects.

- b. The actual cost of moving goods and effects may include the cost of commercial moving companies, rental of moving vans/trucks and operating cost (gas) of these rentals, and the cost of packing/unpacking (including labor and materials). Moving and rental companies' insurance charges may be included.
- c. Travel expenses directly associated with a move may include mileage of all owned vehicles and en route lodging.

Lodging may be covered for the employee and all immediate family members residing in the household. En route lodging may be provided for one night if the distance of the move is 400 miles or more, plus one additional night for each additional 400 miles. Lodging for one night at the destination may be permitted.

Mileage and lodging will be consistent with the Tennessee Board of Regents travel policy rates. Travel expenses incurred when moving from another state to Tennessee will be reimbursed at the out-of-state rates.

For the purpose of these regulations, immediate family is defined as any of the following named members of the employee's household at the time he/she reports for duty at his/her new official station: spouse, children (including step-children, adopted children, or foster children) unmarried and under 21 years of age or physically or mentally incapable of supporting themselves regardless of age, or dependent parents of the employee and the employee's spouse.

- d. If two or more members of an immediate family otherwise qualify for reimbursement or allowances under these regulations as Tennessee Board of Regents employees, only one member shall be eligible for employee reimbursement or allowances; the other is eligible for reimbursement as a family member.
- e. Storage of household goods and personal effects may be allowed for a period not to exceed 90 days.

3. Arranging for Moving and Payment

- a. If the total moving expense authorized exceeds \$5,000 and if APSU agrees to pay all of the cost of a commercial mover, APSU must arrange for the mover through normal purchasing procedures. The vendor should be paid directly by APSU.
- b. In all other cases, APSU may require, at its option, that arrangements be made through its Purchasing Department or the employee may make the arrangements and seek reimbursement.
- c. Only arrangements made directly by APSU will be reimbursed directly to vendors by APSU. In other cases APSU should reimburse the employee. Claims for reimbursement must be supported by an invoice.

4. Other Provisions

- a. Moving expense will be paid or reimbursed only after a contract is executed between the employee and APSU. See Addendum II.
- b. All travel and travel expenses shall be accomplished as soon as possible, but in no event shall the effective date of the move to the completion of travel and transportation exceed twelve (12) months unless written extension is granted by the President of APSU. All payments or reimbursements must be made within twelve (12) months of the date employment begins for new employees or relocation occurs for relocated employees.
- c. The agreement on the amount of moving expenses to be paid, the type expenses to be paid, responsibility for arranging logistics, etc., should be clearly understood in writing between the employee and APSU.
- d. APSU shall assume no liability whatsoever for personal injuries, property damage, or other losses which may be sustained in connection with any moves undertaken pursuant to these regulations.

XI. Exceptions

The Chancellor shall have the authority to grant exceptions to any part or all of the provisions of this policy when deemed

appropriate and necessary. Standing exceptions involving the Chancellor, his or her immediate staff, Presidents, Area School Directors, System employees traveling with the aforementioned and members of the Board of Regents are detailed in TBR Policy No. 4:03:03:00.

Addendum I

APSU Travel Policy

This Addendum provides the specific expense considerations cited in the general travel policy. The reimbursement rates listed below are consistent with the current Comprehensive Travel Regulations of the State of Tennessee, which may be revised from time to time. The following shall remain in effect from and after August 1, 1998, until revised by the Chancellor.

General Reimbursement Rates

Standard mileage rate	\$ 0.26 per mile
Maximum parking fees without receipt (Required for hotel and airport parking)	\$ 5.00 per day
Fees for handling of equipment or promotional materials	\$20.00 per hotel

In-state Travel Reimbursement Rates

Level I Counties and Cities

Day of Departure and return	Maximum Lodging	Maximum Meals and Incidentals
75% of M & I	\$60.00 + tax	\$30.00
Shelby Co.	Davidson Co.	Knox Co.
Gatlinburg	Sullivan Co.	Johnson City
		Hamilton Co.

Level II Counties and Cities

Day of Departure and return	Maximum Lodging	Maximum Meals and Incidentals
75% of M & I	\$50.00	\$30.00
All other counties and cities not listed above.		

Out-of-State Reimbursement Rates

Employees are to utilize the US General Services Administration. CONUS (Continental United States) rates provided by the federal government. The CONUS rates are located on the US Government's web page at -

<http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/travel.shtml>

Use the CONUS standard rates for all locations within the continental United States not specifically shown on the web page as a listed point.

Standard Out-of-Country Rates

<u>Day of Departure and Return</u>	<u>Maximum Lodging</u>	<u>Maximum Meals and Incidentals</u>
Actual Expense or 75% of M & I	Actual Expense	\$42.00

(Per diem amount only to be used when receipts are not available.)

Addendum II

TENNESSEE BOARD OF REGENTS
MOVING EXPENSE AGREEMENT

Agreement made on _____ (Date) between AUSTIN PEAY STATE UNIVERSITY (referred to as the Institution), and (Employee's Full Name) (referred to as the Employee),

WITNESS:

WHEREAS, the Employee, with employment date effective (Employment Date) desires to move and relocate his/her residence from City and State to Clarksville, TN, and the Institution desires to reimburse or pay on behalf of the Employee (partial) cost of the moving expenses, the parties, therefore, agree as follows:

1. The Institution agrees to reimburse or pay on behalf of the Employee an amount not to exceed \$_____ for moving expenses incurred for the relocation. Of this amount, not more than \$_____ can be reimbursed directly to the individual. All reimbursement claims must comply with the State Comptroller's rules and regulations in effect when this agreement is signed. Also, the Employee agrees to provide original receipts for all reimbursement claims.
2. In consideration for the Institution either reimbursing or paying the costs of moving, the Employee agrees to remain employed by the Institution for a period of at least one year. For faculty appointed on an academic basis, one year is defined as one regular academic session (Fall and Spring semesters, nine months). For all other annual faculty and employees, one year is defined as twelve months. Should the Employee leave employ prior to completion of that year, the Employee will be liable to the Institution for all moving expenses which the Institution has paid (to or on behalf of the Employee), together with reimbursements and all payroll taxes withheld by the Institution in connection with such expenses.
3. The Employee hereby gives the Institution an express lien on all salaries, wages, and other sums payable to him/her by the Institution, for the purpose of securing all amounts due under Section 2 above in the event the Employee leaves prior to one year's employment at the Institution. The Employee authorizes the Institution to withhold all amounts due under this Agreement from any sum payable to the Employee by the Institution.

4. If the Employee fails to remain employed as indicated in Section 2 above for reasons beyond his/her control considered sufficient by the Institution, all or part of the liability under Section 2 may be waived by the Institution. Any such waiver must be approved in writing by the President. (The dean/department head must notify Accounting Operations if the Employee does not remain employed at the Institution at least one year.) In the event a waiver is approved and the employee has not been employed for at least 39 weeks, the amount paid to the Employee as moving expenses will be considered taxable income and included on the Employee's form W-2 as wages at the end of the calendar year.
5. To be eligible as a moving expense, payments must be considered deductible under current Internal Revenue Service (IRS) Regulations regarding moving expenses. Any payments made to the Employee or on behalf of the Employee for moving expenses which are not considered deductible by the IRS will be considered as taxable income to the Employee and included on the Employee's form W-2 as wages at the end of the calendar year. Employees are encouraged to familiarize themselves with IRS regulations on moving expenses and consult with the University's Office of Human Resources should questions arise.

Employee (Signature)

President (Signature)

Employee (Print or Type)

President (Print or Type)

Employee's Social
Security Number

Assistant Vice Pres. for Finance

Department Name

Account Number to be Charged

Department Contact and
Phone Number

ADDENDUM III
EXCERPTS FROM TENNESSEE CODE ANNOTATED

31

BOARD OF CLAIMS

9-8-111

(A) The claimant shall have the burden of proving that the escapee caused the damage, that the proximate cause of the escape was the negligence of a state employee, that the incident giving rise to the loss occurred in the county in which the escape occurred or in a county contiguous to the county in which the escape occurred, that the damage occurred within seventy-two (72) hours of the escape and that the amount requested is not reimbursable from any other source;

(B) No award shall be paid if the state correctional facility from which the individual causing such damage escaped is classified as a community service center, a work release center or a non-secured juvenile facility;

(C) No award shall be paid to any individual who aided in the escape of the inmate causing such damage;

(D) For purposes of this subdivision, negligence shall exist when an employee of the department of correction is disciplined as a result of acts or omissions related to the occurrence of escape;

(E) Claim awards shall be limited to five thousand dollars (\$5,000) per claimant; and

(F) No award shall be made for damages occurring prior to February 4, 1987; provided, that claims made pursuant to this subdivision for damages that occurred between January 1, 1987 and February 29, 1988 must be filed with the board of claims within sixty (60) days of February 29, 1988; and

(10) Be authorized to adopt and publish rules and regulations necessary for the proper performance of its duties.

(b) The board of claims may not consider a claim filed more than one (1) year after the occurrence of the incident giving rise to the claim. [Acts 1984, ch. 972, § 16; 1986, ch. 626, § 6; 1986, ch. 911, § 5; 1988, ch. 467, § 1; 1988, ch. 701, § 1.]

Law Reviews. The Exclusiveness of an Employee's Workers' Compensation Remedy Against His Employer (Joseph H. King, Jr.), 55 Tenn. L. Rev. 405 (1988).

Cited: Walker v. Norris, 917 F.2d 1449 (6th Cir. 1990).

9-8-109. Claims award fund.

Section to Section References. This section is referred to in § 9-8-308.

Cited: University of Tenn. v. United States

Fid. & Guar. Co., 670 F. Supp. 1379 (E.D. Tenn. 1987); Jain v. University of Tenn., 670 F. Supp. 1388 (W.D. Tenn. 1987).

9-8-111. Compensation for loss, damage, or destruction of personal property. — (a)(1) The state shall compensate state employees for the loss, damage or destruction of personal property which is not otherwise compensable which occurs in the course of employment and which is required by the state to be used in the course of employment.

(2) For purposes of this section, a motor vehicle shall be considered required by the state to be used in the course of employment only if:

(A) The employee was reimbursed for mileage by the state for use of such motor vehicle at the time of the incident giving rise to the claim; or

(B) The employee was authorized to use a rental motor vehicle paid for by the state at the time of the incident giving rise to the claim.

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(3) The requirement that the employee's personal property be required by the state to be used in the course of employment shall be waived if:

(A) The loss, damage or destruction resulted from an assault and battery upon the state employee;

(B) The loss, damage or destruction occurred while the employee was performing duties outside the normal scope of his or her employment at the direction of an immediate supervisor; or

(C) The loss, damage or destruction occurred as a result of a special hazard of the employee's employment which is not encountered by the general public.

(b) Notwithstanding the provisions of subsection (a), the state shall not compensate state employees for the loss, damage or destruction of personal property if:

(1) The loss, damage or destruction resulted from an act of God or natural disaster;

(2) The loss, damage or destruction of personal property which is not a motor vehicle resulted from the employee's negligence;

(3) The loss, damage or destruction of personal property which is a motor vehicle resulted from the employee's gross negligence; or

(4) The loss, damage or destruction represents normal wear and tear of personal property.

(c) In cases where the employee has the benefit of insurance coverage for the personal property, the employee shall not be compensated by the state unless the employee has attempted to obtain compensation from such insurer. The state shall compensate the employee only to the extent the employee is not compensated by the insurer.

(d) The burden shall be upon the employee to prove the extent of the loss, damage or destruction of personal property and the failure of an insurer to compensate for such loss, damage or destruction. The state shall only be responsible for compensating employees to the extent that such proof is submitted. [Acts 1981, ch. 517, § 1; T.C.A., § 9-8-218; Acts 1984, ch. 972, § 19; 1986, ch. 626, § 9; 1988, ch. 850, § 1.]

9-8-112. Final judgments against state employees.

Compiler's Notes. Section 4-5-108 et seq., referred to in this section, is apparently a reference to those provisions prior to the 1982 revision of title 4, ch. 5. Present provisions concerning contested cases are found in title 4, ch. 5, part 3.

Cross-References. Approval of employment of private counsel, § 8-42-104.

Defense counsel for state employees. § 8-42-103.

Section to Section References. This section is referred to in §§ 8-42-103, 8-42-104, 9-8-108.

Cited: Jain v. University of Tenn., 670 F. Supp. 1388 (W.D. Tenn. 1987).

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PART 3—TENNESSEE CLAIMS COMMISSION

9-8-301. Creation.

Compiler's Notes. The Tennessee claims commission, created by this section, terminates June 30, 1991. See §§ 4-29-112, 4-29-212.

Section to Section References. This section is referred to in §§ 4-29-212, 29-13-102.

Law Reviews. Selected Tennessee Legislation of 1986, 54 Tenn. L. Rev. 457 (1987).

Cited: Fireman's Fund Ins. Co. v. Bell Helicopter Textron, Inc., 667 F. Supp. 583 (E.D.

Tenn. 1987); Jain v. University of Tenn., 670 F. Supp. 1388 (W.D. Tenn. 1987); Computer Shoppe, Inc. v. State, 780 S.W.2d 729 (Tenn. Ct. App. 1989); Brown v. State, 783 S.W.2d 567 (Tenn. Ct. App. 1989); Walker v. Norris, 917 F.2d 1449 (6th Cir. 1990); Thompson v. Regional Medical Center, 748 F. Supp. 575 (W.D. Tenn. 1990).

NOTES TO DECISIONS

1. In General.

The Tennessee Claims Commission Act did not deprive federal district court of jurisdiction over medical malpractice action against defendants in their individual capacity. Rather, it

granted absolute immunity to defendants who were state employees acting within the scope of their employment. Thompson v. Regional Medical Center, 754 F. Supp. 594 (W.D. Tenn. 1991).

9-8-305. Powers and duties.

Cited: White ex rel. Swafford v. Gerbitz, 860 F.2d 661 (6th Cir. 1988).

→ **9-8-307. Jurisdiction — Claims — Waiver of actions — Standard for tort liability — Damages — Immunities — Definitions — Transfer of claims.** — (a)(1) The commission or each commissioner sitting individually shall have exclusive jurisdiction to determine all monetary claims against the state falling within one (1) or more of the following categories:

(A) The negligent operation or maintenance of any motor vehicle or any other land, air, or sea conveyance;

(B) Nuisances created or maintained;

(C) Negligently created or maintained dangerous conditions on state controlled real property. The claimant under this subsection must establish the foreseeability of the risks and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;

(D) Professional malpractice;

(E) Negligent care, custody or control of persons;

(F) Negligent care, custody or control of personal property;

(G) Negligent care, custody or control of animals. Damages are not recoverable under this section for damages caused by wild animals;

(H) Negligent construction of state sidewalks and buildings;

(I) Negligence in planning and programming for, inspection of, design of, preparation of plans for, approval of plans for, and construction of, public roads, streets, highways, or bridges and similar structures, and negligence in maintenance of highways, and bridges and similar structures, designated by the department of transportation as being on the state system of highways or the state system of interstate highways.

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(J) Dangerous conditions on state maintained highways. The claimant under this subsection must establish the foreseeability of the risk and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;

(K) Workers' compensation claims by state employees, including injuries incurred by national guard members, state defense force members, civil air patrol members, civil defense agency personnel and emergency forest fire-fighters while on active duty and in the course of that duty. The commission's payment of these claims shall be in such amount and subject to such limitations as set forth in title 50, chapter 6, except the following code sections shall have no application to workers' compensation claims filed against the state: §§ 50-6-103, 50-6-104, 50-6-106(5), 50-6-117, 50-6-205(c) and (d), 50-6-206, 50-6-208, 50-6-211, 50-6-213, 50-6-222, 50-6-224(2), 50-6-225(a)-(d) and (g), 50-6-228, 50-6-229(b), 50-6-233, 50-6-307, and title 50, chapter 6, part 4. Where appropriate, the claims commission shall be considered the court or tribunal to determine claims within the provisions of title 50, chapter 6. Payments shall be made and accepted without regard to fault as a cause of the injury or death. The second injury fund shall have no application to workers' compensation claims against the state of Tennessee. Payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments. Likewise, the acceptance of compensation by the officer or employee shall not be considered a binding determination of the obligations of the employer as to future compensation payments; nor shall the acceptance of compensation by the officer or employee be considered a binding determination of his rights. The interested parties shall have the right to settle all matters of compensation between themselves, but all settlements before the same are binding on either party, shall be reduced to writing and shall be approved by a commissioner before whom the claim for compensation is entitled to be heard. It shall be the duty of the commissioner to whom any proposed settlement shall be presented for approval, to examine the same to determine whether the officer or employee is receiving, substantially, the benefits provided by the Workers' Compensation Law, compiled in title 50, chapter 6. To this end, he may call and examine witnesses. Upon such settlement being approved, an order shall be rendered by the commissioner and duly entered by the clerk. In case any officer or employee of the state of Tennessee for whose injury or death compensation is payable under the Workers' Compensation Law shall at the time of injury be employed or paid jointly by two (2) or more employers subject to such law, such employers shall contribute to payment of such compensation in a proportion of their several wage liability to such officer or employee. The state of Tennessee shall be considered the primary employer and the determination of workers' compensation paid shall be pursuant to the procedures provided for state officers and employees. If one (1) or more, but not all, of such officers and employees should be subject to the Workers' Compensation Law and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject shall be to pay the proportion of the entire compensation which their portion of the wage liability bears to the wages of

the officer or employee; provided, however, that nothing in this section shall prevent any agreement between the different employers between themselves as to the distribution of the ultimate burden of such compensation. The state of Tennessee shall pay the officer or employee under the Workers' Compensation Law and seek contribution from other contributing employers. The state of Tennessee shall have a right of action in the courts against the joint employers;

(L) Actions for breach of a written contract between the claimant and the state which was executed by one (1) or more state officers or employees with authority to execute the contract; provided, that the group insurance agreements created pursuant to §§ 8-27-201 and 8-27-302, shall be considered contracts for purposes of this subsection in order for the commission to determine insurance claims which have been previously rejected by the state insurance committee or the local education insurance committee;

(M) Negligent operation of machinery or equipment;

(N) Negligent deprivation of statutory rights, except for actions arising out of claims over which the civil service commission has jurisdiction;

(O) Claims for the recovery of taxes collected or administered by the state, except any tax collected or administered by the commissioner of revenue;

(P) Claims for the loss, damage or destruction of the personal property of state employees based on § 9-8-111;

(Q)(i) Claims for injuries incurred by persons where such injury occurred while the person was a passenger in a motor vehicle operated by a state employee while such employee was acting within the scope of employment. The claimant has the burden of proving the following:

(a) The injuries suffered by the claimant occurred as a result of an accident involving a motor vehicle operated by a non-state employee and a motor vehicle operated by a state employee who, at the time of the accident, was acting within the scope of employment;

(b) The proximate cause of the accident was the negligent operation of the motor vehicle operated by the non-state employee;

(c) The claimant has been unable to recover any damages from the negligent party because the negligent party was uninsured or underinsured at the time of the accident and is otherwise financially incapable of fully compensating the claimant;

(d) The claimant has been unable to recover sufficient amounts under workers' compensation law or from any other public or private source, including the claimant's uninsured motorist's insurance policy, to fully compensate for the injuries suffered; and

(e) The claimant's presence in the motor vehicle operated by the state employee was for the benefit of the state, except that this requirement shall be waived for persons who are injured while a passenger in a state-owned motor vehicle used in the state employee van pool program authorized in § 4-3-1105(23).

(ii) Notwithstanding the provisions of subsection (e), awards under this subdivision (a)(1)(Q) shall be limited to amounts recoverable under subdivision (a)(1)(K). Awards under this subdivision (a)(1)(Q) shall not be consid-

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ered payments under an uninsured motorists insurance policy as provided for in title 56, chapter 7, part 12;

(R) Claims for libel and/or slander where a state employee is determined to be acting within the scope of employment;

(S)(i) Claims for compensation filed under the Criminal Injuries Compensation Act, compiled in title 29, chapter 13 and § 40-24-107. Claims filed pursuant to this subdivision shall be determined in accordance with the provisions of title 29, chapter 13 and, if requested by the claimant, shall be heard in the claimant's county of residence. Decisions of the commission shall be subject to appeal in the same manner set forth in § 9-8-403 for other decisions of the commission.

(ii) Notwithstanding the provisions of title 29, chapter 13 to the contrary, the Tennessee claims commission shall have exclusive jurisdiction to determine all claims filed for compensation under the Criminal Injuries Compensation Act in accordance with the provisions of title 29, chapter 13; provided, however, that this exclusive jurisdiction shall apply only to claims for compensation filed on or after January 1, 1987. At the request of the claimant and with the consent of the court, any claim filed prior to January 1, 1987 may be transferred to the claims commission for determination of the claim;

(T) Actions based on § 69-1-201; and

(U) Actions based on violations of the requirements of procurement of commodities or services under title 71, chapter 4, part 7.

(2) No item enumerated in this subsection shall be interpreted to allow any claim against the state on account of the acts or omissions of persons, partnerships, corporations or other entities licensed or regulated by agencies of the state, notwithstanding any negligence committed by the state in the course of performing licensing or regulatory activities. No item enumerated in this subsection shall be interpreted to allow any claims against the state arising out of or resulting from: the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization; an inspection, or by reason of making an inadequate or negligent inspection of any property, except as provided for in subdivision (a)(1)(I); or, riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances. Except that the claims commission shall have jurisdiction over riots and disturbances occurring on or after January 1, 1985 by persons who are in the care, custody and control of the state where the state's negligence is the proximate cause of the riot or disturbance which, in turn, is the proximate cause of the injury to the claimant or damage to the claimant's personal property.

(3) It is the intent of the general assembly that the claims commission shall only hear claims arising on or after January 1, 1985. All claims arising prior to January 1, 1985 are to be governed by the law as it was prior to that date. For purposes of jurisdiction, a claim for recovery of taxes is deemed to arise on the date of the payment under protest. However, for any claim falling within the jurisdiction of the claims commission as determined by this subsection and arising before January 1, 1985, the board of claims may authorize the chairman of the board to transfer any claim or classes of claims to the claims

commission. No claims shall be transferred where the claimant objects. Transferred claims shall be subject to the same requirements and procedures as claims originally filed with the claims commission. It is the intent of the general assembly that the jurisdiction of the claims commission be liberally construed to implement the remedial purposes of this legislation. It is the intent of the general assembly that no distinctions be made between officers and employees of the state under this legislation. The availability of state records and documents concerning claims shall be subject to the same discovery defenses as are available to other parties. The portion of the records in possession of the division of claims administration containing the amount of funds reserved for each claim for the claims award fund shall be confidential and not subject to the provisions of § 10-7-503, until the final adjudication of the claim.

(b) Claims against the state filed pursuant to subsection (a) shall operate as a waiver of any cause of action, based on the same act or omission, which the claimant has against any state officer or employee. The waiver shall be void if the commission determines that the act or omission was not within the scope of the officer's or employee's office or employment.

(c) The determination of the state's liability in tort shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care.

(d) The state will be liable for actual damages only. No award shall be made unless the facts found by the commission would entitle the claimant to a judgment in an action at law if the state had been a private individual. The state will not be liable for punitive damages and the costs of litigation other than court costs. The state will not be liable for willful, malicious, or criminal acts by state employees, or for acts on the part of state employees done for personal gain. The state may assert any and all defenses, including common law defenses, which would have been available to the officer or employee in an action against such an individual based upon the same occurrence. The state may assert any absolute common law immunities available to the officer or employee, however, good faith common law immunity may not be asserted. If the claimant is successful with any claim filed with the claims commission after January 1, 1985, the state shall pay such interest as the commissioner may determine to be proper, not exceeding the legal rate as provided in § 47-14-121. In contract actions, interest may be awarded, but if the rate of interest is provided in the contract, the award of interest shall be at that rate.

(e) For causes of action arising in tort, the state shall only be liable for damages up to the sum of three hundred thousand dollars (\$300,000) per claimant and one million dollars (\$1,000,000) per occurrence. The board of claims is authorized to purchase insurance, on a per claimant or per occurrence basis, for any class of claim. Any recovery covered by such a policy may exceed the monetary limits of this subsection, but only up to the policy limit.

(f) No language contained in this chapter is intended to be construed as a waiver of the immunity of the state of Tennessee from suit in federal courts guaranteed by the eleventh amendment to the Constitution of the United States.

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(g) No language contained in this chapter is intended to be construed to abridge the common law immunities of state officials and employees.

→ (h) State officers and employees are absolutely immune from liability for acts or omissions within the scope of the officer's or employee's office or employment, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain. For purposes of this chapter, "state officer" or "employee" has the meaning set forth in § 8-42-101(a)(3).

(i)(1) Claims that were timely filed with a court of competent jurisdiction and that fall within the jurisdiction of the claims commission found in subsection (a) may be transferred to the division of claims administration by agreement of the parties and the consent of the attorney general and reporter and upon such transfer shall be considered timely filed with the division of claims administration. Such transfer shall be effected by filing with the division of claims administration the parties' agreement and the complaint which is the subject of the agreement. Such claims shall be considered by the division of claims administration and the claims commission, as provided by law, even if the court retains jurisdiction over the claim.

(2) Claims which are transferred to the division of claims administration pursuant to this subsection shall be investigated by the division of claims administration, acted upon or transferred by the division, and acted upon by the claims commission pursuant to the same statutory requirements and procedures as apply to claims originally filed with the division of claims administration. [Acts 1984, ch. 972, § 8; 1985, ch. 36, § 12; 1985, ch. 105, §§ 1, 4-7, 16; 1985, ch. 322, § 3; 1986, ch. 626, §§ 1-3; 1986, ch. 749, § 1; 1986, ch. 911, §§ 1, 2, 4; 1988, ch. 890, § 1; 1989, ch. 28, § 2; 1989, ch. 491, §§ 1, 2, 5; 1991, ch. 133, § 3; 1991, ch. 499, § 2.]

Compiler's Notes. Acts 1988, ch. 890, § 2 provided that the 1988 amendment by that act shall apply to all records relating to claims against the state filed on or after May 2, 1988.

Amendments. The 1991 amendment by ch. 133 rewrote (a)(1)(I) which read: "Negligence in planning and programming, inspection, design, construction, maintenance or approval of plans and construction of public highways and bridges if such activity is mandated or undertaken pursuant to state or federal law;"

The 1991 amendment by ch. 499 added (a)(1)(U).

Effective Dates. Acts 1991, ch. 133 § 7. April 10, 1991.

Acts 1991, ch. 499, § 4. July 1, 1991. Section 4 also provided that for purposes of appointing members to the advisory committee for purchase from the blind and other severely handicapped and for promulgating rules and regulations, the amendments to this section by that act took effect June 25, 1991.

Cross-References. Approval of employment of private counsel, § 8-42-104.

Defense counsel for state employees, § 8-42-103.

Definition of "state employee," § 8-42-101.

Responsibility for maintenance of roads,

bridges, etc., in state highway system. § 54-1-126.

Section to Section References. This section is referred to in §§ 8-42-103, 8-42-104, 68-2-1115.

Law Reviews. Criminal Injuries Compensation: A Primer (Richard W. Rucker), 23 No. 4 Tenn. B.J. 32 (1987).

The Exclusiveness of an Employee's Workers' Compensation Remedy Against His Employer (Joseph H. King, Jr.), 55 Tenn L. Rev. 405 (1988).

Updating Tennessee's Public Records Law (Douglas Pierce), 24 No. 5 Tenn. B.J. 24 (1988).

Attorney General Opinions. Immunity of members of private industry councils and officers and directors of Growth Enterprise Nashville, Inc., OAG 87-102 (6/15/87).

Liability of local emergency planning committee members, OAG 88-89 (4/19/88).

Immunity of commission on continuing legal education, OAG 88-153 (8/24/88).

Sovereign immunity, OAG 89-91 (6/22/89).

Effect of purchase of professional liability insurance, OAG 90-03 (1/8/90).

Cited: Jain v. University of Tenn., 670 F. Supp. 1388 (W.D. Tenn. 1987); Pan Am World Servs., Inc. v. Jackson, 754 S.W.2d 53 (Tenn.

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1988); *Walker v. Norris*, 917 F.2d 1449 (6th Cir. 1990); *Austin v. State*, 796 S.W.2d 449 (Tenn. 1990).

NOTES TO DECISIONS

ANALYSIS

1. Applicability.
2. Jurisdiction.
3. Waiver of actions.
4. Sovereign immunity.
5. Notice.
6. State highways.
7. State-controlled real property.
8. Breach of contract.

1. Applicability.

Subdivision (a)(1)(E) has no application to persons paying entrance fees to state maintained recreation facilities merely because there are rules and regulations pertaining to the use thereof. *Learue ex rel. Learue v. State*, 741 S.W.2d 337 (Tenn. Ct. App. 1987); *Learue ex rel. Learue v. State*, 757 S.W.2d 3 (Tenn. Ct. App. 1987).

Subdivision (a)(1)(E) pertains to persons confined to penal institutions, residences, or health and other similar facilities maintained by the state. *Learue ex rel. Learue v. State*, 741 S.W.2d 337 (Tenn. Ct. App. 1987); *Learue ex rel. Learue v. State*, 757 S.W.2d 3 (Tenn. Ct. App. 1987).

2. Jurisdiction.

In case where person was injured in state park swimming pool, commission had jurisdiction under provisions of subdivision (a)(3) (now (a)(1)(C)) relating to negligently created or maintained dangerous conditions on state controlled real property. *Learue ex rel. Learue v. State*, 757 S.W.2d 3 (Tenn. Ct. App. 1987).

Conduct of the commissioner of general services, board of standards, and division of claims administration, in refusing to hear bidder's complaint, in suggesting that bidder had other remedies, and that bidder take its claim to the commission, did not confer subject matter jurisdiction on the commission, and did not estop the state from raising lack of subject matter jurisdiction as a defense. *Computer Shoppe, Inc. v. State*, 780 S.W.2d 729 (Tenn. Ct. App. 1989).

Under this section, the claims commission had jurisdiction to decide a claim brought by prisoner for deprivation of statutory right to medical treatment. *Bryson v. State*, 793 S.W.2d 252 (Tenn. 1990).

Federal district court lacks subject matter jurisdiction over monetary claims against the state of Tennessee pursuant to U.S. Const., amend. 11. *Thompson v. Regional Medical Center*, 754 F. Supp. 594 (W.D. Tenn. 1991).

3. Waiver of Actions.

Where the plaintiff elects to sue the state before the claims commission, he waives any cognate federal cause of action. *White ex rel. Swafford v. Gerbitz*, 860 F.2d 661 (6th Cir. 1988), cert. denied, 489 U.S. 1028, 109 S. Ct. 1160, 103 L. Ed. 2d 219 (1989).

4. Sovereign Immunity.

If it may be said that the act creating the Tennessee claims commission waived its immunity for wilful or malicious actions, the plaintiffs must seek redress before the commission, and the court is without subject matter jurisdiction. *Hampton v. Tennessee Bd. of Law Exmrs.*, 770 S.W.2d 755 (Tenn. Ct. App. 1988), cert. denied. — U.S. —, 110 S. Ct. 498, 107 L. Ed. 2d 501 (1989).

University of Tennessee resident physicians' receipt of educational benefit from their residency programs did not exclude such resident physicians from immunity as state employees under the exception in subsection (h). *Thompson v. Regional Medical Center*, 748 F. Supp. 575 (W.D. Tenn. 1990).

The Tennessee Claims Commission Act did not deprive federal district court of jurisdiction over medical malpractice action against defendants in their individual capacity. Rather, it granted absolute immunity to defendants who were state employees acting within the scope of their employment. *Thompson v. Regional Medical Center*, 754 F. Supp. 594 (W.D. Tenn. 1991).

5. Notice.

A district highway superintendent whose primary responsibility is to keep the roads safe for public travel in any kind of conditions and to keep warning signs visible is one of the proper state officials for the purpose of satisfying the notice requirement. *Sweeney v. State*, 768 S.W.2d 253 (Tenn. 1989).

6. State Highways.

Dangerous condition found. *Sweeney v. State*, 768 S.W.2d 253 (Tenn. 1989).

7. State-Controlled Real Property.

Subdivision (a)(1)(C) removes the state's immunity to the same extent as the obligation of a private owner or occupier of land; in other words, for the purposes of determining the state's liability after removal of immunity, this section merely codifies the common law obligation of the owner or occupier of land who has an obligation to exercise ordinary care and diligence in maintaining his premises in a safe

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condition for visitors upon the premises, and is under an affirmative duty to protect these persons against dangers of which they know or which, with reasonable care, they might discover. *Sanders v. State*, 783 S.W.2d 948 (Tenn. Ct. App. 1989).

8. Breach of Contract.

The 1989 amendment of subdivision (a)(1)(L) is not retroactive. *Computer Shoppe, Inc. v. State*, 780 S.W.2d 729 (Tenn. Ct. App. 1989).

9-8-308. Privilege tax on filing of claims — Exemption. — (a) There is levied a privilege tax on the filing of claims with the claims commission of twenty-five dollars (\$25.00) on each claim filed with the claims commission; provided, that no tax shall be levied on claimants who consent at the time of filing with the administrative clerk for their claims to be assigned to the small claims docket under § 9-8-403(a)(2), and proceed upon affidavits filed with the claims commission without a hearing. The tax shall be collected by the administrative clerk of the claims commission, and all funds collected by the clerk shall be paid over to the claims award fund established by § 9-8-109. Claims automatically transferred to the claims commission by the division of claims administration pursuant to § 9-8-402(c) due to a failure to honor or deny the claim during the ninety (90) day settlement period shall not be subject to the privilege tax established by this section. The commissioner or the reviewing court shall have the discretion to order that the privilege tax paid pursuant to this section be refunded to a claimant whose claim is determined to be meritorious.

(b) Any person shall be permitted to file a claim with the claims commission without paying the privilege tax established by subsection (a) by taking and subscribing the following oath in writing: "I, _____, do solemnly swear, that, owing to my poverty, I am not able to pay the privilege tax ordinarily required to file a claim with the claims commission and that I am justly entitled to the damages sought to the best of my belief."

(c) Any person filing a claim for compensation under the Criminal Injuries Compensation Act or § 40-24-107 shall be permitted to file a claim with the claims commission without paying the privilege tax established by subsection (a). [Acts 1989, ch. 491, § 6; 1990, ch. 755, § 14.]

Amendments. The 1990 amendment added (c).

Effective Dates. Acts 1990, ch. 755, § 16. March 27, 1990.

Cross-References. Criminal injuries compensation, title 29, ch. 13.

PART 4—DIVISION OF CLAIMS ADMINISTRATION

9-8-401. Creation.

Section to Section References. This section is referred to in § 29-13-102.

Cited: *Brown v. State*, 783 S.W.2d 567 (Tenn. Ct. App. 1989).