

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

50894

FILE:

DATE: JUL 14 1975

MATTER OF: B-183443

97390

DIGEST:

Thomas A. McDonnell -- Reimbursement of  
attorney's fees

Employee claims reimbursement for attorney's fee paid incident to purchase of residence at new duty station on which employee assumed existing mortgage. The charges for the review of purchase offer agreement, consultation with lending institution, etc. are advisory in nature and, therefore, not reimbursable. The charge for examination and certification of title search and survey is reimbursable only to the extent it covers updating title examination and survey from date of existing loan since such updating is practice in area of residence. The closing attendance fee is reimbursable only if it represents charge for conducting settlement, as opposed to services of an advisory nature.

This decision is rendered at the request of Ethel Wedemeyer, Authorized Certifying Officer, United States Secret Service, Department of Treasury, for an advance decision as to whether she may certify for payment a voucher for \$540. The question presented is whether attorney's fees incurred by Thomas A. McDonnell, an employee of the Department, incident to his transfer from Washington, D. C., to Buffalo, New York, are advisory in nature and, therefore, not reimbursable under the provisions of Federal Travel Regulations (FPMR-101-7) para. 2-6.2c (May 1973).

Mr. McDonnell was transferred effective April 14, 1974. Incident to the transfer he purchased a home in the vicinity of his new official station and incurred \$540 in attorney's fees in connection with such purchase. Mr. McDonnell provided two itemized statements of the attorney's fees, one providing a brief description of the services performed by the attorney without any dollar value attributed to each service and another providing a breakdown of the cost of each service. Since the second statement provides itemized costs of each service and it appears to be more complete in detail, our primary consideration will be focused on it, referring to the first itemization for additional clarity, where needed. The second itemization is as follows:

B-183443

"1. Review of Purchase Offer Agreement - 1 hr.	\$ 35.00
"2. Review of assumption documents furnished by Manufacturers and Traders Trust Co., including the Truth in Lending Disclosure Statement and Closing Notification Form - 1 hr.	35.00
"3. Consultations and correspondence with lending institution re assumption of mortgage documents involved in closing and confirmation of County and school tax figures and principal balance due and per diem together with closing procedures - 1 hr.	35.00
"4. Telephone conversations and corres- pondence with Russell Kelleran, Attorney for sellers re obtaining tax bills, extension of time as requested by sellers for closing date, search and survey documents - 1 hr.	35.00
"5. Review of Bond and Mortgage issued to sellers from Manufacturers and Traders Trust Company - 1 hr.	35.00
"6. Telephone conversations with buyer re terms of purchase contract and mortgage assumption, agreement, credits to purchaser and seller, together with a breakdown of closing statement figures including furnishing of final closing figures - 2 hr.	75.00
"7. Consultation with Pierce and Cash Realtors, Inc. re terms and conditions of sale including final inspection of property prior to closing - 3½ hrs.	125.00
"8. Examination and certification of Title Search and Survey on said property - 2½ hrs.	90.00
"9. Closing attendance fee - 2 hrs.	<u>75.00</u>
"TOTAL LEGAL SERVICES RENDERED:	\$540.00"

B-183443

The certifying officer is of the opinion that all of the above items appear to be advisory in nature, and therefore, nonreimbursable under FTR para. 2-6.2c (May 1973). That section provides as follows:

"To the extent such costs have not been included in brokers' or similar services for which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily charged in the locality of the residence: costs of (1) searching title, preparing abstract, and legal fees for a title opinion or (2) where customarily furnished by the seller, the cost of a title insurance policy; costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees; costs of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses. Costs of litigation are not reimbursable."

We have consistently held that under the above-quoted regulation no reimbursement may be allowed for legal services which are of an advisory nature. B-175710, July 17, 1972; B-174644, April 20, 1972; B-150304, February 18, 1972. Where a legal fee paid includes amounts for legal representation and counseling, the full amount of the fee is not reimbursable. Only those parts of an attorney's fee that represent services of the type enumerated in FTR para. 2-6.2c (May 1973) are reimbursable. Thus, those services provided by the attorney which are described in items 1 through 7 appear to be advisory in nature and are not reimbursable, regardless of the fact that a prudent purchaser would require such services. B-179482, March 21, 1974; B-178008, April 18, 1973; and B-175710, supra.

B-183443

Concerning item 8, "Examination and certification of Title Search and Survey on said property," we are uncertain as to the exact nature of the service rendered by the attorney here. The original itemization of the attorney's services provides a more detailed explanation:

"Discovery Examination and recording in Erie County Clerk's Office at Buffalo, New York of two discharges of pre-existing mortgages (sic) that were found in the Title examination."

We have approved reimbursement for expenses incurred for the title examination and related instruments of certification of clear title where such expenses are customarily paid by the purchaser of a residence at the new official duty station and do not exceed amounts customarily charged in the locality of the residence. See B-175710, supra, and B-171323, February 5, 1971. This is so even where the purchaser assumes the loan previously made on the property rather than obtaining a new loan. B-171323, supra. We have been informally advised by the Buffalo, New York, area office of the United States Department of Housing and Urban Development that in the Buffalo area it is customary only to update the title search on an assumption. That is, the title search is brought current from the date of the previous title search of the existing loan. Accordingly, if Mr. McDonnell will submit a statement from his attorney, indicating the amount of time, with related fees, that was spent on updating the title search and on the related instruments of certification of clear title, that amount may be reimbursed. Reimbursement also may be made for the expenses incurred in preparing instruments of certification of clear title.

Regarding item 9 our Office has consistently held that any fee attendant to "closing" may be reimbursed only if it represents the cost of conducting the closing, as distinguished from services rendered at settlement which are advisory in nature. The file submitted with Ms. Wedemeyer's letter does not disclose the exact nature of the "closing attendance fee." While the term "attendance" implies that the attorney did not conduct the settlement, in which case the fee would not be reimbursable, it may be that the \$75 "closing attendance fee" actually represent a charge for the

B-183443

conducting of the settlement, in which case it would be for reimbursement. See B-173222, August 10, 1971. Therefore, item 9 may be reimbursed only if Mr. McDonnell presents evidence that the fee was one for conducting the settlement.

Accordingly, the voucher, should be certified for payment in accordance with the above.

PAUL W. DOWLING

For the

Comptroller General  
of the United States