

DECISION

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

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FILE: B-183048

DATE: MAY 13 1976

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MATTER OF: James G. Gasque - Real Estate Expenses - Title Requirements

DIGEST:

Transferred employee may not be reimbursed for expenses incurred incident to sale of his residence at his old duty station, when title to that residence was in name of employee's mother-in-law, even though employee made all mortgage payments and paid all other expenses associated with the residence, and title was taken in mother-in-law's name only because employee's income was not sufficient to qualify for financing. Title requirements of 5 U.S.C. § 5724a(a)(4) and Federal Travel Regulations must be met in order to qualify for reimbursement.

This matter has been submitted for an advance decision by Orris C. Huet, an authorized certifying officer of the United States Department of Agriculture (USDA), by letter dated January 10, 1975, reference FI-3. The issue presented is whether an employee may be reimbursed for real estate sales expenses incurred incident to a transfer when title to the property sold was solely in the name of the employee's mother-in-law. For the reasons set forth below, the voucher may not be certified for payment.

Under the authority of AD-202, Travel Authorization Number 411157, dated January 24, 1974, Mr. James G. Gasque, an employee of the USDA, Animal and Plant Health Inspection Service, was transferred from Beltsville, Maryland, to Athens, Georgia. At the time of his transfer, Mr. Gasque was residing at 12838 Claxton Drive, Laurel, Maryland. In early 1972, Mr. Gasque had attempted to purchase this property, but he was unable to qualify for financing because of his income level. In order to facilitate the transaction, Mr. Gasque's mother-in-law, Mrs. Ernestine Givens, agreed to have the property placed in her name, with the understanding that Mr. Gasque would make the monthly payments, pay all maintenance costs, and would have the option of buying the house at a later date. Any expenses, relating to the losses, or profits at the time of purchase or sale would be Mr. Gasque's responsibility. From the record before us, it appears that Mr. and Mrs. Gasque occupied the property continuously as their residence until he was transferred, and that Mrs. Givens never occupied the property as her residence. There is nothing in the record to indicate that anyone other than Mr. Gasque paid any of the expenses relating to this residence.

In the spring of 1973, Mr. Gasque and Mrs. Givens discussed transferring the property into Mr. and Mrs. Gasque's names. For various reasons the transfer did not take place then, but it was agreed that it would be taken care of when Mrs. Givens was next in the area, in the fall of 1973. When the matter was next discussed, in about October 1973, Mr. Gasque told his mother-in-law that he might be transferred in June 1974. They were advised by their attorney that, because of the high cost of transferring real property in Prince Georges County, Maryland, it would not be wise to transfer the property to Mr. Gasque and then pay the same transfer expenses a second time when Mr. Gasque was reassigned. In January 1974, Mr. Gasque was definitely informed that he was to be reassigned.

On February 7, 1974, a contract was executed for the sale of the residence by Mrs. Givens to Lyle K. Mullins. On February 28, 1974, Mr. Gasque signed an agreement stating that he would purchase the residence from Mrs. Givens if the sale to Mr. Mullins was not consummated. However, settlement for the sale to Mr. Mullins was held on April 8, 1974. When Mr. Gasque submitted his claim for reimbursement of all of his transfer-related expenses, that portion relating to the sale of the residence he occupied in Laurel, Maryland, was denied by a Voucher Difference Statement dated September 3, 1974, on the grounds that he had not acquired an interest in the property prior to the date upon which he was definitely informed that he would be transferred. On November 13, 1974, Mr. Gasque submitted a reclaim voucher for reimbursement of those real estate expenses.

The statutory authority for reimbursing an employee for real estate expenses incurred incident to a transfer is 5 U.S.C. § 5724a(a)(4) (1970), which includes certain requirements relating to the title to the property involved. These requirements are carried over into the Federal Travel Regulations (FPMR 101-7) para. 2-6.1c (May 1973) (FTR), which states that real estate expenses may be reimbursed provided that:

"The title to the residence or dwelling at the old or new official station, or the interest in a cooperatively owned dwelling or in an unexpired lease, is in the name of the employee alone, or in the joint names of the employee and one or more members of his immediate family, or solely in the name of one or more members of his immediate family. For an employee to be eligible for

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reimbursement of the costs of selling a dwelling or terminating a lease at the old official station, the employee's interest in the property must have been acquired prior to the date the employee was first definitely informed of his transfer to the new official station."

Paragraph 2-1.4d of the FTR defines "immediate family" as:

"Any of the following named members of the employee's household at the time he reports for duty at his new permanent duty station or performs authorized or approved overseas tour renewal agreement travel or separation travel: spouse, children (including step-children and adopted 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 of the employee's spouse."

There is nothing in the record before us to indicate that Mr. Gasque's mother-in-law was a member of his household or dependent upon him. In fact, the record indicates the opposite on both points. Also, there is nothing in the record showing that title of any sort to the property involved, was in Mr. Gasque's or his wife's name. There is no evidence of any written agreement, other than the one relating to the sale to Mullins, that would provide for the transfer of the property from Mrs. Givens to Mr. Gasque. Therefore, the conditions precedent relating to title to the property involved have not been met, and Mr. Gasque is not entitled to reimbursement of the expenses incurred.

R.F. MELIER

Deputy

Comptroller General
of the United States