DECISION

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

60805

APR 27 1976

FILE: B-185621 DATE: 99017

MATTER OF: Charles A. Oravetz - Loan origination fee

DIGEST: The fact that transferred employee may have been incorrectly advised by lending institution that the 1-1/2 percent service charge or loan origination fee paid by him to secure mortgage for purchase of residence was not a finance charge provides no basis for reimbursement of fee since such payment is expressly precluded by Federal Travel Regulations (FPMR 101-7) para. 2-6.2d (May 1973).

This action involves the claim of Mr. Charles A. Oravetz, a National Oceanic and Atmospheric Administration employee, for reimbursement of the $570 loan origination fee paid by him to secure a mortgage for the purchase of a residence in St. Petersburg, Florida. The purchase was made incident to a transfer from his former duty station in Little Rock, Arkansas, to his new official station in St. Petersburg. Mr. Oravetz' claim for reimbursement of the $570 amount is not predicated solely upon the authority contained at 5 U.S.C. § 5724a(a)(4) (1970) for reimbursement of real estate transaction expenses incident to transfer. It is based in part on the failure of the mortgage bankers from whom he secured financing to correctly advise him that their $570 fee constituted a finance charge.

The certifying officer who forwarded Mr. Oravetz' claim to this Office for an advance decision states that he advised the employee that a loan origination fee constitutes a finance charge for which reimbursement as a real estate transaction expense is precluded by the following language of Federal Travel Regulations (FPMR 101-7) para. 2-6.2d (May 1973):

> "d. Miscellaneous expenses. * * * Interest on loans, points, and mortgage discounts are not reimbursable. Notwithstanding the above, no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System. * * *"

Regulation Z, referenced above, appears at 12 Code of Federal Regulations § 226.4 (1975) and provides in pertinent part as follows:

> "(a) General Rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:
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> "(1) Interest, time price differential, and any amount payable under a discount or other system of additional charges.
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> "(2) Service, transaction, activity, or carrying charge.
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> "(3) Loan fee, points, finder's fee, or similar charge.
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> "(4) Fee for an appraisal, investigation, or credit report.
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> "(e) Excludable charges, real property transactions. The following charges in connection with any real property transaction, provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this part, shall not be included in the finance charge with respect to that transaction:
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> "(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes and for required related property surveys.

"(2) Fees for preparation of deeds, settlement statements, or other documents.

"(3) Amounts required to be placed or paid into an escrow or trustee account for future payments of taxes, insurance, and water, sewer, and land rents.

"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

Under the above authorities we have held that charges in the nature of percentage based fees which are not identified as being in payment of otherwise allowable expenses are considered part of the cost of money under the Truth in Lending Act and that the employee may not be reimbursed therefor. B-176481, August 11, 1972; B-176775, October 25, 1972; B-183177, March 17, 1975.

We are told that Mr. Oravetz is now satisfied that the $570 which he paid to the mortgage company is in fact a finance charge and that he does not contend otherwise. Nonetheless he believes that the mortgage company's advice that the fee was not a finance charge is an extenuating circumstance on the basis of which he may be reimbursed for payment of the fee in question.

The loan statement issued August 13, 1975, in connection with the closing of Mr. Oravetz' mortgage loan lists as a "service charge" to the borrower a $190 fee. That amount is apparently the remainder of a $570 or 1-1/2 percent service charge or loan origination fee assessed by the lender. In a letter to the employee dated October 2, 1975, the responsible loan officer furnished the following explanation of the fee in question:

"A service charge or origination fee of 1 1/2% of the loan amount was charged to you and is neither a discount or commitment fee paid to the investor. This is strictly our charge for obtaining the loan. The 1% ($380.00) that we collected on approval and in advance of

closing was part of the 1-1/2% origination fee. I am enclosing copy of the memorandum from our home office dated 5/28/75 indicating that you were to pay an origination fee of 1-1/2%. Since we had already collected 1% in advance only 1/2% ($190.00) was collected at closing."

Notwithstanding that the above-quoted letter is fairly explicit in its indication that the fee in question is a service charge or loan origination fee, either of which constitutes a finance charge, Mr. Oravetz was apparently earlier advised otherwise by the lending company. As there is no documentation in this regard, we assume the erroneous advice was given orally.

Regarding Mr. Oravetz' belief that the lender's erroneous advice is a fact that may warrant payment of his claim, it should first be noted that erroneous advice given even by the Government's own agents and employees provides no basis for reimbursement of an expense that is otherwise prohibited. Where there is in fact no authority to use Government funds for payment of a particular expense, authority may not be created by an incorrect expression of opinion by a Government employee or agent that authority exists. The well established rule of law in this regard is that anyone entering into an arrangement with the Government takes the risk of having ascertained that the agent with whom he deals and who purports to act for the Government stays within the limits of his authority, inasmuch as the Government can be neither bound nor estopped by the unauthorized acts of its agents. Wilber National Bank of Oneonta, Administrator v. United States, 294 U.S. 120 (1935); Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947).

Clearly the incorrect advice of an individual who is not even an employee of the United States Government but who is the employee of a private lending institution cannot serve as a basis for otherwise unauthorized expenditures of public funds. We, therefore, find no basis for reimbursement to Mr. Oravetz for the $570 service charge or loan origination fee paid by him to secure a mortgage for the purchase of a home at his new duty station.

Paul G. Dembling

Comptroller General
of the United States