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DECISION



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

FILE: 2-18999

DATE: February 1, 1978

**MATTER OF: Lloyd E. McLaughlin - Real Estate Expenses -
Mobile Home**

- DIGEST:**
1. Transferred employee purchased land near new station for purpose of constructing dwelling. Employee occupied mobile home on land during construction. Although house was not fully constructed 2 years after transfer, employee may be reimbursed expenses incident to purchase of land under FTR para. 2-6.1b since he occupied mobile home from which he regularly commuted to work.
 2. Employee purchased 10-acre lot on which he occupied mobile home while constructing house. Whether determination of how much land reasonably relates to residence site should be made depends upon the fees for which reimbursement is claimed and the billing practices of persons rendering such services. Since in this case the recording fees, title search, and closing fee were a flat charge, such determination need not be made.

By a letter dated August 26, 1977, Mr. H. Larry Jordan, an authorized certifying officer of the Department of Agriculture, requested our decision whether a voucher in favor of Mr. Lloyd E. McLaughlin for reimbursement of legal and related costs in connection with the purchase of land at his new duty station may be certified for payment.

The record indicates that on June 2, 1975, Mr. McLaughlin, an employee of the Department of Agriculture, transferred from Independence, Missouri, to Washington, D.C. Mr. McLaughlin then purchased approximately 10 acres of land at Lovettsville, Virginia, in the vicinity of his new station. Settlement of this transaction occurred on

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August 12, 1975. The employee planned to construct a dwelling on the site, and, on March 19, 1976, he obtained a building permit to construct a single family residence. Realizing that the construction would take longer than 2 years, Mr. McLaughlin obtained a temporary permit to locate a mobile home on the land pending construction. He has been living in the mobile home since September 1, 1976.

Mr. McLaughlin has submitted a voucher requesting reimbursement of \$176 associated with the purchase of the land only. These costs consist of a \$51 fee for recording the deed and an attorney's fee as follows:

Title Search	\$100
Handling Closing	25

The agency denied reimbursement on May 16, 1977, on the grounds that the voucher could not be paid until construction has been completed, and that the 2-year period in which to complete construction had expired. In reclaiming the above costs, Mr. McLaughlin has submitted a statement from his employing office supporting his claim. Contending that the purchase of the lot and the construction of the house are two separate transactions, the statement cites our decision in Glenn A. Kovar, B-186003, October 4, 1976, for the proposition that settlement on the purchase of the lot was accomplished on August 12, 1975, within the time limitation. It is thus argued that reimbursement would be proper. The certifying officer maintains that the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973) provide for the separate purchase of land only in connection with the placing of a mobile home on the site. Contending that the mobile home must be used as a permanent residence, the certifying officer questions whether Mr. McLaughlin's use of the mobile home is permanent in view of his intention to construct a single family home on the same site.

Statutory authority for reimbursement of the residence transaction expenses of transferred employees is found at 5 U.S.C. § 5724a (1970). Implementing that authority, conditions concerning the location and type

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of residence for which reimbursement of certain expenses will be made are set forth at FTR paragraph 2-6.1b:

"Location and type of residence. The residence or dwelling is the residence as described in 2-1.4i, which may be a mobile home and/or the lot on which such mobile home is located or will be located."

The referenced portion of paragraph 2-1.4i provides in relevant part:

"* * * With respect to entitlement under these regulations relating to the residence and the household goods and personal effects of an employee, official station or post of duty also means the residence or other quarters from which the employee regularly commutes to and from work. * * *"

Finally, with respect to the time in which the transaction must be completed, FTR paragraph 2-6.1e provides:

"Time limitation. The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than 1 (initial) year after the date on which the employee reported for duty at the new official station. Upon an employee's written request this time limit for completion of the sale and purchase or lease termination transaction may be extended by the head of the agency or his designee for an additional period of time, not to exceed 1 year, regardless of the reasons therefor so long as it is determined that the particular residence transaction is reasonably related to the transfer of official station."

Under the above-cited regulations, the type of residence for which reimbursement may be made is the residence or other quarters from which the employee

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regularly commutes to and from work, which may be a mobile home and/or the lot on which such mobile home is or will be located. Thus, we have held that an employee may be reimbursed expenses incident to the purchase of a building lot when he subsequently moved into a mobile home on the lot while construction was proceeding. B-168484, January 5, 1970. We assume that after Mr. McLaughlin occupied the mobile home on September 1, 1976, he commuted regularly between that location and his duty station. Further, settlement on the purchase of the lot occurred within 1 year after the effective date of the transfer. Accordingly, under FTR para. 2-1.4i, Mr. McLaughlin may be reimbursed for the allowable expenses incurred in the purchase of the lot on which the mobile home is located. See B-168484. supra.

The certifying officer has inquired whether a determination should be made as to how much of the land reasonably relates to the residence site. Such a determination should be made if required under our decision in 54 Comp. Gen. 597 (1975). In that regard, we stated at 54 Comp. Gen. 599 that the certifying officer should take into account the billing practice by attorneys in the area of the residence. Thus if the recording fees, title search, and closing fee are a flat fee, regardless of the size and cost of the land, the above determination need not be made, and reimbursement may be made in toto, providing the fee is reasonable in amount and in line with other charges for similar services in the locality. We have been advised by the attorney who performed the services in this case that his \$100 fee for the title search was a flat fee, representing the total amount charged for his services. We note, however, that the sales contract for the property provided that:

"Seller and Buyer to share equally all settlement attorney's fees, including title search, which pertain to transfer and sale of above named property."

Since Mr. McLaughlin was thus legally obligated to pay only one-half of the attorney's fee, \$50 of the amount charged for the title search may be reimbursed.

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Finally, we note that one of the items for which reimbursement was requested was a \$25 attorney's fee for handling the closing. In our recent decision in George W. Lay, 56 Comp. Gen. 561 (1977) we reviewed the policy concerning the extent to which legal fees may be reimbursed. In that decision we held that necessary and reasonable legal fees and costs, except for the fees and costs of litigation, incurred by reason of the purchase or sale of a residence incident to a permanent change of station may be reimbursed provided that the costs are within the customary range of charges for such services within the locality of the residence transaction. Since, however, our decision in Lay will be applied prospectively only to cases in which settlement of the transaction occurs on or after April 27, 1977, the present matter must be determined in accordance with the previously applicable laws and decisions.

Our previous decisions concerning the reimbursement of legal fees consistently held that only legal services of the type enumerated in FTR para. 2-6.2c could be reimbursed, and that no reimbursement could be made for legal services which are advisory in nature. Those decisions held that an attorney's fee charged for merely attending a settlement to represent an employee in an advisory capacity may not be reimbursed. However, a fee charged for actually conducting the settlement may be reimbursed. John O. Border, B-184599, September 16, 1975. It is necessary, therefore, to ascertain whether the attorney actually conducted the settlement, or merely attended in an advisory capacity. In that regard, the attorney's efforts to conduct the settlement at his office, effect the proper exchange of documents, and ensure the proper distribution of money have been held to be indicia that the attorney in fact conducted the settlement. See Patrick J. Kelly, B-188970, October 13, 1977. In the present case, we have been advised that the attorney in fact conducted the closing in his office. Since as noted above, Mr. McLaughlin was obligated under the contract to pay for one-half of the legal costs, \$12.50 may properly be allowed as reimbursement of the closing fee.

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Action on the voucher should be taken in accordance with the foregoing.

Deputy

R. J. Keller
Comptroller General
of the United States