

**DECISION**

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

*PH 112*  
**7799**

**FILE: B-191792****DATE: September 25, 1978****MATTER OF: Philibert A. Ouellet - Transfer,  
real estate expenses, attorney fees**

**DIGEST:** Employee, who purchased residence in Washington, D.C., area incident to transfer and incurred legal fees of both lending institution's (mortgagee's) attorney and his own attorney for performance of legal services in connection with transaction, may be reimbursed for both legal fees, provided they are customarily paid and are within the customary range of charges in locality of residence.

This action is in response to a letter dated April 25, 1978, with enclosures, from Mr. James E. Lewis, Chief, Finance Division, Federal Highway Administration, submitting a voucher and requesting an advance decision concerning reimbursement of Mr. Philibert A. Ouellet for certain attorney's fees incurred incident to the purchase of a residence in Reston, Virginia, resulting from a permanent change of station.

After being notified on August 23, 1977, of his impending transfer from Albany, New York, to Washington, D.C., effective October 9, 1977, Mr. Ouellet purchased a home in the vicinity of his new official station. In connection with this purchase, he signed a statement on September 26, 1977, to the effect that the Agreement of Sale provided that the seller had arranged for a law firm of the seller's choice to perform the required legal functions and to hold settlement. The agreement further provided that if he wanted his own attorney, he was at liberty to secure the same and pay for the services provided by him.

Mr. Ouellet submitted a claim for \$275 representing the costs of legal services that he obtained in order to have equal representation in matters attendant with the real estate purchase transaction. He had previously been reimbursed \$375 for all attorney's fees paid to the law firm chosen by the seller, which included settlement or closing fee, abstract or title search, title examination, title insurance binder, document preparation, and notary fee.

Mr. Ouellet's claim for his personal attorney's fee was initially denied on grounds that legal fees of an advisory nature are not reimbursable. Upon reclaim, he was advised that a claim

for reimbursement for services by a second attorney required itemization of actual services provided before consideration for approval of payment. Thereafter, he submitted an itemized statement for \$275 dated April 11, 1978, from the law offices of Larson & Lilienthal, which included review of documents, discussions with sales manager regarding new home warranty, meeting regarding down payment and possible bridge loan, discussions of rider and final deposit, discussion regarding loan approval and expediting, discussion of power of attorney, and advising on documents at the final settlement.

In reclaiming the expense, Mr. Quile contends in essence that an attorney selected by the seller represents primarily the interests of the builder and the agency making his loan to buy the residence. Thus, the selection of that attorney was not voluntary, and a conflict of interest existed, which required the services of another attorney with whom he had an attorney-client relationship. He further contends that the second attorney's fee was for services which were not only advisory in nature, but which are customary, necessary and reasonable services incident to the purchase of residential housing.

Reimbursement of the legal expenses of residence transactions of transferred employees is authorized by 5 U.S.C. 5724a (1970). Paragraph 2-6c of the Federal Travel Regulations (FPMR 101-7) (May 1973) implementing this authority provides as follows:

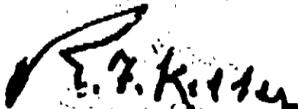
"(c) Legal and related expenses. To the extent such costs have not been included in brokers' or similar services for which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller 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;

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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."

In our decision in the Matter of George W. Lay, B-185976, April 27, 1977, 56 Comp. Gen. 561, 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. Pursuant to that decision, the primary consideration in determining whether certain legal services may be reimbursed is whether it is customary to obtain such services in the locality of the residence transaction. Further, it should be noted that the operative concept in this regard is the rendition of legal services to or on behalf of the employee, not the existence of a contractual relationship between the employee and the person performing the service. Thus, under our decision in Lay, if it were the local custom for the purchaser to be represented by his own attorney, as well as to pay for legal services rendered by the lending institution's (mortgagee's) attorney, legal expenses for services by both attorneys would be reimbursable, provided the fee is within the customary range of charges for such services in the locality. See Donald Mitgory, B-190616, March 22, 1978.

Therefore, Mr. Ouellet may be reimbursed for the legal expenses in question provided the "customarily paid" and "do not exceed amounts customarily charged" conditions of paragraph 2-6.2c of the Federal Travel Regulations are met. We understand technical assistance in making those determinations is available at the local or area office of the Department of Housing and Urban Development serving the area in which the expense incurred. See FTR para. 2-6.3c (May 1973).

  
Acting Comptroller General  
of the United States