

**DECISION**

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

FILE: B-171953

DATE: MAR 17 1976

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MATTER OF: James R. Crouch - Relocation Expenses:  
Reimbursement of Broker's Fee

DIGEST: Transferred employee paid real estate commission on sale of residence. Realty agency reimbursed employee for accrued interest in the form of a penalty charged to employee by the mortgagee. The penalty was imposed on the employee for failure to give timely notice concerning the loan payoff. Since the liability arose through the failure of the realty agency to give the required notice, the reimbursement of the accrued interest by the realty agency may not be considered as voluntary. Under section 4.2a of OMB Circular No. A-56, employee may be reimbursed for full commission which was payment for services actually rendered. Cf. B-184501, October 9, 1975.

This matter was forwarded to our Office by a certifying officer of the United States Department of Agriculture who has requested a decision as to whether the Department should request Mr. James R. Crouch, an employee of the Forest Service, to refund \$123.22 for excess relocation expenses reimbursed to him in connection with a change of official station from Atlanta, Georgia, to Oxford, Mississippi, in 1971.

Incident to his transfer of official station, Mr. Crouch sold his residence in Atlanta through Cloward Realty, Inc. The record discloses that Mr. Crouch's house was sold for \$25,000 and that a sales commission of \$1,500 (6 percent) was paid to Cloward Realty, Inc. However, on the closing date Cloward Realty, Inc. gave Mr. Crouch a check for \$123.22, the sum of the accrued interest charged to the seller by the mortgagee for failure to give 30 days written notice of the loan payoff. The realty agency did so because it had failed to give the required notice to the mortgagee. Mr. Crouch claimed and was reimbursed the full amount of the commission (\$1,500).

Section 4.2a of Office of Management and Budget (OMB) Circular No. A-56, Revised August 17, 1971, in effect at the time of the real estate transaction here involved, provided that "A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable." Under that provision, the employee was entitled to be reimbursed for a real estate commission to the

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extent he actually paid for services in selling the house. B-171953, April 9, 1973; B-184501, October 9, 1975. The payment of \$123.22 by the realty agency to the employee may not be considered as a voluntary payment since it arose out of an act of negligence by the realty agency in failing to give timely notice to the Mortgagee. Presumably this negligence would have given rise to a cause of action by the employee against the realty agency. Under these circumstances the commission paid by the employee was actually for services rendered and was properly reimbursed to the employee. The payment of \$123.22 by the realty agency to the employee was a separate transaction which may not be considered as a reduction of commission and therefore no further collection action is necessary. The instant case is distinguishable from B-184501, October 9, 1975, in which a payment of accrued interest was made voluntarily by the realty agency and had the effect of reducing the real estate commission.

R. F. HELLER

Deputy Comptroller General  
of the United States