



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Thomas A. Gibbens - Real Estate Expenses -
Soil Examination Fee
File: B-226532
Date: December 9, 1987

DIGEST

A transferred employee's claim for reimbursement of the cost of a soil examination he incurred in connection with the construction of a residence at his new duty station may not be allowed because it resulted from the construction of the residence and, therefore, may not be reimbursed in view of the specific prohibition contained in Federal Travel Regulations paragraph 2-6.2d.

DECISION

This decision is in response to a request from an authorized certifying officer with the Bureau of Reclamation, United States Department of the Interior, for our opinion as to whether Mr. Thomas A. Gibbens is entitled to reimbursement for the cost of a soil examination he was required to obtain in connection with the construction of a home at his new duty station. For the reasons explained below, we hold that Mr. Gibbens is not entitled to reimbursement of that expense.

Mr. Gibbens, an employee of the Bureau of Reclamation, was transferred from Lakewood, Colorado, to Loveland, Colorado, in December 1985. He decided to construct a residence rather than purchase an existing one and closed on the new house on November 12, 1986. His claim for reimbursement of the expense of a soil examination was denied by the Bureau of Reclamation on the grounds that Mr. Gibbens had not shown that the soil examination was required by his lending institution as a condition of obtaining financing.

While Mr. Gibbens did not submit any information regarding the lending institution's requirement for a soil examination, he has provided a letter dated January 6, 1987, from the Larimer County Commissioners, in which it was stated

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that because the soil in the subdivision where Mr. Gibbens constructed his home "exhibited moderate to severe limitations due to shrink/swell potential," a soil examination was required before a building permit would be issued. Mr. Gibbens points out that he considered building his home in three different subdivisions, each of which had similar requirements.

Section 5724a(a)(4) of Title 5, United States Code authorizes reimbursement of the costs involved in the sale of a residence at an employee's old duty station and the purchase of a residence at his new duty station. Paragraph 2-6.2d of the Federal Travel Regulations (FPMR 101-7, September 1981) (FTR) implements that statutory provision and provides in part that:

"* * * In cases involving construction of a residence, reimbursement of expenses would include those items of expense which are comparable to expenses that are reimbursable in connection with the purchase of existing residences and will not include expenses which result from construction."

In light of this regulation, the basic issue to be resolved in residence construction cases is whether the particular real estate transaction expense claimed is one which would have been incurred by the employee had he purchased an existing residence.

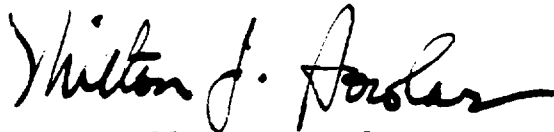
We have stated that reimbursable selling and purchase expenses involve the costs of transacting the exchange of ownership of the residence but not building it. See Larry R. Dreihaup, B-205510, February 8, 1982. This does not mean that expenses related to construction are reimbursable if required by a lender as a condition for obtaining a mortgage loan. In Dreihaup, for example, we denied the cost of architectural plans or drawings for the construction of a residence even though they were required by a financial institution for a mortgage loan because those plans related to the construction of a residence and would not have been required had the employee purchased a residence.

In Dennis R. Smetana, B-206051, September 29, 1982, we considered a survey expense claim which involved establishing the metes and bounds of a one acre tract of land purchased by the employee within a larger tract of land being purchased by the employee. Apparently, the survey was required by the builder before he would begin construction. While it appeared the expense related to

construction, there was some indication the survey was also required before the employee could secure legal title in order to support title insurance and obtain permanent mortgage financing, thus being the type of expense which may have been incurred by the employee had he purchased an existing residence. We ruled that if the survey was required only to obtain construction financing of his new residence, it would not be allowed. However, since the record was not clear on that point, we went on to say that if the employee could show that the survey was also required to obtain permanent mortgage financing, the expense could be allowed.

We do not believe Smetana would mandate reimbursement of Mr. Gibbens' claim even if he had shown it was necessary to incur the expense of the soil examination to obtain permanent mortgage financing. Although the survey involved in Smetana could have been necessary in connection with the purchase of a residence, the soil examination for which Mr. Gibbens seeks reimbursement clearly relates only to the construction of his residence. We have denied reimbursement for these types of expenses on the grounds that such items are related to construction. See Stanley F. Fancher, B-184928, Sept. 15, 1976.

And although the soil examination was required by the county in which Mr. Gibbens constructed his house that does not affect his entitlement to reimbursement. We have denied reimbursement for similar items, necessary to meet legal requirements, because they were for construction of a residence and not similar to costs associated with the purchase of a residence. See Jack T. Brawner, B-192420, Aug. 27, 1979, and Larry R. Dreihaupt, B-205510, Feb. 8, 1982. The soil examination for which Mr. Gibbens incurred an expense was required prior to the issuance of a building permit. As such it is clearly related solely to construction of a residence and may not be allowed.



Acting Comptroller General
of the United States