

DECISION

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

60084

FILE: B-183673

DATE: OCT 24 1975

97792

MATTER OF:

Douglas W. Swanson, Jr. - Attorney's Fees

DIGEST:

Employee's original claim for reimbursement for attorney's fees computed on 1 percent of mortgage value was denied for failure to provide itemization. Employee reclaims on basis that 1 percent fee is standard in area, regardless of nature of legal services performed. However, only attorney's fees specified by FTR para. 2-6.2c may be reimbursed, thus necessitating itemization. Ninety-five percent of \$316 attorney's fees may be reimbursed to employee since only one item on list of legal services performed is not for reimbursement (office consultations) and attorney attributes 5 percent of total chargeable time to such consultations.

Mr. James F. Wagner, an authorized certifying officer, Energy Research and Development Administration (ERDA), has requested a decision by letter of April 10, 1975, as to whether he may certify a reclaim voucher for reimbursement of attorney's fees incurred by an employee incident to the purchase of a residence under the circumstances described below.

Mr. Douglas W. Swanson, Jr., an employee of ERDA, incurred legal and related expenses in the amount of \$316 in settling his purchase on May 24, 1974, incident to his transfer to Pascagoula, Mississippi, on April 26, 1974. Mr. Swanson's original claim for reimbursement of this amount was denied by the agency on the basis of two decisions of this Office requiring itemization of attorney's fees.

In support of his reclaim voucher, Mr. Swanson states that the legal fee would have been \$316, or 1 percent of his mortgage, regardless of the nature of the legal service rendered. His attorney states that since the 1 percent charge is customary in the area, detailed time records were not kept. Accordingly, Mr. Swanson argues that any itemized statement provided now would be "an obvious fabrication." However, Mr. Swanson's attorney has provided a summary, dated July 17, 1974, of the legal services which were performed. The summary is as follows:

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- "Title search of County records
- "Preparation of pertinent papers of loan closing
- "Office consultations with Mr. Swanson
- "Recording necessary instruments
- "Forwarding necessary instruments to proper parties
- "Making proper disbursement of loan proceeds"

Legal fees are reimbursable only to the extent allowed by section 2-6.2c of the Federal Travel Regulations (FPMR 101-7) (May 1973) which at all pertinent times has read as follows:

"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; 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 decision B-183037, March 21, 1975, we stated that:

" * * * In interpreting this section, it has been held that the entire fee which an employee pays to retain an attorney to represent and counsel him in connection with a real estate transaction may not be reimbursed under the above-quoted section. Only those parts of an

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attorney's fees which represent services of the types enumerated in the regulation are reimbursable. B-180752, June 12, 1974; B-172055, May 28, 1971; B-169621, June 25, 1970. In B-172055, May 28, 1971, this Office refused to allow payment of an attorney's fee which was based on a "Schedules of Fees" established by a state organization. In that case the fee also represented a percentage of the mortgage. An itemization was required and only those items enumerated in section 2-6.2c of the Federal Travel Regulations could be reimbursed. See also 54 Comp. Gen. 67 (1974). * * *

In decision B-183037, supra, an employee was claiming reimbursement for attorney's fees computed on the basis of 1 percent of the mortgage, and it was alleged that the fee would not vary regardless of the nature of the services performed. We held that the flat fee was not reimbursable and that an itemization was required, and accordingly reimbursement was allowed only for those items enumerated in FTR para. 2-6.2c (May 1973).

Therefore, despite Mr. Swanson's protestations that any itemization would be "an obvious fabrication," it follows that such an itemization is required in order to determine entitlement under the above-quoted paragraph.

The summary presented by Mr. Swanson's attorney normally would not constitute an acceptable itemization since it lacks specific values attributable to each legal service performed. However, all of the items detailed in the summary with the exception of the one captioned "office consultations" appear to be properly reimbursable under FTR para. 2-6.2c (May 1973). The record indicates that the office consultations were required due to difficulties in obtaining clear title. Mr. Swanson's attorney estimates that this item consumed approximately 5 percent of his time. Accordingly, we would not object to reimbursement of attorney's fees in the amount of \$300.20, representing 95 percent of the total fee of \$316.

R.F. KELLER

Deputy } Comptroller General
of the United States