

# DECISION



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

FILE:

B-186931

DATE: SEP 2 1976

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MATTER OF:

Richard E. Lincoln - Pro rata reimbursement  
of residence transaction expenses

DIGEST:

1. Transferred civilian employee sold property at old duty station in 2 parcels. Although reimbursement of expenses for 3 1/2 acre parcel containing house, barn, and garage is proper, reimbursement of expenses for sale of additional 20 acres may not be made since Federal Travel Regulation (FPMR 101-7), para. 2-6.1f (May 1973) states that pro rata reimbursement will be made when land is in excess of that reasonably related to residence site and the 20 acres is excess land.
2. Transferred employee who owned residence on 23 1/2 acre site was informed by agency official that he could divide property into 2 parcels to facilitate sale and be reimbursed for expenses of selling both parcels although Federal Travel Regulations permit only pro rata reimbursement when land is in excess of that reasonably related to residence site. Employee may not be reimbursed for sale of excess 20 acres of land since Government is not liable for negligent acts of its agents.

This decision is in response to a request for a decision dated July 7, 1976, from Ms. Orris C. Huet, an authorized certifying officer of the Department of Agriculture, as to whether she could certify for payment a voucher submitted by Mr. Richard E. Lincoln, an employee of the Animal and Plant Health Inspection Service (APHIS), Department of Agriculture. The voucher is for reimbursement of expenses incurred in the sale of 20 acres of land in connection with the change of Mr. Lincoln's permanent duty station.

The record indicates that Mr. Lincoln was authorized on August 10, 1973 to travel from Atlanta, Georgia to Denton, Texas for the purpose of changing his official duty station. Mr. Lincoln reported at his new duty station on September 4, 1973. At the time of the transfer, Mr. Lincoln owned approximately 23 1/2 acres of land in Hall County, Georgia. The property consisted of a residence, a barn, a garage, a small pasture for horse grazing, woods, and riding trails. Although the claimant immediately listed his Georgia property for sale, he was unable to sell the entire parcel due to poor economic conditions. Accordingly, he requested and, on July 26, 1974, was granted a 1-year extension of time within which to complete the sale of his residence under the provisions of Federal Travel Regulations (FPMR 101-7) para. 2-6.1e (May 1973).

Upon the advice of his realtor, Mr. Lincoln subsequently divided the property into two sections in order to enhance his prospects of making a sale. In November 1974 Mr. Lincoln sold a parcel of 3 1/2 acres which included the house, barn, and garage. The claimant has been reimbursed for the expense of this sale. On June 18, 1975, Mr. Lincoln sold the remaining 20 acres for \$23,500 and submitted his claim for brokerage fees in the amount of \$2,350 in connection therewith. This claim was administratively disallowed as the sale of land was in excess of that which reasonably relates to a residence site. Mr. Lincoln re-submitted his claim with a request that his employing agency forward it to this Office for a decision. He predicates his request for reconsideration on the fact that he was advised by his agency that dividing his property into two parcels would not preclude reimbursement of the expenses for the sale of both parcels. Further, Mr. Lincoln questions whether it is the intent of the Federal Travel Regulations to preclude reimbursement in these circumstances.

The governing regulation which provides an allowance for expenses incurred in connection with residence transactions is FTR para. 2-6.1f (May 1973). Regarding pro rata entitlement, that paragraph provides:

" \* \* \* The employee shall also be limited to pro rata reimbursement when he sells or purchases land in excess of that which reasonably relates to the residence site."

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This sentence was added to Bureau of the Budget Circular No. A-56, section 4.1f, revised June 26, 1969, and has been carried forward into the FTR. The addition of the sentence was explained on page 4 of Bureau of the Budget Transmittal Memorandum No. 5, dated June 26, 1969 as follows:

"A sentence is added to renumbered paragraph 4.1f to limit reimbursement to the expenses that apply to such land as reasonably relates to the residence site."

Even prior to the addition of the above language to Circular No. A-56, we hold that, based on regulation implementing 5 U.S.C. 5724a(a)(4) which provides for reimbursement only of the costs involved in the sale of an employee's residence, reimbursement on a pro rata basis is required when an employee sells property in addition to his residence. B-163137, February 19, 1963.

It is clear, therefore, from the foregoing, that the intent of the regulations is to limit reimbursement of residence transaction expenses to that portion of the property which reasonably relates to the residence site. In 54 Comp. Gen. 597 (1975), we set forth guidelines for use by the administrative agencies in determining the amount of property for which reimbursement is appropriate. These guidelines include examination of zoning laws or regulations, appraisals by experts, and consideration of the location and topography of the land. Presumably, these guidelines were followed by the agency in approving reimbursement for the expenses of the sale of the 3 1/2 acre parcel containing the residence and appurtenances, and we will not disturb that finding here. Since the 3 1/2 acre plot thus constitutes the residence site, the additional 20 acres constitutes "excess" property for which reimbursement of transaction expenses is not permitted by law or regulation.

Mr. Lincoln also contends that he should not be prejudiced for his reliance on the erroneous advice given to him regarding residence expense reimbursements. It should first be noted that irrespective of the advice given him prior to the division of his property, Mr. Lincoln would have been required to demonstrate that, under the criteria stated at 54 Comp. Gen. 597, supra, the property for which reimbursement is requested is reasonably

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related to the residence site. Also, all Government officers and employees are special agents of limited authority and all persons dealing with such agents and employees are charged with notice thereof and of the limitations upon the authority of the agents with which they deal. B-179635, March 20, 1974. It is well settled that in the absence of specific statutory authority, the Government is not liable for the negligent acts or omissions of its officers and employees; nor is it bound by or responsible for their unauthorized or incorrect statements. Robertson v. Sichel, 127 U.S. 507, 515 (1888); German Bank of Memphis v. United States, 143 U.S. 573, 579 (1893); 22 Comp. Gen. 221 (1942); 44 id. 337 (1964).

Accordingly, the voucher submitted by Mr. Lincoln for reimbursement of the brokerage fees incurred in connection with the sale of the 20-acre parcel of land may not be certified for payment.

R.F.KELLER  
~~Acting~~ Comptroller General  
of the United States