

DOCUMENT RESUME

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[Claim for Reimbursement of Attorney's Fee]. B-188970. October 13, 1977. 2 pp.

Decision re: Patrick J. Kelly; by Paul G. Dezbiling, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Federal Bureau of Investigation.

Authority: 5 U.S.C. 5724a. B-185976 (1977). B-184599 (1975).

F.T.R. (FPMR 101-7), para. 2-6.2c. 56 Comp. Gen. 561.

D. E. Cox, Authorized Certifying Officer of the Federal Bureau of Investigation, requested a decision concerning an employee's claim for reimbursement of an attorney's fee incurred in connection with the sale of his former residence incident to a transfer. Since the attorney conducted the settlement, as distinguished from acting in an advisory capacity, the fee may be reimbursed. (SW)

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DECISION



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

FILE: B-188970

DATE: October 13, 1977

MATTER OF: Patrick J. Kelly - Attorney's Fee

DIGEST: Incident: to transfer employee sold home at old station without use of realtor. Employee subsequently retained attorney to prepare documents and handle settlement of transaction. Since attorney conducted settlement, as distinguished from mere attendance in advisory capacity, attorney's fee for conducting settlement may be reimbursed.

By a letter dated June 6, 1977, Mr. D.E. Cox, an authorized certifying officer of the Department of Justice, Federal Bureau of Investigation (FBI), requested our decision concerning a voucher submitted by Mr. Patrick J. Kelly, an FBI employee. Mr. Kelly has requested reimbursement of an attorney's fee incurred in connection with the sale of his former residence incident to his transfer from Philadelphia, Pennsylvania, to Harrisburg, Pennsylvania.

The record shows that Mr. Kelly accomplished the sale of the residence without the use of a real estate agent, and subsequently retained an attorney, Hersh Kozlov, Esq., to draft the documents and perform the functions necessary to a consummation of the transaction. The attorney submitted a statement dated September 20, 1976, to Mr. Kelly for the following charges:

Preparation of Deed	\$ 35.00
Preparation of Agreement of Sale	65.00
Attendance at Settlement	<u>100.00</u>
Total	\$200.00

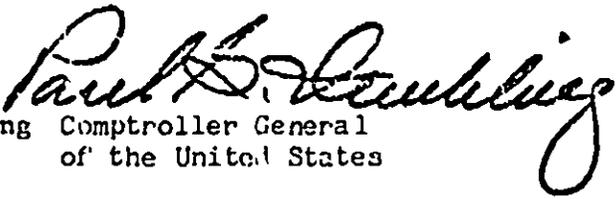
Mr. Kelly was reimbursed \$100 for the preparation of documents, but the \$100 charge for attendance at settlement was administratively denied as being an advisory service. He reclaimed the suspended \$100 charge and the matter was referred by the certifying officer to this Office for a decision.

B-188970

Statutory authority for reimbursement of the legal expenses of residence transactions of transferred employees is found at 5 U.S.C. 5724a (1970). Regulations implementing that authority at the time of Mr. Kelly's transfer were contained in paragraph 2-6.2c of the Federal Travel Regulations (FPMR 101-7, May 1973). In our recent 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. Since, however, our decision in Lay will be applied prospectively only to cases in which settlement of the transaction occurs on or after April 27, 1977, the present matter must be determined in accordance with the previously applicable laws and decisions.

Our previous decisions concerning the reimbursement of legal fees consistently held that only legal services of the type enumerated in FTR para. 2-6.2c could be reimbursed, and that no reimbursement could be made for legal services which are advisory in nature. Those decisions held that an attorney's fee charged for merely attending a settlement to represent an employee in an advisory capacity may not be reimbursed. However, a fee charged for actually conducting the settlement may be reimbursed. John O. Border, B-184599, September 16, 1975. We have been informally advised that in the present case, the attorney conducted the settlement at his office, effecting the proper exchange of documents and ensuring the proper distribution of money. In these circumstances, we hold that the attorney in fact conducted the closing, as distinguished from a passive attendance in an advisory capacity. Therefore, pursuant to our decision in Border, the legal fee charged for that service may be reimbursed.

Accordingly, the voucher may, if otherwise proper, be certified for payment.


Acting Comptroller General
of the United States