

DECISION

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

118537

FILE: B-205041**DATE:** May 28, 1982**MATTER OF:** Eugene B. Roche - House-hunting trip -
Erroneous authorization

DIGEST: Employee who was permanently transferred from Kansas City, Missouri, to Anchorage, Alaska, is not entitled to reimbursement for spouse's house-hunting trip since both old and new official stations were not located in conterminous United States, 5 U.S.C. § 5724a(a)(2). Erroneous advice and authorization by agency officials does not create right to reimbursement where expense claimed is precluded by law.

The issue decided here is whether a Government employee may be authorized and reimbursed expenses incurred for a house-hunting trip performed by the employee's spouse in connection with an official transfer to a duty station outside the conterminous United States. Under the express terms of paragraph 2-4.1c(3) of the Federal Travel Regulations and 5 U.S.C. § 5724a(a)(2), reimbursement for travel and transportation expenses for trips to seek permanent quarters shall not be authorized when either the old or new duty station or both duty stations are located outside the conterminous United States.

This decision is in response to a request for an advance decision from the Assistant Director of Administration for Budget and Financial Management, Federal Mediation and Conciliation Service, concerning the entitlement of Mr. Eugene B. Roche, an employee of the Service, to reimbursement for relocation expenses for a house-hunting trip, in October 1980, performed by Mr. Roche's wife incident to a permanent change of station from Kansas City, Missouri, to Anchorage, Alaska.

Reimbursement for travel and transportation expenses to seek a new permanent residence at a new official station is authorized by 5 U.S.C. § 5724a(a)(2) (1976), which provides in part as follows:

"(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided

therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of * * *

* * * * *

"(2) * * * Expenses of transportation to seek permanent residence quarters at a new official station when both the old and new stations are located within the continental United States. * * *" (Emphasis added.)

This statutory provision has been implemented in part by paragraph 2-4.1 of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR), which similarly states that in order for an employee to be reimbursed for a house-hunting trip, the old and the new official duty stations must be located within the conterminous United States. See 52 Comp. Gen. 834 (1973) involving a transfer from Alaska to the conterminous United States; and Paul L. Guidry, B-203645, October 9, 1981, concerning a house-hunting trip performed by an employee's spouse for a transfer from Paris, France.

Accordingly, there is no lawful authority for reimbursement of the cost of Mr. Roche's wife's house-hunting trip.

The Assistant Director has stressed the existence of certain mitigating factors in Mr. Roche's claim which follow from the Service's admission that the granting of advance approval of the round trip to seek new quarters was an inadvertent administrative error. The Assistant Director further points out as follows:

"Because of severe budget constraints agency-wide in all object classes, Mr. Roche volunteered to make the transfer at the lowest possible cost to the agency. He minimized expenses by not selling his home in Kansas City. Furthermore, station transfers to Alaska by two agency employees in 1978 and 1980 were substantially more expensive to the agency than Mr. Roche's transfer: their transfer costs were \$4,942 and \$5,272, compared to

Mr. Roche's expenses of \$3,061, which includes the disputed amount being claimed."

In the first instance paragraph 1-1.3a of the FTR places an affirmative obligation on all employees engaged in the performance of official travel to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. At the same time, once an agency determines that a transfer is in the interest of the Government, certain allowances under 5 U.S.C. §§ 5724 and 5724a, as implemented by the FTR, are mandatory and will be paid on a uniform basis. See Dennis F. Bracy, B-196596 January 9, 1980, and decisions cited therein. One such nondiscretionary allowance is that for reimbursement for the expenses of residence transactions as provided for in 5 U.S.C. § 5724a(a)(4) and Chapter 2, Part 6 of the FTR.

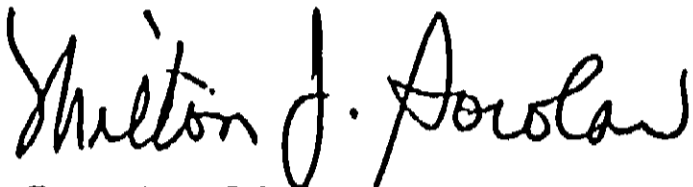
As a result, on the basis of the record before us, Mr. Roche's actions in minimizing relocation expenses to a figure below those of apparently comparable transfers, are commendable--but create no additional entitlement to reimbursement. Moreover, on the record before us, Mr. Roche's decision not to sell his residence at the old duty station must be considered a matter of personal preference as opposed to an improperly imposed agency constraint. As such, that fact is not material to the disposition of his claim.

It is unfortunate when a Government employee, like Mr. Roche here, receives erroneous advice concerning his or her relocation entitlements. We have consistently held, however, that the erroneous advice or authorization does not in itself create a right to reimbursement where the expense claimed is precluded by law. That conclusion is required by the fundamental rule of law that persons receiving money erroneously paid by a Government agency or official acquire no right to the money and are liable to make restitution. In that connection, we have noted that although the prior misunderstanding or misinformation about the matter was regrettable, that alone could not furnish a proper basis for allowing the employee to keep the erroneous payments, since the Government is not responsible for or bound by the mistakes of its agents

B-205041

or officials, and no legal authority exists which might otherwise serve as a basis for waiving collection of the erroneous payments. See James F. Brown, B-201771, August 6, 1981, and decisions cited therein.

We recognize that Mr. Roche relied on the misinformation and erroneous authorization given to him concerning his entitlement to reimbursement for a house-hunting trip. However, as indicated above, the agency's erroneous actions may not serve as the basis for establishing a valid entitlement to reimbursement, since the Government cannot legally be bound by the mistakes of its agents, and no lawful authority exists which would otherwise permit payment of the house-hunting expenses claimed by Mr. Roche.

you 
Comptroller General
of the United States