



Office of the General Counsel

B-247860

July 23, 1992

Mr. David R. Petak  
Food and Drug Administration  
Public Health Service  
Department of Health and Human Services  
Rockville, Maryland 20857

Dear Mr. Petak:

This is in response to your request for our opinion on reimbursement of certain items of relocation expenses claimed on vouchers submitted by Mr. \_\_\_\_\_, an HHS employee, incident to the construction of a residence near his new duty station. We conclude that he may be reimbursed additional amounts as explained below.

Mr. \_\_\_\_\_ was authorized a permanent change of station from New Orleans to Lafayette, Louisiana, effective April 8, 1990. In connection with that transfer he was also authorized relocation expenses under the Federal Travel Regulations (FTR). Mr. \_\_\_\_\_ acquired one acre of land by donation from his father and began the construction of a residence on it. Mr. \_\_\_\_\_ submitted a voucher for reimbursement of several costs associated with these transactions. After examination by HHS, the following items, totaling \$4,156.55, have been questioned: 1) settlement and closing costs (\$2,788.80) on consolidated construction and mortgage loan; 2) legal fee (\$777.25) for preparation and execution of a Servitude of Passage for property acquired for residence; 3) legal fee (\$590.50) for preparation and execution of an Act of Donation for property acquired by donation.

The statutory provisions governing reimbursement for real estate expenses incident to a transfer are contained in 5 U.S.C. § 5724a(a)(4) (1988) and regulations issued pursuant thereto. Under the FTR a transferred employee is entitled to be reimbursed real estate expenses for the purchase of an existing residence. If he decides to construct a residence rather than purchase an existing residence, the only reimbursable expenses incident to that construction are those which are comparable to expenses which would be reimbursable in connection with a residence

purchase.<sup>1</sup> Any expenses incurred which relate particularly to the construction process are not allowable.  
, B-208302, July 17, 1984.

#### Consolidated Construction and Mortgage Loan Costs

In the present case, each stage of the building process from land acquisition to financing involved a number of expenses which would be appropriately reimbursable had Mr. purchased an existing residence. However, an employee may be reimbursed only once for each type of expense that is allowable under the law and regulations.  
B-223112, Nov. 25, 1986. Since expenses incident to permanent mortgage financing are most representative of expenses an employee would incur to purchase an existing residence, determinations of entitlement should be primarily based on an examination of that settlement.  
B-226271, Nov. 5, 1987. In addition, other expenses incurred prior to permanent financing may be reimbursed as long as they are not a duplication of an expense item already allowed, an expense uniquely applicable to construction, or a nonreimbursable item under FTR para. 302-6.2(d) (2).  
, supra. Since Mr. y's closing costs were for consolidated construction and permanent financing they are reimbursable under the same FTR provisions as if Mr. had purchased an existing residence. The agency should therefore review the closing costs consistent with the above to determine those which are of a type applicable to the purchase of an existing residence and are not duplicative.

We note that as part of the consolidated mortgage loan, Mr. was required to pay a 1-percent loan origination fee (\$656) to the lender. That fee may be reimbursed. See  
, 63 Comp. Gen. 456 (1984);  
64 Comp. Gen. 306 (1985).

We also note that a fee of \$250 was charged at settlement for a property survey and Mr. has also submitted an invoice (\$568.50) for a second survey showing property to be acquired. Property surveys usually are performed for one of two purposes. One purpose is to establish the exterior measurement and positioning of the foundation of a structure to be constructed on property. Such a survey may not be reimbursed since it is unique to the construction process.  
, B-205510, Feb. 8, 1982. The other purpose is to establish the perimeter and configuration of the property. Where a lender requires such a survey for financing purposes, reimbursement is proper, subject to a determination that the amount of the charge is customary for

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<sup>1</sup>FTR 41 C.F.R. § 302-6.2(d) (1) (x) (1990).

the area. , B-206051, Sept. 29, 1982.  
Mr. may be reimbursed the survey fee only in the latter circumstances. The record did not contain an agency determination that either survey fee was required by the lender and that the amount of the fee was customary in Lafayette.

#### Attorney's Fees

Two specific items for which attorney's fees were incurred have been questioned: (1) preparation and execution of a servitude of passage; and (2) preparation and execution of an act of donation. The servitude of passage was necessitated since Mr. had to cross over 3 separate, individually-owned properties to reach his property.

Under FTR, para. 302-6.2(d)(1)(x), if an employee would not have incurred an expense but for the fact he had a residence constructed, reimbursement for such expenses may not be allowed. , 63 Comp. Gen. 68 (1983). It is evident that had Mr. purchased an existing home, legal access to the property would not have had to be secured independently. Therefore, legal fees necessary to obtain a servitude of passage for the undeveloped property would not have been incurred but for the fact Mr. had a residence constructed, and accordingly, reimbursement may not be allowed.

The attorney's fee associated with the acquisition of the property by donation, necessitating the preparation of an act of donation may be paid since it is akin to the fee Mr. would have been required to pay for the preparation of legal instruments had he purchased an existing residence. , 63 Comp. Gen. 68 (1983). Moreover, we have held that a employee may be reimbursed for his expenses incurred in taking title to residence as a gift from a relative. B-173652, Oct. 27, 1971. We note, however, that the statute authorizing reimbursement of the legal expenses of transferred employees in connection with the sale or purchase of a residence, 5 U.S.C. § 5724a(a)(4), expressly limits entitlement to those amounts "customarily charged in the locality where the residence is located." The implementing regulations restrict legal expenses for the employee buying a house to expenses "customarily paid by a 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." FTR 41 C.F.R. § 302-6.2(c).

Accordingly, HHS may certify Mr. \_\_\_\_\_'s vouchers for payment to the extent consistent with the above.

Sincerely yours,

*for Seymour Epps*  
James F. Hinchman  
General Counsel