



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

B-178399

June 13, 1973

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Mr. Robert J. Schullery
Authorized Certifying Officer
Federal Aviation Administration
Department of Transportation

Dear Mr. Schullery:

We refer further to your letter of April 6, 1973, which transmitted for advance decision a voucher in behalf of Morris H. Earle in the amount of \$375 for certain (claimed real estate expenses) incident to a change of duty station from Kansas City, Missouri, to Des Plaines, Illinois, under travel orders dated January 10, 1972. The items reclaimed are an association assessment fee and a portion of the attorney's fee previously disallowed.

Mr. Earle purchased a home in the vicinity of his new duty station. The purchase contract in pertinent part provided in its section 11 as follows:

A. In order to enable the Association to commence its operations in a sound financial condition, Buyer agrees to pay or contribute to the Association, at closing, or its predecessors the sum of Three Hundred Dollars (\$300.00), which sum shall be in addition to and not in lieu of any and all monthly assessments and may be held and used by the Association or its predecessor for any purpose for which any funds derived by assessment could be used pursuant to the Declaration.

You state Mr. Earle paid the above described \$300 at settlement on July 8, 1972, and now claims reimbursement on the basis that the "fee" is a customary charge in the locality. You have disallowed his claim since the applicable regulations make no provision for its reimbursement. On his reclaim for the item, Mr. Earle urges that the purchase of his home was contingent upon payment of the "fee". We agree with your conclusion that the fee is not a reimbursable item of expense within the provisions of section 4.2 of Office of Management and Budget (OMB) Circular No. A-56 (as revised August 17, 1971). The Declaration referred to in the above quote was not submitted. However, sections 4 and 11 of the purchase agreement indicate that the assessment may be used, as are monthly assessments "to provide for

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all work, services and other activities which shall appear to be necessary or desirable by the Association or its predecessors to provide for the benefit of said Fairfax Village or residents thereof." It is reasonable to conclude that such assessment is for operating or maintenance costs, and as such specifically excluded as a reimbursable item. See section 4.2d of OMB Circular No. A-56.

In regard to legal services, Mr. Earle had claimed \$382 for professional legal services, \$75 of that amount identified as a fee for "attendance at closing" had been disallowed administratively and is reclaimed on the basis of the attorney statement that the item represents "actual active performance" rather than "passive advisory service." In this connection Mr. Earle submitted a copy of a letter from his attorney concerning the attendance at closing which in pertinent part states:

On the day of closing, you will recall that we met with representatives of the Seller and the Title Company in the latter's office. We computed the pro-ration credits due the respective parties for real estate taxes, title charges, State Documentary Tax Stamp and the like. Because the seller still owed a balance to the original owner of the land, we required that a letter be prepared and executed by the seller's representative authorizing the Title Company to pay a portion of the proceeds directly to the original owner to satisfy that obligation. We arranged for extended coverage under the title Company's Owner's Title Insurance Policy to protect you against the possibility of unrecorded mechanic lien claims. This is not a part of the usual title insurance coverage and requires special arrangement with the title company and the execution of certain affidavits and examination of waivers of lien as to all new construction. Incidentally, in order to expedite closing and to arrange for immediate occupancy, we personally delivered to the office of the Attorney for the lender, certain documents which we had expected to be completed beforehand, but which had been overlooked.

The applicable regulation, OMB Circular No. A-56, section 4.2c, provides:

c. Legal and related costs. To the extent such costs have not been included in brokers' or similar services for

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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; 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.

We have consistently held that under the above-quoted regulation no reimbursement is to be allowed for legal services which are of an advisory nature. D-175710, July 17, 1972, copy enclosed, and decisions cited therein. The services rendered at settlement as described above appear to be advisory and for the sole benefit of the purchaser, as distinguished from a charge for the conducting of the closing. Accordingly, there is no authority for allowance of any part of the \$75 fee as claimed.

The voucher which is returned herewith may not be certified for payment.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States