

Seed Grain Liens Priority Over Chattel Mortgage.

A person holding a chattel mortgage subsequent to a seed grain lien may pay the amount due on such lien, after the same has been entered on the tax rolls, and may receive therefor a receipt from the county treasurer and have it attached to the original seed grain lien.

November 24, 1920.

Mr. R. N. Jones,
County Attorney,
Harlowton, Montana.

Dear Sir:

I have your letter of the 22nd inst., with reference to payments of amounts due on seed grain liens or contracts by persons holding subsequent chattel mortgages on the property covered by the lien or contract.

As I understand the situation it is substantially as follows:

Many persons who procured aid from the county and executed seed grain liens or contracts under Chapter 19 Session Laws Extra, Sess. 1919, failed to pay the amounts due thereon before October 20, 1920, and the county treasurer, in compliance with the requirements of Section 25 of said Chapter 19, then entered on the tax rolls the amounts due on such liens or contracts. After such liens or contracts had been given to the county the persons giving the same executed chattel mortgages which became second liens. These second mortgage holders now offer to pay to the county the amount due the county on said seed grain contracts or liens, asking that the county treasurer issue receipts to them for such payments, and such persons will then file such receipts with the county clerk who will attach them to the original liens or contracts on file in his office, thus subrogating the persons paying the same to all of the rights of the county, claiming the right to do so under Section 8, Chapter 86 Session Laws 1913.

The amount due under any such seed grain lien or contract, while termed in said Chapter 19, a tax, is not, in any sense of the word, a tax, but it is an amount becoming under on a contract between the person receiving the aid and the county (*Strand v. Marin* 152 NW 280), hence the rule that one desiring to pay the taxes against a piece of property may not pay a part of such tax only but must pay the whole thereof, has no application to the payment of the amount due on such a seed grain lien or contract, and any person who has any interest in the property against which the same is charged on the tax books may pay the amount due on such lien or contract without paying the general taxes due, or may pay the general taxes due, without paying the amount of the lien or contract.

If a subsequent mortgagee should pay the amount due on any such lien or contract the lien of the county for general taxes would not be affected in any way, and such general tax lien might be en-

forced in the manner provided by law, by summary seizure and sale of personal property, when no real estate owned, or by sale at delinquent tax sale if real estate.

By permitting a subsequent mortgagee to pay the amount of the seed grain lien or contract entered on the tax books, with interest, receiving a receipt for such payment and filing the receipt and having the same attached to the seed grain lien or contract on file in the office of the county recorder, I do not see can operate in any way to injure any person, unless possibly it may be the mortgagee paying the same, and if he is willing to take a chance I do not see that any one else can complain. Certainly the county cannot be injured as it simply receives the amount it is entitled to receive in payment of the seed grain lien or contract while still retaining its general tax lien for the general taxes due and unpaid. And I do not see how the person giving the seed grain lien or contract to the county can be injured, as he will not be called upon to pay any other or greater amount than he would be called on to pay if the county had not received its money from the mortgagee.

I am, therefore, of the opinion that a person holding a chattel mortgage, which is subsequent to a seed grain lien or contract, may pay to the county treasurer, the amount due on such seed grain lien or contract, after the same has been entered on the tax rolls, and when such payment is made may receive from the county treasurer a receipt thereof, and the person paying such amount and receiving such receipt may file the same with the county recorder and have it attached to the original seed grain lien or contract on file in such office. The county treasurer will enter the amount so received on the tax books as a payment of the amount due on such seed grain lien or contract, but will not make any endorsement on the lien or contract showing a release thereof, as the payment to the county treasurer does not operate as a payment and discharge of the lien or contract, but merely as an assignment thereof.

Respectfully,

S. C. FORD,

Attorney General.