

**County Treasurer—Acceptance of Delinquent Taxes—
Seed Grain Lien.**

The mortgagee of land upon which both the general taxes and the seed grain lien extended as a tax are delinquent has the right to have the two segregated, and may pay the former without paying the latter, and the County Treasurer may accept such payment.

R. B. Hayes, Esq.,
County Attorney,
Miles City, Montana.

My dear Mr. Hayes:

You have requested my opinion whether the County Treasurer may accept payment of delinquent county and State taxes upon real estate from a mortgagee thereof without the mortgagee paying at the same time the tax due for seed grain furnished for use upon the real estate involved.

Section 22, Chapter 19, Extraordinary Session Laws of 1918, reads as follows:

"The county clerk shall, as soon as said board has delivered the applications to him, upon demand of each applicant whose application has been approved by said board, issue to such applicant an order for the number of bushels of each kind of seed grain which has been allowed to said applicant, unless otherwise directed by the board of county commissioners, or chairman thereof; provided, however, that said order must not be delivered until the applicant shall have signed a contract in duplicate, which contract shall have the same force and effect of a promissory note, acknowledged in the same manner as deeds are acknowledged, to the effect that such applicant for and in consideration of.....bushels of seed grain received from.....County, promises to pay to said county.....dollars, the amount of the cost of said seed grain, together with interest thereon from the date of said contract until said amount is paid at the rate of not exceeding seven per cent per annum; that the same shall be a lien upon all property, both real and personal, owned by such applicant, if he be the owner of any real property, which property must be particularly described therein, and shall also be a lien upon all crops grown from said seed grain; that the amount thereof shall become due and payable on the first day of October following the harvesting of the crop grown from said seed grain; provided, however, that the amount due may be paid at any time prior to said date, and that if not paid by the twentieth day of October following the harvesting of the crop grown from said seed grain if the applicant is the owner of property, either real or personal, the amount thereof shall be levied as a tax against such property and collected at the same time and in the same manner as other taxes are collected; * * *

Section 23 of said chapter provides, in part, as follows:

"* * * the county shall have and acquire a just and valid lien upon all of the real and personal property owned by the applicant, * * * to the amount due the county upon such contract, which lien shall be prior to all liens and incumbrances against or upon said property except liens and incumbrances filed or recorded in the office of the county recorder of such county prior to the filing of such contract, and except liens of threshermen for threshing, and liens of laborers for planting and harvesting the crop grown from such seed grain, * * * and such lien shall continue in force until the amount specified in such contract, with the interest thereon shall be fully paid; provided, however, that such seed grain lien shall not apply to,

or be prior to, or superior to renewals of mortgages, which mortgages are prior liens at the time such seed grain lien attaches."

Section 25 of said chapter reads as follows:

"If the amount specified in said contract with the interest thereon is not paid by the twentieth day of October of the year in which the crop grown from said seed grain is harvested, it shall be the duty of the county treasurer of such county to enter the amount of such indebtedness upon the tax rolls of such county for that year as a tax upon all property, real and personal, which is described in said contract as being subject to the lien thereof, which tax shall be collected at the time and in the same manner as other taxes are collected, and if such tax becomes delinquent said property shall be sold for delinquent taxes at the same time and in the same manner that property is sold for delinquent taxes."

This seed grain lien, after being extended on the tax roll, is called a tax; but, as a matter of fact, it is not a tax, but is an amount due on a contract between the applicant and the county, and the rule that one may not pay part of the taxes against property without paying the whole thereof has no application to paying or not paying the amount due on a seed grain lien or contract, and any person who has any interest in the property may pay off the seed grain lien without paying the general taxes, or may pay the general taxes without paying the seed grain lien. (See Vol. 8, Opinions Attorney General, 532.)

By special provision of the Act itself, these seed grain liens, even after being extended on the tax roll, do not take precedence over mortgages of a date prior to the date of the seed grain lien, and in case of action brought to foreclose such a mortgage, the lien of the county for seed grain furnished under the said Act would be foreclosed the same as any other subsequent encumbrance. This, of course, would not be true of the general county and State taxes which might be a lien on such property. (See Vol. 8, Opinions Attorney General, 160.)

Therefore, it is my opinion, that the mortgagee of land upon which both the general taxes and the seed grain lien extended as a tax are delinquent has the right to have the two segregated, and may pay the former without paying the latter, and that the County Treasurer may accept such payment.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.