

Seed Grain Lien—Power of Board of County Commissioners to Waive or Compromise in Favor of a Renewal Mortgage.

The Board of County Commissioners of a county have no power to waive the priority of a seed grain lien for any purpose or to compromise the same.

C. W. Noyes, Esq.,
County Attorney,
Ryegate, Montana.

My dear Mr. Noyes:

You have inquired whether the Board of County Commissioners have power to waive the priority of a seed grain lien in favor of a first mortgage on the land involved in order to make the abstract show clear title for the purpose of renewing the mortgage, also whether the Board may compromise the amount of such seed grain lien.

Section 23 of Chapter 19 of the Laws of the Extraordinary Session of 1918 reads, in part, as follows:

“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.”

This provision specifically gives priority to a renewal mortgage, so that, except for the convenience of renewing the mortgage, no advantage would be subserved by a waiver of the priority. However, the County Commissioners have no authority to waive or compromise in any way the claims of the State. They are given no such authority by the Act in question, and it is well established that the County Commissioners have no authority except that found written in the statutes, or necessarily implied from the authority given.

Hershey v. Neilson, 47 Mont. 132;
State ex rel. Lambert v. Coad, 23 Mont. 131;
Morse v. Granite County, 44 Mont. 78;
Edwards v. Lewis & Clark County, 53 Mont. 359.

Section 39 of Article V of the Constitution of the State of Montana reads as follows:

“No obligation or liability of any person, association or corporation, held or owned by the state, or any municipal corporation therein, shall ever be exchanged, transferred, re-

mitted, released or postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury."

The Legislature having no power under the foregoing provision to remit or diminish an obligation or liability to the State, it would be powerless to delegate the authority to do so to a county as a political subdivision of the State, and the possibility of implying such power in the County Commissioners from any authority given them could not, therefore, exist.

It is, therefore, my opinion that the County Commissioners have no power to waive the priority of a seed grain lien for any purpose or to compromise or lessen the same.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.