

Hail Insurance Lien—Priority Over Other Liens—Priority of Seed Grain Lien—Upon What Crop Seed Lien Attaches.

Section 8363 of the Revised Codes of 1921 construed as giving a seed grain lien precedence over a lien for hail insurance, but limiting the seed lien to the crop upon which the seed loan was given.

M. L. Parcels, Esq.,
County Attorney,
Columbus, Montana.

My dear Mr. Parcels:

You have requested advice on the priority of the hail insurance lien over other liens.

The question of the priority of a seed grain lien over other liens was discussed in an opinion by former Attorney General Ford, found in Volume 8, Opinions of the Attorney General, at page 160. I quote the following from this opinion:

"The courts have held, and undoubtedly correctly, that while the amount becoming due under a seed grain lien is denominated a tax, it is not in fact a tax, and that a county cannot furnish seed grain to one, taking a lien on his land, and by denominating it a tax create a lien superior to a mortgage lien in existence at the time the seed grain lien was taken by the county. They say that this is nothing more nor less than a loan by the county, and that in making such loan the county stands on exactly the same footing as an individual who might have made the loan, consequently no lien for such loan can divest a mortgagee of his prior lien, but the county's lien is subject to the prior mortgage lien, and that this being true the county cannot sell the

land under its lien and divest the mortgagee of his lien, or compel the mortgagee to pay the amount of the seed grain lien in order to protect his mortgage lien."

Undoubtedly the same reasoning applies to a hail insurance lien, and the lien is not entitled to priority over other liens existing at the time it was placed of record.

You call attention to the provisions of Section 8363, Revised Codes of 1921, regarding the priority of a seed grain lien over a lien for hail insurance. This section provides, in part:

"Any person * * * who shall furnish * * *
* hail insurance for the purpose of protecting the said party's crop from damage by hail during the hail season of the then growing or seeded crop, * * * shall, upon filing the statement provided for in the next section, have a lien subject to any seed lien that may then or thereafter be placed on record against the said crop for the amount due the said person."

Undoubtedly this provision giving priority to a seed lien has reference only to the seed lien upon the same crop upon which hail insurance was furnished. I can see no objection to the Legislature providing that the seed lien upon a given crop should be prior to a lien for hail insurance, although the seed lien may not have been recorded until after the hail insurance lien. This, however, would be limited to the crop upon which the hail insurance was given and would not extend to a crop for the succeeding year. The lien for hail insurance does not take priority over any existing lien.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.