State Hail Insurance—Application for by Vendee Under Contract for Sale of Real Estate—Duty of Assessor.

An application for State hail insurance by the vendee under a contract for the sale of real estate should be controlled by Section 5, Chapter 169, 15th Session Laws, and treated in the same manner as a tenant's application. If the record owner of land does not agree to such insurance tax, it cannot be collected against the land where the contract for sale is not completed. The Assessor should examine the records, and in cases where applicant for insurance is not the record owner of the land, he should proceed under the law as provided for tenants.

E. K. Bowman, Esq.,
State Board of Hail Insurance,
Helena, Montana.

My dear Mr. Bowman:

You have requested an opinion as to whether hail insurance tax can be collected against the owner of a tract of land which was sold under contract, the application for insurance being made by the vendee without the consent or knowledge of the vendor; the vendee representing himself as the owner.

Section 5 of Chapter 169, 15th Legislative Assembly, provides the manner in which any person, not the owner in fee of the land, may obtain State hail insurance thereon. The latter part of that section reads as follows:

> "Provided that the owners of lands worked by others under lease or contract, shall elect if such lands shall be subject to the tax levies herein provided for, and the crops grown thereon protected for hail insurance, or the lessee of such land may tender payment of the tax levied for Hail Insurance to protect his crops, in cash, to the officer authorized to receive same, whereupon such crops shall become eligible to the benefits and protection afforded by this Act for hail insurance."

The above seems to be the only provision in the law for the insuring of crops by persons other than the owners of the land on which the crops are grown. There is no method provided for the insuring by a grantee under a contract for deed to the land as distinguished from a tenant or lessee. Therefore, such a person must be treated either as a tenant or as an owner. If he is to be treated as a tenant, he did not comply with the law when he applied for the insurance. Therefore he was not insured and cannot be compelled to pay for the protection. (See Vol. 8, Opinions of Attorney General, page 274.)

In this case, as I understand the facts, Johnson is the owner in fee of the land. He sold the same to Eddy under a contract for deed. Eddy applied for hail insurance representing himself as owner of the land. Eddy has failed to carry out the terms of the contract and Johnson has foreclosed the same. Eddy, at the time he applied for the insurance, owned an equity in the land equal to whatever payment he had made thereon under the contract, but the records of the county fail to show ownership in any person other than Johnson. The law (Sec. 2, Chap. 169, above) provides for the tax to pay for State hail insurance to be levied upon the land. If the owner of the crops insured is not likewise the owner of the land, he must proceed under Section 5, above, in order to obtain the protection. Eddy was not the owner of the land; he merely held an equity therein contingent upon his performance of his contract, and in order to bind the land for the hail insurance tax it was necessary that Johnson should elect, as provided in Section 5, above. The County Assessor should examine the records, and where the record title of the land is not in the applicant for hail insurance, should require the procedure of Section 5, above, to be followed.

It is my opinion that the application for insurance made by Eddy was not legally made; that he was not insured; and that the tax, therefore, should not be levied against the land.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.