

Seed Grain Loan—Lien For, Continuation Of—Priority of—Federal Loans.

By Chapter 21 of Act Extraordinary Session of the Fifteenth Legislative Assembly, the State does not have a lien prior to that of Federal Government for loan for seed grain.

A seed lien to a county is not a continuing one on crops so as to run from year to year, and such lien is superior to liens given to the United States under chattel mortgage on the crop.

May 1st, 1919.

Hon. D. G. O'Shea, Pres.,
Federal Land Bank
Spokane, Wash.

My dear Senator:

I am in receipt of your telegram of the 26th inst., as follows:

“Kindly advise if where state or county made seed grain loan last year and such loan remains unpaid if such lien be held to be continuing lien on crops from year to year with priority over other chattel mortgages. Was any legislation adopted this year affecting situation? Completion federal loans delayed awaiting your opinion.”

Also of your letter of the 29th inst., with reference to the same subject.

Loans were made to farmers for the purchase of seed grain during the year 1918 from two sources. First, by the State of Montana from its War Defense Fund, such loans being authorized by Chapter 21, Acts Extraordinary Session Fifteenth Legislative Assembly, and, second, by the several counties of the state under Chapter 19, Acts of Extraordinary Session, Fifteenth Legislative Assembly.

Chapter 21 authorized the State Council of Defense to expend the money appropriated by loan for the purpose of encouraging, aiding and assisting those engaged in agricultural pursuits in procuring seed, planting, sowing, raising and harvesting crops, etc. Section 2), and, while it did not provide any particular manner in which repayment of such loans should be secured, authorized the Council of Defense to enter into any and

all contracts and to require the execution of such notes, liens and mortgages to secure the repayment of such loans, as such council should deem necessary and proper (Section 6). The Council of Defense adopted the policy of requiring these loans to be secured by mortgages, rather than by seed grain or crop liens, and wherever possible, required the borrower to secure the loan by a mortgage on real estate, or if that was not possible, then by mortgage on personal property, such as live stock, etc., and if it was impossible for the borrower to give a mortgage on either real estate or personal property, then a mortgage on growing crop. I am informed by the State Treasurer that while the state has some chattel mortgages on 1918 crop, by far the larger number are on either real estate or personal property other than growing crop. However, the last session of the legislature passed an act, Senate Bill No. 50, being Chapter 19, Session Laws of 1919, Section 4 of which provides that if any person who has secured a loan from the United States, or any department thereof for the purpose of procuring seed grain for planting crops during the year 1919, and shall give the United States, or such department thereof, a mortgage or lien to secure payment of such loan upon the same property as is covered by the mortgage or lien to the State, the mortgage or lien given to the United States, or such department thereof, shall be deemed and considered as a first lien on said property and the mortgage or lien to the state shall be deemed and considered as subsequent and subject thereto. This bill was prepared in my office and was intended for the very purpose of permitting the Federal Government making loans to those who had procured loans from the State during the preceding year, and making any lien or mortgage taken for any such loan superior to that which the state may have taken for its loan. I am, therefore, of the opinion that the fact that the State made a loan and took a mortgage or lien does not prevent the Federal Government from making a loan and taking a mortgage on the same property, as, under the provisions of such section, the mortgage or lien of the Federal Government will be prior and superior to that of the state. I am enclosing copy of Senate Bill No. 50, in order that you may examine the same and see the provisions contained therein.

With reference to the seed grain lien taken by the several counties of the State under Chapter 19, the situation is somewhat different. Section 23 provides that when the lien is filed in the office of the county recorder the county shall have a lien upon all of the real and personal property owned by the borrower, *and upon all crops grown from such seed grain*, and upon the land on which the seed grain is to be sown if the borrower does not own the land and the owner has signed the lien. It will be seen from the provisions of this section that while the lien attached to all real and personal property owned by the borrower, it is, so far as the crop is concerned, a lien only on the crop grown from such seed grain. Section 25 provides that if the amount secured by the lien, with interest thereon, is not paid by the 20th day of October, of the year in which the crop grown from the seed grain is harvested, such amount shall be entered on the tax rolls for that year as a tax upon all real and personal property described in the lien, and such tax shall be collected in the same manner as other taxes are collected, and if it becomes delinquent the property shall be sold for delinquent taxes at the same time and in the same manner that property is sold for delinquent taxes.

I do not believe that the provisions of Section 16, Chapter 86, Session Laws 1913, which provides for mortgages on growing crops, have any application to seed grain liens given to counties under Chapter 19, but that by the very terms of Section 23 of Chapter 19, the lien is restricted to the crop grown from the seed grain for which the lien is given.

In the spring of 1918 many farmers procured from their counties seed grain for planting crops that spring, and the crops which should have been grown therefrom would have been harvested in the fall of 1918 if there had not been a failure of crops. In such cases the liens, so far as crops are concerned, attached only to the crops which should have been grown and harvested that year, and not to crops grown and harvested in 1919. However, in some of the counties seed was furnished for fall planting and the crops to be grown therefrom will not be harvested until the early fall of 1919. In these cases the lien attaches to the 1919 crop.

The last session of the legislature passed an Act, House Bill 106, being Chapter 53, Session Laws of 1919, providing for the extending of the time for payment of seed grain liens under Chapter 19, copy of which bill I am enclosing herewith. This bill, of course, only applies to liens covering 1918 crops, which were then due, and not to any liens which may have been given on 1919 crops, and which will not be due until Oct. 20th, 1919. I do not believe that under this bill the lien on 1918 crops is extended or revived so as to cover 1919 crops, but it is only extended as to the personal and real property covered by the same, and the amount of which was entered, after October 20th, 1918, on the tax rolls.

I am, therefore, of the opinion that any seed grain lien which may have been given to any county on a crop to be grown and harvested during the year 1918 is a lien only on the crop grown and harvested from such seed grain during the year 1918, and that it is not continued so that it is now a lien on any crop grown and harvested during the year 1919, and consequently any lien taken by the Federal Government on the crop to be grown and harvested in 1919 will be a first lien thereon, but that any such seed grain lien given in 1918 for seed grain, the crop from which is to be grown and harvested in 1919, is a lien on the crop to be grown and harvested in 1919, and, the legislature not having passed any law making such seed grain liens given to counties subordinate to liens given to the United States, such lien will be prior and superior to any lien or chattel mortgage which may be given to the United States on such crop.

Respectfully,

S. C. FORD,

Attorney General.