

Seed Grain Lien—Delinquent.

Instructions to enable counties to enforce a seed grain lien, where prior mortgage has been paid off.

June 2nd, 1919.

Mr. S. J. Tracht,
County Treasurer,
Havre, Montana.

Dear Sir:

I am in receipt of your letter of recent date stating that you have received a letter from the Banking Corporation of Montana containing what purports to be an excerpt of a letter from my office in which I say that if the county treasurer "finds that there is a delinquent and that there is a mortgage or lien upon the property which was filed or recorded prior to the filing of the seed grain contract, you should enter the amount of such delinquent tax in your delinquent tax book, but in your notice of delinquent tax sale you should not include any part of this tax and on the delinquent tax sale you should not sell the property for any part of such tax."

A copy of my letter with reference to delinquent taxes for seed grain liens was sent out to every county treasurer in the state and you should have a copy in your files.

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 a nindividual 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. For this reason all county treasurers were advised to search the records when any amount due under a seed grain lien became delinquent, and if it was found that there was a mortgage on the land at the time the seed grain lien was given to the county, to enter the amount of such delinquency in the delinquent tax book, but not to sell the same at the tax sale. By doing this the lien will still remain against the land, subject to the prior mortgage lien, and should the mortgage lien be paid off at any time then the seed grain lien may be enforced against the land.

Respectfully,

S. C. FORD,

Attorney General.