

## State Lands—Mortgages—Foreclosure — Sale — Oil and Gas.

Land acquired by the state under mortgage foreclosure may be resold to the original mortgagor, his heirs, assigns, or legatees without a reservation of the oil and gas rights.

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Register State Lands,  
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My dear Mr. Bailey:

You have requested my opinion whether, when the state has foreclosed a mortgage and acquired title to lands and the mortgagor or any other of the persons authorized so to do by Section 1938 of the Revised Codes of 1921, as amended by Chapter 94, Session Laws of 1923, applies to repurchase the land as provided in said section as so amended, the contract issued on the repurchase shall reserve to the state any mineral, oil or gas rights, or whether the contract shall be issued without any reservation.

Section 1938 of the Revised Codes of 1921, as amended by Chapter 94, Session Laws of 1923, provides for the foreclosure of the mortgages given to secure loans made by the state. It requires that if no other person shall at the Sheriff's sale bid the full amount due upon the mortgage, with the costs and expenses of foreclosure sale, unpaid taxes, and interest from the date of judgment, the Register of State Lands shall bid in the property in the name of the state for the amount due and all costs incurred, and then provides that if the same is not redeemed as provided by law, a Sheriff's deed shall be made to the State of Montana and that the lands shall thereafter be subject to sale and disposal in the same manner as other state lands, and then adds the following proviso:

“That said lands may be re-sold to the original mortgagor, his heirs, legatees or any party defendant to said foreclosure proceeding or sale, **in the following manner:** Upon written application to repurchase said lands made by the original mortgagor, his heirs, assigns, legatees, or all parties interested of record, to the State Board of Land Commissioners, filed within ninety (90) days from the expiration of the period of redemption, accompanied with a payment of fifteen per cent (15%) of the sum the state was compelled to bid for the land, together with interest thereon, as allowed by law, the said Board of Land Commissioners may enter into a contract with such original mortgagor, his heirs or legatees, or all parties interested of record, by which the balance of said sum shall be paid on the amortization plan during a period not exceeding thirty-five (35) years, from the date of the execution of the mortgage. \* \* \* Payment may be made in full at any time before maturity, at any interest paying date, together

with interest on all deferred payments at the rate of five per cent (5%) per annum to be paid annually, and conditioned that upon the faithful performance of said contract by said purchaser, his heirs, legatees, or assigns, **the title to said land, as acquired under the mortgage, will be reconveyed to the said purchaser, his heirs, legatees or assigns.**"

The "title to said lands as acquired under the mortgage" by the state is the title to the entire estate in the lands so acquired, including oil, gas and other minerals, and, if we are to give any force or effect to this provision, then the state must reconvey this title, which is a title to every estate in the lands. If none of the preferred class apply to purchase the lands, then they would be sold at auction to the highest bidder "in the same manner as other state lands are sold," which would, of course, include a reservation of the oil, gas and coal. This manner of sale, however, has no application to a re-sale to the preferred class mentioned in the statute, where the land is sold to the mortgagor, his heirs, assigns, legatees or parties interested of record who held liens subsequent to the lien of the state, as no provision is made for any competitive bidding, and it is apparent that the Legislature did not intend that, as to this class, competitive bidding should be indulged in. In other words, that the plan of sale in the case of other state lands has no application to a resale to this class.

It is, therefore, my opinion that on a repurchase of land sold to the state on execution sale, under a mortgage foreclosure, the state must reconvey all title which it acquired under the mortgage, where repurchase is made by the mortgagor, his heirs, legatees or assigns, and that he is entitled to the first right to repurchase and that, in case he or his heirs do not exercise this right, then it may be exercised by any of the other parties named in this section.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.