

Hail Insurance—Liens—Mortgages—Taxes.

The hail insurance tax provided for in Section 351, Revised Codes of 1921, does not take priority over a mortgage lien of record on the land at the time the hail insurance tax is levied.

Stuart McHaffie, Esq.,
County Attorney,
Ryegate, Montana.

My dear Mr. McHaffie:

You have requested my opinion whether the tax for state hail insurance, levied on land under the provisions of Section 351, Revised Codes of Montana of 1921, is a prior lien to a mortgage on the land of record at the time of the levy.

This tax is only authorized to be levied on lands of the state on which are growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of the State Hail Insurance Act. To become subject to the Act, the owner of the land must make his election prior to August 15th of any year, by filing in the office of the County Assessor of the county in which the land is situated, an application for state hail insurance (Section 350). The tax is therefore not a general tax, and, in fact, not a tax at all as the term is generally understood. The fact that it is denominated a tax in the law does not in fact make it such.

The proceeding between the land owner and the state is nothing more or less than a contract by which the land owner receives from the state insurance against loss by hail of his growing crop and submits his land on which the crop is growing as security that the premium for such insurance will be paid. The premium becomes a lien on the land with exactly the same effect as a mortgage given to the state to secure the payment. The state, therefore, stands on exactly the same footing as would a hail insurance company that insured the crop and took a mortgage on the land to secure the payment of the premium. If there is a prior mortgage on the land at the time, the lien for the hail insurance premium becomes a subsequent lien and this rule is the same whether the insurer be the state or an insurance company.

The provisions of the law which authorize the extension of the levy on the tax roll, and the collection thereof in the same manner as other taxes are collected, is merely a means provided for the collection of the amount of the lien by the state through its officers at the least expense. Such provisions do not in any manner convert the lien into a tax so as to give it priority over other liens already existing against the land.

It is, therefore, my opinion that the hail insurance tax provided for in Section 351, Revised Codes of Montana of 1921, is not in fact a tax in the sense that it takes priority over a mortgage lien of record on the land at the time such hail insurance tax is levied.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.