

**Attorney General—Deeds—Mortgages — State of Montana.**

The direction contained in Section 1938, Revised Codes of Montana, 1921, requiring the Attorney General to foreclose mortgages held by the state is not mandatory and an acceptance of a deed containing a reservation to the grantor of a right of redemption or to repurchase the land according to the provisions of law would be sufficient to terminate all rights of the mortgagor and to obtain for the state all title and interest in the property which it would secure through a foreclosure proceeding, where no encumbrances or liens subsequent to the lien of the state's mortgage are involved.

H. V. Bailey, Esq.,  
Register State Lands,  
Helena, Montana.

My dear Mr. Bailey:

You have submitted to this office the question as to whether the state may accept a deed to property upon which it holds a mortgage, where the mortgagor is in default and where there are no other liens or encumbrances subsequent to the mortgage of the state.

You have submitted the following reservation which it is proposed to insert in the deed from the mortgagor to the state, in order to secure to him the same rights that he would have in case the state foreclosed the mortgage, to-wit:

“Reserving to the party of the first part, his heirs, legatees, and assigns, the right to redeem the above described property within the time provided by law, or to re-purchase the same on or before the.....day of....., 19....., under the terms and conditions as provided in Section 1938, Revised Codes of 1921, as amended by Chapter 94 of the Session Laws of 1923, as fully and to the same extent as he would have had if foreclosure proceedings had been concluded by the state.”

You have called attention to the following portion of Section 1938, above referred to, to-wit:

“In case of default in any of the conditions of any mortgage taken as security for any loan made from any of such funds, by reason of which the right to foreclose the same shall accrue to the state, the State Board of Land Commissioners shall notify the Attorney General of such default, and the Attorney General shall, in the name of and in behalf of the state, foreclose such mortgage by action in the manner provided by law for the foreclosure of mortgages upon real estate.”

You have asked whether this section makes it mandatory upon the state to foreclose all proceedings of this character, where the mortgagor is willing to transfer his equity in the land to the state by a deed containing the foregoing reservation. The purpose of foreclosure is not only to cut off all rights of the mortgagor, except his right of redemption, but also to cut off the rights of all subsequent encumbrances and liens. In case there are no liens or encumbrances subsequent to the mortgage of the state, there would be no purpose in a foreclosure proceeding, except to terminate the rights of the mortgagor in the premises.

The direction, above referred to, contained in Section 1938 requiring the Attorney General to foreclose these mortgages is not intended as a prerequisite to the termination of rights of the mortgagor, but is merely a direction to him to proceed to foreclose where it is necessary to do so.

It is, therefore, my opinion that this direction is not mandatory and that a deed containing the reservation above referred to is sufficient to terminate all rights of the mortgagor and to obtain for the state all title and interest in the property which it would secure through a foreclosure proceeding where no encumbrances or liens subsequent to the lien of the state's mortgage are involved.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.