

**Irrigation Districts—Lands—Loans — Mortgages—State
Lands—State Board of Land Commissioners.**

New loans may be made upon the amortization plan to take up old mortgages that are delinquent in irrigation districts, whenever the State Board of Land Commissioners deems such change advantageous to the state and the provisions of Section 1931, Revised Codes of Montana, 1921, do not apply to renewal of loans in such cases.

H. V. Bailey, Esq.,
Register State Lands,
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My dear Mr. Bailey:

Your letter was received in which you state that you have a number of farm loans in Toole county which are maturing and which are within an irrigation district. The question arises as to the right to renew these loans because of the fact that the irrigation district bonds have become a prior lien and you desire an opinion of this office as to whether or not these loans can be renewed.

Section 1931, Revised Codes of 1921, with reference to state farm loans provides:

“The amount of each loan made on farm lands shall not exceed two-fifths of the actual cash value of the lands, and shall be secured by a first mortgage thereon, and such lands shall be free and clear of all other prior incumbrances or liens of every nature and kind.”

This office has held that land included within an irrigation district is not free and clear of incumbrances and liens, but is subject to the lien of the bonds issued and outstanding. Consequently, a mortgage to the state on land so included within an irrigation district is not a mortgage on lands free and clear of all other prior incumbrances and liens, and this holding has been consistently adhered to. However, while loans of the common school funds may not be made under this section, where there is any prior incumbrance such as a

lien of irrigation district bonds, yet these loans, which are now proposed to be renewed, were made upon the land prior to its inclusion in an irrigation district and at the time so made the land was free and clear of all incumbrances and liens. The lien of irrigation district bonds, where the land has been included within an irrigation district that has issued bonds, is prior to the mortgage of the state by virtue of the statute which so declares such priority.

The mortgage security, in case of a renewal of the loan or a new mortgage made to take up the old loan, would be in exactly the same situation with regard to the priority of its lien after the renewal as it is at the present time. Nothing is to be lost to the state by reason of the renewal of the loan at this time. The state is either bound to foreclose these liens or to make a new loan to take up the old one, and, in case the mortgage is foreclosed, the state cannot withdraw the lands from the irrigation district or release them from the lien of the irrigation district bonds, but will be obliged to pay the irrigation district tax and eventually lose the land in case of a foreclosure under the irrigation district bonds.

In amending the Farm Loan Act, the Legislative Assembly passed Section 3, Chapter 6, Laws 1923, authorizing conversion of existing farm loans into amortization mortgages. It provides:

"All farm mortgages in which such funds are invested when this amendment becomes effective may be converted into amortization mortgages conforming to the requirements of Section 1932-A and other legal requirements, upon application by the mortgagor or his successor in interest, whenever the State Board of Land Commissioners deems such change safe and advantageous to the state. Provided, however, that no loan shall be made for more than forty (40) per cent of the actual value of the land. The State Land Board may in its discretion include in the principal of the new loan delinquent interest and other liens and charges against the land covered by the mortgage, whenever such action is deemed to be for the best interest of the state. There shall be charged for converting the old farm mortgages into amortization mortgages the reasonable cost of such work to the state to be fixed by the State Board of Land Commissioners."

This section was added to the Farm Loan Act by the Legislature with full knowledge of existing conditions as to liens of mortgages in irrigation districts created since the date of the mortgage. It may well be presumed, therefore, that the Legislature intended that no exception be made regarding this class of mortgage.

It is, therefore, my opinion that new loans may be made on the amortization plan to take up old mortgages that are delinquent in irrigation districts whenever the State Board of Land Commissioners

deems such a change safe and advantageous to the state and that the provisions of Section 1931, Revised Codes of 1921, do not apply to renewal of loans in such cases.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.