

County Treasurer—Crops—Hail — Insurance — Liens — Taxes.

A person owing the state for hail insurance, whether it has been procured upon "crop lien subject only to a seed lien" or upon land against which a tax has been levied for the cost of said insurance, is not entitled to pay the same in two equal installments under the provisions of Chapter 96 of the Laws of 1923.

E. K. Bowman, Esq.,
Chairman State Board of Hail Insurance,
Helena, Montana.

My dear Mr. Bowman:

You have submitted the question of whether or not hail insurance taxes come within the provisions of Chapter 96 of the Session Laws of the Eighteenth Legislative Assembly relating to the semi-annual payment of taxes, authorizing payment in two equal installments, and ask my opinion thereon.

The state hail insurance laws, being Sections 350 to 363, inclusive, of the Revised Codes of Montana, 1921, were amended by Chapter 40 of the Session Laws of the Eighteenth Legislative Assembly. Before amendment, these laws provided that all hail insurance premiums, costs or charges, except in those cases where payment was made in cash at the time the insurance was procured, should become a charge upon the land upon which the crops insured were grown, said charge being in the nature of a tax levied and assessed against the land, and which was entered on the assessment roll and collected by the County Treasurer in the same manner as other property taxes were collected by him. At that time all taxes became due and payable at six o'clock P. M. on the 30th day of November of each year, and if these hail insurance taxes were not paid by that time in full, they became delinquent as other taxes and collection thereof was enforced by tax sale of the land.

In amending these laws, the Legislature added a new section, being Section 3 of said Chapter 40, which in substance provides that no owner of land against which there is more than one year's delinquent taxes can procure state hail insurance, unless his application be accompanied with cash payment of cost, or unless he makes application to the County Treasurer and furnishes a sufficient crop lien, subject only to a seed lien, to secure the payment of the cost of the insurance, and likewise, as to any other person who is unable to secure state hail insurance under the provisions of the Act for any other reasons.

The laws, as amended, provide for a tax to be levied and assessed against the land upon which the insured crop is grown in all cases except those mentioned in said Section 3 of said chapter, which tax is spread upon the tax roll and collected by the County Treasurer in the manner and form as other property taxes are collected, and in addition thereto the tax becomes a lien upon the crops of the insured. In the cases mentioned in Section 3 of said chapter, such cases not being provided for under the laws before their amendment, the Legislature added another section, being Section 7 of said chapter, to provide for the enforcement of collection of the cost of said insurance in those cases, as follows:

"If the person receiving hail insurance secured by a crop lien fails to pay said insurance to the County Treasurer by January first of the year following the year in which the crops so insured are grown, the County Treasurer shall after the first day of January deliver to the Sheriff of said county a full, true and correct copy of the lien on file in the office of the Clerk and Recorder and such Sheriff must immediately demand from the person or persons signing such lien, payment of the amount due thereon, and if the same is not paid to the Sheriff upon such demand being made, the Sheriff must forthwith seize and sell in the manner provided by law for the sale of personal property under execution a sufficient amount of grain belonging to such person to pay the amount due for hail insurance together with interest and costs and expenses of seizure and sale."

This section provides the method of collection in all cases mentioned in Section 3 of Chapter 40 of said Session Laws; that is, in all cases where the cost of the insurance is not a tax upon the land. In these cases the state looks to the crop lien subject only to a seed lien as its security for the payment of the cost of the insurance, and if payment is not voluntarily made by January 1st of the year following, it is enforced out of the security in the manner specified in said Section 7 of said Chapter 40, supra. No provision is made for extending the amount of the cost of the insurance as a tax upon the assessment roll, and it is not a tax to be enforced by a tax sale, and, therefore, does not come within the provisions of said Chapter 96 of the Session Laws of the Eighteenth Legislative Assembly relating

to the semi-annual payment of taxes. The cost of this insurance, in these cases, is therefore not payable in two equal semi-annual payments, but is payable in full and if not so paid by the time specified in said Section 7 of Chapter 40 of the Session Laws of the Eighteenth Legislative Assembly, it is the duty of the County Treasurer to enforce the collection thereof in the manner set forth therein.

In the other cases, that is, where the cost of the insurance is a tax against the land, and also a lien upon the crops of the insured, it is provided in Section 4 of said Chapter 40, that:

“Said lien shall be enforced in the same manner as provided in Section 7 of this Act, and all applications for hail insurance shall be in such form as to constitute the lien herein provided.”

The County Treasurer, therefore, is provided with two means of collecting the cost of the insurance in this class of cases, one by enforcing the tax lien and the other by enforcing the crop lien. If the levy for the cost of the insurance is not paid by January 1st of the year following he must enforce the crop lien by having the Sheriff seize and sell sufficient of the grain to pay the same, as provided in said Section 7, together with interest, costs and expenses of seizure and sale. This law, therefore, requires the Treasurer to proceed to enforce payment of this levy without regard to the semi-annual payment of taxes, as provided for in Chapter 96 of the Session Laws of the Eighteenth Legislative Assembly, and has specifically provided that the levy for the cost of the insurance shall be collected prior to the time when the second installment of taxes would become due under said Chapter 96, and has given him an additional means of collection that is not provided for in said chapter, to-wit, enforcement of the crop lien.

It is, therefore, my opinion that a person owing the state for hail insurance, whether it has been procured upon “crop lien subject only to a seed lien” or upon land against which a tax has been levied for the cost of said insurance, is not entitled to pay the same in two equal installments under the provisions of Chapter 96 of the Session Laws of the Eighteenth Legislative Assembly.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.