

County Treasurer—Hail Insurance—Taxes—Mortgages.

When assessments for hail insurance are not paid it is the duty of the County Treasurer to sell the land upon which such assessments are a lien in the manner provided by law.

Prior to the passage of Chapter 40 of the Laws of 1923 the priority of mortgage or hail assessment liens depended upon priority of placement upon the land. Chapter 40 gives hail insurance assessment liens priority over mortgage liens in all cases where both the mortgage and assessment were placed upon the land subsequent to the Act.

L. Q. Skelton, Esq.,
State Examiner,
Helena, Montana.

My dear Mr. Skelton:

You have submitted to this office for my opinion the following questions:

“In cases where the mortgagee pays all taxes except the state hail insurance and claims his mortgage prior to the hail lien, is it the duty of the County Treasurer to sell at tax sale the property for the amount of the delinquent hail insurance and issue tax sale certificate to the purchaser thereof?”

“If the mortgagee is redeeming from tax sale is it the duty of the County Treasurer to issue redemption certificate

for the total charges against the property less the amount of the state hail insurance, in which event what is the legal status of the delinquent hail insurance?"

It has been held in a number of opinions rendered by this office that exactments or assessments for hail insurance, although denominated "taxes" by the statute, are not taxes in the proper sense of the term.

However, Sections 350 to 363, R. C. M. 1921, as amended by Chapter 40 of the Laws of 1923, being the law relating to hail insurance, provide the same machinery for the collection of hail insurance assessments as is provided for the collection of general taxes.

Section 354, R. C. M. 1921, as amended by Chapter 40 of the Laws of 1923, provides as follows:

"The County Treasurer in each county in the state shall collect all levies made under this Act in the same manner as other property taxes are collected * * *. All County Treasurers shall use due diligence in making the collections of the levies provided herein."

It thus appears that the law not only provides the method by which the hail insurance levies are collected, but imposes upon the County Treasurer the obligation to use diligence in the performance of his duty in this regard. The County Treasurer should, therefore, when the hail insurance levy is unpaid, sell the land in the manner provided for the sale of lands for delinquent taxes and issue a tax sale certificate to the purchaser.

Section 351, Chapter 40, of the Laws of 1923, provides in part as follows:

"Such tax levies respectively shall be chargeable to the lands of each taxpayer who shall elect to become subject to this Act and shall be extended on the tax roll and collected by the officers charged with such duties in the manner and form as are other property taxes and if not paid shall be a lien on the lands against which the same are levied as are other property taxes. Provided, however, that the lien as provided above shall in no way affect mortgages that are of record at the time of the approval of this Act. The lien of any mortgage filed subsequent to the passage and approval of this Act shall be subsequent to any lien for hail insurance hereafter levied thereon." Approved February 28, 1923.

If, then, the mortgage to which you refer was placed upon the land prior to the date of the approval of the above Act and prior to the levy for hail insurance, the mortgagee should be allowed to redeem the land without paying the hail insurance levy. In such case, the hail insurance levy should stand as an unsatisfied lien upon the land, inferior to the mortgage.

However, if the mortgage was placed upon the land at a time subsequent to the date of the approval of the Act above, then the mortgagee should not be allowed to redeem the land from tax sale without payment of the hail insurance levies. The Act above specifically makes the lien of all mortgages, placed of record subsequent to its approval, inferior to the lien of hail insurance levies made after the approval of the Act. In other words, the Act raises the lien of hail insurance levies to the dignity of the lien of taxes, and, one placing a mortgage upon land, is presumed to place it there with notice of all the provisions of law governing the same.

Very truly yours,

L. A. FOOT,
Attorney General.