

**Opinion No. 252.****Seed Grain Loans—Lien, Release of—  
County Commissioners—County Clerk  
—Constitutional Law.**

HELD. 1. The repeal of the seed grain loan act without a saving clause extinguished the lien of the contract and any tax lien which may have resulted from a failure of the owner of the property to comply with the terms of the contract.

2. The County Commissioners must direct the county clerk to execute, and he must execute on behalf of the county, a release not only of the lien of the contract but the lien of any so-called tax arising from the contract.

3. Chapters 29 and 121, Laws of 1935, are constitutional.

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February 14, 1936.

Mr. W. M. Black  
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In your letter of January 23, you ask us whether the lien of a seed grain contract, the amount payable under which became due over eight years ago and still remains due, has been extinguished by virtue of the provisions of Chapter 121, Laws of 1935, and if not, whether affirmative action on the part of the Board of County Commissioners is necessary.

Sections 4640-4679, Revised Codes 1921, dealt with the application of the needy farmer to the Board of County Commissioners for seed grain, the contract between him and the county on account of the furnishing thereof, and cognate subjects. Section 4662 specifically gave the county a lien upon the real and personal property owned by such farmer to secure the payment of the amount of his obligation under the contract, and further provided that such lien shall continue in force until said amount, with the interest thereon, shall be fully paid.

Sections 1 and 2 of Chapter 121, Laws of 1935, read as follows:

"Section 1. That in all cases where the eight (8) year statute of limitations provided by the Laws of Montana for limiting actions on contracts in writing, shall have run against the enforcement of any seed grain contract, note or obligation executed to any county under the provisions of the Montana Seed Grain Act of 1918, Sections 4640 to 4679, inclusive, Revised Codes of Montana, 1921, the County Commissioners of the several counties of the state, are hereby authorized and empowered to direct the County Clerk to execute and deliver on behalf of the county, a release of any real or personal property described in any such seed grain contract, from the lien of said contract and from the lien of any so-called 'tax' which has heretofore been imposed upon said property, real or personal, under the provisions of said grain Act.

"Section 2. For the purpose of carrying out this Act, the County Commissioners shall enter upon their minutes a brief description of the contract in question and an order directing the County Clerk to execute a release in accordance with the terms of this Act and the County Clerk shall thereupon be fully empowered, and it shall be his duty to execute such release on behalf of the county, the same to be acknowledged by him as required by law for the acknowledgment of grants of real property."

The declaration of the legislature that seed grain contracts whose status is similar to the one in question are barred by the statute of limitations is probably sound as a matter of law. (Sections 9029 and 9043, R. C. M. 1921; Board of County Com'rs v. Story, 26 Mont. 517; State of Nevada v. Yellow Jacket Silver Min. Co. 14 Nev. 220; Woods v. Hyde, 222 Pac. 168.)

In repealing sections 4640 to 4679, without a saving clause, Chapter 29, Laws of 1935, and not Chapter 121, Laws of 1935, extinguished the lien of the contract and any tax lien which may have resulted from a failure of

the owner of the property to comply with the terms of the contract. (First Nat. Bank v. Barto, 72 Mont. 437; 1 Lewis' Sutherland on Statutory Construction, Sec. 282; 59 C. J. 1185.) But in order to remove the "technical cloud" mentioned in the preamble to Sections 1 and 2 of Chapter 121 and to clear the record as it were, the legislature deemed it proper to require affirmative action on the part of the Board of County Commissioners. It must, by an order entered on its minutes, direct the County Clerk to execute, on behalf of the county, a release not only of the lien of the contract but the lien of any so-called tax arising from the contract. Thereupon, it becomes the duty of the County Clerk to subscribe his name to such release and to acknowledge the execution of the same before a proper officer.

We do not think Chapter 29 or Chapter 121 is violative of Section 10 of Article I of the constitution of the United States, or of Section 11 of Article III of the constitution of Montana, relating to the impairment of contracts, inasmuch as the obligations run to the counties and they are political subdivisions of the state and act as its agents in a governmental sense. (12 C. J. 997; Miller v. Henry, 124 Pac. 197; State v. George, 142 N. W. 945; Tulare County v. City of Dinuba, 206 Pac. 983; Bolivar Tp. Board v. Hawkins, 191 N. E. 158. See, also, City of Helena v. Helena Light & Railway Co., 63 Mont. 108.) It is no more than proper to add here that the Supreme Court of Idaho in the case of Fidelity State Bank v. North Fork Highway Dist., 209 Pac. 449, apparently took a strong position to the contrary. In view of the language of Section 4662 we are not so sure that Chapters 29 and 121 do not violate Section 39 of Article V of the constitution of Montana relating to the diminution of obligations and liabilities owned by the state or a municipal corporation therein. However, a close reading of the opinions of the court in Board of Co. Com'rs v. Story, supra; State v. Hitsman, 99 Mont. 521, and State v. Leslie, 100 Mont. 449, 50 Pac. (2d) 959, would justify the conclusion that they do not.