

OPINION
45-133

April 23, 1945 (OPINION)

HAIL TAX

RE: Lien - Attaches When

Re: Priority of Lien for Hail Tax for 1928 on Lots 3-4 and S 1/2 NE 1/4 of 5-155-93--Mountrail County.

Your letter of April twenty-third, re the above matter, shows that the then owners of the above land mortgaged the same to the State to secure a loan of school money in 1928, the mortgage being dated September twenty-eighth, and the same was recorded on October 2, 1928. Later, by reason of delinquency of the mortgagors, the State intended to foreclose, but, rather than have the foreclosure, the mortgagors deeded the same to the State by quit claim deed. When the abstract was continued, it was found that there were judgment liens accruing after the giving of the mortgage, so that it was necessary to foreclose the mortgage to eliminate these judgment liens. The mortgage was accordingly foreclosed and sheriff's deed was issued on April 21, 1941, and the same was recorded on May 2, 1941. On January 5, 1943, this farm was sold at public sale to one Peter N. Skabo, who has paid the contract in full and received deed from the State. It now appears that the mortgagors had state hail insurance on this land for the year 1928 and that the State Hail Department now claims a prior lien in the sum of something over \$50.00. You ask for our opinion as to whether or not this hail tax lien has priority over the lien of the mortgage.

The question of priority must be determined by the laws of North Dakota in force during the year 1928. Section 2185 of the 1925 Supplement to the Compiled Laws was in force in 1928. This section provided: "All real estate taxes, including hail insurance taxes, both flat and indemnity * * * shall become due on the first day of December of the year for which the taxes are levied * * * ." This remained the law until it was amended by chapter 257 of the Laws of 1933, which changed the due date from December first to December thirty-first.

Section 198b7 of the 1925 Supplement, which was in full force and effect in 1928, provided: " * * * any such tax or imposition, which has been heretofore, or may hereafter be levied, shall be and constitute a first and prior lien upon all lands upon which the same is levied to the same extent and with like effect as a general tax, and shall be collected, and payment thereof enforced, in the same manner as any general tax * * * ."

The only statute in force when the mortgage was given relating to the time the lien for taxes attaches was section 2186 of the Compiled Laws of 1913, which provided: "All taxes shall, as between vendor and purchaser, become a lien upon the real estate on and after the first day of December of each year." So far as we have been able to ascertain, our Supreme Court has never determined the date upon which real estate taxes become a lien. However, it is the opinion of this

office that real property taxes do not become a lien upon real property until they become due. See Report of Attorney General, 1932 to 1934, page 285.

Therefore, it is the opinion of this office that the lien for the 1928 hail tax did not attach until December 1, 1928 hail tax did not attach until December 1, 1928. Since the mortgage was given and recorded before that date, the mortgage was the prior lien. See State v. Divide County, 68 N.D. 708.

NELS G. JOHNSON

Attorney General