

OPINION
55-56

May 5, 1955 (OPINION)

FHA

RE: Seed Loans - Priority of Liens

We have received your request for an opinion dated April 29, 1955.

You state that your agency has made a large number of seed loans this spring and filed as security in each case a crop production lien as provided in chapter 35-08 of the North Dakota Revised Code of 1943. It now develops that in a number of cases crop mortgages have been given to other agencies of the state others to secure the payment of the purchase price of the land or under rental agreements. Your question then is whether your agency has a first lien on the crop in case there is both a crop mortgage and your crop production lien on record against the crop.

Section 35-0803 provides that a crop production lien shall have priority as to crops covered thereby, over all liens or encumbrances except threshing liens. Chapter 35-05 prohibits and makes void crop mortgages except when made in favor of the United States, this state, any state, or any department or agency of any of them, including the Bank of North Dakota, or to any mortgage given as security for money advanced or loaned for the purpose of paying government crop insurance premiums, or to liens by contract given to secure the purchase price or the rental of land upon which the crops covered by the lien are to be grown. There is nothing in this chapter which gives mortgages taken thereunder policy over crop production liens. It is, however, an existing lien and the contracts or leases purport to retain title in the seller to all crops to be grown upon the land involved and while we believe the courts would declare the crop production lien a prior and superior lien, the question is not without some doubt and we suggest that in every case where a lease or purchase contract with a crop mortgage is involved that you take a waiver or subordination agreement from the lessor or seller as the case may be to the extent of money advanced by your agency for the purchase of seed.

LESLIE R. BURGUM

Attorney General