

**OPINION
60-160**

June 3, 1960 (OPINION)

LIENS

RE: Crop Mortgages - Abstract of Crop Liens

This is in reply to your letter of May 26, 1960, concerning crop mortgage abstracts.

You wish to know if it is necessary to include grain loan mortgages for a prior year that have been filed in the current year on the current year's abstract. For example: 1959 grain mortgages on crops grown in 1959 and filed after January 1, 1960. Should they be included in the 1960 crop mortgage abstract?

We note that section 35-0506 of the 1957 Supplement to the North Dakota Revised Code of 1943 provides in part:

"Any elevator company doing business in the state may make written application to the register of deeds for an abstract of all mortgages and liens upon grain grown during the year within the county. . . . The register of deeds, on or before the fifteenth day of July of each year, shall mail to each applicant who has paid the fee for the year an abstract of all existing mortgages and liens upon grain or crops raised or to be raised during the year, . . . The abstract also shall contain a list of all mortgages and liens filed against crops or grain grown in such crop year which have been satisfied. At least once each week during the balance of the calendar year, the register of deeds shall mail to each of the applicants a similar abstract of liens, mortgages, and releases filed in his office since the date of the preceding abstract."

We note that the statute in several instances refers to "grain grown during the year", "crops raised or to be raised during the year" and "crops or grain grown in such crop year." This terminology would appear to indicate that only the mortgages on the crops grown or to be grown during the current year need be included in the abstract. However, upon examining the purpose of the statute it is evident that it was enacted for the protection of the elevators which buy the grain. If grain is grown during one year and no grain loan mortgage is filed during that year, no mortgage would be indicated on the abstracts for that year. If a grain loan mortgage is filed against such grain during the following year and if we proceed on the theory that only grain loan mortgages on grain grown during the current year are to be included on the abstract, the elevator would not have noticed that a grain loan mortgage had been filed.

The statute of necessity must also be construed to include the term "filed" since any mortgage or lien which was not filed with the register of deeds would not be included on the abstract. It, therefore, appears that the statute could refer to mortgages and liens "filed during the year" as well as "grain grown during the

year."

In view of this possible construction of the statute and the situation which would develop if these mortgages would not appear on the abstract, it is our opinion that the register of deeds of the several counties should give serious consideration to including grain loan mortgages for a prior year that have been filed in the current year on the current year's abstract. While the statute may not technically require such information to be included on the abstract, we believe that including this information on the abstract would best protect the interests of the parties involved, avoid any fraudulent transactions in the sale of such grain, and prevent any possible action against the registers of deeds for neglect of duty.

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