

MAINE STATE LEGISLATURE

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January 3, 1933

Hon. Elbert D. Hayford
State Auditor
State House

Dear Sir:

You inquire regarding the payment of interest on taxes assessed on farms on which the farm land loan commission have granted loans. I find no decisions of our Courts directly applicable, but on general principles I can say that all payments necessary to free the mortgaged land from a tax lien can properly be charged up under the mortgage against the mortgagor if the mortgagee makes the payment. The first case which you mention is of interest from November 1 to December 10 on taxes which were not called to your attention until December 10. The fact that they were not called to your attention would make no difference. The interest is running and the tax collector in due course would advertise the property for sale and sell it for the taxes plus costs and this item of interest. Your payment of this additional sum is, therefore, entirely proper.

In the other case which you mention a suit has been brought and costs of suit added. This would seem to indicate that the tax lien had expired and the tax collector is bringing a simple suit possibly accompanied by an attachment. If the lien is gone, however, the claim of the collector for taxes would apparently come in subsequent to your mortgage as far as the property itself is concerned. There would, therefore, be some question whether even the taxes, not to speak of the costs and interest, could be paid by you and charged up under the mortgage, but possibly this could be done under the obligation in the mortgage that the mortgagor "will pay all taxes". Even in such case, however, there is quite a doubt in my mind that apparently the tax collector was at fault in not proceeding on his tax lien under which he could have collected taxes and interest. By letting the tax lien go, delaying bringing suit and running up costs, he is able to get a judgment for a larger amount against the owner. If, however, the mortgagee has not been at fault in any way, as a matter of principle I should not suppose he could charge these additional sums against you.

Very truly yours,

Attorney General

CFR H