

**Opinion No. 21-2884**

March 31, 1921

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** Mr. Joseph Wertheim, Carlsbad, N. Mex.

**Unplanted and Growing Crops May Be Mortgaged.**

**OPINION**

{\*38} I have delayed replying to your letter of the 19th instant regarding chattel mortgages upon growing crops until I should have an opportunity to thoroughly investigate the law governing the subject in question.

The general rule regarding mortgages upon growing crops is that such crops are subject to mortgage, and such a mortgage is specifically authorized in this state by virtue of the provisions of Chapter 71, Laws of 1915.

It is also generally held that mortgage of an unplanted crop, or the future products of a farm made by one in possession of the land as an owner or lessee, is valid at law. Such a mortgage, however, made by a person who is not in possession of the land, or has only a future possibility of ownership or possession, is generally held to be invalid.

Therefore, in my opinion, a mortgage of an unplanted crop in this state would be valid at law, and a subsequent mortgage executed after {\*39} the crop had been planted, or during the course of growth or at maturity would be a subsequent lien to that executed prior to the time of the planting of such crop.