

*tural Cooperative Association, Inc. v. Interstate Commerce Commission*, 350 F. 2d (Ninth Circuit 1965), certiorari denied, 382 U.S. 1011, Jan. 25, 1966), in which the Council participated as amicus curiae.

In that case, the court held in effect that a cooperative qualified under the Agricultural Marketing Act could lawfully engage without operating authority in the transportation of nonfarm related property for nonmembers to the extent that such transportation is incidental to its primary transportation operations and necessary for its effective performance.

One question of other witnesses that seems to concern some members of the subcommittee is how are you going to determine what is incidental and what is necessary. Would that not open up a field for a lot lawsuits? I think it is true that there is hardly any law passed by Congress that is not subject to lawsuits. But the Ninth Circuit Court of Appeals in this Northwest decision did lay down a guideline as to what is meant by incidental and necessary. I am reading from the decision of the court, the Ninth Circuit Court of Appeals.

The court said that:

Such transportation is incidental to the cooperative's agricultural activity when limited to use of otherwise empty trucks returning from hauling member farm products to market and producing a small return in proportion to the cooperatives' income in trucking farm products and farm supplies.

We recognize, Mr. Watson, that does not have the particularity that we would like for administration by an administrative agency. I would hope that the Interstate Commerce Commission would not be too restrictive in these interim guidelines that Mrs. Brown referred to this morning, but I would say that there is some guideline contrary to what some of these so-called trucking cooperatives have advertised in the papers—that they can haul anything anywhere. That has hurt the bona fide cooperatives of the country.

If you will look at the law as laid down by the interpretation of the Ninth Circuit Court of Appeals you will see that the court has given some guidelines as to what is incidental and necessary.

Mr. PICKLE. You have read, apparently, the language from the Ninth Circuit Court of Appeals relating to guidelines. Is what you read contained in your testimony?

Mr. HARMANSON. I departed from the testimony because I felt this would be a pertinent place to bring that out for the subcommittee.

In like manner, the court stated that transportation of non-farm-related products is "necessary":

When it is not economically feasible to operate the trucks empty on return trips, and where the additional income obtained is no more than that required to render performance of the cooperatives' primary farm transportation service financially practicable.

Now, returning to the statement. This interpretation of "incidental and necessary," as has been indicated, is not a new interpretation, but we feel, and the crux of our testimony before the Senate subcommittee was, that this was the interpretation intended by the Congress from the time that this amendment was introduced by Congressman Jones, then chairman of the House Agriculture Committee, when the Motor Carrier Act was passed in 1935 and it is consistent with the interpretation that has been given by the Farm Credit Administration in their regulations in administering this definition for qualification for loans to cooperatives through the banks for cooperatives.