

SCOPE OF THE PROBLEM

The contemporaneous constructions placed upon the provisions of the Interstate Commerce Act by the Commission which possesses special competence in this field, are entitled to great weight and respect and will not be overturned unless they are arbitrary or plainly erroneous.³⁶

The traditional concern of the Interstate Commerce Commission in dealing with cases arising from the cooperative exemption has been to prevent an association, under the guise of the exemption, from engaging in transportation as a public carrier for-hire.³⁷ This concern manifests the problem the Commission has had in attempting to impose any form of regulation on cooperatives.

The Commission must enforce the regulatory provisions within its authority with a view toward promoting the "National Transportation Policy,"³⁸ designed to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices . . . and enforced with a view to carrying out the above declaration of policy.³⁹

But exempt cooperatives which engage too extensively in the area of for-hire carriage of nonmember and nonagricultural goods, will be in derogation of this "Policy" restriction on "unjust discriminations, undue preferences or advantages."

Logically, the Commission's position seems sound. An agricultural cooperative is exempt from all regulatory control, except for safety and hours of service provisions, merely by being such a bona fide cooperative.⁴⁰ Since it is exempt, a cooperative need have no contact with the Commission whatsoever. It is not required to file a petition for exemption, or to describe its exempt activities in any way. The practical effect of this is that by declaring itself exempt, a cooperative, whether actually exempt or merely claiming to be exempt, can operate in interstate commerce in any way the cooperative itself may determine to be permissible under the statute.

The Commission has the power to investigate violations of the statutes within its jurisdiction, either upon the receipt of a complaint concerning such practices,⁴¹ or upon its own motion.⁴² It may also apply to the appropriate district court to enjoin operations by motor carriers in violation of the statutory regulations.⁴³ However, the problem of administration of such provisions is clear: before bringing any action against a cooperative, the Commission must first have knowledge, either independently or furnished by complaint, of both the existence of the cooperative and the nature and extent of its unpermitted activities. But where there is no requirement for cooperatives to notify the Commission of their activities, or even of their existence, organized and rational supervision becomes all but impossible.

The Interstate Commerce Commission must attempt to regulate the transportation activities of agricultural cooperatives, consistent with its purpose to prevent "undue preferences or advantages, and unfair or destructive competitive practices."⁴⁴ However, it is unable to maintain even supervisory authority over the operations of these cooperatives, since there is no requirement of qualification for exemption by application to the Commission. Faced with this dilemma, the Commission may take two courses of action: it may seek a change in the law to enable it to obtain knowledge at least of the existence of those cooperatives entitled to exemption, or it may work with the present legislation, and attempt to confine the exemption by construing the statutes in accordance with its viewpoint. In fact, both these courses of action have been attempted.

³⁶ *ICC v. Weldon*, 90 F. Supp. 873, 877 (W.D. Tenn. 1950); *accord*, *East Tex. Motor Freight Lines, Inc. v. Frozen Food Express*, 351 U.S. 49, 54 (1957).

³⁷ *Northwest Agric. Cooperative Ass'n v. ICC*, 350 F.2d 252, 256 (9th Cir. 1965); *ICC v. Jamestown Farmers Union Federated Cooperative Transp. Ass'n*, 151 F.2d 403, 404 (8th Cir. 1945); *Cache Valley Dairy Ass'n Investigation of Operations*, 96 M.C.C. 616, 620 (1964); *Agricultural Transp. Ass'n of Tex. Investigation of Operations*, 96 M.C.C. 293, 299 (1964); *Machinery Haulers Ass'n v. Agricultural Commodity Serv.*, 86 M.C.C. 5, 24 (1961).

³⁸ *Id.*

⁴⁰ 49 U.S.C. § 303(b) (1964).

⁴¹ 49 U.S.C. § 13(1) (1964).

⁴² 49 U.S.C. § 13(2) (1964).

⁴³ 49 U.S.C. § 322(b)(1) (1964) (this is the provision utilized by the Commission in *Northwest*).

⁴⁴ 49 Stat. 543 (1935).