

motor carriers set forth in part II of the Act. Under this section, motor vehicles controlled and operated by agricultural cooperatives, or by a federation of such cooperatives are exempt from the Commission's economic regulation provided the cooperatives meet certain qualifying criteria as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. § 1141).

The Agricultural Marketing Act, as pertinent here, provides that an agricultural cooperative association "... [S]hall not deal in farm products, farm supplies, and farm business services with or for non-members in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and non-member business transacted by such association."

The original exemption from regulation for agricultural cooperatives was included in the Motor Carrier Act of 1935. In 1940, this exemption was expanded to include a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

Although, in general, the only difficulty arising from this exemption for many years was whether, in a given fact situation, a particular operation qualified as an agricultural cooperative association within the definition of such an association under the Agricultural Marketing Act, in the early 1960's the Commission began receiving complaints from carriers and shippers in many sections of the country concerning the expanding operations of allegedly *bona fide* agricultural co-ops.

It was a very tedious process to investigate and bring to a conclusion all of these complaints. Necessarily, we attempted to deal with the problem by laying down broad guidelines. In 1961, the Commission held in the *Machinery Haulers Assn. v. Agricultural Commodity Serv.*, 86 M.C.C. 5, that for a co-op to enjoy the benefits of section 203(b)(5) of the Interstate Commerce Act it must meet the following tests:

- (1) It must be operated and controlled by and for the benefit of its farmer members through its duly elected officers and directors.
- (2) It must either own or control, under long-term lease, the vehicles which it uses to perform transportation.
- (3) Its membership must be limited to those who were in fact producers of agricultural commodities.
- (4) It may not perform transportation services functionally unrelated to its members' farming activities.

The guidelines established in this proceeding were largely left undisturbed by the courts until a decision was handed down by the United States Court of Appeals for the Ninth Circuit, in *Northwest Agricultural Cooperative Association v. Interstate Commerce Commission* 350 F. 2d. 252 (1965), *cert. denied* 382 U.S. 1011 (1966). Since this case is indicative of the problems which the provisions of S. 752 are designed to alleviate, it may be useful at this point to briefly outline the undisputed facts, stipulated by all of the parties involved, which prompted this litigation.

Northwest was and is a non-profit corporation organized under the Idaho Marketing Act for the purpose of enabling its members to collectively and economically transport their agricultural products to markets. It is solely engaged in transportation activities and operates a fleet of long-haul trucks for this purpose. On return trips from market places, Northwest transported farm supplies back to its members. However, the volume of these supplies did not equal the amount of farm products shipped outbound and, consequently, Northwest had empty space in its trucks. To make use of this space Northwest made a practice of backhauling non-farm-related commodities for non-members of the association. For example, it transported for non-members such things as furnaces, air conditioners, and water heaters from California to Idaho; machinery from Minnesota to Idaho; hardware from New Jersey to Oregon; wire springs from Illinois to Oregon; yarn from Oregon to Idaho; door hanger parts from New York to Oregon; and roofing materials from California to Idaho. From November 13, 1963, to March 19, 1964, Northwest received approximately \$230,375 for transportation services. Approximately \$41,000, or about 16 percent of that sum, was derived from the transportation of non-farm commodities for non-members. It was this latter type of transportation which the Commission sought to have stopped.

In support of its complaint, the Commission contended that transportation activities of agricultural cooperatives are not completely exempt under section 203(b)(5) from its economic regulation. We pointed out in this respect that an