

cultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater power or purposes than cooperative associations so defined.

Such motor vehicles are thus exempt by that section from all of the provisions of part II of the Interstate Commerce Act (the so-called Motor Carrier Act) except those provisions relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment.

For a number of years the Interstate Commerce Commission has expressed concern about abuses and other evils growing out of this escape provision of the Act. Others, too, have been concerned. The Commission's principal concern in this regard in past years and the principal concern of others as well up until late 1965 and early 1966 was abuse—sometimes flagrant—of the statutory exemption occurring through subterfuge and deceit practiced by persons who in order to escape economic regulation of general for-hire transportation services performed by them operated unlawfully under the guise of agricultural cooperative associations.

During the course of hearings conducted by a Subcommittee of the Senate Commerce Committee in July of 1966, several witnesses showed by actual examples and case histories just how bogus or phony or fake agricultural cooperative associations have been used as cover for illicit transportation activities. The record of those hearings, which were directed to S. 1729 (89th Congress), contains a great deal of well-documented material on that subject. There is no need to repeat it here.

In any event, the principal problem in connection with the agricultural cooperatives' exemption is no longer that the exemption is being abused by means of spurious cooperatives. I do not mean to say that the exemption is no longer used as a guise for the performance of unlawful transportation. That troublesome problem has not gone away. Comparatively recent developments, however, have produced a problem that is more serious than that to which the earlier bill was directed.

I refer to the decision of the United States Court of Appeals for the Ninth Circuit in *Northwest Agricultural Cooperative Association, Inc. v. Interstate Commerce Commission*, 350 F. 2d 252 (1965), and to the Supreme Court's denial of *certiorari* in that case on January 24, 1966.

The *Northwest* case involved a non-profit corporation formed under the Idaho Cooperative Marketing Association Act for the purpose of enabling its members collectively and economically to transport their agricultural products to markets. Northwest was, and presumably still is, engaged solely in transportation activities with a fleet of long haul trucks. On return trips from market areas, Northwest transported farm supplies back to members of the cooperative. The volume of these farm supplies did not equal the volume of farm products shipped on the outbound trips, however, and consequently Northwest had available empty backhaul space in its trucks. In order to utilize this space Northwest backhauled non-farm-related commodities for non-members of the association for compensation.

For example, Northwest transported for non-members 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. During a four-month period in 1963-1964 Northwest received approximately \$230,375 for transportation services, of which some \$41,000, or about 16 percent, was derived from the transportation for non-members of non-farm commodities.

The Interstate Commerce Commission brought suit in 1964 in the United States District Court for the District of Oregon to enjoin Northwest from this hauling of general commodities for-hire throughout the country, for non-member merchants and manufacturers, without a certificate of public convenience and necessity.

The Commission contended that transportation activities of agricultural cooperative associations are not completely exempt from economic regulation under section 203(b)(5) of the Interstate Commerce Act. It pointed out that an agricultural cooperative is defined in the Agricultural Marketing Act as one dealing in "farm products . . . farm supplies and/or farm business services." It conceded that transportation services performed for members of a cooperative that are "directly or functionally related" to their agricultural activities are exempt from economic regulation. It argued, however, that for-hire transportation of non-