

If it is felt that legislation should be granted and passed, we feel that the cooperatives that are presently operating should be protected by, perhaps, the inclusion of a "Grandfather Right" clause which would allow these co-operatives to continue in business. This bill, as presently drafted, would surely put many of the cooperatives out of business. We do not feel that legislation should be passed whereby a lawful business will be forced out of existence.

In the minutes of our co-operative, the Board of Directors have directed me to let the Interstate Commerce Commission check our books and records, which they have constantly done. We have, at all times, fully cooperated with the Interstate Commerce Commission; however, under the existing law, we are not required to do this. I, therefore, feel that if this bill is passed, we should have "grandfather rights" as we have always cooperated with the Interstate Commerce Commission and complied with their regulations.

We also operate as a cooperative approved by the Department of Defense to haul their freight. This government freight is exempt from economical regulation under Section 22 of the Motor Carrier Act, and by operating under Section 203 (b) (5) for the Department of Defense, we have helped reduce the cost of transportation for this branch of the government. It appears to me that this phase of our operation is very important, especially in view of the current tax increase and in view of the fact that there is a six billion dollar cut in the budget. The savings our vehicles have been giving to the government should certainly be taken into consideration as I am sure you can realize this type of savings is very important to the national budget.

It is our opinion, as well as many members of the Department of Defense, that the service rendered by the cooperatives is faster than service previously received, since we are able to provide "through" transportation. This phase is also very important to the Department of Defense.

It was recently approved that the common carriers, including rail and truck, have substantial rate increases. We wish to point out, however, that we have maintained basically the same rates for several years. This is an important factor to the farming and ranching markets and has been a prime factor in the cost of farm commodities.

To summarize our opinions and views, we feel that the passage of this bill will be detrimental to the general public and the farmers and will create an increase in the cost of farm commodities. It will also endanger the existence of lawful businesses that are presently assisting the government in substantial savings in the cost of transportation. We feel that these facts must be very fully and carefully considered.

Thank you very much.

NONFARM BACKHAULS FOR NONMEMBERS OF AGRICULTURAL COOPERATIVES: IMPACT OF THE NORTHWEST DECISION

(By Charles B. Wiggins, Hastings Law School, California)

In 1965, the Court of Appeals for the Ninth Circuit, in *Northwest Agricultural Cooperative Association v. ICC*,¹ held that agricultural cooperatives which haul nonagricultural products to and for nonmembers maintain their transportation exemption from the Interstate Commerce Act,² provided such activity is "necessary and incidental" to the statutory purpose of the association. The decision broadened the scope of activities which had been permitted by the Interstate Commerce Commission under this exemption, and climaxed a continuing dispute between the Commission and the courts as to the nature and limitations of the cooperative exemption, most significantly from the regulation of rates. It is the purpose of this discussion to examine the present status of the cooperative exemption, based on the *Northwest* decision, by analyzing the various positions expounded as to the proper statutory construction, and the ramifications of proposals for change in the regulatory system.

¹ 350 F.2d 252.

² 49 U.S.C. ch. 8 (1964).