Construction of the Existing Statutes

Nonfarm Business Prohibited

Unable to effectuate its recommendations in congressional action, the Commission has worked within its investigatory framework in attempting to define the limits of exempt operations, either by its own proceedings or by judicial interpretation. It has urged persistently that the exemption provisions of the Motor Carrier Act [55] should be strictly construed so that cooperatives shall not be allowed to engage indiscriminately in for-hire carriage for nonmembers.[56] Its contention is that the Motor Carrier Act is a remedial statute.[57] Exemptions to such statutes must be applied as narrowly as possible to permit application of the regulatory provisions to all carriers within its scope.[58]

With reference to the definition of the cooperative associations found in the Agricultural Marketing Act,[59] the Commission implies an inherent limitation. The third proviso of that definition states that a cooperative "shall not deal in *farm* products, *farm* supplies, and *farm* business services with or for nonmembers" [60] in excess of its member activities. To the Commission, the express mention only of *farm*-related activities indicates that Congress did not anticipate that cooperatives would engage in *non*farm-related dealings at all,[61] or at least that whatever nonfarm-related dealings a cooperative did have would have to be "functionally related" to its principal farm-related function.[62] Thus, to the Commission, non*member* dealings were obviously anticipated,[63] but the incidental hauling of agricultural products for nonmembers is far different from the hauling of nonagricultural products to and for nonmembers, and such incidental hauling should not be covered by the exemption.[64]

In its brief filed for the *Northwest* appeal, the Commission made this position clear by applying the maxim of statutory construction "*Expressio unius est exclusio alterius*" [65] to the facts of that case.[66] The Commission found that

> [a]pplying this maxim to 12 USCA Section 1141j(a), a cooperative association means an association in which *farmers* act together doing the things mentioned therein, all of which have to do with *farm* products, *farm* supplies or farm [*sic*] business services. It excludes all matters not included in these terms. . . . It specifically includes only farm items, and therefore excludes all non-farm activities.[67]

Since this was the case, then all nonagricultural backhauls for nonmembers must be, by the terms of the statutory definition itself, outside the scope of proper activities performed by a cooperative.

Logically, it appears that the maximum is inapplicable in this situation. The Agricultural Marketing Act prohibits the provision of more nonmember than member business. This is not a test of inclusion, as required for application of the maxim, but of exclusion.

Accordingly, if the maxim is applied here, the result is that the section must be deemed to contain *all* the factors that would disqualify the association and all other activities must be construed as not so prohibited.[68]

This is neither the position the Commission would advocate nor the position that should be taken with respect to the statute. The maxim should not be applied when it can, by one interpretation, eliminate the substantive restrictions on the nature of a cooperative's business altogether.

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[55] 49 Stat. 543 (1935).

[56] Machinery Haulers Ass'n v. Agricultural Commodity Serv., 86 M.C.C. 5, 24 (1961); ICC v. Jamestown Farmers Union Federated Cooperative Transp. Ass'n, 151 F.2d 403, 404 (W.D. Tenn. 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, 297 (1964).

[57] ICC v. Weldon, 90 F. Supp. 873, 876 (W.D. Tenn. 1950).

[58] McDonald v. Thompson, 305 U.S. 263, 266 (1938).

[59] 12 U.S.C. § 1141j(a) (1964).

[60] *Id.* (emphasis added).

[61] *See* ICC v. Jamestown Farmers Union Federated Cooperative Transp. Ass'n, 151 F.2d 403, 404 (8th Cir. 1945).

[62] Machinery Haulers Ass'n v. Agricultural Commodity Serv., 86 M.C.C. 5, 25 (1961).

[63] *Id.* at 24.

[64] Cache Valley Dairy Ass'n Investigation of Operations, 96 M.C.C. 616, 620 (1964).

[65] "Expression of one thing is the exclusion of another." BLACK'S LAW DICTIONARY 692 (4th ed. 1951).

[66] Brief for Appellee at 9, Northwest Agric. Cooperative Ass'n v. ICC, 350 F.2d 252 (9th Cir. 1965).

[67] *Id.* at 10.

[68] Reply Brief for Appellant at 6, *id.*