

If the Commission's interpretation is correct, the following result is inevitable:

Statutory language: "the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members." 12 U.S.C. § 1141j(a).

Interpolations required . . . : [all of the foregoing, plus] " . . . the association shall not deal in or transport any nonfarm products, nonfarm supplies, or nonfarm business services either for members or nonmembers . . . " ⁶⁹

Nowhere is this restriction provided for; and prior discussion indicates that this interpretation is unacceptable in light of indications of legislative intent, both at the time the Motor Carrier Act was enacted and also when additional regulatory legislation has been introduced in Congress without success. Therefore, this proposal by the Commission should be rejected.

Nonmember Business Restricted: The Courts and the Commission

The Commission, both by its proposals for change and its construction of the existing statutes, has sought to keep the number of exempt cooperatives to the minimum permitted by a literal interpretation of the statutory definition. The rulings of the courts, however, have not lent support to this position. Rather, they have tended to broaden the scope of the exemption in keeping with their liberal view as to the proper statutory construction.⁷⁰ This dichotomy can best be shown by comparing the Commission's interpretations with the answers of the courts.

There is a basic interpretational difference of opinion between the Commission and the courts that is vitally important to the area under discussion. The Commission adheres to the view that

transportation rendered by a cooperative association must be assessed in light of the essential relationship between the association and its members in their capacities as producers of farm products and purchasers of farm supplies and/or farm business services; and, in order to come within the so-called agricultural cooperative exemption, *such transportation, whether performed for members or nonmembers, must be designed to benefit directly, or be functionally related to its members' activities as such producers and purchasers.*⁷¹

The courts, on the other hand, have tended to see that

[n]ecessarily goods must be handled by them which may not be strictly farm supplies. Some of their customers may not be members or even farmers. But if the cooperative is predominantly engaged in one or more of the activities specified in the Agricultural Marketing Act, and if its business with nonmembers is in an amount not greater in value than the total amount of the business that it transacts with its own members, such association does not lose its fundamental character as a cooperative. In other words, *if such activities are merely incidental to, and necessary for the effectuation of the cooperative's principal activities as embraced within the Act, the status of the cooperative remains unimpaired.*⁷²

This conflict between application of the "functionally related" test and the "incidental and necessary" test has caused much difficulty for cooperatives, the Commission, and the courts.

What the parties mean by these phrases is not altogether clear, but certainly the Commission would impose a more stringent construction on the nature of the nonmember business. To be "functionally related" within the Commission's test, backhauls would have to be "directly essential to the activities of the members of the cooperative in their capacities as producer [*sic*] of farm products, or as purchasers of farm supplies and farm business services."⁷³ This would seem to suggest, for example, that the backhauling of fertilizer for nonmembers would be acceptable only if a partial backhaul load was required by members, with the space remaining used to haul fertilizer to be sold to nonmembers, but that backhauling such a product for sale to nonmembers, when there was no member demand for it, would not be permitted. It is unlikely that Congress, in enacting

⁶⁹ Brief for Secretary of Agriculture as Amicus Curiae at 9, *id.*

⁷⁰ See Chandler, *Convenience and Necessity: Motor Carrier Licensing by the Interstate Commerce Commission*, 28 OHIO ST. L.J. 379, 384-85 (1967).

⁷¹ *Machinery Haulers Ass'n v. Agricultural Commodity Serv.*, 86 M.C.C. 5, 24 (1961) (emphasis added).

⁷² *ICC v. Jamestown Farmers Union Federated Cooperative Transp. Ass'n*, 57 F. Supp. 749, 753 (D. Minn. 1944), *aff'd* 151 F.2d 403 (8th Cir. 1945) (emphasis added).

⁷³ *Machinery Haulers Ass'n v. Agricultural Commodity Serv.*, 86 M.C.C. 5, 25 (1961).