All savings made by utilizing trucks of farmers' cooperatives for back-hauls are passed back to the farmers, since the cooperative operates on a cost basis without profit to itself.

Even though the pending legislation might open a relatively small hole in the dike, we fear its passage would encourage the Interstate Commerce Commission to intensify its attacks on the whole agricultural exemption.

The Commission has a long history of persistent and aggressive attacks upon farmers and their cooperatives and on the agricultural transportation exemptions granted them by Congress.

NONQUALIFIED COOPERATIVES

Practically all of the objections of the Commission and the regulated carriers have been directed against the trucking operations of organizations which they allege are not qualified cooperatives.

There is very little complaint against the back-hauls of qualified farmer cooperatives of the type which we represent. In fact, how could there be where the percentage of general freight hauled by farmers' cooperatives is so very small.

Nevertheless, the legislation sought by the Interstate Commerce Commission and the regulated truckers has attacked directly the farmers' agricultural cooperatives. Similar attacks in the past have been leveled against other parts of the agricultural exemptions.

We are concerned that the proposed legislation is merely another attempt, in a long series of attempts on the part of the Commission and the regulated truckers, to undermine the agricultural exemptions.

We hold no brief for non-qualified organizations which seek to avoid the regulation of their trucking operations by claiming the cooperative exemption.

Such organizations are not protected under either the law or the court decisions. They are subject to action by the Interstate Commerce Commission, and the Commission has successfully maintained actions against them.

The Commission has complained that when one improper operation is stopped the same men set up another organization and resume the same type of operation.

We are not aware that other agencies have encountered similar enforcement difficulties. An injunction against the officers would appear to be adequate to put an end to similar operations under another name.

In effect, the Commission has proposed that it be relieved of the burden of proving that the guilty operator is guilty by requesting, instead, that Congress limit the operations of qualified agricultural cooperatives which are performing efficient and economical transportation services for farmers.

The farmers' cooperative exemption should be left alone, and the Commission should enforce the present law against non-qualified organizations which have no valid exemption.

THE NORTHWEST CASE

At Congressional hearings on this issue, the Commission has relied heavily on the decision of the United States Court of Appeals in the Northwest Agricultural Cooperative Association case (350 F.2d 252).

That decision, the Commission told Congress, would permit a farmers' cooperative to haul non-member, non-agricultural freight in unlimited amounts so long as the total non-member business done by the cooperative did not exceed the total value of member business.

The court's opinion does not support such an interpretation of the case.

The court was quite specific, it seems to us, in limiting the volume of such freight to that which is incidental to the agricultural objectives of the cooperatives. The issue in the Northwest case was whether a farmers' cooperative hauling agricultural products to market for its members could utilize its trucks on the return trips to haul non-farm related freight. The court held that such transportation was incidental to its agricultural objectives and therefore exempt from economic regulation by the Interstate Commerce Commission.

The court said [emphasis added]:

* * * * *

"a cooperative would not be of the character contemplated by the statute if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, *and in no conceivable circumstances*