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Record Nos. 7119, 7120

In the
Supreme Court of Appeals of Virginia
at Richmond

AGRICULTURAL SERVICES
ASSOCIATION, INC.
v. Record No. 7119
COMMONWEALTH OF VIRGINIA,
ex rel., etc.

AGRICULTURAL SERVICES
ASSOCIATION, INC.
v. Record No. 7120
COMMONWEALTH OF VIRGINIA,
ex rel., etc.

FROM THE STATE CORPORATION COMMISSION

RULE 5:12—BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7119

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 6th day of December, 1968.

AGRICULTURAL SERVICES ASSOCIATION
INC., Appellant,

against

COMMONWEALTH OF VIRGINIA, AT THE
RELATION OF THE STATE CORPORATION
COMMISSION, Appellee.

From the State Corporation Commission

Upon the petition of Agricultural Services Association, Inc., an appeal of right is awarded it from an order entered by the State Corporation Commission on the 24th day of June, 1968 (Case No. M-880), in a certain proceeding then therein depending, wherein Commonwealth of Virginia, at the relation of the State Corporation Commission, was plaintiff and the petitioner was defendant; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said State Corporation Commission in the penalty of \$300, with condition as the law directs.

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7120

VIRGINIA :

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 6th day of December, 1968.

AGRICULTURAL SERVICES ASSOCIATION,
INC., Appellant,

against

COMMONWEALTH OF VIRGINIA, AT THE
RELATION OF THE STATE CORPORATION
COMMISSION, Appellee.

From the State Corporation Commission

Upon the petition of Agricultural Services Association, Inc., an appeal of right is awarded it from an order entered by the State Corporation Commission on the 24th day of June, 1968 (Case No. M-897), in a certain proceeding then therein depending, wherein Commonwealth of Virginia, at the relation of the State Corporation Commission, was plaintiff and the petitioner was defendant; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said State Corporation Commission in the penalty of \$300, with condition as the law directs.

Records Nos. 7119-7120

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page 1 }

* * * * *

December 14, 1967

Commonwealth of Virginia, at the relation of the State Corporation Commission

v. Case No. M-880

A. S. A., Inc.
North High Street
Bells, Tennessee 38006
Defendant

RULE

It appearing that the defendant is operating as a motor vehicle carrier through Virginia in interstate commerce without having obtained appropriate authority from the Interstate Commerce Commission and after having certified to the State Corporation Commission the fact of non-requirement of authority by the Interstate Commerce Act; and it appearing from an inspection of the defendant's operations in Wythe County, Virginia, on November 15, 1967, and again in Wythe County, Virginia, on November 16, 1967, that the defendant is required by the Interstate Commerce Act to have appropriate authority from the Interstate Commerce Commission, it is

ORDERED:

That the defendant show cause at 10 a.m., on February 29, 1968, in the court room of the State Corporation Commission in the Blanton Building in Richmond, Virginia, why a penalty not to exceed \$1000 should not be assessed against it and why its authority to operate on the highways of Virginia should not be suspended or revoked pursuant to the provisions of §56-304.12 of the Code of Virginia.

A copy of this rule shall be served on the Secretary of the Commonwealth of Virginia as agent for the defendant and a copy sent by first class United States Mail to the defendant.

* * * * *

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* * * * *

December 29, 1967

Commonwealth of Virginia, at the relation of the State Corporation Commission

v.

Case No. M-897

Agricultural Services Association, Inc.

N. High Street

P. O. Box 220

Bells, Tennessee 38006

Defendant

RULE

It appearing that the defendant is operating as a motor vehicle carrier through Virginia in interstate commerce without having obtained appropriate authority from the Interstate Commerce Commission and after having certified to the State Corporation Commission the fact of non-requirement of authority by the Interstate Commerce Act; and it appearing from an inspection of the defendant's operations in Rockingham County, Virginia on November 29, 1967 that the defendant is required by the Interstate Commerce Act to have appropriate authority from the Interstate Commerce Commission, it is

ORDERED:

That the defendant show cause at 10 o'clock, a.m., on February 29, 1968 in the courtroom of the State Corporation Commission in the Blanton Building in Richmond, Virginia, why a penalty not to exceed \$1000 should not be assessed against it and why its authority to operate on the highways of Virginia should not be suspended or revoked pursuant to the provisions of §56-304.12 of the Code of Virginia.

A copy of this rule shall be served on the Secretary of the Commonwealth of Virginia as agent for the defendant and a copy sent by first class United States Mail to the defendant.

* * * * *

page 3 }

Commonwealth of Virginia
State Corporation Commission
Richmond

February 23, 1968

Commonwealth of Virginia
At the relation of the
State Corporation Commission

Case No. M-880

v.
A. S. A., Inc.
Box 220
Bells, Tennessee 38006
Defendant

It appearing proper so to do, it is
ORDERED that this matter be, and it is hereby, continued
to March 28, 1968, in the courtroom of the State Corporation
Commission in the Blanton Building in the City of Richmond
at 10 o'clock, a.m.

A copy of this order shall be sent to John M. Reams, Attor-
ney at Law, Agricultural Services Association, Inc., Box 220,
Bells, Tennessee, counsel for the defendant, and to the de-
fendant.

* * * * *

page 4 }

* * * * *

March 1, 1968

Commonwealth of Virginia, at the relation of the State Cor-
poration Commission

Case No. M-897

v.
Agricultural Services Association, Inc.
N. High Street
P. O. Box 220
Bells, Tennessee 38006
Defendant

It appearing proper so to do, it is
ORDERED that this matter be, and it is hereby, continued
to March 28, 1968, in the courtroom of the State Corporation

Commission in the Blanton Building in the City of Richmond at 10 o'clock, a.m.

A copy of this order shall be sent to John M. Reams, Agricultural Services Association, Box 220, Bells, Tennessee 38006, counsel for the defendant.

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page 5 }

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March 27, 1968

Commonwealth of Virginia
At the relation of the
State Corporation Commission
v.
A. S. A., Inc.
Box 220
Bells, Tennessee 38006
Defendant

Case No. M-880

It appearing proper so to do, it is
ORDERED that this matter be, and it is hereby, continued to May 6, 1968, in the courtroom of the State Corporation Commission in the Blanton Building in the City of Richmond at 10 o'clock, a.m.

An attested copy of this order shall be sent to the defendant.

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page 6 }

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March 27, 1968

Commonwealth of Virginia, at the relation of the State Corporation Commission
v.
Agricultural Services Association, Inc.
N. High Street
P. O. Box 220
Bells, Tennessee 38006
Defendant

Case No. M-897

It appearing proper so to do, it is

ORDERED that this matter be, and it is hereby, continued to May 6, 1968, in the courtroom of the State Corporation Commission in the Blanton Building in the City of Richmond at 10 o'clock, a.m.

An attested copy of this order shall be sent to the defendant.

* * * * *

page 7 } Commonwealth of Virginia
State Corporation Commission

Commonwealth of Virginia,
At the relation of the
State Corporation Commission

Case No. M-880

v.
A. S. A., Inc.
North High Street
Bells, Tennessee 38006
Defendant

Rule

Commonwealth of Virginia,
At the relation of the
State Corporation Commission

Case No. M-897

v.
Agricultural Services Association, Inc.
N. High Street
P. O. Box 220
Bells, Tennessee 38006
Defendant

page 8 } PRESENT:
Commissioners
Jesse W. Dillon (Chairman)
H. Lester Hooker
Ralph T. Catterall

(Commissioner Hooker presiding)

H. L. Smith, Jr.

APPEARANCES:

Francis Silver,
William J. Augello, Jr.,
and
John Reams,
Attorneys for Defendant

William C. Seibert,
Attorney for the Commission

Date of Hearing May 6, 1968

page 9 } Commissioner Hooker: Proceed, Mr. Seibert.
Mr. Seibert: May it please the Commission, there are two cases to be heard today. Case No. M-880 is a Rule against A.S.A., Inc., which is Agricultural Services Association, Inc., and it alleges two violations of the Registration Rule; and also Case No. M-897, a Rule against Agricultural Services Association, Inc., all of Bells, Tennessee. That case was postponed until today, and so was the original case, Case No. M-880.

I will ask Mr. Smith to take the stand.

page 10 } H. L. SMITH, JR., a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Seibert:

Q. Give your name, please.

A. H. L. Smith, Investigator for the State Corporation Commission.

Q. And did you on November 15, 1967, check a motor vehicle operated by Agricultural Services Association, Inc.?

A. I did, yes, Sir.

Q. What did you find on this?

A. I checked—this occurred in Wythe County, Route No. 11, at approximately 3:30 P. M., on the 15th day of November, 1967. I checked a White tractor, serial number 661922, on that date registered to A.S.A., Inc., Bells, Tennessee. The driver was Mr. Ray E. Rooks, from Maury City, Tennessee.

The driver stated that he was employed by A.S.A., Inc., that he had picked his load up from Lombard Brothers, Inc.,

H. L. Smith, Jr.

at Allentown, Pennsylvania, also one shipment
 page 11 } from Rayflex in Allentown, Pennsylvania, one
 shipment from Darlington Fabrics Corporation,
 Newton, New Jersey. All shipments were consigned to South-
 ern Foundations, Alamo, Tennessee. The bills indicated that
 Southern Foundations was the consignee, and also Kellwood
 Company was shown as consignee on some of the bills. The
 driver stated that Kellwood and Southern Foundations were
 one and the same corporation.

The commodity being shipped were nylon goods, elastic
 goods, and webbing tape. Some of the bills, the photostat is
 not too good and I can't tell what they are.

Commissioner Hooker: Is all of it non-exempt?

A. As far as I know, yes, Sir.

Mr. Seibert:

Q. That's all of the non-exempt. Now, did you again make
 a check on November 16?

A. Yes, Sir. On the 16th of November, 1967, in Wythe
 County, Route No. 11, at approximately 1:10 P. M., I checked
 another truck which was an International tractor, serial
 number G-179595, being driven by Mr. Lynn R. Blackburn
 of Bells, Tennessee, and registered to A.S.A., Inc
 page 12 } Bells,, Tennessee .

The driver was employed by A.S.A., Inc. He
 stated that he had picked up the commodities in Connecticut
 and Rhode Island and was going to Southern Foundations
 Corporation, Bells, Tennessee. He had no lease aboard the
 truck. He also had elastic webbings or elastic web, hose sup-
 porter fittings, something else on there I can't make out, elas-
 tic braid, cotton trimmings, cotton goods, elastic webbing, syn-
 thetic fibre piece goods, and several others that I cannot make
 out, rayon cotton, cotton piece goods-finished.

Mr. Seibert: May the Commission please, the registration
 with the Commission is by the Agricultural Services Associa-
 tion, Inc., Bells, Tennessee, and is For Hire Carrier, Exempt,
 Interstate. The cards issued on the two vehicles showed Agri-
 cultural Services Association, Inc.; and there is another
 case on which the Rule has not been drawn, on December 21,
 1967.

R. C. Wilson

This is all from this witness.

page 13 } Commissioner Hooker: Cross examine.
 Mr. Augello: No questions.
 Commissioner Hooker: Stand aside.

Witness stood aside.

page 14 } Mr. Seibert: Mr. Wilson.

R. C. WILSON, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Seibert:

Q. What's your name, Sir?

A. R. C. Wilson.

Q. And your position?

A. Investigator, Enforcement Division, State Corporation Commission.

Q. Mr. Wilson, did you on November 29, 1967, check a motor vehicle operated by Agricultural Services Association, Inc.?

A. I did.

Q. Will you please state where this happened, and what vehicle it was, and the circumstances?

A. It was in Rockingham County, Virginia, Interstate No. 81, at 12:30 P. M., November 29, 1967; this was a Peterbilt Tractor, bearing Tennessee license HX-2545, registered to Agricultural Services Association, Inc., Transportation Division, Box 220, Bells, Tennessee.

page 15 } The driver was James R. Warren, of Newbern, Tennessee.

Q. What did this shipment consist of?

A. He had three different shipments. Shipment No. 1 was three hundred cartons of frozen vegetables, and two hundred and fifty cartons of regular cut, green beans, shipped from the Winter Garden Foods, Inc., Sales Subsidiary For Winter Garden Freezer Company, Inc., Box 119, Bells, Tennessee. The consignee was Hills Korvette Super Markets, Inc., of Brentwood, New York, with a notation "Ship To: Global Frozen Foods, 519 W. 16th St., New York City, N. Y." That bill of lading was dated November 28, 1967, Waybill No. J-5647.

R. C. Wilson

There were two other shipments on the same date November 28, 1967, Bill No. J5750, twenty-five hundred cartons of "WH", the letter "S. Kist" okra, twenty-two thousand, five hundred pounds, shipped from Winter Garden Foods, Inc., Bells, Tennessee, consigned to Seabrook Farms Company, Box 500, Seabrook, New Jersey. with a notation, "Ship To: Seabrook Farms Co., c/o James Talcott, Inc. and Merchants Refgr. Co., 17th Street, New York, N. Y."

Bill No. J5749, dated November 28, 1967 two page 16 } hundred and forty-six cartons of Ardsley WH okra, four thousand, four hundred and twenty-eight pounds. Shipper was Winter Garden Foods, Inc., Bells, Tennessee. Consignee was Seabrook Farms Co., Box 500, Seabrook, New Jersey, with notation "Ship To: Seabrook Farms Co., c/o Merchants Refgr. Co., 17th St., New York, N. Y."

Q. Mr. Wilson, what was the name of the shipper in that case?

A. The shipper was Winter Garden Foods, Inc.

Q. What did it say "Sales Subsidiary"?

A. Yes, Sir. Winter Garden Foods, Inc., Sales Subsidiary for Winter Garden Freezer Company, Inc.

Q. Is that at Bells, Tennessee?

A. Box 119, Bells, Tennessee.

Q. And that was going to Global Frozen Foods, New York, New York?

A. It was consigned to Hills Korvette Super Markets, Inc., of Brentwood, New York, with the destination of Global Frozen Foods, New York City.

Mr. Seibert: If the Commission please, frozen foods are not exempt.

Commissioner Catterall: Was that okra frozen?

page 17 } Mr. Seibert: All of this was frozen.

A. Frozen packages, frozen foods.

Mr. Seibert: All of these packages originated in Bells, Tennessee, and were destined to the northern points. The other shipments were going south.

I might say I have been furnished by Mr. Augello a copy of the charter of Agricultural Associates-Agricultural Services Association, Inc., and one of the incorporators is shown

Emmett Barker

as Winter Garden Company, Inc., not Winter Garden Foods, Inc., but Winter Garden Company, Inc.

That's all I have from Mr. Wilson.

Commissioner Hooker: Any questions?

Mr. Augello: No questions.

Commissioner Hooker: Stand aside.

Witness stood aside.

page 18 } Commissioner Hooker: Any further evidence?

Mr. Seibert: That is all we have, Sir.

Commissioner Hooker: Do you have anything to say?

Mr. Augello: May I call a witness?

Commissioner Hooker: Yes.

Mr. Augello: Thank you. Mr. Emmett Barker.

May it please the Commission, would you like to have a brief explanation of the operations of the Defendant?

Chairman Dillon: I would, yes.

Mr. Augello: Agricultural Services Association, Inc. is an exempt cooperative, an agricultural cooperative which was formed last year. Part of the services performed for its members is the transportation pursuant to Section 203(b)(5) of the Interstate Commerce Act. And we intend to show in defense of the business that the transportation performed was performed for a member of A.S.A. with respect to the frozen commodities going north; and the return transportation was performed for a non-member and, as the

page 19 } Commission knows, there is a certain limitation upon the amount of non-member business that may be conducted by any agricultural cooperative.

In all instances the amount of the business was performed well within the limitations placed upon the exemption; and I would like to show through this witness and have him explain the detailed operations of the cooperative so that this Commission may be satisfied that we are operating as a *bona fide* agricultural cooperative within the Agricultural Marketing Act of 1929.

Commissioner Hooker: All right. Present your evidence.

page 20 } EMMETT BARKER, a witness introduced on behalf of Defendant, being first duly sworn, testified as follows:

Emmett Barker

DIRECT EXAMINATION

By Mr. Augello:

Q. Will you please state your full name and address.

A. Emmett Barker, 873 South Yates Street, Memphis, Tennessee.

Q. And by whom are you employed?

A. Agricultural Services Association, Inc.

Q. In what capacity?

A. Executive Vice President.

Q. How long have you held that position?

A. Since September 1, 1967.

Q. Will you tell us in detail what Agricultural Services Association, Inc. is?

A. I would be pleased to, and, if I may, making some general statements to sort of set the stage, and then I will go into the detailed end of it.

In the Mid-South area around Memphis, particularly in West Tennessee, most of the truck crops are vegetable crops that are grown or produced by, for the majority, by colored tenant farmers; and as agricultural progress has changed and developed over the years, we found ourselves there with these, still several thousand of these people, about to be left out of the main stream of agriculture, principally because of the mechanical innovations and the lack of technical resources to which they had access that they could use in maintaining themselves in agriculture rather than in downtown districts or Washington or Watts, for example.

So we began looking around and I should not say—when I say “We”, I am speaking of the parties involved in A.S.A., as to how can we bring these people into the main stream of agriculture, how can we keep them on farms and enjoying their improved standards of living rather than moving into the farm areas, how can we set up a system whereby these small farmers can enjoy the benefits of the mechanical innovations that are taking place, the large machinery, the mechanical harvesting, and that sort of thing?

Well, the idea was conceived that, first of all, these people have very limited financial resources as well as managerial ability and that sort of thing. Well, how do you bring them into this main stream of agriculture? And the idea was conceived that if we had an

Emmett Barker

agricultural cooperative, and to which these people could belong, through area cooperatives that they might join, along with some corporate farming operations who were already in this main stream of agriculture, that this might offer an opportunity to these people to maintain pace with the agricultural technology.

And so this was approached and considered and discussed among these people. As a matter of fact, in our incorporators, two or three of them I am sure, and right offhand I believe there is C. B. Pitts, you may find him on there, was one of the original incorporators, and these are colored tenant farmers there.

But these people knew that they had to have something or they were just going to have to leave the area. So we set up A.S.A. or A.S.A. was set up, and the charter granted in August of 1966, as an agricultural cooperative under the Agricultural Marketing Act of Tennessee, with nine members in this cooperative, Agricultural Services Association. Four of these members would be four area farmer cooperatives which are comprised of approximately three thousand colored tenant farmers. The fourth is comprised of thirteen farming operations in the Dyersburg, Tennessee, area, which is a larger and more specialized farming area.

And the whole idea was to put together this system so that these people could have access to the mechanical harvesting equipment, so that they could have access to technology, so that they could be brought in and made a part of the, really the frozen food business is what it amounted to, and many programs had been instigated that were attempting to bring these people in, but somehow the extension serviced their programs, and everybody else, and they just had not reached it because they had not worked with it.

This offered an opportunity to these people, and it was set up accordingly, that we would have to start with four divisions:

The Agricultural Production Division was the raw product marketing, the cooperative marketing of raw products in this business. They coordinated the sales of the raw products, the planting of it, the harvesting of it, and that sort of thing.

The Property and Equipment Division owned about a million, a little over a million dollars worth of spec-

Emmett Barker

ialized farming equipment, large mechanical harvesters that ran, say, you are talking about twenty-five to thirty-five thousand dollars apiece for each one of these; so you can see now why many of these small farmers do not get involved with them; but through their membership in this area they have access to this equipment on a cost or through a cooperative basis.

Then we have our Technical Services Division, principally which is involved in agricultural research. I note that up to this point that even our own universities, I am embarrassed to say, have not done the type of research that was needed to help these people improve their farm production, and this agricultural research phase of our Technical Services Division does get involved with this and has made some very significant contributions to the productivity of the crops that these colored tenant farmers grow.

Then the other area was our Transportation Division.

One phase of it deals with hauling the raw prod-
 page 25 } ucts from what we call our "Country Receiving
 Stations" and, if it would be appropriate, here is a picture of one of these, if you would like to just look at some of these things as I go along here, for example. These are what we call our "Country Receiving Stations".

The other phase of the transportation activities is, of course, with the refrigerated transport. Now, the thing is here, and I think it is in all fairness to the approach to cover it and point out and illustrate it, the difference between what we are doing in our operations down there and the opportunities that it has for our members, contrasted with many others. Basically what we are doing, we are putting together a farm-to-the-table food system, and by virtue of our setup as an agricultural cooperative we are bringing all of these factors in; heretofore, and again I repeat these some, say, three thousand colored tenant farmers, that's exactly what they were, they were outside the ultimate periphery of this whole thing.

But now through their membership in their local cooperative, which in turn belongs to A.S.A., they are really now a part of the frozen food business, and they have a financial
 page 26 } stake in it by virtue of their particular engage-
 ment here; so, as we begin to establish a total system here, it became obvious that our approach was different from what the Secretary of Agriculture, what the

Emmett Barker

N.F.O., what the Farm Bureau and many others had proposed, simply for this reason, that we were looking at marketing the end product. The important thing, and this is something that has been overlooked in agriculture, it's not so much growing the stuff as it is what can we ultimately break it into to be marketed and can it be marketed at a profit.

And this was our whole approach. There is no need in the world to produce a pound of black-eyed peas if you can't sell it in the store and make a profit; otherwise, there is no profit created anywhere else in the system, and this is our whole approach to the total system. As well as this whole thing began to fit together, we could see that there were some activities in all phases, in the growing and processing and the marketing of it, where you might say an agricultural cooperative or any kind of a cooperative activity would almost flow through this thing, functioning cooperatively in some areas, independently in others, as we went through; but yet creating a system whereby the efficiencies and the econo-
page 26 } mies created would flow back in relative part to the agricultural producers that were involved.

And so this is basically the overall philosophy, that basically is the way that we operate the thing, and the approach that we are taking on it. So you can carry on from there.

Q. Mr. Barker, with that preliminary explanation, can you tell us who the members of A.S.A. are?

A. Yes. We have, as I mentioned earlier, nine members at the present time in this cooperative.

Q. What are their names and when you give us their names, would you tell us the extent to which any of these members conduct farming operations, if any?

A. All right. Crockett Farms, Inc. is one of the four area farmer cooperatives that I mentioned. This is an area agricultural cooperative. They have about approximately nine hundred and fifty members. Would you like to have me give something about their productive-capability of the cooperatives or—

Q. Just to the extent to which they are a part.

A. Yes. Well, their members grow in excess of six thousand acres of peas, okra, green peppers, squash, *et*
page 28 } *cetera*, that they market they market through Agricultural Services Association.

The second member that I will call here is Dixie Garden Farms, a division of the Winter Garden Freezer Company,

Emmett Barker

Inc. They operate approximately three thousand acres of vegetable land in Crockett and Haywood Counties, in West Tennessee.

A foreign division of Tennessee Freezers operates approximately four thousand acres of vegetable producing land in Gray County, Tennessee.

Fayette Growers, Inc.—this is a second area grower cooperative that's composed of approximately a thousand members, and they produce and market through A.S.A. in the area coop. the production from approximately twelve thousand acres of field peas, squash, okra, sweet potatoes, *et cetera*.

Haywood Growers, Inc. is an area grower cooperative, composed of approximately thirteen hundred members, and they also grow about thirteen thousand acres of field peas, okra, squash, turnips, and sweet potatoes.

T Industries, Inc. T Industries owns five farms consisting of approximately eight thousand acres, that's lo-
page 29 } cated in both East and West Tennessee. This land
is share-cropped in both vegetable and field crops,
and these vegetable crops are marketed through A.S.A.

Winter Garden Farms. Winter Garden Farms leases and operates approximately two thousand, five hundred acres of vegetable land growing green beans exclusively, and these leases range from ten to two hundred acres, and are located throughout the Cumberland Plateau in Tennessee.

Q. Is that the corporate name of Winter Garden Farms; is that the full name?

A. It's—no, it's the Winter Garden Farms of Winter Garden Company, Inc.

Q. Is that a different corporation than the Winter Garden Freezer Company that you mentioned earlier?

A. Yes, it is.

Q. Did you finish with the members of A.S.A.?

A. Yes. This is a description of our various members.

Q. Now, and am I correct in that all of the members are farmers?

A. That is correct.

Q. Do any of these members conduct any non-
page 30 } farm activities?

A. Of what would you be referring to as not a farmer?

Emmett Barker

Commissioner Catterall: The individual members, not the corporate members.

Mr. Augello: No, the corporate members.

Commissioner Catterall: I thought they had a freezer plant.

Mr. Augello: That's why I'm asking. I asked if any of these corporate members conduct any nonfarm activities.

Commissioner Catterall: I see.

A. Yes. Tennessee Freezers is involved in freezing plant operations. Tennessee Foods, they are—apparently I missed them in this first go-round. They are another member, which should make nine; maybe I've just got eight, it should make nine members; and they also have very extensive farming operations in Rossville, Tennessee, in the Rossville, Tennessee, area. They have a farm down there something in excess of eight hundred acres, approximately that amount.

Commissioner Catterall: Is that only farming?

page 31 } A. No, Sir. They also have plant operations
and farms. Winter Garden Farms, their parent
company, the Winter Garden Company, has freezing plant
operations.

Mr. Augello

Q. How about Dixie Garden Farms?

A. The Winter Garden Freezer *Companyd* does not have any plant operations. They are just a marketing activity.

Mr. Seibert

Q. Is that *ther Winte* Garden Freezer Company, Inc.?

A. Yes, Sir.

Mr. Augello

Q. Now you described some of the services that or did you describe the complete services that A.S.A. performs for its members?

A. Well, I just briefly outlined the four major areas. Since that time we have added a Data Processing Division to our operations to keep up with all of these records which we found and we could over-bill, but cumbersome paperwork, it could clear quickly.

Emmett Barker

- page 32 } Q. When was A.S.A. formed?
 } A. Our charter was given in August of 1966.
 } Q. How long has it actually been operating?
 } A. Actually, 1967 was our first, what you would say, year
 of operation as an entity.
 } Q. And has your first fiscal year ended?
 } A. Yes.
 } Q. As of what date?
 } A. December 31.

Q. Taking the shipment of frozen okra, which I believe was made the subject of this investigation, can you tell us exactly how that shipment originated, starting right from the fields to the open market, and how this was handled through A.S.A. and its various offices?

A. Yes. I think that in these pictures that I passed around here earlier you saw in a sense where it started. Our okra is grown for the most part by colored tenant farmers in that general area. Most of them have about an acre to two acres apiece of it that they and their families grow and handle, usually in the evenings and early mornings after they have already done a day's work on the farm to start with.

page 33 } It is then received at one of these receiving
 } stations where it is marketed through their local
 } area farmers cooperative which is a member of
 } A.S.A. And at this particular point the A.S.A. Transportation
 } Division picks up this product, this okra, for example,
 } and hauls it to one of the processing plants that has been
 } designated and for which we have a supply agreement. Then,
 } of course, it is appropriately frozen and prepared for distribution
 } for retail consumption and it is either put into one
 } of our members' warehouses at that point or it is shipped to
 } a terminal destination for some future distribution. This is
 } all okra that our members have grown and that our members
 } are involved with all the way through to the marketing. Now,
 } is that indicative of what you want?

Q. Now, on one of the bills the witness referred to the shipper being Winter Garden Foods, a division of Winter Garden Freezer. Can you explain that?

A. The Winter Garden Foods, as I understand it, and, of course, this is—I would imagine you would have to go to the Winter Garden Company specifically to get exact details, but, as I understand it, it is the marketing division, the finished product marketing division of the Winter Garden

Emmett Barker

Freezer Company, that markets all of the prod-
 page 34 } ucts that are grown by A.S.A. members.

Q. The Winter Garden Freezer Company is a member of A.S.A.?

A. Yes.

Q. And they were the shipper on this frozen okra?

A. Yes.

Q. And they actually processed and froze the A.S.A. grown and owned okra?

A. Yes. This is true because, if I might explain the reason why it is set up this way, because of our unique setup these some three or four thousand farmers out here have access to this processing and marketing capability which otherwise they would not have if they were not a part of this whole program, rather than them getting and building their own processing plants and trying to go out to market them.

Chairman Dillon: Let me see if I understand thoroughly this thing. Now, you've got nine corporations that belong to A.S.A.?

A. Yes, and this is considering the area farmer cooperatives as a corporation.

page 35 } Chairman Dillon: Yes.

A. They are a corporation.

Chairman Dillon: And then you've got literally thousands of these little one and two and three-acre tenant farmers that belong to these—

A. Four area—

Chairman Dillon: —four area—

A. —farmer cooperatives.

Chairman Dillon: —farmer cooperatives. And they raise their okra and other vegetables?

A. Right.

Chairman Dillon: And harvest them, and one of these nine corporations or members of your A.S.A. will gather this; gather the harvest vegetables?

A. Now, the farmers, there are usually about two hundred who will deliver their products to a, what we call a "country receiving station".

Chairman Dillon: Oh, yes, to the receiving station. Then—

A. At that point there, it's their Transportation Division, as far as that goes.

Emmett Barker

Chairman Dillon: That picks them up there and
page 36 } takes them into the processing plant?

A. Right.

Chairman Dillon: When does the title to these vegetables
pass from the tenant farmer to someone else?

A. Well, upon delivery to the receiving station, the title
passes to his marketing cooperative.

Chairman Dillon: To his marketing cooperative.

Commissioner Hooker: Does he get paid for it at that
time?

A. Yes, Sir. This is one of the unique approaches that we
have in our program. I don't know how familiar you are
with contract farming, but most of these processors, for ex-
ample, they are as much as six months to a year in finally
paying for all of their parts. Because of the setup that we
have, we pay this grower on the spot, and it can be anywhere
from fifty cents to fifty dollars, because they bring it in in
everything from *am* apron full of it almost to a washtub in
the back of the car; but one way that we are going to be able
to do this in 1968, and keep, continue paying on the spot, is
in working with the banks for coops in financing these sales.

page 37 } Mr. Augello

Q. Now, at the end of the first fiscal year on
A.S.A.'s system, can you tell us what the total combined re-
venue was of A.S.A. business?

A. In excess of seven million dollars.

Q. And what percentage of that total revenue was derived
from member business?

A. Party in excess of seventy per cent. May I point out
there that it will be higher than that in 1968 simply because
some of our people were not at that time properly organized.

Q. They weren't properly organized and taken into A.S.A.?

A. In 1967. That will be in 1968.

Commissioner Catterall: How do you define "member busi-
ness"?

Mr. Augello

Q. Would you define "member business" for him?

A. Yes. This is business done, I guess you would say, on
behalf of or with these nine members in A.S.A., four of which
are representing the some three thousand farmers.

Emmett Barker

page 38 } Commissioner Catterall: Some of the business
for the members is exempt commodities and some
is not.

A. No. Everything that we do for our members is agricultural.

Commissioner Catterall: I thought under the ICC license they are a common carrier of non-exempt property. Is that a correct understanding?

Mr. Seibert: As I understand it, the exemption is for non-exempt commodities in the—

Commissioner Catterall: Isn't that what they filed with us to get that—

Mr. Seibert: No, we've got the—they are registered as "Exempt commodities", "Transportation for hire of exempt commodities".

Commissioner Catterall: Well, that's what threw me off because most of these commodities are not exempt, no matter whom they were carried for.

Mr. Augello: If the Commission please, I believe that our permit will show that it was issued for the exemption under 203(b)(5), which is the agricultural exemption. Is that clear now?

Commissioner Catterall: The agricultural section?
page 39 }

Mr. Seibert: Well, we issued it in accordance with what you say here "For Hire Carrier Exempt Interstate".

Mr. Augello: Well—

Mr. Seibert: And you are contending that it is agricultural cooperative and, therefore, exempt under the Interstate Commerce Act.

Mr. Augello: That's correct. There are two exemptions, Your Honor. One is under 203(b)(6) which is for agricultural commodities, and the other is the exemption under 203(b)(6) which is for agricultural cooperatives. Now, any—

Chairman Dillon: Well, you agree that these are not exempt commodities under the first one?

Mr. Augello: Those vegetables are not exempt commodities under 203(b)(6). However, it is our position that they are exempt under 203(b)(5) if the cooperative is qualified, is *bona fide*.

Commissioner Catterall: Well, is it your position that that registration that you gave us is the one that you meant to give us or is that a clerical error?

page 40 } Mr. Augello: May I have a copy? Thank you.
 May I have a minute to look at this?

Commissioner Hooker: Yes.

Mr. Augello: It might be, Your Honor, and I'll you why. As I see it, the application for registration of the operating authority, the boxes that were checked were "For Hire", "Common", "Contract" and "Not exempt".

Commissioner Catterall: Not exempt?

Mr. Augello: Oh, now your copy shows "exempt", and our copy shows that there was a correction made, and I must apologize. I don't have the original application here.

Commissioner Catterall: So you will agree that our men had to pick these trucks up, won't you?

Mr. Augello: If the final registration was issued in this form under "Exempt", without it explaining whether it's 203 (b) (5) or 203(b) (6), I would say "Yes, he had good cause to pick us up and inquire into it, yes, Sir."

We have had this trouble with other States.

page 41 } Commissioner Catterall: Do the other States
 between Memphis and New York have to enforce
 these Federal rules the way we do?

Mr. Augello: Yes, Sir.

Commissioner Catterall: And you have had trouble in all the States on your route?

Mr. Augello: We have had trouble with some of them, and, when we properly explained the situation, we are reissued a new certificate which says 203(b) (5). I think the reason is that so many of the States are so accustomed to issuing exempt certificates to the itinerant truckers that they automatically issue them for 203(b) (6).

Commissioner Catterall: Yes, but we just take your word for it when you apply.

Mr. Augello: I just wish that we had our file on the original permit here. Perhaps I could explain it to your satisfaction, but I must admit I don't have it.

Commissioner Catterall: Isn't that the original thing that you filed with us?

page 42 } Mr. Seibert: That's a copy of the original.

Commissioner Catterall: That's the original application.

Mr. Seibert: I think I have the original here.

Mr. Augello: And I think, just a word, that it would be—

Mr. Seibert: This is what we have. This is what we have.

Mr. Augello: And I believe we obtained a letter from the

local district supervisor of the ICC stating that we were organized as a cooperative, and were operating under Section 203(b)(5), and we furnished the Corporation counsel with a copy of that letter.

Mr. Seibert: The letter says, if the Commission please:

"The carrier listed above has certified to this office that it is engaged in transportation in interstate commerce under the following classification:

"Agricultural Cooperative, under section 203 page 43 } (b) 5.

"Carriers in this classification are subject only to the Motor Carrier Safety Regulations of this Commission.

"W. W. Garland
District Supervisor"

"The carrier listed * * * has certified to this office"—now that is not passage of this—

Chairman Dillon: The carrier did what?

Mr. Seibert: "The carrier has certified".

Commissioner Hooker: Well, it didn't say what—

Mr. Seibert: It doesn't say what the ICC said.

Commissioner Hooker: It doesn't say also whether it knew what was being transported, that he is certifying to.

Mr. Seibert: No, Sir.

Chairman Dillon: Well, he named the section in there.

Commissioner Hooker: Yes, the section number.

Mr. Seibert: Yes, but what I was saying is "The carrier certified".

page 44 } Commissioner Hooker: Yes, the carrier.

Mr. Seibert: And the Interstate Commerce Commission has not passed upon it, not for this particular carrier.

Mr. Augello: Well, counsel is—

Chairman Dillon: I thought we were talking about what he filed here to get this permit.

Mr. Seibert: Oh—what he filed here?

Chairman Dillon: Yes, that's right, that's what I'm talking about.

Mr. Seibert: The last thing he filed was that letter with—

Chairman Dillon: What does his application for a permit to use a Virginia road, a highway, say?

Emmett Barker

Mr. Seibert: On which we brought our rules.

Chairman Dillon: On which we issued the permit. That's what I want to know.

Mr. Augello: Exempt.

Mr. Seibert: Exempt only.

Chairman Dillon: Exempt. You didn't have the 5(b)?

Mr. Augello: No, that is correct, because there page 45 } was no—there's no break there. Now, some of the State applications show "Exempt under 203 (b)(5), 203(b)(5) or 203(b)(6)".

Well, the Virginia application does not so state.

Commissioner Catterall: This says "Exempt Commodities", doesn't it?

Mr. Augello: No, it does not say that.

Commissioner Catterall: Doesn't that application say "Exempt Commodities"?

Chairman Dillon: No.

Mr. Seibert: No, it says "Class of Carrier Exempt".

Chairman Dillon: Yes, which it would be exempt under either section.

Commissioner Hooker: As I understand this, Mr. Seibert, the certification in that letter does not say that they were within their rights in the transportation, but they merely certified that they complied with the law, because they didn't know what was actually in the trucks being transported.

Mr. Seibert: Their certification was under page 46 } "Class of Carrier Exempt" in 1967 under which these rules are drawn.

Commissioner Catterall: And we have no investigation by the Federal Commission as to what they are actually doing?

Mr. Seibert: Not yet, Sir.

Commissioner Catterall: Well, don't we have to examine their books to find out what they are doing?

Mr. Seibert: Well, there's some question here I would like to ask about some of this operation.

Commissioner Catterall: Wait just one minute.

Commissioner Hooker: Are you through on Direct?

Mr. Augello: No, I wasn't, Your Honor.

Commissioner Hooker: Proceed.

Mr. Augello

Q. I was about to ask what percentage of your gross revenue consisted of transportation revenue, both raw products and finished products.

Emmett Barker

A. About 1967, about, something slightly over page 47 } thirteen per cent.

Q. In dollars—you gave us a seven million dollar figure for total revenue; what would that be in dollars?

A. Just a little over a million dollars in the transportation division, and I believe that figures out about thirteen per cent.

Q. Well, can you tell us approximately what percentage of your total transportation revenue was derived from nonmember business?

A. I would have to say that it is estimated here simply because our final audit is not in yet on it, but it would appear that it will be probably something less than three per cent.

Commissioner Catterall: Well, do you count it membership business when you bring cotton goods back for a member?

A. No, Sir.

Chairman Dillon: What does the statute say on that particular business?

Mr. Augello: The statute says that you may not do more than fifty per cent of your gross revenues with page 48 } nonmembers.

Chairman Dillon: Gross revenue from transportation?

Mr. Augello: No, no, your gross agricultural revenue. It doesn't say fifty per cent, Your Honor. It says that you may not do more business with non-members—

Chairman Dillon: Than you do with members.

Mr. Augello: —than you do with members. That's the present statute.

Q. And just so the record may be clear, the testimony was that, and correct me if I'm not correct, that approximately three per cent of the transportation revenue was derived from nonmembers.

A. Total dollar volume.

Q. Three per cent of the total dollar agricultural coop revenue that's from nonmember by the Transportation Division.

Commissioner Hooker: Do you keep that segregated in your accounting business, your bookkeeping?

A. Yes, Sir.

Commissioner Catterall: Well, we just happened
page 49 } to catch two-thirds of them that were down there;
is that right?

Mr. Augello: Well, I think what happened there—yes, they picked up two nonrated commodities and two frozen commodities, and that's just the way it happened, yes, Sir.

Commissioner Catterall: How are our men on the highway going to go over your books when they stop you?

Mr. Augello: Well,—

Commissioner Catterall: Why doesn't the Interstate Commerce Commission give you a seal of approval so we will recognize it when you go through?

Mr. Augello: At the present time there is no regulation set up for that. There is legislation pending, however, whereby that proposal has been suggested, that is that, and the Commission would like, these agricultural coops to register with the Commission and get a stamp or seal of approval.

Commissioner Catterall: Then we wouldn't have to stop all the drivers.

page 50 } Mr. Augello: That's correct. We admit that this whole field, of course, is in a great state of fluxion. We recognize that. There is legislation pending on the Hill right now whereby they even want to change the fifty per cent basis, and I think it's probably going to even go through.

Commissioner Hooker: There's a case pending before the Federal Judge at this time.

Mr. Seibert: To make it ten per cent.

Commissioner Hooker: At this time, isn't it?

Mr. Augello: In the District of Columbia?

Commissioner Hooker: Yes, the Federal Judge.

Mr. Augello: I am not familiar with that.

Mr. Seibert: It's in the Federal Court, I think, that they might want to make it ten per cent.

Commissioner Hooker: Yes.

Mr. Augello: The latest legislative proposal that came out last week I believe was that they were going to change it to fifteen per cent of the total tonnage, not revenue, but fifteen per cent of the tonnage handled by the cooperatives, and I understand that the United States Department of
page 51 } Agriculture has agreed to that figure, and the railroads and trucking associations have agreed to that figure, so that in all likelihood I don't see any block to the passage of that legislation in this form.

Emmett Barker

Commissioner Catterall: And you claim that you will come within that even after the amendment?

Mr. Augello: I believe so, yes. Based upon the first year's operation, we have no qualms about it at all. I have no further questions, Your Honors.

CROSS EXAMINATION

By Mr. Seibert

Q. You state that the present membership consists of Crockett Farms, I believe, Dixie Garden Foods, Inc., Winter Garden Company, Inc., T Industries, Tennessee Foods, Fayette Growers, Inc., Haywood Growers, Inc.—and what's that?

A. Dyersburg Farms, Inc.

Q. Dyersburg. And T Industries?

A. Yes.

Q. Now, let's take the Winter Garden Company, Inc.

A. Are you talking about the Winter Garden
page 52 } Company or the Winter Garden *Freezer*?

Q. I'm talking about the Winter Garden Company, Inc. What is the name of the one that is a member of your Association?

A. They both are the Winter Garden.

Q. One or the other is; which one? Which one is a member of your Association?

A. I said the Winter Garden Freezer is a member.

Q. The Winter Garden Freezer Company?

A. Right. Dixie Garden Farms is a Division of Winter Garden Freezer Company, Inc.

Q. You didn't say that. You said nine members.

A. Right.

Q. Were members of your Association. Now, what are those nine members?

A. Crockett Farms, Inc.

Q. All right, Sir. Crockett Farms, Inc. Do they operate any other corporation?

A. No, Sir.

Q. All right. Dixie Garden Farms?

A. Farm Disision of the Winter Garden Freezer
page 53 } Company.

Commissioner Catterall: Well, that's not a corporation.

A. Yes. That is the Farm Division of Winter Garden Freezer Company, Inc.

Emmett Barker

Commissioner Catterall: It is not a corporation?

A. Yes, it is a corporation.

Commissioner Catterall: What is the name of the corporation?

Chairman Dillon: Winter Garden.

A. The Winter Garden Freezer Company.

Commissioner Catterall: This other is just a figment.

Commissioner Hooker: We will have to think about that some.

Mr. Augello: Your Honors, I believe the witness is mistaken. He is not an attorney. Dixie Garden Farms is not a corporation. It is a Division of Winter Garden Freezer Company, Inc.

Chairman Dillon: Well, that's exactly what he page 54 } said.

Commissioner Hooker: It is a Division of the Winter Garden Freezer Company, Inc.

Chairman Dillon: He said namely that it is a Division of this corporation.

Mr. Augello: The question was, "Is it a corporation?" and he said, "Yes".

Commissioner Catterall: I wanted to know the name of the corporation.

Chairman Dillon: He meant the Winter Garden Foods.

Commissioner Catterall: The Winter Garden Foods.

Mr. Augello: No.

Mr. Seibert: What is Winter Garden Foods, Inc.?

A. That's *snother* one.

Mr. Seibert: Well, you didn't say so.

A. Winter Garden Farms—I am sorry, the girl left it off here—it's the Winter Garden Farms Division of the Winter Garden Company. Winter Garden Freezer is not a member.

Chairman Dillon: Let me suggest that he write page 55 } them out on this paper, and we can get it from that. It will be a lot easier that way.

Commissioner Catterall: He doesn't know the names of the corporations. His lawyer had better do that.

Mr. Augello: Perhaps I can do that.

Commissioner Hooker: Yes. Let the attorney do that.

Mr. Augello: If I may just explain at this point on the record, the Winter Garden Foods is a Division of Winter Garden Freezer Company, Inc. Then there is another Winter Garden Company, Inc., which has a Division known as—

Emmett Barker

A. Winter Garden Farms.

Mr. Augello: —Winter Garden Farms.

Commissioner Catterall: Because Divisions are merely assumed names under which the corporation is operating.

Mr. Augello: That's correct.

Commissioner Catterall: And we didn't know the names of the corporations.

Mr. Augello: That's right.

page 56 } Commissioner Catterall: These are individual corporate entities.

Mr. Augello: Then there is a third complication. Dixie Garden Farms is another Division of the Winter Garden Freezer Company, Inc. This is what is causing the confusion. There are three very similar names.

Commissioner Catterall: You have spent over three hundred dollars coming up here, so maybe that's enough penalty in this case.

Commissioner Hooker: Wait until he gets through with his evidence.

Mr. Seibert: What I want to know, if the Commission please, is I have a copy of their original corporate papers, and it shows the Winter Garden Company, Incorporated; and we have a new Rule against the Winter Garden Company, Winter Garden Foods, Incorporated, and Winter Garden Freezer Company, Incorporated.

Now which is a member of this Association?

A. Both of them.

Mr. Augello: Now, if I am reading from the page 57 } same document, Winter Garden Foods, Inc. is written in on this Enforcement Division report.

That is a misnomer. There is no corporation known as "Winter Garden Foods, Inc." There is, as I explained previously, "Winter Garden Foods, Division of Winter Garden Freezer Company, Inc." Now—

Chairman Dillon: That is why I suggested that you write the names down on that piece of paper and let's keep quiet for just a minute while you write them down there, and we will all get them straight.

Commissioner Hooker: One thing, then they were operating under one name, and they were operating under the wrong name, weren't they, when the man picked them up?

A. We didn't write this name on this report. It is apparent that—

Emmett Barker

Commissioner Hooker: The Rule was issued from our investigator's report.

Chairman Dillon: Our investigator made a mistake in putting "Inc." on it. It should have been "a Division" page 58 } sion".

A. That's correct.

Chairman Dillon: "Division" of the corporation.

Commissioner Hooker: I don't know. Maybe it should be.

The Commission will recess five minutes while you are writing the list.

The Commission resumes its session.

Commissioner Catterall: How many names have you got? Nine.

Winter Garden Freezer Co., Inc. They have two fictitious names.

Winter Garden Co., Inc.—one fictitious name.

Tennessee Foods, Inc.—one fictitious name.

Tennessee Freezers, Inc.—one fictitious name.

Mr. Seibert: They operate under different names, and fictitious names.

Commissioner Catterall: They register under one name and and do business under a different name.

page 59 } Chairman Dillon: Well, it's the same as the State Corporation Commission has the Motor Carrier Enforcement Division.

Commissioner Catterall: Well, we don't do business that way. We serve all of our orders in the name of the Commission.

Chairman Dillon: Of course, I don't see the necessity of doing it.

Mr. Seibert: I notice Winter Garden Freezer Company, Incorporated, shows a Division as Winter Garden Foods. Winter Garden Company, Incorporated, also shows a Division as Winter Garden—is that "Foods" or is that "Farms"?

Mr. Augello: "Farms".

Mr. Seibert: "Farms".

Commissioner Hooker: Give the list to Mrs. Wootton to put it in the record.

List referred to is as follows:

1. Winter Garden Freezer Co., Inc.
(Divisions) Dixie Garden Farms
Winter Garden Foods

Emmett Barker

- page 60 } 2. Winter Garden Co., Inc.
 (Division) Winter Garden Farms
 3. Tennessee Foods, Inc.
 (Division) Tennessee Foods Farms Division
 4. Tennessee Freezers, Inc.
 (Division) Tennessee Freezers Farm Division
 5. T Industries, Inc.
 6. Crockett Farms, Inc.
 7. Dyersburg Farms, Inc.
 8. Haywood Growers, Inc.
 9. Fayette Growers, Inc.

Mr. Augello: The reason for that, Your Honors, is that Winter Garden Foods Division is a Sales Division; and Winter Garden Farms is a Farming Division. That's why separate Divisions are set up.

Chairman Dillon: Why don't you just give the name of the corporation (Farming Division)?

Commissioner Catterall: In parentheses.

Mr. Seibert: I've only got one question.

Commissioner Catterall: When you—

Chairman Dillon: It would be a lot simpler.

page 61 } Commissioner Catterall: When you get an automobile license, you give them your real name, don't you?

Mr. Augello: Well, I am only the Commerce Counsel, and I just get the cases where—

Commissioner Catterall: So that might be an individual.

Chairman Dillon: After they mess it up, you just get it to straighten out.

Mr. Augello: That's right.

Mr. Seibert

Q. I've got one question. None of these Divisions is a separate corporation; is that right?

A. That's correct.

Commissioner Hooker: Is that all?

Mr. Augello: That's all.

Commissioner Hooker: Stand aside.

Witness stood aside.

Commissioner Hooker: The Commission will take this matter under advisement.

page 62 }

Commonwealth of Virginia
State Corporation Commission
Richmond

June 24, 1968

COMMONWEALTH OF VIRGINIA, at the relation of the
State Corporation Commission

v.

CASE NO. M-880

A.S.A., inc.

Box 220

Bells, Tennessee 38006

Defendant

JUDGMENT

On May 6, 1968, came on for hearing the rule issued against the defendant and from the evidence the Commission finds that the defendant violated the law as alleged in the rule, and that the defendant is not entitled to the agricultural cooperative exemption of the Interstate Commerce Act (Section 203(b)(5), as defined by the decision of the *United States District Court, Northern District of Texas, in I.C.C. v. American Association, et al., January 26, 1968; 1968 Federal Carrier Cases (82,006)*. Accordingly, it is

ORDERED:

1. That all identification markers, plates or other evidences of right issued for any motor equipment owned or operated by the defendant be revoked and surrendered for cancellation on July 24, 1968, unless before that date the defendant shall pay to the Commonwealth a penalty in the sum of \$150.00.

2. That no authority be hereafter issued for the operation by the defendant of any motor equipment unless
page 63 } and until the penalty herein prescribed has been paid.

3. An attested copy of this order shall be sent to John M. Reams, Agricultural Services Association, Inc., Box 220, Bells, Tennessee 38006, counsel for the defendant, and to William J. Augello, Jr., and Francis Silver, 2 W. 45th Street, New York, New York 10036, counsel for the defendant.

* * * * *

page 64 }

June 24, 1968

COMMONWEALTH OF VIRGINIA, at the relation of the
State Corporation Commission

v.

CASE NO. M-897

AGRICULTURAL SERVICES ASSOCIATION, INC.

N. High Street

P. O. Box 220

Bells, Tennessee 38006

Defendant

JUDGMENT

On May 6, 1968, came on for hearing the rule issued against the defendant and from the evidence the Commission finds that the defendant violated the law as alleged in the rule, and that the defendant is not entitled to the agricultural cooperative exemption of the Interstate Commerce Act (Section 203(b)(5), as defined by the decision of the *United States District Court, Northern District of Texas, in I.C.C. v. American Association, et al.*, January 26, 1968; 1968 Federal Carrier Cases (82,006). Accordingly, it is

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* * * * *

page 66 } Opinion, HOOKER, *Commissioner*

Agricultural Services Association, Inc., hereinafter referred to as A.S.A. came on for hearing May 6, 1968. It was alleged by the Commerce Counsel that the aforesaid defendant was not entitled to the agricultural cooperative exemption of Part II of the Interstate Commerce Act (Section 203(b) 5), as defined by the decision of the United States District Court, Northern District of Texas, in *I.C.C. v. All American Association*, et al, January 26, 1968; 1968 Federal Carriers Cases ¶82,006.

Section 203 (b) of the ICA exempts from I.C.C. regulation transportation performed by agricultural cooperatives operating within the purview of the Agricultural Marketing Act codified as 12 U. S. Code 1141-1141j.

page 67 } The Court, in *I.C.C. v. All American Association*, et al, defines the 203 (b) exemption as follows:

“Section 1141j (Agricultural Marketing Act) defines ‘co-operative associations’ as any association in which farmers act together, among other things, to furnish farm business services, provided that such associations are operated for the mutual benefit of the members thereof as producers or purchasers and, provided further:

“Third. That 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.”

“‘Member business’ within the meaning of the Agricultural Marketing Act is that business done for members and related to their farming activities. Many individuals as well as large publicly owned corporations engage in a variety of business activities, including farming. A member raising cattle or growing crops is engaged in farming. However, the same member operating a packinghouse or canning plant is not engaged in farming.

“Therefore, the transportation of dressed and frozen meats and other packinghouse products by AAA for packinghouses registered as members is not ‘farm member business’ within the meaning of the Agricultural Marketing Act. Likewise, the transportation of bananas and grapefruit for registered members in their capacities as motor carriers and of

cattle for dealers in cattle, as opposed to cattle raisers, registered as members, is not farm member business.

"A cooperative association may not engage in nonmember business unless such business is incidental and necessary to that which is farm related member business.
page 68 } *Northwest Agricultural Coop. Assn. v. Interstate Commerce Commission* (16 Federal Carriers Cases ¶81,758, 350 F 2d 252 and *Agricultural Transportation Association of Texas v. United States* (1967 Federal Carriers Cases ¶81,957), 274 F. Supp. 528.

"Under the third proviso of the Agricultural Marketing Act, section 1141j, a cooperative association is permitted to transact business with nonmembers not to exceed that business transacted with members. However, this provision does not authorize an association engaging in the for-hire transportation of property by motor vehicle to transport *any* commodities for nonmembers. Commodities transported for nonmembers must be *incidental* to the primary farm service of the association. Also, transportation for nonmembers must be *necessary* in that it must be conducted to equalize or prevent economic losses resulting from otherwise one-way use of vehicles for member traffic."

A.S.A. alleges that it is entitled to the agricultural exemption contained in 203 (b) 5 of the Interstate Commerce Act and 1141j of the Agricultural Marketing Act. The issue in this Case is a factual issue and turns upon the nature of the transportation conducted by A.S.A. There are two facets of transportation involved here. Involved are two instances of alleged "back haul" violations and three cases of alleged "front haul" violations. The "back haul" violations will be discussed first.

(A "back haul" is the return trip during which the truck moves from its shipping point and returns to its
page 69 } cooperative.)

On November 15, 1967, State Corporation Commission Investigator H. L. Smith, Jr., stopped an A.S.A. truck carrying nonexempt commodities from Allentown, Pennsylvania, and Newton, New Jersey, to Alamo, Tennessee. On November 16, 1967, State Corporation Commission Investigator Smith stopped another A.S.A. truck carrying nonexempt commodities which had been picked up in Rhode Island and Connecticut destined for Bells, Tennessee. At this point,

the Commonwealth of Virginia has established a *prima facie* case. The defendant A.S.A. is hauling commodities in interstate commerce which require appropriate authority from the Interstate Commerce Commission. A.S.A. has no such authority. A.S.A.'s only defense is the agricultural cooperative exemption and it must show that it is entitled to the exemption or the State Corporation Commission has sustained its burden of proof. A.S.A. must show that the nonmember, nonexempt goods it is hauling is incidental and necessary to its farming business and that the revenue from nonmember hauling is less than half of A.S.A.'s revenue from handling member products.

"Under Section 1141j (Agricultural Marketing Act) (a cooperative) . . . is permitted to engage in transportation for nonmembers to an extent that the revenues therefrom do not exceed the revenues yielded from the member associations. But this provision does not give a cooperative association *carte blanche* authority to engage in interstate transportation of *any* commodities for nonmembers within the prescribed limits. The products transported for nonmembers page 70 } must be *incidental* to the primary farm service of the association and *necessary* in the sense that the carriage service must be rendered so as to equalize or prevent an economic loss which would result from a trip with an empty trailer-truck. *Northwest Agricultural Cooperative Association v. I.C.C.* 16 Federal Carriers Cases ¶81,758." *Agricultural Transportation Association of Texas v. U. S.*, *et al.* 1967 Federal Carriers Cases ¶81,957.

"Neither the express language of the Act (Agricultural Marketing Act) nor the legislative history thereof, . . . warrants the conclusion that Congress intended to allow agricultural cooperatives to become general transportation companies by performing for-hire transportation for anyone or for any purpose . . . To the contrary, transportation rendered by a cooperative association must be assessed in the 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." *Machinery Haulers Association, et al v. Agricultural Commodity Service*, 14 Federal Carriers Cases ¶35,155.05.

At no time during the hearing, through testimony or other evidence, did A.S.A. establish that the trips in question were incidental and necessary for the continued operation of A.S.A. Therefore, it is the opinion of the Commission that A.S.A. was in violation of the Interstate Commerce Act on November 15, and 16, 1967, as to the vehicles stopped by Investigator Smith, in that A.S.A. was engaged as a general transportation company for hire without I.C.C. authorization.

page 71 } As to the "front haul" (traveling from the cooperative to destination) transportation, State Corporation Commission Investigator R. C. Wilson stopped three A.S.A. vehicles enroute from the cooperative at Bells, Tennessee, to points in New York and New Jersey. All three trucks were carrying commodities (frozen foods) which require I.C.C. authority to haul them interstate, i. e., nonexempt commodities. Again A.S.A.'s only defense was the Agricultural Cooperative Exemption under 203 (b) 5 of the Interstate Commerce Act and 1141j of the Agricultural Marketing Act. Therefore, a *prima facie* violation exists here also.

As in the case of the "back haul" transportation, A.S.A. has failed also to show that their "front haul" transportation of nonmember, nonexempt commodities is incidental and necessary to the continued operation of the cooperative or that such transportation is fundamentally related to the cooperative's members' farming operations.

The Commission is of the opinion and finds as a fact that A.S.A. is engaged in the general transportation of nonexempt commodities across state lines in violation of the Interstate Commerce Act.

DILLON, *Chairman*, and CATTERALL, *Commissioner*, concur.

August 2, 1968

page 72 } COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

CERTIFICATE

It is certified to the Supreme Court of Appeals of Virginia that the foregoing transcript of the record in these proceedings, there being no exhibits, contains all of the facts upon which the actions appealed from were based, together with

all of the evidence introduced before or considered by this Commission.

Witness the signature of Jesse W. Dillon, Chairman of the State Corporation Commission, under its seal and attested by its Clerk this 12th day of August, 1968, at Richmond, Virginia.

Jesse W. Dillon
Chairman

Attest: W. Humey Dovell
First Assistant Clerk

CERTIFICATE

I, W. Humey Dovell, First Assistant Clerk of the State Corporation Commission, certify that within sixty days after the final order in these cases A.S.A., Inc., and Agricultural Services Association, Inc., by their attorney, Francis A. Silver, 4301 Columbia Pike, Arlington, Virginia 22204, filed with me a notice of appeal therein which had been delivered to Counsel for the State Corporation Commission and to the Attorney General of Virginia, pursuant to the provisions of Section 13 of Rule 5:1 of the Rules of Supreme Court of Appeals of Virginia.

Subscribed at Richmond, Virginia, August 12, 1968.

W. Humey Dovell
First Assistant Clerk

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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