STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#91011

NO. STATE OF NEBRASKA
OFFICIAL
FEB 12 1991
DEPT. OF JUSTICE

DATE: February 7, 1991

SUBJECT: Issuance of Common Carrier Certificate or Contract Carrier Permit to Transportation Cooperative.

REQUESTED BY: Frank E. Landis, Chairman
Nebraska Public Service Commission

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to whether the Nebraska Public Service Commission may grant an application by an entity qualifying as a "transportation cooperative" under Neb.Rev.Stat. § 75-309.03 (Reissue 1990) seeking to obtain either a certificate of authority to operate as a common carrier or a permit to operate as a contract carrier to engage in intrastate motor carrier operations in Nebraska. For the reasons stated below, it is our opinion that an entity may not maintain its status as a "transportation cooperative" under § 75-309.03 if it is granted a common carrier certificate or a contract carrier permit.

Section 75-309.03 establishes an exemption from Commission regulation of motor carrier activity to "a transportation cooperative consisting of cooperative associations . . . provid[ing] transportation solely to its member cooperative associations", provided certain requirements are met. This section incorporates the definition of "cooperative association" in 12 U.S.C. § 1141j, which provides that "'cooperative association' means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing and/or furnishing farm supplies and/or farm business

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Linda L. Willard

services. . . ." In your request letter, you state that a "transportation cooperative" is an association of agricultural cooperatives which is a corporate entity that provides transportation services to its member agricultural cooperative entities, which, in turn, are corporate entities in their own right.

Your question concerns the interpretation of the exception in § 75-309.03 for transportation cooperatives, and, specifically, whether an entity exempted from Commission regulation under this provision may also hold a certificate to operate as a common carrier or a permit to operate as contract carrier.

A fundamental principle of statutory construction is to attempt to ascertain legislative intent and to give effect to that intent. Pump & Pantry, Inc. v. City of Grand Island, 233 Neb. 191, 444 N.W.2d 312 (1989). The reasons for the enactment of a statute, and the purposes and objects of the act, may be guides in attempting to give effect to the intent of lawmakers. State v. Jennings, 195 Neb. 434, 238 N.W.2d 477 (1976). A statute must be given a reasonable construction to accomplish the objectives and purposes of the act. School Dist. of Omaha v. State Bd. of Educ., 187 Neb. 76, 187 N.W.2d 592 (1971). In construing a legislative act, resort may be had to the history of its passage for the purpose of determining legislative intent. Georgetowne Ltd. Partnership v. Geotechnical Services, Inc., 230 Neb. 22, 430 N.W.2d 34 (1988).

In our view, the plain language employed by the Legislature in restricting application of the exemption from Commission regulation for transportation cooperatives precludes the conclusion that such entities may also be authorized to operate as common or contract carriers. As previously noted, § 75-309.03(1) provides a transportation cooperative "may provide transportation service solely to its member cooperative associations without applying for or receiving a certificate or permit from the commission to provide such service" if certain requirements are satisfied. One of these is set forth in subsection (1)(a) of § 75-309.03, which requires that "[t]he transportation cooperative ha[ve] no greater power or purpose other than to provide service to its member cooperative associations." In addition, subsection (1)(e) of § 75-309.03 reiterates the requirement that the transportation cooperative must provide transportation service "solely to its member cooperative associations." Subsection (4) of § 75-309.03 further provides: "If a transportation cooperative operates as a for-hire carrier in violation of this section, the transportation cooperative shall no longer qualify to furnish transportation service as provided in

this section and shall be subject to the penalties provided . . . for operating as a common or contract carrier without a certificate or permit."

In light of the foregoing, we believe it is evident the Legislature did not intend to permit an entity qualifying for the limited exclusion from Commission regulation as a transportation cooperative to retain such status and, at the same time, be authorized to operate as a common carrier under a certificate granted by the Commission or, for that matter, to operate as a contract carrier under a permit issued by the Commission. This intent is most clearly expressed in § 75-309.03(1)(a), which requires that a "transportation cooperative" qualifying for the exception have "no greater power or purpose other than to provide service to its member cooperative associations." This language, in addition to the Legislature's limitation of this exception to an entity of this nature engaged in providing transportation services "solely to its member cooperative associations," evinces a legislative intent to preclude the establishment of a "dual status" for such entities as both exempt transportation cooperatives and regulated common or contract carriers.

This interpretation of the limited application of § 75-309.03 is confirmed by the legislative history of the statute. The history of the act indicates it was designed to address, in part, questions which had been raised regarding the Commission's jurisdiction over the activities of cooperative associations involved in providing transportation services. Committee Records on LB 78, 91st Leg., 1st Sess., (January 30, 1989); 1989 Neb. Laws, LB 78, Transcript of Floor Debate, March 28, 1989, 3080-3081 (Statement of Senator Lamb). The amendment to LB 78 containing the exception for transportation cooperatives was specifically described by the introducer of the bill as reflecting the Legislature's intent to permit transportation cooperatives which "conduct private motor carriage solely for the member cooperative associations benefit" to operate without obtaining a certificate of public convenience and necessity, provided the cooperatives complied with "specified operating and information filing requirements." 1989 Neb. Laws, LB 78, Transcript of Floor Debate, April 19, 1989, 4564-4565 (Statement of Senator Lamb). This is consistent with the intent stated by the Legislature in § 75-309.03 to limit application of this exemption to entities which possess no "power or purpose" other than to provide transportation services to member cooperative associations.

In sum, it is our opinion that it would be inconsistent with both the language and intent of § 75-309.03 to allow an entity

exempted from Commission regulation as a "transportation cooperative" to also hold a certificate as a common carrier or a permit as a contract carrier.

Very truly yours,

DON STENBERG
Attorney General

L. Jay Bartel
Assistant Attorney General

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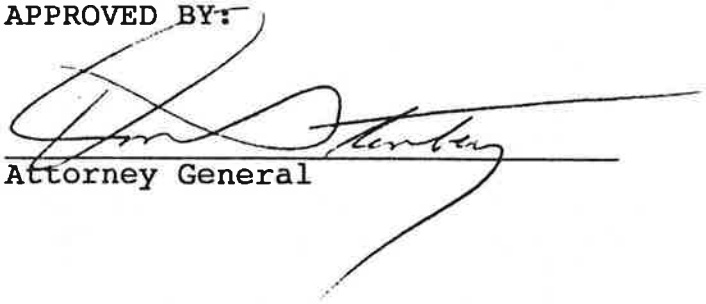
APPROVED BY:



Attorney General