

MR. [EDWARD I.] KOCH [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Koch: On page 5, line 9, insert immediately before the period “: *Provided*, That the limitation on total payments that may be required in any fiscal year by all contracts entered into under section 235 of the National Housing Act, as amended, is increased by \$25,000,000, and the limitation on total payments under those entered into under section 236 of such Act, is increased by \$25,000,000”.

MR. [CHARLES R.] JONAS [of North Carolina]: Mr. Chairman, I make a point of order against the amendment on the ground it is legislation on an appropriation bill.

THE CHAIRMAN:⁽¹⁴⁾ The gentleman will state his point of order.

MR. JONAS: Mr. Chairman, as I understand the amendment, it seeks to increase contract authority, and the bill under consideration does not contain any contract authority but merely payments that have accrued and have to be paid in order to liquidate contract authority. Therefore, I think the amendment is subject to a point of order and I so make it.

MR. KOCH: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The gentleman from New York is recognized on the point of order.

MR. KOCH: This chapter relates to sections 235 and 236, but provides no new moneys and does not provide the moneys that heretofore have been authorized. I submit to you, Mr. Chair-

man, that all my amendment will do is to appropriate moneys which heretofore have been authorized for the purpose provided in the amendment.

THE CHAIRMAN: The Chair is ready to rule. The amendment does constitute legislation in an appropriation bill and violates clause 2 of rule XXI. Therefore, the Chair sustains the point of order.

§ 34. Exceptions From Existing Law

Contracts, Competitive Bidding Waived

§ 34.1 Language in an appropriation bill providing that purchases and contracts for supplies or services may be made by the Tennessee Valley Authority without regard to any law relating to advertising or competitive bidding was conceded to be legislation on an appropriation bill and held not in order.

On Dec. 15, 1950,⁽¹⁵⁾ during consideration in the Committee of the Whole of the second supplemental appropriation bill (H.R. 9920), a point of order was raised against the following provision:

TENNESSEE VALLEY AUTHORITY

For an additional amount, \$64,500,000, to remain available until

15. 96 CONG. REC. 16672, 81st Cong. 2d Sess.

14. Wayne N. Aspinall (Colo.).

expended: *Provided*, That purchases and contracts for supplies or services may be made by the Authority during the fiscal year 1951 without regard to any provisions of law relating to advertising or competitive bidding.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the proviso on line 9, running down to line 12 on page 11 that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:⁽¹⁶⁾ Does the gentleman desire to be heard further on the point of order?

MR. [ALBERT A.] GORE [of Tennessee]: If the gentleman insists on the point of order it must, in my opinion, be sustained, but I do feel that the gentleman will make a grievous error in insisting upon it.

THE CHAIRMAN: Does the gentleman from New York insist on his point of order?

MR. TABER: I insist on my point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman from New York makes the point of order that the language referred to is legislation on an appropriation bill. The gentleman from Tennessee concedes the point of order.

The Chair sustains the point of order.

Exception From Civil Service Laws

§ 34.2 Language in an appropriation bill permitting employment of personnel "without regard to civil-service

16. Jere Cooper [Tenn.].

laws and regulations or the Classification Act of 1923" was conceded to be legislation and not in order.

On May 19, 1939,⁽¹⁷⁾ during consideration in the Committee of the Whole of a general appropriation bill, a point of order was raised against the following provisions:

PROMOTION OF FOREIGN TRADE

Promotion of foreign trade: For the purpose of carrying into effect the provisions of section 4 of the act entitled "An act to amend the Tariff Act of 1930", approved June 12, 1934 (48 Stat. 945), as amended, including personal services without regard to civil-service laws and regulations or the Classification Act of 1923, as amended, stenographic reporting services, by contract if deemed necessary, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5),⁽¹⁸⁾ contingent

17. 84 CONG. REC. 5845, 76th Cong. 1st Sess.

18. 41 USC §5 stated: Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals, except (1) when the amount involved in any one case does not exceed \$2,500, (2) when the public exigencies require the immediate delivery of the articles or performance of the service, (3) when only one source of supply is available and the Government purchasing or contracting officer shall so certify, or (4) when

expenses, printing and binding, traveling expenses, and such other expenses as the President may deem necessary, \$43,000.

MR. [CARL E.] MAPES [of Michigan]: Mr. Chairman, I desire to make a point of order against the following language in lines 11 and 12:

Without regard to civil-service laws and regulations or the Classification Act of 1923, as amended.

I may say, Mr. Chairman, that I confine the point of order to that specific language in order to avoid a long debate, such as we got into a little while ago.

MR. THOMAS S. McMILLAN [of South Carolina]: Mr. Chairman, as the gentleman has confined his point of order to the specific language to which he has referred, I will concede the point of order.

THE CHAIRMAN:⁽¹⁹⁾ The point of order is sustained.

§ 34.3 Provision in an appropriation bill to enable the President, through appro-

the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under Government supervision and paid for on a time basis. Except (1) as authorized by section 1638 of Appendix to Title 50, (2) when otherwise authorized by law, or (3) when the reasonable value involved in any one case does not exceed \$500, sales and contracts of sale by the Government shall be governed by the requirements of this section for advertising.

19. Harold D. Cooley (N.C.).

appropriate agencies, to make certain expenditures and employment of persons without regard to section 3709 of the Revised Statutes and the civil service laws was held as legislation and not in order.

On Jan. 30, 1941,⁽²⁰⁾ during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 2788), a point of order was raised against the following provision:

The Clerk read as follows:

To enable the President, through appropriate agencies of the Government, to provide for emergencies affecting the national security and defense and for each and every purpose connected therewith, and to make all necessary expenditures incident thereto without regard to the provisions of law regulating the expenditure of Government funds or the employment of persons in the Government service, such as section 3709⁽¹⁾ of the Revised Statutes and the civil service and classification laws, \$100,000,000; and, in addition, the President is authorized, through such agencies, to enter into contracts during the fiscal year 1942 for the same purposes to an amount not exceeding \$25,000,000: *Provided*, That an account shall be kept of all expenditures made or authorized hereunder, and a report thereon shall be submitted to the Congress on June 30, 1942.

MR. [ROBERT] RAMSPECK [of Georgia]: Mr. Chairman, a point of order.

20. 87 CONG. REC. 407, 77th Cong. 1st Sess.

1. See § 34.2, *supra*, for provisions of § 3709 [41 USC § 5].

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, a point of order.

THE CHAIRMAN:⁽²⁾ The Chair recognizes the gentleman from South Dakota, a member of the committee.

MR. CASE of South Dakota: Mr. Chairman, I make a point of order against the words "emergencies affecting," beginning in line 8, and in lines 11 to 15, inclusive, these words:

Without regard to the provisions of law regulating the expenditure of Government funds or the employment of persons in the Government service such as section 3709 of the Revised Statutes and the civil service and classification law.

as being legislation in an appropriation bill.

THE CHAIRMAN: Does the gentleman from Virginia desire to be heard on the point of order?

MR. [CLIFTON A.] WOODRUM of Virginia: With reference to the latter part of the point of order, Mr. Chairman, undoubtedly that is legislation, the language in lines 11 to 15 which the gentleman has quoted. It is legislation and subject to a point of order, although it is the same language that was carried in the appropriation bill last year which made available an emergency fund to the President.

With reference to the language in line 8, I may say that simply describes the method of using appropriate agencies to provide for emergencies affecting the national security. I do not see that it is subject to a point of order.

THE CHAIRMAN: The point of order is sustained.

Waiving Classification Act

§ 34.4 An appropriation for temporary employees at

2. R. Ewing Thomason (Tex.).

rates to be fixed by the Director of the Census without regard to the Classification Act was conceded to be legislation on an appropriation bill and held not in order.

On Mar. 16, 1945,⁽³⁾ during consideration in the Committee of the Whole of a general appropriation bill (H.R. 2603), a point of order was raised against the following provision:

The Clerk read as follows:

Compiling census reports and so forth: For salaries and expenses necessary for securing information for and compiling and publishing the census reports provided for by law, the collection, compilation and periodic publication of statistics showing United States exports and imports, and for sample surveys throughout the United States for the purpose of estimating the size and characteristics of the Nation's labor force and population, including personal services at the seat of government; *temporary employees at rates to be fixed by the Director of the Census without regard to the Classification Act*; the cost of transcribing State, municipal, and other records; preparation of monographs on census subjects and other work of specialized character by contract or otherwise; travel expenses, including not to exceed \$4,000 for attendance at meetings of organizations concerned with the collection of statistics, when incurred on the written authority of the Secretary; reimbursement for actual cost of ferry fares and bridge, road and tunnel tolls, and not to exceed 3 cents per mile for travel performed

3. 91 CONG. REC. 2368, 79th Cong. 1st Sess.

in privately owned automobiles within the limits of their official posts of duty, of employees engaged in census enumeration or surveys; maintenance, repair, and operation of three motor-propelled passenger-carrying vehicles; construction and repair of tabulating machines and other mechanical appliances, and the rental or purchase and exchange of necessary machinery, appliances, and supplies, including tabulating cards and continuous form tabulating paper; books of reference, periodicals, maps, newspapers (not exceeding \$200), \$4,757,000. . . .

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I make the point of order against the language on page 56 beginning in line 16 with the word "temporary" and ending in line 18 with the word "act" that it is legislation on an appropriation bill.

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN:⁽⁴⁾ the point of order is sustained.

§ 34.5 Language in the District of Columbia appropriation bill authorizing the commissioners to enter into contracts for the construction of the first unit of an extensible library building at a cost not exceeding \$1,118,000 and re-appropriating the balance of \$60,000 previously appropriated for preparation of plans and specifications, making same available without regard to the Classifica-

tion Act of 1923 or section 3709 of the Revised Statutes was conceded and held to be legislation on an appropriation bill.

On Apr. 6, 1939,⁽⁵⁾ during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 5610), a point of order was raised against the paragraph containing the following provision:

Not to exceed \$350,000 of the unexpended balance of the appropriation of \$500,000 contained in the District of Columbia Appropriation Act for the fiscal year 1939 for beginning the construction in square 533 of the first unit of an extensible building for the government of the District of Columbia is hereby reappropriated and made available for beginning the construction in square 491 of the first unit of an extensible library building, including quarters for the administrative offices of the Board of Education, (and the Commissioners are authorized to enter into contract or contracts for the construction of such first unit at a total cost, including improvement of grounds and all necessary furniture and equipment, not to exceed \$1,118,000: *Provided*, That the unexpended balance of the appropriation of \$60,000, contained in such act for the preparation of plans and specifications for a library building to be constructed on square 491 is continued available for the same purpose during the fiscal year 1940, and shall

4. Wilbur D. Mills (Ark.).

5. 84 CONG. REC. 3923, 76th Cong. 1st Sess.

be available for the employment of professional and other services, without reference to the Classification Act of 1923, as amended, civil-service requirements, or section 3709 of the revised Statutes).⁽⁶⁾

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make the point of order against the language beginning on line 23, page 18, after the word "education," down to the end of the paragraph on page 19, ending in line 10. It is legislation on an appropriation bill.

THE CHAIRMAN:⁽⁷⁾ Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [ROSS A.] COLLINS [of Mississippi]: The gentleman makes his point of order to the language beginning with the word "and", in line 23, and ending with line 10 on page 19?

MR. RICH: Yes.

MR. COLLINS: And not to the entire paragraph?

MR. RICH: Not to the entire paragraph.

MR. COLLINS: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

§ 34.6 An appropriation for the District of Columbia Auditor's Office coupled with language making part of the money available "without reference to the Classification Act of 1923, as amended,

6. See 34.2, supra, for provisions of § 3709 (41 USC § 5).

7. Claude V. Parsons (Ill.).

and civil-service requirements" was held to be legislation on an appropriation bill and not in order.

On Apr. 2, 1937,⁽⁸⁾ during consideration in the Committee of the Whole of the District of Columbia appropriation bill, a point of order was raised against the following provision:

AUDITOR'S OFFICE

For personal services, \$136,700, of which \$10,000 shall be available immediately, without reference to the Classification Act of 1923, as amended, and civil-service requirements, for examination of estimates of appropriations, and for other purposes; and the compensation of the present incumbent of the position of disbursing officer of the District of Columbia shall be exclusive of his compensation as United States property and disbursing officer for the National Guard of the District of Columbia.

MR. [RALPH O.] BREWSTER [of Maine]: Mr. Chairman, I make a point of order against the language, beginning on page 5, line 16, as follows—

Without reference to the Classification Act of 1923, as amended, and civil-service requirements—

on the ground that if it is in compliance with existing law it is unnecessary and if it is not, it is certainly legislation on an appropriation bill.

THE CHAIRMAN:⁽⁹⁾ Does the gentleman from Mississippi [Mr. Collins]

8. 81 CONG. REC. 3101, 75th Cong. 1st Sess.

9. Jere Cooper (Tenn.).

desire to be heard on the point of order?

MR. [ROSS A.] COLLINS: I do not.

THE CHAIRMAN: The Chair is of the opinion that the provision to which the gentleman from Maine has made the point of order is patently legislation on an appropriation bill which is not authorized under the rules of the House. Therefore, the point of order is sustained.

§ 34.7 Employment of a real estate expert in the Auditor's Office, District of Columbia, without reference to civil service requirements was held legislation on an appropriation bill and not in order.

On Jan. 31, 1938,⁽¹⁰⁾ during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 9181), a point of order was raised against the following provision:

AUDITOR'S OFFICE

For personal services, \$131,700, of which \$2,000 shall be available without reference to the Classification Act of 1923, as amended, [and civil-service requirements for the employment of a real-estate expert, to be immediately available; and the compensation of the present incumbent of the position of disbursing officer of the District of Columbia shall be exclusive of his compensation as United States property

10. 83 CONG. REC. 1306, 75th Cong. 3d Sess.

and disbursing officer for the National Guard of the District of Columbia.)

MR. [VINCENT L.] PALMISANO [of Maryland]: Mr. Chairman, I make the point of order that this is legislation upon an appropriation bill. The point of order is directed to page 5, line 8, after the words "as amended", "and civil-service requirements for the employment of a real-estate expert, to be immediately available; and the compensation of the present incumbent of the position." This is legislation.

THE CHAIRMAN:⁽¹¹⁾ Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [ROSS A.] COLLINS [of Mississippi]: Is this point of order made only as to the language "and civil-service requirements for the employment of a real-estate expert, to be immediately available"? Is that the end of it?

MR. PALMISANO: It is in line 8, "civil-service requirements."

MR. COLLINS: I am trying to find out what the gentleman is objecting to—"civil-service requirements"?

MR. PALMISANO: Beginning at the paragraph, yes.

MR. COLLINS: I have no comment to make on those words, Mr. Chairman.

THE CHAIRMAN: The language to which the point of order is directed is very clearly legislation, and therefore, the point of order is sustained.

§ 34.8 Language in an appropriation bill for the District of Columbia providing for the employment of a secretary to the people's counsel, and not to exceed \$5,000

11. William J. Driver (Ark.).

may be used for the employment of expert services by contract or otherwise and without reference to the Classification Act of 1923, as amended, was held legislation on an appropriation bill and not in order.

On Jan. 31, 1938,⁽¹²⁾ during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 9181), a point of order was raised against the following provision:

PUBLIC UTILITIES COMMISSION

For two commissioners, people's counsel, and for other personal services, \$76,000, [of which amount \$1,620 shall be available for the employment of a secretary to the people's counsel, and not to exceed \$5,000 may be used for the employment of expert services by contract or otherwise and without reference to the Classification Act of 1923, as amended.]

MR. [VINCENT L.] PALMISANO [of Maryland]: Mr. Chairman, I make a point of order against the language on page 7, line 3, after "76,000", and ending with the word "amended."

THE CHAIRMAN:⁽¹³⁾ Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [ROSS A.] COLLINS [of Mississippi]: I may say to the gentleman that this is language that has been carried in this bill ever since the cre-

ation of the Public Utilities Commission, and it is my understanding that under existing law appropriations can be made for the employment of expert services. This is not the language of the committee, but the language of the Budget, and it is money that is necessary to be appropriated in order that the Commission may be able to function, and without which I doubt seriously that they can function.

THE CHAIRMAN: In the opinion of the Chair, very clearly this is an attempt to impose legislation on an appropriation bill, and the point of order is therefore sustained.

Personal Services to the President

§ 34.9 A paragraph in a general appropriation bill containing funds for personal services for the President "without regard to the provisions of law" regulating government employment and for entertainment expenses to be accounted for solely on the certificate of the President was conceded to contain legislation and stricken.

On Aug. 1, 1973,⁽¹⁴⁾ During consideration in the Committee of the Whole of a general appropriation bill (H.R. 9590), a point of order was raised against the following provision:

The Clerk read as follows:

14. 119 CONG. REC. 27286, 27287, 93d Cong. 1st Sess.

12. 83 CONG. REC. 1307, 75th Cong. 3d Sess.

13. William J. Driver (Ark.).

THE WHITE HOUSE OFFICE

SALARIES AND EXPENSES

For expenses necessary for the White House Office, including not to exceed \$2,250,000 for services as authorized by title 5, United States Code, section 3109, at such per diem rates for individuals as the President may specify, and other personal services without regard to the provisions of law regulating the employment and compensation of persons in the Government service; newspapers, periodicals, teletype news service, and travel (not to exceed \$75,000), and official entertainment expenses of the President, to be accounted for solely on his certificate; \$9,100,000.

THE CHAIRMAN:⁽¹⁵⁾ The gentleman from Michigan (Mr. Dingell) has reserved a point of order.

The gentleman will state his point of order.

MR. [JOHN D.] DINGELL: . . . I would point out that this language appearing on page 12, lines 14 through 25, constitutes a violation of rule XXI, clause 2, in that it constitutes legislation in an appropriation bill.

I would point out specifically the language which reads on line 18:

at such per diem rates for individuals as the President may specify . . .

Clearly this is not sanctioned by authorization or law. And then the language goes on:

and other personal services without regard to the provisions of law regulating the employment and compensation of persons in the Government service . . .

And then the language goes on.

I would state, Mr. Chairman, there is no showing that there is legislative authority for this particular appropriation. I would point out again to the Chair that there is a requirement in the Rules of the House that appropriation committees do bear the burden of establishing the legislative basis for attempted appropriations. I would point out that this has not been done, and I insist on the point of order.

THE CHAIRMAN: Does the gentleman from Oklahoma desire to be heard on the point of order?

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, we submitted this item along with many others for expert review by the Office of Management and Budget, and were advised that the language starting on line 18 after "section 3109,"—

at such per diem rates for individuals as the President may specify, . . .

And going down to line 22, where it says—

in the Government service . . .

And we were advised that the language is subject to a point of order, and we concede the point of order.

We were also advised that the language on page 12, line 23, after—

(not to exceed \$75,000) . . .

The words—

and official entertainment expenses of the President, to be accounted for solely on his certificate . . .

Is also subject to a point of order, and we concede that.

The rest of it is not subject to a point of order because it is provided by law.

THE CHAIRMAN: The Chair is ready to rule.

15. Richard Bolling (Mo.).

If the Chair understands correctly, the gentleman from Michigan (Mr. Dingell) has made a point of order against various items in the paragraph and therefore makes a point of order against the entire paragraph?

MR. DINGELL: Mr. Chairman, that is correct.

THE CHAIRMAN: Unless the gentleman from Texas desires to be heard, the Chair is ready to rule on the point of order to the paragraph.

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. ECKHARDT: Mr. Chairman, I have been about to raise a point of order on the provision "to be accounted for solely on his certificate." I understand that this is conceded.

THE CHAIRMAN: The Chair also understands it is conceded. The Chair's understanding of the situation is that the point of order made by the gentleman from Michigan lies against the whole of the paragraph. The Chair is prepared to rule that the point of order has been conceded and is sustained, and that the whole paragraph, therefore, is stricken.

Travel Expenses

§ 34.10 Language in a general appropriation bill providing for transportation of prisoners in the custody of United States marshals to narcotic farms without regard to the act of Jan. 19, 1929, and also providing that

marshals and their deputies may be allowed, in lieu of actual expenses of transportation, up to four cents per mile for use of privately owned automobiles when traveling on official business, was conceded to be legislation on an appropriation bill and held not in order.

On Mar. 16, 1945,⁽¹⁶⁾ during consideration in the Committee of the Whole of a general appropriation bill (H.R. 2603), points of order were raised against the following provision:

The Clerk read as follows:

Salaries and expenses of marshals, etc.: For salaries, fees and expenses of United States marshals, deputy marshals, and clerical assistants, including services rendered in behalf of the United States or otherwise; services in Alaska in collecting evidence of the United States when so specifically directed by the Attorney General; traveling expenses, including the actual and necessary expenses incident to the transfer of prisoners in the custody of United States marshals to narcotic farms [without regard to the provisions of the act approved January 19, 1929 (21 U.S.C. 227);]⁽¹⁷⁾ purchase, when authorized by the Attorney General, of two motor-propelled passenger-carrying vans at not to exceed \$2,000 each; and maintenance, repair, and operation of motor-propelled passenger-carrying vehicles \$3,980,000: [*Pro-*

16. 91 CONG. REC. 2363, 79th Cong. 1st Sess.

17. 21 §227 provided for the transfer of prisoner addicts to and from farms.

vided, That United States marshals and their deputies may be allowed, in lieu of actual expenses of transportation, not to exceed 4 cents per mile for the use of privately owned automobiles when traveling on official business within the limits of their official station.]

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I make the point of order against the language in line 11, running down into line 13, which reads as follows: "without regard to the provisions of the act approved January 19, 1929 (21 U.S.C. 27)" on the ground that it is amendatory of existing law.

MR. [LOUIS C.] RABAUT [of Michigan]: We concede the point of order, Mr. Chairman.

THE CHAIRMAN:⁽¹⁸⁾ The point of order is sustained.

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make the point of order against the language in line 17, beginning with the word "*Provided*" to the end of the paragraph, that it is legislation on an appropriation bill.

MR. RABAUT: We concede the point of order, Mr. Chairman.

THE CHAIRMAN: The point of order is sustained.

§ 34.11 Language in a general appropriation bill providing that the Secretary of State is authorized to pay the actual transportation expenses and \$10 per diem in lieu of subsistence of citizens of the other American republics while traveling in the West-

ern Hemisphere without regard to the standardized government travel regulations and to make advances of funds notwithstanding section 3648 of the Revised Statutes, and to make contracts and grants of money without regard to section 3709 of the Revised Statutes, was held legislation on an appropriation bill and not in order.

On Mar. 15, 1945,⁽¹⁹⁾ during consideration in the Committee of the Whole of a general appropriation bill (H.R. 2603), the following transpired:

The Clerk read as follows:

Cooperation with the American republics: For all expenses necessary to enable the Secretary of State to meet the obligations of the United States under the Convention for the Promotion of Inter-American Cultural Relations between the United States and the other American republics, signed at Buenos Aires, December 23, 1936, and to carry out the purposes of the Act entitled "An Act to authorize the President to render closer and more effective the relationship between the American republics," approved August 9, 1939, and to supplement appropriations available for carrying out other provisions of law authorizing related activities . . . such expenses to include personal services in the District of Columbia, not to exceed \$125,000 for printing and binding; stenographic reporting, translating and other services by contract, without regard

18. Wilbur D. Mills (Ark.).

19. 91 CONG. REC. 2307, 2308, 79th Cong. 1st Sess.

to section 3709 of the Revised Statutes (41 U.S.C. 5) ⁽²⁰⁾ . . . *Provided*, That the Secretary of State is authorized under such regulations as he may adopt, [to pay the actual transportation expenses and not to exceed \$10 per diem in lieu of subsistence and other expenses, of citizens of the other American republics while traveling in the Western Hemisphere, without regard to the Standardized Government Travel Regulations, and to make advances of funds notwithstanding section 3648 of the Revised Statutes] ⁽¹⁾ . . . and the Secretary of State, or such official as he may designate is hereby authorized, in his discretion, [to

20. See §34.2, *supra*, for provisions of 41 USC § 5.

1 Section 3648 provided: No advance of public money shall be made in any case unless authorized by the appropriation concerned or other law. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper, to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected.

make contracts with, and grants of money or property to, governmental and public or private nonprofit institutions and facilities in the United States and the other American republics, including the free distribution, donation, or loan of publications, phonograph records, radio transcriptions, art works, motion-picture films, educational material, and other material and equipment, and other gratuitous assistance in the fields of the arts and sciences, education and travel, publications, the radio, the press, and the cinema; all without regard to the provisions of section 3709 of the Revised Statutes.] . . .

MR. [EDWARD H.] REES [of Kansas]: Mr. Chairman, I make the point of order against the language on page 33, line 16, beginning with the word "to" and ending with the word "Statutes", on line 22, that it is legislation on an appropriation bill and without authority in law.

MR. (EMMET) O'NEAL [of Kentucky]: Mr. Chairman, a great many points of order are being made on matters which seem to me to be largely administrative. I believe that executives should not need authority in law for many things which in the common ordinary practice of business or operation of Government bureaus are considered to be part of an executive job. The tendency of our courts in recent years has been to do away with legal technicalities which often defeat justice. Sometimes I feel that the House defeats proper legislation by a too strict adherence to superannuated procedure. If you must have laws to authorize every little incidental effort to be made by an executive, it would be impossible, in my opinion, for any executive to carry on properly the business of his office.

You could go through any appropriation bill and pick out small duties that an executive is called upon to do which could not be authorized specifically by any act of Congress because they are too multitudinous. . . .

THE CHAIRMAN:⁽²⁾ Does the gentleman from Kansas insist on his point of order?

MR. REES of Kansas: Mr. Chairman, the gentleman from Kansas does insist on his point of order and suggests that after all the Appropriations Committee is not a legislative committee, as I understand it.

THE CHAIRMAN: The gentleman from Kansas insists on his point of order.

The Chair is ready to rule.

The language referred to by the gentleman from Kansas definitely changes existing law and therefore is subject to a point of order. The Chair is constrained to sustain the point of order.

MR. REES of Kansas: Mr. Chairman, a further point of order.

THE CHAIRMAN: The gentleman will state it.

MR. REES of Kansas: Mr. Chairman, I make the point of order against the language beginning on page 34, line 9, with the word "to" and extending down to and including line 6 on page 35, that it is legislation on an appropriation bill and without authority of law.

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, this is based on 22 United States Code 501, 502, and is in use by other agencies of the Government.

THE CHAIRMAN: The Chair calls to the attention of the gentleman from Michigan that there is a specific waiv-

er of existing law in regard to the very subject mentioned by him.

MR. RABAUT: Then, Mr. Chairman, we will have to concede the point of order.

THE CHAIRMAN: The Chair sustains the point of order.

International Conferences, Incidental Printing Expenses

§ 34.12 Language in a general appropriation bill permitting the Secretary of State under the heading "International conferences (emergency)" for "printing and binding without regard to section 11 of the act of March 1, 1919 (44 U.S.C. 111)" was conceded to be legislation on an appropriation bill and held not in order.

On Mar. 15, 1945,⁽³⁾ during consideration in the Committee of the Whole of a general appropriation bill (H.R. 2305), a point of order was raised against the following provision:

International conferences (emergency): For all necessary expenses, without regard to section 3709 of the Revised Statutes,⁽⁴⁾ of participation by the United States, upon approval by the Secretary of State, in international activities which arise from time to time in the conduct of foreign affairs and for which specific appropriations have not

3. 91 CONG. REC. 2305, 2306, 79th Cong. 1st Sess.

4. See §34.2, supra, for provisions of 41 USC §5.

2 Wilbur D. Mills (Ark.).

been provided pursuant to treaties, conventions, or special acts of Congress, including personal services in the District of Columbia or elsewhere without regard to civil service and classification laws; employment of aliens; travel expenses without regard to the Standardized Government Travel Regulations and the Subsistence Expense Act of 1926, as amended; transportation of families and effects under such regulations as the Secretary of State may prescribe; stenographic and other services; rent of quarters by contract or otherwise; purchase or rental of equipment, purchase of supplies, books, maps, periodicals and newspapers; transportation of things; contributions for the share of the United States in expenses of international organizations; [printing and binding without regard to section 11 of the act of March 1, 1919 (44 U.S.C. 111);⁽⁵⁾ entertainment;] and representation allowances as authorized by the act of February 23, 1931, as amended (22 U.S.C. 12, 23c); \$1,500,000.

MR. [JOSEPH P.] O'HARA [of Minnesota]: Mr. Chairman, I make the point of order against that part of the paragraph commencing in line 20 on page 21 with the word "printing" and extending down to and including the figure "\$1,500,000", in line 24, that it is legislation on an appropriation bill and is contrary to the specific law against such expenditures.

THE CHAIRMAN:⁽⁶⁾ Does the gentleman desire to include the sum of money contained in the paragraph within his point of order?

MR. O'HARA: No; I do not intend to include the sum of money.

5. 44 USC § 111 referred to government printing required to be done at the Government Printing Office.
6. Wilbur D. Mills (Ark.).

THE CHAIRMAN: The gentleman intends, then, to include the language in lines 20, 21, 22, and 23?

MR. O'HARA: Yes.

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Purchase of Reindeer; Waiving Certain Laws Regulating Contracts

§ 34.13 Provision in an appropriation bill authorizing the purchase of reindeer without regard to sections 3709 and 3744 of the Revised Statutes was conceded to be legislation and held not in order.

On Mar. 15, 1939,⁽⁷⁾ during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 4852), a point of order was raised against the following provision:

The Clerk read as follows:

Reindeer industry, Alaska: For the purchase, in such manner as the Secretary of the Interior shall deem advisable and without regard to sections 3709⁽⁸⁾ and 3744⁽⁹⁾ of the Re-

7. 84 CONG. REC. 2789, 76th Cong. 1st Sess.
8. See § 34.2, supra, for provisions of § 3709.
9. Section 3744 referred in part to contracts made by the Secretary of the Interior required to be in writing, and copies to be filed as specified.

vised Statutes, of reindeer, abattoirs, cold-storage plants, corrals, and other buildings, and communication and other equipment, owned by nonnatives in Alaska, as authorized by the act of September 1, 1937 (50 Stat. 900), \$820,000; and for necessary administrative expenses in connection with such purchase and the establishment and development of the reindeer industry for the benefit of the Eskimos and other natives of Alaska, as authorized by said act, including personal services in the District of Columbia (not to exceed \$2,300) and elsewhere, traveling expenses, erection, repair, and maintenance of corrals, fences, and other facilities \$250,000; in all \$1,070,000 to be immediately available: *Provided*, That under this appropriation not exceeding an average of \$4 per head shall be paid for reindeer purchased from nonnative owners: *Provided further*, That the foregoing limitation shall not apply to the purchase of reindeer located on Nunivak Island.

MR. [JOHN C.] SCHAFER of Wisconsin: Mr. Chairman, I make the point of order against the paragraph on the ground that it is legislation on an appropriation bill unauthorized by law. In fact, the language clearly indicates that it repeals the specific provisions of existing law as incorporated in sections 3709 and 3744 of the Revised Statutes.

THE CHAIRMAN:⁽¹⁰⁾ Does the gentleman from Oklahoma desire to be heard?

MR. (JED) JOHNSON of Oklahoma: No; I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

10. Frank H. Buck (Calif.).

Waiving Application of Davis-Bacon

§ 34.14 An amendment to a general appropriation bill making inapplicable those provisions of law, requiring payment of prevailing wage rates under federal construction contracts, to wages paid under contracts funded by that bill, was conceded to be legislation waiving existing law and not in the form of a limitation.

On Sept. 16, 1981,⁽¹¹⁾ during consideration in the Committee of the Whole of the military construction appropriation bill (H.R. 4241), a point of order was raised and sustained against amendments offered to the bill, as follows:

Amendments offered by Mr. [M. Caldwell] Butler [of Virginia]: Page 2, line 11, strike out "\$1,029,519,000" and insert in lieu thereof "\$1,009,276,400". . . .

Sec. 123. The provisions of the Act of March 3, 1931 (40 U.S.C. 276a-276a-5; 46 Stat. 1494), commonly referred to as the Davis-Bacon Act, shall not apply to the wages paid to laborers and mechanics for any work or services performed under any contract entered into on or after the date of enactment of this Act for the construction of any project funds for which are appropriated by this Act. . . .

11. 127 CONG. REC. 20737, 20738, 97th Cong. 1st Sess.

MR. [BO] GINN [of Georgia]: Mr. Chairman, I make a point of order against the amendments because they constitute legislation in an appropriations bill, which is in violation of clause 2, rule XXI. . . .

MR. BUTLER: Mr. Chairman, if the gentleman insists on his point of order, I will not put him further to the proof. I will concede that perhaps he is correct.

THE CHAIRMAN:⁽¹²⁾ The Chair sustains the point of order.

Waiving Certain Laws Regulating Contracts

§ 34.15 Language in a general appropriation bill waiving the provisions of existing law was held to constitute legislation where the law being waived did not specifically permit exceptions therefrom to be contained in appropriation bills.

On Nov. 13, 1975,⁽¹³⁾ it was held that, while 41 United States Code section 5 provides that "unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the government may be made or entered into only after advertising a sufficient time previously for proposals", language in a general appropria-

12. Philip R. Sharp (Ind.).

13. 121 CONG. REC. 36271, 94th Cong. 1st Sess.

tion bill authorizing the Congressional Budget Office to contract without regard to that provision constituted legislation in violation of Rule XXI clause 2, based upon a prior ruling of the Chair and also upon the language of the statute itself permitting an appropriation or other law, but not a bill, to waive its provisions. The proceedings are discussed in § 37.13, *infra*.

§ 35. Change in Source of Appropriated Funds or in Methods of Financing

Change in Source of Funds—Reclamation Fund/General Fund

§ 35.1 Where existing law authorizes appropriations out of a reclamation fund for surveys, it has been held not in order to appropriate money out of the general funds of the Treasury for such surveys.

On May 17, 1937,⁽¹⁴⁾ H.R. 6958, the Department of the Interior appropriation for 1938, was being considered in the Committee of the Whole. At one point, the Clerk read as follows:

Grand Coulee Dam, Wash.: For continuation of construction of Grand Cou-

14. 81 CONG. REC. 4692, 75th Cong. 1st Sess.