

“hereof” strike the period, insert a colon and the following: *“Provided further, That no part of the funds herein appropriated shall be available for any expense incident to making export payments or export subsidies on any agricultural commodities being sold or sold to the government of any Communist country (as defined in section 620(f) of the Foreign Assistance Act of 1961) or to any agency or national thereof, except when the President determines that such guarantees would be in the national interest and reports each such determination to the House of Representatives and the Senate within 30 days after such determination.”* . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from Illinois on the ground that it is legislation on an appropriation bill.

I will say that I have not had a chance to review the authorities, but it is my recollection during the years that I have served in this capacity handling this bill on the floor of the House, when any provision requires extra duties and imposes those extra duties on the executive department, the President in this instance, such a proposal goes beyond being a restriction on the expenditure of money and amounts to legislation. For that reason, Mr. Chairman, I believe the point of order should be sustained.

THE CHAIRMAN:⁽¹⁴⁾ Does the gentleman from Illinois desire to be heard on the point of order?

MR. FINDLEY: Yes, Mr. Chairman, simply to say that in my opinion, the amendment amounts to a limitation on

the use of funds and, therefore, comes within the rules.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Illinois [Mr. Findley] has offered an amendment to the language appearing at page 31, line 8, to insert the following language:

Provided further, That no part of the funds herein appropriated shall be available for any expense incident to making export payments or export subsidies on any agricultural commodities being sold or sold to the government of any Communist country (as defined in section 620(f) of the Foreign Assistance Act of 1961) or to any agency or national thereof, except when the President determines that such guarantees would be in the national interest and reports each such determination to the House of Representatives and the Senate within 30 days after such determination.

In the opinion of the Chair, the language last read, beginning with the words “except when the President determines” does impose additional duties upon the President.

§ 57. Subject Matter: Agriculture

No Funds to Countries Engaging in Trade With North Vietnam

§ 57.1 To a general appropriation bill, an amendment providing that no funds appropriated thereby shall be used to administer programs for

14. Eugene J. Keogh (N.Y.).

the sale of agricultural commodities to nations that permit ships under their registry to transport equipment to Communist North Vietnam was held a proper limitation not imposing additional duties.

On Apr. 26, 1966,⁽¹⁵⁾ the Committee of the Whole was considering H.R. 14596, a bill appropriating funds for the Department of Agriculture. The following proceedings took place:

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Findley: On page 36, on line 6 strike the period, insert a colon and the following:

“Provided, That no funds appropriated by this Act shall be used to formulate or administer programs for the sale of agricultural commodities pursuant to titles I or IV of Public Law 480, Eighty-third Congress, as amended, to any nation which sells or furnishes or which permits ships or aircraft under its registry to transport to North Vietnam any equipment, materials or commodities, so long as North Vietnam is governed by a Communist regime.” . . .

THE CHAIRMAN:⁽¹⁶⁾ Does the gentleman from Mississippi insist upon his point of order?

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I do.

15. 112 CONG. REC. 8969, 8970, 89th Cong. 2d Sess.

16. Eugene J. Keogh (N.Y.).

THE CHAIRMAN: The gentleman will state it.

MR. WHITTEN: Mr. Chairman, it is legislation on an appropriation bill in that it imposes new duties, new responsibilities, and determinations beyond the ability of the Secretary of Agriculture, who administers this program, to determine. . . .

THE CHAIRMAN: The Chair is ready to rule. . . .

The Chair would state that it is satisfied that established precedents [justify] its holding the language of the proposed amendment as a limitation on the appropriation, and therefore overrules the point of order.

Allocation of State Agricultural Funds; Grant of Authority Instead of Negative Restriction

§ 57.2 Language in an appropriation bill providing that the county agricultural conservation committee in any county “with the approval of the State committee” may allot not to exceed five per centum of its allocation for the agricultural conservation program to the Soil Conservation Service for services of its technicians in carrying out the program, was held to be legislation and not in order.

On Apr. 27, 1950,⁽¹⁷⁾ during consideration in the Committee of the

17. 96 CONG. REC. 5914, 5915, 81st Cong. 2d Sess.

Whole of H.R. 7786 (Department of Agriculture chapter, general appropriation bill, 1951), a point of order was raised against the following provision:

MR. [FRED] MARSHALL [of Minnesota]: Mr. Chairman, I make the point of order against the following language beginning in line 17 on page 191—

Provided further, That the county agricultural conservation committee in any county with the approval of the State committee may allot not to exceed 5 percent of its allocation for the agricultural conservation program to the Soil Conservation Service for services of its technicians in formulating and carrying out the agricultural conservation program and the funds so allotted shall be utilized by the Soil Conservation Service for technical and other assistance in such county—

That it is legislation on an appropriation bill. The language contained in these lines has to do with the administration of the programs in two separate agencies of the Department of Agriculture, which ought to come before a proper legislative committee to have legal determination made. . . .

THE CHAIRMAN:⁽¹⁸⁾ The Chair is prepared to rule.

The gentleman from Minnesota [Mr. Marshall] has made a point of order against the language appearing in that section of the bill on page 191 beginning with the word "*Provided*" in line 17, and continuing through the remainder of that paragraph down to and including the word "county" in line 25, on the ground that it includes leg-

islation on an appropriation bill in violation of the rules of the House.

The Chair has examined the language here in question and is of the opinion that it could be drawn so as to constitute a limitation, but as the language appears now in the bill it does appear to the Chair that it contains legislation. The Chair, of course, has to pass on the question as it is here presented and invites attention to the fact that among other things it includes the words "with the approval." It appears to the Chair that the language quoted does include legislation on an appropriation bill in violation of the rules of the House.

The point of order is sustained.

Parliamentarian's Note: A subsequent amendment to the bill that day providing, *inter alia*, that "not to exceed 5 percent of the allocation for the agricultural conservation program for any county may be allocated to the Soil Conservation Service" for services of its technicians in carrying out the agricultural conservation program, was held to be a limitation restricting the availability of funds and therefore in order. See §67.13, *infra*.

Price Support Program; Limiting Payments But Requiring New Duties

§ 57.3 To a general appropriation bill, an amendment limiting the use of funds for payments to farmers but at

18. Jere Cooper (Tenn.).

the same time providing definitions, new authorizations, and imposing additional duties on the Secretary of Agriculture was ruled out as legislation.

On June 6, 1961,⁽¹⁹⁾ during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 7444), a point of order was raised against the following amendment:

MR. [WILLIAM H.] AVERY (of Kansas): Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Avery: On page 33, line 22, strike out the period, and add “: *Provided further*, (1) That no part of this authorization shall be used to formulate or carry out a price support program for 1962 under which a total amount of price support in excess of \$50,000 would be extended through loans, purchases, or purchase agreements made or made available by Commodity Credit Corporation to any person on the 1962 production of all agricultural commodities, (2) That the term “person” shall mean an individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity, or a State, political subdivision of a State, or any agency thereof, (3) That in the case of any loan to, or purchase from, a cooperative marketing organization, such limitation shall not apply to the amount of price support received by the cooperative marketing organization, but the amount of price support made available to any person through such

cooperative marketing organization shall be included in determining the amount of price support received by such person for purposes of such limitation, and (4) That the Secretary of Agriculture shall issue regulations prescribing such rules as he determines necessary to prevent the evasion of such limitation”. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make the point of order that the amendment is legislation on an appropriation bill. It provides for new duties on the part of the Secretary of Agriculture, in addition to other legislative provisions.

THE CHAIRMAN:⁽²⁰⁾ Does the gentleman from Kansas desire to be heard on the point of order?

MR. AVERY: Yes, Mr. Chairman.

As I recall it, about 2 years ago right now, in 1959, I think the distinguished gentleman from Texas was in the chair that day; if not the gentleman from Texas presently in the chair, it was one of his Texas colleagues. When I submitted the original amendment to this same section of the appropriation bill, the gentleman from Mississippi raised a point of order against the amendment. After a considerable amount of deliberation, shall I say, the Chairman upheld the amendment as being a further limitation on the administrative costs of the Commodity Credit Corporation. Therefore, the point of order was not sustained.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Kansas offers an amendment which has been reported. The Chair would observe it was probably this chairman who occupied

19. 107 CONG. REC. 9626, 9627, 87th Cong. 1st Sess.

20. Paul J. Kilday (Tex.).

the chair on the occasion the gentleman from Kansas referred to. It was apparently on the 18th of May 1959.

The Chair did not understand the gentleman from Kansas to state that the amendment now pending is in identical language as that which was offered in 1959. . . .

The Chair has the language which was before the Chair in 1959, and will read it:

Amendment offered by Mr. Avery: Page 27, line 19, strike out the period, add a colon and insert: "Further, no funds appropriated in this section shall be used to process Commodity Credit loans which are in excess of \$50,000."

The Chair points out that that language was directly, solely and exclusively directed at the purpose for which funds being appropriated at that time could be used.

The Chair has examined the pending amendment, and while the first sentence of the pending amendment would indicate that it is in the nature of a limitation, it does refer to authorizations. This is the crux of the ruling of the Chair.

The Chair points out that the language of the amendment contains definitions, authorizations, and imposes duties upon an officer of the executive department. It is therefore clearly legislation on an appropriation bill. It is not identical or, in the opinion of the Chair, similar to the amendment offered in 1959.

The Chair is constrained to sustain the point of order.

***Price Support Programs;
Equating Costs to Import
Quotas***

§ 57.4 To a general appropriation bill an amendment re-

quiring that when funds in the bill are used to institute agricultural price support for any commodity the Secretary of the Treasury be notified and that he make certain adjustments on the import duty on such commodity was conceded to be legislation and held not in order.

On May 1, 1952,⁽¹⁾ during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 7314), a point of order was raised against the following amendment:

Amendment offered by Mr. [Wesley A.] D'Ewart [of Montana]: Page 45, line 16, after the word "law": insert the following: "*Provided*, That when any funds contained in this appropriation are used to institute agricultural price support for any commodity, the Secretary of the Treasury shall be notified of such support program and shall make such adjustments in the import duty on such commodity as are necessary so that the duty paid price in United States dollars is not less than the parity price announced by the Secretary of Agriculture for the marketing season of the commodity."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make the point of order against the amendment as legislation on an appropriation bill. I do not differ with the object of the gentleman, but I think that it is legis-

1. 98 CONG. REC. 4743, 4744, 82d Cong. 2d Sess.

lation. However, I will reserve the point of order so that the gentleman may make his presentation. . . .

THE CHAIRMAN:⁽²⁾ Does the gentleman concede the point of order?

MR. D'EWART: I do.

THE CHAIRMAN: The point of order is sustained.

Payments to Feed Grain Producers; Limiting to Percent of Diverted Acreage

§ 57.5 To a bill making appropriations for the Department of Agriculture, an amendment limiting any payments to feed grain producers to 20 percent of the fair market value of acreage diverted under the Soil Conservation and Domestic Allotment Act, was held a proper limitation imposing only incidental additional duties on the executive branch (the requirements as to determination of the fair market value of such acreage being already contained in law).

On May 26, 1965,⁽³⁾ the Committee of the Whole was considering H.R. 8370. At one point the Clerk read as follows:

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Chairman, I offer an amendment.

2. Aime J. Forand (R.I.).

3. 111 CONG. REC. 11656, 11657, 89th Cong. 1st Sess.

The Clerk read as follows:

Page 33, line 24, after the word "hereof", strike the period, insert a colon and the following: "*Provided further:* That none of the funds herein appropriated may be used to formulate or carry out a feed grain program during the period ending June 30, 1966, under which the total amount of payments made to feed grain producers under section 16(h) of the Soil Conservation and Domestic Allotment Act, as amended, and section 105(d) of the Agriculture Act of 1949, as amended, would be in excess of 20 per centum of the fair market value of any acreage diverted under section 16(h) of the Soil Conservation and Domestic Allotment Act, as amended."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I reserve a point of order. . . .

The existing law expires this year, as I understand it. Whether it will be extended or not I do not know. The proponent of the amendment says this extends existing law. That statement of itself means that it is legislation. Quite definitely you cannot extend existing law without its being legislation. On that basis, I respectfully submit that it is legislation on an appropriation bill. . . .

MR. [NEAL] SMITH of Iowa: Mr. Chairman, I would like to point out that the basic legislation determines the limit according to the average yield of the land. This would determine the limit according to the sales value of land, whether that be speculative or productive. And it would cost an additional \$9 million to make these appraisals. This is \$9 million worth of additional duties placed upon the Secretary of Agriculture and does represent legislation upon an appropriation bill. . . .

THE CHAIRMAN:⁽⁴⁾ The Chair is ready to rule. . . .

The Chair has carefully read the amendment offered by the gentleman from Illinois and even though a limitation, as was stated before, on an appropriation bill, may impose additional burdens on the executive branch of the Government; and even though it might be estimated that the cost of those additional burdens may run to any amount, the Chair is of the opinion that the amendment offered by the gentleman from Illinois is, in fact, a limitation on an appropriation bill and therefore overrules the point of order.

Parliamentarian's Note: As indicated in Public Law No. 88-26 (subsection h) the same precise requirements for determining fair market value of acreage diverted during the prior crop year were in law [see 16 U.S.C. §590p(h)].

Prohibiting Commodity Storage Charges Not Determined by Competitive Bidding

§ 57.6 To an agricultural appropriation bill, including funds for the Commodity Credit Corporation, an amendment prohibiting the use of funds therein to pay storage charges on commodities owned by the corporation, when such charges have not been determined by competitive bidding, was held to

4. Eugene J. Keogh (N.Y.).

impose additional duties on the corporation to require competitive bidding and was ruled out as legislation.

On May 26, 1965,⁽⁵⁾ during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 8370), a point of order was raised against the following amendment:

MR. [ROBERT R.] CASEY [of Texas]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Casey: On page 33, immediately before the period at the end of line 2, insert the following: “: *Provided further,* That no part of the funds appropriated by this Act shall be used for the payment of charges for storage of any agriculture commodity belonging to the Commodity Credit Corporation which charges have not been determined by competitive bidding.”

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make a point of order against the amendment.

Mr. Chairman, the amendment, quite patently, would require extra work on the part of the employees of the Department. They would have to make a finding as to what part had been made by competitive bidding and what part had not. Since the present law does not require competitive bidding, it would require different duties from that required under existing law. For that reason, I think the amendment is legislating in an appropriation bill.

5. 111 CONG. REC. 11654, 89th Cong. 1st Sess.

THE CHAIRMAN:⁽⁶⁾ Does the gentleman from Texas [Mr. Casey] desire to be heard on the point of order?

MR. CASEY: Mr. Chairman, I do not mind saying that I consulted with the Parliamentarian and I do not think my argument would be sustained anyway and there is no use in taking the time of the Committee in this regard.

THE CHAIRMAN: Does the gentleman from Texas concede the point of order?

MR. CASEY: No, sir; I do not concede the point of order.

Mr. Chairman, I think this is strictly a limitation on the use of these funds and I ask the Chairman to rule at this point that it is germane.

THE CHAIRMAN: The gentleman from Texas offers an amendment directed to page 33, line 2, which reads as follows: "*Provided further*, That no part of the funds appropriated by this Act shall be used for the payment of charges for storage of any agricultural commodity belonging to the Commodity Credit Corporation which charges have not been determined by competitive bidding," to which amendment the gentleman from Mississippi makes the point of order that this imposes additional substantive duties on the Commodity Credit Corporation, and with that contention this occupant of the chair is in complete agreement and, therefore, sustains the point of order.

Poultry Inspection; Authorizing and Directing

§ 57.7 Language in a general appropriation bill providing that the Department of Agri-

6. Eugene J. Keogh (N.Y.).

culture is "hereby authorized and directed to make such inspection of poultry as it deems essential" was conceded to be legislation and was ruled out on a point of order.

On May 11, 1960,⁽⁷⁾ during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 12117), a point of order was raised against the following provision:

The Clerk read as follows:

Marketing services: For services relating to agricultural marketing and distribution, for carrying out regulatory acts connected therewith, and for administration and coordination of payments to States, \$26,838,000, including not to exceed \$25,000 for employment at rates not to exceed \$50 per diem, except for employment in rate cases at not to exceed \$100 per diem pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (5 U.S.C. 574), as amended by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), in carrying out section 201(a) to 201(d), inclusive, of title II of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291) and section 203(j) of the Agricultural Marketing Act of 1946: *Provided*, That the Department is hereby authorized and directed to make such inspection of poultry products processing plants as it deems essential to the protection of public health and to permit the use of appropriate inspection labels where it determines from such in-

7. 106 CONG. REC. 10032, 86th Cong. 2d Sess.

spection that such plants operate in a manner which protects the public health, and not less than \$500,000 shall be available for this purpose.

MR. [JOHN D.] DINGELL [Jr., of Michigan]: Mr. Chairman, I make a point of order against the language beginning in line 2, page 17, commencing with the word "Provided", right down through the end of that paragraph on page 17, line 9.

This constitutes legislation on an appropriation bill.

MR. [FRED] MARSHALL [of Minnesota]: Mr. Chairman, I make a point of order against the entire paragraph, beginning in line 15, page 16, through line 9 on page 17, on the ground it is legislation on an appropriation bill.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, the committee does not care to oppose the point of order. I do not think there is any question but what points of order lie.

THE CHAIRMAN:⁽⁸⁾ The gentleman from Mississippi concedes both points of order. The Chair sustains the point of order of the gentleman from Minnesota and the entire paragraph is ruled out as legislation.

Soil Conservation Payments; Requiring Pass-through to Sharecroppers

§ 57.8 To a paragraph of an appropriation bill making appropriations for soil conservation payments, an amendment providing that no payment in excess of

8. Paul J. Kilday (Tex.).

\$1,000 shall be paid to any one person or corporation unless at least one-half of the amounts so paid shall be paid to sharecroppers or renters of farms for which payments are made was held to be legislation and not in order, in that, under the guise of a limitation it provided affirmative directions that imposed new duties.

On Mar. 28, 1939,⁽⁹⁾ The Committee of the Whole was considering H.R. 5269, an Agriculture Department appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [Francis H.] Case of South Dakota: Page 89, line 9, after the colon, insert "*Provided further*, That of the funds in this paragraph no payment in excess of \$1,000 shall be paid for any one farm operated by one person: *Provided further*, That no payment in excess of \$1,000 shall be paid to any one person or corporation unless at least one-half of the amounts so paid shall be paid to sharecroppers or renters of farms for which payments are made." . . .

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make the point of order against the amendment proposed by the gentleman from South Dakota that it is legislation under the guise of a limitation. . . .

MR. CASE of South Dakota: Mr. Chairman, this amendment is a limita-

9. 84 CONG. REC. 3427, 3428, 76th Cong. 1st Sess.

tion on payments; and in the present instance one would have to turn from the gentleman from Missouri as chairman of the subcommittee to the gentleman from Missouri as parliamentarian. The Chair will find the following on page 62 of Cannon's Procedure:

As an appropriation bill may deny an appropriation for a purpose authorized by law, so it may by limitation prohibit the use of money for part of the purpose while appropriating for the remainder of it. It may not legislate as to qualifications of recipients, but may specify that no part shall go to recipients lacking certain qualifications.

In this particular instance the qualification is set up for the landlord that he shall give at least half this payment to his sharecropper or renter. Viewed in this light I believe the Chair will find it is a pure limitation.

MR. CANNON of Missouri: Mr. Chairman, the proposed amendment couples with the purported limitation affirmative directions and is legislation in the guise of a limitation.

THE CHAIRMAN:⁽¹⁰⁾ Cannon's Precedents, page 667, volume 7, 1936, section 1672, states:

An amendment may not under guise of limitation provide affirmative directions which impose new duties.

The last part of the pending amendment states:

Unless at least one-half of the amount so paid shall be paid to these croppers or renters of farms for which payments are made.

It is the opinion of the Chair that this requires affirmative action; therefore the point of order is sustained.

10. Wright Patman (Tex.).

Agricultural Stations in Other Countries; Requiring Certification of Adequate Domestic Funding

§ 57.9 To a section of an appropriation bill an amendment proposing that "no money shall be spent on agricultural stations or experiments in other countries until the Secretary of Agriculture certifies that such expenditure is a necessity and that experimental work of a similar nature in the United States is adequately financed," was held to be legislation and not in order.

On Apr. 7, 1949,⁽¹¹⁾ during consideration in the Committee of the Whole of a general appropriation bill (H.R. 4016), a point of order was raised against the following amendment:

MR. [JOHN] PHILLIPS of California: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Phillips of California: Page 20, line 10, after the word "thereon" and the semicolon, insert "*Provided*, That no money shall be spent on agricultural stations or experiments in other countries until the Secretary of Agriculture certifies that such expenditure is a necessity and that experimental work of a similar nature in

11. 95 CONG. REC. 4107, 81st Cong. 1st Sess.

the United States is adequately financed.”

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I make a point of order against the proposed amendment on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN:⁽¹²⁾ Does the gentleman from California desire to be heard on the point of order?

MR. PHILLIPS of California: Mr. Chairman, I contend that it is a limitation upon the expenditure of funds because it requires that the necessity for them and the limitation for them be provided and certified to before the money is expended.

THE CHAIRMAN: Does the gentleman from New York desire further to be heard?

MR. ROONEY: The statement that no money shall be spent is clearly legislation; and it imposes additional duties on the Department, which makes it legislation.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from California [Mr. Phillips] introduces certain language requiring the Secretary of Agriculture to make certain findings. The Chair construes that language to be legislation on an appropriation bill in that it imposes additional duties upon the agency involved. So, the point of order is sustained.

Farm Programs; Directing Secretary How to Administer

§ 57.10 Language in the Agriculture Department appro-

12. James W. Trimble (Ark.).

appropriation bill requiring the Secretary of Agriculture to carry into effect the provisions of the Bankhead-Jones Farm Tenant Act through the Federal Farm Mortgage Corporation and by utilizing through cooperative agreements the personnel and facilities of the federal land banks and the national farm associations was conceded to be legislation on an appropriation bill and held not in order.

On Apr. 19, 1943,⁽¹³⁾ during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 2481), a point of order was raised against the following provision:

Salaries and expenses: To enable the Secretary to carry into effect the provisions of title I of the Bankhead-Jones Farm Tenant Act approved July 22, 1937 (7 U.S.C. 1000-1006), and to reduce and retrench expenditures, said act shall be administered by the Secretary through the Federal Farm Mortgage Corporation of the Farm Credit Administration and by utilizing through cooperative agreements the personnel and facilities of the Federal land banks and the national farm-loan associations, \$500,000 for necessary expenses in connection with the making of loans under title I of this act and the collection of moneys due the

13. 89 CONG. REC. 3595, 78th Cong. 1st Sess.

United States on account of loans heretofore made under the provision of said act, including the employment of persons and means in the District of Columbia and elsewhere, exclusive of printing and binding as authorized by said act.

MR. [HAROLD D.] COOLEY [of North Carolina]: Mr. Chairman, I make the point of order against the paragraph for the reason that it is legislation on an appropriation bill and is not authorized by law.

MR. [MALCOLM C.] TARVER [of Georgia]: Will the gentleman point out what particular parts he feels are legislation?

MR. COOLEY: The entire section, from line 19, on page 89, down to and including line 8, on page 90.

MR. TARVER: So far as the section requires the Secretary to carry out the duties to which reference is made in the paragraph through the Federal Farm Mortgage Administration, of the Farm Credit Administration, and to utilize the personnel and facilities of the Federal land banks, it is legislation, and the committee at the proper time will offer an amendment which will be in conformity with the rules. We concede the point of order.

THE CHAIRMAN:⁽¹⁴⁾ The point of order to the paragraph is conceded and is sustained.

Performance Bonds; Authority to Require of Contractors

§ 57.11 Language in the agriculture appropriation bill permitting the Secretary of

14. William M. Whittington (Miss.).

Agriculture to require bonds from market agencies and dealers under rules he may prescribe, and authorizing the Secretary to suspend registrants if found insolvent, was conceded to be legislation on an appropriation bill and held not in order.

On Apr. 19, 1943,⁽¹⁵⁾ during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 2481), a point of order was raised against the following provision:

The Clerk read as follows:

Packers and Stockyards Act: For carrying out the provisions of the Packers and Stockyards Act, approved August 15, 1921, as amended by the act of August 14, 1935 (7 U.S.C. 181-229), \$350,000: *Provided*, That the Secretary may require reasonable bonds from every market agency and dealer, under such rules and regulations as he may prescribe, to secure the performance of their obligations, and whenever, after due notice and hearing, the Secretary finds any registrant is insolvent or has violated any provisions of said act, he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than 5 days, unless suspended or modified or set aside by the Secretary or a court of competent jurisdiction.

MR. [HAMPTON P.] FULMER [of South Carolina]: Mr. Chairman, I make the

15. 89 CONG. REC. 3586, 78th Cong. 1st Sess.

point of order against the language beginning with the word "*Provided*" in line 17, page 80, down to the bottom of and including line 3 on top of page 81, that it is legislation on an appropriation bill not authorized by law.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, the point of order is conceded.

THE CHAIRMAN:⁽¹⁶⁾ The point of order is sustained.

Distribution of Farming Materials; Requiring Secretary to Adhere to State Laws

§ 57.12 An appropriation for distribution of seeds, fertilizers, or any other farming materials, and providing that the Secretary of Agriculture shall comply with such state laws when applicable to such farming materials under his control, was conceded and held to place additional duties on the Secretary of Agriculture and therefore to comprise legislation on an appropriation bill.

On Apr. 16, 1943,⁽¹⁷⁾ during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 2481), the following point of order was raised:

MR. [CLIFFORD R.] HOPE [of Kansas]: Mr. Chairman, a point of order.

16. William M. Whittington (Miss.).

17. 89 Cong. Rec. 3494, 78th Cong. 1st Sess.

THE CHAIRMAN:⁽¹⁸⁾ The gentleman will state it.

MR. HOPE: Mr. Chairman, I make the point of order that the language beginning in line 23 on page 66 with the words "Provided further," and running down through the word "control" in line 15 on page 67 is legislation on an appropriation bill.

THE CHAIRMAN: The Chair will be glad to hear the gentleman from Kansas on his point of order.

MR. HOPE: Mr. Chairman, this proviso contains this language:

That such amount shall be available for the distribution, through established trade channels and non-governmental agencies, including farmers' cooperative associations, of seeds, fertilizers, lime, trees, or any other farming materials, or any soil-terracing services, and making grants thereof to agricultural producers to aid them in carrying out farming practices approved by the Secretary in the 1943, 1944, and 1945 programs under said act of February 29, 1936, as amended.

It further provides—

for the reimbursement of any Federal, State, or local government agency for fertilizers, seeds, lime, trees, or other farming materials, or any soil-terracing services, furnished by such agency; and for the payment of all expenses necessary in making such grants including all or part of the costs incident to the delivery thereof, and including the payment of inspection fees or taxes for such inspections as may be required under State laws, and the Secretary shall comply with such State inspection laws whenever they are applicable to any such farming materials under his control.

18. William M. Whittington (Miss.).

I submit that all of that language is legislation. It imposes additional duties upon the Secretary. It is not authorized under any existing legislation. It further directs and orders that the Secretary shall comply with State inspection laws whenever they are applicable.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, in order to shorten the debate, may I say to the gentleman that we concede the point of order.

THE CHAIRMAN: The point of order is conceded. The point of order is sustained.

Discretion to Transfer Property

§ 57.13 Language in an appropriation bill permitting the Secretary of Agriculture in his discretion to transfer property and equipment of the Hawaii Experiment Station to the experiment station of the University of Hawaii was conceded to be legislation and held not in order.

On Apr. 15, 1943,⁽¹⁹⁾ during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 2481), a point of order was raised by Mr. Clifford R. Hope, of Kansas, against the provision described above, on grounds that it

19. 89 CONG. REC. 3421, 78th Cong. 1st Sess.

constituted legislation. The following exchange then took place:

THE CHAIRMAN:⁽²⁰⁾ Does the gentleman from Georgia desire to be heard on the point of order?

Mr. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, the point of order is conceded.

THE CHAIRMAN: The point of order is sustained.

Disease Eradication; Requiring Secretary to Cooperate With State Authorities

§ 57.14 Language in an appropriation bill for "determining and applying such methods of eradication . . . of the disease . . . known as 'citrus canker' as in the judgment of the Secretary of Agriculture may be necessary, including cooperation with such authorities of the States concerned . . . as he may deem necessary," was conceded and held to impose additional duties on the Secretary of Agriculture and therefore to comprise legislation on an appropriation bill.

On Mar. 24, 1939,⁽¹⁾ the Committee of the Whole was considering H.R. 5269, an Agriculture Department appropriation bill.

20. William M. Whittington (Miss.).

1. 84 CONG. REC. 3272, 76th Cong. 1st Sess.

The following proceedings took place:

Citrus canker eradication: For determining and applying such methods of eradication or control of the disease of citrus trees known as "citrus canker" as in the judgment of the Secretary of Agriculture may be necessary, including cooperation with such authorities of the States concerned, organizations of growers, or individuals, as he may deem necessary to accomplish such purposes, §13,485: *Provided*, That no part of the money herein appropriated shall be used to pay the cost or value of trees or other property injured or destroyed.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph on page 54, lines 5 to 14, and call attention to the fact that this paragraph delegates additional duties to the Secretary of Agriculture. I call the Chair's particular attention to the language in the first part of the paragraph. . . .

This clearly is a delegation of additional authority to the Secretary and requires additional duties of the Secretary of Agriculture.

MR. [CLARENCE] CANNON of Missouri: What is the point of order, Mr. Chairman?

MR. TABER: That it delegates additional duties to the Secretary of Agriculture and requires additional responsibilities of him, and thus is legislation on an appropriation bill.

MR. CANNON of Missouri: Of course, Mr. Chairman, the point of order is well taken.

THE CHAIRMAN:⁽²⁾ The point of order is sustained.

2. Fritz G. Lanham (Tex.).

Cotton Allotment Acres; Requiring New Conditions for Eligibility

§ 57.15 An amendment to a general appropriation bill prohibiting the use of funds therein for a program under which farmers who plant a nonconserving crop on cotton allotment acres are eligible for federal set-aside payments was ruled out as legislation requiring federal officials to make new determinations of eligibility not required to be made by existing law.

On June 16, 1976,⁽³⁾ during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 14237), an amendment was offered against which a point of order was sustained, as follows:

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Findley: Page 17, line 22, strike the period after the word "regulations" and insert the following: "*Provided further*, That none of the funds appropriated or made available under this Act shall be used to formulate or carry out a program for the 1977 crop year under which producers who plant a nonconserving crop on

3. 122 CONG. REC. 18666, 18667, 94th Cong. 2d Sess.

cotton allotment acres are eligible for payments under the second sentence of Section 103(e)(2) of the Agricultural Act of 1949 as amended.”

MR. [JAMIE L.] Whitten [of Mississippi]: Mr. Chairman, I reserve a point of order on the amendment. . . .

Mr. Chairman, I desire to be heard on the point of order.

The amendment provides, and may I read it:

That none of the funds appropriated or made available under this Act shall be used to formulate or carry out a program for the 1977 crop year under which producers who plant a nonconserving crop on cotton allotment acres. . . .

There is nothing in existing law that requires the Secretary of Agriculture to determine which farmers plant a nonconserving crop on cotton allotment land. To carry out that amendment would certainly impose on the Secretary an additional duty to determine whether or not that was true. Since there seems to be a mixture of argument pro and con, as well as directed to the matter before us, I would like to call attention to the fact that the crop in this instance as discussed by the proponent is soybeans. Had we not provided those soybeans, the executive branch probably would have kept the embargo on exports longer than it did. . . .

I repeat again, Mr. Chairman, that there is no way in the world that the Secretary of Agriculture can determine which producers plant a nonconserving crop on cotton allotment acres without doing something he does not do now and is not required to do now. That brings it where it is clearly subject to a point of order. . . .

MR. FINDLEY: . . . Mr. Chairman, this amendment is parallel in all points to a series of amendments that I have offered over the years which have been challenged in each case by the gentleman from Mississippi and in each case unsuccessfully. In a sense perhaps it is pointless to repeat the arguments that have been made effectively in past years. It is retrenchment to a withholding of funds. It clearly is within the Holman Rule.

The question was raised as to whether it imposes a new duty upon the Secretary. While the key words, of course, are “formulate or carry out a program,” the formulation or carrying out of a program to which the limitation applies would not impose a new duty upon the Secretary because everyone who seeks to get relief under the Disaster Relief program must fill out an application form. It would, of course, therefore, be a very simple matter for this form to require the applicant to state whether or not a nonconserving crop has been planted, if that would indeed be a point in question before the Chair; but there have been at least 15 other almost identical amendments that have been successfully sustained by the Chair in the past, and I feel confident that the Chair will sustain the point of order.

THE CHAIRMAN:⁽⁴⁾ Is it the point of the gentleman from Illinois that the determinations called for in the last 4 lines of the amendment are already carried out under existing law? Is that the contention?

MR. WHITTEN: They are not.

MR. FINDLEY: Mr. Chairman, in order to carry out the disaster relief

4. Sam Gibbons (Fla.).

provisions of the existing law, a farmer must make application, and on this application he must state certain things and certify certain things. Therefore it is my opinion that this imposes no additional duty upon the administrator of this act for the determination to be made that producers are not planting a nonconserving crop.

THE CHAIRMAN: Could the gentleman elaborate on that specific point, about whether or not in order to qualify the farmer is required now under existing law to make application?

MR. FINDLEY: Absolutely that is an essential step that applies equally to all farmers who seek relief under the disaster relief provisions of the law.

MR. WHITTEN: Mr. Chairman, in my opinion the gentleman in the well has acknowledged that additional duties are required. There is nothing in my knowledge that in the department they have anything which shows that certain crops were planted. They do not have any such record. If this amendment were adopted they would have to start keeping such records.

As I understand the gentleman he said there is nothing to keep them from bringing in such a certificate. If these were brought in, the department would have to go over them and determine this, that and the other. There have been a few times in history when they accepted such papers and there was one time when they had certificates certifying more crops than were ever planted.

As I understood the gentleman, he acknowledges that an additional certificate would have to be supplied with additional information, and from that

the Secretary would have to make a new determination, one he does not now have to make.

THE CHAIRMAN: The Chair is prepared to rule.

The proponent of the amendment carries the burden of proof to show that a new duty is not required. Based on that the Chair is going to rule that the gentleman from Illinois has not shown that the Department of Agriculture would not be required by his amendment to make new determinations of eligibility under the cotton allotment program, or institute new recordkeeping procedures, and the Chair sustains the point of order.

Price Support Loans; Requiring Minimum Interest Rates

§ 57.16 An amendment to a general appropriation bill prohibiting the use of funds therein for loans not repayable at a certain minimum interest rate or interest on which at time of default is payable without regard to value of collateral was held to require new determinations not required by law as to the nature of interest on loans and was ruled out as legislation in violation of Rule XXI clause 2.

On July 29, 1982,⁽⁵⁾ during consideration in the Committee of the Whole of H.R. 6863 (supplemental

5. 128 CONG. REC. 18624, 97th Cong. 2d Sess.

appropriation bill), a point of order against the following amendment was sustained:

The Clerk read as follows:

Amendment offered by Mr. [Peter A.] Peyser [of New York]: Page 2, line 15, immediately before the period insert the following: "*Provided further*, That no funds appropriated or otherwise made available under this chapter shall be available for price support loans for agricultural commodities for which the interest rate is not guaranteed payable at a rate of not less than 9 percent per year and for which the aggregate interest owing at the time of default is payable without regard to the value of the collateral." . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I will insist on my point of order.

THE CHAIRMAN:⁽⁶⁾ The gentleman will state his point of order.

MR. WHITTEN: Mr. Chairman, as I mentioned earlier, the Commodity Credit Corporation was set up as a corporation and given the right and the power to sell and to buy and do all those kinds of things a corporation would. It was set up as a corporation for that purpose, to do all the things an average corporation can do.

I respectfully submit that the language the gentleman from New York [Mr. Peyser] has offered is not in that charter. Those decisions are left to the officers of the corporation.

I respectfully submit that the amendment provided that no funds shall be used for which an interest rate of not less than 9 percent is charged on default of its own commodities. That

gives affirmative direction and is, therefore, legislation since it applies to the corporation.

The amendment also requires the Department to determine—and I quote to you—"the aggregate interest owing at the time of default." That is not required in the law. That determination is not required, and, therefore, that provision is legislation.

The amendment also requires that the value of the commodity be determined at the time of default. That is not in the charter and required under law. Commodity value is determined at the time of sale, not at the time of default. That requirement is not required by law and would also be legislation.

Therefore, Mr. Chairman, I ask that this point of order be sustained. . . .

MR. PEYSER: . . . The charter of the Commodity Credit Corporation does provide for an interest payment. It provides for an interest payment, and all I am doing is stipulating that the interest payment shall not be less than a certain percent. So I do not believe I am changing anything in the charter that is not already in the charter.

I am simply stipulating a figure and a word that says, "guaranteed," because in the present situation, with the interest rate that they call for in the Corporation, there is nothing there that says they have to pay it, and they do not. Not paying it is costing \$1 billion. So, Mr. Chairman, I feel that I am not at all violating the charter or adding to the charter. I am simply establishing a rate. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Mississippi [Mr. Whitten] has made a point of order

6. George E. Brown, Jr. (Calif.).

against the amendment essentially on the grounds that it requires additional determinations to be made by the Commodity Credit Corporation. While it is drafted as a limitation, the amendment does require the Commodity Credit Corporation to undertake computations and additional duties not now demonstrably required by law. The amendment would require procedures to be put into effect that are not now required.

The Chair, therefore, sustains the point of order.

Prohibiting Disposal of Surplus Agricultural Land

§ 57.17 An amendment to a general appropriation bill prohibiting the use of funds therein for the General Services Administration to dispose of U.S.-owned agricultural land declared surplus was ruled out as legislation requiring the finding that surplus U.S.-owned lands are "agricultural", where the law cited by the proponent of the amendment defining that term was not applicable to the GSA.

On Aug. 20, 1980,⁽⁷⁾ during consideration in the Committee of the Whole of H.R. 7593 (Department of Treasury and Postal Service appropriation bill), a point of order

7. 126 CONG. REC. 22156, 22158, 96th Cong. 2d Sess.

was sustained against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [Donald J.] Pease [of Ohio]: Page 27, after line 17, insert the following new section:

Sec. 4. None of the funds appropriated by this title may be used by the General Services Administration before January 1, 1981, to dispose of any United States owned agricultural land which is determined by the Administrator of the General Services Administration to be surplus. . . .

Mr. JOHN L. BURTON [of California]: Mr. Chairman, I insist on my point of order, that it is legislation on an appropriation bill. As the distinguished gentleman from Ohio said, if we want to change policy, it explicitly places new duties on the GSA to have them make investigations, compile evidence, make a determination, is this agricultural land or not, as discussed in the colloquy between the gentleman from Vermont and the gentleman from Ohio.

There is no definition of agricultural land as it goes in the hierarchy of how the GSA has to do business. This would change their whole way of doing business.

For instance, under the present law there are airports, and airports have a certain top priority. If, in fact, part of the land around that airport was used for such things as hay cropping, they would then have to make a determination at each and every airport, is there hay cropping here before we can turn this over to a local community for a dollar? . . .

Mr. PEASE: . . . We have had any number of amendments similar to this

before us which have been upheld by the Chair. This does not impose new duties on the Administrator of GSA. It merely prohibits him from using any of the funds in this bill to dispose of U.S. owned agricultural land.

There is a definition in the statute in the Agricultural Foreign Investment Disclosure Act of agricultural land.

Mr. Chairman, in the Agricultural Foreign Investment Disclosure Act of 1979 there is a definition of agricultural land. It says under section 3508, definitions:

For the purposes of this chapter, the term "agricultural land" means any land located in any one or more States and used for agricultural, forestry or timber production purposes.

In other words, it is not sufficient that it would be suitable for, it must be used or in the process of being used for agricultural purposes under the definition in the existing law.

MR. JOHN L. BURTON: If I may, Mr. Chairman, that is in the law. The Administrator of GSA would have to look through every piece of property in its jurisdiction, in its inventory and then see if it fits the statute of law. It is not under their law, it is defined and it is in another code section, and they would have to go through every piece of surplus property to make this determination. That is certainly an added burden on them.

THE CHAIRMAN:⁽⁸⁾ The Chair is prepared to rule. The Chair is of the opinion . . . that there is nothing in the Federal Property and Administration Services Act which would confer au-

thority on GSA to determine whether certain U.S. owned lands are agricultural lands, and the Chair would sustain the point of order.

The statute cited by the gentleman from Ohio contains a definition under title 7, United States Code, with respect to agricultural land owned by foreigners and reported to the Secretary of Agriculture, and not to federally owned land.

Parliamentarian's Note: Where terms used in a purported limitation are challenged because of their ambiguity or indefiniteness, the burden is on the proponent of such intended limitation to show that no new duties would arise in the course of applying the terms thereof.

§ 58. Commerce

Authorization for Sales of Scientific Reports

§ 58.1 An amendment to the Departments of State, Justice, Commerce, and the Judiciary appropriation bill authorizing the Secretary of Commerce upon request of any organization or individual to reproduce any scientific or technical report and to sell such reproduction at a cost to be determined by the Secretary was held to be legislation on an appropriation bill and not in order.

8. Richardson Preyer (N.C.).