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CHAPTER 26

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Unauthorized Appropriations; Legislation on Appropriation Bills

A. INTRODUCTORY MATTERS

§ 1. Generally; Scope

A House rule prohibits the inclusion in general appropriation bills of "unauthorized" appropriations, except for works in progress, and prohibits provisions "changing existing law," usually referred to as "legislation on an appropriation bill," except for provisions that retrench expenditures under certain prescribed conditions.[1]

The statement of the rule under which most of the precedents in this chapter were decided is as follows:[2]

> No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill. . . .

On Jan. 3, 1981, the 98th Congress restructured and amended the clause as follows: paragraph (a) retained the prohibition against unauthorized appropriations in general appropriation bills and amendments thereto except in continuation of works in progress; paragraph (b) narrowed the "Holman Rule" exception from the prohibition against legislation to cover only retrenchments reducing amounts of money included in the bill as reported, and permitted legislative committees with proper jurisdiction to recommend such retrenchments to the Appro-

1. Rule XXI clause 2, *House Rules and Manual* § 834 (1985). The "retrenchment" provision is known as the Holman rule, and is discussed in §§ 4, 5, infra.
2. See Rule XXI clause 2, *House Rules and Manual* § 834 (1973). This chapter discusses significant recent rulings through 1984. For earlier treatment, see 4 Hinds' Precedents §§ 3701–4018; 7 Cannon's Precedents §§ 1125–1570, 1579–1720.

priations Committee for discretionary inclusion in the reported bill; paragraph (c) retained the prohibition against amendments changing existing law but permitted limitation amendments during the reading of the bill by paragraph only if specifically authorized by existing law for the period of the limitation; and paragraph (d) provided a new procedure for consideration of retrenchment and other limitation amendments only when reading of a general appropriation bill has been completed and only if the Committee of the Whole does not adopt a motion to rise and report the bill back to the House.[3]

The broad requirement that appropriations be "authorized" by prior legislation is discussed in another chapter.[4] In practice, the concepts "unauthorized appropriations" and "legislation on general appropriation bills" have frequently been used almost interchangeably as grounds for objection in making points of order pursuant to Rule XXI clause 2. It can, of course, readily be seen that an appropriation sought to be made without prior authorization has, in a sense, the effect of legislation, particularly in view of rulings of long standing[5] that a "proposition changing existing law" may be construed to include the enactment of a law where none exists. The two concepts are treated separately in this chapter, however. For example, it will be seen that the objection that an appropriation is "unauthorized" is frequently employed where the general purpose of the appropriation has been authorized, but the amount sought to be appropriated allegedly exceeds the amount authorized.[6]

Frequently, rulings on points of order will turn on whether a proposition is in fact one of legislation, or whether it is merely a permissible "limitation" on the funds sought to be appropriated. Such limitations may validly be imposed in certain circumstances, where the effect is not to directly change existing law. Thus, just as the House may decline to appropriate for a purpose authorized by law, it may by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it.[7] The lan-

3. See Rule XXI clause 2, *House Rules and Manual* § 834 (1983).

4. See Ch. 25, supra, discussing general principles applicable to appropriation bills and the reporting and consideration thereof.

5. See 4 Hinds' Precedents §§ 3812, 3813.

6. See, for example, § 21, infra.

7. See 4 Hinds' Precedents § 3936; 7 Cannon's Precedents § 1595.

guage of the limitation may provide that no part of the appropriation under consideration shall be used for a certain designated purpose.[8]

Such limitations must not be legislative in character; for example, they must not give affirmative directions, impose new duties upon executive officers, or by their terms restrict executive discretion to such a degree as to constitute a change in policy rather than a matter of administrative detail. A separate division in this chapter[9] discusses those instances in which the Chair, usually in response to points of order based on Rule XXI clause 2, has held that the proposition in question was a permissible limitation on the use of funds.[10]

8. 4 Hinds' Precedents §§ 3917–3926; 7 Cannon's Precedents § 1580.

9. See §§ 64–79, infra.

10. A limitation may also be imposed on the total amount appropriated by a bill. See § 80, infra. Pursuant to § 401(a) of the Congressional Budget Act of 1974 (Pub. L. No. 93–344), legislative bills authorizing contract or borrowing spending authority must provide that such authority is available only to the extent or in such amounts provided in appropriations acts. Thus, a properly drafted limitation on new spending authority may be included in a general appropriation bill if specifically required by the act containing that contract or borrowing authority.

The rule against unauthorized appropriations and legislation on general appropriation bills is one of long standing. Its purpose has been to prevent delay of appropriation bills because of contention over propositions of legislation while at the same time to require prior consideration and enactment of authorizing legislation reported by legislative committees with legislative and oversight jurisdiction over the policies and programs which form the basis for expenditure of government funds.

It should be emphasized that the rule applies only to "general" appropriation bills. The broad question as to when a bill may be considered a "general" appropriation bill, and when not, is discussed in another chapter.[11]

Note: The rulings cited in this chapter are intended to illustrate the application of the rule requiring appropriations to be based on prior authorization. No attempt has been made to indicate whether measures similar to those ruled upon, if offered today, would in fact be authorized under present laws.

"General" Appropriation Bills

§ 1.1 Restrictions imposed by Rule XXI clause 2 apply only

11. See Ch. 25, supra.

to general appropriation bills.

On May 21, 1937,[12] there was under consideration in the Committee of the Whole a joint resolution (H.J. Res. 361) providing for appropriations "to continue to provide relief and work relief on useful public projects," including projects previously approved for the Works Progress Administration. The funds appropriated were to be used "in the discretion of and under the direction of the President." During consideration of the joint resolution, a point of order was raised against the following amendment, and proceedings ensued as indicated below:

> Page 3, after line 18, insert the following: "The funds allocated hereunder to the Works Progress Administration shall be so apportioned and distributed over the 12 months of the fiscal year ending June 30, 1938, and shall be so administered during such fiscal year as to constitute the total amount that will be furnished during such fiscal year through such agency for relief purposes." . . .
>
> MR. PARSONS: I make the point of order that the amendment is not in order because it is legislation on an appropriation bill.
>
> THE CHAIRMAN:[13] The Chair is ready to rule. The bill in question is not a general appropriation bill, and therefore clause 2 of Rule XXI does not apply. The Chair overrules the point of order.

Continuing Appropriations

§ 1.2 Parliamentarian's Note: The rule against legislation in appropriation bills is limited to general appropriation bills; thus, a joint resolution continuing appropriations for government agencies pending enactment of the regular appropriation bills, which is not a "general appropriation bill" as it does not provide appropriations on an annual basis, is not subject to the prohibitions of Rule XXI clause 2 against legislative language.

On Sept. 21, 1967,[14] The following proceedings occurred in the House:

> MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I ask unanimous consent

12. 81 CONG. REC. 4936, 75th Cong. 1st Sess. See also 84 Cong. Rec. 7345, 7365, 7366, 76th Cong. 1st Sess., June 16, 1939 (proceedings relating to H.J. Res. 326, the work relief and public works appropriation bill and a point of order raised by Mr. Claude V. Parsons [Ill.]).

For further discussion of the distinction between "general" appropriation bills and those not falling within that category, see Ch. 25, supra.

13. John J. O'Connor (N.Y.).

14. 113 CONG. REC. 26370, 90th Cong. 1st Sess.

that it may be in order on Wednesday, September 27, or any day thereafter, for the House to consider a joint resolution making continuing appropriations.

THE SPEAKER:[15] Is there objection to the request of the gentleman from Texas?

MR. [FRANK T.] BOW [of Ohio]: Mr. Speaker, reserving the right to object, I wish to address a parliamentary inquiry to the Chair.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. BOW: Mr. Speaker, the parliamentary inquiry is this: Is a continuing resolution subject to amendment when it is brought onto the floor of the House, if the amendment is germane?

THE SPEAKER: The Chair will state that any germane amendment will be in order. It would have to be a germane amendment.

MR. BOW: I thank the Speaker, and I withdraw my reservation of object.

THE SPEAKER: Is there objection to the request of the gentleman from Texas? . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, further reserving the right to object, may I ask the gentleman from Texas if this is the second, third, fourth, or fifth continuing resolution?

MR. MAHON: Mr. Speaker, this is the third continuing resolution to be considered by the House this year.

I would also say in this case, as in former cases, that the continuing resolution would be considered in the House under the 5-minute rule, and I assume any relevant amendment could be offered.

MR. GROSS: This would be considered in the House under the 5-minute rule, and any amendment that is germane could be offered?

MR. MAHON: We have considered them heretofore under the 5-minute rule and that would be my intention in this case. . . .

MR. GROSS: Mr. Speaker, in view of the fact that the gentleman says the 5-minute rule will prevail and that any germane amendments will be in order to the continuing resolution, I withdraw my reservation of objection.

THE SPEAKER: Is there objection to the request of the gentleman from Texas [Mr. Mahon]?

There was no objection.[16]

Supplemental Appropriations

§ 1.3 A supplemental appropriation joint resolution containing additional funds for two agencies for the balance of the fiscal year was held not to be a "general" appropriation bill within the meaning of the rule prohibiting appropriations in general appropriation bills for unauthorized expenditures.

On Apr. 12, 1973,[17] Mr. George H. Mahon, of Texas, called up for

15. John W. McCormack (Mass.).

16. *Parliamentarian's Note:* Had this been a general appropriation bill, it would have been called up as a privileged bill under Rule XI clause 22 (now clause 4), rather than by unanimous consent. See Ch. 25, supra, for further discussion of the privileged nature of general appropriation bills.

17. 119 CONG. REC. 12191, 93d Cong. 1st Sess. Permission for consideration of

consideration in the House as in Committee of the Whole a joint resolution (H.J. Res. 496) making supplemental appropriations for the Civil Aeronautics Board and the Veterans' Administration for fiscal year 1973.

Mr. Silvio O. Conte, of Massachusetts, raised a point of order against the appropriation for the Civil Aeronautics Board, and proceedings ensued as indicated below:

> MR. CONTE: Mr. Speaker, I raise a point of order in regard to the payments to air carriers for an additional amount for "payments to air carriers" in the amount of $26,800,000, to remain available until expended.
>
> The point of order is that it exceeds the authority to fix rates as set by the Congress under section 406, 72 statute 763, as amended by 76 statute 145, 80 statute 942, and 49 U.S.C. 1376.
>
> The law states:
>
> > The Board is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft.
>
> Later on, in section (b) of the same authority to fix rates, the rate may be determined under (3):
>
> > The need of each such air carrier (other than a supplemental air carrier) for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier . . . .
>
> Therefore, Mr. Speaker, I raise the point of order that this appropriation exceeds the authorization as passed by the Congress and signed into law by the President. . . .
>
> THE SPEAKER:[18] The Chair is ready to rule.
>
> The pending House joint resolution is not a general appropriation bill. The point of order which the gentleman has made does not apply to this pending legislation.
>
> The Chair, therefore, overrules the point of order.

Parliamentarian's Note: This bill, containing as it did appropriations for two agencies for the remainder of the fiscal year, would have qualified as a "general appropriation bill" under the precedents. However, the Committee on Appropriations filed the bill under the impression it was not a general bill, and since no points of order were reserved, none could have been pressed in Committee of the Whole.

Legislation in Motion to Recommit

§ 1.4 If any portion of a motion to recommit with instruc-

this bill was granted on Apr. 10, 1973. The bill was filed on Apr. 11, 1973, pursuant to a unanimous-consent agreement to permit filing after adjournment. No points of order against the bill were reserved, either at the time of filing or at the time permission was granted for consideration of the bill.

18. Carl Albert (Okla.).

tions constitutes legislation on an appropriation bill, the entire motion is out of order.

On Sept. 1, 1976,[19] During consideration in the House of the legislative branch appropriation bill (H.R. 14238), a point of order was raised and sustained against a motion to recommit as indicated below:

The Clerk read as follows:

Mr. [R. Lawrence] Coughlin [of Pennsylvania] moves to recommit the bill, H.R. 14238, to the Committee on Appropriations, with instructions to that Committee to report the bill back to the House forthwith, with the following amendments: On page 7, after line 24, insert the following new section: . . .

"Expenditure of any appropriation contained in this Act, disbursed on behalf of any Member or Committee of the House of Representatives, shall be limited to those funds paid against a voucher, signed and approved by a Member of the House of Representatives, stating under penalty of perjury, that the voucher is for official expenses as authorized by law: *Provided further,* That any Member of the House of Representatives who willfully makes and subscribes to any such voucher which contains a written declaration that it is made under the penalties of perjury and which he does not believe at the time to be true and correct in every material matter, shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $2,000 or imprisoned for not more than five years, or both.". . .

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, I make a point of order against the motion to recommit. . . .

Mr. Speaker, the motion to recommit falls in violation of the rules against legislation in an appropriation bill. Under the rules of the House, Mr. Speaker, a motion to recommit is subject to the same germaneness tests as any other amendment to a piece of legislation.

Mr. Speaker, I therefore make a point of order against the motion on the grounds that it constitutes an attempt to legislate in an appropriation bill. . . .

On page 3, there is a requirement that any Member who makes a willful statement subscribing any voucher shall be guilty of the penalties of perjury.

This adds essentially a new amendment to the Criminal Code, which most properly can be found in title 18 of the United States Code, and it imposes further, Mr. Speaker, a requirement that such act shall constitute a felony which will be punishable by not more than $2,000 or subject to imprisonment of not more than 5 years. . . .

MR. COUGHLIN Mr. Speaker, I rise in opposition to the point of order that has been raised. . . .

Mr. Speaker, with respect to the point of order addressed to the execution of vouchers under penalties of perjury, that does not impose a significant additional duty in compliance with the facts that those vouchers must already be executed by the Members certifying that they are for official expenses. This motion says they would be executed under penalty of perjury.

19. 122 CONG. REC. 28883, 28884, 94th Cong. 2d Sess. The Clerk read as follows:

The additional amendment would concede the point of order as it applies to the second paragraph on page 3 of the motion, but I think it would be beneficial to the Members to have that explanation there; and I would hope that the point of order would be withdrawn as to that point. . . .

THE SPEAKER:[20] The Chair is prepared to rule. The Chair is going to sustain the point of order. The gentleman from Pennsylvania has conceded one portion of the point of order, and with that the entire motion to recommit is subject to a point of order.

Procedure for Offering Limitations

§ 1.5 When a general appropriation bill has been read, or considered as read, for amendment in its entirety, the Chair (after entertaining points of order) first entertains amendments which are not prohibited by Rule XXI clause 2(c), and then recognizes for amendments proposing limitations not contained or authorized in existing law pursuant to Rule XXI clause 2(d), subject to the preferential motion that the Committee of the Whole rise and report the bill to the House with such amendments as may have been agreed to.

20. Carl Albert (Okla.).

On Oct. 27, 1983,[1] The Committee of the Whole had under consideration the Treasury Department and Postal Service appropriation bill (H.R. 4139), when the following proceedings occurred:

MR. [CHRISTOPHER H.] SMITH of New Jersey: Mr. Chairman, would it be in order at this time to offer a change in the language that would not be considered under the House rules to be legislating on an appropriations bill?

THE CHAIRMAN:[2] The Chair will first entertain any amendment to the bill which is not prohibited by clause 2(c), rule XXI, and will then entertain amendments proposing limitations pursuant to clause 2(d), rule XXI.

Mr. Smith of New Jersey: Mr. Chairman, I offer an amendment.

MR. [BRUCE A.] MORRISON of Connecticut: Mr. Chairman, I reserve a point of order against the amendment.

THE CHAIRMAN: The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. Smith of New Jersey: On page 49, immediately after line 2, add the following new section:

"Sec. 618. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefit program which provides any benefits or coverages for abortions, under such negotiated plans after the last day of the contracts currently in force."

1. 129 CONG. REC. —, 98th Cong. 1st Sess.
2. Philip R. Sharp (Ind.).

MR. MORRISON of Connecticut: Mr. Chairman, I would like to be heard on my point of order.

THE CHAIRMAN: The Chair will hear the gentleman's point of order.

MR. MORRISON of Connecticut: Mr. Chairman, my point of order is that this amendment constitutes a limitation on an appropriation and cannot be considered by the House prior to the consideration of a motion by the Committee to rise.

THE CHAIRMAN: The Chair must indicate to the gentleman that no such preferential motion has yet been made.

The gentleman is correct that a motion that the Committee rise and report the bill to the House with such amendments as may have been adopted takes precedence over an amendment proposing a limitation.

Motion to Rise and Report With Recommendation For Recommittal

§ 1.6 Pursuant to Rule XXI clause 2, as adopted in the 98th Congress, a motion that the Committee of the Whole rise and report a general appropriation bill to the House with such amendments as may have been adopted takes precedence over an amendment proposing a limitation not contained or authorized in existing law, after the bill has been read for amendment in its entirety; accordingly a motion that the Committee rise and report the bill to the House with the recommendation that it be recommitted, with instructions to the committee to report the bill back to the House (whether or not forthwith) with an amendment proposing such a limitation, does not take precedence of the motion to rise and report the bill to the House with such amendments as may have been adopted.

The following motions were made on Sept. 19, 1983,[3] during consideration of H.R. 3222 (Departments of Commerce, State, Justice, and the Judiciary appropriations for fiscal 1984):

The Clerk read as follows:

Mr. [Neal] Smith of Iowa moves that the Committee do now rise and report the bill to the House with sundry amendments with the recommendation that the amendments be agreed to and that the bill as amended do pass.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I have a preferential motion at the desk.

THE CHAIRMAN:[4] The Clerk will report the preferential motion.

The Clerk read as follows:

Mr. Walker moves that the Committee do now rise and report the bill to the House with the recommendation that the bill, as

3. 129 CONG. REC. —, 98th Cong. 1st Sess.

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

amended, be recommitted to the Committee on Appropriations with instructions that the committee report the bill, as amended, back to the House with the following amendment:

At the end of title II, add the following new section:

"None of the funds appropriated under this title shall be used to prevent or in any way prohibit the implementation of programs of voluntary school prayer and meditation in the public schools."

Mr. Smith made a point of order against the preferential motion on the ground that the motion violated clause 2 of Rule XXI.

The effect of the Walker motion would have been to reverse the precedence contemplated by Rule XXI clause 2(d) by allowing a vote on a limitation amendment before the motion to rise and report. Accordingly, the Chair indicated that, although a motion that the Committee of the Whole rise and report a bill to the House with the recommendation that the bill be recommitted is preferential to a motion to rise and report where a bill has been read in full under the general five-minute rule of the House,[5] instructions in a recommittal motion may not propose an amendment which would not be in order. The Chair applied the principle that it is not in order to do indirectly (by a motion to recommit with instructions to report a particular amendment back to the House) that which may not be done directly under the rules of the House by way of amendment.

On appeal, the Chair's decision was sustained by a voice vote.

Legislative Language in Prior Appropriation Acts

§ 1.7 The fact that legislative language may have been included in appropriation acts in prior years applicable to funds in those laws does not permit the inclusion in a general appropriation bill of similar language requiring officials to make determinations not otherwise required by law for the fiscal year in question.

The ruling of the Chair on Sept. 22, 1983,[6] as that a provision in a general appropriation bill prohibiting the use of funds therein to perform abortions except where the life of the mother would be endangered if the fetus were carried to term, and providing that the several states shall remain free not to fund abortions to the extent they deem appropriate, is legislation requiring federal officials to make determinations and judgments not required by law, not-

5. 8 Cannon's Precedents Sec. 2329.

6. 129 CONG. REC. —, 98th Cong. 1st Sess.

withstanding the inclusion in prior year appropriation bills of similar legislation applicable to funds in prior years. The proceedings are discussed in § 52.44, infra.

§ 2. Points of Order; Timeliness

As all bills making or authorizing appropriations require consideration in Committee of the Whole, it follows that the enforcement of Rule XXI clause 2 must ordinarily occur during consideration in Committee of the Whole, where the Chair, on the raising of a point of order, may rule out any portion of the bill in conflict with the rule. No report of parts of the bill thus ruled out is made to the House. It is the practice, therefore, for some Member to reserve points of order when a general appropriation bill is referred to Committee of the Whole, in order that portions in violation of the rule may be eliminated in the Committee. On one occasion where points of order were not reserved against an appropriation bill when it was reported to the House and referred to the Committee of the Whole, points of order in the Committee of the Whole against a proposition in violation of this clause were overruled, on the ground that the Chairman of the Committee of the Whole lacked authority to pass upon the question.[7]

General appropriation bills are read "scientifically" only by paragraph headings and appropriation amounts, and points of order against a paragraph must be made before an amendment is offered thereto or before the Clerk reads the next paragraph heading and amount. Where the bill is considered as having been read and open to amendment by unanimous consent, points of order against provisions in the bill must be made before amendments are offered, and cannot be reserved pending subsequent action on amendments.[8]

Reservation of Points of Order

§ 2.1 Since points of order had not been reserved on an appropriation bill when it was reported to the House and referred to the Committee of the Whole, points of order against a proposition in violation of Rule XXI clause 2 were overruled on the ground that the Chairman lacked authority to pass upon the question.

7. See § 2.1, infra.
8. See the discussion in *House Rules and Manual* § 835 (1983).

On Apr. 8, 1943, the Clerk read a provision of a bill containing legislative and judiciary appropriations for 1944,[9] as follows:[10]

> Salaries of clerks of courts: For salaries of clerks of United States circuit courts of appeals and United States district courts, their deputies, and other assistants, $2,542,900: *Provided*, That the positions of deputy clerk of the United States district court at Springfield, Mass., Cumberland, Md. . . . and Pueblo, Colo., are hereby abolished and such provisions of law as require offices of clerks of courts to be maintained at such places are hereby repealed.

The following points of order were then made:[11]

> MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Chairman, I make the point of order that the material contained in line 20, page 55, down to the end of the paragraph on page 56, line 11, is legislation on an appropriation bill.
>
> MR. [JOHN J.] COCHRAN [of Missouri]: Mr. Chairman, I make the point of order that there was no reservation made when this bill was introduced with reference to points of order, and the Record will bear me out. Therefore a point of order against anything in the bill now is not in order.
>
> The Chairman[12] subsequently ruled as follows:[13]

> The Chair is prepared to rule, if there is no withdrawal of the points of order.
>
> In this connection the Chair feels that there is a duty upon all Members to read the rules, which are published. This is not just mere custom, as the Chair sees it.
>
> The Journal discloses that there were no points of order reserved on the pending bill when it was reported to the House on April 6, 1943.
>
> The Chair has been very deeply impressed with the decisions on this question which run back to 1837, particularly an opinion expressed by Chairman Albert J. Hopkins, of Illinois, on March 31, 1896—Hinds' Precedents, volume V, section 6923—in which it was stated:
>
> > In determining this question the Chair thinks it is important to take into consideration the organization and power of the Committee of the Whole, which is simply to transact such business as is referred to it by the House. Now, the House referred the bill under consideration to this Committee as an entirety, with directions to consider it. The objection raised by the gentleman from North Dakota would, in effect, cause the Chair to take from the Committee the consideration of part of this bill, which has been committed to it by the House. The Committee has the power to change or modify this bill as the Members, in their wisdom, may deem wise and proper, but it is not for the Chairman, where no points of order were reserved in the House against the bill. . . . The effect would be, should the Chair sustain the point of order made by the gentleman from North Dakota, to take from the consideration of the Committee of the Whole a part of this bill which has been committed to it by the House without reservation of this right to the Chairman.

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9. H.R. 2409.

10. 89 CONG. REC. 3150, 78th Cong. 1st Sess.

11. *Id.* at pp. 3150, 3151.

12. James P. McGranery (Pa.).

13. 89 CONG. REC. 3153, 78th Cong. 1st Sess.

Hopkins then held that he had no authority to sustain a point of order against an item in the bill.

The present occupant of the chair feels constrained to follow the precedents heretofore established and sustains the point of order made by the gentleman from Missouri (Mr. Cochran).

Note: On occasion, a Member has by unanimous consent reserved points of order against an appropriation bill already reported and referred to the Calendar.[14]

Reservation of Points of Order Against Amendments

§ 2.2 The reservation of a point of order against an amendment to an appropriation bill is within the discretion of the Chair. Thus, even though a Member states that he "will reserve a point of order" and then seeks the Chair's recognition to speak in opposition to the amendment, the Chair may dispose of the point of order first.

On June 6, 1963,[15] The Committee of the Whole was considering H.R. 6754, a Department of Agriculture appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Paul] Findley [of Illinois]: Page 33, after line 12, insert the following:

"Sec. 607. None of the funds provided herein shall be used to pay the salary of any officer or employee who negotiates agreements or contracts or in any other way, directly or indirectly, performs duties or functions incidental to supporting the price of Upland Middling Inch cotton at a level in excess of 30 cents a pound."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make a point of order against the amendment, but I will reserve the point of order at this time.

THE CHAIRMAN:[16] The gentleman from Mississippi reserves the point of order.

The Chair recognizes the gentleman from Illinois. . . .

MR. WHITTEN: Mr. Chairman, I rise in opposition to the amendment.

MR. [PAUL C.] JONES of Missouri: Mr. Chairman, I want to speak on the point of order.

THE CHAIRMAN: Does the gentleman from Mississippi [Mr. Whitten] press his point of order?

MR. WHITTEN: I will not press it for the moment and yield to the gentleman from Missouri [Mr. Jones].

THE CHAIRMAN: The gentleman from Missouri has indicated he desires to be heard on the point of order which has not been made.

MR. WHITTEN: Mr. Chairman, I make the point of order, if I may.

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14. See 86 CONG. REC. 1991, 76th Cong. 3d Sess., Feb. 26, 1940.

15. 109 CONG. REC. 10411, 10412, 88th Cong. 1st Sess.

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

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

MR. WHITTEN: Mr. Chairman, I make the point of order on the basis that the prohibition that would be set up here would require new duties to be performed in determining who negotiates, whether their actions constitute negotiations, or whether their actions in any of these particulars are in such a manner as to have their salaries not paid, particularly in view of other laws which require that employees of the Federal Government be paid certain specified sums.

Mr. Chairman, it does call for new duties and there is no limitation in its entirety.

THE CHAIRMAN: Does the gentleman from Missouri [Mr. Jones] desire to be heard on the point of order?

MR. JONES of Missouri: I desire to be heard, Mr. Chairman, on the point of order. . . . Mr. Chairman, I contend this is legislation on an appropriation bill because it would prohibit the Secretary from carrying out the duties and the authority that he has under legislation that has not been changed. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Illinois [Mr. Findley] has offered an amendment which provides for the insertion of a new section, which amendment provides in words that none of the funds provided in the pending bill shall be used to pay the salary of any officer or employee who does certain things.

In the opinion of the Chair, that constitutes within the rules of the House a limitation on the funds being appropriated and is a proper form of limitation. Therefore, the Chair overrules the point of order.

Effect of Conceding Point of Order

§ 2.3 Where a point of order is made against language in an appropriation bill and the point is conceded by the Member handling the bill, the Chair normally sustains the point of order.

On Apr. 12, 1960,[17] the Committee of the Whole was considering H.R. 11666, a State, Justice, and Judiciary Departments appropriation bill. The following proceedings took place:

> For expenses necessary for permanent representation. . . $1,850,000.
>
> MR. [H.R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 7 beginning with line 1 and running through line 12 on the ground that it contains an appropriation not authorized by law.
>
> Mr. Chairman, I call your attention to page 7 of the report on the pending bill, H.R. 11666, which states:
>
>> The following table sets forth the amounts allowed for each organization.
>
> Item 7 provides $30,000 for the Interparliamentary Union.
>
> Mr. Chairman, I also call your attention to page 1035 of the hearings and the justification for this appropriation, from which I read as follows:
>
>> The act of June 28, 1935, as amended by Public Law 409, ap-

17. 106 CONG. REC. 7941, 86th Cong. 2d Sess.

proved February 6, 1948 (22 U.S.C. 276), authorizes an amount of $15,000 to assist in meeting the expenses of the American group of the Interparliamentary Union for each fiscal year.

I further read from the justification to be found on the same page:

Although the enabling legislation authorizes an appropriation of $15,000, there is included in this request $30,000.

Mr. Chairman, I make the point of order that this violates rule 21, paragraph 2, of Cannon's Procedures which provides that no appropriation shall be made without prior authorization.

THE CHAIRMAN:[18] Does the gentleman from New York desire to be heard on the point of order?

MR. [JOHN J.] ROONEY [of New York]: . . . It is the fact, and we concede, that the Interparliamentary Union, which has been in existence for some 70-odd years, does not have an authorization for expenditure beyond $15,000 per annum, whereas the newly created NATO Interparliamentary Union and the Canadian Interparliamentary Union have authorizations for $30,000. . . .

Mr. Chairman, I am now constrained to concede that the point of order is well taken and I shall immediately offer an amendment.

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

Point of Order Against Part of Paragraph

§ 2.4 Where a point of order is made against an entire paragraph in an appropriation bill on the ground that a portion thereof is in conflict with the rules of the House and the point of order is sustained, the entire paragraph is eliminated.

On July 23, 1970,[19] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 18515) the following proceedings occurred:

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, a point of order.

THE CHAIRMAN:[20] The gentleman will state it.

MR. HALL: Mr. Chairman, I make a further point of order under this title and under the heading "Office of Economic Opportunity," on page 38, lines 1 through 25, including the colon after the word "grant", predicated upon the fact that this is further legislation in an appropriation bill and that it involves specifically, Mr. Chairman, the phrase on line 14 "and for purchase of real property for training centers:" and other legislation language which is foreign to an appropriation bill. . . .

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The gentleman from Kentucky will be heard.

MR. PERKINS: Mr. Chairman, if I understand the point of order raised by

18. W. Homer Thornberry (Tex.).

19. 116 CONG. REC. 25634, 91st Cong. 2d Sess.

20. Chet Holifield (Calif.).

the gentleman from Missouri, the gentleman moved to strike the language on page 38 from what line through what line?

MR. HALL: The Chair has just repeated it. Line 1, including the title and the heading, down through the colon following the word "grant."

MR. PERKINS: Mr. Chairman, if I may be heard further, lines 1 through 5 including the amount authorized and appropriated, $2,046,200,000, follows the language in the authorization bill. We do have some new language commencing on lines 14 through 15 that is not in the authorization bill presently, but this is the language that has been carried on previous appropriation bills. The language that I specifically refer to that is not in the authorization bill is on line 14 after "1964," commencing with "and for purchase of real property for training centers."

Now, this language is not in the authorization bill.

The language commencing on line 18 and the rest of the paragraph down to line 21 is language on an appropriation bill, in my judgment, because there is nothing in the authorization bill. But we certainly do not want the amount that is appropriated for the economic opportunity act stricken from this bill. It is in strict compliance with the authorization amendment.

THE CHAIRMAN: The Chair is ready to rule.

There are ample precedents for ruling a complete paragraph out of order, if any part of that paragraph is out of order. The gentleman from Kentucky has conceded that part of it is not in order, and therefore the Chair sustains the point of order made by the gentleman from Missouri (Mr. Hall).

§ 2.5 When part of a paragraph is subject to be stricken on a point of order as being legislation, the entire paragraph is subject to the point of order.

On May 11, 1960,[1] During consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 12117) the following proceedings occurred:

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 . . . *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 inspection 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

1. 106 CONG. REC. 10032, 86th Cong. 2d Sess. See also 107 CONG. REC. 19726, 87th Cong. 1st Sess., Sept. 15, 1961 (proceedings relating to H.R. 9169); and 83 CONG. REC. 652, 75th Cong. 3d Sess., Jan. 17, 1938 (proceedings relating to H.R. 8947, a Treasury and Post Office Departments appropriation bill.

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:[2] 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.

§ 2.6 Where a point of order is made against an entire proviso on the ground that a portion of it is subject to the point of order, and the point of order is sustained, the entire proviso is eliminated.

On Apr. 16, 1943,[3] The Committee of the Whole was considering H.R. 2481, an Agriculture Department appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

To enable the Secretary to carry into effect the provisions of sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act . . . not to exceed $50,000 for the preparation and display of exhibits. . . . *Provided further*, That in order to effect (specified reductions) such part of the funds available for salaries and administrative expenses shall be transferred under section 11 of the Soil Conservation and Domestic Allotment Act of February 29, 1936, as amended, to the existing extension services of the land-grant colleges in the several States to enable them to carry out all necessary educational, informational, and promotional activities in connection with such programs in these States and no other funds than those so transferred shall be expended for such activities . . . *Provided further*, That notwithstanding any other provision of law, persons who in 1943 carry out farming operations as tenants or sharecroppers on cropland owned by the United States Government and who comply with the terms and conditions of the 1943 agricultural conservation program, formulated pursuant to sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, as amended, shall be entitled to apply for and receive payments, or to retain payments heretofore made, for their participation in said program to the same extent as other producers. . . .

MR. [HAMPTON P.] FULMER [of South Carolina]: Mr. Chairman, a point of order.

THE CHAIRMAN:[4] The gentleman will state it.

MR. FULMER: On Page 65, beginning in line 9, with the words "*Provided further*," I make a point of order against

2. Paul J. Kilday (Tex.).

3. 89 CONG. REC. 3491–94, 78th Cong. 1st Sess.

4. William M. Whittington (Miss.).

all of that section down to line 18, including the word "activities," the language reading, "*Provided further,*" That in order to effect such 50-percent reduction such part of the funds available for salaries and administrative expenses shall be transferred under section 11 of the Soil Conservation and Domestic Allotment Act of February 29, 1936, as amended, to the existing extension services of the land-grant colleges in the several States to enable them to carry out all necessary educational, informational, and promotional activities in connection with such programs in these States and no other funds than those so transferred shall be expended for such activities"; that it is the legislation on an appropriation bill without authorization. I make that point of order. . . .

THE CHAIRMAN: The gentleman has other points of order against the paragraph?

MR. FULMER: Yes.

THE CHAIRMAN: Will the gentleman indicate those?

MR. FULMER: On page 67, line 16, down to and including line 3 on page 68, which language is as follows: "*Provided further,* That notwithstanding any other provision of law, persons who in 1943 carry out farming operations as tenants or sharecroppers on cropland owned by the United States Government and who comply with the terms and conditions of the 1943 agricultural conservation program, formulated pursuant to sections 7 to 17 inclusive, of the Soil Conservation and Domestic Allotment Act, as amended, shall be entitled to apply for and receive payments, or to retain payments heretofore made, for their participation in said program to the same extent as other producers: *And provided further,* That no part of such amount shall be available for carrying out the provisions of section 202 (a) to (f) of the Agricultural Adjustment Act of 1938," on the ground that it is legislation on an appropriation bill without any authorization in law. . . .

MR. [SCHUYLER OTIS] BLAND [of Virginia]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. BLAND: Mr. Chairman, if a part of a paragraph or section in a bill is subject to a point of order and a point of order is made to the paragraph or section, does that not carry out the entire paragraph or section?

THE CHAIRMAN: The gentleman is correct.

MR. [EVERETT M.] DIRKSEN [of Illinois]: Mr. Chairman, for clarification, the point of order was not made against the entire paragraph as I understand it.

THE CHAIRMAN: The entire proviso. That is what the gentleman had in mind?

MR. BLAND: Yes. . . .

THE CHAIRMAN: The Chair is ready to rule on the first point of order submitted by the gentleman from South Carolina [Mr. Fulmer]. . . .

The gentleman from Illinois concedes that the point of order is sound and well taken for that part of the proviso beginning after the word "States" in line 15, as follows: "to enable them to carry out all necessary educational, informational, and promotional activities, that it is subject to the point of order, being legislation upon an appropriation bill.

If any part of the proviso is subject to a point of order, the whole proviso falls, therefore the Chair sustains the point of order made by the gentleman from South Carolina [Mr. Fulmer]. . . .

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I understood there was a point of order against another portion of the paragraph, the concluding proviso. I only wish to be heard at this time on the point of order as far as it relates to the concluding proviso, that is, on page 68, line 1:

> That no part of such amount shall be available for carrying out the provisions of section 202 (a) to (f) of the Agricultural Adjustment Act of 1938.

Those are the provisions of the Agricultural Adjustment Act of 1938 which make available $4,000,000 from this fund for the maintenance of the four regional laboratories. We have already appropriated in a preceding paragraph of the bill $4,000,000, from the Federal Treasury and not from this fund for those laboratories. For that reason, it became necessary to provide that the same amount should not again be made available from this particular fund, which would result in $8,000,000 being made available to the four regional laboratories when no such amount was estimated therefor.

This is a limitation under the Holman rule. This simply limits the expenditures which are authorized under this paragraph, so that this appropriation which has already been made in a preceding paragraph of the bill cannot be duplicated from these funds.

MR. FULMER: Mr. Chairman, after rereading this provision and hearing the gentleman's argument, I confine my point of order to the proviso on page 67 beginning in line 16 and running down through line 25, ending with the word "producers." . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from South Carolina makes the point of order against the language beginning in line 16 and running down to and including the word "producers" in line 25 that it is legislation on an appropriation bill. With the information available to the Chair, the Chair is of the opinion that it is legislation on an appropriation bill, and sustains the point of order.

§ 2.7 A point of order may be made against part of a paragraph which, if sustained, would not necessarily affect the remainder of such paragraph unless a point of order were specifically made against the entire paragraph.

On Mar. 30, 1954,[5] the Committee of the Whole was considering H.R. 8583, an independent offices appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

> Capital grants for slum clearance and urban redevelopment: For an additional amount for payment of capital grants as authorized by title I of the Housing Act of 1949, as amended (42 U.S.C. 1453, 1456), $39,000,000, to remain available until expended: *Pro-*

5. 100 CONG. REC. 4108, 4109, 83d Cong. 2d Sess.

vided, That no funds in this or any other act shall be available for payment of capital grants under any contract involving the development or redevelopment of a project for predominantly residential uses unless incidental uses are restricted to those normally essential for residential uses: *Provided further*, That before approving any local slum clearance program under title I of the Housing Act of 1949, the Administrator shall give consideration to the efforts of the locality to enforce local codes and regulations relating to adequate standards of health, sanitation, and safety for dwellings and to the feasibility of achieving slum clearance objectives through rehabilitation of existing dwellings and areas: *Provided further*, That the authority under title I of the National Housing Act shall be used to the utmost in connection with slum rehabilitation needs.

MR. [JACOB K.] JAVITS [of New York]: Mr. Chairman, I make a point of order against the proviso appearing on page 28, lines 13 to 18, on the ground it is legislation on an appropriation bill.

THE CHAIRMAN:[6] Does the gentleman from California desire to be heard on the point of order?

MR. [JOHN] PHILLIPS [of California]: No, Mr. Chairman. I think we are compelled to concede the point of order and I submit an amendment to replace it. . . .

THE CHAIRMAN: The Chair sustains the point of order.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. WHITTEN: Mr. Chairman, is it possible to make a point of order to one part of a paragraph and have it limited to that particular part?

THE CHAIRMAN: A Member may make a point of order to any objectionable language in the paragraph.

MR. WHITTEN: Separating it from the remainder of the paragraph?

THE CHAIRMAN: Yes.

Timeliness—Objection to Consideration

§ 2.8 A point of order against consideration of a general appropriation bill, on grounds that the total of proposed appropriations exceeds the total amount authorized, will not lie in the House. The proper time to demand enforcement of Rule XXI clause 2 (the rule against reporting appropriations not previously authorized) is when such item is read for amendment in the Committee of the Whole.

On Sept. 8, 1965,[7] the following proceedings occurred in the House:

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the

6. Louis E. Graham (Pa.).

7. 111 CONG. REC. 23140, 23141, 89th Cong. 1st Sess.

State of the Union for the consideration of the bill (H.R. 10871) making appropriations for foreign assistance and related agencies for the fiscal year ending June 30, 1966, and for other purposes; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate on the bill be limited to 3 hours, one-half of that time to be controlled by the gentleman from Kansas [Mr. Shriver] and one-half to be controlled by myself.

THE SPEAKER:[8] Is there objection to the request of the gentleman from Louisiana?

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, reserving the right to object, at the proper time I shall ask for recognition to make a point of order against consideration of the bill. I should like to be advised as to that time.

THE SPEAKER: The Chair will say that if the unanimous-consent request is granted the gentleman may then assert whatever he wants to under the rules.

Is there objection to the request of the gentleman from Louisiana?

There was no objection.

MR. GROSS: Mr. Speaker, I make the point of order against consideration of this bill on the ground that in adoption of the conference report by the Congress, and with the signature of the President of the United States now a fact, and, therefore, the authorization bill is law, it includes a new section, section 649, which reads as follows:

> Limitation on aggregate authority for use in the fiscal year 1966. . . .

THE SPEAKER: What is the number of that section?

MR. GROSS: Section 649.

THE SPEAKER: Of the authorization bill?

MR. GROSS: Of the authorization bill, which reads as follows:

> Notwithstanding any other provision of this act, the aggregate of the total amount authorized to be appropriated for use during the fiscal year 1966 for furnishing assistance and for administrative expenses under this act shall not exceed $3,360 million. . . .

The limitation contained in the conference report, which is now law, is $3,360 million. The report accompanying this bill states clearly there is sought to be appropriated by this bill $3,630,622,000.

MR. PASSMAN: . . . Mr. Speaker, I should like to direct attention to the fact that the authorization bill limited new appropriations to $3,360 million. We are only recommending new appropriations in the amount of $3,285 million which is $75 million below the amount authorized.

Under section 645 of the basic act, and I quote:

> Unexpended balances: Funds made available pursuant to this Act, the Mutual Security Act of 1955, as amended, Public Law 86–735, are hereby authorized to be continued available for the general purposes for which appropriated and may at any time be consolidated and in addition may be consolidated with appropriations made available for the same general purposes under the authority of this Act.

Mr. Speaker, this is the basic legislation.

If I may make one further observation, Mr. Speaker, a good part of the section that the gentleman is referring

8. John W. McCormack (Mass.).

to has to do with no-year funds anyway. The no-year funds in which the appropriation or unexpended balance is automatically carried forward would be $120,978,000. We have moved on the premise that the original basic act authorized the continuation of the unexpended or unobligated funds from previous years. . . .

MR. GROSS: Mr. Speaker, I would point out the new section inserted in the authorization bill which has been read, and I am sure the Speaker understands it thoroughly, makes no provision for new funds. It says explicitly, "notwithstanding any other provision of this Act, the limitation is $3,360 million."

THE SPEAKER: The Chair is prepared to rule.

Without passing upon the question, that might arise later on, if it does, the Chair is of the opinion that the point of order should be made against the item or items in the appropriation bill which the gentleman from Iowa might claim to be in excess of the amount authorized by law, and not against the consideration of the bill itself.

The Chair overrules the point of order.

The question is on the motion.

§ 2.9 A point of order against an unauthorized appropriation does not lie in the House against consideration of a special appropriation bill made in order pursuant to a rule reported from the Committee on Rules.

Where the House had agreed to a resolution providing for consideration of a joint resolution making temporary appropriations, an objection to consideration of the joint resolution on the ground that the authorization for the appropriations therein had expired was held not to be in order. The proceedings on Aug. 21, 1951,[9] during which the House was considering House Resolution 397, making in order the consideration of House Joint Resolution 320, were as follows:

MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, I call up the resolution (H. Res. 397) which I submitted earlier in the day, making in order House Joint Resolution 320, and ask for its immediate consideration.

The Clerk read the resolution as follows:

Resolved, That immediately upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (H.J. Res. 320) amending an act making temporary appropriations for the fiscal year 1952, and for other purposes. . . . At the conclusion of the consideration of the joint resolution for amendment, the Committee shall rise and report the joint resolution to

9. 97 CONG. REC. 10479–81, 82d Cong. 1st Sess. See also § 2.8, supra. The point of order based on lack of authorization only lies against an item in a general appropriation bill when that item is read for amendment in Committee of the Whole under the five-minute rule.

the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the joint resolution and amendments thereto to final passage without intervening motion except one motion to recommit.

THE SPEAKER:[10] The question is, Will the House consider the resolution?

The question was taken; and (two-thirds having voted in favor thereof) the House decided to consider the joint resolution. . . .

[The resolution was subsequently agreed to.][11]

MR. [CLARENCE] CANNON [of Missouri]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (H.J. Res. 320) amending an act making temporary appropriations for the fiscal year 1952, and for other purposes.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I make a point of order against consideration of the joint resolution on the ground that the authorization has expired, and that there is no authorization for this appropriation.

THE SPEAKER: The resolution just adopted makes in order the consideration of the joint resolution, and, therefore, the point of order does not lie.

The Chair overrules the point of order.

Point of Order During Reading

§ 2.10 A point of order against a paragraph of a general appropriation bill on the ground that it is legislation will not lie until the paragraph is read; and such a point of order is not precluded by the fact that, by unanimous consent, an amendment was offered to the paragraph before it was read.

On July 31, 1969,[12] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 13111) the following proceedings took place:

The Clerk read as follows:

Sec. 409. No part of the funds contained in this Act shall be used to force busing of students, the abolishment of any school or the attendance of students at a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district, or school.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I raise the point of order on section 409 on page 56 of the bill that this is legislation on an appropriation bill. It violates section 834 of the House rules. It does not comply with the Holman rule. It is not a retrenchment. In fact, it adds additional burdens and additional duties, just as the Chair ruled against my amendment to section 408 because it would require additonal personnel to determine whether busing has been

10. Sam Rayburn (Tex.).

11. 97 CONG. REC. 10481, 82d Cong. 1st Sess.

12. 115 CONG. REC. 21677, 21678, 91st Cong. 1st Sess.

used, one, for the abolishing of any school and, two, to require the attendance of any student at any particular school. You would have to have investigators there to determine this as a condition precedent to obtaining Federal funds otherwise available to any State school district or school. No. 1, for the abolition of any school, and No. 2, whether the attendance of any student at any particular school could be investigated there to determine this as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.

Therefore, Mr. Chairman, I urge the Chairman to sustain the point of order.

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

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

Mr. Chairman, I raised the point awhile ago that the gentleman, having asked unanimous consent that the amendments to the two sections be considered en bloc and having obtained that unanimous-consent request, and after having the amendments considered en bloc in connection with the two sections, that the House has already considered section 409 and the point of order comes too late. That is the situation on the one hand.

Second, a reading of the section clearly shows that the House has already considered section 409 in connection with the prior amendments. In addition to that, this is clearly a limitation on an appropriation bill and does not have to conform to the Holman rule. . . .

THE CHAIRMAN: The Chair is ready to rule.

The objection of the gentleman from Mississippi which has been made to the effect that this section had been considered when, by unanimous consent amendments to the two sections were considered, does not nullify the fact that section 409 had not been read. Therefore, when section 409 was read it was subject to points of order.

§ 2.11 A point of order against a paragraph of a general appropriation bill is not in order until that paragraph is read; and the Chairman has declined to recognize a Member to make a point of order against both paragraphs of a particular section when only the first of such paragraphs has been read.

On June 4, 1970,[14] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867) the following proceedings occurred:

The Clerk read as follows:

Sec. 107. (a) No assistance shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry to Cuba, so long as it is governed by the Castro regime, in addition to those items contained on the list maintained by the Administrator pursuant to title I of the Mutual Defense Assistance Control Act of 1951, as amended, any arms, ammunition, implements of war, atomic energy

13. Chet Holifield (Calif.).

14. 116 CONG. REC. 18403, 91st Cong. 2d Sess.

materials, or any other articles, materials or supplies of primary strategic significance used in the production of arms, ammunition, and implements of war or of strategic significance to the conduct of war; including petroleum products.

MR. [PETER H. B.] FRELINGHUYSEN [of New Jersey]: Mr. Chairman, I make a point of order against section 107(a) on the ground that it is legislation in an appropriations bill.

THE CHAIRMAN:[15] Does the gentleman make his point of order against the entire section?

MR. FRELINGHUYSEN: When I get the opportunity, I shall certainly make the point of order against section (b) also. If it is in order, I shall be glad to make the point of order against both sections (a) and (b) at this time.

THE CHAIRMAN: The Chair would prefer to rule on the sections separately. The gentleman has made a point of order against section 107(a). The Chair will hear the gentleman.

§ 2.12 A point of order against language in a general appropriation bill comes too late after the reading of the subsequent paragraph.

On June 6, 1963,[16] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 6754) proceedings occurred as indicated below:

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I make the point of order against the language on page 17, line 5, beginning with the word "and" and all that follows through the period on line 11, on the ground it is legislation on a general appropriation bill.

THE CHAIRMAN:[17] The Chair may say to the gentleman from Illinois that his point of order comes too late. The Clerk has reached page 19.

Bill Considered as Read

§ 2.13 Where all of a general appropriation bill (and not just the portion not yet read), was, by unanimous consent, considered as read and open to points of order and amendment at any point, the Chairman sustained a point of order against a provision conceded to be legislation in a paragraph which had been passed in reading for amendment when the unanimous-consent request was agreed to.

On June 7, 1972,[18] during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 15259), the following proceedings occurred:

The Clerk read as follows:

GENERAL OPERATING EXPENSES

General operating expenses, $65,029,000, of which $629,700 shall

15. Hale Boggs (La.).

16. 109 CONG. REC. 10398, 88th Cong. 1st Sess. See also 109 CONG. REC. 24752, 88th Cong. 1st Sess., Dec. 16, 1963 (H.R. 9499).

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

18. 118 CONG. REC. 19900, 19901, 92d Cong. 2d Sess.

be payable from the highway fund (including $72,400 from the motor vehicle parking account), $94,500 from the water fund, and $67,300 from the sanitary sewage works fund. . . .

MR. [WILLIAM H.] NATCHER [of Kentucky] (during the reading): Mr. Chairman, I ask unanimous consent that the bill be considered as read, open to amendment at any point, and subject to any points of order.

THE CHAIRMAN:[19] Is there objection to the request of the gentleman from Kentucky?

There was no objection.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, I raise a point of order.

THE CHAIRMAN: The gentleman from Missouri will state his point of order.

MR. HALL: Mr. Chairman, my point of order should lie on page 3, line 8, following the colon, against the phrase:

> *Provided*, That the certificates of the Commissioner (for $2,500) and of the Chairman of the City Council (for $2,500) shall be sufficient voucher for expenditures from this appropriation for such purposes, exclusive of ceremony expenses, as they may respectively deem necessary:

In other words, Mr. Chairman, I am raising a point of order against all after the colon on line 8, through the colon on line 13.

This was not authorized, and it is an appropriation bill without authorization.

THE CHAIRMAN: The Chair will state to the gentleman from Missouri that that part of the bill to which the gentleman has raised his point of order was previously read prior to the unanimous-consent request.

MR. HALL: But, Mr. Chairman, I submit that the unanimous-consent request was granted to the entire bill, that it be open to amendment and open for points of order at any point. This request was granted and therefore I have gone back to this point of order.

THE CHAIRMAN: Does the gentleman from Kentucky desire to be heard on the point of order raised by the gentleman from Missouri?

MR. NATCHER: Mr. Chairman, the gentleman from Missouri [Mr. Hall] is correct, and we concede the point of order.

THE CHAIRMAN: The point of order is conceded, and the point of order is sustained.

Are there any further points of order?

Are there any amendments to be proposed?

Bill Opened for Amendment at Any Point

§ 2.14 Where an appropriation bill partially read for amendment is then opened for amendment "at any point" (rather than for "the remainder of the bill"), points of order to paragraphs already read may yet be entertained.

On June 7, 1972,[20] in a paragraph appropriating funds for

19. Dante B. Fascell (Fla.).

20. 118 CONG. REC. 19900, 19901, 92d Cong. 2d Sess.

general operating expenses for the District of Columbia, a proviso stating that certificates of the Commissioner and Chairman of the City Council shall be sufficient vouchers for expenditure from that appropriation was conceded to be legislation in violation of Rule XXI clause 2 and was ruled out on a point of order. The part of the bill against which the point of order was directed had been read prior to a unanimous-consent request that the bill be open for amendment at any point.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, I raise a point of order.

THE CHAIRMAN:[1] The gentleman from Missouri will state his point of order.

MR. HALL: Mr. Chairman, my point of order should lie on page 3, line 8, following the colon, against the phrase:

> *Provided*, That the certificate of the Commissioner (for $2,500) and of the Chairman of the City Council (for $2,500) shall be sufficient voucher for expenditures from this appropriation for such purposes, exclusive of ceremony expenses, as they may respectively deem necessary. . . .

In other words, Mr. Chairman, I am raising a point of order against all after the colon on line 8, through the colon on line 13.

This was not authorized, and it is an appropriation bill without authorization.

THE CHAIRMAN: The Chair will state to the gentleman from Missouri that that part of the bill to which the gentleman has raised his point of order was previously read prior to the unanimous-consent request.

MR. HALL: But, Mr. Chairman, I submit that the unanimous-consent request was granted to the entire bill, that it be open to amendment and open for points of order at any point. This request was granted and therefore I have gone back to this point of order.

THE CHAIRMAN: Does the gentleman from Kentucky desire to be heard on the point of order raised by the gentleman from Missouri?

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Chairman, the gentleman from Missouri (Mr. Hall) is correct, and we concede the point of order.

THE CHAIRMAN: The point of order is conceded, and the point of order is sustained.

Are there any further points of order?

Are there any amendments to be proposed?[2]

§ 2.15 Where the Committee of the Whole has granted unanimous consent that the remainder of a general appropriation bill be considered as read and open to points of order or amendment at any point, the Chair first inquires whether any Member desires to raise a point of order against any portion of

1. Dante B. Fascell (Fla.).

2. See also 119 CONG. REC. 20068, 93d Cong. 1st Sess., June 18, 1973 [H.R. 8658].

the pending text, and then recognizes Members to offer amendments to that text.

On Feb. 19, 1970,[3] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 15931) the following proceedings occurred:

MR. [DANIEL J.] FLOOD [of Pennsylvania] (during the reading): Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read and open to points of order or amendment at any point.

THE CHAIRMAN:[4] Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

THE CHAIRMAN: Are there any points of order?

MR. [JAMES G.] O'HARA [of Michigan]: Mr. Chairman, I rise to make a point of order against the language contained in section 411, beginning on line 12, through line 20 on page 61, which reads as follows:

> Sec. 411. In the administration of any program provided for in this Act, as to which the allocation, grant, apportionment, or other distribution of funds among recipients is required to be determined by application of a formula involving the amount appropriated or otherwise made available for distribution, the amount available for expenditure or obligation (as determined by the President) shall be substituted for the amount appropriated or otherwise made available in the application of the formula.

Mr. Chairman, I make the point of order on the ground that the section in question constitutes legislation on an appropriation bill and does not come within the exception.

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

MR. FLOOD: Mr. Chairman, the language is patently legislation on an appropriation bill. I concede the point of order.

THE CHAIRMAN: The gentleman from Pennsylvania concedes the point of order, and the Chair sustains the point of order.

MR. [NEAL] SMITH of Iowa: Mr. Chairman, I make a point of order against the language on page 57, lines 9 through 16, which reads as follows:

> *Provided further,* That those provisions of the Economic Opportunity Amendments of 1967 and 1969 that set mandatory funding levels, including mandatory funding levels for the newly authorized programs for alcoholic counseling and recovery and for drug rehabilitation, shall be effective during the fiscal year ending June 30, 1970: *Provided further,* That of the sums appropriated not less than $22,000,000 shall be used for the family planning program.

Mr. Chairman, I make the point of order on the ground that it is legislation on an appropriation bill.

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

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3. 116 CONG. REC. 4019, 91st Cong. 2d Sess. See also § 2.22, infra, as to the proper time for making points of order against provisions of the bill where the bill is considered as read and open to points of order and amendments at any point.

4. Chet Holifield (Calif.).

MR. SMITH of Iowa: Mr. Chairman, the point of order is that it is legislation on an appropriation bill.

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

MR. FLOOD: Not on this point, Mr. Chairman; no.

THE CHAIRMAN: Does the gentleman from Michigan seek recognition on this point of order:

MR. O'HARA: I do, Mr. Chairman.

Mr. Chairman, it seems to me the amendment simply restates existing law in the authorizing legislation, and if that is indeed the case, I do not think it is subject to a point of order.

THE CHAIRMAN: The Chair will say that if this restates existing law, there is no point in it being in the bill, and the fact that it is in the bill on its face would indicate there must be legislation in it in addition to that contained in existing law. The Chair, therefore, sustains the point of order.

Are there any further points of order?

The Chair will recognize at this time Members who wish to offer amendments.

§ 2.16 A point of order against language in an appropriation bill comes too late when the Committee of the Whole has granted unanimous consent that the remainder of the bill be considered as read and open at any point to points of order or to amendments and the Chairman has asked for amendments after having asked for points of order.

On Aug. 19, 1949,[5] the Committee of the Whole was considering H.R. 6008, a supplemental appropriation bill. The proceedings were as follows:

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read and be open at any point to points of order and amendments.

THE CHAIRMAN:[6] Is there objection to the request of the gentleman from Michigan?

There was no objection.

THE CHAIRMAN: Are there any points of order?

If not, are there any amendments?

MR. [WILLIAM M.] WHEELER [of Georgia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Wheeler: On page 6, line 17, strike out all the paragraph to and including all of lines 16 on page 7. . . .

MR. [JAMES P.] SUTTON [of Tennessee]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. SUTTON: Mr. Chairman, I make the point of order against the language on page 19 that it is legislation on an appropriation bill.

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5. 95 CONG. REC. 11870, 11876, 81st Cong. 1st Sess. See also § 2.22, infra, as to the proper time for making points of order against provisions of the bill where the bill is considered as read and open to points of order and amendments at any point.

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

THE CHAIRMAN: The point of order comes too late. At the time the further reading of the bill was dispensed with, the Chair requested Members desiring to make points of order to do so at that time.

After Request for Additional Debate

§ 2.17 After an amendment to an appropriation bill has been read by the Clerk and a reservation of objection has been made against a unanimous-consent request for an additional five minutes' debate, it has been held to be too late to raise a point of order against the amendment.

On Feb. 1, 1938,[7] The Committee of the Whole was considering H.R. 9181, a District of Columbia appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Everett M.] Dirksen [of Illinois]: On page 57, in line 19, strike out "$900,000" and insert in lieu thereof "$1,900,000."

MR. DIRKSEN: Mr. Chairman, I ask unanimous consent to proceed for an additional 5 minutes.

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, reserving the right to object——

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that this increase is not authorized by law.

THE CHAIRMAN:[8] The point of order of the gentleman from New York comes too late. A request has already been presented, and there has been a reservation of objection to it.

After Withdrawal of Reservation

§ 2.18 A point of order against an amendment to an appropriation bill does not come too late if made immediately after the withdrawal of a prior reservation of a point of order since the initial reservation of a point of order inures to all Members.

On Mar. 27, 1962,[9] the Committee of the Whole was considering H.R. 10904, a Department of Health, Education, and Welfare appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

HOSPITAL CONSTRUCTION ACTIVITIES

To carry out the provisions of title VI of the Act, as amended, $188,572,000. . . .

MR. [WILLIAM FITTS] RYAN of New York: Mr. Chairman, I offer an amendment.

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7. 83 CONG. REC. 1364, 75th Cong. 3d Sess.

8. William J. Driver (Ark.).

9. 108 CONG. REC. 5164, 5165, 87th Cong. 2d Sess.

The Clerk read as follows:

Amendment offered by Mr. Ryan of New York: On page 25, line 21, immediately before the period insert the following: "*Provided further,* That no part of the amounts appropriated in this paragraph may be used for grants or loans for any hospital, facility, or nursing home established, or having separate facilities, for population groups ascertained on the basis of race, creed, or color."

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I reserve the point of order.

MR. RYAN of New York: Mr. Chairman and Members of the House, I rise to support an amendment which would provide a limitation upon the appropriations for hospital construction activities: that is, relating to page 25 of the bill.

Mr. Chairman, this amendment would prevent the use of funds appropriated under the Hill-Burton Act for hospital construction for segregated facilities.

The Hill-Burton program has provided Federal financing to help construct more than 2,000 medical care facilities in 11 Southern States. Since the inception of the Hill-Burton program these States have received $562,921,000 for hospital construction. Authorities have pointed out that virtually all of these institutions discriminate in various ways against Negro citizens. . . .

MR. JAMES C. DAVIS [of Georgia]: Mr. Chairman, is it in order for me at this time to make a point of order against the amendment?

THE CHAIRMAN:[10] The gentleman from Rhode Island has reserved his point of order. Does the gentleman from Rhode Island insist on the point of order?

MR. FOGARTY: Mr. Chairman, I waive the point of order. I have stated my reasons as to why the amendment should be defeated and I ask the committee to vote down the amendment.

MR. JAMES C. DAVIS: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state the parliamentary inquiry.

MR. JAMES C. DAVIS: Mr. Chairman, is it in order for me to make a point of order against the amendment?

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, does not the point of order come too late?

THE CHAIRMAN: The gentleman from Georgia is making a parliamentary inquiry at the present time.

MR. YATES: I beg pardon.

MR. JAMES C. DAVIS: Mr. Chairman, I was on my feet at the time the gentleman from Rhode Island was recognized and I was on my feet for the purpose of making a point of order against the amendment.

THE CHAIRMAN: The gentleman from Rhode Island being a member of the committee, the custom is that he be recognized first.

The Chair is ready to rule on the point of order.

MR. YATES: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. YATES: Mr. Chairman, has not the point of order been waived by the gentleman from Rhode Island speaking to the question?

THE CHAIRMAN: The Chair understood that the gentleman from Rhode

10. Omar T. Burleson (Tex.).

Island was speaking to his point of order and insisted then on the defeat of the amendment.

MR. YATES: That is correct, Mr. Chairman, and, therefore, no point of order is proper at this time.

THE CHAIRMAN: The gentleman from Georgia [Mr. James C. Davis] now states he was on his feet attempting to press a point of order against the amendment, but the Chair had understood that the gentleman from Rhode Island did insist on his point of order. However, the Chair was in error as to that and the gentleman from Georgia is now recognized to make his point of order.

MR. YATES: Mr. Chairman, one final parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. YATES: Mr. Chairman, does not the point of order by the gentleman from Georgia come too late?

THE CHAIRMAN: Not under the circumstances. The Chair would assume there is a possibility of more than one point of order being made and for more than one reason.

The Chair recognizes the gentleman from Georgia.

MR. JAMES C. DAVIS: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill. . . .

THE CHAIRMAN: . . . The gentleman from New York has offered an amendment to which a point of order has been made. The language of the amendment to which a point of order has been raised is as follows:

> *Provided further*, That no part of the amounts appropriated in this paragraph may be used for grants or loans for any hospital, facility, or nursing home established, or having separate facilities, for population groups ascertained on the basis of race, creed, or color.

The Chair is of the opinion that the amendment is a proper limitation under the rules of the House and, therefore, overrules the point of order.

Upon Third Reading

§ 2.19 A point of order against language in an appropriation bill is not in order at the third reading of the bill in the House.

On June 6, 1963,[11] the Committee of the Whole was considering H.R. 6754, an Agriculture Department appropriation bill. The proceedings were as follows:

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I make the point of order against the language on page 17, line 5, beginning with the word "and" and all that follows through the period on line 11, on the ground it is legislation on a general appropriation bill.

THE CHAIRMAN:[12] The Chair may say to the gentleman from Illinois that his point of order comes too late. The Clerk has reached page 19.

MR. FINDLEY: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

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11. 109 CONG. REC. 10398, 10399, 88th Cong. 1st Sess.

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

MR. FINDLEY: Mr. Chairman, would it be in order to make a point of order on the third reading of the bill?

THE CHAIRMAN: No, it would not.

The Clerk read as follows: . . .

MR. FINDLEY: Mr. Chairman, I ask unanimous consent to return to page 17 for the purpose of making a point of order.

THE CHAIRMAN: Is there objection to the request of the gentleman from Illinois?

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

Various Grounds for Objection

§ 2.20 Points of order were made against an entire title in an appropriation bill for the Atomic Energy Commission which included, in part, provisions for (1) the employment of aliens; (2) rental of space upon a determination of need by the Administrator of General Services; (3) use of unexpended balances of previous years; (4) transfer of sums to other agencies; (5) a sum to remain available until expended; (6) reappropriation of funds for plant and equipment; and (7) a power reactor project not authorized by law and the title was held to be in violation of Rule XXI clause 2.

On July 24, 1956,[13] during consideration in the Committee of the Whole of the second supplemental appropriation bill, a point of order was raised against a title containing provisions as described above. The proceedings were as follows:

MR. CLARENCE CANNON [of Missouri]: Mr. Chairman, I ask unanimous consent that the bill be considered as read and now be open to points of order and amendments to any part of the bill.

THE CHAIRMAN:[14] Is there objection to the request of the gentleman from Missouri?

There was no objection.

MR. CANNON: Mr. Chairman, I make a point of order against title I and also the item for the Bureau of Reclamation on page 7.

THE CHAIRMAN: Is the gentleman making a point of order against the entire title I?

MR. CANNON: Title I and the material indicated as well as on page 7.

THE CHAIRMAN: Let us pass on one point of order at a time, please. Does anybody wish to be heard on the point of order made by the gentleman from Missouri [Mr. Cannon] against title I?

MR. [WALTER H.] JUDD [of Minnesota]: On what basis is the point of order made?

MR. CANNON: Not authorized by law and is legislation on an appropriation bill.

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13. 102 CONG. REC. 14289, 84th Cong. 2d Sess.

14. Oren Harris (Ark.).

MR. JUDD: A lot of it is authorized by law.

MR. [JOHN] TABER [of New York]: Mr. Chairman, the items in title I, with the exception of the several provisos, are entirely within the statute and are authorized. I thought I had an understanding that the only item to go out was the $400 million item, but as long as the point of order is made on that, I will offer an amendment to cover everything except that last proviso after the point of order is disposed of.

MR. CANNON: Mr. Chairman, title I, in its entirety, is subject to a point of order. Part of the paragraph being subject to a point of order, the entire paragraph is subject to a point of order.

Title I is subject to a point of order on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Missouri makes the point of order against title I of the pending bill on the ground that it is legislation on an appropriation bill or contains appropriations not authorized by law. The Chair has gone through title I and has observed that every paragraph in it either contains legislation on an appropriation bill, which is in violation of the rules of the House, or contains appropriations which are not authorized by law, which is also in violation of the rules of the House.

The Chair sustains the point of order.

Point of Order Too Late After Amendment Offered to Paragraph

§ 2.21 A point of order must be made against a paragraph of a general appropriation bill after it is read and before an amendment is offered thereto (even if the amendment is ruled out of order).

On June 22, 1983,[15] the Committee of the Whole had under consideration the Department of Transportation appropriation bill (H.R. 3329), when an amendment was offered and proceedings ensued as indicated below:

The Clerk read as follows:

Sec. 305. None of the funds provided under this Act for Formula grants shall be made available to support mass transit facilities, equipment, or operating expenses unless the applicant for such assistance has given satisfactory assurances in such manner and forms as the Secretary may require . . . that the rates charged elderly and handicapped persons during nonpeak hours shall not exceed one-half of the rates generally applicable to other persons at peak hours: *Provided*, That the Secretary, in prescribing the terms and conditions for the provision of such assistance shall (1) permit applicants to continue the use of preferential fare systems for elderly or handicapped persons where those systems were in effect on or prior to November 26, 1974. . . .

MR. [ROBERT J.] MRAZEK [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Mrazek: Insert the following on page 36,

15. 129 CONG. REC. ——, 98th Cong. 1st Sess.

line 24, ending with the phrase "prior to November 26, 1974," "provided that said applicant adopts and implements appropriate standards of eligibility which includes those citizens who reside in the district served by the mass transit system".

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I reserve a point of order against the amendment. . . .

I would remind the House under the rules of the House, though, an issue of this kind with substantive merit needs to come before the House—under the rules adopted primarily with votes from the majority side earlier in this Congress—needs to come before the body in the authorization bills rather than in the appropriations bill.

In this particular instance, the amendment that we have before us constitutes legislation in an appropriation bill under the provisions of clause 2 of Rule XXI.

My objection to the amendment rests on that procedural grounds that legislation in an appropriations bill is beyond the scope of the present consideration and that this amendment must properly be brought before the House in the course of the authorization process. . . .

MR. [RICHARD L.] OTTINGER [of New York]: Mr. Chairman, I think the gentleman's point of order is not well taken. The gentleman might have and I indeed had considered making a point of order against the section as being not in order for reasons that the gentleman has stated with respect to this amendment.

No such point of order was made, however. Therefore, it is too late to knock out the legislation on the basis that it is legislation on an appropriation bill.

This amendment merely seeks to make technical changes in the language which is already there and to which no objection was made. Therefore, it should be in order. . . .

MR. [DENNIS M.] HERTEL of Michigan: Mr. Chairman, it seems clear that the amendment proposed now that is in question deals with perfecting language. We are talking about the very same standards in this amendment that are recognized in the bill. All we are talking about is extending those standards to another group of citizens that are covered by this bill and this authority. . . .

THE CHAIRMAN:[16] If no other Member wishes to be heard, the Chair is prepared to rule.

Although the pending section of the bill includes legislation which was allowed to remain when no point of order was raised, the fact is that the amendment adds additional legislative requirements that appropriate standards of eligibility be determined for an additional category of citizens not covered by section 305 and, therefore, the Chair must rule that it is more than perfecting and in fact does constitute additional legislation on an appropriation and is out of order at this time.

MR. OTTINGER: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. OTTINGER: Mr. Chairman, would it be in order at this time, then, to assert a point of order against section 305?

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16. Philip R. Sharp (Ind.).

THE CHAIRMAN: The Chair will indicate to the gentleman that the assertion of that point of order comes too late.

Time for Making Points of Order Against Provisions of Bill Considered as Read

§ 2.22 Where a general appropriation bill is by unanimous consent considered as read and open to points of order and then to amendments at any point, points of order against provisions in the bill must be made before amendments are offered, and cannot be reserved pending subsequent action on amendments, since points of order lie against provisions in the bill as reported under Rule XXI clause 2, and separately against amendments in violation of that rule.

On Dec. 1, 1982,[17] during consideration in the Committee of the Whole of the Departments of Labor, Health and Human Services, and Education appropriation bill (H.R. 7205), a parliamentary inquiry was raised as indicated below:

MR. [NEAL] SMITH of Iowa: Mr. Chairman, I have a parliamentary inquiry.

The portion of the bill to which the parliamentary inquiry relates is as follows:

SPECIAL PROGRAMS

For carrying out the consolidated programs and projects authorized under chapter 2 of the Education Consolidation and Improvement Act of 1981; . . .

. . . Mr. Chairman, is it possible, since the bill is open to amendment [at] any point, to reserve a point of order and to make it at a later time against certain lines in the bill?

THE CHAIRMAN:[18] The Chair will state that the point of order must be made at this time, before amendments are offered.

Point of Order Against Paragraph Where Amendment Has Been Offered

§ 2.23 While a point of order can be made against an entire paragraph of a general appropriation bill if any portion contravenes the rules, it is too late to rule out the entire paragraph after points of order against specific portions have been sustained and an amendment to the paragraph has been offered.

On June 27, 1974,[19] during consideration of the Departments

17. 128 CONG. REC. 28175, 97th Cong. 2d Sess. See also §§ 2.15, 2.16, supra, for earlier precedents on related issues.

18. Don Fuqua (Fla.).

19. 120 CONG. REC. 21671, 21672, 93d Cong. 2d Sess.

of Labor, and Health, Education, and Welfare appropriation bill (H.R. 15580), the following proceedings occurred as indicated above:

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Flood: Page 18, line 7, insert ": *Provided*, That none of the funds in this Act shall be used to pay any amount for basic opportunity grants for full-time students at institutions of higher education who were enrolled as regular students at such institutions prior to April 1, 1973." . . .

MRS. [EDITH] GREEN of Oregon: Mr. Chairman, I make a point of order against this amendment. The point of order is what I cited a moment ago, Cannon's Procedure in the House of Representatives, on page 246:

If a part of a paragraph . . . is out of order, all is out of order and a point of order may be raised against the portion out of order or against the entire paragraph. . . .

THE CHAIRMAN:[20] The Chair is prepared to rule.

The amendment offered by the gentleman from Pennsylvania (Mr. Flood), does appear to meet the tests of a limitation on an appropriation bill. It limits the funds in this specific bill and it is negatively stated. For these reasons it would clearly appear to be admissible as a limitation, distinguishable from that language which was stricken in the proviso that had appeared in the original bill.

The Chair does not understand that the gentlewoman had raised a point of order against the entire paragraph. The gentlewoman raised two specific points of order on which the Chair ruled.

If the gentlewoman had at that time intended to make a point of order against the entire paragraph she should so have stated, and the Chair believes that a point of order at this moment on those grounds would be untimely made since an amendment to the paragraph is now pending.

Point of Order Weighed Against Bill as Amended

§ 2.24 A point of order against an amendment as legislation on a general appropriation bill must be determined in relation to the bill in its modified form (as affected by disposition of prior points of order).

On June 14, 1978,[1] the Chair found that, to a general appropriation bill from which all funds for the Federal Trade Commission had been stricken as unauthorized, an amendment prohibiting the use of all funds in the bill to limit advertising of (1) food products containing ingredients found safe by the Food and Drug Administration or considered "generally recognized as safe", or not con-

20. James C. Wright, Jr. (Tex.).

1. 124 CONG. REC. 17644–47, 95th Cong. 2d Sess.

taining ingredients found unsafe by the FDA, and (2) toys not declared hazardous or unsafe by the Consumer Product Safety Commission, imposed new duties upon the Federal Communications Commission (another agency funded by the bill) to evaluate findings of other federal agencies—duties not imposed upon the FCC by existing law, and therefore violated Rule XXI clause 2. The proceedings are discussed in Sec. 58.7, infra.

Reserving Points of Order on General Appropriation Bill

§ 2.25 Once points of order have been reserved in the House against provisions in a general appropriation bill pending a unanimous consent request for filing of the report thereon and referral to the Union Calendar when the House would not be in session, points of order need not be reserved again when the report is filed from the floor as privileged on a later day, as the initial reservation carries over to any subsequent filing on that bill.

On Mar. 1, 1983,[2] privileged report was submitted on H.R. 1718, the essential and productive jobs and unemployment compensation appropriation bill, 1983:

> Mr. [Jamie L.] Whitten [of Mississippi], from the Committee on Appropriations, submitted a privileged report (Rept. No. 98–11) on the bill (H.R. 1718) making appropriations to provide emergency expenditures to meet neglected urgent needs, to protect and add to the national wealth, resulting in not make-work but productive jobs for women and men and to help provide for the indigent and homeless for the fiscal year 1983, and for other purposes, which was referred to the Union Calendar and ordered to be printed.
>
> THE SPEAKER PRO TEMPORE:[3] All points of order on the bill have previously been reserved.

Parliamentarian's Note: While there did not appear to be a precedent directly on this point, it was decided merely as a matter of convenience to the minority that where they have once reserved points of order (so that provisions in violation of Rule XXI clauses 2 and 6 might be stricken on points of order by the Committee of the Whole and not reported back to the House), the minority Member need not be back on the floor to again reserve points of order when the report is filed.

Appropriation Bills Read "Scientifically" by Paragraph Headings

§ 2.26 General appropriation bills are read only by para-

2. 129 CONG. REC. ——, 98th Cong. 1st Sess.

3. Bill Alexander (Ark.).

graph headings and appropriation amounts, and the Clerk reads the page and line numbers of those headings for the information of Members only when the reading of the bill has been interrupted by debate or amendment.

On Nov. 30, 1982,[4] during consideration of H.R. 7158 (Department of Treasury and Postal Service appropriation bill), the Chair made a statement regarding the timeliness of points of order during the reading of appropriation bills as follows:

> MR. [WILLIAM E.] DANNEMEYER [of California]: Mr. Chairman, I have a point of order which I would like to assert at page 25, lines 8 through 20.
>
> THE CHAIRMAN:[5] The Chair would advise the gentleman in order to do that, that section of the bill having been read, he will have to request unanimous consent.
>
> MR. DANNEMEYER: Mr. Chairman, I ask unanimous consent that I be permitted to assert a point of order on page 25, lines 8 through 20. . . .
>
> MR. [EDWARD R.] ROYBAL [of California]: Mr. Chairman, I object.
>
> THE CHAIRMAN: Objection is heard. . . .
>
> The Chair would make only one observation and that is this: that the Clerk is reading this bill as Clerks for years and years and years have read appropriation bills. Under that procedure, normally page numbers are not cited at all unless the reading of the bill has been interrupted by the offering of an amendment or by debate.
>
> So it does, the gentleman is correct, require closer attention than the reading of a normal bill or bills other than appropriation bills.

Chair Normally Does Not Ask For Points of Order

§ 2.27 The Chair does not inquire whether any points of order are to be made against a paragraph of a general appropriation bill which has been read by the Clerk (except where reading has been dispensed with by unanimous consent).

On May 31, 1984,[6] the following exchange occurred:

> The Clerk read as follows:
>
> Sec. 610. None of the funds appropriated or otherwise made available by this Act may be obligated or expended to issue, implement, administer, conduct or enforce any antitrust action against a municipality or other unit of local government. . . .
>
> MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I offer an amendment.
>
> THE CHAIRMAN:[7] The Clerk will report the amendment.

4. 128 CONG. REC. 28066, 28067, 97th Cong. 2d Sess.
5. Gerry E. Studds (Mass.).
6. 130 CONG. REC. ——, 98th Cong. 2d Sess.
7. George E. Brown, Jr. (Calif.).

The Clerk proceeded to read the amendment.

MR. [JOHN EDWARD] PORTER [of Illinois] (during the reading): Mr. Chairman, is the Chair not going to ask for points of order on this segment?

THE CHAIRMAN: The Clerk had completed reading the section, so the Chair did not ask for points of order.

§ 3. Waiver of Points of Order; Perfecting Text Permitted to Remain

Points of order against provisions of an appropriation bill may be waived by unanimous consent or special rule. Such waiver will not preclude points of order against amendments offered from the floor; but, of course, the waiver of points of order may be made applicable to such amendments, or to specified amendments.

In addition, language of the bill or amendment that is subject to a point of order may be permitted to remain through mere failure to make the point of order.

Language that has been permitted to remain in the bill or amendment may be modified by a further amendment, provided that such amendment is germane and does not contain additional legislation or additional separately earmarked unauthorized items of appropriation.

The precedents which follow discuss these principles.

Waiver by Unanimous Consent

§ 3.1 The House may grant unanimous consent that points of order be waived against all of the provisions contained in an appropriation bill, even before such bill is reported to the full committee by a subcommittee.

On May 23, 1944,[8] a unanimous-consent request was granted, as follows, relating to H.R. 4879, the national war agencies appropriation bill:

MR. [CLARENCE] CANNON of Missouri: Mr. Speaker, I ask unanimous consent that it may be in order to take up the war agencies bill immediately after disposition of business on the Speaker's table on Thursday next, that points of order on the bill be waived, and that general debate be confined to the bill.

THE SPEAKER [SAM RAYBURN, of Texas]: Is there objection to the request of the gentleman from Missouri (Mr. Cannon)?

MR. [JOHN] TABER of New York: Mr. Speaker, reserving the right to object, the gentleman means points of order on matters contained in the bill?

MR. CANNON of Missouri: Yes; only points of order on matters reported by

8. 90 CONG. REC. 4917, 78th Cong. 2d Sess.

the committee, not points of order that may be raised during consideration of any amendment that may be offered to the bill in the Committee of the Whole.

MR. TABER: Did the gentleman incorporate in his request that debate be confined to the bill?

MR. CANNON of Missouri: Yes; that debate be confined to the bill.

THE SPEAKER: Is there objection to the request of the gentleman from Missouri [Mr. Cannon]?

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, reserving the right to object, may I ask the chairman of the Appropriations Committee if any arrangements have been made as to the period of general debate, so that it may be in the Record?

MR. CANNON of Missouri: General debate will not exceed 1 day. We hope to begin reading the bill before the close of the day.

THE SPEAKER: Is there objection to the request of the gentleman from Missouri [Mr. Cannon]? There was no objection.

On May 25, 1944,[9] H.R. 4879 was reported to the House and the following proceedings took place:

MR. CANNON of Missouri, from the Committee on Appropriations, reported the bill (H.R. 4879) making appropriations for war agencies for the fiscal year ending June 30, 1945, and for other purposes (Rept. No. 1511), which was . . . with the accompanying report, referred to the Committee of the Whole House on the state of the Union and ordered to be printed.

MR. TABER: Mr. Speaker, I reserve all points of order on the bill, and I desire to propound a parliamentary inquiry at this time.

THE SPEAKER: The gentleman will state it.

MR. TABER: Mr. Speaker, on Tuesday afternoon prior to adjournment the gentleman from Missouri [Mr. Cannon] asked unanimous consent in substance that it might be in order to take up this bill today and that all points of order against it be waived. There being no objection, that consent was given.

My parliamentary inquiry is: That bill not having been reported by the subcommittee to the full Committee on Appropriations or by the full Committee on Appropriations of this House, were points of order against the bill waived? . . .

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Speaker, it has been my observation that unanimous-consent requests to waive points of order against appropriation bills have always been submitted after the bill has been reported, I am not aware of any practice of coming in 2 days ahead of the reporting of a bill at a late hour in the afternoon when very few Members are on the floor and obtaining unanimous consent to waive points of order against a bill which has not even been formulated, not even introduced, not even as yet considered by the committee from which it is to be reported.

MR. TABER: Mr. Speaker, I have known of at least 10 cases in the last 10 years where the same practice has been followed.

THE SPEAKER: The Chair is prepared to rule. . . .

. . . It has been held that the Committee on Rules may report a resolu-

9. 90 CONG. REC. 4990–92, 78th Cong. 2d Sess.

tion providing for the consideration of a bill which has not been introduced. When a rule is reported it can be adopted only by a majority vote of the House.

It would seem to the Chair that a unanimous-consent request about which there was no contest would be even stronger than that.

MR. [CLIFTON A.] WOODRUM of Virginia: Would the Chair hold that the Committee on Appropriations, which does not have legislative authority, would have no right to report a legislative provision, unanimous consent having been obtained before the bill was even reported to the full committee, no matter what objectionable legislative features may have been put in the bill by the full committee, and yet when it comes to the House it would not be subject to a point of order?

THE SPEAKER: Any time that any Member of the House desires to object to a request of this kind he may exercise his right to do it.

The Chair holds that points of order against the provisions in this bill have been waived.

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Speaker, in view of the importance of this as a matter of setting a precedent, I respectfully appeal from the decision of the Chair and ask for recognition. . . .

The question involved is whether or not you want the Speaker to recognize Members to ask for the consideration of appropriation bills with points of order waived and let that recognition come at any time regardless of whether or not the bill has been reported to the House.

Mr. Speaker, I move the previous question.

MR. MCCORMACK: Mr. Speaker, I move that the appeal be laid on the table.

THE SPEAKER: The motion of the gentleman from Massachusetts is preferential.

The question was taken; and the Chair being in doubt, the House divided; and there were—ayes 175, noes 54.

MR. [EZEKIEL C.] GATHINGS [of Arkansas]: Mr. Speaker, I ask for the yeas and nays.

THE SPEAKER: Twenty-six Members have risen, not a sufficient number.

The yeas and nays were refused.

So the motion was agreed to.

THE SPEAKER: The motion offered by the gentleman from Massachusetts is agreed to, and the decision of the Chair sustained.

Waiver by Special Rules, Generally

§ 3.2 The House may adopt a resolution waiving points of order against a section of an appropriation bill which contains legislative provisions in violation of Rule XXI clause 2.

On May 27, 1969,[10] the following proceedings took place:

MR. [CLAUDE D.] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 424 and ask for its immediate consideration.

10. 115 CONG. REC. 14055, 14056, 91st Cong. 1st Sess.

The Clerk read the resolution, as follows:

H. RES. 424

Resolved, That during the consideration of the bill (H.R. 11582) making appropriations for the Treasury and Post Office Departments, the Executive Office of the President, and certain independent agencies, for the fiscal year ending June 30, 1970, and for other purposes, all points of order against section 502 of said bill are hereby waived.

THE SPEAKER:[11] The gentleman from Florida [Mr. Pepper] is recognized for 1 hour.

MR. PEPPER: Mr. Speaker, I yield 30 minutes to the distinguished gentleman from Illinois (Mr. Anderson) and myself such time as I may consume.

Mr. Speaker, House Resolution 424 provides for a rule waiving all points of order against section 502 of H.R. 11582, the Treasury, Post Office, and Executive Office appropriation bill, 1970.

The reason for the waiver is that section 502 constitutes legislation on an appropriation bill.

This section 502 would set aside, Mr. Speaker, only for 1 year the personnel ceiling on the Treasury, Post Office, and Executive Office which ceiling was placed on the governmental agency by Public Law 90–364.

The resolution was agreed to.

Use and Importance of Special Rules

§ 3.3 A statement was made by the Chairman of the Committee on Appropriations as to the use of resolutions, reported by the Committee on Rules and adopted by the House, waiving points of order against legislation in appropriation bills; the chairman then indicated to government departments and legislative committees of the House that, in the next session, nothing would be included in an appropriation bill, however customary or urgent, that was not specifically authorized by law.

On Mar. 23, 1945,[12] Mr. Clarence Cannon, of Missouri, made the following statement concerning House Resolution 194, a resolution waiving points of order against legislative provisions of H.R. 2689, the Agriculture Department appropriation for 1946:

. . . [The resolution] is not in contravention of the rules because the rules specifically provide in rule XI that the Committee on Rules can at any time come in here and report a resolution giving a legislative committee appropriating power or giving an appropriating committee legislative power. The proposition before us is entirely and completely within the purview of the rules of the House. . . .

Mr. Speaker, what has brought about the necessity for this rule? We

11. John W. McCormack (Mass.).

12. 91 CONG. REC. 2671, 2672, 79th Cong. 1st Sess.

have brought in and considered all the appropriation bills of this session up to this time without such a rule.

And we would have brought in this bill without a rule, but for the fact that certain Members of the House . . . objected to every minor legislative provision inserted. . . .

. . . In this instance, the great Committee on Agriculture, which has jurisdiction, approved the bill and the Committee on Rules approved it; otherwise we would not have reported it to the House. But I would like to take advantage of the opportunity to add as an individual member of the committee that in view of the fact that points of order have been so persistently raised on this bill that the Committee on Appropriations should in the future, notwithstanding the needs of the departments in the transaction of their routine business, be like Caesar's wife: innocent of even the implication of any infringement upon any rule or practice of the House. I should like to give notice to the departments, to the legislative committees of the House and to all concerned that in the next session nothing will be included in any appropriation bill, however customary or however urgent, that is not specifically authorized by law. I trust this notice is in ample time to permit any department to make application to legislative committees having jurisdiction, and in time for such committees to report such authorization, if they so desire.

§ 3.4 On an occasion when the Committee on Rules failed to grant a rule waiving points of order against provisions in an appropriation bill, a member of the Committee on Appropriations cited the need for such rule and made points of order against several paragraphs of the bill as it was read for amendment, for purposes of demonstrating the desirability of waiving points of order against provisions in appropriation bills.

On July 14, 1955,[13] the following proceedings took place:

MR. [CLARENCE] CANNON [of Missouri]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7278) making supplemental appropriations for the fiscal year ending June 30, 1956, and for other purposes; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate proceed not to exceed 4 hours. . . .

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, with malice toward nobody but with determination to do my duty as I see it, I want to report to this House that yesterday I appeared before the Committee on Rules, as was the request of the full Committee on Appropriations. I told the Committee on Rules that this bill was filled with paragraphs that were subject to points of order; that the bill probably contained very few pages where a ruling could be denied against points of order, and the bill would be

13. 101 CONG. REC. 10572, 10573, 84th Cong. 1st Sess.

bad. I said there were so few pages that I limited it to about four pages that would not be subject to a point of order.

I read to the committee a prepared statement and said the bill contained many of the paragraphs that were in the final supplemental bill as handled by the Committee on Appropriations every year, and that rule is usually granted.

The gentleman from New York (Mr. Taber), the gentleman from California (Mr. Phillips), and the gentleman from Wisconsin (Mr. Davis) were present and opposed a rule. Mr. Davis lent his moral support.

Past history always allowed a rule. To my surprise the committee failed to act, and we find ourselves with a bill involving approximately $1,650,000,000. . . .

Rather than to have a field day on points of order I intend to ask unanimous consent to ask for deletion from the bill of all the paragraphs subject to a point of order so the House may work its will on that part of the bill on which the decision of the Rules Committee permits us to function. This will represent a big saving in time and much useless talk. . . .

. . . So this is my notice that I intend to cite the paragraphs that are subject to points of order and ask for their deletion from this bill.

MR. [JOHN] TABER [of New York]: . . . Mr. Chairman, I opposed the rule because there was a paragraph in the bill that I felt was not proper, and I do not believe that the Members of the House will feel it is proper if they read it. When that point is reached I propose to offer a point of order against it.

On the other hand, there are in the bill an enormous number of items, as always appear in a supplemental bill at the end of the session, that contain language that makes them particularly subject to a point of order. Those paragraphs have been before the House time after time and very seldom, if ever, have points of order been raised against them.

Frankly, I do not see how we can meet our responsibility in connection with the Government without consideration of a very large number of items that are covered in this bill. I cannot understand just why any Member of the House would feel that he should want to make a point of order against an item unless that item was, in his opinion, against the interests of the Government. That will be my approach to the problem and I will confine my points of order to what I believe may not be in the interest of the Government.

With that statement, I shall feel obliged to object to an omnibus request to be made before the reading of the individual paragraphs.

In the proceedings that followed with respect to the bill, Mr. Rabaut made numerous points of order against provisions of the bill.

Illustrative Forms of Special Rules

§ 3.5 A resolution reported from the Committee on Rules, waiving points of order against consideration of a general appropriation

bill which had not been reported for three calendar days, and waiving points of order against certain provisions in the bill which were not authorized by law or which constituted legislation.

On May 14, 1970,[14] the following proceedings took place:

MR. [RAY J.] MADDEN [of Indiana]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1004 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1004

Resolved, That upon the adoption of this resolution it shall be in order to move, clause 6 of Rule XXI to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 17575) making appropriations for the Departments of State, Justice, and Commerce, and Judiciary, and related agencies for the fiscal year ending June 30, 1971, and for other purposes, and all points of order against the provisions contained under the following headings are hereby waived: "Law Enforcement Assistance Administration" beginning on page 19, line 14 through line 19; "Economic Development Administration" beginning on page 23, line 5 through line 23; "National Bureau of Standards" beginning on page 29, line 7 through line 16; "Maritime Administration" beginning on page 30, line 13 through page 33, line 12; "Arms Control and Disarmament Agency" beginning on page 43, line 8 through line 12; "Commission on Civil Rights" beginning on page 43, line 14 through line 17; and "Small Business Administration" beginning on page 45, line 17 through page 46, line 10.

After debate, the resolution was agreed to.

§ 3.6 The form of a resolution waiving points of order against certain paragraphs in an appropriation bill not authorized by law or containing legislative language is set out below, accompanied by related proceedings.

On June 24, 1969,[15] the following proceedings took place:

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 449 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 449

Resolved, That during the consideration of the bill (H.R. 12307) making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, offices, and the Department of Housing and Urban Development for the fiscal year ending June 30, 1970, and for other purposes, all points of order

14. 116 CONG. REC. 15575, 91st Cong. 2d Sess.

15. 115 CONG. REC. 17045, 91st Cong. 1st Sess.

against the provisions contained under the following headings are hereby waived: "Appalachian Regional Development Programs" beginning on page 3, line 22, through page 4, line 3, "Independent offices—Appalachian Regional Commission" beginning on page 4, line 15 through page 4, line 21, "National Aeronautics and Space Administration" beginning on page 21, line 13, through page 23, line 3; and "National Science Foundation" beginning on page 23, line 5, through page 25, line 2.

THE SPEAKER:[16] The gentleman from Missouri (Mr. Bolling) is recognized for 1 hour.

MR. BOLLING: Mr. Speaker, I yield 30 minutes to the gentleman from California (Mr. Smith) and pending that I yield myself such time as I may consume.

Mr. Speaker, the three specific waivers of points of order are necessary because the items on which the waivers are given or proposed by this resolution have not been authorized by law. I explained this to the House during the colloquy between the majority and minority leaders last Thursday. The items are, as anyone who listened to the reading of the resolution knows, the National Aeronautics and Space Administration, the National Science Foundation, and a part of the Appalachian development programs. The waiver makes it possible for Members of the House to work their will on the specific provisions of the appropriation, and the Committee on Rules felt that it was wiser to handle the matter in this fashion rather than permitting a situation to develop in which the Senate almost surely would add the items on the Senate side when the matter came up, and the only participation of the House would be in conference, and on the conference report.

Therefore the Committee on Rules recommends the waiver on these three points of order.

I urge the adoption of the resolution.

The resolution was adopted.

§ 3.7 The form of a resolution waiving points of order against one title of an appropriation bill is set out below. On June 16, 1964,[17] a rule in the following form was adopted:

MR. [B. F.] SISK [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 785, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

> *Resolved*, That during the consideration of the bill (H.R. 11579), making appropriations for certain civil functions administered by the Department of Defense, the Panama Canal, certain agencies of the Department of the Interior, the Atomic Energy Commission, the Saint Lawrence Seaway Development Corporation, the Tennessee Valley Authority, and the Delaware River Basin Commission, for the fiscal year ending June 30, 1965, and for other purposes, all points of order against title III of said bill are hereby waived.[18]

16. John W. McCormack (Mass.).

17. 110 CONG. REC. 13953, 88th Cong. 2d Sess.

18. *Parliamentarian's Note:* The resolution waiving points of order was requested since the atomic energy au-

After debate, the resolution was agreed to.

§ 3.8 The form of a resolution providing that during the consideration of a general appropriation bill all points of order against a specified chapter thereof or any provision contained therein be waived, and further waiving points of order against a designated amendment containing legislation, is set forth below.

On May 9, 1950,[19] the following proceedings took place:

MR. [EDWARD E.] COX [of Georgia]: Mr. Speaker, I call up House Resolution 593 and ask for its immediate consideration.

The Clerk read the resolution (H. Res. 593), as follows:

Resolved, That during the consideration of the bill (H.R. 7786) making appropriations for the support of the Government for the fiscal year ending June 30, 1950, and for other purposes, all points of order against chapter XI of said bill or any provision contained therein are hereby waived and all points of order against the following amendment to such chapter are hereby waived:

On Page 425, after line 13, insert:

"Sec. 1113. Notwithstanding the provisions of section 6 of the act of August 24, 1912 (37 Stat. 555), or the provisions of any other law, the Secretary of State may, in his absolute discretion, during the current fiscal year, terminate the employment of any officer or employee of the Department of State or of the Foreign Service of the United States whenever he shall deem such termination necessary or advisable in the interests of the United States.

"Notwithstanding the provisions of section 6 of the act of August 24, 1912 (37 Stat. 555), or the provisions of any other law, the Secretary of Commerce may, in his absolute discretion, during the current fiscal year, terminate the employment of any officer or employee of the Department of Commerce whenever he shall deem such termination necessary or advisable in the best interests of the United States."

Following debate, the resolution was adopted.

§ 3.9 The form of a resolution waiving points of order against the legislative provisions of a supplemental appropriation bill.

On Sept. 23, 1940,[20] the following proceedings took place:

MR. [ADOLPH J.] SABATH [of Illinois], from the Committee on Rules, submitted the following report on the bill (H.R. 10539) making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other purposes, which was read and referred to the

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thorization bill, H.R. 10945, had not passed the Senate at the time this appropriation bill was called up in the House.

19. 96 CONG. REC. 6725, 81st Cong. 2d Sess.

20. 86 CONG. REC. 12480, 76th Cong. 3d Sess.

House Calendar and ordered to be printed:

HOUSE RESOLUTION 609

Resolved, That during the consideration of the bill (H.R. 10539) making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other purposes, all points of order against the legislative provisions of the bill are hereby waived.

After debate, the resolution was agreed to.

§ 3.10 The form of a resolution making in order, during the consideration of the foreign aid appropriation bill, the offering of a specific amendment containing legislation.

On May 26, 1949,[1] the following resolution was considered and agreed to:

MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 228 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That during the consideration of the bill (H.R. 4830) making appropriations for foreign aid for the fiscal year ending June 30, 1950, and for other purposes, it shall be in order to consider without the intervention of any point of order the following amendment:

"On page 4, line 7, strike out the period, insert a colon, and the following: '*Provided further,* That the entire amount may be apportioned for obligation or may be obligated and expended, if the President after recommendation by the Administrator deems such action necessary to carry out the purposes of said act during the period ending May 15, 1950'."

Form of Resolution Providing for Consideration of Joint Resolution

§ 3.11 The form of a resolution providing for consideration of a joint resolution making appropriations, waiving all points of order against provisions in the joint resolution, making in order without the intervention of any point of order any amendment offered by direction of the Committee on Appropriations.

On May 12, 1938,[2] the following resolution was called up and agreed to:

MR. [JOHN J.] O'CONNOR of New York: Mr. Speaker, I call up House Resolution 497.

The Clerk read the resolution, as follows:

HOUSE RESOLUTION 497

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole

1. 95 CONG. REC. 6890, 81st Cong. 1st Sess.

2. 83 CONG. REC. 6777, 75th Cong. 3d Sess.

House on the state of the Union for the further consideration of House Joint Resolution 679, a joint resolution making appropriations for work relief, relief, and otherwise to increase employment by providing loans and grants for public works projects, and all points of order against said joint resolution are hereby waived. That upon the expiration of the general debate fixed by order of the House of May 4, 1938, the joint resolution shall be read by sections for amendment under the 5-minute rule. It shall be in order to consider without the intervention of any point of order any amendment offered by direction of the Committee on Appropriations. At the conclusion of such consideration the Committee shall rise and report the joint resolution to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the joint resolution and the amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Amendment of Waiver in Special Rule

§ 3.12 Where the Committee on Rules had intended to recommend a waiver of points of order against unauthorized items in a general appropriation bill but not against legislative language therein, the Member calling up the resolution offered an amendment to reflect that intention.

On July 21, 1970,[3] the following proceedings took place:

MR. [JOHN A.] YOUNG [of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1151 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1151

Resolved, That during the consideration of the bill (H.R. 18515) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1971, and for other purposes, all points of order against said bill for failure to comply with the provisions of clause 2, rule XXI are hereby waived.

MR. YOUNG: . . . Mr. Speaker, House Resolution 1151 is a resolution waiving points of order against certain provisions of H.R. 18515, the Departments of Labor, Health, Education, and Welfare and related agencies appropriation bill for fiscal year 1971. . . .

Because the authorizations have not been enacted, points of order are waived against the bill for failure to comply with the first provision of clause 2, rule XXI. By mistake, the second provision was covered by the rule—so I have an amendment at the desk to correct the resolution.

Now, Mr. Speaker, as stated there is a clerical error in the rule and at the proper time I shall send to the desk a committee amendment to correct the clerical error.

3. 116 CONG. REC. 25240–42, 91st Cong. 2d Sess.

Mr. Speaker, I urge the adoption of the resolution. . . .

The Clerk read as follows:

Amendment offered by Mr. Young: Strike out lines 5 through 7 of the resolution and insert in lieu thereof the following: "purposes, all points of order against appropriations carried in the bill which are not yet authorized by law are hereby waived."

The amendment was agreed to. . . .

The resolution was agreed to.

Waiver of Points of Order Against Amendments

§ 3.13 The previous question was rejected on a resolution reported from the Committee on Rules waiving points of order against a general appropriation bill, and the resolution was amended to permit consideration of an amendment to the bill containing legislation.

On May 10, 1973,[4] the following proceedings took place:

MR. [JOHN A.] YOUNG of Texas: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 389 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 389

Resolved, That during the consideration of the bill (H.R. 7447) making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes, all points of order against said bill for failure to comply with the provisions of clause 2 and clause 5 of rule XXI are hereby waived.

THE SPEAKER:[5] The gentleman from Texas is recognized for 1 hour. . . .

MRS. [PATSY T.] MINK [of Hawaii]: Mr. Speaker, I rise in opposition to the rule for the purpose of asking the House to vote down the previous question in order that an amendment to H.R. 7447 can be offered, which will correct a grievous error which was made in the urgent supplemental, which restricted the allocation of funds under impact aid for category B children to the rate of 54 percent.

The rule which we are now considering, which waives in other instances 109 points of order, did not offer us this same opportunity to present this amendment to the House to permit the House to work its will. . . .

MR. YOUNG of Texas: Mr. Speaker, I move the previous question on the resolution.

THE SPEAKER: The question is on ordering the previous question.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MRS. MINK: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

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4. 119 CONG. REC. 15273–81, 93d Cong. 1st Sess.

5. Carl Albert (Okla.).

The vote was taken by electronic device, and there were—yeas 184, nays 222, not voting 27, as follows: . . .

So the previous question was not ordered. . . .

MRS. MINK: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. Mink: Strike out the period at the end of House Resolution 389 and insert "and it shall be in order to consider, without the intervention of any point of order, an amendment on page 10, after the heading on line 13, in the following form: . . .

"'The paragraph under this heading in Public Law 93–25 is amended by striking out "54%". . . .'"

[The resolution as amended was agreed to.]

Extent of Waiver; Applicability to Amendments

§ 3.14 Where a general appropriation bill is considered under terms of a special resolution "waiving points of order against said bill," the waiver applies only to the provisions of the bill and not to amendments thereto.

On Oct. 18, 1966,[6] the Committee of the Whole was considering H.R. 18381, a supplemental appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Glenard P.] Lipscomb [of California]: On page 2, after line 10 insert: . . .

"PROCUREMENT OF AIRCRAFT AND MISSILES, NAVY

"For an additional amount for 'Procurement of aircraft and missiles, Navy,' $431,000,000, to remain available until expended.", and renumber the succeeding chapter and section numbers accordingly.

MR. [GEORGE H.] Mahon [of Texas]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[7] The gentleman will state the point of order.

MR. MAHON: The point of order is that the Committee on Appropriations operates under authorizing legislation, which we often refer to as "412," providing annual authorization for the procurement of aircraft, ships, missiles, and so forth. The House Armed Services Committee has not reported, and Congress has not authorized these additional funds, this $431 million for the procurement of additional aircraft.

So I make the point of order against the amendment on the grounds that it would exceed the authorization. I would withhold the point of order if the gentleman wishes to discuss the amendment, but I must insist upon the point of order. . . .

It is true that we are operating under a rule waiving points of order,[8]

6. 112 CONG. REC. 27417, 89th Cong. 2d Sess.

7. James G. O'Hara (Mich.).

8. See H. Res. 1058, 112 CONG. REC. 27405, 89th Cong. 2d Sess., Oct. 18, 1966, stating:

"*Resolved*, That during the consideration of the bill (H.R. 18381) making supplemental appropriations for the fiscal year ending June 30, 1967, and for other purposes, all points of order against said bill are hereby waived."

but the rule waived points of order only with respect to the content of the bill, not with respect to amendments.

Clearly it seems to me that this amendment is subject to a point of order.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Texas has stated the content of the resolution providing for the consideration of the bill before the Committee of the Whole correctly. The resolution waives points of order against the bill but it does not waive points of order against amendments to the bill.

Inasmuch as there seems to be agreement between the gentleman from Texas and the gentleman from California that the funds contained in the amendment are not authorized by legislation enacted into law, the point of order is sustained.

The Clerk will read.

§ 3.15 Where the House had adopted a resolution providing that "during the consideration of" a general appropriation bill "the provisions of Rule XXI clause 2 are hereby waived," the Chair, based on legislative history during debate on the resolution, ruled that the waiver extended only to provisions in the bill and not to amendments offered from the floor.

On June 22, 1973,[9] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 8825), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

The Clerk read as follows:

Amendments offered by Mr. [Robert O.] Tiernan [of Rhode Island]: Page 4, line 18, strike out "to remain available" and insert in lieu thereof "which shall be obligated and expended for such assistance as authorized by such title, and shall remain available for that purpose".

Page 5, line 2, strike out "to remain available" and insert in lieu thereof "which shall be obligated and expended for such grants as authorized by such title and section, and shall remain available for that purpose".

Page 5, line 13, strike out "to remain available" and insert in lieu thereof "which shall be obligated and expended for such grants and assistance as authorized by such title, and shall remain available for that purpose".

MR. [EDWARD P.] BOLAND]of Massachusetts]: Mr. Chairman, I reserve a point of order on all three amendments. . . .

Mr. Chairman, [the provision] is clearly legislation on an appropriation bill and mandates spending for which there is no legislation. It appears in statutory responsibility otherwise provided by law relating to the Secretary.

THE CHAIRMAN:[10] Does the gentleman from Rhode Island desire to be heard on the point of order?

MR. TIERNAN: Yes, I do.

First of all, the chairman said this would provide for mandatory spending

9. 119 CONG. REC. 20981–83, 93d Cong. 1st Sess.

10. James G. O'Hara (Mich.).

in programs that are not authorized. Under the rule we adopted today, all points of order with regard to that would be waived. . . .

THE CHAIRMAN: . . . The gentleman from Connecticut (Mr. Giaimo) is correct in asserting that if the amendment offered by the gentleman from Rhode Island (Mr. Tiernan) is out of order at all it is out of order because of the second sentence of clause 2 of rule XXI, which contains the provisions that "nor shall any provision in any such bill or amendment thereto changing existing law be in order," and so forth, setting forth exceptions. But the gentleman from Connecticut (Mr. Giaimo) contends and the gentleman from Rhode Island (Mr. Tiernan) concurs, that the resolution providing for the consideration of the bill waives the provisions of that rule. The Chair has again read the rule. It says:

> *Resolved*, That during the consideration of the bill (H.R. 8825) making appropriations for the Department of Housing and Urban Development . . . the provisions of clause 2, rule XXI are hereby waived.

It does not say that points of order are waived only with respect to matters contained in the bill. It says "During the consideration of the bill" the provisions of clause 2 of rule XXI are waived.

The Chair was troubled by that language and has examined the statements made by the members of the Committee on Rules who presented the rule to see if their statements in any way amplified or explained or limited that language. The Chair has found that both the gentleman from Louisiana (Mr. Long) and the gentleman from Ohio (Mr. Latta) in their explanations of the resolution did, indeed, indicate that it was their intention, and the intention of the committee, that the waiver should apply only to matters contained in the bill and that it was not a blanket waiver.

Therefore whatever ambiguity there may have been in the rule as reported, the Chair is going to hold, was cured by the remarks and legislative history made during the presentation of the rule, which were not disputed in any way by the gentleman from Connecticut or anyone else. However, the Chair recognizes that it is a rather imprecise way of achieving that result and would hope that in the future such resolutions would be more precise in their application. . . .

The amendment offered by the gentleman from Rhode Island provides: "These funds shall be expended."

These are the words used by the amendment. Affirmative direction by a long line of precedents has been held to be legislation on appropriation bills.

The Chair is not holding that it is not within the power of Congress to give such affirmative directions. It may or it may not; that is a subject of some dispute right now. The Chair simply holds that an appropriation bill is no place to do it, and the Chair, therefore, sustains the point of order.

Extent of Waiver; Applicability to House Resolutions Incorporated in Bill

§ 3.16 Where the House is considering a general appropriation bill under a resolution waiving all points of order

against the bill, a paragraph enacting the provisions of several House-passed resolutions as permanent law, though concededly legislative in character, is not subject to a point of order.

On Dec. 10, 1970,[11] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 19928), a point of order was raised against the following provision, and proceedings ensued as indicated below:

> The provisions of House Resolutions 1270 and 1276, relating to certain official allowances; House Resolution 1241, relating to compensation of the clerks to the Official Reporters of Debates; and House Resolution 1264, relating to the limitation on the number of employees who may be paid from clerk hire allowances, all of the Ninety-first Congress, shall be the permanent law with respect thereto.
>
> MR. [H.R.] GROSS [of Iowa]: Mr. Chairman, I rise to make a point of order against the language beginning on line 23 of page 12 and running through line 4 of page 13 as being legislation on an appropriation bill and not a retrenchment.
>
> MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the gentleman's point of order would be appropriate except, of course, for the fact that we do have a rule waiving points of order against the bill.
>
> THE CHAIRMAN:[12] The Chair is prepared to rule. Does the gentleman from Iowa care to be heard further?
>
> MR. GROSS: No, sir.
>
> THE CHAIRMAN: Under the resolution the House adopted points of order against the bill are waived. The point of order is not sustained.

Legal Effect of Legislative Language After Enactment

§ 3.17 Legislation in an appropriation bill may be subject to a point of order under Rule XXI clause 2, but if not challenged it becomes permanent law where it is permanent in its language and nature and as such may serve as sufficient authorization in law for subsequent appropriations.

On May 20, 1964,[13] during consideration in the Committee of the Whole of the Agriculture Department appropriations bill (H.R. 11202), the following point of order was raised, and proceedings ensued as indicated below:

> MR. [PAUL] FINDLEY [of Illinois]: My point of order is to lines 3 through 9, the portion of the section beginning with the figure in parentheses 5. I will read it. It reads as follows:
>
> (5) not in excess of $25,000,000 to be used to increase domestic con-

11. 116 CONG. REC. 40941, 91st Cong. 2d Sess.

12. Claude D. Pepper (Fla.).

13. 110 CONG. REC. 11422, 11423, 88th Cong. 2d Sess.

sumption of farm commodities pursuant to authority contained in Public Law 88-250, the Department of Agriculture and Related Agencies Appropriation Act, 1964, of which amount $2,000,000 shall remain available until expended for construction, alteration and modification of research facilities.

There is legislation in an appropriation bill.

THE CHAIRMAN:[14] The gentleman will include the word "and" on line 2, I assume.

MR. FINDLEY: Yes.

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

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I call attention to the section in the bill, last year where Congress passed permanent legislation authorizing this in the appropriation act in which we said hereafter this could be done. It is in last year's appropriation act which was written for this specific purpose and provides hereafter not to exceed $25 million may be appropriated for these purposes. We cite chapter and verse there, so to speak, and it is quite clear.

MR. FINDLEY: Mr. Chairman, may I be heard on that? . . .

My point is that the activity which would be appropriated for in this paragraph (5) has not been authorized in legislation heretofore.

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

The Chair has had called to its attention the section which was contained in Public Law 88–250, in which it appears that the appropriation here, which incidentally is also in the nature of a limitation, was authorized by the Congress by the inclusion of the words pointed out by the gentleman from Mississippi that "hereafter such sums (not in excess of $25,000,000 in any one year) as may be approved by the Congress shall be available for such purpose," and so forth.

The Chair therefore holds that the language in that public law cited is authority for the inclusion in the pending bill of the language to which the point of order was addressed, and therefore overrules the point of order.

MR. FINDLEY: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. FINDLEY: The language authority cited in the public law was a reference to a public law which was an appropriation act; am I correct?

THE CHAIRMAN: The Chair pointed that out. The Chair might say, incidentally, that while legislation on an appropriation bill may be subject to a point of order, if none is made it is perfectly valid legislation and becomes permanent law if it is permanent in its language and nature.

Amendments Adding Further Legislation

§ 3.18 The fact that legislative provisions restricting the uses of funds in other acts for certain purposes have been permitted to remain in a general appropriation bill by failure to make a point of order does not permit the of-

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

fering of an amendment adding additional legislation prohibiting the availability of funds in other acts for certain other purposes.

On Aug. 1, 1973,[15] the following proceedings occurred in the Committee of the Whole:

Mr. [DANTE B.] FASCELL [of Florida]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Fascell: On page 36, after line 23, insert a new section: . . . .

(b) No part of any appropriation contained in this or any other Act, or of funds available for expenditure by any corporation or agency, shall remain available to any agency whenever either House of Congress, or any committee or subcommittee thereof (to the extent of matter within its jurisdiction) requests the presence of an officer or employee of an agency for testimony regarding matters within the agency's possession or under its control unless the officer or employee shall appear and supply all information requested. . .

MR. [HOWARD W.] ROBISON of New York: Mr. Chairman, I make a point of order again on the proposed amendment as amended by the gentleman from Florida on the ground that it is still legislation on an appropriation act, resting that again on the basis that the language makes it apply to "this or any other act."

MR. FASCELL: Mr. Chairman, the amendment seeks to be strictly a limitation within the purview of the rule. I call the attention of the Chair to the language in 607(a), which says—

No part of any appropriations contained in this or any other Act, or of funds available for expenditure by any corporation or agency, shall be used for publicity . . .

Once having done that in this legislation, it seems to me that where language is clearly a limitation within the purview of the legislation or extending the legislation, that the amendment would be in order.

THE CHAIRMAN:[16] The mere fact that this similar language remains in the bill does not protect the gentleman's amendment from the fact that it adds additional legislation to that which has been permitted to remain in the bill and is itself subject to a point of order.

The point of order is sustained.

§ 3.19 To a section of an appropriation bill providing that the Secretary of the Army be authorized to require from the Chief of Engineers a planning report for each river and harbor project, and each flood control project, an amendment seeking to give such authority to the Secretary of the Interior as well was held to add further legislation.

On Aug. 20, 1951,[17] the Committee of the Whole was considering H.R. 5215, a supplemental appropriation bill. When the fol-

15. 119 CONG. REC. 27291, 27292, 93d Cong. 1st Sess.

16. Richard Bolling (Mo.).

17. 97 CONG. REC. 10406, 10408, 82d Cong. 1st Sess.

lowing section was pending for amendment, a motion to strike out the section was offered. A perfecting amendment to the section was then offered and was ruled out as legislation, as follows:

Sec. 1313. In the administration of the various acts authorizing construction of river and harbor and flood-control projects, the following shall be hereafter applicable:

(a) The Secretary of the Army is authorized and directed to have the Chief of Engineers prepare a planning report for each river and harbor project, and for each flood-control project, heretofore or hereafter adopted and authorized by law. Appropriation for construction of an adopted and authorized project, or authorized modification thereof, is authorized only after submission by the Secretary of the Army of a planning report to Congress and the printing thereof as a document of Congress. . . .

After the planning report for a project has been submitted to Congress, and after initial construction funds have been appropriated, such project shall be reviewed by the Chief of Engineers in the first half of each succeeding fiscal year, and a statement of progress thereon, in such form as to permit of ready comparison with the planning report, shall be filed by him with the Appropriations Committees of Congress not later than the following 1st day of February.

(b) The Chief of Engineers is directed to make a report to the Congress not later than December 31, 1952, upon all river and harbor projects, and flood-control projects, adopted and authorized since March 3, 1925, the construction or further improvement of which under present conditions is undesirable, inadvisable, or uneconomical, or in which curtailment of the projects should be made for any other reason.

MR. [HENRY] LARCADE [of Louisiana]: Mr. Chairman, I offer an amendment which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. Larcade: On page 42, line 3, strike out all of section 1313.

THE CHAIRMAN:[18] The gentleman from Louisiana is recognized.

MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, will the gentleman yield for a parliamentary inquiry?

Mr. LARCADE: I yield briefly.

Mr. FORD: Mr. Chairman, I have an amendment which I would like to offer as a substitute for the amendment offered by the gentleman from Louisiana. May I offer that subsequent to his presentation and debate and prior to the vote on his amendment?

THE CHAIRMAN: The proposed substitute offered by the gentleman from Michigan (Mr. Ford) is rather in the nature of a perfecting amendment and would have to be taken up by the committee first.

The gentleman may offer his amendment after the gentleman from Louisiana has concluded. . . .

Amendment offered by Mr. Ford:

Page 42, line 6, strike out the word "is" and insert "and the Secretary of the Interior are."

Page 42, line 7, after the word "engineers" insert the following "and the Commissioner of Reclamation".

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18. Edward J. Hart (N.J.).

Page 42, line 13, after the word "Army" insert the following, "and the Secretary of the Interior."

Page 43, line 23, after the word "engineers" insert the following "and the Commissioner of Reclamation".

Page 44, line 1, strike out the word "him" and insert the word "them."

Page 44, line 3, strike out the word "is" and insert "and the Commissioner of Reclamation are."

MR. [JOHN J.] DEMPSEY [of New Mexico]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. DEMPSEY: The amendment is not germane to this section, and in addition to that, it is purely legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Michigan desire to address himself to the point of order?

MR. FORD: Mr. Chairman, in reply to the point of order made by the gentleman from New Mexico, I would like to say first that under the rule adopted at the time this legislation came to the floor all points of order were waived. Secondly, I think that the amendment is germane because it does apply to engineering and construction of Federal projects, and section 1313 in itself applies to engineering and construction of Federal projects. . . .

THE CHAIRMAN: The Chair is ready to rule.

With respect to the question of waiving all points of order, that runs only to the provisions of the bill and not to amendments offered to the bill. A proposition in an appropriation bill proposing to change existing law but permitted to remain, may be perfected by germane amendments, provided they do not add further legislation. The Chair is of the opinion that this amendment does add further legislation, and, therefore, sustains the point of order.

§ 3.20 To an amendment containing legislation (because prohibiting activities from funds "in this or any other act") but permitted to be offered to a general appropriation bill pursuant to a resolution waiving points of order against that amendment, an amendment adding additional legislation (making the activities illegal) to that permitted to remain was ruled out in violation of Rule XXI clause 2.

On June 29, 1973,[19] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9055), the following proceedings occurred:

MR. [JOHN J.] FLYNT Jr., [of Georgia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Flynt: Page 57, line 21, strike out all of section 307 and insert a new section 307, as follows:

Sec. 307. None of the funds herein appropriated under this Act or heretofore appropriated under any other

19. 119 CONG. REC. 22352, 22362, 93d Cong. 1st Sess.

act may be expended to support directly or indirectly combat activities in, over or from off the shores of Cambodia or in or over Laos by the U.S. forces. . . .

MR. [CHARLES E.] BENNETT [of Florida]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Bennett to the amendment offered by Mr. Flynt: At the end of the Flynt Amendment strike the period and insert a semicolon and the words "and from the date of the enactment of this law it shall be illegal for anyone to participate in, or order, any such activities."

THE CHAIRMAN:[20] All time under the limitation having expired, the question is on the amendment offered by the gentleman from Florida (Mr. Bennett) to the amendment offered by the gentleman from Georgia (Mr. Flynt).

MR. [ELFORD A.] CEDERBERG [of Michigan]: Mr. Chairman, I make a point of order against the amendment.

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

MR. CEDERBERG: Legislation on an appropriation bill is subject to a point of order. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair feels that the amendment offered by the gentleman from Georgia (Mr. Flynt) was protected by the rule. An amendment to that amendment which would add language making an act illegal would be in effect legislation on an appropriation bill, in violation of clause 2, rule XXI, and the point of order is sustained.

20. Jack B. Brooks (Tex.).

§ 3.21 Legislative language in a general appropriation bill which is permitted to remain therein because of a waiver of points of order may be perfected by germane amendment but such amendment may not contain additional legislation.

On June 26, 1973,[1] the Committee of the Whole was considering the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 8877), which read in part:

> OFFICE OF EDUCATION
>
> ELEMENTARY AND SECONDARY EDUCATION
>
> For carrying out, to the extent not otherwise provided, title I ($1,810,000,000), title III ($146,393,000) . . . and section 222(a)(2) of the Economic Opportunity Act of 1964, $2,105,393,000: Provided, That the aggregate amounts made available to each State under title 1–A for grants to local education agencies with that State shall not be less than such amounts as were made available for that purpose for fiscal year 1972: *Provided further,* That the requirements of section 307(e) of Public Law 89–10, as amended, shall be satisfied when the combined fiscal effort of the local education agency and the State for the preceding fiscal year was not less than such combined fiscal effort in the second preceding fiscal year.

1. 119 CONG. REC. 21388, 21389, 93d Cong. 1st Sess.

An amendment was then offered:

MR. [ALBERT H.] QUIE [of Minnesota]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Quie: On page 18, line 7, insert "(1)"' before "shall", strike out line 9, and insert in lieu thereof the following: purpose for fiscal year 1972; but (2) shall not be more than ¾ the difference between the amounts which would be made available to such State under this Act without application of this clause and the amounts made available to such State for that purpose for fiscal year 1972, and (3) shall not be more than 110 percent of the amounts made available to such State for that purpose for fiscal year 1972, plus ½ the difference between such amounts and the amounts which would be made available to such State under this Act without application of this clause or clause (2) of this proviso: *Provided further,* that the

MR. [NEAL] SMITH [of Iowa]: Mr. Chairman, I rise to make a point of order against the amendment on the ground it is legislation on an appropriation bill.

THE CHAIRMAN:[2] The Chair will hear the gentleman.

MR. SMITH of Iowa: That is the sum and substance of it. It is legislation on an appropriation bill.

It might be said that the provision it seeks to amend is also legislation on an appropriation bill, but that point was waived in the rule. . . .

MR. QUIE: . . . I believe the gentleman is correct in saying that the language the amendment seeks to amend would have been subject to a point of order if the committee had not gone to the Rules Committee to get a waiver of points of order. However, under the Holman Rule there is permitted language which would retrench expenditures, and the effect of this amendment would be to retrench expenditures. For that reason I believe the amendment is in order. . . .

MR. [JAMES G.] O'HARA [of Michigan]: Mr. Chairman, under the provisions of clause 2 of rule XXI, which forbids legislation on an appropriation bill, it is made clear that if an amendment modifies such legislation as has been left in the bill—and it is admitted that this is legislation which is left in by reason of the resolution under which we are considering it—that amendment modifying legislation which is already in the bill will be permitted, although if it attempts to add something new it will not be permitted.

I should like to point out, Mr. Chairman, that the Quie amendment simply modifies that language. The language says:

Shall receive not less than the amount received in 1972.

The Quie amendment says:

Shall receive not less than ¾ of the amount received in 1972.

MR. QUIE: Mr. Chairman, if the gentleman will yield, my amendment says, "Not more than," so it is truly a limitation.

MR. O'HARA: "Not more than".

In any event, it is simply a modification of the 100-percent figure that is already in the bill.

2. Chet Holifield (Calif.).

THE CHAIRMAN: . . . The Quie amendment does strike out words in line 9, but it also adds a considerable amount of language to that already in the bill.

The language is as follows:

(2) but shall not be more than 3/4 the difference between the amounts which would be made available to such State under this Act without application of this clause and the amounts made available to such State for that purpose for fiscal year 1972, and (3) shall not be more than 110 percent of the amounts made available to such State for that purpose for fiscal year 1972, plus ½ the difference between such amounts and the amounts which would be made available to such State under this Act without application of this clause or clause (2) of this proviso:

The amendment would add language which the Chair feels is legislation on an appropriation bill, and it is not in order as a certain retrenchment of expenditures.

The Chair sustains the point of order.

§ 3.22 Where a general appropriation bill containing legislative provisions is being considered under a procedure waiving all points of order against the bill, amendments which add further legislation are not in order.

On Dec. 8, 1971,[3] during consideration in the Committee of the Whole, under a resolution waiving points of order, of the foreign assistance appropriation bill (H.R. 12067), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

The Clerk read as follows:

Amendment offered by Mr. [Thomas M.] Pelly [of Washington]: On page 10 after line 21 insert the following: "Sec. 114. No part of any appropriations contained in this Act may be used to provide assistance to Ecuador, unless the President determines that the furnishing of such assistance is important to the national security of the United States and reports within 30 days such determination to the Congress."

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I reserve a point of order against the amendment. . . .

THE CHAIRMAN:[4] Does the gentleman from Louisiana insist on and desire to be heard on his points of order?

MR. PASSMAN: I do, Mr. Chairman, and I do so reluctantly, because there is a lot of merit to the amendment offered by the gentleman from Washington (Mr. Pelly), but I think it would impose additional duties upon the President. I believe it would be subject to a point of order. I shall not press the point further, or elaborate at length, but ask for a ruling.

THE CHAIRMAN: Unless the gentleman from Washington desires to be heard the Chair is ready to rule.

The gentleman from Washington (Mr. Pelly) submitted an amendment

3. 117 CONG. REC. 45495, 92d Cong. 1st Sess.

4. Charles M. Price (Ill.).

to limit the funds available in this bill to Ecuador, contingent upon a decision and a report to be made by the President of the United States. The key words of the amendment are: "unless the President determines and reports within 30 days to the Congress." Obviously, in the opinion of the Chair, that is legislation on an appropriation bill. Therefore the Chair sustains the point of order.

Germane Exception From Legislative Provision

§ 3.23 An amendment which comprises legislation on an appropriation bill but which has been permitted to remain because no point of order was raised against it, may be perfected by germane amendments.

On Jan. 31, 1938, the Committee of the Whole was considering H.R. 9181, a District of Columbia appropriation bill. The following amendment was agreed to: (5)

Amendment offered by Mr. [Ambrose J.] Kennedy of Maryland: Page 13, line 2, after the period, insert a new paragraph, as follows:

"For the use of the House District of Columbia Committee to employ such clerical help as will be necessary to make a complete study of the various surveys previously made of the government of the District of Columbia for the express purpose of forming such legislation as will effect a more efficient and economic handling of the government affairs of the District of Columbia, $5,000."

An amendment was then offered, as follows:

Amendment offered by Mr. [Millard F.] Caldwell [of Florida]: Page 13, line 2, after the amendment offered by Mr. Kennedy, insert a new paragraph, as follows:

"For a complete investigation of the administration of public relief in the District of Columbia, to be made under the supervision and direction of the Commissioners, including the employment of personal services without reference to the Classification Act of 1923, as amended, and civil-service requirements, $5,000."

Subsequently Mr. Caldwell offered an amendment to his amendment: (6)

The Clerk read as follows:

Amendment offered by Mr. Caldwell to the amendment pending: After the word "relief" in the proposed amendment, insert 'not including the activities of the Works Progress Administration."

MR. [CLAUDE A.] FULLER [of Arkansas]: Mr. Chairman, I make the point of order against the amendment for the reason that it is legislation on an appropriation bill and, furthermore, that it seeks to make an appropriation for an item not authorized by law. . . .

THE CHAIRMAN: (7) Objection is heard. The Chair is ready to rule. The

5. 83 CONG. REC. 1309, 75th Cong. 3d Sess.

6. *Id.* at 1312.

7. William J. Driver (Ark.).

gentleman from Florida offers an amendment to the pending amendment in the following language:

> After the word "relief" in the proposed amendment, insert "not including the activities of the Works Progress Administration."

That is the amendment to the amendment offered and to which the gentleman from Arkansas addresses his point of order. The original amendment proposed legislation on an appropriation bill, but no point of order was raised against it. That being so, an amendment that would contain an exception would be germane and in order, certainly. Therefore, the point of order that the gentleman directs to the amendment to the amendment must be overruled.

Mr. Fuller then contended that his right to make a point of order against the original Caldwell amendment was renewed by the attempt to amend that amendment. The Chair rejected this conclusion, reiterating the grounds for his ruling.

§ 3.24 To a legislative section permitted to remain in an appropriation bill and providing that hereafter no funds shall be available to pay for annual leave accumulated and unused at the end of a year, an amendment exempting a designated class of employees from the operation of such provision was held to be in order as a valid exception which did not add further legislation to that permitted to remain.

On Mar. 21, 1952,[8] the Committee of the Whole was considering H.R. 7072, an independent offices appropriation bill. The Clerk read as follows:

TITLE IV—GENERAL PROVISIONS

Sec. 401. Hereafter no part of the funds of, or available for expenditure by any corporation or agency included in this or any other act, including the government of the District of Columbia, shall be available to pay for annual leave accumulated by any civilian officer or employee during any calendar year and unused at the close of business on June 30th of the succeeding calendar year: *Provided,* That the head of any such corporation or agency shall afford an opportunity for officers or employees to use the annual leave accumulated under this section prior to June 30 of such succeeding calendar year: . . . *Provided further,* That this section shall not apply with respect to the payment of compensation for accumulated annual leave in the case of officers or employees who leave their civilian positions for the purpose of entering upon active military or naval service in the Armed Forces of the United States.

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Rees of Kansas: On page 62, line 17, after

8. 98 CONG. REC. 2690, 82d Cong. 2d Sess.

the words "United States", insert "or employees who are entitled to less than 15 days of annual leave."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[9] The gentleman will state it.

MR. THOMAS: Mr. Chairman, it adds additional duties and it is legislation on an appropriation bill. . . .

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

The Chair has had an opportunity to analyze the language of the amendment and feels that the amendment is an exception to the legislative limitation starting on line 5 of page 62 of the pending bill. Section 401, which starts on line 5 of page 62, is a legislative provision allowed by waiver of points of order to remain in an appropriation bill. The pending amendment appears to the Chair merely to be a perfecting amendment which is germane to the provision to which it applies and one which does not add legislation. Therefore, the point of order is overruled.

§ 3.25 Where a legislative provision in a general appropriation bill is permitted to remain by the adoption by the House of a resolution waiving points of order, and where there is pending an amendment in the form of a limitation to that provision, it is in order to offer an amendment to such amendment which provides a germane exception from the limitation and which does not constitute additional legislation.

On May 7, 1970,[10] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 17399), the following occurred after the Clerk had read a legislative paragraph protected by the special rule waiving points of order:

The Clerk read as follows: . . .

Sec. 501. (a) Expenditures and net lending (budget outlays) of the Federal Government during the fiscal year ending June 30, 1971, shall not exceed $200,771,000,000: *Provided*, That whenever action, or inaction, by the Congress on requests for appropriations and other budgetary proposals varies from the President's recommendations reflected in the Budget for 1971 (H. Doc. 91–240, part 1), the Director of the Bureau of the Budget shall report to the President and to the Congress his estimate of the effect of such action or inaction on budget outlays, and the limitation set forth herein shall be correspondingly adjusted: *Provided further*, That the Director of the Bureau of the Budget shall report to the President and to the Congress his estimate of the effect on budget outlays of other actions by the Congress (whether initiated by the President or the Congress) and the limitation set forth herein shall be correspondingly adjusted, and reports, so far as practicable, shall indicate whether such other actions were initiated by the President or by the Congress.

9. Wilbur D. Mills (Ark.).

10. 116 CONG. REC. 14569–71, 91st Cong. 2d Sess.

MR. [EDWARD P.] BOLAND [of Massachusetts]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Boland: On page 53 on line 25 after the amount ($200,771,000,000), insert the following: ", of which expenditures none shall be available for use for American ground combat forces in Cambodia.". . .

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I offer an amendment to the amendment offered by the gentleman from Massachusetts (Mr. Boland).

The Clerk read as follows:

Amendment offered by Mr. Findley to the amendment offered by Mr. Boland: In front of the period insert the following: "except those which protect the lives of American troops remaining within South Vietnam."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[11] The gentleman will state his point of order.

MR. MAHON: I make a point of order on the ground that the amendment requires particular and special duties.[12]

THE CHAIRMAN: Does the gentleman from Illinois wish to be heard on the point of order?

MR. FINDLEY: Mr. Chairman, I feel that it does not impose any specific duties. No report is required. No determination is required. It applies simply to troops that are there for a specific purpose.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make the further point of order that it is legislation on an appropriation bill.

THE CHAIRMAN: The Chair has examined the proposed amendment to the amendment. In the opinion of the Chair the proposed amendment to the amendment constitutes an exception to the limitation that was offered by the gentleman from Massachusetts, does not constitute additional legislation, and is germane. Therefore the Chair overrules the point of order.

Restriction on Contract Authority Contained in Bill

§ 3.26 To a section of an Agriculture Department appropriation bill containing legislation authorizing the Secretary of Agriculture to make such additional commitments as may be necessary in order to provide full parity payments, an amendment providing that the payments shall not exceed an amount necessary to equal parity "when added to the market price and the payment made for conservation . . . of agricultural land resources," was held a proper limitation restricting the availability of

11. James G. O'Hara (Mich.).

12. The imposition of additional duties on officials as constituting a "legislative" enactment is discussed in detail in §§ 52 and 53, infra. The Chair here apparently took the view that the determination of the purpose of American troops in Cambodia was not such a newly required duty as would constitute a change in existing law.

funds which did not add further legislation to that already contained in the bill.

On Mar. 9, 1942,[13] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill, the Clerk read the following provisions:

PARITY PAYMENTS

To enable the Secretary of Agriculture to make parity payments to producers of wheat, cotton, corn (in the commercial corn-producing area), rice, and tobacco pursuant to the provisions of section 303 of the Agricultural Adjustment Act of 1938, there are hereby reappropriated the unobligated balances of the appropriations made under this head by the Department of Agriculture Appropriation Acts for the fiscal years 1941 and 1942, to remain available until June 30, 1945, and the Secretary is authorized and directed to make such additional obligations as may be necessary in order to provide for full parity payments: . . . *Provided further,* That such payments with respect to any such commodity shall be made with respect to a farm in full amount only in the event that the acreage planted to the commodity for harvest on the farm in 1943 is not in excess of the farm acreage allotment established for the commodity under the agricultural conservation program, and, if such allotment has been exceeded, the parity payment with respect to the commodity shall be reduced by not more than 10 percent for each 1 percent, or fraction thereof, by which the acreage planted to the commodity is in excess of such allotment. The Secretary may also provide by regulations for similar deductions for planting in excess of the acreage allotment for the commodity on other farms or for planting in excess of the acreage allotment or limit for any other commodity for which allotments or limits are established under the agricultural conservation program on the same or any other farm.

An amendment was offered, as follows:

Amendment offered by Mr. [John] Taber [of New York]: On page 77, line 5, after the word "farm," strike out the period, insert a colon and a proviso as follows: "*Provided further,* That parity payments, under the authority of this paragraph, shall not exceed such amount as is necessary to equal parity when added to the market price and the payment made or to be made for conservation and use of agricultural land resources under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act approved February 29, 1936, as amended; and the provisions of the Agricultural Adjustment Act of 1938 as amended; *Provided further,* That the total expenditures made and the contracts entered into in pursuance of this paragraph shall not exceed in all $212,000,000.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I submit a point of order against the amendment proposed by the gentleman from New York [Mr. Taber]. . . .

MR. TABER: . . . The bill, on page 75, provides that the Secretary is au-

13. 88 CONG. REC. 2124, 2125, 77th Cong. 2d Sess.

thorized and directed to make such additional commitments or incur such additional obligations as may be necessary in order to provide for full parity payments.

That is legislation. It is brought in order under the rule. The language that I have submitted is clearly germane to that provision because it provides a method. It is purely a limitation to the payments that shall be made for parity under the authority of this paragraph. For this reason it is clearly germane and it is clearly in order.

It would be in order if there was no legislation in the paragraph because it is a pure limitation.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, may I be heard?

THE CHAIRMAN:[14] The Chair will hear the gentleman from South Dakota.

MR. CASE of South Dakota: Mr. Chairman, may I make the observation that if the proposal is clearly a limitation, even though it embraces some legislation, it is in order under the Holman rule.

THE CHAIRMAN: The Chair would like to ask the gentleman from New York [Mr. Taber] if there are any funds other than those appropriated in this bill to be used for parity payments?

MR. TABER: None.

THE CHAIRMAN: Just the funds in this bill?

MR. TABER: That is correct.

THE CHAIRMAN: The amendment the gentleman is offering is to limit the funds offered in this bill?

MR. TABER: That is my intention. I think perhaps I ought to insert after the word "payments" in the third line the words "under the authority of this paragraph." With that in, it would clearly be in order.

THE CHAIRMAN: Does the gentleman from New York [Mr. Taber] ask to modify his amendment?

MR. TABER: I do, Mr. Chairman.

THE CHAIRMAN: The gentleman from New York asks unanimous consent to modify his amendment by inserting after the word "payments" "under the authority of this paragraph." Is there objection to the request of the gentleman from New York [Mr. Taber]?

There was no objection.

THE CHAIRMAN: The gentleman from New York [Mr. Taber] has offered an amendment, on page 77, line 5, undertaking to provide further limitations on the payment and the administration of parity payments, to which the gentleman from Georgia has made a point of order.

It seems to the Chair that the language of the amendment offered by the gentleman from New York constitutes a limitation upon the funds appropriated by this paragraph or proposed to be appropriated by this paragraph and does not constitute legislation.

The Chair therefore overrules the point of order.

Increasing Limitation on Expenditures

§ 3.27 Where the House had adopted a resolution waiving points of order against a section of an appropriation bill setting a limitation on fiscal year expenditures and con-

14. Robert Ramspeck (Ga.).

taining legislative provisions, an amendment increasing the limitation by an amount equal to certain budgetary fixed costs was allowed as a germane amendment perfecting that portion of the bill.

On May 21, 1969,[15] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 11400), the following section of the bill was read:

TITLE IV

LIMITATION ON FISCAL YEAR 1970 BUDGET OUTLAYS

Sec. 401. (a) Expenditures and net lending (budget outlays) of the Federal Government during the fiscal year ending June 30, 1970, shall not exceed $192,900,000,000: *Provided,* That whenever action, or inaction, by the Congress on requests for appropriations and other budgetary proposals varies from the President's recommendations thereon, the Director of the Bureau of the Budget shall report to the President and to the Congress his estimate of the effect of such action or inaction on expenditures and net lending, and the limitation set forth herein shall be correspondingly adjusted.

(b) The Director of the Bureau of the Budget shall report periodically to the President and to the Congress on the operation of this section. The first such report shall be made at the end of the first month which begins after the date of approval of this Act; subsequent reports shall be made at the end of each calendar month during the first session of the Ninety-first Congress, and at the end of each calendar quarter thereafter.

An amendment was offered, as follows:

Amendment offered by Mr. [Jeffery] Cohelan of California: On page 62, line 3, add the following as a new section:

"(c) The limitation set forth in subsection (a), as adjusted in accordance with the proviso to that subsection, shall be increased by an amount equal to the aggregate amount by which expenditures and net lending (budget outlays) for the fiscal year 1970 on account of items designated as "Open-ended programs and fixed costs" in the table appearing on page 16 of the Budget for the fiscal year 1970 may be in excess of the aggregate expenditures and net lending (budget outlays) estimated for those items in the April review of the 1970 budget."

The following proceedings then took place:

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment in that it is legislation on an appropriation bill.

Mr. Chairman, the rule pertaining to title IV only protects what is in the bill, not amendments to the bill. . . .

THE CHAIRMAN:[16] The Chair is ready to rule.

15. 115 CONG. REC. 13270, 13271, 91st Cong. 1st Sess. See also 113 CONG. REC. 32886, 32887, 90th Cong. 1st Sess., Nov. 16, 1967, and 113 CONG. REC. 32966, 32967, 90th Cong. 1st Sess., Nov. 17, 1967 (proceedings relating to H.R. 13893).

16. Chet Holifield (Calif.).

The Chair has examined title IV. This [amendment] is a new subparagraph to title IV. Title IV is legislation in a general appropriation bill, and all points of order have been waived (against) title IV, as a result of [its] being legislation. Therefore the Chair holds that the amendment is germane to the provisions contained in title IV and overrules the point of order.

Striking Out Legislation Permitted to Remain, Inserting Identical Language With Numerical Change

§ 3.28 An amendment striking out a legislative provision that had been allowed by waiver of points of order to remain in the independent offices appropriation bill, and reinserting said provision in identical terms except for a change in the number of housing units authorized by such provision, was held proper as not adding further legislation.

On Mar. 20, 1952,[17] the Committee of the Whole was considering H.R. 7072, an independent offices appropriation bill, which read in part:

PUBLIC HOUSING ADMINISTRATION

Annual contributions: For the payment of annual contributions to public housing agencies in accordance with section 10 of the United States Housing Act of 1937, as amended (42 U.S.C. 1410), $29,880,000: . . . *Provided further,* That notwithstanding the provisions of the United States Housing Act of 1937, as amended, the Public Housing Administration shall not, with respect to projects initiated after March 1, 1949, (1) authorize during the fiscal year 1953 the commencement of construction of in excess of 25,000 dwelling units, or (2) after the date of approval of this act, enter into any agreement, contract, or other arrangement which will bind the Public Housing Administration with respect to loans, annual contributions, or authorizations for commencement of construction, for dwelling units aggregating in excess of 25,000 to be authorized for commencement of construction during any one fiscal year subsequent to the fiscal year 1953, unless a greater number of units is hereafter authorized by the Congress. . . .

An amendment was offered by Mr. Sidney R. Yates, of Illinois:[18]

Amendment offered by Mr. Yates: On page 24, line 11, after the words "*Provided further*", strike out the remainder of line 11 and all lines thereafter through the word "Congress" in line 25, and insert in lieu thereof the following: "That notwithstanding the provisions of the Housing Act of 1937, as amended, the Public Housing Administration shall not, with respect to projects initiated after March 1, 1949, authorize during the fiscal year 1953 the commencement of construction of in excess of 50,000 dwelling units."

17. 98 CONG. REC. 2626–29, 82d Cong. 2d Sess.

18. *Id.* at p. 2627.

Subsequently, Mr. O. Clark Fisher, of Texas, offered a substitute amendment:[19]

> Amendment offered by Mr. Fisher as a substitute for the amendment offered by Mr. Yates: Page 24, strike out line 11, all the language down to and including the word "Congress" in line 25 and insert the following: "*Provided further*, That notwithstanding the provisions of the United States Housing Act of 1937, as amended, the Public Housing Administration shall not, with respect to projects initiated after March 1, 1949 (1) authorize during the fiscal year 1953 the commencement of construction of in excess of 5,000 dwelling units, or (2) after the date of approval of this act enter into any agreement, contract, or other arrangement which will bind the Public Housing Administration in respect to loans, annual contributions, or authorizations for commencement of construction, for dwelling units aggregating in excess of 5,000 to be authorized for commencement of construction during any one fiscal year subsequent to the fiscal year 1953, unless a greater number of units is hereafter authorized by the Congress."

Mr. Franklin D. Roosevelt, Jr., of New York, here ascertained by parliamentary inquiry that a waiver of points of order against the above provisions of the bill did not apply to amendments.

> MR. ROOSEVELT: Mr. Chairman, I make the point of order against the amendment on the ground that it is legislation on an appropriation bill in the future as well as at present.
>
> THE CHAIRMAN:[20] The Chair is ready to rule.
>
> The Chair has had an opportunity to read and to analyze the amendment offered by the gentleman from Texas [Mr. Fisher]. The gentleman's amendment is identical with the language in the bill on page 24, beginning with line 11 through the word "Congress" in line 25, except for the figures in lines 16 and 22, where the gentleman's amendment would strike the words "twenty–five" in each instance and insert "five." That, to the Chair, is a perfecting amendment, and under the rules it is entirely possible for this procedure to be followed. The section of the bill to which the amendment is offered is legislation which has been permitted to remain by waiver of points of order. Such legislative provisions can be perfected by germane amendments which add no further legislation. The amendment before us is germane and adds no further legislation. Therefore, the Chair overrules the point of order.

Examples of Perfecting Amendments Ruled Out as Adding Legislation to That in Bill

§ 3.29 A section which proposes legislation in a general appropriation bill, being permitted to remain, may be perfected by a germane amendment, but this does not permit an amendment which adds further legisla-

19. *Id.* at p. 2628.

20. Wilbur D. Mills (Ark.).

tion; thus, where a provision in the Defense Department appropriation bill required the Secretary of Defense to furnish certain information on proposed purchases to small business enterprises, an amendment requiring expenditures to be made in accordance with provisions of other laws relating to small business was held to be additional legislation and not in order.

On May 10, 1956,[1] a section of the Defense Department appropriation bill (H.R. 10986) was read in Committee of the Whole, and an amendment offered, as indicated:

The Clerk read as follows:

Sec. 609. Insofar as practicable, the Secretary of Defense shall assist American small business to participate equitably in the furnishing of commodities and services financed with funds appropriated under this act by making available or causing to be made available to suppliers in the United States, and particularly to small independent enterprises, information, as far in advance as possible, with respect to purchases proposed to be financed with funds appropriated under this act, and by making available or causing to be made available to purchasing and contracting agencies of the Department of Defense information as to commodities and services produced and furnished by small independent enterprises in the United States, and by otherwise helping to give small business an opportunity to participate in the furnishing of commodities and services financed with funds appropriated by this act.

MR. [JAMES] ROOSEVELT [of California]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Roosevelt: On page 36, line 13, section 609 is amended by adding at the end thereof the following language:

"The expenditures of all appropriations contained in this act effected by this section shall be made in accordance with the policies and provisions of Public Law 413, 80th Congress, Section 2(b) and Public Law 163, 83d Congress, section 203."

MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I reserve a point of order on the amendment. . . .

Mr. Chairman, the gentleman from California [Mr. Roosevelt] was good enough to give me in advance a copy of his proposed amendment, and I have submitted it to a number of my committee colleagues. We are all very much in favor of helping small business. The bill as written is designed to that end. Because of the views entertained by those with whom I have conferred, however, I feel constrained to insist on the point of order.

THE CHAIRMAN:[2] Does the gentleman from California desire to be heard on the point of order?

MR. ROOSEVELT: No, Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is conceded.

1. 102 CONG. REC. 7967, 7968, 84th Cong. 2d Sess.

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

The Chair therefore sustains the point of order.

§ 3.30 Where an appropriation for an object not authorized by law is allowed to remain in an appropriation bill under a resolution waiving points of order, an amendment requiring not less than a certain portion of that appropriation to be used for a different purpose not authorized by law was held to be legislation in violation of the rule.

On July 27, 1954,[3] during consideration in the Committee of the Whole of the mutual security appropriation bill (H.R. 10051), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Phillips: On page 3, line 24, after "$100,000,000", insert "of which not less than $4,100,000 shall be made available to the Food and Agriculture Organization of the United Nations for carrying out multilateral technical cooperation programs authorized by section 306."

MR. [JOHN M.] VORYS [of Ohio]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill and is not authorized by law. . . .

THE CHAIRMAN:[4] Does the gentleman from New York [Mr. Taber] desire to be heard on the point of order?

MR. [JOHN] TABER: Yes, Mr. Chairman. The language is not authorized by law. There is no authorization for any of these items here except the rule under which the bill was brought in.

MR. PHILLIPS: Mr. Chairman, on that point, I will have to concede the point of order. In other words, everything in the bill would be subject to a point of order, except for the fact that the Committee on Rules waived points of order against the printed bill.

The Chairman: The Chair is constrained to sustain the point of order.

§ 3.31 To a provision in an appropriation bill imposing a penalty upon persons who accept employment, the compensation for which is paid from funds in the bill, if such persons belong to a specified type of organization, an amendment extending such penalty to persons who refuse to answer questions before a committee of Congress regarding their membership in such an organization was ruled out of order as adding further legislation to that in the bill and as not being germane to the section to which offered.

3. 100 CONG. REC. 12286, 12287, 83d Cong. 2d Sess.

4. Louis E. Graham (Pa.).

On July 2, 1953,[5] the Committee of the Whole was considering the Defense Department appropriation bill (H.R. 5969), which, in part, provided for penalties upon persons who accept employment for which compensation is paid from funds in the bill, if such persons belong to an organization which asserts the right to strike against the government or which advocates overthrow of the government. An amendment was offered to such provision, and a point of order made against the amendment:

MR. [JAMES P.] SUTTON [of Tennessee]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Sutton: On page 46, line 10, after "violence", insert the following: "or refuses to answer questions before any committee of Congress regarding his or her membership in or affiliation with such organization on the ground that such testimony may incriminate such person."

MR. [ERRETT P.] SCRIVNER [of Kansas]: Mr. Chairman, a point of order.

THE CHAIRMAN:[6] The gentleman will state it.

MR. SCRIVNER: Mr. Chairman, although the committee understands the purpose of the amendment and knows the results it might obtain, we nevertheless feel that the amendment is subject to a point of order, and insist on the point of order that it is legislation on an appropriation bill.

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

MR. SUTTON: Mr. Chairman, this is a restriction on an appropriation. I talked with the chairman of the full Committee on Appropriations about this amendment and also talked to the chairman of the subcommittee handling the bill and also the ranking minority member of the subcommittee. I was hopeful they would accept this amendment. To me it is a restriction on an appropriation and is something I believe the entire Congress would be in favor of. I hope the gentleman will withdraw his point of order and let this amendment go into the appropriation bill. I still insist, Mr. Chairman, that it is a restriction.

THE CHAIRMAN: In the opinion of the Chair, the amendment offered by the gentleman from Tennessee adds further legislation to that in the bill, and the amendment is not germane to the section to which it is offered. The Chair, therefore, sustains the point of order.

§ 3.32 Where a provision in a general appropriation bill established a continuing fund in the "Southeastern Power Area," to be available for designated expenditures in such area, an amendment establishing a similar fund from receipts of the "Southwestern Power Administration" for similar expendi-

5. 99 CONG. REC. 7974, 83d Cong. 1st Sess.

6. Leo E. Allen (Ill.).

tures in the southwestern area was held to add legislation unauthorized by law.

On Apr. 24, 1951[7], the Committee of the Whole was considering H.R. 3790, an Interior Department appropriation. The following paragraph was pending:

> All receipts from the transmission and sale of electric power and energy under the provisions of section 5 of the Flood Control Act of December 22, 1944 (16 U.S.C. 825s), generated or purchased in the southeastern power area, shall be covered into the Treasury of the United States as miscellaneous receipts, except that the Treasury shall set up and maintain from such receipts a continuing fund of $50,000, and said fund shall be placed to the credit of the Secretary, and shall be subject to check by him to defray emergency expenses necessary to insure continuity of electric service and continuous operation of Government facilities in said area.

MR. [BOYD] TACKETT [of Arkansas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Tackett: Strike out the period on line 18, page 3, following the word "area" and insert the following language: "*Provided, further,* That all receipts from the transmission and sale of electric power and energy under the provisions of section 5 of the Flood Control Act of December 22, 1944 (16 U.S.C. 825s), generated or purchased by the Southwestern Power Administration, shall be covered into the Treasury of the United States as miscellaneous receipts, except that the Treasury shall set up and maintain from such receipts a continuing fund of $250,000. . . ."

MR. [JAMES W.] TRIMBLE [of Arkansas]: Mr. Chairman, I make the point of order against the amendment on the ground that it is legislation on an appropriation bill and that the language used changes the purpose of the legislation to be considered.

THE CHAIRMAN:[8] Does the gentleman from Arkansas desire to be heard on the point of order?

MR. TACKETT: Yes, Mr. Chairman.

I contend, Mr. Chairman, that this is a limitation upon legislation and that it is germane to the provisions of the bill, because the Southwestern Power Administration and the Southeastern Power Administration are both authorized under section 5 of the Flood Control Act of December 22, 1944, and that this amendment places the Southwestern Power Administration and other such agencies under the Department of the Interior under the same provisions and entitlement so far as the continuing fund is concerned. It is certainly germane, Mr. Chairman, for the simple reason that both such agencies are set up under the Flood Control Act of 1944, and this is a limitation upon the legislation that is provided by this section of the proposal now before the committee. . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Arkansas [Mr. Tackett] has offered an amendment on page 3, line 18, to a paragraph of the bill which has to do with the con-

7. 97 CONG. REC. 4293, 4294, 82d Cong. 1st Sess.

8. Wilbur D. Mills (Ark.).

tinuing fund of the Southeastern Power Administration. The gentleman from Arkansas [Mr. Trimble] makes a point of order against the amendment. The Chair has had an opportunity to read and analyze the amendment offered by the gentleman from Arkansas, which has to do with the generation or purchase of electric power by another agency than the Southeastern Power Administration, the Southwestern Power Administration. The amendment contains language that is clearly legislation.

In answer to the suggestion of the gentleman from New York, even though legislation may appear in an appropriation bill, that language cannot be amended by other language which adds legislation. Briefly, a proposition in an appropriation bill proposing to change existing law, but permitted to remain, may be perfected by germane amendments, but such amendments may not add legislation, and it is the opinion of the Chair that the amendment offered by the gentleman from Arkansas proposes to add legislation not authorized by law.

Therefore, the Chair sustains the point of order made by the gentleman from Arkansas [Mr. Trimble].

§ 3.33 A paragraph which proposes legislation in a general appropriation bill being permitted to remain may be perfected by a germane amendment, but this does not make in order an amendment which contains additional legislation.

On June 1, 1944,[9] the Committee of the Whole was considering H.R. 4899, a Department of Labor and Federal Security Agency appropriation bill. The Clerk read as follows:

Employment office facilities and services: For all necessary expenses of the War Manpower Commission in connection with the operation and maintenance of employment office facilities and services, and the performance of functions, duties, and powers relating to employment service transferred to the War Manpower Commission by Executive Order No. 9247, including the recruitment and placement of individuals for work or training in occupations essential to the war effort; such expenses to include . . . travel expenses (not to exceed $2,268,000); and rent in the District of Columbia: . . . *Provided further,* That the Chairman of the War Manpower Commission may transfer funds from this appropriation to the Social Security Board for "grants to States for unemployment compensation administration" as authorized in title III of the Social Security Act, as amended to meet costs incurred by States in making available to the War Manpower Commission premises, equipment, supplies, facilities, and services, needed by the Commission in the operation and maintenance of employment office facilities and services, any sum so transferred and not expended in accordance with this proviso to be retransferred to this appropriation, $57,968,079. . . . *Provided further,* That no portion of the sum herein appropriated shall be expended by any Federal agency for the salary of any person who is engaged for more than half of the time, as determined by the State director of

9. 90 CONG. REC. 5152, 5153, 78th Cong. 2d Sess.

unemployment compensation, in the administration of the State unemployment compensation act, including claims taking but excluding registration for work.

At this point, an amendment was offered.

MR. [FRANK B.] KEEFE [of Wisconsin]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Keefe: On page 61, line 4, strike out the period, insert a semicolon, and insert the following: "*Provided further*, That pending the return of the employment offices and services to the States, the Federal agency administering the United States Employment Service shall maintain that service as an operating entity, and during the period of its administration shall maintain all functions performed by State employment offices on the date said offices were loaned to the Federal Government."

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, a point of order.

THE CHAIRMAN:[10] The gentleman will state it.

MR. TARVER: Mr. Chairman, I have two points of order. First, the amendment comes too late. The succeeding paragraph "training within industry service" has already been read and the Clerk had begun to read section 702. The amendment is offered at a point preceding the paragraph relating to training within industry. Second, the amendment is legislative in character and proposes legislation on an appropriation bill. Points of order against all legislative matters contained in the bill were by unanimous consent waived by the House on Monday of this week. But that waiver does not include legislative provisions which may be offered by amendment and which are not contained in the bill, and in this case do not relate to any legislative provision contained in the bill. The Wagner-Peyser Act authorizes the making of appropriations to the employment service which has now been transferred by Executive Order No. 9247 to Federal jurisdiction. But the appropriations for that service are authorized by the Wagner-Peyser Act and the duties of administrative officials in the administration of the Wagner-Peyser Act are clearly defined by law. The gentleman by his amendment proposes to place upon them certain designated duties which are not specifically required in existing law, and to that extent proposes an alteration, if not an expansion, of the provisions of the Wagner-Peyser Act. . . .

MR. KEEFE: Mr. Chairman, addressing myself to [the point of order, that this is legislation upon an appropriation bill], if I understand the gentleman's argument it is that here is a legislative attempt to change the provisions of the Wagner-Peyser Act and to impose conditions upon the employment offices of the country at variance with the provisions of the Wagner-Peyser Act. . . . The fact of the matter is that the employment offices in many of the States of this Union prior to the enactment of the Wagner-Peyser Act in 1933, on the 6th of June, were State offices and State maintained and operated, pursuant to State law, and they were financed in whole by State appropriations. Then, in 1933, we passed the Wagner-Peyser Act, the sole purpose of

10. John J. Sparkman (Ala.).

which was to extend Federal aid to States in connection with the operation of a State employment service. . . . Now then, this is a simple limitation on this appropriation bill in the form of this amendment, simply saying that the Federal Government in the operation of these State offices that have been turned over to the Federal Government for the duration of the war, shall be operated on the same basis and with the same functions that they were operated before the States turned them over to the Federal Government; that they shall not do away with their functions, but shall maintain them as an operating entity. . . . I find no inference so far as I am able to see, which in any way seeks to change the law of 1933, the Wagner-Peyser Act, or which seeks to enact into this bill any legislative provision at all. It is simply a limitation to the extent that they shall not do away with functions that were functions in the offices when the Federal Government took those offices over, when they were maintained as State offices. There is not anything in the Wagner-Peyser Act which is contrary to that position at all, because these State offices with State functions were maintained with Wagner-Peyser Act funds before the Federal Government took them over.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Wisconsin [Mr. Keefe] offered an amendment to which the gentleman from Georgia [Mr. Tarver] interposed a point of order.

The general rule relating to this may be stated as follows:

> A paragraph which proposes legislation in a general appropriation bill being permitted to remain may be perfected by a germane amendment; but this does not permit an amendment which adds additional legislation.

The Chair is of the opinion that the amendment is germane, but it certainly appears that it is additional legislation, in that it directs that something shall be done.

Therefore, the Chair is constrained to sustain the point of order.

Adding New Class to Those Covered by Legislative Direction; Ruled Out

§ Sec. 3.34 To a legislative provision permitted to remain in an appropriation bill, authorizing the Secretary of Transportation to allow applicants for mass transit assistance to continue use of preferential fare systems to an existing class covered by those systems, an amendment requiring the applicants to extend their preferential fare systems to a new class of recipients not then covered was ruled out of order as adding legislation to that permitted to remain.

On June 22, 1983,[11] the Committee of the Whole had under consideration the Department of Transportation appropriation bill

11. 129 CONG. REC. ——, 98th Cong. 1st Sess.

(H.R. 3329), when an amendment was offered and proceedings ensued as indicated below:

The Clerk read as follows:

> Sec. 305. None of the funds provided under this Act for Formula grants shall be made available to support mass transit facilities, equipment, or operating expenses unless the applicant for such assistance has given satisfactory assurances in such manner and forms as the Secretary may require . . . that the rates charged elderly and handicapped persons during nonpeak hours shall not exceed one-half of the rates generally applicable to other persons at peak hours: *Provided*, That the Secretary, in prescribing the terms and conditions for the provision of such assistance shall (1) permit applicants to continue the use of preferential fare systems for elderly or handicapped persons where those systems were in effect on or prior to November 26, 1974. . . .

MR. [ROBERT J.] MRAZEK [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Mrazek: Insert the following on page 36, line 24, ending with the phrase "prior to November 26, 1974," "provided that said applicant adopts and implements appropriate standards of eligibility which includes those citizens who reside in the district served by the mass transit system".

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I reserve a point of order against the amendment. . . .

I would remind the House under the rules of the House, though, an issue of this kind with substantive merit needs to come before the House—under the rules adopted primarily with votes from the majority side earlier in this Congress—needs to come before the body in the authorization bills rather than in the appropriations bills.

In this particular instance, the amendment that we have before us constitutes legislation in an appropriation bill under the provisions of clause 2 of Rule XXI.

My objection to the amendment rests on that procedural grounds that legislation in an appropriations bill is beyond the scope of the present consideration and that this amendment must properly be brought before the House in the course of the authorization process. . . .

MR. [RICHARD L.] OTTINGER [of New York]: Mr. Chairman, I think the gentleman's point of order is not well taken. The gentleman might have and I indeed had considered making a point of order against the section as being not in order for reasons that the gentleman has stated with respect to this amendment.

No such point of order was made, however. Therefore, it is too late to knock out the legislation on the basis that it is legislation on an appropriation bill.

This amendment merely seeks to make technical changes in the language which is already there and to which no objection was made. Therefore, it should be in order. . . .

MR. [DENNIS M.] HERTEL of Michigan: Mr. Chairman, it seems clear that the amendment proposed now that is in question deals with perfecting language. We are talking about the very same standards in this amendment

that are recognized in the bill. All we are talking about is extending those standards to another group of citizens that are covered by this bill and this authority. . . .

THE CHAIRMAN:[12] If no other Member wishes to be heard, the Chair is prepared to rule.

Although the pending section of the bill includes legislation which was allowed to remain when no point of order was raised, the fact is that the amendment adds additional legislative requirements that appropriate standards of eligibility be determined for an additional category of citizens not covered by section 305 and, therefore, the Chair must rule that it is more than perfecting and in fact does constitute additional legislation on an appropriation and is out of order at this time.

Rule Waiving Rule XXI Pending Authorization

§ 3.35 The Chairman and members of the Committee on Armed Services on one occasion first opposed the adoption of a rule waiving points of order against the Defense Department appropriation bill, then agreed to support the rule after the Chairman of the Committee on Appropriations announced that the appropriation bill would not be called up pending final conference action on the authorization measure.

On July 26, 1968,[13] the following proceedings took place:

MR. [WILLIAM M.] COLMER [of Mississippi]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1273 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1273

Resolved, That during the consideration of the bill (H.R. 18707) making appropriations for the Department of Defense for the fiscal year ending June 30, 1969, and for other purposes, all points of order against said bill are hereby waived.

MR. COLMER: . . . Mr. Speaker, this resolution simply makes in order the consideration of the appropriation bill for the Department of Defense for fiscal year 1969. Of course, as the membership is aware, the Appropriations Committee reports and bills are privileged. They do not require ordinarily a rule to bring them to the floor. But in this case a rule was requested and granted simply because the authorizing legislation which ordinarily precedes the reporting and consideration of an appropriation bill has not been finally enacted.

The matter is now in conference, and the Committee on Appropriations, I understand, with the concurrence of the leadership, came to the Committee on Rules and requested a rule waiving points of order. . . .

MR. [L. MENDEL] RIVERS [of South Carolina]: Mr. Speaker, of course,

12. Philip R. Sharp (Ind.).

13. 114 CONG. REC. 23622, 23623, 23627, 23628, 90th Cong. 2d Sess.

there has been cooperation. This is perfectly satisfactory. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, the gentleman from South Carolina and the gentleman from Texas agree that upon the adoption of the rule, the bill will not be called up in the House by the Committee on Appropriations until the conference report on the authorization bill has been adopted by both bodies.

MR. RIVERS: Mr. Speaker, that is agreeable to me. . . .

MR. COLMER: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER:[14] The question is on the resolution.

MR. [DONALD] RUMSFELD [of Illinois]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Recognition for Debate on Legislation Permitted to Remain

§ 3.36 The Chairman of the Committee of the Whole on one occasion ruled that, during consideration of a general appropriation bill, members of the Committee on Appropriations are ordinarily entitled to preference in recognition, but that when a rule is adopted waiving points of order against legislative provisions in the bill, recognition may be divided between members of the Committee on Appropriations and other Members interested in the bill.

On Mar. 5 and 6, 1941,[15] the following proceedings took place:

THE CHAIRMAN:[16] The gentleman from Georgia [Mr. Pace] has been seeking recognition. The Chair realizes that this is an appropriation bill, and that ordinarily members of that committee would be entitled to preference, but under the rule adopted yesterday we made this part of it a legislative bill by making certain legislation in order. The Chair is going to divide the time between the members of the Appropriations Committee and the other Members of the House who are vitally interested in this proposition. The Chair now recognizes the gentleman from Georgia [Mr. Pace], a member of the Committee on Agriculture.

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. RICH: The Chair made the statement that this is not an appropriation bill; that it is a legislative bill. . . .

THE CHAIRMAN: The gentleman from Pennsylvania misunderstood the occupant of the chair. . . .

Permit the Chair to make a statement.

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14. John W. McCormack (Mass.).

15. 87 CONG. REC. 1846, 1921, 1922, 77th Cong. 1st Sess.

16. John E. Rankin (Miss.).

On yesterday the question of recognizing members of the committee to the exclusion of other Members of the House was raised. The Chair stated that since we were operating under a rule that makes in order legislation on an appropriation bill, the Chair did not feel the policy that has grown up in recent years of recognizing members of the committee to the exclusion of other Members of the House should be followed. The Chair does not know what attitude future Chairmen of the Committee of the Whole may assume, but the present occupant of the chair wishes to lay down what the Chair believes to be a sound principle in this respect.

There are 40 members of the Committee on Appropriations. They have control of all the time for general debate on bills coming from that committee just as members of the Committee on Foreign Affairs, members of the Committee on Ways and Means, or other committees have control of the time under general debate on bills coming from their respective committees. There is no written or adopted rule of this House giving members of the committee in control of the bill the exclusive right to recognition under the 5-minute rule over other Members of the House, but a custom to that effect seems to have grown up in recent years which the Chair thinks is wrong.

It is all right to give preference to the chairman of a subcommittee or to the ranking minority member on that subcommittee in connection with important amendments under the 5-minute rule, but the Chair does not think it is fair to the rest of the membership of the House to follow a policy, and gradually petrify it into the rules of the House, of recognizing all members of a committee handling the bill under the 5-minute rule to the exclusion of other Members of the House.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I trust the Chair has no intention of announcing a formal decision, which would be in contravention of the practice of the House, which has been in effect for a hundred years. From time immemorial the members of the committee in control of the bill and charged with its passage have been given precedence in recognition, other things being equal. . . .

. . . The members of a committee through months—sometimes years—of work on a certain class of legislation or a recurring bill are naturally more familiar with it, and under the rules of the House are responsible for its disposition. And it naturally follows that they must be in position to secure the floor and must be accorded priority of recognition when that subject or that bill is under consideration in order to expedite the business of the House. There is no specific provision in the body of the rules, but the practice has not only been established in the long history of the American Congress but came down to us from the English Parliament from which we received originally our parliamentary code. . . .

THE CHAIRMAN: . . . The Chair may say to the gentleman from Missouri [Mr. Cannon] that there is no written rule on this subject, but within the last two or three decades appropriations have been taken away from other committees and concentrated in the hands of one committee. The Chair is not speaking any more with reference to the Committee on Appropriations than any other committee. It is perfectly fair for a committee to have charge of gen-

eral debate and probably debate under the 5-minute rule to a large extent, but the Chair does not think it is fair—especially under conditions such as we have here, where a rule has been adopted making legislation that ordinarily comes from the Committee on Agriculture and from other committees of the House in order on the bill—the Chair does not think it fair to the rest of the membership of the House to recognize members of the Committee on Appropriations under the 5-minute rule to the exclusion of the other Members of the House. . . .

MR. [EVERETT M.] DIRKSEN [of Illinois]: Is this to be regarded as a ruling today, or is it merely an observation of the Chair?

THE CHAIRMAN: It is a ruling as far as this bill is concerned.

On Rare Occasions the Committee on Appropriations Has Been Authorized to Report Legislation

§ 3.37 The Committee on Appropriations has been authorized by House resolution to examine allegations that certain persons in the government were unfit for such service because of subversive interests, and to incorporate in any appropriation measure any legislation approved by such committee as a result of such investigation.

On Feb. 9, 1943,[17] House Resolution 105, authorizing the Committee on Appropriations to investigate subversive activities, was reported from the Committee on Rules, considered, and adopted by the House. The resolution is as follows:

> *Resolved*, That the Committee on Appropriations, acting through a special subcommittee thereof appointed by the chairman of such committee for the purposes of this resolution, is authorized and directed to examine into any and all allegations or charges that certain persons in the employ of the several executive departments and other executive agencies are unfit to continue in such employment by reason of their present association or membership in or with organizations whose aims or purposes are or have been subversive to the Government of the United States. Such examination shall be pursued with the view of obtaining all available evidence bearing upon each particular case and reporting to the House the conclusions of the committee with respect to each such case in the light of the factual evidence obtained. . . . Any legislation approved by the committee as a result of this resolution may be incorporated in any general or special appropriation measure emanating from such committee or may be offered as a committee amendment to any such measure notwithstanding the provisions of clause 2 of rule XXI.

Changing Sum of Unauthorized Appropriation Permitted to Remain; Held in Order

§ 3.38 Where an unauthorized appropriation is permitted to remain in a general appropriation bill by failure to raise, or by waiver of, a point

17. 89 CONG. REC. 734, 78th Cong. 1st Sess.

of order, an amendment merely changing that amount and not adding legislative language or earmarking separate funds for another unauthorized purpose is in order.

On June 8, 1977, [18] the Committee of the Whole was considering a Department of Transportation appropriation bill (H.R. 7557), when an amendment was offered and ruled in order as indicated below:

The Clerk read as follows:

COAST GUARD

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the operation and maintenance of the Coast Guard, not otherwise provided for; purchase of not to exceed twelve passenger motor vehicles, for replacement only; and recreation and welfare; $871,865,000 of which $205,977 shall be applied to Capehart Housing debt reduction: . . .

MR. [MARIO] BIAGGI [of New York]: Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Biaggi: On page 3, line 7, strike "$871,865,000" and insert in lieu thereof "$878,865,000". . . .

MR. [SILVIO O.] CONTE [of Massachusetts]: Madam Chairman, the amendment under rule XXI, clause 2, the amendment of the gentleman from New York is out of order because it has not been authorized. The authorization for this is pending and the House has requested a conference on this. . . .

THE CHAIRMAN: [19] The Chair is ready to rule.

The Chair has before it the amendment which is offered by the gentleman from New York (Mr. Biaggi). That amendment simply changes an unauthorized appropriations figure in the bill, striking that figure and inserting in lieu thereof another. The gentleman does not seek, in his amendment, to earmark these additional funds at all.

Under the precedents, then, where an amendment only seeks to change an unauthorized amount permitted to remain in the bill by failure to raise a point of order or by a waiver, and does not add any legislative language or earmark for a specific unauthorized project, that amendment is in order. (Deschler's ch. 25, sec. 23.11.)

Therefore, the point of order is overruled and the gentleman is recognized for 5 minutes.

§ 3.39 Where an unauthorized appropriation is permitted to remain in a general appropriation bill by a resolution waiving points of order, an amendment merely changing that amount and not adding legislative language is in order.

18. 123 CONG. REC. 17941, 17942, 95th Cong. 1st Sess.

19. Barbara Jordan (Tex.).

On Oct. 1, 1975,[20] during consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 9861), a point of order against an amendment was overruled, as indicated below:

The Clerk read as follows:

Amendment offered by Mr. [Bill] Chappell [Jr., of Florida]: on page 31, line 10, strike out "$3,146,050,000" and insert in lieu thereof the following: "$3,093,150,000";

And on page 31, line 14, strike out "$801,419,000" and insert in lieu thereof the following: "$796,119,000". . . .

MR. [SAMUEL S.] STRATTON [of New York]: Mr. Chairman, I make a point of order against the amendment. . . .

[A]s I understood the gentleman's explanation, he says that this continues research on the F–401 engine, but I would point out to the Chair that on page 285 of the report, it is indicated that this fiscal year 1976 budget requests $2 million for additional termination charges for this engine, and any money that would continue the research and development on this would not have a proper authorization. Therefore, this would constitute legislation in an appropriation bill. . . .

MR. [JOSEPH P.] ADDABBO [of New York]: Mr. Chairman, the Chappell amendment totally reduces the figure reported in the bill. There is no other language in the amendment, so therefore it must be pointed out, Mr. Chairman, the point of order must be overruled because there is no other legislative language included in this amendment. It strictly goes to the dollar figure in the bill. . . .

THE CHAIRMAN:[1] The Chair is ready to rule.

For the reasons so eloquently stated by the gentleman from New York (Mr. Addabbo), and where as here an appropriation for an object not authorized by law is allowed to remain in an appropriation bill under a resolution (H. Res. 752) waiving points of order against unauthorized items in the bill, an amendment merely changing the amount of such appropriation is in order (Chairman Graham, July 27, 1954). Also it is obvious that the amendment offered by the gentleman from Florida reduces amounts covered in the bill, and is in order under clause 2, rule XXI.

The Chair overrules the point of order.

Changing Unauthorized Figure Not Yet Read For Amendment; Ruled Out

§ 3.40 Where by unanimous consent amendments were offered en bloc to a paragraph of a general appropriation bill containing an unauthorized amount not yet read for amendment, one of the amendments, which increased that unauthorized figure, was ruled out in violation of Rule XXI clause 2, since at that point it was not

20. 121 CONG. REC. 31058, 31059, 94th Cong. 1st Sess.

1. Daniel D. Rostenkowski (Ill.).

being offered to a paragraph which had been read and permitted to remain by the Committee of the Whole.

On June 21, 1984,[2] during consideration of the Treasury Department appropriation bill (H.R. 5798), the following proceedings occurred:

MR. [GLENN] ENGLISH [of Oklahoma]: Mr. Chairman, I have really three amendments that I am offering today which are all related to one issue, namely, the restoration of funds needed to effectively operate the air support branches of the Customs Service, and since the amendments do not change the overall totals contained with the bill, but rather simply restore the funds to the accounts for which the Office of Management and Budget approved them, I ask unanimous consent that all three amendments be considered en bloc.

THE CHAIRMAN:[3] Is there objection to the request of the gentleman from Oklahoma?

MR. [BILL] FRENZEL [of Minnesota]: . . . I reserve a point of order on the English amendment. . . .

THE CHAIRMAN: The Clerk will report the remaining amendments.

The Clerk read as follows:

Amendments offered by Mr. English: Page 3, line 2, strike out "22,768,000" and insert in lieu thereof "$20,768,000".

Page 6, line 7, strike out "$32,070,000" and insert in lieu thereof "$36,070,000". . . .

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

Mr. Chairman, I make a point of order that the amendment offered by the gentleman from Oklahoma contains appropriations of funds not previously authorized, and, therefore, is in violation of clause 2 of rule XXI. . . .

The amendment provides $4 million in additional funds for the Customs Service on page 6. Funding for the Customs Service has not been authorized by the Congress and, in addition, the amounts contemplated by the English amendment are inconsistent with those approved by the authorizing committee, the Committee on Ways and Means.

Mr. Chairman, I make a point of order that the funding in the English amendment has not been authorized and, therefore violates clause 2 of rule XXI. . . .

MR. [EDWARD R.] ROYBAL [of California]: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The Chair sustains the point of order.

Parliamentarian's Note: Had Mr. English waited until the Customs Service paragraph was read, and if no point of order were raised against the unauthorized amount in that paragraph, and had he then obtained unanimous consent to offer the same three amendments en bloc by returning to prior paragraphs to accomplish the reductions contemplated, his amendments en bloc would not have been subject to a point of order, since he would have been

2. 130 CONG. REC. ——, 98th Cong. 2d Sess.

3. Anthony C. Beilenson (Calif.).

merely perfecting an unauthorized amount permitted to remain by failure to raise a point of order against the paragraph. Mr. Frenzel, however, did make a point of order against the paragraph on the Customs Service interdiction program when that paragraph was read for amendment subsequently.

Lesser Duty Than That Contemplated by Pending Legislation; Held in Order

§ 3.41 A legislative provision permitted to remain in a general appropriation bill may be perfected by germane amendment as long as the amendment does not add further legislation.

On June 27, 1984,[4] during consideration in the Committee of the Whole of the Treasury Department and Postal Service appropriation bill (H.R. 5798), an amendment was offered as follows:

The Clerk read as follows:

Sec. 618. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefit program which provides any benefits or coverages for abortions, under such negotiated plans after the last day of the contracts currently in order. . . .

The Clerk read as follows:

Sec. 619. The provisions of section 618 shall not apply where the life of the mother would be endangered if the fetus were carried to term.

MRS. [PATRICIA] SCHROEDER [of Colorado]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. Schroeder: On page 51, in line 6, delete "life" and insert in lieu thereof "health". . . .

MR. [CHRISTOPHER H.] SMITH [of New Jersey]: Mr. Chairman, this is legislating on an appropriations bill, in violation of rule XXI, clause 2, and I ask that it be ruled in such a way by the Chair. . . .

MRS. SCHROEDER: Mr. Chairman, clause 2(b) of rule XXI states, "No provision changing existing law shall be reported in any general appropriation bill. . . ." Out of this language comes the general restriction prohibiting the consideration of legislation as part of an appropriation bill. One way the Chair decides whether a limitation constitutes legislation is to determine whether the provision adds new affirmative directions for administrative officers.

Clearly, section 619 of H.R. 5798 would have been subject to a valid point of order, had any Member sought to raise one. The "life of the mother" exception to a limitation on funding for abortions on an appropriations measure has on numerous occasions been ruled out of order. This happened last year on this very legislation.

4. 130 CONG. REC. ——, 98th Cong. 2d Sess.

But, no Member raised that point of order on section 619. My amendment seeks to amend section 619 by enlarging the exception to apply to the "health of the mother," rather than to the "life of the mother." The appropriate test is not whether section 619, as amended, would be subject to a point of order but, rather, the test is whether my amendment adds new or different affirmative directions to an administrative officer. The question is whether my amendment would change the nature of the legislation already on this bill.

To answer that question, we must refer to section 618 of the bill, which prohibits the use of funds appropriated by the bill to pay for an abortion or for administrative expenses in connection with any health plan under the Federal Employees Health Benefit Program [FEHBP] which provides benefits or coverages for abortions. Clearly, the first part of this section is a nullity, because there is no authorization to use one penny appropriated by the bill to pay directly for an abortion. The operative language is the second part.

The administrative burden imposed by section 619 is that the Director of the Office of Personnel Management is required to review contracts with health care providers to ensure that they provide no reimbursement for abortions, unless the life of the mother is at stake. Examining those same contracts to ensure that they provide no reimbursement for abortions unless the health of the mother is at stake is precisely the same administrative burden. Each involves reviewing 130 contracts to see whether certain language appears in them. There is no different administrative burden.

Arguably, section 619 creates another administrative burden which requires the Director of the Office of Personnel Management to monitor the implementation of health benefit plans to ensure compliance with the restriction. In this role, section 619 asks the Director of the Office of Personnel Management to second guess doctors and insurance carriers to decide whether the life of the mother would truly have been endangered if the fetus had been carried to term. Undoubtedly, this is an affirmative obligation which is nowhere authorized in law and which the Director of the Office of Personnel Management is uniquely unqualified to perform.

My amendment reduces this administrative obligation. If the Director of the Office of Personnel Management were obliged to ensure compliance with section 619, as amended, he would merely have to determine whether the health of the mother would have been endangered if the fetus were carried to term. This is a much smaller burden.

The life of the mother is a narrow subset of the health of the mother. Medical personnel can say with far greater assurance that the health of a patient might be impaired than that the life of the patient might be lost. To make a determination that the life of the mother would be endangered if the fetus were carried to term, one must make a prior determination that the health of the mother was also endangered. Hence, section 619, as amended by my amendment, would impose a part of the administrative burden imposed by section 619, as reported, but a substantially reduced part. . . .

THE CHAIRMAN:[5] The Chair is prepared to rule.

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5. Anthony C. Beilenson (Calif.).

Under the precedents, a legislative provision permitted to remain in a general appropriations bill may be perfected by amendment so long as the amendment does not add further legislation. The Chair would refer to Mr. Deschler, chapter XXVI, section 2.3.

In the opinion of the Chair, the determinations required by section 619 of this bill, the present bill, as to whether the life of the mother is in danger necessarily subsume determinations as to whether the health of the mother is in danger and, for that reason, the amendment adds no different or more onerous requirements for medical determination to those already required and contained in section 619.

The Chair, therefore, would overrule the gentleman's point of order.

Perfecting Unauthorized Figure but Mandating Expenditures; Ruled Out

§ 3.42 While an unauthorized item permitted to remain in a general appropriation bill by a waiver of points of order may be changed by amendment, an increase in that figure may not be accompanied by legislative language directing certain expenditures.

On June 18, 1976,[6] H.R. 14239 (Departments of State, Justice, Commerce, and Judiciary appropriations for fiscal 1977), was under consideration, which provided in part:

For economic development assistance as authorized by titles I, II, III, IV, and IX of the Public Works and Economic Development Act of 1965, as amended, and title II of the Trade Act of 1974, $300,000,000.

An amendment was offered, as follows:

MR. [PHILIP E.] RUPPE [of Michigan]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Ruppe: In Title III, page 27, line 2, strike out "$300,000,000," and insert in lieu thereof: "$329,500,000, of which not less than $77,000,000 shall be used for economic adjustment as authorized by title IX of the Public Works and Economic Development Act of 1965, as amended.". . .

MR. [JOHN M.] SLACK [of West Virginia]: Mr. Chairman, the amendment would violate clause 2 of rule XXI which provides:

No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law. . . .

The rule adopted earlier, waiving all points of order against certain provisions in the bill for failure to comply with the provisions of clause 2, rule XXI, applies only to those provisions in the bill. The waiver does not apply to amendments which would add additional provisions.

This amendment, Mr. Chairman, would add a provision to the bill earmarking $77 million for economic adjustment under title IX of the Public

6. 122 CONG. REC. 19297, 94th Cong. 2d Sess.

Works and Economic Development Act of 1965, as amended. Extension of that legislation which is required for fiscal year 1977 has not been enacted. . . .

MR. RUPPE: . . . Mr. Chairman, my amendment would increase the funding level of title IX of this section from $47.5 to $77 million. It is my understanding that that section does fund economic development assistance for titles I, II, III, IV, and IX of the Public Works and Economic Development Act of 1965.

THE CHAIRMAN:[7] The Chair is ready to rule.

If the amendment of the gentleman merely changed the unauthorized figure permitted to remain in the appropriation bill, it would be in order; but the amendment does mandate the expenditure of not less than a certain amount of money for a purpose which has not been authorized and as such constitutes legislation in an appropriation bill.

The Chair sustains the point of order.

Expressing Different Congressional Policy to That in Bill; Ruled Out

§ 3.43 To a provision in a general appropriation bill (permitted to remain by failure to raise a point of order) stating the sense of Congress that any new Panama Canal treaty must protect the vital interests of the United States in the Canal Zone and in the operation, maintenance, and defense of the Canal, an amendment striking that provision and inserting a statement that it was the sense of Congress that any such treaty must not abrogate or vitiate the "traditional interpretation" of past Panama Canal treaties, with special reference to territorial sovereignty, was ruled out as constituting a different statement of legislative policy, not merely perfecting in nature, which was further legislation.

On June 10, 1977,[8] during consideration in the Committee of the Whole of the Departments of State, Justice, Commerce, and the Judiciary appropriation bill, a point of order was sustained against the following amendment:

MR. [ELDON J.] RUDD [of Arizona]: Mr. Chairman, I offer an amendment.

(The portion of the bill to which the amendment relates is as follows:)

Sec. 104. It is the sense of the Congress that any new Panama Canal treaty or agreement must protect the vital interests of the United States in the Canal Zone and in the operation, maintenance, property and defense of the Panama Canal.

The Clerk read as follows:

7. Otis G. Pike (N.Y.).

8. 123 CONG. REC. 18402, 18403, 95th Cong. 1st Sess.

Amendment offered by Mr. Rudd: Page 14, delete lines 1 through 5 and insert in lieu thereof:

Sec. 104. It is the sense of the Congress that any new Panama Canal treaty or agreement must not abrogate or vitiate the traditional interpretation of the treaties of 1903, 1936, and 1955, with special reference to matters concerning territorial sovereignty. . . .

MR. [JOHN M.] SLACK [of West Virginia]: Mr. Chairman, I make a point of order reluctantly, because the amendment deals with matters not addressed in the bill and is clearly legislation on an appropriation bill. . . .

MR. RUDD: . . . This is simply a clarification to section 104. We have heard many statements here this afternoon and this morning regarding the desire by many of our distinguished colleagues here, and I think that they are in favor of retaining the Panama Canal. All this does is to clarify this language, put it in proper perspective, so that there will be no question about the retention of the Panama Canal.

THE CHAIRMAN:[9] The Chair is prepared to rule.

The gentleman from Arizona (Mr. Rudd) offered an amendment to section 104, which is a sense of the Congress section.

The amendment offered by the gentleman from Arizona (Mr. Rudd) would change the sense of the Congress legislation permitted to remain in the bill and would clearly alter it. The gentleman's amendment would be further legislation on an appropriation bill and subject to a point of order. The Chair must sustain the point of order made by the gentleman from West Virginia (Mr. Slack).

9. Walter Flowers (Ala.).

Repeating Existing Legislation Verbatim; Held in Order

§ 3.44 An amendment to a general appropriation bill may not add further legislation to that permitted to remain in the bill; and the amendment is not subject to a point of order if containing, verbatim, a legislative provision already contained in the bill.

On Aug. 27, 1980,[10] where an amendment to a general appropriation bill prohibited the use of funds therein for the Occupational Health and Safety Administration for certain purposes, but exempted from such prohibitions persons "engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees," the Chair, in overruling a point of order against the amendment, stated,

> No new duties or determination are required [by the amendment] and the final proviso, while requiring findings as to the temporary status of a farm labor camp, is already in the bill and the amendment does not add legislation to that permitted to remain in the bill.[11]

10. 126 CONG. REC. 23519–21, 96th Cong. 2d Sess.

11. The proceedings are discussed in more detail in Sec. 73.11, infra.

Earmarking Part of Unauthorized Lump Sum; Ruled Out

§ 3.45 An unauthorized item in a general appropriation bill being permitted to remain by a special rule waiving points of order, figures in such item may be perfected but the provision may not be changed by an amendment substituting funds for a different and specified unauthorized purpose.

For an item in a general appropriation bill containing funds for a nuclear aircraft carrier program, against which points of order had been waived for failure of the authorization bill to be enacted into law, a substitute amendment striking out those funds and inserting unauthorized funds for a conventional-powered aircraft carrier program was ruled out under Rule XXI clause 2, as unprotected by the waiver against the bill. The proceedings of Aug. 7, 1978,[12] were as follows:

The Clerk read as follows:

For expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law, including armor and armament thereof, plant equipment, appliances, and machine tools and installation thereof in public and private plants; . . . as follows: . . . for the CVN–71 nuclear aircraft carrier program, $2,129,600,000. . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Yates: On page 20, line 2, after "$128,000,000"; strike the words and amount on lines 2 and 3: "for the CVN–71 nuclear aircraft carrier program, $2,129,600,000;"

On page 20, line 8, after "in all:" strike "$5,688,000,000," and insert in lieu thereof "$3,558,400,000,". . . .

MR. [BILL D.] BURLISON of Missouri: Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. Burlison of Missouri as a substitute for the amendment offered by Mr. Yates: Page 20, line 2, strike out "for the CVN–71 nuclear aircraft carrier program, $2,129,600,000;" and insert in lieu thereof "for the conventional-powered aircraft carrier program, $1,535,000,000.". . .

MR. [CHARLES E.] BENNETT [of Florida]: Mr. Chairman, it would seem to me that this amendment would be subject to a point of order. I have not deeply researched the matter, but we do have a bill before us which passed both the House and the Senate, and that language provided for a nuclear carrier. This bill that is before us specifically provides for a nuclear carrier, and it does not provide for any other type of carrier. . . .

THE CHAIRMAN:[13] The Chair will observe that the Committee on Rules did waive points of order to the pend-

12. 124 CONG. REC. 24710, 24712, 95th Cong. 2d Sess.

13. Daniel D. Rostenkowski (Ill.).

ing paragraph, but it did not waive points of order against amendments.

The Chair will point out that unauthorized items in a general appropriation bill being considered under a special rule waiving all points of order may be perfected by germane amendments merely changing a figure, but such procedure does not permit the offering of amendments adding further unauthorized items on appropriation. As far as the Chair is aware, the conventional powered aircraft carrier is not authorized, and the Chair would have to sustain the point of order made by the gentleman from Florida.

MR. BURLISON of Missouri: Mr. Chairman, I believe the Chairman has not addressed the point that I raised about the authorization bill itself failing to designate what ships are to be built. In other words, there is a single figure in the authorization bill for shipbuilding, and that is what my amendment is to.

THE CHAIRMAN: The Chair would also have to observe that the authorization bill is not signed and, therefore, it is not yet law.

The Chair sustains the point of order.

§ 4. The Holman Rule

The Holman rule (Rule XXI clause 2), which had its inception in the 44th Congress, underwent various modifications between 1876 and 1911. At times it was dropped completely. The formulation of Rule XXI clause 2, from 1911 until the 98th Congress, and under which most of the decisions contained in this section were made, was as follows: [14]

> No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill: *Provided,* That it shall be in order further to amend such bill upon the report of the committee or any joint commission authorized by law or the House Members of any such commission having jurisdiction of the subject matter of such amendment, which amendment being germane to the subject matter of the bill shall retrench expenditures.

The second sentence of the clause comprises the Holman rule exception to Rule XXI, and permits legislative provisions in general appropriation bills or amendments, provided the stated conditions are met. The exception, of course, is to the prohibition against "changing existing law," not to the prohibition against unauthorized appropriations.

A distinction should be noted between provisions meeting the

14. *House Rules and Manual* Sec. 834 (1973). See also the note following Sec. 834, *House Rules and Manual,* for history of the rule.

criteria of the Holman rule and "limitations" of the kind discussed in the latter part of this chapter.[15] Under the Holman rule, a provision that is admittedly "legislative" in nature is nevertheless held to fall outside the general prohibition against such provisions, because it accomplishes specified ends. The "limitations" discussed in later sections are not "legislation" and are permitted on the theory that Congress is not bound to appropriate funds for every authorized purpose.

Paragraph (b) of Rule XXI clause 2, as amended in the 98th Congress narrowed the "Holman rule" exception so that it covered only retrenchments reducing amounts of money covered by the bill, and not retrenchments resulting from reduction of the number and salary of officers of the United States or of the compensation of any person paid out of the U.S. Treasury. Paragraph (b) also eliminated separate authority conferred upon legislative committees or commissions with proper jurisdiction to report amendments retrenching expenditures, and permitted legislative committees to recommend such retrenchments to the Appropriations Committee for discretionary inclusion in the reported bill. Paragraph (d) as added in the 98th Congress provides a new procedure for consideration of all retrenchment amendments only when reading of the bill has been completed and only if the Committee of the Whole does not adopt a motion to rise and report the bill back to the House.[16]

In applying the Holman rule, care should be taken, of course, in assessing the relevance of those decisions which involved interpretation of that rule but which did not reflect the current form or interpretation of the rule.[17]

Generally; Abolishing Offices

§ 4.1 Legislation to be in order under the Holman rule must be germane, must retrench expenditures, and the language used must be essential to the accomplishment of that retrenchment.

On Feb. 29, 1932,[18] the Treasury and Post Office Departments

15. See Sec. 64–79, infra.

16. See Rule XXI clause 2, *House Rules and Manual* § 834 (1983).

17. Some of the precedents which would now be found to be inapplicable, for example, are those at 4 Hinds' Precedents Sec. 3846, 3885–92; 7 Cannon's Precedents §§ 1484, 1486–92, 1498, 1500, 1515, 1563, 1564, 1569; and the decision of June 1, 1892, found at 23 CONG. REC. 4920, 52d Cong. 1st Sess.

18. 75 CONG. REC. 4957, 4958, 72d Cong. 1st Sess.

appropriation bill[19] as under consideration. A provision was read as follows:

> The offices of comptrollers of customs, surveyors of customs, and appraisers of merchandise (except the appraiser of merchandise at the port of New York), 29 in all, with annual salaries aggregating $153,800, are hereby abolished. The duties imposed by law and regulation upon comptrollers, surveyors, and appraisers of customs, their assistants and deputies (except the appraiser, his assistants and deputies at the port of New York) are hereby transferred to, imposed upon, and continued in positions, now established in the Customs Service by or pursuant to law, as the Secretary of the Treasury by appropriate regulation shall specify. . . .

A point of order was then made:

> MRS. [FLORENCE P.] KAHN [of California]: Mr. Chairman, I make a point of order against the section, beginning in line 16, page 11, and running through line 8, on page 12, that it is legislation on an appropriation bill and therefore out of order.

In responding to the point of order, Mr. Joseph W. Byrns, of Tennessee, stated:

> Mr. Chairman, the committee acknowledges that the provision to which the point of order has been made, abolishing these offices of appraisers, comptrollers, and surveyors of customs, is legislation on an appropriation bill and changes existing law.
>
> Under the provisions of clause 2 of Rule XXI, known as the Holman rule, legislation is in order upon an appropriation bill if it conforms to that rule.
>
> The pertinent portion of clause 2 of that rule is as follows:
>
> > No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill. . . .
>
> The committee contends that the paragraph in this bill to which objection has been raised is in order under the provisions of the Holman rule.
>
> Under previous decisions legislation to be in order under this rule must be germane to the bill and must retrench expenditures in one of the three methods set forth in the rule, namely (1) by reduction of the number and salary of officers of the United States, (2) by the reduction of the compensation of any person paid out of the Treasury of the United States, or (3) by the reduction of the amounts of money covered by the bill.
>
> Under previous decisions of the House it has also been held that it is not enough merely to reduce the number and compensation of officers of the United States or the compensation of any person paid out of the Treasury, but the legislation must retrench ex-

19. H.R. 9699.

penditures in doing that. On this point Chairman Saunders, in a decision on December 9, 1922, said:

> The many rulings on this question are fairly uniform. They all hold that when, on the face of the bill, the proposed new legislation retrenches expenditures in one of three ways the point of order should be overruled, and the rule is generally laid down that the construction should be liberal in favor of retrenchment of government expenditures.

Under previous decisions it has also been held that the retrenchment in expenditures must not be conjectural or speculative but must show on the face of the legislation. In this connection Speaker Kerr held:

> In considering the question whether an amendment operates to retrench expenditures, the Chair can only look to what is properly of record before him—that is, the pending bill, the specific section under consideration, the law of the land, so far as it is applicable, and the parliamentary rules and practice of the House; and beyond these he is not permitted to go in deciding the question.

In discussing the question of the saving, Chairman Saunders also said:

> The Chair can only act upon the proposition which is presented on the face of that proposition.

In presenting this paragraph under the Holman rule the committee believes that it answers all of the requirements laid down under sound decisions:

(1) It is germane; (2) it reduces the number and salary of officers of the United States; (3) it retrenches expenditures; (4) the retrenchment is not speculative or argumentative but is specific; (5) every part of the legislation is essential.

1. Germaneness: The bill makes appropriations for the Customs Service, and customarily carries salaries for the offices proposed to be abolished.

2. Reduction of offices and salaries: The paragraph provides for the abolition of 29 offices established by law and now in existence, with salaries aggregating annually $153,800. Under the provisions of the paragraph these offices are eliminated commencing with the date of approval of this bill. The incumbents in them will at that time be removed from the pay roll.

3. Retrenchment of expenditures: The paragraph retrenches expenditures by the elimination of these offices and the saving of the salaries. That is complete on the face of the legislation.

4. The retrenchment is not speculative: The definiteness of the saving can not be controverted. The bill abolishes the 29 positions. They will be gone. The duties are transferred specifically to other positions in the service. The work will be continued. No added expense will come from this transfer, because the paragraph provides that the Secretary of the Treasury shall make the transfer and carry out the legislation without adding any new positions. The retrenchment is specific, definite, and complete. There is no escape from saving $153,800, and in making up this bill the committee has taken out that amount.

5. Every part of the legislation proposed is necessary to the reduction: The legislation is divided into the following parts:

(a) Abolition of the positions; (b) transfer of the duties to positions now

in the service; (c) change in title of existing positions after the transfer to make the title accord to the new duties transferred to them; (d) require the Secretary to administer the transfer of duties in such a way as not to establish any new position.

The necessity of all portions of the legislation and its intimate relationship to the effectiveness and conclusiveness of the retrenchment must be apparent. Without all of the parts the legislation would not be effective.

The Chairman, Edgar Howard, of Nebraska, ruled as follows:

I am afraid the Chair is not in harmony with the position of the lady from California. It would seem to the Chair that this paragraph is safely enfolded in the embrace of the Holman Rule. For the benefit of the lady from California the Chair will say that to be in order under the Holman Rule three things must concur—first, it must be germane; second, it must retrench expenditures; and, third, the language embodied in the paragraph must be confined solely to the purpose of retrenching expenditures.

The Chair finds upon examination of the paragraph that it is germane to the portion of the bill wherein it is inserted. The paragraph on its face definitely reduces the number of officers of the United States by 29 and thereby saves $153,800, thus retrenching expenditures.

The remaining question for the Chair to determine is whether there is any language in the paragraph that is legislation which does not contribute to the retrenchment of the $153,800.

The Chair has examined the paragraph with considerable care in order to determine whether the legislation is coupled up with and essential to the reduction of money. The Chair finds that the paragraph abolishes a number of positions, that it transfers the duties heretofore performed by the officers holding those positions to positions now in the service, that in order to accomplish that it confers upon the Secretary of the Treasury authority to designate the titles of the employees now in the service who are to perform the additional duties, that it requires the Secretary to administer the transfer of duties in such a way as not to establish any new positions. It is apparent to the Chair that all the legislation to be found in the paragraph is necessary to accomplish the purpose of retrenching expenditures. The Chair thinks that the paragraph clearly comes within the provisions of the Holman Rule and overrules the point of order.

§ 4.2 A provision in an appropriation bill abolishing the offices of the surveyor of customs at the Port of New York and seven comptrollers of customs and transferring the duties of these officers to positions already established in the Customs Service, was held to be in order under the Holman rule.

On Feb. 27, 1939,[20] during consideration in the Committee of the Whole of the Treasury and Post

20. 84 CONG. REC. 1961, 1962, 76th Cong. 1st Sess.

Office Departments appropriation bill (H.R. 4492), a point of order was raised against the following proviso, and proceedings then followed as indicated below:

Salaries and expenses: For collecting the revenue from customs, for the detection and prevention of frauds upon the customs revenue, and not to exceed $100,000 for the securing of evidence of violations of the customs laws . . . *Provided further,* That the offices of the surveyor of customs at the port of New York and seven comptrollers of customs, with annual salaries aggregating $51,600, are hereby abolished. The duties imposed by law and regulations upon the surveyor of customs at the port of New York and comptrollers of customs, their assistants and deputies are hereby transferred to, imposed upon, and continued in positions now established in the Customs Service by or pursuant to law, as the Secretary of the Treasury by appropriate regulations shall specify; and he is further authorized to designate the titles by which such positions shall be officially known hereafter. The Secretary of the Treasury, in performing the duties imposed upon him by this paragraph, shall administer the same in such a manner that the transfer of duties provided hereby will not result in the establishment of any new positions in the Customs Service.

MR. [JAMES M.] FITZPATRICK [of New York]: A point of order, Mr. Chairman.

THE CHAIRMAN:[21] The gentleman will state it.

MR. FITZPATRICK: Mr. Chairman, I make a point of order against the language on page 16, line 14, beginning with the words "Provided further," and extending down to line 5, on page 17, as legislation on an appropriation bill, especially that part of the language beginning in line 23, which states "and he is further authorized to designate the titles by which such positions shall be officially known hereafter."

To me this seems to be purely legislation on an appropriation bill. . . .

THE CHAIRMAN: Does the gentleman from Indiana wish to be heard?

MR. [LOUIS] LUDLOW [of Indiana]: Yes, Mr. Chairman. I do not believe there is any necessity for extended comment on this point of order.

In 1932 a provision in substantially identical language was included in the Treasury-Post Office appropriation bill. The gentlewoman from California [Mrs. Kahn] made a point of order against the provision. The Chair ruled that the five considerations essential to the application of the Holman rule were present in the language proposed, namely, (1) that it was germane, (2) that it reduced the number and salaries of officers of the United States, (3) that it retrenched expenditures, (4) that the retrenchment was not speculative or argumentative but was specific, and (5) that every part of the legislation was essential.

The point of order was, therefore, overruled and I submit it should be in the instant case.

May I say further there is no doubt about the application of the Holman rule in cases where it is ascertainable that there will be a substantial saving, whether or not any specific amount of saving is indicated. However, in the instant case we have the peculiarly ad-

21. John W. Boehne, Jr. (Ind.).

vantageous position of being able to certify to the exact amount in dollars and cents that will be saved, namely, $51,600. Therefore, I submit to the Chair this comes clearly within the Holman rule. I direct the Chair's attention to the fact that we have complied scrupulously with the Ramseyer rule, and he will find set forth on page 47 of our report the text of existing legislation and the text of the legislation we propose in place of it. Having done this, we have only to comply with the Holman rule to make the provision invulnerable to a point of order, and this we have done. I ask for the ruling of the Chair.

MR. FITZPATRICK: Mr. Chairman, the gentleman from Indiana states there will be a saving of $51,000. If the Chair will refer to page 18 of the report he will see that new positions involving a total of $51,600 will be created in the same department so the saving is just $600. Therefore, any claim that there will be a saving of $51,000 is just not so. The report shows new positions are being created in the same department.

MR. [VITO] MARCANTONIO [of New York]: If the gentleman will yield, may I say that this particular proviso takes powers away from one branch of a department and confers them on another, which clearly is legislation.

MR. LUDLOW: Of course, the one has no connection, relation, or relevancy to the other. All that is necessary for us to say is that in this transaction by abolishing certain positions we make a saving of $51,600. If we appropriate a similar amount of money to another branch for some other purpose, what connection does that have with this?

MR. FITZPATRICK: The money is to be appropriated to the same department for men to perform the same duties as the comptrollers whose positions you are abolishing.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York [Mr. Fitzpatrick] makes the point of order against the proviso on page 16 on the grounds that it embraces legislation in an appropriation bill. The gentleman from Indiana contends that although it is legislation on an appropriation bill it comes within the Holman rule and is therefore in order. The Holman rule may be found in the second sentence of clause 2 of rule XXI, and is as follows:

> Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill.

In order to justify language in an appropriation bill under the Holman rule three things must concur: First, it must be germane; second, it must retrench expenditures in one of the ways enumerated in the rule; and, third, the language embodied in the provision must be confined solely to the purpose of retrenching expenditures.

The Chair has carefully examined the proviso to which the point of order is directed and is of the opinion that the language is germane and that on its face it definitely shows a reduction of the officers of the United States and a retrenchment of expenditures in the amount of $51,600.

It is also apparent to the Chair that all the legislation to be found in the paragraph is necessary to accomplish the purpose of retrenching expenditures. The Chair has been fortified in his opinion on this proposition by a decision made by Chairman Howard on February 29, 1932, on a proposition almost identical with the pending proviso. In that instance the Chair overruled the point of order on the ground that the provision came clearly within the Holman rule.

For the reasons stated the Chair is of the opinion that the language to which the point of order has been directed clearly comes within the provisions of the Holman rule, and, therefore, overrules the point of order.

Parliamentarian's Note: In both of the decisions cited above, an argument might have been advanced that a permanent change in law (the abolishment of an office) rendered the amendment or provision not germane to a one-year appropriation bill. In another ruling, in 1966, an amendment providing that appropriations "herein and heretofore made" shall be reduced by $70 million through the reduction of federal employees as the President determines was held to be legislative and not germane to the bill, since it went to funds other than those carried therein, and was therefore not within the Holman rule exception.[1]

Thus, one of the criteria frequently cited[2] as essential for application of the Holman rule was not met. Moreover, the Chair in the 1966 instance ruled that a reappropriation of unexpended balances, prohibited by Rule XXI clause 5 (now clause 6),[3] is not in order on a general appropriation bill under the guise of a Holman rule exception to Rule XXI clause 2.

Reduction in Number of Naval Officers

§ 4.3 An amendment reducing the number of naval officers and providing the method by which the reduction should be accomplished was allowed under the Holman rule.

On Jan. 20, 1938, during consideration in the Committee of the Whole of the Navy Department appropriation bill (H.R. 8993), a provision was read as follows:[4]

Pay of naval personnel: For pay and allowances prescribed by law of officers on sea duty and other duty, and officers on waiting orders, pay—$35,461,649 . . .; pay and allowances of the Nurse Corps, including assistant

1. See 112 CONG. REC. 27424, 27425, 89th Cong. 2d Sess., Oct. 18, 1966. See also § 5.9, infra.

2. See, in addition to the above 1939 ruling, § 4.1, supra.

3. See the discussion of this rule in Ch. 25, § 3, supra.

4. 83 CONG. REC. 853, 75th Cong. 3d Sess.

superintendents, directors, and assistant directors—pay, $560,020; rental allowance, $24,000; subsistence allowance, $23,871; pay, retired list, $271,976; in all $879,867; rent of quarters for members of the Nurse Corps; . . . reimbursement for losses of property as provided in the act approved October 6, 1917 (34 U.S.C. 981, 982) . . . $10,000; . . . in all, $176,845,282; and no part of such sum shall be available to pay active-duty pay and allowances to officers in excess of nine on the retired list, except retired officers temporarily ordered to active duty as members of retiring and selection boards as authorized by law: *Provided,* That, except for the public quarters occupied by the Chief of Office of Naval Operations . . . and messes temporarily set up on shore for officers attached to seagoing vessels, to aviation units based on seagoing vessels including officers' messes at the fleet air bases, and to landing forces and expeditions . . . no appropriation contained in this act shall be available for the pay, allowances, or other expenses of any enlisted man or civil employee performing service in the residence or quarters of an officer or officers on shore as a cook, waiter, or other work of a character performed by a household servant.

An amendment was then offered, and a point of order made, as indicated:[5]

The Clerk read as follows:

Amendment offered by Mr. [Byron N.] Scott [of California]: Page 26, line 8, after the word "*Provided*", insert "That commissioned line officers of the active list of the line of the Navy (Marine Corps) carried by law as additional numbers or passed over, shall be counted within the authorized total number of such commissioned officers of the active list of the line of the Navy: *Provided further*."

MR. [WILLIAM B.] UMSTEAD [of North Carolina]: Mr. Chairman, I make a point of order against the amendment offered by the gentleman. I am willing to reserve the point of order if the gentleman would like to be heard.

THE CHAIRMAN:[6] The gentleman will state his point of order.

MR. UMSTEAD: Mr. Chairman, I make the point of order that it is legislation upon an appropriation bill, that it is contrary to existing law, and that it does not and will not result in any reduction in expenditures under this section.

THE CHAIRMAN: Does the gentleman from California [Mr. Scott] care to be heard?

MR. SCOTT: Mr. Chairman, I expect the amendment will be held germane under the exception known as the Holman rule.

I call attention to the fact the act of July 22, 1933, fixes the maximum commissioned line officers' strength of the Navy— that is, the number of line officers that we can have in the Navy at any one time—at 6,531. This is exclusive of those officers who are known as additional numbers in grade or additional numbers.

On page 84 of the hearings had by the subcommittee of the Appropriations Committee and in the second table thereon, it will be seen that in-

5. *Id.* at pp. 854, 855.

6. R. Ewing Thomason (Tex.).

cluding additional numbers the line officers' strength after the commissioning of the class graduating from the Naval Academy in June, 1938, would [be] 6,562 and after the commissioning of the graduating class in June 1939, which is within the fiscal year for which this bill makes appropriation, the number will be 6,824.

The amendment does change existing law by providing that officers in additional numbers category shall be included in the authorized line-officer strength of the Regular Navy. At the present time additional numbers are not counted as a part of the authorized line-officer strength, which, as I have said, is 6,531. If the amendment which I have offered is agreed to, the effect would be—that is, if no counteracting legislation passes in the meantime—to deny commissions to at least 293 midshipmen. It would deny commissions to at least 293 midshipmen graduating in June 1939. This would make a difference between 6,824 and the 6,531 which is the line strength authorized by law.

The table on page 91 of the hearings indicates there will be 591 graduates in June 1939. This would mean a reduction of 293 officers who otherwise would have to be appropriated for and would retrench expenditures by reduction of the number and salary of the officers of the United States as follows:

For pay, subsistence, and transportation in the Navy, $44,975 in pay, including subsistence allowance, and $1,418 in transportation, which is borne out by the figures on pages 236, 242 and 275, page 236 providing for pay, page 242 subsistence and allowance, and page 275 for transportation. This would show the exact amount that would be saved by denying commissions to 293 midshipmen graduating in June 1939.

If the amendment is ruled in order I shall later offer amendments carrying into effect the reduction of amounts that would be caused if we commissioned the 293 graduates of the academy to whom I expect to deny commissions. . . .

THE CHAIRMAN: The Chair is ready to rule, unless the gentleman from North Carolina would like to be heard further.

In the opinion of the Chair, there is no question about the germaneness of the amendment. It seems to resolve itself largely into a question of facts and figures as to whether or not the amendment comes within the Holman rule. The part of the Holman rule, with which the members of the Committee are familiar, that is relevant here, is subsection 2 of rule XXI, which reads as follows:

> Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill.

Section 1511 of volume VII of Cannon's Precedents of the House, reads as follows:

> A proposition reducing the number of Army officers and providing the method by which the reduction should be accomplished was held to come within the exceptions under

which legislation retrenching expenditure is in order on an appropriation bill.

A reading of the amendment, together with the facts stated by the gentleman from California which, in the opinion of the Chair, have not been successfully controverted, that the amendment will actually reduce the number of officers as well as effect a retrenchment of expenditures thereby brings the amendment within the Holman rule cited by the Chair, and therefore the point of order is overruled.

Ceiling on Employment

§ 4.4 To an appropriation bill, an amendment providing that no part of any appropriation therein shall be used to pay the compensation of any incumbent appointed to any position which may become vacant during the year, except when the agency involved has reduced its number of personnel in a specified manner, was held to be in order under the Holman rule as a reduction in the number and salary of the officers of the United States.

On Mar. 21, 1952,[7] after an amendment had been offered to the independent offices appropriation bill (H.R. 7072), the following point of order was raised, and the decision of the Chair was as indicated above. The amendment was as follows:

Amendment offered by Mr. Jensen: Page 64, after line 21, insert a new section as follows:

"No part of any appropriation or authorization contained in this act shall be used to pay the compensation of any incumbent appointed to any civil office or position which may become vacant during the fiscal year beginning on July 1, 1952: *Provided,* That this inhibition shall not apply—

"(a) to not to exceed 25 percent of all vacancies;

"(b) to positions filled from within a department, independent executive bureau, board, commission, corporation, agency or office, provided for in this act. . . . *Provided further,* That when any department, independent executive bureau, board, commission, corporation, agency or office, contained in this act shall, as the result of the operation of this amendment reduce its personnel to a number not exceeding 90 percent of the total number provided for in this act, such amendment may cease to apply and said 90 percent shall become a ceiling for employment during the fiscal year 1953, and if exceeded at any time during fiscal year 1953 this amendment shall again become operative."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill, and on the further ground that it places extra burdens and duties on the various boards, agencies, and bureaus.

7. 98 CONG. REC. 2696, 82d Cong. 2d Sess.

THE CHAIRMAN:[8] Will the gentleman point out the specific language in the amendment to which he refers?

MR. THOMAS: Yes, it is near the end:

> As the result of the operation of this amendment reduce its personnel to a number not exceeding 90 percent of the total number provided for in this act, such amendment may cease to apply and said 90 percent shall become a ceiling for employment during the fiscal year 1953, and if exceeded—

There is an alternative there, as the Chair will see—

> at any time during fiscal year 1953 this amendment shall again become operative.

Somebody has got to make some decisions there; it places extra duties in order to arrive at decisions; and on top of that it is legislation.

THE CHAIRMAN: The Chair will be glad to hear the gentleman from Iowa briefly if he desires to be heard on the point of order.

[MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, the best evidence that this amendment is germane to the bill and is not legislation is the fact that the amendment was adopted by the House last year and was held to be germane by the Chair. Points of order were raised against it at that time, as I recall.

The amendment is not mandatory in the sense that the word "may" is used where the additional burdens and responsibilities might be placed on the agencies other than the 10 percent reduction that must be made which is purely a limitation on an appropriation bill and comes within the language and the intent of the Holman rule.

MR. [ALBERT A.] GORE [of Tennessee]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The Chair will hear the gentleman.

MR. GORE: Mr. Chairman, the amendment offered by the gentleman from Iowa is legislation on an appropriation bill for the following reasons: As stated in the next to the fourth line from the bottom, upon the attainment of that condition under operation of the amendment, thereupon the amendment affirmatively legislates in the following language:

> Said 90 percent shall become a ceiling for employment during the fiscal year 1953.

That language, I respectfully submit, Mr. Chairman, is legislation, it is affirmatively fixing a legal ceiling upon the employment upon the attainment of a condition in the amendment; therefore I respectfully suggest it is legislation on an appropriation bill.

THE CHAIRMAN: . . . The gentleman from Tennessee says that the language contained in the amendment "said 90 percent shall become a ceiling for employment during the fiscal year 1953" is legislation.

The Chair is of the opinion that even if that language is legislation, it is clearly within the Holman rule, as suggested by the gentleman from Iowa (Mr. Jensen). This, in the opinion of the Chair, is a limitation within the meaning of the Holman rule by limiting the number of employees within these agencies of Government covered by this bill and the amount of money to be made available under this bill.

. . . The Chair is of the opinion that the amendment is in order and there-

8. Wilbur D. Mills (Ark.).

fore overrules the point of order made by the gentleman from Texas.

Reduction of Total Appropriation

§ 4.5 To a general appropriation bill, an amendment providing that total appropriations therein be reduced by a specified amount was held in order (even though legislative in form) since it provided for a retrenchment of expenditures and thus came within the Holman rule.

On Apr. 5, 1966, [9] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 14215), the following proceedings took place:

[MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Bow: On page 46, after line 21, insert a new section as follows:

"Sec. 302. Appropriations made in this Act are hereby reduced in the amount of $7,293,000."

MR. [WINFIELD K.] DENTON [of Indiana]: Mr. Chairman, I make a point of order against the amendment, but will reserve the point of order. . . .

Mr. Chairman, there are numerous agencies covered by this appropriation bill. While the executive branch has discretion not to spend this money, the proposed amendment would force the Executive to assign priorities to the various agencies. It would place discretionary action with the President and, it is the Congress who determines how funds shall be appropriated. The amendment would take that authority from the Congress and give it to the Executive.

THE CHAIRMAN: [10] I understand that the gentleman from Indiana is insisting on his point of order?

MR. DENTON: Yes, Mr. Chairman.

THE CHAIRMAN: The Chair is prepared to rule. The amendment would reduce the appropriations in this bill in the amount of $7,293,000. The so-called Holman rule provides:

> Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill.

Therefore, the Chair overrules the point of order.

Reducing Funds, Prohibiting Particular Use

§ 4.6 An amendment reducing an amount in a general appropriation bill for the Postal Service and providing that no funds therein be used to

9. 112 Cong. Rec. 7689, 89th Cong. 2d Sess.

10. Charles M. Price (Ill.).

implement special bulk third-class rates for political committees was held in order either as a negative limitation not specifically requiring new determinations or as a retrenchment of expenditures under the "Holman Rule" even assuming its legislative effect, since the reduction of the amount in the bill would directly accomplish the legislative result.

On July 13, 1979,[11] during consideration in the Committee of the Whole of H.R. 4393 (Treasury Department, Postal Service and general government appropriation bill) a point of order against an amendment was overruled as indicated below:

THE CHAIRMAN:[12] The Clerk will read.

The Clerk read as follows:

For payment to the Postal Service Fund for public service costs and for revenue foregone on free and reduced rate mail, pursuant to 39 U.S.C. 2401 (b) and (c), and for meeting the liabilities of the former Post Office Department to the Employees' Compensation Fund and to postal employees for earned and unused annual leave as of June 30, 1971, pursuant to 39 U.S.C. 2004, $1,697,558,000.

[MR. [DAN] GLICKMAN [of Kansas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Glickman: On page 9, line 3, delete "$1,697,558,000." and insert in lieu thereof "$1,672,810,000: *Provided,* That no funds appropriated herein shall be available for implementing special bulk third-class rates for 'qualified political committees' authorized by Public Law 95–593.". . .

[MR. [ROBERT C.] ECKHARDT [of Texas]: My point of order is that the amendment places a burden on the Postal Department which would not exist but for this amendment. . . . [I]f the amendment is passed, it does not merely withhold funds, but it requires the Postal Department to adjust the rates of the Postal Department in order to comply with the limitation contained in this amendment. Therefore, this is not a mere limitation on an appropriation but it is a limitation which requires the Postal Department, as the gentleman has stated in his letter, to adjust all rates, determine which rates need adjustments, which ones qualify or would not qualify under the provision, and, thus, reduce those rates to the figures that would permit the reduction in revenue. Therefore, it seems clear to me that this affords an extremely heavy burden on the Postal Department which would not otherwise exist but for the passage of the amendment. If this were not true, the situation would create an anomalous condition which I had pointed out in my initial question to the gentleman in the well and the author of the amendment. It would create a situation in which the benefits provided under section 3626 of title 39 would still be enjoyed by qualifying political committees, and yet the Postal Department would not

11. 125 CONG. REC. 18453–55, 96th Cong. 1st Sess.

12. Richardson Preyer (N.C.).

be able to receive the adjustment due to the additional costs. It seems to me that in effect if the gentleman is correct and if adjustments are made in the rate, there is another change in substantive law occasioned by the adjustment in rates. That is, the adjustment in rates substantively changes Public Law 95–593 so as to deprive qualified political committees, including the Democratic Committee and the Republican Committee, and all others that qualify, of the benefits that we have enacted in another piece of legislation, not one that deals with the Postal Department but deals generally with the rates of political parties with respect to the use of the mails.

MR. GLICKMAN: . . . The amendment is strictly one of limitation. It reduces funding by $25 million and limits the use of that funding with respect to the charging of postal rates. I would state for the gentleman and for the Chair that section 3627 of title 39, United States Code is discretionary authority to adjust rates if the appropriation fails and is not mandatory authority and, therefore, I do believe that the amendment is merely a limitation and is germane. . . .

THE CHAIRMAN: The Chair is prepared to rule on the point of order.

In the opinion of the Chair, the amendment constitutes a negative limitation on how funds in the bill are spent rather than being legislation on an appropriations bill. No new determinations are required. Even if the amendment should be considered as constituting legislation, it constitutes a retrenchment because it cuts the amounts in the bills and the legislative effect directly contributes to that reduction.

The Chair, therefore, overrules the point of order.

Exception From a Retrenchment

§ 4.7 To an amendment in order under the Holman rule containing legislation but retrenching expenditures by a formula reduction for every agency funded by the bill, an amendment exempting from that reduction several specific programs does not add further legislation and is in order.

On July 30, 1980, [13] during consideration in the Committee of the Whole of the Department of Agriculture appropriation bill (H.R. 7591), a point of order against an amendment was not sustained, as indicated below:

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Whitten to the amendment offered by Mr. (Herbert E.) Harris (of Virginia): Strike (out the) period and add: ", except that this limitation shall not apply to emergency or disaster programs of the Farmers Home Administration and the Agricultural Stabilization and Conservation Service and programs for the control of infectious or contagious diseases of hu-

13. 126 Cong. Rec. 20503, 96th Cong. 2d Sess.

mans and animals carried out by the Food and Drug Administration and the Animal and Plant Health Inspection Service.".

MR. HARRIS: Mr. Chairman, I would like to make a point of order on that amendment. . . .

I feel the amendment is clearly legislation on an appropriation bill and does in fact do violence to my amendment. . . .

MR. WHITTEN: . . . Deschler's Procedure, chapter 25, section 9.7 (states):

> An exception to a valid limitation in a general appropriation bill is in order, providing the exception does not add language legislative in effect.

I do not consider that this adds legislative language to the amendment. It is an exception to the limiting provision as offered. I respectfully submit that it is in order and should be considered.

THE CHAIRMAN:[14] The Chair is ready to rule.

An exception to a limitation or a retrenchment which does not add legislation is clearly in order under the precedents, and the point of order is not sustained.

Exception From a Limited Use

§ 4.8 To an amendment retrenching expenditures in a general appropriation bill by reducing amounts therein and prohibiting their availability to particular recipients, an amendment lessening the amount of the reduction and also providing an exception from the limitation may be in order as a perfection of the retrenchment if funds contained in the bill remain reduced thereby.

On July 13, 1979,[15] it was held that, to an amendment to a general appropriation bill limiting the use of funds for the Postal Service to implement special mail rates for qualified political committees as authorized by law, an amendment lessening the amount of the reduction of funds in the original amendment and also excepting from the limitation certain congressional political committees as defined in law was in order either as an exception from a valid limitation which did not add legislation (since the determinations as to which political committees fit those descriptions were already required by law of the Postal Service) or as perfecting a retrenchment amendment while still reducing funds in the bill. The proceedings were as follows:

MR. [WILLIAM D.] FORD of Michigan: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Ford of Michigan to the amendment offered

14. James C. Corman (Calif.).

15. 125 CONG. REC. 18456, 18457, 96th Cong. 1st Sess.

by Mr. [Dan] Glickman [of Kansas]: On page 9, line 3, delete "$1,697,558,000." and insert in lieu thereof "$1,676,810,000" and strike the period after "Public Law 95–593" and insert the following: ", other than the national, state or congressional committee of a major or minor party as defined in Public Law 92–178, as amended.". . .

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, the Ford amendment, is, indeed legislation on an appropriations act, because by limiting the amount available under the bill, the Postal Service will be required to establish two different rates; one for major and minor political parties entitled under the bill and another rate for political parties which do not qualify.

Unlike the discretionary authority under section 3627, this adjustment would be mandatory.

I would like to point out that the reference in the bill is to Public Law 92–178, which in its title VII deals with certain tax incentives for contributions to candidates for public office and which sets out certain definitions with respect to national committees of national political parties and State committees of a national political party as designated by the national committee of such party. . . .

Now, there are definitions here and those definitions must be addressed by another body besides the Post Office Department; but here the Post Office Department is going to have to determine whether a committee is a State committee of a national political party as designated by the national committee of such party and must apply the definitions as the result of additional duties attributed and ascribed to the Postal Department that are not previously attributable to that Department; so there is, indeed, an additional burden with respect to defining or establishing and applying the definition of a major or minor party as defined under this law and also with respect to establishing two separate rates in order to accomplish the objective sought here. . . .

MR. FORD of Michigan: . . . First, I believe that the gentleman from Texas (Mr. Eckhardt) confuses the addition of duties to the executive branch that require the exercise of discretion and the imposition of an obligation to make determinations that would not otherwise have to be made.

What our amendment does is it simply refers them to a clearly defined interpretation, consistent with virtually everything else that is contained in the postal code, with respect to qualifying and nonqualifying people. . . .

The second point is that I would refer to the gentleman's argument against the amendment offered by the gentleman from Kansas (Mr. Glickman) on this point of order in which he pointed out that the effect of not adopting the amendment offered by the gentleman from Kansas (Mr. Glickman) would be that the law would not be changed, and that the Post Office Department would have a continuing duty to determine whether a political party was a political party for the purpose of giving them a subsidy, even without the Glickman amendment. I suggest that the effect of knocking out my amendment will be to leave the duty of the Postal Service to make that determination much broader and much more complex then it would with the narrowing effect of our amendment which requires that they need only

pick up the telephone and call the Federal Election Commission and ask, "Who, if anyone, qualifies for this class of mail? We have got some people who are applying for a permit. Shall we grant them the permit?"

The way this discretion is exercised is not that you mail a letter and wait to see if the Post Office catches you; you go down to the Post Office first and you say, "I am representing the Democratic"—or the Republican—"National Committee. We wish to have a permit with a number assigned to us so that our mail is clearly identified and to entitle us to mail as a nonprofit organization third class bulk mail."

At that point the Postal Service makes a determination as to whether or not you qualify. They do not make a determination as to whether the Democratic Party or the Republican Party qualifies; they simply pick up the phone and call the FEC and find out. . . .

THE CHAIRMAN:[16] The Chair is prepared to rule.

Exceptions to limitations or retrenchments permitted to remain in the bill are permitted if not constituting additional legislation. In the opinion of the Chair, the law already imposes a duty on the Postal Service, under Public Law 95–593, to determine whether any political committee is a National, State, or congressional committee of a political party.

Public Law 95–593 provides definitions of what constitutes political parties. Since these standards exist in the law, it is the opinion of the Chair that no additional burden is imposed by the amendment, or, in any event, the amendment remains a retrenchment, and the point of order is overruled.

16. Richardson Preyer (N.C.).

§ 5. Provisions Not Within the Halman Rule

Certainty of Reduction Must Appear

§ 5.1 An amendment to a general appropriation bill, proposing legislation which may result in a future deficiency appropriation and therefore does not patently reduce expenditures, though providing for a reduction in the figures of an appropriation, is not in order under the Holman rule.

On June 3, 1959,[17] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 7454), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

> Amendment offered by Mr. [Daniel J.] Flood [of Pennsylvania]: Page 2, line 12, strike out "$3,233,063,000" and insert "$3,233,000,000, to be disbursed in such manner that the military personnel, Regular Army, shall be maintained at not less than 900,000 during fiscal year 1960."

17. 105 CONG. REC. 9714, 9715, 86th Cong. 1st Sess.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill. . . .

MR. FLOOD: Mr. Chairman, the amendment I have just offered, instead of raising the bill and adding money, reduces the amount of the appropriation and is in the nature of a retrenchment. I take the position that it is, first, germane to the bill, obviously. And, secondly, it is obviously a retrenchment because it reduces the amount of the appropriation instead of adding to it, and it directs that the funds be used for the purpose of keeping the Army strength or making the Army strength at 900,000. The only question that would be in debate on the point of order made by my friend, the gentleman from Texas, would be as to the latter provision. Certainly, this amendment is germane. Secondly, I submit it is a retrenchment. . . .

. . . I submit to you, sir, in the bill itself there is a provision under the general provisions thereof stating that the funds in this bill cannot be used for any other purpose than those declared in the bill, and no other funds can be used for that purpose.

I submit, sir, that this is a flat, and intended by me to be a flat, limitation upon the Department of Defense. It permits no discretion to be utilized so it can be abused. It is a flat limitation upon the expenditure of funds. . . .

THE CHAIRMAN:[18] Does the gentleman from Texas desire to be heard on the point of order?

MR. MAHON: Mr. Chairman, I would like to be heard briefly. . . .

Mr. Chairman, all limitations on the size of military personnel have been suspended by Public Law 86–4, section 2, until 1963. Therefore there are no limitations—ceilings or floors—in effect during fiscal year 1960.

The amendment proposed would have the effect of establishing a floor as to the size of military force.

This amendment imposes additional duties on the executive branch since it would require them to maintain a specific number of troops, a requirement which does not exist at the present time. The amendment therefore is legislation on an appropriation bill.

This does make a reduction of $63,000 in the amount carried in the bill but funds would have to be disbursed on the deficiency basis which will require the appropriation of additional funds for this same purpose during fiscal year 1960 which is the period covered by this bill. Therefore, this is not a retrenchment as provided by the Holman rule. The language itself does not show retrenchment on its face. . . .

MR. FLOOD: Mr. Chairman, what I say will be a complete rebuttal. The only element the gentleman brings in is the question of the use of the funds. Certainly this affects the use of additional funds unless the Department of Defense came in for supplemental appropriations which would have to be by act of the President as an affirmative act.

The amendment is a limitation on the expenditure of funds in their discretion.

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

While in the opinion of the Chair this amendment does in effect seek to

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

retrench expenditures, it does by the language added impose upon the executive branch a mandatory duty of maintaining personnel at a figure greater than provided in the pending bill; and in the opinion of the Chair constitutes legislation on an appropriation bill. Therefore, the Chair sustains the point of order.

Reduction Must Be Certain, Not Speculative

§ 5.2 To come within the purview of the Holman rule, it must affirmatively appear that a proposition, if adopted, will retrench expenditures as a definite result, not as a probable or possible contingency.

On Mar. 7, 1940,[19] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 8745), a point of order was raised against the following provision, and after argument, the Chair ruled that the provision was not in order.

Salaries and expenses: For all necessary expenditures of the Bituminous Coal Division in carrying out the purposes of the Bituminous Coal Act of 1937, approved April 26, 1937 (50 Stat. 72) . . . $2,187,800: *Provided,* That the first paragraph of subsection "(e)" of part II of the Bituminous Coal Act of 1937 (50 Stat. 72), is amended by inserting at the end of such paragraph and before the period the following: ": *Provided further,* That the provisions of this act shall not apply to a sale of bituminous coal for the exclusive use of the United States or of any State or Territory of the United States or the District of Columbia, or any political subdivision of any of them."

MR. [ANDREW] EDMISTON [of West Virginia]: Mr. Chairman, a point of order.

THE CHAIRMAN:[20] The gentleman will state it.

MR. EDMISTON: Mr. Chairman, I make a point of order against the proviso on page 8, beginning in line 7 and ending in line 14. . . .

MR. [JAMES M.] FITZPATRICK [of New York]: Mr. Chairman, I believe this amendment comes under the Holman rule. Eight percent of all the coal handled by this Commission will be used by the Federal, State, and city governments throughout the country. About 35,000,000 tons of coal will be used, and it will cost the Federal, State, and city governments approximately $3,850,000. It will cost the Federal Government alone $1,100,000.

The appropriation in this bill is $2,187,800 for the administration of the act. It will not be necessary for the Commission to handle about 8 percent of all the coal coming under the Bituminous Coal Act if this amendment is agreed to. It is hard to say whether or not it will save $187,000, which would be about 8 percent of the total amount allowed in the bill for administering the act. In my opinion it will certainly save from $20,000 to $100,000. If that is so, it surely is germane to the act,

19. 86 CONG. REC. 2512–14, 76th Cong. 3d Sess.

20. Jere Cooper (Tenn.).

and it will save the different cities, States, and the Federal Government over $3,000,000. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, that this item is legislation is specifically set out in the language between lines 7 and 10 on page 8 in that it proposes to add a paragraph to subsection (e) of part 2 of the Bituminous Coal Act of 1937. . . .

The language carried here does none of those things which are covered by the Holman rule. It is not in any way in order, nor does it appear that the language in any way effects a saving to the Treasury of the United States. Under these circumstances it is not legislation in line with the Holman rule, but quite the contrary, and the point of order should be sustained. . . .

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

The gentlemen speaking in opposition to the point of order have endeavored to justify the provision appearing in the bill to which reference has been made on the ground that it comes within the provisions of the so-called Holman rule. . . .

The Chair . . . invites attention to page 56 of Cannon's Procedure in the House of Representatives, and quotes as follows: . . .

> It must affirmatively appear upon the face of the bill that the proposition, if enacted, will retrench expenditures.
>
> A retrenchment of expenditure relied upon to bring a proposition within the exception to the rule prohibiting legislation on an appropriation bill must be apparent from its terms, and a retrenchment conjectural or speculative in its application, or requiring further legislation to effectuate, is not admissible.

The Chair also invites attention to another precedent directly in point to a proper consideration of the question here presented, section 1530, volume VII of Cannon's Precedents, quoting:

> The reduction of expenditure relied upon to bring a proposition within the exception to the rule prohibiting legislation on an appropriation bill must appear as a certain and necessary result and not as a probable or possible contingency.

The language of the proviso to which the point of order is made is as follows:

> *Provided*, That the first paragraph of subsection '(e)' of part II of the Bituminous Coal Act of 1937 (50 Stat. 72), is amended by inserting at the end of such paragraph and before the period the following: "*Provided further*, That the provisions of this act shall not apply to a sale of bituminous coal for the exclusive use of the United States or of any State or Territory of the United States or the District of Columbia, or any political subdivision of any of them."

It seems to the Chair that this language is legislation on a general appropriation bill. The very language itself clearly shows that the purpose sought to be accomplished is the amendment of existing law. Therefore, as it appears so clearly that it is legislation on an appropriation bill, under the provision of the rule to which the Chair has referred and based upon the previous decisions and precedents here cited, the Chair feels that this provision does not properly come within that provision of clause 2 of rule XXI, known as the Holman rule.

The Chair, therefore, sustains the point of order made by the gentleman from West Virginia as to the proviso.

Reduction Cannot Be Contingent on Event

§ 5.3 To a paragraph appropriating money for the National Bituminous Coal Commission, an amendment providing that if the act appropriated for is declared unconstitutional by the Supreme Court none of the money provided in the bill shall thereafter be spent was held not to be in order under the Holman rule [the reduction of funds not being certain] but was viewed as a limitation.

On Jan. 24, 1936,[1] the Committee of the Whole was considering H.R. 10464, a supplemental appropriation bill. The following proceedings took place:

NATIONAL BITUMINOUS COAL COMMISSION

Salaries and expenses, National Bituminous Coal Commission: For all necessary expenditures of the National Bituminous Coal Commission in performing the duties imposed upon said Commission by the Bituminous Coal Conservation Act of 1935, including personal services and rent in the District of Columbia and elsewhere, traveling expenses, contract stenographic reporting services, stationery and office supplies and equipment, printing and binding, and not to exceed $2,500 for newspapers, reference books, and periodicals, fiscal year 1936, $400,000: *Provided*, That this appropriation shall be available for obligations incurred on and after September 21, 1935, including reimbursement to other appropriations of the Department of the Interior for obligations incurred on account of said Commission. . . .

MR. [ROBERT L.] BACON [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Bacon: Page 22, line 11, after the word "Commission", insert "*Provided*, That if the Bituminous Coal Conservation Act of 1935 is declared to be unconstitutional by the Supreme Court of the United States, no money herein provided shall thereafter be spent, and all money herein appropriated and unexpended shall be immediately covered back into the Treasury."

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[2] The gentleman will state his point of order.

MR. WOODRUM: This seems to me to be legislation undertaking to effect a limitation. If, of course, the Supreme Court declares the act unconstitutional, expenditures under it will cease and no money may thereafter be expended under the act.

MR. BACON: Mr. Chairman, it seems to me this is an amendment that comes within the Holman rule, that it is a limitation saving money for the Treasury of the United States.

MR. WOODRUM: But it is made contingent on something that may or may not happen.

1. 80 CONG. REC. 994, 996, 74th Cong. 2d Sess.

2. Jere Cooper (Tenn.).

MR. BACON: Yes; it is made contingent on something happening.

MR. [KENT E.] KELLER [of Minnesota]: Mr. Chairman, if the gentleman will yield, is the gentleman suggesting that the Congress should hint the unconstitutionality of a law before it is passed on by the Supreme Court?

THE CHAIRMAN: The Chair is of the opinion that the Holman rule does not necessarily apply. The Chair is of the opinion, however, that the amendment is a limitation. The purport of the amendment taken as a whole impresses the Chair as being a limitation.

MR. WOODRUM: May I call the attention of the Chair to the fact that the amendment means hereafter, any time in the future, any appropriation that hereafter may be made, and that it is not confined to the appropriation in this bill?

THE CHAIRMAN: Yes; that is the very point on which the Chair's decision turns. The Chair interprets the words used in the amendment to mean that it refers to the appropriation provided in this bill. It would, therefore, be a limitation on the appropriation here provided. The Chair, therefore, overrules the point of order.

Parliamentarian's Note: The distinction was made in § 4, supra, between (1) provisions which, although legislative in nature, are nevertheless in order under the Holman rule, and (2) provisions which are not legislative in nature but are, rather, in order as proper "limitations." Limitations are discussed in §§ 64–79, infra. As an example of those instances in which the Holman rule is cited in support of an amendment but found inapplicable, the Chair relying instead on language of limitation, see § 64.27, infra, discussing the ruling of July 16, 1979. At issue on that occasion was an amendment to a general appropriation bill prohibiting the use of funds therein to carry out any ruling of the Internal Revenue Service to the effect that taxpayers are not entitled to certain charitable deductions. The Chair first indicated that the Holman rule was inapplicable, since the certainty of a reduction in expenditures did not appear. But the amendment was held in order as a limitation, since the amendment was merely descriptive of an existing ruling already promulgated by that agency and did not require new determinations as to the applicability of the limitation to other categories of taxpayers.

Reduction Cannot Be Conjectural

§ 5.4 Language in a general appropriation bill providing that "in the discretion of the Secretary of the Interior, not to exceed $3 per diem in lieu of subsistence may be allowed to Indians actually traveling away from their

place of residence when assisting in organization work" was held to be legislation and not in order under the Holman rule.

On May 14, 1937,[3] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 6958), a point of order was raised against the following provision, and proceedings ensued as indicated below:

The Clerk read as follows:

For expenses of organizing Indian chartered corporations, or other tribal organizations, in accordance with the provisions of the act of June 18, 1934 (48 Stat., p. 986), including personal services, purchase of equipment and supplies, not to exceed $3,000 for printing and binding, and other necessary expenses, $100,000, of which not to exceed $25,000 may be used for personal services in the District of Columbia: *Provided,* That in the discretion of the Secretary of the Interior, not to exceed $3 per diem in lieu of subsistence may be allowed to Indians actually traveling away from their place of residence when assisting in organization work.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph upon the ground that it contains legislation and changes existing law, that the provision appearing on page 16, from lines 16 to 20, is legislation not authorized by law, and I make the point of order against the entire paragraph. . . .

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, this is clearly within the Holman rule. This retrenches expenditures. The Pay and Subsistence Act authorizes $5 a day. This simply reduces the per diem to $3 a day. Therefore I feel confident that this is within the Holman rule.

MR. TABER: Mr. Chairman, I do not believe there is any authority in law for the payment of any money for Indians for traveling away from their place of residence in connection with this work. In any event the proviso imposes new duties upon the Secretary of the Interior to determine in his discretion when funds may be allowed to Indians. The chairman of the committee has not cited us to any authority providing for any funds being allotted to Indians for such travel. The imposition of these additional duties upon the Secretary of the Interior make it clearly subject to the point of order.

THE CHAIRMAN:[4] The Chair is ready to rule. The Chair thinks that the first part of the paragraph down to the proviso in line 16 on page 16 is authorized under section 9 of the statute approved June 18, 1934, and, therefore, is in order. The Chair thinks, however, so far as the proviso, line 16 down to the word "work" on line 20, is concerned, that it does not appear on the face of this proviso that it necessarily is a saving, and therefore does not come within the Holman rule and appears to be legislation on an appropriation bill. The Chair, therefore, sustains the point of order as to the proviso.

Language Must Show Unqualified and Certain Reduction

§ 5.5 Legislation proposed on an appropriation bill must

3. 81 CONG. REC. 4592, 75th Cong. 1st Sess.

4. Lister Hill (Ala.).

indicate by its terms an unqualified reduction of expenditures, if it is to be in order under the Holman rule; accordingly, a paragraph in an appropriation bill proposing the continuance of a temporary law which eliminated bonus payments for re-enlistment in the Army, Navy, and Marine Corps, was held not to be in order under the Holman rule on the ground that the language did not specifically and definitely show a retrenchment of expenditures.

On Feb. 18, 1937,[5] during consideration in the Committee of the Whole of the Treasury and Post Office Departments appropriations bill (H.R. 4720), the Chairman made the following ruling:

> THE CHAIRMAN:[6] The Chair is ready to rule on the point of order.
>
> . . . (A) point of order is made against this proviso appearing on page 27, at line 10:
>
> > *Provided further,* That section 18 of the Treasury-Post Office Appropriation Act, fiscal year 1934, is hereby continued in full force and effect during the fiscal year ending June 30, 1938, and for the purpose of making such section applicable to such latter fiscal year the figures "1934" shall be read as "1938."
>
> This section clearly continues a provision of the so-called Economy Act of the Seventy-third Congress enacted in 1933, which eliminated bonus payments for reenlistment in certain departments of the Government. This provision expired by operation of law. This section provides for its reenactment or its continuance, and is, therefore, legislation. The suggestion has been made that the point of order should be overruled because there is a retrenchment under the Holman rule.
>
> The Chair reads from Cannon's Precedents, volume 7, section 1538:
>
> > Unless an amendment proposes legislation which will retrench an expenditure with definite certainty, it is not in order under the Holman rule.
>
> And, again, section 1542 of the same volume, which is a little more clearly applicable to this particular point of order:
>
> > In construing the Holman rule the Chair may not speculate or surmise as to whether a particular provision might or might not operate to retrench an expenditure. Legislation proposed on an appropriation bill must indicate by its terms an unqualified reduction of expenditure to fall within the exception of the rule.
>
> The Chair is of the opinion that the showing made is not definite enough to be an unqualified reduction of expenditure, because it is entirely speculative as to whether there would be reenlistments. The Chair, therefore, does not believe the proviso comes within the provisions of the Holman rule. It is clearly legislation on an appropriation bill, and the Chair sustains the point of order.

Parliamentarian's Note: Where a provision attempts reductions,

5. 81 CONG. REC. 1388, 75th Cong. 1st Sess.
6. Arthur H. Greenwood (Ind.).

qualifying words in the provision may operate to make the reductions uncertain. See, for example, § 52.6, infra, in which an amendment made specified reductions in a defense appropriation bill, but added the qualification that the reductions were to be made "without impairing national defense." Such a qualification makes the Holman rule inapplicable.

Reduction Based on Budget Estimates; Speculative and Uncertain

§ 5.6 An amendment to an appropriation bill providing for percentage reductions in accounts carried in the bill, to be computed by applying percentages to the corresponding estimates in the President's budget was held to be legislation and not in order under the Holman rule inasmuch as no reduction was shown on its face and any reduction thereunder would be speculative.

On May 17, 1951,[7] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 3973), a point of order was raised and sustained against the following amendment:

> The Clerk read as follows:
>
> Amendment offered by Mr. [Thomas B.] Curtis of Missouri: On page 58, line 5, add a new section as follows:
>
> "Sec. 410 (a) Except as hereinafter provided, reductions in each appropriation . . . contained in this act are hereby made in the total amount resulting from the application of the percentages indicated herein to the amounts of obligations for the fiscal year 1952, if any, included in the President's budget estimates on which each such appropriation . . . is based, for the following objects:
>
> "Travel, 20 percent.
>
> "Transportation of things, 10 percent. . . ."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill. It requires the exercise of additional duties not required by any other law. Further, it is not protected by the Holman rule because any retrenchment of expenditures by the amendment is purely speculative, for any cuts are to be made on the basis of the figures in the President's budget. You cannot look at the bill and at the amendment and tell whether the amendment would reduce expenditures. . . . I respectfully submit that while there may be retrenchment under the Holman rule, it has to be entirely apparent on the face of the amendment, rather than speculative. Therefore, the amendment is not saved by that rule. . . .

MR. [JOHN] TABER [of New York]: The reductions are absolutely specific

7. 97 CONG. REC. 5477, 5478, 82d Cong. 1st Sess.

in every instance, and the amount to which the reduction would apply is absolutely specific. Therefore, it is not speculative in the slightest degree. . . .

THE CHAIRMAN:[8] The Chair is prepared to rule. . . .

After very serious study on this amendment, the Chair is of the opinion that this is legislation on an appropriation bill, and the question then arises as to whether it is protected by the Holman rule. That rule requires the legislation to make a retrenchment of expenditures beyond doubt. Since this amendment operates against the budget estimates rather than the amounts in the bill, the question of retrenchment is speculative.

Therefore, the Chair holds that the amendment offered by the gentleman from Missouri (Mr. Curtis) is legislation upon an appropriation bill and the Chair sustains the point of order.

Conjectural or Speculative Reduction Not Sufficient

§ 5.7 Language in a general appropriation bill restricting the powers of the selection boards for the Navy was held to be legislation and not in order under the Holman rule.

On Aug. 17, 1937,[9] during consideration in the Committee of the Whole of the third deficiency appropriation bill (H.R. 8245), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

MR. [WILLIAM H.] SUTPHIN [of New Jersey]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Sutphin: Page 22, after line 10, insert a new paragraph, as follows:

"That the powers and duties conferred by law or regulation upon selection boards for the Navy now established or which may be established during the remainder of the fiscal year ending June 30, 1938, shall not be exercised after the date of the enactment of this act and prior to July 1, 1938, and no recommendation or action of any such board shall be effective during the remainder of the fiscal year ending June 30, 1938."

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill and changes existing law. . . .

MR. SUTPHIN: Mr. Chairman, I admit the amendment is legislation, but respectfully submit that it is in order under clause 2 of rule XXI, the so-called Holman rule.

That rule requires that a legislative proposition in the first place must be germane to the subject matter of the bill, and, if germane, that it shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill.

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

9. 81 CONG. REC. 9172, 9173, 75th Cong. 1st Sess.

The first requisite is that the legislation must be germane to the subject matter of the bill. This is a bill, according to its title, making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1937, and for prior fiscal years, to provide urgent supplemental appropriations for the fiscal year ending June 30, 1938, and for other purposes. The truth of the matter is, the bill is very largely a bill making supplemental or additional appropriations for the fiscal year 1938—the current fiscal year.

Among other subdivisions is one pertaining to the Navy Department. Whether there be a Navy Department subdivision or not, however, or whether there be any provision under the Navy Department section dealing with personnel or not, I submit that the bill adds to appropriations already made by Congress for the fiscal year 1938 for various governmental agencies, and provides, besides, additional appropriations for such fiscal year, and that is an amendment would be in order adding to an appropriation already made for a purpose authorized by law (the question of germaneness would not lie against such an amendment), it would be just as logical to hold in order an amendment the effect of which would be to reduce an appropriation already made, to wit, the appropriation "Pay of the Navy, 1938." The Chair is acquainted with the ruling holding in order on an appropriation bill a provision repealing an appropriation already made. The amendment proposed in effect repeals in part an appropriation already made.

Now, as to the expenditure-retrenchment phase, I should like to point out, so as to remove any doubt, how the amendment would bring about a "reduction of the compensation of any person paid out of the Treasury of the United States."

Section 2 of the act of July 22, 1935 (49 Stat. 487), provides that except in time of war there shall not be in the line of the Navy on the active list, exclusive of officers carried as additional numbers, more than 58 rear admirals, 240 captains, and 515 commanders. Therefore it is self-evident that in order for a commander to be advanced to the grade of captain there must be a fewer number than 240 captains; and likewise, in order for a captain to be advanced, there must be a fewer number than 58 rear admirals.

Advancement of officers of the Navy above the grade of ensign is contingent upon selection for promotion by a board of naval officers. There are a number of laws on the subject, but it should suffice here merely to cite section 291 of title 34 of the United States Code.

On page 859 of the hearings on the naval appropriation bill for the fiscal year 1938, a table appears—inserted by the Chief of the Bureau of Navigation, the Personnel Bureau of the Navy Department—giving by fiscal years actual and estimated retirements of officers owing to nonselection for promotion over the period 1934 to 1944, both inclusive. As to that portion which is an estimate, I might say that the appropriation for pay of the Navy for the fiscal year 1938 or any fiscal year is based upon estimates of the personnel situation prepared by the Bureau responsible for the table to which I have invited the Chair's attention.

According to that table, 16 captains will be retired during the fiscal year 1938 owing to nonselection. The table shows other retirements, but I shall not go further in the interest of brevity and clarity. The enforced elimination of those 16 captains will admit of the advancement of 16 selected-for-promotion commanders, which, in turn, would admit of the advancement of a like number of selected lieutenant commanders.

Those advancements, besides bestowing additional rank, will occasion added expense. Under the Joint Services Pay Act of 1922 (sec. 1, title 37, U.S.C.), the lieutenant commanders of normal service tenure would move into a higher pay period and would become entitled to a higher rental allowance, while the advanced commanders of normal service tenure also would move into a higher pay period, but would receive a lesser subsistence allowance, considerably more than offset, however, by the increase of pay.

I might go further and say that increased rank necessitates a change of station, which entails travel expense from the old to the new station, including the expense of moving dependents, where there are dependents. That is not conjectural in any sense. The amount of the expense necessarily would be, however, because we have no way of knowing either the present or new duty stations.

So, Mr. Chairman, as to the retrenchment phase, there can be no manner of doubt that the amendment will effect a substantial saving. I only have cited advancements from two grades in the interest of brevity and clarity. The rule does not deal with the degree of saving.

MR. WOODRUM: Mr. Chairman, the amendment on its face does not show any saving or retrenchment and it is purely speculative whether or not there would be any saving. As a matter of actual experience we know that if put into operation there would not be a saving, and the amendment in order to be in order must show positively that there is to be a saving to the United States Treasury. . . .

THE CHAIRMAN:[10] the Chair is prepared to rule. This amendment takes away the powers of the board now appointed for promotion in the Navy. Therefore, clearly it is legislation on an appropriation bill. Furthermore, it is not shown on the face of the amendment that there is any retrenchment of expenditures, and in order to come within the province of the Holman rule, such retrenchment must be certain and not conjectural or speculative. The gentleman from New Jersey (Mr. Sutphin) in arguing his point of order has emphasized that speculative feature of his amendment, if it should be adopted. The Chair, therefore, sustains the point of order.

Specifying Construction Materials; Not Definite Reduction

§ 5.8 During consideration of an appropriation for continuing the construction of annex buildings for the Government Printing Office, a provision that the exterior construction material for one annex building should be as

10. Claude V. Parsons (Ill.).

contemplated in the original cost estimates for the project was held to be legislation, and not in order under the Holman rule.

On Jan. 17, 1938,[11] the Committee of the Whole was considering H.R. 8947, a Treasury and Post Office Departments appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> Government Printing Office, annex buildings, Washington, D.C.: For continuation of construction of annex buildings for the Government Printing Office, $2,500,000; and the limit of cost for this project is hereby increased from $5,885,000, as authorized in the Second Deficiency Appropriation Act, fiscal year 1935, approved August 12, 1935, to $7,000,000: *Provided*, That the character of the exterior construction material for annex building No. 3 shall be that contemplated in the original cost estimates for such project.
>
> MR. [EUGENE B.] CROWE [of Indiana]: Mr. Chairman, I make a point of order against the proviso on page 47, beginning with the word 'Provided', in line 14, and extending to the end of line 17, that it clearly is legislation on an appropriation bill under the provisions of clause 2 of rule XXI. . . .
>
> MR. [EMMET] O'NEAL of Kentucky: Mr. Chairman, this proviso merely seeks to reduce the expenditure and is in reality, therefore, a limitation on an appropriation bill and falls within the rule.
>
> MR. CROWE: Mr. Chairman, if the gentleman will permit an interruption, there is nothing about the language, as I see it, that limits or reduces expenditures.
>
> MR. O'NEAL of Kentucky. It is a limitation.
>
> THE CHAIRMAN:[12] the Chair is ready to rule. . . .
>
> . . . [T]his proviso is legislation and to be in order it would be necessary to show that it would effect an economy or a retrenchment. This not being shown, the Chair is therefore of the opinion that the proviso is subject to the point of order.
>
> The Chair sustains the point of order.

Reappropriation of Old Funds Not Necessarily Retrenchment; Retrenchment Language Must Be Germane

§ 5.9 The payment from a fund already appropriated of a sum which would otherwise be charged against the Treasury is not a retrenchment of expenditures falling within the Holman rule exception to Rule XXI clause 2.

On Oct. 18, 1966,[13] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 18381), a point

11. 83 CONG. REC. 652, 75th Cong. 3d Sess.

12. Arthur H. Greenwood, (Ind.).

13. 112 CONG. REC. 27425, 89th Cong. 2d Sess.

of order was raised and later sustained against the following amendment:

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Bow: On page 16 after line 3 add a new section as follows:

"Sec. 803. Notwithstanding any other provision, appropriations herein, as the President shall determine, shall, not later than 120 days after the date of enactment of this Act, be reduced in the aggregate by not less than $1,500,000,000 through substitution by reduction and transfer of funds previously appropriated for governmental activities that the President, within the aforementioned 120 days, shall have determined to be excess to the necessities of the services and objects for which appropriated."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against this amendment.

THE CHAIRMAN:[14] The gentleman will state his point of order.

MR. MAHON: The point of order is that the amendment goes far beyond the scope of this bill and applies to funds made available by other laws for which appropriations are not provided in the pending measure. . . .

THE CHAIRMAN: Does the gentleman from Ohio wish to be heard on the point of order?

MR. BOW: Yes, I do wish to be heard, Mr. Chairman. . . .

I believe we have changed the Holman rule today by making it relate to this bill. The previous precedents of the House have been it must not necessarily apply to this particular bill when there is a retrenchment, so we are making new precedents today.

This is a general appropriation bill affecting various agencies. Since the amendment also deals with and affects various appropriations of various agencies, it is germane.

Again, there can be no speculation as to its retrenching Federal expenditures because it reduces appropriations in this bill—in this bill by $1.5 billion and requires the President to fund activities in this bill from previously appropriated funds that are excess to the necessities of the services and objects for which appropriated.

I point out again that the Holman rule does not go along with the decision suggested by the distinguished chairman of the committee that additional duties are involved.

Under the Holman rule it is a question of retrenchment of expenditures.

The legislation in this amendment is not unrelated to the retrenchment of expenditures. Instead, it is directly instrumental in accomplishing the reduction of expenditures. Thus, the proposed retrenchment and the legislation are inseparable and must be considered together.

"Cannon's Precedents," in volume VII, 1550 and 1551, holds that an amendment may include such legislation as is directly instrumental in accomplishing the reduction of expenditures proposed. That is the precise situation with respect to this pending amendment.

Again I cite "Cannon's Precedents," volume VII, 1511, which holds that language admitted under the Holman

14. James G. O'Hara (Mich.).

rule is not restricted in its application to the pending bill, and to the June 1, 1892, decision, to which I referred before, of the Committee of the Whole and its Chairman, that an amendment was in order under the Holman rule even though it changed existing law. [Note: See comment concerning the 1892 decision in the introduction to Sec. 4, supra.]

I say, Mr. Chairman, I believe if this is held to be out of order we will be changing the precedents and the rules of the House, and we will be destroying the Holman rule.

I urge the Chair to overrule the point of order.

THE CHAIRMAN: The Chair is prepared to rule.

The amendment offered by the gentleman from Ohio specifies that appropriations herein, as the President shall determine, shall be reduced in the aggregate by not less than $1.5 billion. This reduction would be achieved by authorizing and directing the President to utilize previously appropriated funds for the activities carried in this bill.

The Chair feels that the amendment is clearly legislation. It places additional determinations and duties on the President and involves funds other than those carried in this bill.

Therefore, if the amendment were to be permitted it would have to qualify, as the gentleman has attempted to qualify it, under the Holman exception, under the Holman rule, rule XXI, clause 2.

In the opinion of the Chair, the Holman exception is inapplicable in this instance for three reasons.

First, the payment from a fund already appropriated of a sum which otherwise would be charged against the Treasury has been held not to be a retrenchment of expenditures under the Holman rule.

Chairman Hicks, of New York, ruled to the same effect when a proposition involving the Holman rule was before the House on January 26, 1921.

Second, it seems to the Chair that the language proposed by the gentleman from Ohio [Mr. Bow] authorizes the reappropriation of unexpended balances, a practice prohibited by clause 5 of rule XXI.

Third, the amendment goes to funds other than those carried in this bill and is not germane.

With respect to the latter point and the citation that has been given by the gentleman from Ohio, which is found in the precedents of the House, volume VII, 1511, the Chair will note that the proposition reduced the number of Army officers and provided the method by which the reduction should be accomplished. It was an amendment, as it appears in the citation, to a War Department appropriation bill and was therefore germane in spite of whatever the general proposition in the heading may have stated.

For the reasons given, the Chair will sustain the point of order made by the gentleman from Texas.

Reimbursement to Treasury From Receipts

§ 5.10 Language in a general appropriation bill providing that all moneys hereafter received by the United States in connection with any irri-

gation project constructed by the federal government shall be covered into the general fund until such fund has been reimbursed for allocations to the project, was held to be legislation on an appropriation bill and not to come within the provisions of the Holman rule.

On Nov. 29, 1945,[15] during consideration in the Committee of the Whole of the first deficiency appropriation bill (H.R. 4805), a point of order was raised against the following provision:

> Total, general fund, construction, $42,765,000: *Provided*, That all moneys hereafter received by the United States in connection with any irrigation project . . . shall be covered into the general fund until the general fund has been reimbursed in full for allocations and appropriations made to such project from the general fund. . . .
>
> MR. [J. W.] ROBINSON [of Utah]: Mr. Chairman, I make the point of order against the proviso commencing on page 30, line 15, and continuing on page 31 down to the end of line 6 that it is legislation on an appropriation bill.
>
> MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, the committee concedes the point of order. . . .
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I desire to be heard on the point of order. It is manifest that this item requires that funds received shall be covered into the general fund of the Treasury until the general fund has been fully reimbursed for the amount that it has expended. In my opinion that is an order under the Holman rule. It saves money to the Treasury on the face of the document.
>
> THE CHAIRMAN:[16] The Chair thinks it is clearly legislation on an appropriation bill, and so holds. The point of order is sustained.

Costs Shifted From Government to Private Party

§ 5.11 Language in the District of Columbia appropriation bill providing that in regard to the building of an underpass at Dupont Circle, the cost of changing or removing street-railway tracks by the street-railway company shall be borne by such company and providing further that the company shall install other equipment at its own expense, was held not to come within the provisions of the Holman rule.

On Feb. 1, 1938,[17] 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, and pro-

15. 91 CONG. REC. 11192, 11193, 79th Cong. 1st Sess.

16. R. Ewing Thomason (Tex.).

17. 83 CONG. REC. 1379, 1380, 75th Cong. 3d Sess.

ceedings ensued as indicated below:

For the construction of an underpass at Dupont Circle . . . $480,000: *Provided,* That the cost of the necessary changes, removal, construction, and reconstruction of the street-railway tracks and appurtenances, to be performed by the street-railway company, including paving within the streetcar track area, shall be borne by the street-railway company owning or operating over the existing tracks: *Provided further,* That the funds herein appropriated shall be available for construction, at time of roadway paving, of suitable streetcar-loading platforms, and the street-railway company shall, at its own expense, furnish and install approved lighting equipment, signs, and so forth, in accordance with plans to be approved by the Public Utilities Commission and shall, at its own expense, operate and maintain such equipment.

MR. [VINCENT L.] PALMISANO [of Maryland]: Mr. Chairman, I make the point of order to the proviso on page 76, line 7, down to and including the word "equipment" in line 20. It is legislation on an appropriation bill.

THE CHAIRMAN:[18] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, I hope the gentleman will reserve the point of order so that I can ask him a question.

MR. PALMISANO: I reserve the point of order.

MR. COLLINS: Mr. Chairman, the provision to which the gentleman makes the point of order imposes upon the street-railway company a part of the expense of carrying on this work, and with the elimination of the language that the gentleman seeks to eliminate it means that the cost of the whole work will be imposed upon the District of Columbia. I am certain that the gentleman does not want to do that, because the streetcar company will be benefited by this underpass. . . .

THE CHAIRMAN: The Chair has examined carefully the language of the bill to which the point of order is directed. The Holman rule could not possibly apply in this case because the language does not retrench expenditures in one of the methods set forth in the rule, but is legislative in character and, therefore, prohibited in an appropriation bill.

The Chair sustains the point of order.

Authority to Terminate Employment

§ 5.12 Language in a general appropriation bill providing that the Secretary of State may, in his discretion, terminate the employment of any employee of the Department of State or of the Foreign Service whenever he shall deem such termination necessary or advisable in the interests of the United States, was held to be legislation on an appropriation bill and not to be within the provisions of the Holman rule.

18. William J. Driver (Ark.).

On Apr. 20, 1950,[19] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 7786), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 104. Notwithstanding the provisions of section 6 of the act of August 24, 1912 (37 Stat. 555), or the provisions of any other law, the Secretary of State may, in his absolute discretion, during the current fiscal year, terminate the employment of any officer or employee of the Department of State or of the Foreign Service of the United States whenever he shall deem such termination necessary or advisable in the interests of the United States. . . .

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, a point of order. The language of section 104 gives to the Secretary of State—and I quote from the section—"in his absolute discretion" power to terminate the employment of any employee. I do not believe we have ever had legislation in the entire history of this Nation which contained this language "absolute discretion." . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, in my opinion this will result in a saving. It is in accordance with the provisions of the Holman rule. When the power authorized in this language is exercised and the Secretary terminates the employment of any officer or employee in his absolute discretion that will result in a saving. That will save money and is in order.

THE CHAIRMAN:[20] . . . The gentleman from New York [Mr. Marcantonio] has made a point of order against the language appearing in section 104 on page 46 of the bill on the ground that it is legislation on an appropriation bill. The Chair has examined the language. The Chair invites attention to the fact that the language does confer definite authority and requires certain acts on the part of the Secretary of State. In response to the argument offered by the gentleman from New York [Mr. Taber] as to the application of the Holman rule it is clearly shown by the precedents and decisions of the House that the saving must be apparent and definite on its face in the language of the bill in order for the Holman rule to apply. Certainly an examination of the language in question clearly shows that any saving would be speculative. In view of the long line of precedents and decisions dealing with the question of legislation on an appropriation bill, which is clearly prohibited under the rules of the House, the Chair has no alternative other than to sustain the point of order.

Reduction in Existing Contract Authorization

§ 5.13 Language in an appropriation bill seeking to change a contract authorization contained in a previous appropriation bill passed by another Congress was held to be legislation and not a retrenchment of funds in the bill.

On Apr. 25, 1947,[1] during consideration in the Committee of the

19. 96 CONG. REC. 5480, 5481, 81st Cong. 2d Sess.

20. Jere Cooper (Tenn.).

1. 93 CONG. REC. 4098, 80th Cong. 1st Sess.

Whole of the Department of the Interior appropriation bill for fiscal year 1948 (H.R. 3123), the following point of order was raised:

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I wish to reserve the point of order first in order that I may get some information before I make the point of order finally, and that is with respect to the language which appears at the bottom of page 51, which reads as follows:

> *Provided further,* That the contract authorization of $15,000,000 contained in the Interior Department Appropriation Act, fiscal year 1946, is hereby reduced to $9,750,000.

My point of order, Mr. Chairman, is that that is legislation amending a previous act and not within the purview of this bill making appropriations for fiscal 1948. It constitutes legislation on an appropriation bill for it destroys existing legislation.

Before I make the point of order, may I ask the chairman of the committee what the reason is for carrying that language? I feel that the development of the synthetic liquid fuel program is very essential to national defense and is probably the cheapest money we can spend in that direction.

MR. [ROBERT F.] JONES of Ohio: The purpose of this language is to limit the amount to be expended further on this project to the authorization provided in the basic act. In other words, the amount remaining after this appropriation will be the amount of $9,750,000, and will tie the entire appropriation to the basic authorization.

MR. CASE of South Dakota: What was the reason, then, for the increase of the authorization to $15,000,000 in the act of 1946 and establishment of contract authority?

MR. JONES of Ohio: That was to tie the appropriations to the $30,000,000 authorization.

MR. CASE of South Dakota: Mr. Chairman, having introduced a bill which seeks to accomplish about that very thing, I am constrained to make the point of order and do make the point of order.

THE CHAIRMAN:[2] Does the gentleman from Ohio desire to be heard on the point of order?

MR. JONES of Ohio: Mr. Chairman, the only purpose of the language is to limit the amount appropriated over all to the $30,000,000 authorization. It seems to me it is merely a restatement of the basic law and clearly in order under the Holman rule because on its face it saves money.

THE CHAIRMAN: This language changes a contract authorization contained in a previous appropriation bill passed by another Congress. The Chair sustains the point of order.

Use of Total Appropriation; Language Precluding Future Supplemental Funding

§ 5.14 A provision in the District of Columbia appropriation bill providing that the appropriation for public assistance shall be so administered as to constitute the total amount that will be utilized during such fiscal year

2. Earl C. Michener (Mich.).

for such purposes was held to place additional duties upon the commissioners and therefore legislation on an appropriation bill and not in order.

On Feb. 1, 1938,[3] the Committee of the Whole was considering H.R. 9181, a District of Columbia appropriation bill. The following proceedings took place:

PUBLIC ASSISTANCE

For the purpose of affording relief to residents of the District of Columbia who are unemployed or otherwise in distress because of the existing emergency, to be expended by the Board of Public Welfare of the District of Columbia by employment and direct relief, in the discretion of the Board of Commissioners and under rules and regulations to be prescribed by the board and without regard to the provisions of any other law, payable from the revenues of the District of Columbia, $900,000, and not to exceed 7 1/2 percent of this appropriation and of Federal grants reimbursed under this appropriation shall be expended for personal services: *Provided,* That all auditing, disbursing, and accounting for funds administered through the Public Assistance Division of the Board of Public Welfare, including all employees engaged in such work and records relating thereto, shall be under the supervision and control of the Auditor of the District of Columbia: *Provided further,* That this appropriation shall be so apportioned and distributed by the Commissioners over the fiscal year ending June 30, 1939, and shall be so administered, during such fiscal year, as to constitute the total amount that will be utilized during such fiscal year for such purposes: *Provided further,* That not more than $75 per month shall be paid therefrom to any one family.

MR. [GERALD R.] BOILEAU [of Wisconsin]: Mr. Chairman, I make a point of order against the proviso appearing on page 58, line 2, after the word "Columbia' and ending on line 7 with the word "purposes."

I make the point of order that this proviso is legislation on an appropriation bill. . . .

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, the language about which the gentleman complains reads as follows:

> *Provided further,* That this appropriation shall be so apportioned and distributed by the Commissioners over the fiscal year ending June 30, 1939, and shall be so administered during such fiscal year as to constitute the total amount that will be utilized during such fiscal year for such purposes.

Unquestionably that is a limitation upon an appropriation and therefore comes within the rules of the House. The object is to save money, and the provision shows on its face that it will save money. . . .

THE CHAIRMAN:[4] The Chair has examined the language employed very carefully, and if I am correct in my construction of that language, it seeks to impose an additional burden upon

3. 83 CONG. REC. 1364, 75th Cong. 3d Sess.

4. William J. Driver (Ark.).

the Commissioners who are charged with the duty of administering the fund sought to be appropriated. In addition to that, there is nothing apparent in the language of the section that will result in a saving. The inference that we have from the statement of the chairman of the Subcommittee on Appropriations is not sufficient to bring it within the rule that a saving will be effected.

The Chair is therefore of the opinion that the point of order is well taken and so rules.

Nongermane Amendment; Unrelated to Funding in Bill

§ 5.15 To a bill making appropriations to supply deficiencies, an amendment proposing to change existing law by repealing that part of a retirement act relating to the President, Vice President, and Members of Congress, was held not germane and not in order under the Holman rule.

On Feb. 9, 1942,[5] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 6548), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

Amendment offered by Mr. [Donald H.] McLean [of New Jersey]: Page 49, after line 2, add a new section, as follows:

"Sec. 303. Public Law No. 411, Seventy-seventh Congress, chapter 16, second session, be, and is hereby, amended by adding at the end thereof the following: '*Provided*, That nothing in this act shall be construed to include within its provisions of the Civil Service Retirement Act the President, Vice President, members of the Senate, and the House of Representatives.'"

And on page 49, line 3, strike out "303" and insert "304."

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make the point of order that the amendment is not germane to the bill, that it is legislation on an appropriation bill, and is out of order. . . .

MR. MCLEAN: I was laying the foundation for my argument.

If the Chair will refer to page 8 of this bill, he will there find the section to which I have referred suspending a provision of the Selective Service Act. That is clearly legislation on this appropriation bill and comparable to my amendment. There are exceptions to the rule that an appropriation bill cannot carry legislation, and I call the Chair's attention to the Holman rule. That rule provides that if the legislation would result in the saving of expenditures it is not subject to a point of order. In the Fifty-second Congress it was decided—

> An amendment to the pension appropriation bill tending to increase the class of persons prohibited from the benefit of the pension laws is in order because its effect would be to reduce expenditures.

The amendment which I have introduced would reduce expenditures. It

5. 88 CONG. REC. 1157, 77th Cong. 2d Sess. For a discussion of the germaneness rule generally, see Ch. 28, infra.

excludes from the benefits of the Civil Service Retirement Act the President, the Vice President, the Senators, and Members of the House of Representatives.

This is the first opportunity we have had to correct our blunder, and we ought to take advantage of it.

THE CHAIRMAN:[6] The Chair is ready to rule.

The amendment offered by the gentleman from New Jersey is clearly not germane to the bill under consideration. If it were germane it would be legislation on an appropriation bill. It does not in any way retrench expenditures under this bill. For two very good reasons, therefore, the Chair sustains the point of order.

Denial of Status to Aliens Not Holman Retrenchment

§ 5.16 Language in an appropriation bill providing "that no alien employed on the Canal Zone may secure United States civil-service status," was held to be legislation on an appropriation bill and not within the exception of the Holman rule.

On July 2, 1947,[7] During consideration in the Committee of the Whole of the War Department civil functions appropriations, a point of order was raised against a provision, as follows:

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, I make a point of order against the language on page 17, line 18, subdivision (7), "that no alien employed on the Canal Zone may secure United States civil-service status," is legislation on an appropriation bill in that it clearly changes existing law.

The existing law, Mr. Chairman, is found in the treaty which was signed between the Republic of Panama and the Government of the United States. The treaty was ratified by the Senate of the United States in 1939. . . .

In February of this year an Executive order was issued by the President modifying the civil-service rules. One portion of that Executive order distinctly permits Panamanians to take civil service examinations and be enrolled in the United States Civil Service. Consequently, this language against which I have raised a point of order forbids Panamanian citizens from securing civil-service status. Thus, it changes the law as set forth in the treaty and changes the law as set out in the Executive order. It is clearly legislation on an appropriation bill.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, if I may be heard on the point of order, the first part of that section reads as follows:

> No part of any appropriation contained in this act shall be used directly or indirectly, except for temporary employment in case of emergency, for the payment of any civilian for services rendered by him on the Canal Zone while occupying a skilled, technical, clerical, administrative, executive, or supervisory position unless such person is a citizen of the United States of America or of the Republic of Panama: *Provided, however—*

Then going to subdivision (7)—

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6. Howard W. Smith (Va.).

7. 93 CONG. REC. 8171, 8172, 80th Cong. 1st Sess.

that no alien employed on the Canal Zone may secure United States civil-service status.

Under the Holman rule, even legislation on an appropriation bill is permitted if it succeeds in the reduction of an expenditure. If aliens are to be given United States civil-service status, it will increase the liability of the United States for the payment of civil-service retirement and other provisions of that sort. Consequently, it seems to me that in that sense the inclusion of this language is a protection of the Treasury of the United States and may be permissible under the Holman rule. Clause 7, of course, is directly related to the "provided, however," and the language of limitation in the first part of the section.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, I would like to call the Chairman's attention to the fact that an act of Congress takes precedent over a treaty or even an Executive order in the form of a treaty. So this language is clearly in order. Congress has the right to enact this legislation.

THE CHAIRMAN:[8] The Chair is ready to rule. So far as the remark just made by the gentleman from Mississippi is concerned, as the Chair remembers, it is in the last analysis an act of Congress, whether it be a treaty or whether it be a law. Therefore, that remark is not germane to the question now before the Committee.

As far as the statement of the gentleman from South Dakota [Mr. Case] is concerned, regarding the Holman rule, at most, this suggests that there might be a saving; there is the possibility of a saving. The Holman rule is very clear that legislation must in its language show an absolute saving. Therefore, that point would not be of any value in sustaining the position which the gentleman takes.

Section 7 provides that no alien employed on the Canal Zone may secure United States civil-service status. So far as the Chair has been advised, there is no law anywhere providing for that very thing, excepting this legislation found in an appropriation bill.

The Chair therefore sustains the point of order.

Holman Exception Distinguished From Limitation

§ 5.17 The Holman rule is applicable only where language in a general appropriation bill "changes existing law" and also has the direct effect of retrenching the amount of funds in the bill; it is not applicable where the language does not constitute legislation but is merely a negative limitation citing, without changing, the applicability of existing law.

On June 18, 1980,[9] an amendment to a general appropriation bill denying availability of funds therein to pay certain benefits to persons simultaneously entitled by law to other benefits, or in

8. Earl C. Michener (Mich.).

9. 126 CONG. REC. 15354-56, 96th Cong. 2d Sess.

amounts in excess of those other entitlement levels, was held in order as a limitation, since existing law already required executive officials to determine whether and to what extent recipients of funds contained in the bill were also receiving those other entitlement benefits. In the course of its ruling, the Chair stated that the Holman rule was not applicable to the provision in question. The proceedings are discussed in § 52.36, infra.

Hypothetical "Net" Saving

§ 5.18 Where existing law directed a federal official to provide for the sale of certain government property to private organizations in "necessary" amounts, but did not require that all such property shall be distributed by sale, an amendment to a general appropriation bill providing that no such property shall be withheld from distribution from qualifying purchasers was ruled out as legislation requiring disposal of all property and restricting discretionary authority to determine "necessary" amounts and not constituting (as required by the Holman rule) a certain retrenchment of funds in the bill.

On Aug. 7, 1978,[10] during consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 13635), a point of order was sustained against the following amendment:

> The Clerk read as follows:
>
> Amendment offered by Mr. John T. Myers [of Indiana]: On page 8, after line 10, add the following new section:
>
> None of the funds appropriated or otherwise made available in this Act shall be obligated or expended for salaries or expenses during the current fiscal year in connection with the demilitarization of any arms as advertised by the Department of Defense, Defense Logistics Agency sale number 31–8118 issued January 24, 1978, and listed as "no longer needed by the Federal Government" and that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308. . . .
>
> MR. [ABNER J.] MIKVA [of Illinois]: Mr. Chairman, I make a point of order on the amendment on the ground that I believe that it is legislation within a general appropriation bill and, therefore, violates the rules of the House. . . .
>
> MR. JOHN T. MYERS: Mr. Chairman, this is a simple limitation amendment. It merely limits the Secretary of the Treasury to continue to carry out existing law. It does not provide any new law. It simply says that the Secretary of the Treasury shall carry out the prevailing, existing law. . . .

10. 124 CONG. REC. 24707, 24708, 95th Cong. 2d Sess.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Chairman, rule 21, clause 2, of the Rules of the House (House Rules and Manual pages 426–427) specifies that an amendment to an appropriation bill is in order if it meets certain tests, such as:

First. It must be germane;

Second. It must be negative in nature;

Third. It must show retrenchment on its face;

Fourth. It must impose no additional or affirmative duties or amend existing law.

First. (The amendment) is germane. As the amendment applies to the distribution of arms by the Defense Logistics Agency, it is not exclusively an Army of civilian marksmanship amendment, so should not be placed elsewhere in the bill. . . .

Second. It is negative in nature. It limits expenditure of funds by the Defense Department by prohibiting the destruction and scrapping of arms which qualify for sale through the civilian marksmanship program, which is a division of the executive created by statute.

Third. It shows retrenchment on its face. Retrenchment is demonstrated in that the Department of Defense is prohibited from expending funds to destroy surplus military arms, and that the arms previously earmarked for destruction will be made available in accordance with existing statute. . . . The House, in adding this amendment, will secure additional funds for the Treasury which the General Accounting Office has determined is adequate to pay costs of handling the arms. For example, the M–1 rifles are to be sold at a cost of $110 each. These are the arms most utilized by the civilian marksmanship program. The Defense Department will not be required to spend additional funds to process the sale of additional arms. . . .

Fourth. [The amendment] does not impose additional or affirmative duties or amend existing law. . . .

Regulations issued . . . AR 725–1 and AR 920–20 provide for the issuance of arms by application and qualification through the Director of Civilian Marksmanship. The DCM shall then submit sale orders for the Armament Readiness Military Command (ARCOM) to fill the requests of these qualified civilians. Thus, the amendment simply requires the performance of duties already imposed by the Army's own regulation. . . .

MR. MIKVA: MR. Chairman, I particularly call attention of the Chair to the second half of the amendment, which imposes an affirmative duty on the Secretary, saying that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308.

Under the general existing law, there are all kinds of discretions that are allowed to the Secretary to decide whether or not such arms shall be distributed. Under this amendment, the existing law is to be changed and those arms may not be withheld. The practical purpose is to turn lose 400,000 to 500,000 rifles into the body politic.

But the parliamentary effect is clearly to change the existing law under which the Secretary can exercise all kinds of discretion in deciding whether or not those arms will be distributed.

Under this amendment it not only limits the fact that the funds may be obligated but it specifically goes on to affirmatively direct the Secretary to distribute such arms under title X, which is an affirmative obligation, which is exactly the kind of obligation the rules prohibit, and I renew my point of order. . . .

THE CHAIRMAN:[11] The Chair is ready to rule.

The Chair has read the section to which the gentleman refers, title 10, United States Code, section 4308, and is of the opinion that it does not require that all firearms be distributed to qualified purchasers. The Chair further feels that while the first part of the amendment is a limitation, the last part of the amendment is a curtailment of Executive discretion, and the Chair sustains the point of order.

§ 6. Amendments Between the Houses

A rule of the House[12] prohibits its conferees from agreeing to certain Senate amendments to general appropriation bills absent specific authority conferred by the House. The rule provides:

> No amendment of the Senate to a general appropriation bill which would be in violation of the provisions of clause 2 of rule XXI,[13] if said amendment had originated in the House, nor any amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by a separate vote on every such amendment.[14]

Amendments to Senate Amendment

§ 6.1 When the House was considering a Senate amendment to a general appropriation bill proposing an expenditure not authorized by law, it was held to be in order in the House to amend such Senate amendment by germane amendments that were legislative in nature.

On Feb. 8, 1937,[15] the House was considering a Senate amend-

11. Daniel D. Rostenkowski (Ill.).

12. Rule XX clause 2, *House Rules and Manual* § 829 (1973). For further discussion of issues arising between the House and Senate with respect to appropriation bills generally, and appropriations on legislative bills, see Ch. 25 § 13, supra. See also Ch. 32, House-Senate Relations, infra; Ch. 33, House-Senate Conferences, infra. And, see Ch. 13, Powers and Prerogatives of the House, supra.

13. See § 1, supra, for discussion of Rule XXI clause 2.

14. Managers may be authorized to agree to an appropriation by a resolution reported from the Committee on Rules. See 7 Cannon's Precedents § 1577.

15. 81 CONG. REC. 975, 976, 75th Cong. 1st Sess.

ment in disagreement on H.R. 3587, a deficiency appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Senate amendment no. 9: Strike out, after the word "appropriation", the following language "or of the appropriation in the Emergency Relief Appropriation Act of 1936 shall be used hereafter to pay the compensation of any person, not taken from relief rolls, detailed or loaned for service in connection with any investigation or inquiry undertaken by any committee of either House . . ." and insert "or of any appropriation for any executive department or independent executive agency shall be used hereafter to pay the compensation of any person detailed or loaned for service in connection with any investigation or inquiry undertaken by any committee of either house of Congress . . . unless the . . . agency . . . from whose staff such person is detailed or loaned shall render to the Secretary of the Senate or the Clerk of the House of Representatives . . . a statement on or before the 10th day of each month of number, grade, or status . . . of the persons so detailed or loaned from the staff of such . . . agency . . . during the preceding calendar month."

Mr. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Speaker, I move to recede and concur in the Senate amendment with an amendment, hich I send to the Clerk's desk.

The Clerk read as follows:

Mr. Woodrum moves that the House recede from its disagreement to Senate amendment no. 9 and agree to the same with an amendment, as follows: In lieu of the matter inserted by said amendment insert the following: "or of any appropriation or other funds of any executive department or independent executive agency shall be used after June 30, 1937, to pay the compensation of any person detailed or loaned for service in connection with any investigation or inquiry undertaken by any committee of either house of Congress under special resolution thereof."

Mr. [HENRY] ELLENBOGEN [of Pennsylvania]: Mr. Speaker, I offer a preferential motion, which I send to the Clerk's desk.

The Clerk read as follows:

Mr. Ellenbogen moves that the House recede and concur in Senate amendment no. 9. . . .

THE SPEAKER PRO TEMPORE:[16] The gentleman from Virginia demands a division of the question. The question is, Shall the House recede from its disagreement to the Senate amendment?

The question was taken, and the motion to recede was agreed to.

Mr. Woodrum: Mr. Speaker, I move to concur in the Senate amendment with an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

Mr. Woodrum moves that the House concur in the Senate amendment with an amendment as follows: In lieu of the matter inserted by said amendment insert the following: "or of any appropriation or other funds of any executive department or independent executive agency shall be used after June 30, 1937, to pay the compensation of any person detailed or loaned for service in connection

16. John J. O'Connor (N.Y.).

with any investigation or inquiry undertaken by any committee of either House of Congress under special resolution thereof."

MR. ELLENBOGEN: Mr. Speaker, I make the point of order that the motion of the gentleman from Virginia violates the rules of the House in that it is legislation on an appropriation bill.

THE SPEAKER PRO TEMPORE: The Chair will state that the Senate amendment is legislation, and the amendment to that amendment offered by the gentleman from Virginia is not out of order because it contains legislation. The Chair therefore overrules the point of order.

Instance of Consideration of Senate Amendments in Committee of the Whole

§ 6.2 Where an appropriation bill was amended by the Senate and a conference requested by the Senate, and the Senate amendments then referred by the Speaker to the House Committee on Appropriations, that committee reported out an alternative bill on the same subject; upon the Senate's refusal to consider the second bill, the House committee then reported back the Senate amendments to the first bill, which were considered and amended in Committee of the Whole and then sent to conference.

On June 1, 1945, the House Committee on Appropriations reported out H.R. 3368, the National War Agencies appropriation, 1946.[17]

On June 8, 1945,[18] the Committee on Rules reported a resolution (H. Res. 289), subsequently adopted, waiving points of order against legislative provisions in the bill. The House then resolved itself into the Committee of the Whole[19] or consideration of the bill. During such consideration, Mr. Vito Marcantonio, of New York, offered an mendment to provide appropriations for continuance of the Fair Employment Practice Committee, a measure with considerable support in the House. A point of order having been raised against the amendment, Chairman John J. Sparkman, of Alabama, sustained the point of order, ruling that the amendment was out of order as legislation on an appropriation bill.[1] The bill subsequently passed the House.[2]

On June 20, 1945, H.R. 3368 was reported in the Senate.[3] Fol-

17. 91 CONG. REC. 5450, 79th Cong. 1st Sess.

18. *Id.* at pp. 5795–99.

19. *Id.* at p. 5799.

1. *Id.* at p. 5831.

2. *Id.* at pp. 5832, 5833.

3. *Id.* at p. 6322

lowing the report, Senator Dennis Chavez, of New Mexico, submitted a written notice, at the direction of the Senate Committee on Appropriations, that it was his intention to move to suspend the rules for the purpose of proposing an amendment to H.R. 3368 to insert provisions for the appropriation for the Committee on Fair Employment Practice.[4]

On June 30, 1945, the Senate considered and adopted the amendment proposing such appropriation, and subsequently passed the bill and requested a conference.[5]

On July 2, 1945, Speaker Sam Rayburn, of Texas, pursuant to his discretionary authority under Rule XXIV clause 2, referred H.R. 3368 with Senate amendments to the Committee on Appropriations.[6]

On July 3, 1945, the Committee on Appropriations reported out H.R. 3649,[7]) which was similar in effect to H.R. 3368 and included some of the measures added by the Senate, but which did not include the appropriation for the Committee on Fair Employment Practice. Points of order were reserved by Members against the bill. An effort was made to obtain a resolution from the Committee on Rules waiving points of order against the legislative provisions contained in H.R. 3649, but requests therefore were denied.

On July 5, 1945,[8] the House resolved itself into the Committee of the Whole for consideration of H.R. 3649. General debate had been waived. But numerous points of order were raised against provisions of H.R. 3649 that appropriated for war agencies.[9] the basis of these points of order, many provisions of the bill were deleted before the bill was passed and sent to the Senate. After it became apparent that the Senate

4. *Id.* at pp. 6322, 6323.

Parliamentarian's Note: The Senate rules sought to be suspended were Rule XVI clauses 1 and 4, relating to amendments to appropriation bills. Written notice of intention to move for suspension of the rules under certain circumstances was required by Senate Rule XL.

5. 91 CONG. REC. 7068, 79th Cong. 1st Sess.

6. *Id.* at p. 7142.

Parliamentarian's Note: Before this reference was made, a unanimous-consent request and an effort to obtain a resolution from the Committee on Rules of the House making it in order to take H.R. 3368 as amended from the Speaker's table, disagree with the amendments, and agree to a conference both failed.

7. 91 CONG. REC. 7189, 79th Cong. 1st Sess.

8. *Id.* at pp. 7226.

9. *Id.* at pp. 7226–36.

would not consider H.R. 3649, the Committee on Appropriations of the House, on July 11, 1945, reported out H.R. 3368 with the Senate amendments.[10]

On July 12, 1945, the House resolved itself into the Committee of the Whole; dispensed with general debate; considered Senate amendments to H.R. 3368 under the five-minute rule and concurred with an amendment to the Senate amendment containing the appropriation for the Fair Employment Practice Committee; and, after disagreeing with other Senate amendments, agreed to the conference requested by the Senate.[11] Thereafter, the Senate agreed to the House amendment to the Senate amendment relating to the Committee on Fair Employment Practice,[12] and on July 13, 1945, the conference report on H.R. 3368 was agreed to by both Houses.[13]

Unanimous Consent; House Conferees Authorized To Agree to Senate Amendments Notwithstanding Rule XX Clause 2

§ 6.3 Form of a unanimous-consent request to send an appropriation bill to conference and authorize the House conferees to agree to Senate legislative amendments notwithstanding the restrictions contained in Rule XX clause 2.

On June 3, 1936,[14] Member addressed Speaker Joseph W. Byrns, of Tennessee, to make the following request:

> MR. [JAMES P.] BUCHANAN [of Texas]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill H.R. 12624, the first deficiency appropriation bill, together with the Senate amendments thereto, disagree to the Senate amendments, and agree to the conference requested by the Senate; also that the managers on the part of the House, notwithstanding the provisions of clause 2, rule XX, be authorized to agree to any Senate amendment with or without amendment, except the Senate amendment having to do with the Florida ship canal and the Senate amendment providing $300,000,000 for public-works projects.
>
> THE SPEAKER: Is there objection to the request of the gentleman from Texas? . . .
>
> There was no objection.
>
> The Chair appointed the following conferees: Mr. Buchanan, Mr. Taylor of Colorado, Mr. Oliver, Mr. Woodrum, Mr. Boylan, Mr. Cannon of Missouri, Mr. Taber, Mr. Bacon, and Mr. Thurston.

10. *Id.* at p. 7404.

11. *Id.* at pp. 7474–94.

12. *Id.* at p. 7464.

13. *Id.* at pp. 7510, 7534.

14. 80 CONG. REC. 8822, 74th Cong. 2d Sess.

§ 6.4 Form of a unanimous-consent request to take from the Speaker's table an appropriation bill with Senate amendments thereto; disagree to the Senate amendments; agree to the conference asked by the Senate; and to give the managers on the part of the House authority to agree to the amendments of the Senate with amendments, notwithstanding the provisions of Rule XX clause 2 and to consider the conference report any time after filed.

On July 2, 1947,[15] Member addressed Speaker Joseph W. Martin, Jr., of Massachusetts, to make the following request:

> MR. [JOHN] TABER [of New York]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4031) making appropriations to meet emergencies for the fiscal year ending June 30, 1948, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate; and that the managers on the part of the House have authority to agree to the amendments of the Senate with amendments, notwithstanding the provisions of clause 2 of rule XX, and that the conference report may be considered at any time.
>
> THE SPEAKER: Is there objection to the request of the gentleman from New York? (After a pause.) The Chair hears none and appoints the following conferees: Messrs. Taber, Wigglesworth, Engel of Michigan, Stefan, Case of South Dakota, Keefe, Kerr, and Mahon.

Point of Order Against Senate Amendment Reported in Disagreement

§ 6.5 When an amendment is adopted by the Senate which, had it been offered in the House, might have been subject to a point of order as in violation of Rule XXI clause 2, and the conferees report such amendment in disagreement, the House may consider the amendment.

On Oct. 6, 1949,[16] the following proceedings took place:

> MR. [MICHAEL J.] KIRWAN [of Ohio]: Mr. Speaker, I call up the conference report on the bill (H.R. 3838) making appropriations for the Department of the Interior for the fiscal year ending June 30, 1950, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.
>
> The Clerk read the title of the bill.
>
> MR. [WESLEY A.] D'EWART [of Montana]: Mr. Speaker, I wish to make a point of order against a provision of this bill.

15. 93 CONG. REC. 8131, 80th Cong. 1st Sess.

16. 95 CONG. REC. 14028, 14038, 14039, 81st Cong. 1st Sess.

THE SPEAKER:[17]) The gentleman can reserve the right to make that point of order later.

Is there objection to the request of the gentleman from Ohio?

There was no objection.

After adoption of the conference report, the House considered the amendments reported in disagreement.

THE SPEAKER: The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

> Senate amendment No. 132: Page 56, line 7, insert the following: ": *Provided further*, That no part of this or prior appropriations shall be used for construction, nor for further commitments to construction of Moorhead Dam and Reservoir, Mont., or any feature thereof until a definite plan report thereon has been completed, reviewed by the States of Wyoming and Montana, and approved by the Congress."

MR. D'EWART: MR. Speaker, a point of order.

THE SPEAKER: The gentleman will state the point of order.

MR. D'EWART: Mr. Speaker, I make a point of order against the provision. . . .

I make this point of order under rule 21, as it is clearly legislation on an appropriation bill; (1) because it is an affirmative direction and (2) it restricts executive discretion to a degree that may be fairly termed a change in policy. I call the Speaker's attention to page 422, section 844 of the House Rules and Manual, which reads, in part, as follows:

> A provision proposing to construe existing law is in itself a proposition of legislation and therefore not in order.

On page 423 in the same section, I quote further:

> A paragraph which proposes legislation being permitted to remain may be perfected by a germane amendment, but this does not permit an amendment which adds additional legislation. And where a Senate amendment proposes legislation, the same principle holds true.

I would call further the Speaker's attention to section 845, which reads, in part, as follows: . . .

> In construing a proposed limitation, if the Chair finds the purpose to be legislative, in that the intent is to restrict executive discretion to a degree that may be fairly termed a change in policy rather than a matter of administrative detail, he should sustain the point of order.

Mr. Speaker, I submit that the amendment to the appropriation bill is an affirmative direction and restricts executive discretion to a degree that may be fairly termed a change in policy. . . .

THE SPEAKER: . . . The Chair will state that if an amendment of this sort had been proposed in the House of Representatives when this bill was under consideration in all probability it would have been subject to a point of order. The Chair does not feel that in this case it is a violation of clause 2 of rule 21, for the simple reason that it has been held as early as 1921 by Mr. Speaker Gillette that when an amendment that might have been subject to a point of order in the House if offered here was adopted by the Senate, and

17. Sam Rayburn (Tex.).

the conferees reported such an amendment in disagreement the House may consider the amendment.

Therefore, the Chair must overrule the point of order of the gentleman from Montana.

MR. KIRWAN: Mr. Speaker, I move that the House recede and concur in the Senate amendment.

Conferees' Authority Where Rule Waived Against House Provision

§ 6.6 Where an appropriation bill is considered in the House under a rule waiving points of order against a provision therein which is unauthorized by law, and the Senate then amends the unauthorized provision, reducing the sum of money involved and striking out a portion of the language, House conferees may (without violating the provisions of Rule XX clause 2) agree to a sum between the two versions and restore the House language.

On Dec. 20, 1969,[18] during consideration in the House of the conference report on the foreign assistance appropriation bill (H.R. 15149) the following point of order was raised, and proceedings ensued as indicated below:

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, I make a point of order against that portion of the conference report which provides funds for the purchase of planes for the Republic of China on the ground that it is an appropriation that is not authorized by law.

I read from the conference report on the authorization bill which appears in the Congressional Record of December 18 on page 39841 relating to the military assistance, section 504 of the act.

The House bill authorized a total of $454,500,000 for military assistance of which $350,000,000 was for worldwide allocation; $50,000,000 for Korea; $54,500,000 for the Republic of China.

The Senate amendment authorized a total of $325,000,000 without any allocation to specified countries.

The managers on the part of the House agreed to the authorization of $350,000,000 without specifying any country allocation. They found it impossible to obtain agreement to a larger total for military assistance and believe that any specific additional allocation for Korea or for the Republic of China would result in a drastic curtailment of the worldwide authorization which would be detrimental to our national security.

So in the basic law, in the authorization law there is no allocation specifically of funds for any country and I suggest that the appropriation of funds in a specific amount for military assistance to a particular country is without authorization of law. . . .

THE SPEAKER:[19] [T]he Chair recalls that when this appropriation bill passed the House, it was considered under a rule waiving points of order.

18. 115 Cong. Rec. 40445–48, 91st Cong. 1st Sess.

19. John W. McCormack (Mass.).

The House agreed to a total figure for military assistance of $454,500,000. The Senate reduced this figure to $325 million. The conferees have reached an agreement between these two amounts, as they had the authority to do.

The Chair holds that the conferees have not exceeded their authority and overrules the point of order.

Parliamentarian's Note: Such an amendment, had it been offered in the House to merely change the unauthorized amount in the House bill against which points of order had been waived, would have been protected by the waiver and thus not subject to a point of order under Rule XXI clause 2.

Senate Amendment, Within Conference Agreement, Held Authorized

§ 6.7 A point of order against a conference report, based on the contention that managers on the part of the House had agreed to a Senate amendment which provided for an appropriation not authorized by law, was overruled.

On Sept. 27, 1961,[20] the following proceedings took place:

MR. [JOHN] TABER [of New York]: Mr. Speaker, I make a point of order against the conference report,[1] and I refer especially to the paragraph on page 30, under the title of "Preservation of Ancient Nubian Monuments—Special Foreign Currency Program":

> For purchase of Egyptian pounds which accrue under title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1704), for the purposes authorized by section 104(k) of that Act, $4,000,000 to remain available until expended.

Mr. Speaker, to my mind that appropriation is not covered by the statute on which it is based. When we went over there—to the conference—and marked it up, I understood it was to be brought back for a separate vote. I did not hear anything else or any talk except that they were going to knock off a couple of words: "to remain available until expended."

Mr. Speaker, I feel that I should read section 104(k) which is referred to in the amendment:

> To collect, collate, translate, abstract, and disseminate scientific and technological information and to conduct and support scientific activities overseas including programs and projects of scientific cooperation between the United States and other countries such as coordinated research against diseases common to all mankind or unique to individual regions of the globe. No foreign currency shall be used for the purpose of this section unless specific appropriations be made therfor.

To my mind, this authorization was not covered by the language of section 104(k). In my opinion, it does not include the sort of operation that is men-

20. 107 CONG. REC. 21521, 21522, 87th Cong. 1st Sess.

1. On H.R. 9169, making supplemental appropriations for fiscal year 1962.

tioned here. It does not have proper authority for an appropriation of this character. It does not authorize purchase of currency.

MR. [ALBERT] THOMAS [of Texas]: Mr. Speaker, I would like the privilege of addressing the Speaker on this item.

. . . Let me first call the attention of the Speaker to the exact language on page 30 of the bill:

> For purchase of Egyptian pounds which accrue under title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1704), for the purposes authorized by section 104(k) of that act $4 million to remain available until expended.

Let us see what 104(k) says:

> To collect, collate, translate, abstract, and disseminate scientific and technological information—

That is exactly what you are doing here.

> conduct and support scientific activities overseas—

Mr. Speaker, how much more definite could that be?

> cooperation between the United States and other countries such as coordinated research—

And so forth.

Mr. Speaker, that language is very definite and it certainly covers this like a blanket.

I cannot see any escape from it.

Is that all, now, Mr. Speaker? May I read to the Chair section 502(c) of the Mutual Security Act of 1954, as amended:

It is the sense of the Congress that prompt and careful consideration should be given to participation by the United States in an internationally financed program which would utilize—

What?

> foreign currencies available to the United States—

To do what?

> to preserve the great cultural monuments of the Upper Nile.

Can it be any more specific than that?

Mr. Speaker, I respectfully submit that our able and distinguished friend's point of order should be overruled.

MR. TABER: Mr. Speaker, if the Chair will permit, the point on which this question is to be determined is the authority in section 104(k). There is nothing there that authorizes an appropriation for the purchase of Egyptian pounds. That is what this appropriation is made for.

THE SPEAKER PRO TEMPORE:[2] The Chair is prepared to rule. . . .

. . . [I]t is the opinion of the Chair that section 104(k) justifies the language contained in the conference report and the Chair overrules the point of order.

Discussion of Senate Rule Concerning Legislation on Appropriation Bills

§ 6.8 Where a general appropriation bill passed by the House contained legislation, it was held in the Senate that such legislative provisions permitted the consideration of legislative amendments.

2. John W. McCormack (Mass.).

On May 29, 1936,[3] the Senate was considering H.R. 12624, a deficiency appropriation bill. The following proceedings took place:

THE PRESIDING OFFICER:[4] The Senator from Missouri made the point of order that the committee amendment amounted to general legislation. The Chair overruled the point of order made by the Senator from Missouri because title II of the bill as it came from the House of Representatives contained many matters of general legislation, and in such a case the rule laid down by Vice President Marshall is stated thus:

> Notwithstanding the rule of the Senate to the effect that general legislation may not be attached to an appropriation bill, still when the House of Representatives opens the door and proceeds to enter upon a field of general legislation which has to do with a subject of this character, the Chair is going to rule—but, of course, the Senate can reverse the ruling of the Chair—that the House having opened the door the Senate of the United States can walk in through the door and pursue the field.

In view of that ruling, the Chair announced that the point of order made by the Senator from Missouri was overruled. From the ruling of the Chair the Senator from Missouri has appealed to the Senate.

MR. [JOEL BENNETT] CLARK [of Missouri]: Mr. President, I desire very briefly to discuss the appeal. . . .

The Chair holds, and holds properly, that title II of the bill does contain some legislation. Many appropriation bills come over here from the House that contain some item of legislation; but from the present ruling of the Chair it would follow that if any general appropriation bill contained any item of legislation, therefore any other item of legislation would be in order in the Senate on a general appropriation bill.

I do not believe that is sound. In other words, it seems to me the necessary application of the ruling of Vice President Marshall, which the Chair has just read, would be to the particular provision which it was sought to amend, and that from the ordinary artifice of dividing a bill into titles, it does not follow that if a particular title happened to contain matter of legislation it would open up the whole title to any other item of legislation. In other words, the question should be whether or not the provision sought to be stricken out by the pending Senate amendment is legislation, and whether that should be opened up by the Senate amendment. . . .

MR. [ALVA B.] ADAMS [of Colorado]: I am thoroughly in accord with the decision of the Chair, but I beg to differ with the reasoning. My understanding of the terms "new legislation" and "general legislation" is that they should be construed to mean something alien to an appropriation bill. In other words, title II does not contain within it that which I think can be correctly defined as new or general legislation. Every part of an appropriation bill is legislation. An appropriation bill is legislation. What the rule seeks to forbid is attaching to an appropriation bill legislation upon other subjects which are new, and which are matters

3. 80 CONG. REC. 8308–10, 74th Cong. 2d Sess.

4. Carl A. Hatch (N.M.).

of general legislation, rather than the regulation, the control, and the direction of the particular appropriation. In that sense I do not believe that a limitation, however inaptly framed, which is directed exclusively to the appropriation made by the bill, is either to be termed "new" or "general" legislation. Therefore, it has seemed to me that the premise upon which the Senator from Arkansas argues is unsound.

I should be willing to concede that if this be legislation opening the gates, it would open them to germane legislation, and to germane legislation only. I cannot see that proposed legislation providing for the appointment of a commission, that commission to go out and engage in scientific undertakings, scientific investigations, to determine the commercial feasibility of a project, is germane to an appropriation bill.

THE PRESIDING OFFICER: The Chair has not ruled on the question as to whether or not it must be germane. The only question on which the Chair ruled was the point of order made by the Senator from Missouri.

MR. ADAMS: I wanted it made clear that my original point of order was submitted on the ground that the amendment of the Senator from Arkansas was general legislation and that it was not germane to the bill.

THE PRESIDING OFFICER: The question is, Shall the decision of the Chair stand as the judgment of the Senate? . . .

MR. CLARK: I ask for the yeas and nays.

The yeas and nays were ordered. . . .

THE PRESIDING OFFICER: The question raised by the point of order made by the Senator from Missouri goes only to the committee amendment. The Chair overruled the point of order made by the Senator from Missouri, holding that, while the amendment did amount to general legislation, nevertheless title II of the bill itself contained many items of general legislation, and under the ruling of Vice President Marshall, the Chair, having been advised that that ruling has been uniformly followed, held that the House of Representatives having opened the door, the Senate could go in. Those were the words of Vice President Marshall. A vote to sustain the ruling of the Chair should be in the affirmative; a vote against the ruling of the Chair should be in the negative. . . .

[The result was announced—yeas 53, nays 19.]

So the decision of the Chair was sustained.

On the question of the germaneness of an amendment offered by Mr. Joseph T. Robinson, of Arkansas, to the committee amendment discussed above, the following statement was made:

THE VICE PRESIDENT (John N. Garner, of Texas): Let the Chair once more state his understanding of the parliamentary situation. The present occupant regrets he was not in the chair at the time the original point of order was made. The Senate by a vote of 53 to 19 has determined that the committee amendment to the appropriation bill is in order. Therefore, any amendment that is germane to the legislation is in order. The question of germaneness of the amendment offered by the Senator

from Arkansas is the question now before the Senate.

Apparently, as the Chair is advised by the Parliamentarian, whoever drew the rules of the Senate was not willing to trust the presiding officer to determine the germaneness of an amendment of this kind, as, under the rules, the Chair does not have the right to determine the germaneness of an amendment to legislation on an appropriation bill. The Chair, therefore, submits to the Senate the question, Is the amendment of the Senator from Arkansas germane to the amendment of the committee?

[On a yea and nay vote, the Senate decided Mr. Robinson's amendment to be germane to the amendment reported by the committee—yeas 53, nays 21.]

Germane Amendment to Senate Legislative Amendment Reported in Disagreement

§ 6.9 A Senate amendment containing legislation reported from conference in disagreement may be amended by a germane amendment even though the proposed amendment is also legislative.

On Aug. 1, 1979,[5] during consideration in the House of H.R. 4388 (energy and water development appropriation bill), a motion was held in order as indicated below:

MR. [TOM] BEVILL [of Alabama]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Bevill moves to recede in the amendment of the Senate No. 37 and concur therein with an amendment as follows in lieu of the matter proposed to be inserted by the Senate insert:

Sec. 502. There is appropriated, out of any money in the Treasury not otherwise appropriated, for an additional amount for "Construction of an Extension to the New Senate Office Building" $52,583,400 toward finishing such building and to remain available until expended: *Provided,* That the amount of $137,730,400 shall constitute a ceiling on the total cost for construction of the Extension to the New Senate Office Building.

It is *further provided,* That such building and office space therein upon completion shall meet all needs for personnel presently supplied by the Carroll Arms, the Senate Courts, the Plaza Hotel, the Capitol Hill Apartments and such buildings shall be vacated.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a point of order. . . .

[T]his amendment offered at this time would not have been in order had it been offered to the bill as originally before the House. The bill is an appropriation bill and this constitutes legislation on an appropriation bill. . . .

MR. BEVILL: Mr. Speaker, I wish to point out this is merely a change of the report language that is in the appropriation bill and it is germane and it is a part of the bill.

THE SPEAKER PRO TEMPORE:[6] The Chair is prepared to rule. The Chair would like to state that the only requirement of the amendment in the

5. 125 CONG. REC. 22007, 96th Cong. 1st Sess.

6. James C. Wright, Jr. (Tex.).

motion offered by the gentleman from Alabama is that it be germane to the Senate amendment. The language is quite clearly germane to the Senate amendment No. 37 and, therefore, the motion is in order and the point of order is overruled.

B. APPROPRIATIONS FOR UNAUTHORIZED PURPOSES

§ 7. In General

The rule[7] prohibiting unauthorized appropriations and legislation on general appropriation bills is applicable only to general appropriation bills. In addition to the precedents in this chapter, extensive discussion of bills considered to be or not to be "general" appropriation bills is found in the preceding chapter on appropriation bills.[8] Further discussion of the general requirement that appropriations be authorized is also to be found in that chapter.

Where the law authorizes appropriations only out of a special fund, appropriations from the general fund are deemed unauthorized.[9]

Contingent Upon Enactment of Authorization

§ 7.1 Language in an appropriation bill providing funds for projects not yet authorized by law is legislation and not in order.

On Sept. 5, 1961,[10] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9033), a point of order was raised against the following provision:

The Clerk read as follows:

TITLE V—PEACE CORPS

Funds appropriated to the President

Peace Corps

For expenses necessary to enable the President to carry out the provisions of the Peace Corps Act, including purchase of not to exceed sixteen passenger motor vehicles for $20,000,000: *Provided*, That this paragraph shall be effective only upon enactment into law of S. 2000 or H.R. 7500, Eighty-seventh Congress, or similar legislation to provide for a Peace Corps.

MR. [EDGAR W.] HIESTAND [of California]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN:[11] The gentleman will state it.

MR. HIESTAND: Title V, which has just been read, has not yet been au-

7. Rule XXI clause 2. See § 1, supra, for text and discussion of the rule.
8. Ch. 25, supra.
9. See §§ 35.1, 35.2, infra.
10. 107 CONG. REC. 18179, 87th Cong. 1st Sess.
11. Wilbur D. Mills (Ark.).

thorized and therefore is subject to a point of order.

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

MR. [OTTO E.] PASSMAN [of Louisiana]: We concede the point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman from Louisiana concedes the point of order and the Chair sustains the point of order made by the gentleman from California (Mr. Hiestand).

§ 7.2 In a general appropriation bill, a paragraph making an appropriation contingent upon the subsequent enactment of authorizing language is in violation of Rule XXI clause 2.

On May 3, 1967,[12] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9481), a point of order was raised against the following provision:

The Clerk read as follows:

CHAPTER VIII

MILITARY CONSTRUCTION

FAMILY HOUSING

HOMEOWNERS ASSISTANCE FUND, DEFENSE

For the Homeowners Assistance Fund, established pursuant to section 1013(d) of the Demonstration Cities and Metropolitan Development Act of 1966 (Public Law 89–754, approved November 3, 1966), $5,500,000, to remain available until expended: Provided, That this paragraph shall be effective only upon enactment into law of S. 1216, Ninetieth Congress, or similar legislation.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, a point of order.

THE CHAIRMAN:[13] The gentleman will state his point of order.

MR. HALL: Mr. Chairman, I wish to make a point of order asking the Chair to strike chapter 8 of the second supplemental appropriation bill, to be found on page 17, lines 6 through 16 thereof, for the reason there has been no authorization of this appropriation and that it is contrary to rule XXI (2) of this body. Consideration of S. 1216 is now before this body's Committee on Rules, it is controversial, it has mixed jurisdictional parentage, and it came out of the Committee on Armed Services with eight or more opposing votes. It can be defeated on the floor.

THE CHAIRMAN: Does the gentleman from Florida seek to be heard on this point of order?

MR. [ROBERT L. F.] SIKES [of Florida]: I do, Mr. Chairman.

Mr. Chairman, as the bill states and as the report states, there is a requirement for the enactment of authorizing legislation. The bill which is before the House clearly requires that appropriations for the acquisition of properties must be authorized by a military construction authorization act, and that no moneys in the fund may be used except as may be provided in an appropriation act, and it would clearly protect the Congress and fulfill the requirements of the law.

12. 113 CONG. REC. 11589, 90th Cong. 1st Sess.

13. James G. O'Hara (Mich.).

What we are seeking to do is to put into operation an immediate program. If we do not provide funds now for people who need money for losses in their property as a result of base closures, it is going to be some months before it can be done, probably, in the regular appropriation bill.

Of course, the language is subject to a point of order. We concede that. If the gentleman insists on his point of order, that is the story, but the homeowners will be the ones who suffer unnecessarily.

THE CHAIRMAN: The Chair is prepared to rule. As the gentleman from Florida has conceded, the language objected to by the gentleman from Missouri is subject to a point of order in that no authorization has been enacted into law. The Chair, therefore, sustains the point of order.

§ 7.3 An item of appropriation providing for an expenditure not previously authorized by law is not in order; and delaying the availability of the appropriation pending enactment of an authorization does not protect the item of appropriation against a point of order under Rule XXI clause 2.

On Apr. 26, 1972,[14] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 14582), a point of order was raised against the following provision:

The Clerk read as follows:

FEDERAL RAILROAD ADMINISTRATION

GRANTS TO NATIONAL RAILROAD PASSENGER CORPORATION

To enable the Secretary of Transportation to make grants to the National Railroad Passenger Corporation, as authorized by section 601 of the Rail Passenger Service Act of 1970, as amended, $170,000,000, to remain available until expended: *Provided*, That this appropriation shall be available only upon the enactment into law of authorizing legislation by the Ninety-second Congress. . . .

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I make a point of order against the $170 million appropriation for Amtrak.

THE CHAIRMAN:[15] The gentleman will state his point of order.

MR. VANIK: Mr. Chairman, the authorization has not yet been made. The fact that the authorization passed the House of Representatives would not make the appropriation valid. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the House has passed the authorization bill. It has not been enacted into law. I think the point of order is well taken.

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

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

THE CHAIRMAN: The Chair understands that the chairman of the committee concedes the point of order. Therefore, the point of order is sustained.

14. 118 CONG. REC. 14455, 92d Cong. 2d Sess.

15. Jack B. Brooks (Tex.).

Authorization Revoked by Law Requiring Subsequent Authorization

§ 7.4 An act providing that, notwithstanding any other law, "no appropriation may be made to the National Aeronautics and Space Administration unless previously authorized by legislation hereafter enacted by the Congress," was construed to have voided all previous authorizations for appropriations to that agency, so that an appropriation for "research and development" was held not authorized by law.

On June 29, 1959,[16] the Committee of the Whole was considering H.R. 7978, a supplemental appropriation bill. During the reading of the bill for amendment, the Clerk read the following paragraph against which a point of order was sustained:

> RESEARCH AND DEVELOPMENT
>
> For an additional amount for "Research and development", fiscal year 1959, $18,675,000, to remain available until expended.
>
> MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[17] The gentleman will state his point of order.
>
> MR. GROSS: Mr. Chairman, I make the point of order against the language on page 4, lines 2, 3, and 4, on the ground that there is no authorization in basic law for this appropriation to be made.
>
> In connection with that, I send a copy of Public Law 86–45 of the 86th Congress to the Chair. I make the point of order on the ground that there is no authorization in basic law for this appropriation to be made. The authorization for this appropriation did exist at one time, but it was repealed by the act of June 15, 1959, Public Law 86–45, section 4. . . .
>
> > Sec. 4. Notwithstanding the provisions of any other law, no appropriation may be made to the National Aeronautics and Space Administration unless previously authorized by legislation hereafter enacted by the Congress.
>
> This law, Mr. Chairman, was approved on June 15, 1959. This language clearly indicates, Mr. Chairman, that appropriations can be made for items authorized by legislation which is hereafter enacted, meaning after June 15, 1959. Section 4 clearly states that appropriations can be made only for items authorized after June 15, 1959, hence all previous authorizations are voided. . . .
>
> THE CHAIRMAN: The gentleman from Iowa has made a point of order against that portion of the bill appearing in lines 2, 3, and 4, page 4, and has called the attention of the Chair to section 4 of Public Law 86–45. In view of the language cited, the Chair sustains the point of order.

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16. 105 CONG. REC. 12125, 86th Cong. 1st Sess.

See also 105 CONG. REC. 12130, 86th Cong. 1st Sess., June 29, 1959.

17. Paul J. Kilday (Tex.).

Waiver of Points of Order Against Items "Not Yet Authorized"

§ 7.5 Where the Committee on Rules had intended to recommend a waiver of points of order against unauthorized items in a general appropriation bill but not against legislative language therein, the Member calling up the resolution offered an amendment to reflect that intention.

On July 21, 1970,[18] the following proceedings took place:

MR. [JOHN A.] YOUNG [of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1151 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1151

Resolved, That during the consideration of the bill (H.R. 18515) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1971, and for other purposes, all points of order against said bill for failure to comply with the provisions of clause 2, rule XXI are hereby waived.

MR. YOUNG: . . . Mr. Speaker, House Resolution 1151 is a resolution waiving points of order against certain provisions of H.R. 18515, the Departments of Labor, Health, Education, and Welfare and related agencies appropriation bill for fiscal year 1971. . . .

Because the authorizations have not been enacted, points of order are waived against the bill for failure to comply with the first provision of clause 2, rule XXI. By mistake, the second provision was covered by the rule—so I have an amendment at the desk to correct the resolution.

Now, Mr. Speaker, as stated there is a clerical error in the rule and at the proper time I shall send to the desk a committee amendment to correct the clerical error. . . .

The Clerk read as follows:

Amendment offered by Mr. Young: Strike out lines 5 through 7 of the resolution and insert in lieu thereof the following: "purposes, all points of order against appropriations carried in the bill which are not yet authorized by law are hereby waived."

The amendment was agreed to. . . .

The resolution was agreed to.

Executive Order Not Sufficient Authorization

§ 7.6 A Presidential order creating a War Relocation Authority was held not an authorization in law for an appropriation for expenses incurred incident to the establishment, maintenance, and operation of the emergency refugee shelter at Fort Ontario, New York.

18. 116 CONG. REC. 25240–42, 91st Cong. 2d Sess.

On Mar. 2, 1945,[19] the Committee of the Whole was considering H.R. 2374, a deficiency appropriation bill. During the reading of the bill for amendment, a point of order was raised against the bracketed language below:

WAR RELOCATION AUTHORITY

Salaries and expenses: The limitation in the appropriation for salaries and expenses, War Relocation Authority, in the National War Agency Appropriation Act, 1945, on the amount which may be expended for travel is hereby increased from $375,000 to $475,000; [and of said appropriation not to exceed $280,477 is made available for expenses incurred during the fiscal year 1945 incident to the establishment, maintenance, and operation of the emergency refugee shelter at Fort Ontario, N.Y., provided for in the President's message of June 12, 1944, to the Congress (H. Doc. 656).]

MR. [HENRY C.] DWORSHAK [of Idaho]: Mr. Chairman, I make the point of order against that part of the section following the semicolon in line 20 and ending on page 14, line 2, that it is legislation on an appropriation bill; furthermore, that there is no specific authority in existing statutes for the operation of this particular program. The Executive order of the President which created the War Relocation Authority does not encompass the activities for which these funds would be used.

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, the item is not subject to a point of order. As the committee will recall, the action of the military authorities in moving from the West Coast for supervised segregation all persons of Japanese ancestry, was one of the most mooted questions in the early days of the war. It was done under Executive authority by virtue of Executive Order No. 9102, establishing the War Relocation Authority in the Executive office of the President and defining its functions and duties. It was financed as many of the early war activities were financed out of the President's special fund. It is therefore authorized by law. This is tantamount to a reappropriation of funds, and is admissible under the rules. There are no grounds upon which a point of order can be sustained.

MR. DWORSHAK: The gentleman has been referring to the Executive order which created the War Relocation Authority; but this refugee activity ostensibly would be conducted under the Executive order which created the War Refugee Board. I submit that there has been no legislation enacted by Congress which authorizes the appropriation of funds for this specific program.

MR. CANNON of Missouri: As I understand, the gentleman's point of order goes to the item in line 21 on page 13 appropriating $280,477. That is in effect a reappropriation for the War Relocation Authority and is therefore in order.

MR. DWORSHAK: No provision has been made for funds for the operation of the War Refugee Board. I am not questioning the Authority for the appropriation for the War Relocation Authority, but there is no existing authority for the other activity.

MR. CANNON of Missouri: This is really a function of the War Relocation

19. 91 CONG. REC. 1682, 1683, 79th Cong. 1st Sess.

Authority, and we are merely making a reappropriation.

MR. DWORSHAK: There has never been any appropriation made, so it cannot be a reappropriation for the War Refugee Board.

MR. CANNON of Missouri: This is a reappropriation of funds formerly supplied by the President's fund.

MR. DWORSHAK: There has never been any appropriation for that activity.

THE CHAIRMAN:[20] May the Chair ask the chairman of the committee, the gentleman from Missouri [Mr. Cannon], if it is his contention that the Executive order by the President would be law within the meaning of the rule requiring appropriations to be authorized by law?

MR. CANNON of Missouri: In the Federal Register of Friday, March 20, 1942, appears a copy of the Executive order. Its functions are fully outlined there. One of its duties would be the establishment of such a refugee shelter as is provided here in the bill. Money has been provided for the support of the activities of this Authority out of the President's fund. This activity was initiated under competent authority and under authority of law and is work in progress. It is therefore in order under the rules of the House.

MR. DWORSHAK: Mr. Chairman, may I add this point: The chairman of the committee persists in referring to Executive Order No. 9102, which created the War Relocation Authority, while I also direct attention to another Executive order which was issued on January 22, 1944, under which the War Refugee Board was created and under which this particular activity has been maintained. There has never been any specific authority in law or any appropriation made heretofore, so it cannot be a reappropriation of funds.

Section 213 of Public Law 358, making appropriations for the executive offices for the fiscal year ending June 30, 1945, requires any agency established by Executive order, having been in existence for more than 1 year, to come to Congress for a regular appropriation. As the War Refugee Board had been created under Executive Order No. 9417 and had utilized money provided by the President from his emergency war fund, it is obvious that no specific authorization has heretofore been considered by Congress for this activity.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Idaho [Mr. Dworshak] makes the point of order against the language beginning in the concluding part of line 20 on page 13 and extending through the balance of the paragraph, that this appropriation is not authorized by law.

Under the rules of the House, no appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law.

It is the opinion of the Chair that an Executive order does not meet the requirement stated in that rule. Therefore, not being authorized by law enacted by Congress, the appropriation would not be in order. The mere fact that it may be a reappropriation would not make it in order if the original appropriation was not authorized by law.

20. John J. Sparkman (Ala.).

Therefore, the Chair sustains the point of order made by the gentleman from Idaho.

§ 7.7 An Executive order does not constitute sufficient authorization "by law" absent proof of its derivation from a statute enacted by Congress authorizing the appropriation; and an appropriation for the Office of Consumer Affairs, established by Executive order, was stricken from a general appropriation bill when the Committee on Appropriations failed to cite statutory authority, other than for funds for personnel, in support of that item.

On June 15, 1973,[1] the following item in the agricultural, environmental and consumer protection appropriations for 1974[2] was under consideration:

For necessary expenses of the Office of Consumer Affairs, established by Executive Order 11583 of February 24, 1971, as amended, $1,140,000, including services authorized by 5 U.S.C. 3109.

A point of order was then raised:

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I rise to make a point of order against the language to be found on page 43, beginning with line 11 and running through line 15.

Mr. Chairman, I make the point of order only because I do not believe the Executive orders should be substituted for authorizations by law.

THE CHAIRMAN [James C. Wright, Jr., of Texas]: Does the gentleman from Mississippi wish to be heard on the point of order?

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, notwithstanding an earlier ruling, I should like to point out something with respect to the Executive order:

Amending Executive Order 11583, establishing Office of Consumer Affairs. By virtue of the authority vested in me as President of the United States, Executive Order 11583, page 24, is amended by substituting for section 1 thereof the following:

If the President of the United States has authority to issue it, the point of order should be overruled. If he does not, it should be sustained.

THE CHAIRMAN: The Chair is prepared to rule.

As cited earlier, it is required that any activity for which an appropriation is contained in a general appropriation bill shall be an activity authorized by law. The Chair observes that in the stated provision two authorities are cited.

One is the Executive Order 11583; the other one is 5 U.S.C. 3109. Apparently the authorization cited, 5 U.S.C. 3109, is only for personnel.

Therefore, the Chair must conclude that the authority cited is Executive Order 11583.

The Chair, of course, is not knowledgeable as to the authority or lack of

1. 119 CONG. REC. 19855, 93d Cong. 1st Sess.
2. H.R. 8619.

authority inherent in the President to issue such an Executive order, but the Chair believes the burden should be upon the committee to cite statutory authorization rather than Executive order, which under the rules does not qualify within the meaning of the word, "law."

MR. WHITTEN: Mr. Chairman, may I ask for my own information and future study, does that mean that the legislature must come before the Congress and it does not have the presumption of right, and only those who attack it can prove otherwise? Now, if the Chair proves to be right, it means that everything has to be proven verse by verse and chapter by chapter. I would presume from my own study of law and my own interpretation that that which comes here in the regular way would be in order unless proven otherwise. I think the Chair has shifted the burden onto the legislative body, as between the three branches of government, as it relates to that branch which claims the right, and I think as long as that is claimed and exercised, the burden would be on the antagonist or the gentleman who raised the point of order.

THE CHAIRMAN: The gentleman from Mississippi [Mr. Whitten] may be entirely right in his assumption that the President, in issuing Executive Order 11583, was doing so pursuant to congressional enactment.

The Chair, lacking knowledge of the source of that authority, believes that the history of rulings from this Chair is that it has been consistently held that law, within the meaning of rule XXI, embraces statutory law enacted by Congress and does not cover Executive orders issued by the executive branch of Government.

For example, the Chair refers to a ruling made by Chairman Sparkman on July 5, 1945, in which the Chair declared:

> An Executive order does not meet the requirement that appropriations must be authorized by law.

MR. WHITTEN: Mr. Chairman, I have gone far afield in my discussion with my friend, the gentleman in the Chair, but do I understand that whatever commission may exist for various other actions taken by the executive branch, this cannot be advanced by the Committee on Appropriations, and is that ruling a complete ruling to exclude from the appropriation process anything that is created by Executive order?

Mr. Chairman, I have some other bills coming up. I have never before heard of such an action.

THE CHAIRMAN: The Chair cannot and would not rule on that question, because it involves a hypothetical situation in the future; nor can the Chair predict with certainty what some future occupant of the Chair might rule.

The Chair simply declares that under precedents heretofore cited, executive orders do not meet the test of law, as required in the rules, for the citation of an authorization for an appropriation, and for that reason the Chair sustains the point of order in the present case.

§ 7.8 Pursuant to Rule XXI clause 2, and 36 USC § 673, commissions and councils must have been established by law—and not merely by Executive order—prior to the

expenditure of federal funds therefor. A lump sum amount for the Civil Service Commission contained in a general appropriation bill was conceded to be in violation of Rule XXI clause 2, where it was shown that a portion of that amount was intended to fund the President's Commission on Personnel Interchange—a commission established solely by Executive order and not created by law.

On June 25, 1974,[3] during consideration of the Departments of the Treasury, Postal Service, and Executive Office appropriations for fiscal 1975,[4] a point of order was made against the following provisions:

> For necessary expenses, including services as authorized by 5 U.S.C. 3109; medical examinations performed for veterans by private physicians on a fee basis; rental of conference rooms in the District of Columbia; hire of passenger motor vehicles; not to exceed $2,500 [for official reception and representation expenses;] and advances or reimbursements to applicable funds of the Commission and the Federal Bureau of Investigation for expenses incurred under Executive Order 10422 of January 9, 1953, as amended; ($90,000,000 together with not to exceed $18,698,000 for current fiscal year administrative expenses for the retirement and insurance programs to be transferred from the appropriate trust funds of the Commission in amounts determined by the Commission without regard to other statutes: *Provided,* That the provisions of this appropriation shall not affect the authority to use applicable trust funds for administrative expenses of effecting statutory annuity adjustments.) No part of the appropriation herein made to the Civil Service Commission shall be available for the salaries and expenses of the Legal Examining Unit of the Commission, established pursuant to Executive Order 9358 of July 1, 1943, or any successor unit of like purpose.

POINT OF ORDER

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I make a point of order on the language beginning at line 12 on page 12 of this bill with the figures "$90,000,000" through line 20 ending in the word "adjustments." . . . Mr. Chairman, the basis for this point of order is the requirement of House rule XXI clause 2, which provides that:

> No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for an expenditure not previously authorized by law.

Mr. Chairman, it is my understanding that there is in fact no authorization for the President's Commission on Personnel Interchange for which $353,000 is herein requested. It was created solely by Executive Order 11451 on January 19, 1969.

This House rule is supported in this regard by title 36 of the United States

3. 120 CONG. REC. 21036, 21037, 93d Cong. 2d Sess.

4. H.R. 15544.

Code, section 673, which also indicates that no funds should be expended by this body without authorization. The full section of the law reads as follows:

TITLE 36, SECTION 673

> No part of the public monies, or of any appropriation made by Congress, shall be used for the payment of compensation or expenses of any commission, council or other similar body, or any members thereof, or for expenses in connection with any work or the results of any work or action of commission, council, board, or similar body, unless the creation of the same shall be or shall have been authorized by law; nor shall there be employed any detail hereafter or heretofore made or otherwise personal services from any Executive Department or other Government establishment in connection with any such commission, council, board, or similar body.

Mr. Chairman, I have a particular concern in regard to a program whose appropriation is contained within the language of lines 12 through 20 of page 12 of this bill. The program is the President's Commission on Personnel Interchange, created solely by Executive Order 11451. There has never been an authorization hearing concerning its operation, since its creation at the beginning of 1969.

A preliminary examination during the past several months by my office and the GAO has revealed a series of potential conflicts of interest. These problems are so serious that the GAO has already referred two cases involving Presidential interchange personnel to the Justice Department for potential criminal conflicts-of-interest violations.

Mr. Chairman, this point of order does not necessarily mean the end of this program. The Congress may and should consider it through the regular authorization process. By following normal procedures, the Congress may be able to write in safeguards preventing future conflict-of-interest problems.

In addition, one must remember that the program's cost of $353,000 as outlined in one brief sentence in the House subcommittee hearing, is only one-tenth of the actual cost of this program since all salaries, travel, moving expenses, and other incidental costs are paid fully by the agency which hires for 1 year an interchange candidate.

I have grave reservations concerning the continuation of this program at all, since I believe that agencies which regulate certain industries will surely have problems with conflict of interest when they hire key industry personnel from the very industries which they are supposed to regulate. I object to personnel from oil companies being hired by FEO and predecessor agencies. I object when a person from the pesticides division from a major company ends up at the pesticide control division of EPA; I object when an auditor from a large accounting firm works for the chief auditor of the SEC—and the SEC has filed allegation of fraud against the firm from which the interchange candidate works for.

The list of obvious potential conflicts of interest is endless. Who among us knows how many real conflicts have existed because of the manner in which this program has proceeded. It seems to me that the Congress must be very alert to prevent potential conflicts of interest. We must not participate in the institutionalization of potential

conflict-of-interest situations because of programs just like the Presidential interchange program.

As the GAO recently said in its report to me on conflicts of interest in this program:

> In our view, the more important question raised by FEO's use of presidential executive interchange program personnel with oil and related industry backgrounds concerns the judgment exercised in placing executives on a year's leave of absence from private industry in positions in an agency exercising a regulatory-type responsibility over the activities of the very company to which the individual involved will return at the completion of his year's assignment. It was this action which created potential conflict of interest situations. At your request, we now are making a broad review of the Presidential Executive Interchange program.

It took us years to begin to root out this very kind of conflict system at the Department of Defense and here we are, a party to its institutionalization.

In any event, I feel strongly that the appropriation of funds for this program would be contrary to both the statute and House rule I have cited.

I ask the Chair to rule.

THE CHAIRMAN [B. F. Sisk, of California]: Does the gentleman from Oklahoma desire to be heard on the point of order?

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The gentleman from Oklahoma (Mr. Steed) concedes the point of order.

The point of order is sustained.

Reorganization Plan as Authorization

§ 7.9 While an Executive order creating a federal office cannot, standing alone, be considered authority in law for appropriations for that office, a reorganization plan from which that office derives may be cited by the Committee on Appropriations to support such an appropriation. A reorganization plan submitted by the President pursuant to 5 USC Sec. 906 has the status of statutory law when it becomes effective and is sufficient authority to support an appropriation under Rule XXI clause 2.

On June 21, 1974,[5] the agricultural, environmental and consumer affairs appropriations for fiscal 1975[6] were under consideration. A point of order was made against an item in the bill, as follows:

> For necessary expenses of the Office of Consumer Affairs, including services authorized by 5 U.S.C. 3109, $1,365,000.

POINT OF ORDER

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I have a point of

5. 120 CONG. REC. 20595, 20596, 93d Cong. 2d Sess.

6. 6. H.R. 15472.

order pertaining to title IV on page 45, lines 9 through 14, under the title "Consumer Programs, Department of Health, Education, and Welfare, Office of Consumer Affairs" on the ground that it violates rule XXI, clause 2, in that there is no existing statutory authority for this office, and I cite as authority the fact that last year this same point of order was made and the Chair ruled that there was no existing authority.

The Subcommittee on Agricultural Appropriations raised this question during their hearing, and a memorandum was submitted from the Department of Health, Education, and Welfare which in effect cited several different statutes, none of which pertained to an Office of Consumer Affairs. I, therefore, insist upon this point of order and ask that this language be stricken.

THE CHAIRMAN [Sam M. Gibbons, of Florida]: Does the gentleman from Mississippi wish to be heard?

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I do wish to be heard. It is pointed out on page 967 of the hearings that we had submitted the report from the Department of HEW, dated March 21, 1974, in which they cite:

> Reorganization Plan No. 1 of 1953 provides in pertinent part: "In the interest of economy and efficiency the Secretary may from time to time establish central . . . services and activities common to the several agencies of the Department . . ." [section 7].

Later this report says:

> The Office of Consumer Affairs, they include policy guidance responsibility respecting the relationship of all of the statutes of the Department to the consumer interest.

So this agency is in line with the Reorganization Plan No. 1 of 1953 which was approved and authorized by the Congress, and for that reason it is within the authorization of the law.

THE CHAIRMAN: Could the gentleman from Mississippi give us the statutory citation for this office?

MR. WHITTEN: It is Reorganization Plan No. 1 of 1953.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, may I be heard in connection with the point of order?

THE CHAIRMAN: The gentleman will proceed.

MR. DINGELL: Mr. Chairman, I would point out that the Appropriations Committee only has authority, and I would say my good friend, the gentleman from Mississippi, is one of the most wise and able Members of this body and he is well aware of the fact that the reorganization plans are not statutory in effect and do not confer the authority on the executive branch to procure and expend appropriated funds. They do not constitute an authorization and, therefore, even though there is a reorganization plan in being it does not constitute the basis upon which the committee may predicate appropriations.

THE CHAIRMAN: Last year when this same point was raised, the authority that was cited was an Executive order. The Chair will state that a reorganization plan–which was not cited as authority on June 15, 1973 - once it has become effective, has the effect of law and of statute and, therefore, the point of order would have to be overruled.

MR. DINGELL: Mr. Chairman, if the Chair will permit me further, the gen-

tleman does not cite the Reorganization Act. He recites a reorganization plan which is very different from a Reorganization Act.

THE CHAIRMAN: The Chair understands that if the reorganization plan has become effective, if it was not rejected by the Congress within the time provided, it has the effect of a statute.

MR. DINGELL: It does not constitute statutory authority.

THE CHAIRMAN: The Chair overrules the point of order. The Chair has examined the law and is citing from title V, United States Code, section 906, which prescribes the procedure by which a reorganization plan does become effective. It is clear to the Chair that Reorganization Plan No. 1 of 1953 has the effect of law, and therefore, the point of order is overruled.

PARLIAMENTARY INQUIRY

MR. BAUMAN: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: The legal position of the Office of Consumer Affairs has not been the subject, as I understand it, or any change in status so far as an Executive order issued in the interim since the last ruling of the Chair in June 1973, and no statutory authority has occurred to authorize its existence; so how can this office now be authorized?

THE CHAIRMAN: The point is that last year the burden was on the Committee on Appropriations. No statutory provision was cited. This year they have cited authority other than an Executive order.

The Chair has examined the pertinent statutes and the Chair overrules the point of order.

The Chair recognizes the gentleman from California.

MR. [CHET] HOLIFIELD [of California]: Mr. Chairman, let me say that I handled the Reorganization Act on the floor that puts the different agencies that were related to environmental duties together into the Environmental Protection Agency. We did not change the statutes that created the different programs, nor did we change committee jurisdictions over the different programs. We left them exactly like they were and are and, therefore, the Chair in my opinion has ruled rightly that the statutes that pertain to the different programs from the Government committees, still exist. Therefore, they have the right to continue to authorize those programs and, of course, the Committee on Appropriations can group their work on appropriations in any way they wish, as was proved by their concentration of authorized energy programs into their centralized consideration. So I think the Chair has ruled rightly.

Parliamentarian's Note: The ruling referred to by Mr. Bauman occurred on June 15, 1973.[7] In that instance, the Chair[8] held that an Executive order does not constitute sufficient authorization "by law" in the absence of proof of its derivation from a statute enacted by Congress authorizing the appropriation. In accordance with the principle that the burden of proving that an item contained in

7. 119 CONG. REC. 19855, 93d Cong. 1st Sess.

8. James C. Wright, Jr. (Tex.).

a general appropriation bill is authorized by law is upon the Committee on Appropriations, which must cite statutory authority for the appropriation, an appropriation for the Office of Consumer Affairs, established by Executive order, was stricken from a general appropriation bill when the Appropriations Committee failed to cite statutory authority, other than for funds for personnel, in support of that item.

Lump-sum Appropriation Only for Authorized Purposes

§ 7.10 To a bill providing a lump-sum appropriation for expenses necessary for collection and study of information pertaining to river and harbor projects, a substitute amendment increasing the lump-sum appropriation in order to provide funds for an additional survey was held to be in order.

On June 18, 1958,[9] the Committee of the Whole was considering H.R. 12858. When the paragraph dealing with "general investigations" was read, an amendment and a substitute therefor were offered.

GENERAL INVESTIGATIONS

For expenses necessary for the collection and study of basic information pertaining to river and harbor, flood control, shore protection, and related projects, and when authorized by law, preliminary examinations, surveys and studies (including cooperative beach erosion studies as authorized in Public Law No. 520, 71st Cong., approved July 3, 1930, as amended and supplemented), of projects prior to authorization for construction, to remain available until expended, $8,473,500: *Provided,* That, no part of the funds herein appropriated shall be used for the survey of Carter Lake, Iowa, until it is authorized.

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Cannon. On page 3, line 19, strike out "$8,473,500" and insert "$8,613,500.". . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN:[10] The gentleman will state his parliamentary inquiry.

MR. TABER: Mr. Chairman, there is nothing in this language which indicates which projects it is for or whether or not they are authorized by law. It seems to me we ought to have that before the item is reached for a vote so a point of order should be made, if they are not authorized.

THE CHAIRMAN: The gentleman from Missouri has been recognized and it is presumed that the gentleman will make his explanation in support of his amendment.

MR. TABER: Mr. Chairman, I reserve a point of order against the amendment. . . .

9. 104 CONG. REC. 11641–43, 85th Cong. 2d Sess.

10. Hale Boggs (La.).

MR. CANNON: Mr. Chairman, as the gentleman is doubtless aware, this is an item from a supplemental budget just received from the Bureau of the Budget. It puts into the bill $140,000 under Public Law 303. That was approved, as you will recall, last September. It gives the title to certain land to the Territory of Alaska, and provides that the Territory may dispose of it; the Territory cannot dispose of the land until certain matters have been established as to the seaward limit of the land. This merely permits the Government engineers to establish the seaward limit of the lands, and thereby makes it possible for the Territory of Alaska to go ahead with the transfer of these tracts.

With respect to the money in this paragraph it is all for authorized surveys with the single exception of this Carter Lake in Iowa. Of course, if the gentleman wants to insist on the point of order, we can let it go out and offer it later without that provision.

MR. TABER: It is subject to a point of order?

MR. CANNON: Only the language, "to remain available until expended." Does the gentleman insist on his point of order?

MR. TABER: No; not for that.

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

MR. TABER: Yes, Mr. Chairman. . . .

MR. [ROBERT] HALE [of Maine]: Mr. Chairman, I offer a substitute amendment.

THE CHAIRMAN: The Clerk will read the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Hale as a substitute for the amendment offered by Mr. Cannon: On page 3, line 19, strike out "$8,473,500" and insert in lieu thereof "$8,498,400."

MR. TABER: Mr. Chairman, I reserve a point of order.

THE CHAIRMAN: The gentleman from Maine [Mr. Hale] is recognized on his amendment.

MR. HALE: Mr. Chairman, I offer this amendment for the purpose of including in the bill $25,000 for a study of the situation in Portland Harbor. The purpose of the study would be to determine the advisability of deepening the harbor channel and anchorage to 45 feet to allow the accommodation of deep-draft tankers. The study has been approved by the Chief of Engineers and authorized by the House Public Works Committee. It was authorized too late, however, to be included in the fiscal 1959 budget.

I would like to remind you that the Committee on Appropriations has added 26 similar unbudgeted surveys to the 1959 public works appropriation bill. One of them, I am informed, has not yet been authorized. I do not know the criteria used by the committee in selecting these 26 particular unbudgeted surveys. I am sure the studies are completely justified. But I do not understand why the authorized Portland Harbor study was not also included. . . .

MR. TABER: Mr. Chairman, I make a point of order against the amendment because it provides for items that are not authorized by law. . . .

THE CHAIRMAN: The gentleman from Maine is recognized to respond to the point of order that the gentleman from New York has made.

MR. HALE: My understanding is that the study was approved by the Corps

of Engineers and authorized by the House Committee on Public Works.

THE CHAIRMAN: Will the gentleman cite the statute which authorizes the appropriation?

MR. HALE: I cannot do that at this time.

THE CHAIRMAN: The Chair is prepared to rule.

MR. [ROBERT E.] JONES [Jr.] of Alabama: Mr. Chairman, I would like to argue the point of order, if the Chair would withhold his ruling.

THE CHAIRMAN: The Chair will withhold his ruling.

MR. JONES of Alabama: Mr. Chairman, the general provisions contained in this appropriation bill have to do with projects that are to be surveyed by the Corps of Engineers. Under the Flood Control Acts of 1928 and 1944 there is general authority for the Corps of Engineers to carry out studies of flood control, navigation, and other water related projects for which there is authority under existing law. Now, the gentleman from Maine offers an amendment to the amendment that authorizes the increase of $8,475,000 by some $25,000. The amendment offered by the gentleman from Maine only identifies the project for which there is an increased authorization. Now, I submit to the Chair that there is no need for identity of the project contained in the amendment. Now, of the $8 million already contained in this bill, it authorizes numerous works to be surveyed by the Corps of Engineers, some of which are not authorized by law and the identity of which would have to be brought forward by the Committee on Appropriations. But, that is a principle that we do not recognize nor have we insisted upon in the past.

Mr. Chairman, I submit further, notwithstanding the fact that the amendment goes to the identity of the project already contained in law, as I have pointed out to the Chair, it is an authorized project for survey heretofore enacted by the House Public Works Committee.

THE CHAIRMAN: I wonder if the gentleman from Alabama could cite the specific authorization for the funds that the gentleman from Maine seeks to include?

MR. JONES of Alabama: I will say to the Chair that my chief argument was made under general authorization which empowers the Corps of Engineers to carry out surveys on general appropriations for survey purposes. I did not rest my argument particularly upon the amendment identifying the Portland Harbor project, because that is in the inherent authority contained in existing law for the Corps of Engineers to execute surveys of projects without those projects being identified in an appropriation bill. If the point of order is sustained, then a point of order would lie against the entire amount, because it fails to identify the project to be surveyed, as to whether or not those projects have been authorized by law.

THE CHAIRMAN: Of course, the gentleman from Maine has based his argument, as the Chair understood it, on the bill which passed the House today and which has not been acted upon by the other body or signed by the President. . . .

MR. [FRANK E.] SMITH of Mississippi: Mr. Chairman, the point of order

against the gentleman's amendment should not lie. Apparently the gentleman from New York made his point of order on the basis that his thought was that this survey was authorized in the bill which the House passed an hour or so ago. That survey was not included in that bill. The survey, as pointed out by the gentleman from Iowa [Mr. Jensen] was authorized under a resolution approved by the House Committee on Public Works something over a year ago. Under the law, the approval by the Committee on Public Works of a study previously authorized under the law some years before is fully entitled to appropriation if the Congress decides to appropriate the money.

THE CHAIRMAN: The reasoning of the gentleman from Mississippi [Mr. Smith] impressed the Chair. The Chair was prepared to rule on the basis of the statement made by the gentleman from Maine [Mr. Hale] that he was relying upon the action taken by the House earlier this afternoon, which obviously was not an authorization in light of the fact that that is an action by this body, but the other body has not acted and the President has not signed it. But the argument advanced by the gentleman from Mississippi impresses the Chair and the point of order is overruled.

Parliamentarian's Note: The rulings in this section and the three sections immediately following should be distinguished from rulings, as in § 47.4, infra, to the effect that an appropriation will not be permitted which is conditioned on a future authorization. The rulings in §§ 7.11–7.13, infra, establish that, where lump sums are involved, language which limits use of an appropriation to projects "authorized by law" or which permits expenditures "within the limits of the amount now or hereafter authorized to be appropriated," is proper. The Chair in such cases is guided in his ruling by the express language of the bill, and not, for example, by indications in the committee report that certain unauthorized projects may be contemplated by the bill's provisions. The project, to be within the purview of the language in question, must have been authorized by law already enacted prior to the bill. Once the project itself has been authorized, Congress can change the limits of expenditure, thereby affecting subsequent expenditures pursuant to the provisions of the appropriation. It should be noted that this result is not an extension of the rule permitting appropriations, without authorization, for "works in progress," because the language under consideration in Sec. 7.11–7.13, infra, relates specifically to expenditures "authorized in law."

§ 7.11 A point of order was held not to lie against an amendment proposing to increase a lump-sum appro-

priation for river and harbor projects where language in the bill limited use of the lump-sum appropriation to "projects authorized by law."

On June 19, 1958,[11] the Committee of the Whole was considering H.R. 12858. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Frank J.] Becker [of New York]: On page 4, line 8, after "expended", strike out '$577,085,500' and insert "$578,455,500.". . .

MR. (JOHN) TABER [of New York]: Mr. Chairman, I make the point of order against this amendment on the ground that it is legislation on an appropriation bill. It appears to be for three projects which have not been authorized by law although a bill did pass the House. Frankly, I do not like the situation where I am obliged to make this point of order, but I feel that I would not be conscientious in the performance of my duty if I did not do so.

THE CHAIRMAN:[12] Does the gentleman from New York [Mr. Becker] desire to be heard on the point of order?

MR. BECKER: Yes, Mr. Chairman. My understanding in trying to evaluate the various points of order in the last 2 days is that it is possible to increase the sum, that is, it is possible to increase the total sum of the appropriation if I do not include any specific authorization. I have not offered any authorization here or legislation on this bill. I am merely increasing the amount and the total sum of the appropriation in order that there will be a sum of money and in order that these three projects can be initiated. I hope the Chairman will overrule the point of order. . . .

THE CHAIRMAN: The gentleman from New York [Mr. Becker] offers an amendment, on page 4, line 8, to which the gentleman from New York [Mr. Taber] raises a point of order.

The Chair has had an opportunity to examine the amendment and to review the ruling of the Chair on yesterday with respect to the language in the bill to which these figures on line 8, page 4, apply. The Chair will point out, as did the Chair on yesterday, that the language to which these figures apply is very specific in that the moneys are to be spent on projects authorized by law. So it would appear to the Chair that the amendment offered by the gentleman from New York [Mr. Becker] raising the amount of the appropriation would be in order.

The Chair therefore overrules the point of order.

§ 7.12 Language in an appropriation bill providing funds for the construction of public works and specifying that none of the funds appropriated should be used for projects not authorized by

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11. 104 CONG. REC. 11766, 11767, 85th Cong. 2d Sess. See also 105 CONG. REC. 10061, 86th Cong. 1st Sess., June 5, 1959.

See the note in § 7.10, supra, for further discussion.

12. Wilbur D. Mills (Ark.).

law "or which are authorized by a law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated" was held to limit expenditures to authorized projects and a point of order against the language as legislation was overruled.

On May 24, 1960,[13] the Committee of the Whole was considering H.R. 12326. At one point the Clerk read as follows:

CONSTRUCTION, GENERAL

For the prosecution of river and harbor, flood control, shore protection, and related projects *authorized by law;* detailed studies, and plans and specifications, of projects (including those for development with participation or under consideration for participation by States, local governments, or private groups) authorized or made eligible for selection by law (but such studies shall not constitute a commitment of the Government to construction); and not to exceed $1,400,000 for transfer to the Secretary of the Interior for conservation of fish and wildlife as authorized by law; $662,622,300, to remain available until expended: *Provided,* That no part of this appropriation shall be used for projects not authorized by law or which are authorized by a law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated. . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order against the language to be found on page 4, beginning on line 18 and into line 21, "or which are authorized by a law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated."

Mr. Chairman, I make the point of order against that language on the ground that it is legislation on an appropriation bill. I make the further point of order that this is authorizing appropriations for projects not authorized by law. . . .

THE CHAIRMAN:[14] The Chair is prepared to rule.

It so happens that almost an identical point of order to an identical paragraph was raised on June 18, 1958,[15] by the gentleman from New York [Mr. Taber]. It also happens that the present occupant of the chair was in the chair at that time. The Chair ruled then that the language was specific, that there was no question about its referring to the controlling phrase "authorized by law," and none of the appropriation can be expended unless authorized by law.

The Chair overrules the point of order and sustains the ruling made on June 18, 1958.

§ 7.13 Where a lump-sum appropriation is prefaced by

13. 106 CONG. REC. 10979, 10980, 86th Cong. 2d Sess.

14. Hale Boggs (La.).

15. See the ruling at § 7.10, supra. For further discussion, see the Parliamentarian's Note in § 7.10.

language limiting expenditure thereof to projects "authorized by or pursuant to law," a point of order against the total figure, based on a general allegation that a portion thereof may be unauthorized, will not lie.

On May 21, 1969,[16] during consideration in the Committee of the Whole of a supplemental appropriation bill for fiscal 1969 (H.R. 11400), Mr. H. R. Gross, of Iowa, raised a point of order against a provision in the bill:

HOUSE OF REPRESENTATIVES

COMPENSATION OF MEMBERS

Compensation of Members, $1,975,000;

SALARIES, OFFICERS, AND EMPLOYEES

"Office of the Speaker", $4,015; . . .

MR. GROSS: Mr. Chairman, I make a point of order against the language on page 23, lines 12, 13, and 14, on the ground that, as admitted by the committee, this contains moneys to be appropriated that have not been authorized by Congress. . . .

THE CHAIRMAN:[17] Does the gentleman from Texas desire to be heard on the point of order?

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the gentleman, I believe, does not seek to reduce funds for the Office of the Speaker, as shown on line 14. The gentleman is, I believe, only referring to the pay increase for the Speaker and other Members—the item on line 12.

MR. GROSS: Very frankly, I do not know which one of these line items contains all the funds, so I am just trying to take as much as I can to be sure I get the funds covered. If the gentleman will tell me what line they are in I will amend my point of order, with the permission of the Chair.

MR. MAHON: The funds which have not been authorized are included in line 12, in the $1,975,000 figure.

MR. GROSS: Those are the only funds that have not been authorized?

MR. MAHON: Yes; that is the figure involved. A small portion of that has not been authorized.

THE CHAIRMAN: Will the gentleman from Texas yield for a clarifying question on the part of the Chair? As the Chair reads this language it says, "for increased pay costs authorized by or pursuant to law." If the Chair understands language, this refers to a cost already authorized by and pursuant to law that is now in existence. Is that true?

MR. MAHON: The Chair is correct. . . .

The $19,835 included in line 12 has not been authorized. That is correct.

MR. GROSS: You mean the $1,975,000?

MR. MAHON: No; $19,835 has not been authorized. But it cannot be paid unless it is authorized. Otherwise, it would revert unused to the Treasury.

THE CHAIRMAN: The Chair again is confused. The Chair sees no reference

16. 115 CONG. REC. 13267, 13268, 91st Cong. 1st Sess. For further discussion, see the Parliamentarian's Note at § 7.10, supra.

17. Chet Holifield (Calif.).

to a figure of $19,835 in the bill or in the language referred to here.

MR. MAHON: It is part of the figure of $1,975,000.

THE CHAIRMAN: Does the gentleman from Texas state to the Chair that of the amount of $1,975,000 there is $19,835 that is not authorized?

MR. MAHON: $19,835.

THE CHAIRMAN: The Chair is still in a quandary because the language in line 7 says, "for increased pay costs authorized by or pursuant to law."

MR. MAHON: Mr. Chairman, all compensation due by law to Members of Congress is authorized. If it is not authorized, it cannot be paid.

THE CHAIRMAN: Yes. . . .

The Chair is constrained to hold that the gentleman's point of order is not well taken, because the money amount in line 12 cannot be used for any other purpose than increased pay costs authorized by or pursuant to law. Therefore, the gentleman's point of order is overruled.

Appropriations Not Exceeding Authorized Limit

§ 7.14 Where a statute authorizes the acquisition of land and construction of buildings within a lump-sum limitation on cost, subsequent appropriations for the construction of buildings under such authorization may not cumulatively exceed the limit of cost fixed in the authorizing act.

On Jan. 20 and 23, 1939,[18] the Committee of the Whole was considering H.R. 2868, a deficiency appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

TREASURY DEPARTMENT

PROCUREMENT DIVISION, PUBLIC BUILDING BRANCH

Bureau of the Census Building, Department of Commerce, Washington, D.C.: For the acquisition of the necessary land and the construction of a building for the Bureau of the Census of the Department of Commerce under the provisions of the Public Buildings Act approved May 25, 1926 (44 Stat. 630), as amended, including the extension of steam and water mains, removal or diversion of such sewers and utilities as may be necessary, and for administrative expenses in connection therewith, $3,500,000.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph just read on the ground it is not authorized by law.

THE CHAIRMAN:[19] The Chair is ready to rule.

When this point of order was raised on Friday last, the Chair was in some doubt as to whether the appropriation in the pending paragraph was authorized under existing law. The citation to the act of May 25, 1926, contained in the paragraph, seemed to place a limitation upon the amount of money that could be appropriated for the construc-

18. 84 CONG. REC. 592, 592, 641–643, 76th Cong. 1st Sess.

19. Wall Doxey (Miss.).

tion of buildings within the District of Columbia. Since last Friday the Chair has had an opportunity of looking into the laws authorizing construction within the District of Columbia. The Chair has found that the act of May 25, 1926, has been amended on two specific occasions—first by the act of January 13, 1928 (45 Stat. 52), and, second, by the act of March 31, 1930 (46 Stat. 136). These amendatory acts have increased the authorization for the District of Columbia to $150,000,000 for the construction of buildings and $40,000,000 for the acquisition of lands for such buildings.

The gentleman from Virginia [Mr. Woodrum] has submitted for the inspection of the Chair a letter addressed to him over the signature of the Director of Procurement of the Treasury Department. The Chair finds in that communication—and of course, the Chair must rely upon the statement of an officer of the Government over his signature—that of the $150,000,000 authorized by construction in the District of Columbia $142,773,092.08 has already been authorized, thus leaving of the original authorization a sum of $7,226,908 for future appropriations. Of the $40,000,000 authorized for the acquisition of land there remains unallocated and unappropriated the sum of $11,320,000. It is manifest, therefore, that under the acts heretofore referred to by the Chair there is sufficient authorization within the limit of cost set in those acts for an appropriation of $3,500,000 for the construction of a Census Building. The Chair desires also to point out that the Director of Procurement in his letter to Mr. Woodrum specifically states that the erection of the new Census Building is within the area defined in the authorization acts.

The question has also been raised as to whether the construction of public buildings in the District of Columbia under allotments by the Public Works Administration should be chargeable against a limitation of $150,000,000 set by the Public Buildings Act of 1926, as amended. The Chair has examined carefully title 2 of the National Industrial Recovery Act, section 12 of the Emergency Relief Appropriation Act of 1935, and section 201 of the Public Works Administration Extension Act of 1937. These acts contained no reference to the Public Buildings Act of May 25, 1926, as amended, and did not otherwise limit the amount expendable for projects in the District of Columbia as authorized by the Public Buildings Act. It seems to the Chair, therefore, that the moneys used under the Public Works Administration for the construction of buildings in the District of Columbia should not be chargeable to the total amount authorized for projects in the District of Columbia under the Public Buildings Act, as amended. The Chair is fortified in this opinion by the fact that the Director of Procurement of the Treasury Department has placed a like construction upon this proposition.

For these reasons the Chair is of the opinion that the appropriation herein provided is within the authorization set by Congress, and, therefore, conforms with the rules of the House. The Chair, therefore, overrules the point of order.

Incidental Expenses to Authorized Functions of Government

§ 7.15 An amendment proposing appropriations for in-

cidental expenses which contribute to the main purpose of carrying out the functions of the department for which funds are being provided in the bill is generally held to be authorized by law.

On Mar. 1, 1938,[20] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. At one point the Clerk read as follows and proceedings ensued as indicated below:

Amendment offered by Mr. [James G.] Scrugham [of Nevada]: Page 72, beginning with line 12, insert the following:

"Administrative provisions and limitations: For all expenditures authorized by the act of June 17, 1902, and acts amendatory thereof or supplementary thereto, known as the reclamation law, and all other acts under which expenditures from said fund are authorized, including not to exceed $100,000 for personal services and $15,000 for other expenses in the office of the chief engineer, $20,000 for telegraph, telephone, and other communication service, $5,000 for photographing and making photographic prints, $41,250 for personal services, and $7,500 for other expenses in the field legal offices; examination of estimates for appropriations in the field; refunds of overcollections and deposits for other purposes; not to exceed $15,000 for lithographing, engraving, printing, and binding; purchase of ice; purchase of rubber boots for official use by employees; maintenance and operation of horse-drawn and motor-propelled passenger vehicles; not to exceed $20,000 for purchase and exchange of horse-drawn and motor-propelled passenger-carrying vehicles; packing, crating, and transportation (including drayage) of personal effects of employees upon permanent change of station, under regulations to be prescribed by the Secretary of the Interior; payment of damages caused to the owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of irrigation works, payment for officials telephone service in the field hereafter incurred in case of official telephones installed in private houses when authorized under regulations established by the Secretary of the Interior; not to exceed $1,000 for expenses, except membership fees, of attendance, when authorized by the Secretary, upon meetings of technical and professional societies required in connection with official work of the Bureau; payment of rewards, when specifically authorized by the Secretary of the Interior, for information leading to the apprehension and conviction of persons found guilty of the theft, damage, or destruction of public property. . . ."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment upon the ground that it is legislation upon an appropriation bill, that it includes items not authorized by law, as, for instance, $5,000 for making photographic prints, not authorized by law in line 20

20. 83 CONG. REC. 2655, 2656, 75th Cong. 3d Sess.

and in line 22, provision for examination of estimates for appropriations in the field, which is not authorized by law; $15,000 for lithographing and engraving, not authorized by law; the purchase of ice, the purchase of rubber boots for official use by employees, not authorized by law.

THE CHAIRMAN:[1] The Chair is ready to rule. This amendment provides for all expenditures authorized by the act of June 17, 1902, and acts amendatory thereof or supplementary thereto, known as the reclamation law, and all other acts under which expenditures from said fund are authorized, and so forth. The Chair thinks that the items to which the gentleman from New York objects specifically are incidental to the main purpose of carrying out the reclamation law. These incidental items it seems to the Chair are necessary to carry out the major purposes of the reclamation law, and the Chair, therefore, overrules the point of order.

Language of Limitation as Constituting New Authority

§ 7.16 Language in an appropriation bill providing that "not to exceed $2,500 of the funds available . . . for salaries and expenses . . . shall be available for . . . entertainment when authorized by the Secretary," was held to be legislation and not in order.

On Apr. 3, 1957,[2] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 6287), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 208. Not to exceed $2,500 of the funds available to the Department for salaries and expenses and not otherwise available for entertainment of officials of other countries or officials of international organizations shall be available for such entertainment when authorized by the Secretary.

MR. [EDGAR W.] HIESTAND [of California]: Mr. Chairman, I make a point of order against this paragraph, that it is legislation on an appropriation bill.

THE CHAIRMAN:[3] The gentleman makes his point of order against the entire section?

MR. HIESTAND: Section 208, lines 5 to 9, inclusive.

THE CHAIRMAN: Does the gentleman from Rhode Island care to comment on this point of order?

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I must concede the point of order. The purpose of this paragraph is to entertain some of these foreign doctors and scientists who come over here, to reciprocate the entertainment that our people receive when they go over there. If the gentleman wants to strike it out, that is his privilege.

THE CHAIRMAN: Does the gentleman insist on the point of order?

MR. HIESTAND: Mr. Chairman, I do.

THE CHAIRMAN: The Chair sustains the point of order.

1. Marvin Jones (Tex.).
2. 103 CONG. REC. 5040, 85th Cong. 1st Sess.
3. Aime J. Forand (R.I.).

§ 8. Works in Progress

Rule XXI clause 2(a),[4] in part prohibits, in general appropriation bills, appropriations for expenditures not previously authorized by law, except to continue appropriations for public works and objects which are already in progress. The phrase refers to tangible works and objects like buildings and roads; it does not contemplate continuance of an indefinite or intangible work.[5] This exception should be compared with the similar exception contained in clause (5) (now 6) Rule XXI discussed in Chapter 25, Sec. 3.16, supra, wherein reappropriations of unexpended balances of appropriations have been prohibited on general appropriation bills since 1946 except in connection with public *works* (not objects) on which work has commenced.

Work Already Commenced

§ 8.1 When the construction of a building for a public purpose has been commenced and there is no limit of cost, further unauthorized appropriations may be made under the exception for works in progress.

On Apr. 27, 1945,[6] the Committee of the Whole was considering H.R. 3024, an Interior Department appropriation. The Clerk read as follows, and proceedings ensued as indicated below:

GENERAL FUND, CONSTRUCTION

For continuation of construction of the following projects in not to exceed the following amounts to be immediately available, and to be reimbursable under the reclamation law.

MR. [ROBERT F.] JONES [of Ohio]: Mr. Chairman, a point of order. . . . I make a point of order against the entire paragraph because it is in violation of title 33 (sic), section 414, of the code. . . .

I refer to the paragraph beginning on line 9 and concluding with line 13, on page 59.

Mr. Chairman, the language of the statute (43 USC § 414) reads as follows:

> Expenditures shall not be made for carrying out the purposes of the reclamation law except out of appropriations made annually therefor and there shall annually in the Budget be submitted to Congress estimates of the amount of money necessary to be expended for carrying

4. *House Rules and Manual* § 834 (1985). For discussion of the distinction between appropriations allowed without authorization for "works in progress," and those appropriations which are expressly limited to use for such projects as are authorized by law, see the Parliamentarian's Note at § 7.10, supra, and see, generally, § 7.10–7.13, supra.

5. See 4 Hinds' Precedents §§ 3714, 3715.

6. 91 CONG. REC. 3911, 3912, 79th Cong. 1st Sess.

> out any or all the purposes authorized by the reclamation law, including the extension and completion of existing projects and units thereof and the construction of new projects.

The portion (of the law) to which I call particular attention is:

> Annual appropriations made hereunder by Congress for such purposes shall be paid out of the reclamation funds provided for by the reclamation law.

This paragraph is legislation because it changes the positive terms of the statute which I have just quoted.

Referring back to the beginning of the bill, it says:

> Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1946, and for other purposes
>
> *Be it enacted, etc.,* That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior for the fiscal year ending June 30, 1946, namely.

This paragraph indicates and shows conclusively that the money will come out of the funds of the Treasury as provided under the terms of the bill. It is in violation of the positive terms of the last sentence of section 414 and, therefore, is legislation on an appropriation bill and subject to a point of order. . . .

Mr. Chairman, on page 21 of Cannon's Precedents it is stated:

> In testing the applicability of the rule to a provision under consideration it is necessary to determine, first: Is it a general appropriation bill?

That question shall be asked. Then, if so, "Is the expenditure authorized by law?"

In this case there is legal authority for expending funds on projects generally out of the general fund of the Treasury, and therefore if the language objected to goes one iota beyond the positive terms of section 414, it is legislation and should be stricken out as such.

MR. [CARL] HINSHAW [of California]: Mr. Chairman, I desire to be heard on the point of order, if the Chair will permit. . . .

I desire to call attention to the language in lines 12 and 13, page 59, where it says these amounts are to be reimbursable under the reclamation law. I think it clearly set forth that this category of improvement is under the Reclamation Act, and therefore the point of order should not be sustained.

THE CHAIRMAN:[7] . . . The gentleman from Ohio invited the attention of the Chair to a certain provision of Cannon's Procedure which was cited by him. The Chair would invite the gentleman's attention to the fact that he stopped reading just one line too soon, in that the next line following the citation presented by the gentleman states:

> If not authorized by law is it for a continuation of work in progress?

The Chair is assured by the gentleman from Oklahoma, the chairman of the subcommittee in charge of the bill under consideration, that the items sought to be stricken by the point of order constitute work in progress.

The Chair would invite attention to the fact that it just happens that the present occupant of the chair was presiding over the Committee of the

7. Jere Cooper (Tenn.).

Whole House on the state of the Union during the consideration of the Interior Department appropriation bill on May 17, 1937, and was called upon to rule upon a point of order to the same effect as the point of order here presented. The Chair would invite attention to the decision made on that date. It is to be remembered that if construction for public purposes has been commenced, even though original appropriation therefor was made without authorization of law, yet the work being in actual progress, further appropriations may be made under the principle of works in progress. . . .

The Chair is of the opinion that the paragraph to which objection is here made really comes under the theory of works in progress and, therefore, overrules the point of order.

Project Originally Unauthorized by Law

§ 8.2 If the construction of a project for public purposes has been commenced, further appropriations therefor may be made under the exception for works in progress, even though the original appropriation for the project was unauthorized.

On May 17, 1937, an appropriation for the continuance of the construction of the Central Valley project was held to be in order as a "work in progress." The proceedings, which took place during consideration of H.R. 6958, an Interior Department appropriation bill, were as follows:[8]

Amendment offered by Mr. Scrugham: In line 20, page 81, insert a new paragraph as follows:

Central Valley project, California, $12,500,000, together with the unexpended balance of the appropriation for this project contained in the First Deficiency Act, fiscal year 1936."

MR. [CASSIUS C.] DOWELL [of Iowa]: Mr. Chairman, a point of order. This is legislation on an appropriation bill, and there is no authority for the appropriation.

May I call the attention of the Chair to the fact that there has been no showing by the committee that there is any authority for the appropriation in this paragraph. The conclusive proof of that is that the proviso just stricken out on a point of order was stricken out because it provided that there may be no authority for this appropriation, and I insist that the paragraph that was stricken out leaves the committee without any authority shown to the Chair under the law for this appropriation.

THE CHAIRMAN:[9] The Chair would be pleased to hear the gentleman from California on the point of order.

MR. [FRANK H.] BUCK [of California]: Mr. Chairman, we have had considerable discussion of various similar points of order. The Chair has ruled several times on clause 2 of rule XXI of the House rules. I invite the Chair's attention again to the language of the clause:

8. 81 CONG. REC. 4688, 4689, 75th Cong. 1st Sess.

9. Jere Cooper (Tenn.).

> No appropriation shall be reported . . . for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress.

I invite the Chair's attention to the fact that Central Valley project was established as a public-works project by the President under authority of the Emergency Relief Appropriation Act of 1935, and I send to the desk for the attention of the Chair the order establishing this as a public-works project. I call the Chair's attention further to the fact that on the 2d day of December 1935 the President of the United States approved the feasibility order which had been prepared and sent to him by the Secretary of the Interior as required by law to establish this as a reclamation project.

I call attention to the further fact that in the first deficiency bill of 1936 there appeared a paragraph, "Central Valley project, California, for continuation, $6,900,000", and so forth; and this I send to the desk for the attention of the Chair.

In view of the ruling Friday on the Gila project, I also call the Chair's attention to a letter received from Commissioner of Reclamation Page, dated May 17, 1937, addressed to me. . . .

> MY DEAR MR. BUCK: In reply to your request regarding the status of work on the Central Valley project, I am providing the following information concerning construction on this project as of May 1, 1937. . . .
>
> Of the $11,400,000 available for construction on May 1, 1937, a total of $1,069,069.48 actually had been expended in construction and engineering work, and a total of $1,179,600 had been obligated or encumbered. Encumbrances placed since May 1, due to award of additional contracts, have increased the total obligated funds by several hundred thousand dollars.
>
> The construction work now is fully under way, with virtually all the preliminary engineering completed. I feel that the construction is being prosecuted vigorously and that good progress has been and is being made.
>
> Very truly yours,
>
> JOHN C. PAGE,
> *Commissioner.*

Mr. Chairman, I submit that under the rulings of the Chair during the consideration of this bill, and those of previous Chairmen, and under the precedents of the House, that this certainly establishes that this is a public work in progress regardless of the previous authorization contained in the deficiency bill of last year or the authorization under the Emergency Relief Act. Therefore this appropriation is in order, and the point of order should be overruled.

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

MR. [JOHN] TABER [of New York]: I do.

THE CHAIRMAN: The Chair will be pleased to hear the gentleman.

MR. TABER: Mr. Chairman, on this point I desire to call the attention of the Chair to the hearings which were held on the 30th day of March, pages 281 and 289, the latter reference especially. It appears from page 281 that a large amount of money has been spent upon the preliminary and exploratory work, but when you get down to page 289 you get to the meat of this question. Down toward the bottom of the page appears the following colloquy:

MR. RICH. What has the money been spent for?

MR. PAGE. The money has been spent for investigation and preliminary work.

That is as of the 30th day of March. There cannot be any question but that is the situation, for that is the evidence before us. This, of course, is not under the reclamation law. This is a proposition where funds were appropriated directly out of the Federal Treasury.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Iowa makes a point of order against the amendment offered by the gentleman from Nevada on the ground that the provisions sought to be included by the amendment seek to make appropriations not authorized by law. The Chair desires again to invite attention to clause 2 of rule XXI. . . .

The Chair further desires to invite attention to a precedent appearing in section 1340 of Cannon's Precedents of the House, volume 7, and read a part from that decision, as follows:

> If the construction of a building, for instance, for a public purpose has been commenced, even though originally subject to the point of order, yet the work having commenced and there being no limit of cost, further appropriations may be made.

There has been presented to the Chair a letter from the Commissioner of Reclamation, and the Chair desires to invite attention to that letter in part as follows, the letter being under date of May 17, 1937. In passing the Chair would comment that, as shown by its date, the letter is subsequent to the date of the hearings to which the gentleman from New York invited attention. This letter is addressed to the gentleman from California [Mr. Buck] and is as follows:

> In reply to your request regarding the status of work on the Central Valley project I am providing the following information concerning construction on this project as of May 1, 1937.
>
> On that date more than 8,000 feet of tunnels had been excavated under contract and by Government forces, and more than 18,000 feet of tunnel and calyx drill holes sunk under contract and by Government forces on the Kennett (Sacramento River Basin) and Friant (San Joaquin River Basin) divisions of the project. The contracts under which this work was done were still in force on May 1 and additional work now is in progress.
>
> On May 1, a large concrete, steel-frame warehouse was under construction and nearing completion on the Friant division which includes Friant Dam and the Friant-Kern and Madera Canals. . . .
>
> The construction work now is fully under way, with virtually all the preliminary engineering completed. . . .

The Chair, therefore, feels that sufficient evidence has been presented to bring this appropriation in the pending amendment within the principle of work in progress as provided for in clause 2 of rule XXI.

The point of order is overruled.

Reappropriation For Works in Progress

§ 8.3 Reappropriation of moneys allotted by the Public Works Administration to several departments or agencies

to continue works in progress was held in order.

On May 13, 1941,[10] during consideration in the Committee of the Whole of H.R. 4590, an Interior Department appropriation, a point of order against language in the bill was overruled as indicated below:

> The Public Works Administration allotments made available to the Department of the Interior, Bureau of Reclamation, pursuant to the National Industrial Recovery Act of June 16, 1933, either by direct allotments or by transfer of allotments originally made to another department or agency, and the allocations made to the Department of the Interior, Bureau of Reclamation, from the appropriation contained in the Emergency Relief Appropriation Act of 1935, the Emergency Relief Appropriation Act of 1937, and the Public Works Administration Appropriation Act of 1938, shall remain available for the purposes for which allotted during the fiscal year 1942.
>
> MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make a point of order against the language on page 8, from line 14 to line 25, inclusive, that it is legislation on an appropriation bill and not authorized by law. . . .
>
> MR. [JOHN] TABER [of New York]: This is not an item for the continuance of projects, nor is it limited to that, but it is an extension of acts which have or will have expired. Some of them were given an extension a year ago in the appropriation bill that was carried then. A further extension is clearly not authorized by law. There is nothing in the exception to the rule like continuation of a project that would apply to this particular paragraph. It does not do that.
>
> THE CHAIRMAN:[11] The Chair is prepared to rule. . . .
>
> The Chair has examined the language of this paragraph . . . with sufficient care to determine that it appears to be exactly the same language as is included in a paragraph of the Interior Department appropriation bill which was considered on March 2, 1938. . . .
>
> The Chair also invites attention to the fact that on page 705 of the hearings of the pending bill it is stated by the Commissioner of the Bureau of Reclamation that the items here covered constitute work in progress.
>
> Therefore the Chair is constrained to overrule the point of order.

Parliamentarian's Note: While beginning in 1946 reappropriations of unexpended balances were prohibited in general appropriation bills, Rule XXI clause 5 (now clause 6) specifically permitted reappropriations of unexpended balances if in continuation of appropriations for public works on which work has commenced. (See Chapter 25, § 3.16 supra for discussion of this issue.)

Reappropriation to Public Works Administration

§ 8.4 Language in an appropriation bill providing that

10. 87 CONG. REC. 4011, 77th Cong. 1st Sess.

11. Jere Cooper (Tenn.).

certain prior allocations or allotments made available to the Bureau of Reclamation, either directly or by transfer of allotments (reappropriations) from other agencies, should remain available during fiscal 1939 for those purposes for which allotted, was held in order under the exception for "works in progress."

On Mar. 2, 1938,[12] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. During consideration of the bill, a point of order was overruled, as follows:

> The Public Works Administration allotments made available to the Department of the Interior, Bureau of Reclamation, pursuant to the National Industrial Recovery Act of June 16, 1933, either by direct allotments or by transfer of allotments originally made to another Department or agency, and the allocations made to the Department of the Interior, Bureau of Reclamation, from the appropriation contained in the Emergency Relief Appropriation Act of 1935 and the Emergency Relief Appropriation Act of 1937, shall remain available for the purposes for which allotted during the fiscal year 1939.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph upon the ground that it is not authorized by law. . . .
>
> MR. [JAMES G.] SCRUGHAM [of Nevada]: Mr. Chairman, the unexpended balances proposed to be appropriated by this paragraph are lawful projects which have qualified as being in order under the rules of the House for one or more of the following reasons:
>
> First. That they are for improvements of existing projects.
>
> Second. That the work on them is in progress.
>
> Third. That there has been a finding of feasibility by the President, which automatically authorizes appropriations, as provided by the reclamation law, title 43, sections 412, 413, and 414.
>
> THE CHAIRMAN:[13] The gentleman from Nevada states that all of these projects are already under way and that this paragraph simply reappropriates money already available.
>
> MR. TABER: These allotments have been made for all sorts of projects not authorized by law, and yet the adoption of this provision would authorize every project that has not yet been authorized for which an allotment has been made.
>
> THE CHAIRMAN: The gentleman states that these projects are already under way.
>
> MR. TABER: That would not authorize them.
>
> THE CHAIRMAN: It authorizes reappropriation of appropriations heretofore made if the work is in progress. The Chair, therefore, overrules the point of order.

12. 83 CONG. REC. 2706, 2707, 75th Cong. 3d Sess.

13. Marvin Jones (Tex.).

Evidence Required to Show "Works in Progress"

§ 8.5 In order to justify an appropriation for a construction project under the exception for "works in progress" by establishing that actual work has begun on the construction project, the Chair may require some documentary evidence that actual construction work has been begun.

On May 14, 1937,[14] during consideration in the Committee of the Whole of H.R. 6958, an Interior Department appropriation, a point of order was sustained as indicated below:

> Gila project, Arizona, $1,250,000: *Provided,* That any right to use of water from the Colorado River acquired for this project and the use of the lands and structures for the diversion and storage of the same shall be subject to and controlled by the Colorado River Compact, as provided in section 8 of the Boulder Canyon Project Act, approved December 21, 1928 (45 Stat. 1062), and section 2 of the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1040);
>
> MR. [LAURENCE] LEWIS [of Colorado]: Mr. Chairman, I make a point of order against the paragraph beginning on page 76, line 20, down to the bottom of the page and continuing on down through and including line 3, on page 77, on the ground that this item of appropriation has not been authorized by law, and, further, that it is contrary to law. No authorization has been enacted for this item. . . .
>
> THE CHAIRMAN:[15] Permit the Chair to state to the gentleman from Nevada that the Chair is familiar with the citation to which the gentleman has called attention. The Chair is not familiar with the actual situation existing with reference to this project. What physical work has been started? What has been done? This the Chair would like to know in order that the Chair may determine whether the principle of work in progress applies to this item. The Chair will appreciate the gentleman's addressing himself to the Chair. . . .
>
> [After further discussion:] The Chair is prepared to rule.
>
> The gentleman from Colorado (Mr. Lewis) makes a point of order against the paragraph beginning in line 20 on page 76 and extending through the remainder of the paragraph, on the ground that it is legislation on an appropriation bill and on the further ground that it is not authorized by existing law; and he advances the position that it does not come within the principle of "work in progress."
>
> The Chair invites attention to section 2 of rule XXI. . . .
>
> The Chair is impressed with what appears to be the unmistakable fact that there has been a general tendency to narrow the application of the so-called principle of "works in progress" as they relate to general appropriation bills. The Chair sought to secure the

14. 81 CONG. REC. 4607, 4608, 4610–12, 75th Cong. 1st Sess.

15. Jere Cooper (Tenn.).

best information available as to the actual situation existing with reference to this appropriation, and, with all due deference, the Chair feels that he has not been presented with a sufficient type of documentary evidence to clearly show the Chair that actual, physical construction on this particular project has been begun. To say the least, the Chair entertains some doubt in his mind as to the actual status of the work on this project. In the absence of evidence of that type, the Chair feels that this doubt should have some degree of control in making a decision on a matter of this importance.

The Chair also invites attention to the fact that the language that was called to the attention of the gentleman from Nevada [Mr. Scrugham] undoubtedly has some bearing upon the question as to whether or not this is legislation on an appropriation bill, especially the language carried in the proviso, which was recently discussed with the gentleman from Nevada. The gentleman from Nevada quite frankly replied to the inquiry of the Chair, that the purpose of including this language was to force compliance with a certain State compact.

Therefore, the Chair feels there could be no doubt that the effect of the inclusion of this language would be that of legislation on an appropriation bill.

Therefore, the Chair is constrained to hold that the proper showing has not been made in the form of documentary evidence that actual construction work has been begun on this particular project. The Chair feels, under an interpretation of the rule and application of the precedents, and especially in view of the language appearing in the proviso, that the point of order made by the gentleman from Colorado [Mr. Lewis] to this paragraph should be sustained, and therefore sustains the point of order.

§ 8.6 The Chair, in determining whether an appropriation for a project was permissible under the exception for public works in progress, has accepted as documentary evidence a letter from an executive officer charged with the duty of constructing such project.

The proceedings of May 17, 1937, which took place during consideration of H.R. 6958, an Interior Department appropriation, have been discussed in a previous section.[16]

§ 8.7 News articles to the effect that soldiers were working on a highway or on the way to construct a highway were held not to be sufficient evidence that an appropriation was permissible under the exception for "works in progress."

On Mar. 10, 1942,[17] the Committee of the Whole was considering H.R. 6736, a War Department civil functions appropriation

16. See § 8.2, supra.

17. 88 CONG. REC. 2223, 2224, 77th Cong. 2d Sess.

bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Francis H.] Case of South Dakota: On page 4, after line 10, insert "Alaskan Highway: For prosecuting the construction of a connecting highway from the States to and into Alaska, $5,000,000.". . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it is not authorized by law. . . .

MR. CASE of South Dakota: In the first place, I doubt that it requires an authorization for the Corps of Engineers to carry on this work. . . .

Even if this project were one which required authorization by law the rules of the House provide that where a project is under construction and an appropriation is made for continuing construction, the appropriation is in order and is not subject to a point of order.

I call the Chair's attention to an Associated Press dispatch that appeared throughout the country in the papers on March 7, in which this statement was made:

> An advance crew of American engineers is at Dawson Creek, and dozens of freight cars carrying construction equipment are expected to pass through Alberta in the next few weeks.

I also call attention to a statement on page 4 of the Official Information Digest issued by the Office of Government Reports on March 5, in which it is stated that War Secretary Stimson announced that Engineer Corps troops were already on their way to work on roads for this Alaskan highway. In other words, construction has already begun.

The United Press this morning reported that 93 soldiers and engineers had arrived from a fort at Cheyenne, Wyo., and were already in Canada working on this highway. This highway is under construction, and on this basis an amendment providing continuation funds should be in order in this bill. . . .

THE CHAIRMAN:[18] The Chair is ready to rule.

The mere fact that press reports show that certain groups are in Alaska does not constitute in the mind of the Chair that there is really a working performance going on in this project at all.

The Chair, therefore, sustains the point of order.

MR. CASE of South Dakota: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. CASE of South Dakota: Did the Chair understand that I quoted also from the Information Digest issued by the Office of Government Reports?

THE CHAIRMAN: The mere information does not constitute an authorization, or does not show the work has actually begun, and is in course of construction.

"Addition" to Building

§ 8.8 An amendment to a general appropriation bill providing an appropriation for the building of an addition to

18. Alfred L. Bulwinkle (N.C.).

the Indian sanitorium at Shawnee, Okla., was held to be an appropriation for a public work in progress.

On Mar. 1, 1938,[19] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. During consideration, a point of order against an amendment to the bill was overruled as indicated below:

CONSTRUCTION AND REPAIR

For the construction, repair, or rehabilitation of school, agency, hospital, or other buildings and utilities, including the purchase of land and the acquisition of easements or rights-of-way when necessary, and including the purchase of furniture, furnishings, and equipment, as follows:

MR. [LYLE H.] BOREN [of Oklahoma]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Boren: Page 65, line 3, after the colon, add: "Shawnee, Okla., addition to Indian Sanitorium, $150,000."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I reserve a point of order against the amendment. Is there any legislation authorizing this expenditure?

MR. BOREN: I am not familiar with any specific authorization.

MR. TABER: Mr. Chairman, I make the point of order there is no legislation authorizing this expenditure and therefore it is legislation on an appropriation bill.

THE CHAIRMAN:[20] Does the gentleman from Oklahoma have anything to say on the point of order, or can the gentleman refer to any statute authorizing the expenditure?

MR. BOREN: Not specifically. The foundation of this amendment is based on the general law that permits extensions of these hospitals and buildings.

THE CHAIRMAN: May the Chair ask the gentleman from Oklahoma whether the institution for which he offers this addition is a going institution at the present time?

MR. BOREN: It is a going institution, and on page 55 of the bill, Mr. Chairman, provision is made for operating the institution.

THE CHAIRMAN: Is other provision made in this bill for the institution?

MR. BOREN: For the maintenance and operation; yes. This amendment is for additional facilities.

THE CHAIRMAN: Are there some buildings there at the present time?

MR. BOREN: Yes; there are six or seven buildings there now and the purpose of this amendment is to improve those buildings.

THE CHAIRMAN: Is this for the purpose of constructing a new building or for repairing a building already there?

MR. BOREN: It is an addition to the present building, providing sleeping porches, sewer facilities, and so forth.

THE CHAIRMAN: The point the Chair would like to have specific information about is whether there is a sanitorium there at the present time or is this a completely new building?

MR. BOREN: There is a sanitorium there at the present time, Mr. Chair-

19. 83 CONG. REC. 2650, 2651, 75th Cong. 3d Sess.

20. Marvin Jones (Tex.).

man, and the intent of the amendment is to provide, in addition to the present sanitorium, sleeping porches and sewer facilities, and so forth, for the existing building.

THE CHAIRMAN: The Chair would like to have the gentleman state specifically whether this is an addition to an existing building.[1] If that is the fact, it would make a difference in the ruling of the Chair on the point of order.

MR. BOREN: That is the fact, Mr. Chairman, and the word "building" should be pluralized, because there are about seven buildings there now.

THE CHAIRMAN: The Chair overrules the point of order.

Statutory Requirement that Repairs Be Authorized

§ 8.9 Where existing law (40 USC § 606) specifically prohibits the making of an appropriation to construct or alter any public building involving more than $500,000 unless approved by resolutions adopted by House and Senate Committees on Public Works, an appropriation in a general appropriation bill for public building construction or renovation not previously authorized by both committees is in violation of Rule XXI clause 2(a), notwithstanding the "work in progress" exception stated in that rule and readopted subsequent to enactment of 40 USC § 606, since the law specifically precludes the appropriation from being made and the "work in progress" exception is only applicable where there is no authorization in law.

On June 8, 1983,[2] paragraph of a general appropriation bill containing funds for the General Services Administration for construction of new buildings at two sites and repair of two existing projects was conceded to be unauthorized and was ruled out on a point of order, since the construction and repair had not been authorized by the Committee on Public Works and Transportation as required by statute for projects in excess of $500,000 (40 USC § 606), and since the public works in progress exception for unauthorized construction and repair does not countervail a statute requiring specific authorization before an appropriation can be made. The proceedings were as follows:

MR. [ROBERT A.] YOUNG of Missouri: Mr. Chairman, I rise to make a point

1. See 4 Hinds' Precedents §§ 3774, 3775, for further discussion of additions to existing buildings as works in progress.

2. 129 CONG. REC. ——, 98th Cong. 1st Sess.

of order against four provisions found in title IV in which the paragraph is entitled "General Services Administration, Federal Buildings Fund, Limitations on Availability of Revenue."

THE CHAIRMAN:[3] The gentleman from Missouri (Mr. Young) is recognized on his point of order.

[The portion of the bill to which the point of order related was as follows:

> The revenues and collections deposited into the fund pursuant to section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(f)), shall be available for necessary expenses of real property management and related activities not otherwise provided for, including operation, maintenance, and protection of federally owned and leased buildings, rental of buildings in the District of Columbia . . . repair and alteration of federally owned buildings, including grounds, approaches and appurtenances, care and safeguarding of sites, maintenance, preservation, demolition, and equipment . . . preliminary planning and design of projects by contract or otherwise; construction of new buildings (including equipment for such buildings); and payment of principal, interest, taxes, and any other obligations for public buildings acquired by purchase contract, in the aggregate amount of $2,023,143,000 of which (1) not to exceed $132,510,000 shall remain available until expended for construction of additional projects as authorized by law at locations and at maximum construction improvement costs (including funds for sites and expenses) as follows:
>
> New Construction: . . .
>
> Oregon: Portland, Bonneville Power Administration Federal Building, $67,475,000.
>
> Tennessee: Knoxville, Federal Building, $14,990,000. . . .
>
> *Provided further,* That funds in the Federal Buildings Fund for Repairs and Alterations shall, for prospectus projects, be limited to the amount by project as follows, except each project may be increased by an amount not to exceed 10 per centum unless advance approval is obtained from the Committees on Appropriations of the House and Senate for a greater amount: . . .
>
> New York: New York, Federal Office Building, 252 Seventh Avenue, $579,000. . . .
>
> Pennsylvania: Pittsburgh, Post Office, $8,974,000. . . .]

MR. YOUNG of Missouri: Mr. Chairman, specifically, on page 18, lines 13 through 17 of the bill, H.R. 3191, under consideration, there appears an appropriation in the amount of $67,475,000 for the construction of the Bonneville Power Administration Federal Building in Portland, Oreg., and $14,990,000 for the construction of a Federal building in Knoxville, Tenn.

In addition, on page 20, lines 18 and 19, there appears an appropriation in the amount of $579,000 for renovation of the Federal Office Building at 252 Seventh Avenue in New York, N.Y.; as well as on page 20, lines 23 and 24, there appears an appropriation in the amount of $8,974,000 for the repair and alteration of the post office in Pittsburgh, Pa.

These four appropriations appear to be in violation of rule XXI, clause 2, of the rules of the House of Representatives. . . .

Mr. Chairman, section 7(a) of the Public Buildings Act of 1959, as amended, 40 U.S.C. 606, states:

> In order to insure the equitable distribution of public buildings

3. Gerry E. Studds (Mass.).

throughout the United States with due regard for the comparative urgency of need for such buildings, except as provided in Section 4, no appropriation shall be made to construct, alter, purchase, or to acquire any building to be used as a public building which involves a total expenditure in excess of $500,000 if such construction, alteration, purchase, or acquisition has not been approved by resolutions adopted by the Committee on Public Works of the Senate and House of Representatives, respectively.

Mr. Chairman, the law is clear that prior to the appropriation of funds for the construction or alteration of a public building which cost shall exceed $500,000, a resolution must be reported by your House Committee on Public Works and Transportation approving such authorization. This action has not occurred to date. . . .

MR. [EDWARD R.] ROYBAL [of California]: . . . It is my understanding that the prospectuses for the construction that is in the bill have not been approved; is that correct?

MR. YOUNG of Missouri: Mr. Chairman, they have not been approved by our subcommittee nor by the full committee.

MR. ROYBAL: Since they have not been approved by any of the committees, I will concede the point of order, Mr. Chairman. . . .

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

§ 9. Burden of Proof of Authorization

Burden on Proponent of Amendment

§ 9.1 The burden of proof is upon the proponent of an amendment to a general appropriation to show that the appropriation therein is authorized by law; and where the proponent was unable to cite a law authorizing the appropriation, the Chair refused to look beyond the absence of a statutory citation to determine whether a bill had been unconstitutionally "pocket vetoed".

The above principle is well established. Thus, on May 11, 1971,[4] during consideration of H.R. 8190, a supplemental appropriation bill, the following proceedings took place:

MR. [FRED B.] ROONEY of Pennsylvania: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Rooney of Pennsylvania: On page 8, after line 15 insert:

4. 117 CONG. REC. 14471, 92d Cong. 1st Sess. See also 96 CONG. REC. 7426, 7427, 81st Cong. 2d Sess., May 22, 1950; 81 CONG. REC. 4684, 4685, 75th Cong. 1st Sess., May 17, 1937.

"NATIONAL INSTITUTES OF HEALTH

"HEALTH MANPOWER

"For an additional amount for "Health Manpower,' $25,000,000 to carry out programs in the family practice of medicine, as authorized by the Family Practice of Medicine Act of 1970 (S. 3418, 91st Congress), of which sums of not less than $25,000 each shall be made immediately available for the planning and/or development of Departments of Family Practice at the Milton S. Hershey Medical Center of the Pennsylvania State University, and at the University of North Carolina at Chapel Hill, and at Harvard University and/or the Children's Hospital Medical Center, and at such other eligible institutions as may apply; funds appropriated by this provision are directed to be expended and shall remain available for obligation and expenditure until expended."

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Chairman, I make a point of order against the language of the gentleman's amendment.

THE CHAIRMAN:[5] The gentleman will state his point of order.

MR. MICHEL: Mr. Chairman, the language is out of order on the grounds that we have no legislative authority whatsoever. There is nothing in the code, nothing in the statutes, no legislative authority whatsoever; and this is an appropriation bill. We cannot be appropriating for anything that is not authorized, and therefore it is clearly outside our realm of consideration here today.

Mr. Chairman, I simply make a point of order against the language. . . .

MR. ROONEY of Pennsylvania: . . . I am sure all of us realize what is involved in the amendment I have offered here today.

The point of order has been made that it is out of order and that it is not germane. My contention is that it is germane. On December 1, in the 91st Congress, we passed this bill in the House. . . .

The bill was passed by the House on December 1 by a vote of 346 to 2. Two Members of Congress voted against the bill in the House. The bill passed the Senate 64 to 1.

On December 14, the bill was sent to the White House for the signature of the President. Subsequently, in accordance with a concurrent resolution, the Senate adjourned to a date certain from the close of business on Tuesday, December 22, 1970, until Monday, December 28, 1970.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I must insist that the gentleman is not addressing himself to the point of order.

MR. ROONEY of Pennsylvania: I am addressing myself to the point of order.

THE CHAIRMAN: The Chair would suggest that the gentleman is trying to address himself to the point of order. The Chair is ready to rule, and wants the gentleman from Pennsylvania to be as brief as possible.

MR. ROONEY of Pennsylvania: Both bodies, the House and the Senate, had given unanimous consent for designated officers to receive messages from the President during the Christmas recess.

The President took advantage of our Christmas recess to veto this legislation by a pocket veto.

Despite the fact that we were still in session, that we had officers from the

5. Wayne N. Aspinall (Colo.).

House and the Senate standing by ready to receive any veto message, he failed and refused to send it over, and instead he pocket vetoed this bill.

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, will the gentleman yield?

MR. ROONEY of Pennsylvania: I am glad to yield to the gentleman from Ohio.

MR. BOW: Has the gentleman read the resolution of adjournment of the House? There is nothing in there on the receiving of messages or any papers from the President. It is a straight adjournment.

MR. ROONEY of Pennsylvania: I believe if the gentleman will look at the record he will find out that both Houses had officers standing by to receive any message from the President, and this is my contention.

MR. BOW: The adjournment resolution does not contain any such thing.

MR. ROONEY of Pennsylvania: It is my contention the President's declaration of a pocket veto in this instance represented an inappropriate use of such veto power.

In this session of Congress we are going to have 10 recesses, and the President can take advantage of the same pocket veto abuse of this legislation.

I maintain, Mr. Chairman, that this bill was enacted into law on the 24th day of December, 1970.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Pennsylvania [Mr. Rooney] has offered an amendment providing $25 million to implement the provisions of the Family Practice of Medicine Act of 1970.

The gentleman from Illinois has raised a point of order against the amendment on the ground that it provides for an expenditure that is not authorized by law.

When the question of authorization is raised against an item in or an amendment to an appropriation bill, it is incumbent upon the committee reporting the bill or the proponent of the amendment to cite the law permitting the appropriation. The proponent of the amendment in this case has referred the Chair to the bill passed by the other body on September 14, 1970, and passed by the House on December 1, 1970. He has also outlined other legislative history concerning the bill, including the fact that the bill was sent to the President who saw fit to "pocket veto" the measure during the Christmas adjournment of the Congress last year.

The Chair is not oblivious to the fact that certain questions have been raised about the legal propriety of this veto. However, the Chair cannot rule on this constitutional question. The Chair may only refer to the statutes at large or the United States Code to find the authorization required to support this appropriation. Since no such statute can be cited, the Chair must sustain the point of order.

§ 9.2 It is incumbent upon the proponent of an amendment to an appropriation bill to cite authority in law for the proposed appropriation when a point of order is made on the ground of lack of such authority.

On May 7, 1957,[6] the Committee of the Whole was consid-

6. 103 CONG. REC. 6430, 6431, 6446, 85th Cong. 1st Sess.

ering H.R. 7221, a supplemental appropriation bill. The following proceedings took place:

MR. [CLEVELAND M.] BAILEY [of West Virginia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Bailey: Page 4, line 5, strike out "$25,000" and insert "$50,000. Of this amount the sum of $25,000 is to be used to make necessary investigations abroad to determine the wage levels, costs of production and working conditions on articles imported from abroad to assist the Commission in processing claims for injury by domestic producers under section 7 of the Reciprocal Trade Agreements Act.". . .

MR. [PRINCE H.] PRESTON [Jr., of Georgia]: Mr. Chairman, I make a point of order against the amendment on the ground that there is no authority for the Tariff Commission to make an investigation abroad into the working conditions under which foreign commodities are produced.

THE CHAIRMAN:[7] Will the gentleman from West Virginia cite to the Chair the authority for the Commission to make an investigation? . . .

MR. BAILEY: I could not advise the Chairman to that effect. But, I do not see why they should be limited to this country because apparently nobody else is. If somebody wants some information, they go abroad and get it. I think the Tariff Commission should be afforded the same opportunity. Members of the Congress, if you want to sit idly by and see the major part of your small American industry, which is the backbone of our country, driven out of business, you just ignore a proposition like this.

THE CHAIRMAN: In view of the fact that there is no authority cited for the Commission to make the investigations contemplated in the amendment, the Chair sustains the point of order.

Parliamentarian's Note: After reading of the bill for amendment, but prior to the rising of the Committee of the Whole, the proponent of the amendment found authority in law for the proposed investigations and, by unanimous consent, the amendment was offered again and considered.[8]

Committee Has Burden of Showing Authorization for Item in Bill

§ 9.3 Language in a general appropriation bill appropriating $5 million for the emergency fund for the President was held unauthorized by law, the Chair indicating that, in the absence of a statement to the contrary, the statement that no legislative authority existed for the proposed appropriation was dispositive of the point of order.

On Jan. 24, 1946,[9] The Committee of the Whole was consid-

7. Frank N. Ikard (Tex.).

8. 103 CONG. REC. 6446, 85th Cong. 1st Sess., May 7, 1957.

9. 92 CONG. REC. 355, 79th Cong. 2d Sess.

ering H.R. 5201, an independent offices appropriation. A point of order was raised against the paragraph which follows:

EMERGENCY FUND FOR THE PRESIDENT

Emergency fund for the President: Not to exceed $5,000,000 of the appropriation "Emergency fund for the President," contained in the First Supplemental National Defense Appropriation Act, 1943, as supplemented and amended, is hereby continued available until June 30, 1947.

MR. [HENRY C.] DWORSHAK [of Idaho]: Mr. Chairman, I make a point of order against the paragraph just read on the ground there is no legislative authority for the appropriation proposed.

THE CHAIRMAN:[10] Does the gentleman from Florida desire to be heard on the point of order made by the gentleman from Idaho?

MR. [JOE] HENDRICKS [of Florida]: Mr. Chairman, I will leave that to the discretion of the Chair.

THE CHAIRMAN: The gentleman from Idaho [Mr. Dworshak] makes a point of order against the paragraph on the ground that the appropriation is not authorized by law. The Chair has stated to the gentleman in charge of the bill, the gentleman from Florida [Mr. Hendricks], that he would be glad to hear him. In the absence of any statement to the contrary, the Chair is bound by the statement of the gentleman from Idaho and, therefore, sustains the point of order.

Burden on Managers of Bill

§ 9.4 The burden of proving the authorization for language carried in an appropriation bill falls on the proponents and managers of the bill; and where the lack of authorization is conceded in response to a point of order that the language is legislation, the Chair sustains the point of order.

On May 28, 1968,[11] the Committee of the Whole was considering H.R. 17522, a bill appropriating for the Departments of State, Justice, and Commerce. At one point the Clerk read as follows, and proceedings ensued as indicated below:

SALARIES OF SUPPORTING PERSONNEL

For salaries of all officials and employees of the Federal Judiciary, not otherwise specifically provided for, $43,500,000 . . . *Provided further,* That without regard to the aforementioned dollar limitations, each circuit judge may appoint an additional law clerk at not to exceed grade (GS) 9.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 42, beginning on line 3, which reads as follows:

> *Provided further,* That without regard to the aforementioned dollar limitations, each circuit judge may appoint an additional law clerk at not to exceed (GS) 9.

Mr. Chairman, I make a point of order against this language on the

10. William M. Whittington (Miss.).

11. 114 CONG. REC. 15357, 15358, 90th Cong. 2d Sess.

ground that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[12] Before the Chair rules on the point of order, can the gentleman from New York cite to the Chair the authority the gentleman says is already existing? . . .

The Chair will state that if the additional clerk is authorized somewhere in law, this would be a limitation upon the grade at which the clerk would be appointed. What is sought to be found out is whether there is existing legislation.

MR. GROSS: I point out, Mr. Chairman, "without regard to the aforementioned dollar limitations," and so on and so forth. It is not a limitation.

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I am sure this is authorized. However, we will concede the point of order in the interest of saving time and bringing it back to the House after the conference. This does not affect the amount of money for these law clerks.

THE CHAIRMAN: In view of that statement, the Chair sustains the point of order.

Burden on Committee on Appropriations

§ 9.5 The burden of proving that an item contained in a general appropriation bill is authorized by law is on the Committee on Appropriations, which must cite statutory authority for the appropriation.

12. Wayne L. Hayes (Ohio).

On June 15, 1973,[13] an appropriation for the Office of Consumer Affairs, established by Executive order, was stricken from a general appropriation bill when the Committee on Appropriations failed to cite statutory authority in support of that item.

Chair Relies on Citations of Law Presented in Argument

Chair Reversed Ruling on Showing That Original Cited Authority Had Been Superceded

§ 9.6 The Committee on Appropriations has the burden of proving the authorization for an appropriation included in a general appropriation bill, but the Chair may overrule a point of order upon citation to an organic statute creating an agency, absent any showing that such law has been amended or repealed to require specific annual authorizations. The failure of Congress to enact into law a specific authorization of appropriations for the Bureau of the Mint for the fiscal year

13. 119 CONG. REC. 19855, 93d Cong. 1st Sess. See also 119 CONG. REC. 38845, 93d Cong. 1st Sess., Nov. 30, 1973 (proceedings relating to H.R. 11576, supplemental appropriations for fiscal 1974).

in question was initially held not to render an appropriation for that agency subject to a point of order, upon citation to the organic law creating that agency and delegating its functions, where it was not brought to the Chair's attention that the organic law had subsequently been amended with the expressed legislative intent of requiring annual authorizations (a decision subsequently reversed by the Chair on his own initiative upon information that organic law had been amended).

On June 8, 1983,[14] the Chair initially relied upon a citation to the organic law creating the Bureau of the Mint, in order to uphold an appropriation for that agency. Subsequently, reversing his own ruling that the appropriation was authorized by a general statute creating the office and delegating to it functions and responsibilities, the Chair ruled that the appropriation for the Bureau of the Mint was not authorized by law, where the organic statute creating the Mint and implicitly authorizing the appropriation of funds had been substantially amended and recodified with the stated legislative purpose of requiring annual authorizations for the Bureau of the Mint. The proceedings were as follows:

The Clerk read as follows:

BUREAU OF THE MINT

SALARIES AND EXPENSES

For necessary expenses of the Bureau of the Mint: $49,558,000.

MR. [FRANK] ANNUNZIO [of Illinois]: Mr. Chairman, I make a point of order that the appropriations for the Bureau of the Mint, salaries and expenses, contained in title I are not authorized by law. . . .

MR. [EDWARD R.] ROYBAL [of California]: . . . The Bureau of the Mint has been operating under one form or another since this country was first founded. The Mint has been minting and issuing coins pursuant to authority found in title 31 of the United States Code. Section 251 of title 31 establishes the Bureau and I would just like to read to the Chairman the first part of section 251. It reads as follows:

> There shall be established in the Treasury Department a Bureau of the Mint embracing as an organization and under its control all mints for the manufacture of coin and all assay offices for the stamping of bars which has been or which may be authorized by law.

Section 253 states:

> The Director of the Mint shall have the general supervision of all mints and assay offices and shall make an annual report to the Secretary of the Treasury of their operations at the close of each fiscal year,

14. 129 CONG. REC. ——, 98th Cong. 1st Sess.

> and from time to time such additional reports setting forth the operational conditions of such institutions as the Secretary shall require, and shall lay before him the annual estimates for their support; and the Secretary of the Treasury shall appoint the number of clerks classified according to law necessary to discharge the duties of said Bureau.

Mr. Chairman, I would like to point out that in addition to the sections I have just read, sections 261 through 463 of title 31 set forth in detail the duties of the Bureau of the Mint, and those sections are replete with requirements that the mint must accomplish certain acts.

I would like to cite Deschler's and Brown's Procedure of the House, chapter 25, section 5.7, which states in part, as follows. Section 5.7 reads as follows:

> The failure of Congress to enact into law separate legislation specifically authorizing appropriations for existing programs does not necessarily render appropriations for those programs subject to a point of order, where more general existing law authorizes appropriations for such programs. Thus, a paragraph in a general appropriation bill purportedly containing some funds not yet specifically authorized by separate legislation was held not to violate Rule XXI clause 2, where it was shown that all of the funds in the paragraph were authorized by more general provisions of law currently applicable to the programs in question. . . .

THE CHAIRMAN:[15] The Chair is prepared to rule.

The gentleman from Illinois makes the point of order that there is no authorization for the expenses contained in the line in question.

The gentleman from California cited an organic statute creating the office in question, namely, the Bureau of the Mint.

The Chair is aware of the bill, H.R. 2628, passed by the House earlier this year, but not yet law. That bill, if and when it becomes law, will authorize some Bureau of Mint appropriations for fiscal 1984 and provide other permanent authorizations for salaries and expenses. Absent citation to such a statute requiring annual authorization, however, the Chair believes that the gentleman from California may rely on an organic act creating the office and authorizing it as a standing authorization in law for the purposes of the Bureau and, therefore, overrules the point of order.

[Subsequently, the following exchange occurred:]

THE CHAIRMAN: The gentleman from California requested the Chair to entertain a return to a point of order earlier overruled.

The Chair in rare circumstances may agree to such a request and has recognized the gentleman to be heard. . . .

MR. ROYBAL: Mr. Chairman, I yield to the gentleman from Illinois (Mr. Annunzio).

MR. ANNUNZIO: . . . I am renewing my point of order that the appropriation violates clause 2 of rule XXI, on page 5, line 14, of the rules of the House, in that they appropriate funds without an authorization.

A misunderstanding concerning the point of order has occurred because of a change in the law that took place in 1981, the Omnibus Reconciliation Act.

15. Gerry E. Studds (Mass.).

Prior to the passage of the act, the mint operated under a permanent authorization and needed only to come before the Appropriations Committee to obtain its funds.

In 1981, however, the Congress changed that law so that the mint had to first obtain a yearly authorization before obtaining an appropriation. . . .

THE CHAIRMAN: The Chair desires to make a statement. The Chair apologizes in advance to the Members for the length of the statement.

Earlier, during consideration of the bill in the Committee of the Whole, the Chair overruled a point of order against the paragraph appropriating funds for the Bureau of the Mint, salaries and expenses, on page 5, lines 14 through 17. In argument on the point of order, the manager of the bill cited provisions of law establishing and delegating functions to the Bureau of the Mint, as sufficient authority to authorize appropriations for annual expenses and salaries. The Chair has since become aware that those provisions of law have been repealed, and that the statutes relating to the mint have been amended, first by the Omnibus Reconciliation Act of 1981, then by the Omnibus Reconciliation Act of 1982, and then by a complete recodification of title 31 of the United States Code. No specific authorization of appropriations for fiscal year 1984 has yet been enacted, but one has passed the House (H.R. 2628).

The Omnibus Reconciliation Act of 1981, Public Law 97–35, provided in section 382 that the sentence in the Code (31 U.S.C. 369) which had been construed to provide a permanent authorization of appropriations for the Bureau of the Mint be repealed, and replaced that language with an authorization of appropriations for fiscal year 1982 only. The report on that measure in the House stated, on page 129, that by repealing the existing statutory provision and by limiting the authorization to fiscal year 1982 only, it is the intent of the committee to repeal the permanent authorization for the salaries and expenses of the Bureau of the Mint. The joint explanatory statement of the conferees on the Reconciliation Act reiterated that the House bill terminated the permanent authorization for appropriations for salaries and expenses of the Bureau of the Mint (page 717). The Omnibus Reconciliation Act of 1982, Public Law 97–253, in section 202, changed the 1982 authorization into a fiscal year 1983 authorization. Public Law 97–258 codified in its entirety title 31 of the United States Code, and carried the 1982 authorization in section 5132 of title 31; all the old provisions of title 31 dealing with the mint, previously cited in argument on the point of order, have been repealed. Public Law 97–452 modified the codification to reflect the 1983 authorization carried in the 1982 Reconciliation Act. There remains no statutory language relating to the mint which may be construed as a permanent authorization.

The Chair recognizes that it is unusual for the Chair to reverse a decision or ruling previously made, and it is the opinion of the Chair that he should undertake such a course of action only where new and substantial facts or circumstances, which were not evident or stated in argument on a point of order, are subsequently brought to his attention.

In rare instances, the Chair has reversed a decision on his own initiative; for example, the Chairman of the Committee of the Whole in 1927, as cited in volume 8 of Cannon's Precedents section 3435, held that a provision in a general appropriation bill constituted legislation after reviewing a statute he was not previously aware of when he had rendered a contrary decision.

For the reasons stated, and in view of the unique and compelling circumstances, the Chair holds that the language in the bill on page 5, lines 14 through 17, appropriating funds for the Bureau of the Mint, is unauthorized and, therefore, rules the paragraph out of order.

Parliamentarian's Note: The Chairman of the Committee of the Whole may in his discretion entertain (or initiate himself) a request for further argument on a point of order previously ruled upon, even where the paragraph has been passed unamended in the reading of the bill for amendment (and unanimous consent is not required),[16] where existing law not previously called to the Chair's attention would require the ruling to be reversed.

As indicated by the Chair's reservations, such authority should be exercised in only the most compelling circumstances, such as where the state of the law has been completely altered and not made known to the Chair; it should not be exercised in order to further interpret laws already cited. Although the committee in the instant case had clearly met the burden of proof on the previous ruling, their position and statutory authority had not been communicated to the Parliamentarian or Chair before that ruling, and the Chair had been forced to rule without the full benefit of arguments on the point of order.

§ 10 Evidence of Authorization

Citation of Statute

§ 10.1 Language in a general appropriation bill permitting funds in that paragraph to remain available until expended was held in order upon citation by the Committee on Appropriations of statutory authority therefor.

On Nov. 30, 1973,[17] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 11576), a point of order was raised against the following provision and proceedings ensued as indicated below:

16. See 8 Cannon's Precedents § 3435.

17. 119 CONG. REC. 38845, 93d Cong. 1st Sess.

TERRITORIAL AFFAIRS

TRUST TERRITORY OF THE PACIFIC ISLANDS

For an additional amount for "Trust Territory of the Pacific Islands", $8,410,000, to remain available until expended.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I raise a point of order to the language at page 3, line 4, beginning with the word "to," and reading as follows: "to remain available until expended."

I cite as authority for this, Mr. Chairman, rule XXI, clause 2, constituting legislation in an appropriation bill and exceeding the authority of the Committee on Appropriations, essentially appropriating for a period beyond 1 year. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the basic law states that the Congress is authorized to make the funds available as expended. This authorization is amply fortified in law. The point of order is not valid, in the judgment of the Committee on Appropriations.

THE CHAIRMAN:[18] Does the gentlewoman from Washington (Mrs. Hansen) or the gentleman from Texas (Mr. Mahon) have a copy of the authorization referred to that could be sent to the desk?

MR. MAHON: Mr. Chairman, we have the citation here. It is 68 Stat. 330. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The Chair has examined the statute in question and finds that it does indeed authorize appropriations providing funds for the trust territories and specifies that they may remain available until expended.

The Chair, therefore, overrules the point of order.

18. James G. O'Hara (Mich.).

Letter From Executive Officer

§ 10.2 In ascertaining whether existing law has been complied with by executive officials in order to justify an appropriation (a condition stated in the law), the Chair has held that a letter written by an executive officer charged with the duty of furthering a certain program was sufficient documentary evidence of authorization of an appropriation in the manner prescribed by law.

On May 17, 1937,[19] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Provo River project, Utah, $750,000.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against this paragraph that the appropriation is not authorized by law. No construction has been started and no law is in force authorizing the

19. 81 CONG. REC. 4680, 4681, 75th Cong. 1st Sess.

project. I call the attention of the Chairman to the latter part of page 245 of the record of the hearings and to the following words:

> Construction program through fiscal year 1937. The starting of actual construction work has been delayed by the necessity of organization and negotiating repayment and water-subscription contracts.
>
> It is expected that bids will be received for the construction—

And so forth. This means there has been no actual construction on this job and that it has not been authorized by specific legislation. Therefore, I make the point of order against it that it is legislation on an appropriation bill, and has not been authorized by law.

THE CHAIRMAN:[20] The Chair invites attention to the provision of the United States Code in title 43, section 413, which reads as follows:

> Approval of projects by President. No irrigation project shall be begun unless and until the same shall have been recommended by the Secretary of the Interior and approved by direct order of the President of the United States.

This is the act of June 25, 1910, commonly referred to as the Reclamation Act.

The Chair would like to inquire of the gentleman from Utah, or someone else in position to give the information, whether or not this item against which a point of order has been made has been recommended by the Secretary of the Interior and approved by the direct order of the President of the United States, and the Chair would like to have some evidence on this point.

MR. [J. W.] ROBINSON of Utah: Mr. Chairman, I hold in my hand, in answer to the statement of the Chair, a letter——

MR. [JAMES G.] SCRUGHAM [of Nevada]: Mr. Chairman, I offer such documentary evidence.

MR. ROBINSON of Utah: I am submitting, Mr. Chairman, a letter from Secretary Ickes, together with the approval of this project by the President.

MR. [CASSIUS C.] DOWELL [of Iowa]: Mr. Chairman, if documentary evidence is offered for the purpose of showing compliance with the law, it seems to me it should be presented to the committee.

THE CHAIRMAN: The Chair has in mind referring to the document in passing upon the question here presented.

The Chair feels he has examined sufficient evidence to supply the information requested. . . .

The Chair is prepared to rule.

There has been presented to the Chair a letter from the Secretary of the Interior, under date of November 13, 1935, which consists of three pages, and the Chair will only refer to the pertinent part of the letter which applies to the particular item under consideration. The letter is addressed to the President of the United States by the Secretary of the Interior. Among other things, it is stated in the letter:

> I recommend that the Provo River project, consisting of the Deer Creek division and the Utah Lake division, be approved and that authority be issued to this Department to proceed with the work and to make contracts and to take any necessary action for the construction of said projects or either division thereof.

20. Jere Cooper (Tenn.).

Sincerely yours,
HAROLD L. ICKES,
Secretary of the Interior.

There appears on this letter, "Approved November 16, 1935, Franklin D. Roosevelt, President."

Therefore the Chair is of the opinion that the evidence is sufficient to meet the requirements in that this item in the pending bill has been recommended by the Secretary of the Interior and approved by the President of the United States, in accordance with the provisions of existing law, as cited by the Chair, appearing in section 413, title 43, of the United States Code. The Chair therefore overrules the point of order.

Letter from Official Given Authority in Law

§ 610.3 In deciding whether an appropriation for housing and technical facilities at an Air Corps intermediate station in Connellsville, Pennsylvania, was authorized by law, the Chair accepted as evidence a letter from the Chief of Staff of the Army; and the committee fulfilled its burden of showing authorization where the Secretary's letter stated that the procedure for authorization had been complied with.

On Mar. 28, 1938,[1] the Committee of the Whole was considering H.R. 9995, a military appropriation bill. A point of order was raised against the following paragraph in the bill:

> For construction and installation of buildings . . . including interior facilities . . . to remain available until expended and to be applied as follows: For . . . housing and technical facilities, Air Corps intermediate station, Connellsville, Pa., $50,000. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the language, beginning with the word "housing," in line 24, page 26, and ending with the figures "$50,000" on page 27, line 1:

> Housing and technical facilities, Air Corps intermediate station, Connellsville, Pa., $50,000.

I do this because it is not authorized by law. . . .

THE CHAIRMAN:[2] The Chair is ready to rule.

The act of August 12, 1936, confers upon the Secretary of War authority to establish intermediate stations in compliance with the terms of that act. The chairman of the subcommittee has furnished the Chair with a letter dated March 22, 1938, from the War Department advising that the Secretary of War under this authority has designated Connellsville, Pa., as an intermediate station and that it had been so designated by the Secretary of War.

The gentleman from New York makes the point of order that before the Secretary of War could make such a designation he must comply with certain provisions of the act. The Chair

1. 83 CONG. REC. 4244, 4245, 75th Cong. 3d Sess.

2. Luther A. Johnson (Tex.).

would not be warranted in assuming that the Secretary of War disregarded the provisions of the law. Since the Secretary of War has made the designation, the Chair thinks it is proper to assume that the Secretary has carried out the provisions of the law giving him that authority; in other words, the Chair does not think that it is necessary for the Chair to assume that the Secretary of War would violate the act. The proper assumption would be that he had complied with the law.

MR. TABER: Mr. Chairman, it seems to me that the burden is upon the gentleman from Pennsylvania, inserting this item in the bill, to show that the Secretary of War has legally made a designation of this place as an intermediate air station in accordance with the provisions of law and that he has met the four requirements that are set forth in the statute. I do not think a mere letter from the Secretary of War stating that he has made some designation would meet the situation unless the Secretary of War set forth that he has determined that this airport complies with the four requirements outlined in the statute. Has the Chair a copy of the statute available?

THE CHAIRMAN: The Chair has a copy of the act and is familiar with the act.

MR. TABER: It would seem to me that the Secretary of War must make a finding with reference to these four requirements specifically and that evidence of it must accompany the request for an authorization.

MR. [J. BUELL] SNYDER of Pennsylvania: Mr. Chairman, will the gentleman yield?

MR. TABER: I yield.

MR. SNYDER of Pennsylvania: He did make that finding with reference to the four specific points.

MR. TABER: But the evidence is not here to support that.

MR. SNYDER of Pennsylvania: The letter should be sufficient evidence.

THE CHAIRMAN: The Chair takes it that the evidence is in the War Department files. The Chair does not think it should be necessary to require that that evidence be sent here. When the House is advised that the Secretary of War has followed the act and has made the designation, the Chair thinks it would be unnecessary to require that the evidence be set forth. In the Chair's opinion the Chair has the right to assume that the Secretary of War has followed the provisions of law and that the records of the War Department would so show.

The point of order is overruled.

Press Reports Relating to Project

§ 10.4 Statements contained in the Official Information Digest issued by the Office of Government Reports, to the effect that Engineer Corps troops were on their way to a specified construction project were held insufficient evidence that the project was authorized, or that it was a "work in progress," for which an appropriation could be made.

On Mar. 10, 1942,[3] the Committee of the Whole was considering H.R. 6736, a bill concerned with civil functions of the War Department. The following proceedings took place:

MR. [FRANCIS H.] CASE of South Dakota. Mr. Chairman, I offer an amendment, which is at the desk.

The Clerk read as follows:

> Amendment offered by Mr. Case of South Dakota: On page 4, after line 10, insert "Alaskan Highway: For prosecuting the construction of a connecting highway from the States to and into Alaska, $5,000,000.". . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it is not authorized by law. . . .

MR. CASE of South Dakota: . . . Even if this project were one which required authorization by law the rules of the House provide that where a project is under construction and an appropriation is made for continuing construction, the appropriation is in order and is not subject to a point of order.

I call the Chair's attention to an Associated Press dispatch . . . in which this statement was made:

> An advance crew of American engineers is at Dawson Creek, and dozens of freight cars carrying construction equipment are expected to pass through Alberta in the next few weeks.

I also call attention to a statement on page 4 of the Offical Information Digest issued by the Office of Government Reports on March 5, in which it is stated that War Secretary Stimson announced that Engineer Corps troops were already on their way to work on roads for this Alaskan highway. In other words, construction has already begun. . . .

THE CHAIRMAN:[4] The Chair is ready to rule.

The mere fact that press reports show that certain groups are in Alaska does not constitute in the mind of the Chair that there is really a working performance going on in this project at all.

The Chair, therefore, sustains the point of order.

MR. CASE of South Dakota: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. CASE of South Dakota: Did the Chair understand that I quoted also from the Information Digest issued by the Office of Government Reports?

THE CHAIRMAN: The mere information does not constitute an authorization, or does not show the work has actually begun, and is in course of construction.

Public Knowledge

§ 10.5 The law authorizing an appropriation, conditioned upon submission of a balanced budget, was held to have been complied with, on the basis of public knowledge that the fiscal 1957

3. 88 CONG. REC. 2223, 2224, 77th Cong. 2d Sess.

4. Alfred L. Bulwinkle (N.C.).

budget submitted by the President (and printed as a House document) was balanced.

On Mar. 20, 1956,[5] the Committee of the Whole was considering H.R. 10004, a supplemental appropriation bill. The following proceedings took place:

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Mahon: On page 16, line 9, insert the following:

"National Park Service: Construction: For an additional amount for construction $3 million.". . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order that the wording of the amendment does not comply with Public Law 361 of the 83d Congress (requiring a balanced budget as a condition to the appropriation).

THE CHAIRMAN:[6] The Chair is ready to rule.

It is a matter of public knowledge that the budget submitted by the President is a balanced budget; therefore, the Chair feels that subsection 2(b) of section 4, Public Law 361, has been complied with.

The point of order is overruled.

Parliamentarian's Note: Public Law No. 83–361, § 4, stated in part:

§ 4(a) There is hereby authorized to be appropriated not to exceed $5,000,000 to complete (certain described) elements of the (Jefferson National Expansion) Memorial as authorized by this Act. . . .

(b) The authorization for an appropriation contained in subsection (a) shall not be effective until such time as

(1) the receipts of the Government for the preceding fiscal year have exceeded the expenditures of the Government for such year, as determined by the Director of the Bureau of the Budget; or

(2) the budget submitted to the Congress by the President . . . reveals that the estimated receipts of the Government for the fiscal year . . . are in excess of the estimated expenditures of the Government for such fiscal year.

Item Carried in Past Appropriation Bills

§ 10.6 The fact that an item has been carried in appropriation bills for many years does not preclude the point of order that it is legislation on an appropriation bill.

On Mar. 24, 1939,[7] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 5269), the following proceedings took place:

The Clerk read as follows:

5. 102 CONG. REC. 5200, 84th Cong. 2d Sess.

6. Francis E. Walter (Pa.).

7. 84 CONG. REC. 3272, 76th Cong. 1st Sess. See also 96 CONG. REC. 5799, 81st Cong. 2d Sess., Apr. 26, 1950 (proceedings relating to H.R. 7786).

Mexican fruitfly control: For the control and prevention of spread of the Mexican fruitfly, including necessary surveys and control operations in Mexico in cooperation with the Mexican Government or local Mexican authorities, $160,460.

MR. [J. WILLIAM] DITTER [of Pennsylvania]: Mr. Chairman, I make the point of order that the paragraph on page 54 which the Clerk has just read, being lines 1 to 4, inclusive, is legislation on an appropriation bill and not authorized by law. . . .

THE CHAIRMAN:[8] Can the gentleman from Missouri, the chairman of the subcommittee, cite any legislative enactment authorizing this provision?

Mr. [CLARENCE] CANNON of Missouri: Mr. Chairman, this provision has been carried in the bill for many years, but there is no law under which an appropriation is authorized for carrying on these activities.

THE CHAIRMAN: Of course, the provision was retained in previous bills by reason of the fact that no point of order was made against it.

If the gentleman has no citation of law authorizing this provision in the bill, the Chair sustains the point of order.

Executive Assurance That Authorization Formula Was Followed

§ 10.7 Where the law authorizing funds for the Postal Service required the calculation of the appropriation to be the difference between revenues received under certain rates and revenues which would have been received under certain other conditions, a lump-sum appropriation was held to be authorized as required by Rule XXI clause 2 upon assurance from the Committee on Appropriations that that amount was based upon estimates properly submitted pursuant to that law.

On Nov. 30, 1973,[9] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 11576), a point of order was raised against the following provision:

For an additional amount for "Payment to the postal service fund", $110,000,000.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order on the matter contained in chapter IX of the bill, H.R. 11576.

THE CHAIRMAN:[10] The gentleman will state his point of order.

MR. GROSS: . . . Mr. Chairman, chapter IX of the bill proposes to appropriate an additional amount for payment to the Postal Service fund in the sum of $110,000,000, for which there is no authorization in the law, and in clear violation of the House rule. . . .

MR. [TOM] STEED [of Oklahoma]: . . . The purpose of the act on the

8. Fritz G. Lanham (Tex.).

9. 119 CONG. REC. 38851–53, 93d Cong. 1st Sess.

10. James G. O'Hara (Mich.).

Postal Corporation is quite clear. It provides that the Congress shall make appropriations to the Postal Corporation for two purposes; one, 10 percent of the 1970 budget, the other, for revenues foregone on certain classes of mail.

When the budget came out this year, those two items totaled $1,373,000,000. The committee, when it reported the bill in the House and Congress approved the bill, carried these two items of $1,373,000,000, but there was another matter that was involved, because the legislative committees have not finished their work. They have had to fund the Postal Corporation for the Government's portion of contributions to the retirement fund for postal pay raises. The House has passed the bill saying that the government had to make these payments. The other body has not seen fit to take any action. The retirement fund was in desperate circumstances, and the committee, in its wisdom, biding time to wait for the legislative committee to act, put in the original bill to transfer out of this $1,373,000,000 to the retirement fund of $142 million. The $110 million involved here is $32 million under the original budget request based upon these two items provided in the act. The revenue foregone is covered in section (c), paragraph 2401:

> There are authorized to be appropriated to the Postal Service each year a sum determined by the Postal Service to be equal to the difference between the revenues the Postal Service would have received if sections 3217, 3403–3405, and 3626 of this title and the Federal Voting Assistance Act of 1955 had not been enacted and the estimated revenues to be received on mail carried under such sections and Act.

What we are faced with here is going back to the beginning. We are actually $32 million under what the original estimates were, and also this is perfectly within the law and perfectly within the original budget estimates of the committee, and it is under the amount that they originally set, and I do not think there is any way on earth that we can begin to say that this could be subject to a point of order. . . .

THE CHAIRMAN: The Chair is prepared to rule.

Section 2401(b)(1) authorizes certain sums for appropriations, as the gentleman from Oklahoma points out, and the gentleman from Iowa has recognized that with respect to this matter further sums are authorized to be appropriated under section 2401(c) which authorizes the appropriation "to the Postal Service each year of a sum determined by the Postal Service to be equal to the difference between the revenues the Postal Service would have received" under certain circumstances and "estimated revenues to be received on mail carried under such sections and act."

The provision carried in the bill is to cover the estimate that was transmitted by the Postal Service.

The gentleman from Iowa makes the point that the estimate transmitted by the Postal Service was not properly arrived at.

The Chair does not believe it is his responsibility or privilege to go beyond the provisions printed in the bill and the authorizing statute. As far as a reading of the bill and the authorizing statute reveals to the Chair, the appropriation is authorized, and the Chair overrules the point of order.

Citation of Generic Law

§ 10.8 A paragraph in a general appropriation bill purportedly containing some funds not yet specifically authorized by separate legislation was held not to violate Rule XXI clause 2 where it was shown that all of the funds in the paragraph were authorized by more general provisions of law currently applicable to the programs in question.

On June 8, 1978,[11] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 12929), a point of order was overruled against the following provision:

> The Clerk read as follows:
>
> STUDENT ASSISTANCE
>
> For carrying out subparts 1 ($3,373,100,000), 2 ($340,100,000), and 3 ($86,750,000) of part A, and parts C ($520,000,000) and E ($328,900,000) of Title IV of the Higher Education Act, and, to the extent not otherwise provided, the General Education Provisions Act, $4,675,750,000, of which $4,651,350,000 shall remain available until September 30, 1980: *Provided,* That amounts appropriated for basic opportunity grants shall be available first to meet any insufficiencies in entitlements resulting from the payment schedule for basic opportunity grants published by the Commissioner of Education during the prior fiscal year: *Provided further,* That pursuant to section 411(b)(4)(A) of the Higher Education Act, amounts appropriated herein for basic opportunity grants which exceed the amounts required to meet the payment schedule published for any fiscal year by 15 per centum or less shall be carried forward and merged with amounts appropriated the next fiscal year.

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: Mr. Chairman, I have a point of order. . . .

[D]uring the discussion of the rule on this bill, I asked if there was money in this portion of the bill for the so-called Middle Income Student Assistance Act. The distinguished chairman of the subcommittee informed me that there indeed was money in the bill for that act.

I indicated at that time that the Middle Income Student Assistance Act was not authorized. In fact, the House specifically refused to consider that act and has subsequently passed the Tuition Tax Credit Act. I was informed that was not necessary because this could be done under current law.

Mr. Chairman, the Middle Income Student Assistance Act is not current law. If the Middle Income Student Assistance Act is current law, why did the President propose it as a new program?

Mr. Chairman, the committee report says that this appropriation is based on the House version of the Middle Income Student Assistance Act and will expand student aid for middle income students. It will not expand aid for

11. 124 CONG. REC. 16778, 95th Cong. 2d Sess.

middle income students without increasing the middle income student limitation, and there is no authorization for that.

Mr. Chairman, I would like to know whether the Middle Income Student Assistance Act is or is not in existence and whether it is or is not necessary, and I make the point of order that the $1.4 billion in this section that is for expanded aid to middle income students is not authorized. . . .

MR. [DAVID R.] OBEY [of Wisconsin]: . . . Mr. Chairman, let me just point out that the Middle Income Student Assistance Act, which has not yet passed, simply gives direction and makes certain changes in an already existing program. The bill before us today funds programs which are in existing law, and the gentleman's point of order is, therefore, not well taken.

THE CHAIRMAN:[12] The Chair is ready to rule.

The gentleman stated quite accurately that the report of the committee on this appropriation bill indicated that the Middle Income Student Assistance Act H.R. 11274 had not become law. It also says, and I quote, on page 74:

> Even though this legislation is still pending, appropriations can be made under existing authority to expand student aid for middle income students, as expressed in the bill and accompanying report.

The Chair has had an opportunity to examine the report on H.R. 11274 and the basic law. This is Public Law 94–482, 94th Congress, the Education Amendment of 1976.

Section 121, Part D, Student Assistance Basic Educational Opportunity Grants, extends the authorizations of the basic act to September 30, 1979.

Considering all of the authorizations for fiscal 1979 under part D—Student Assistance—together, it would appear that the funds in the paragraph in question are authorized.

Therefore, the Chair believes that the Committee is correct in its view that there is extant authorization justifying this appropriation, and he overrules the point of order.

Reorganization Plan

§ 10.9 While an Executive order creating a federal office cannot, standing alone, be considered authority in law for appropriations for that office, a reorganization plan from which that office derives may be cited by the Committee on Appropriations to support such an appropriation.

On June 21, 1974,[13] during consideration in the Committee of the Whole of the Department of Agriculture and environment and consumer protection appropriation bill (H.R. 15472), a point of order was overruled as indicated below:

> MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I have a point of order pertaining to title IV on page 45, lines 9 through 14, under the title "Consumer Programs, Department of

12. Richard Bolling (Mo.).

13. 120 CONG. REC. 20595, 20596, 93d Cong. 2d Sess.

Health, Education, and Welfare, Office of Consumer Affairs" on the ground that it violates rule XXI, clause 2, in that there is no existing statutory authority for this office, and I cite as authority the fact that last year this same point of order was made and the Chair ruled that there was no existing authority. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: . . . It is pointed out on page 967 of the hearings that we had submitted the report from the Department of HEW, dated March 21, 1974, in which they cite:

> Reorganization Plan No. 1 of 1953 provides in pertinent part: "In the interest of economy and efficiency the Secretary may from time to time establish central . . . services and activities common to the several agencies of the Department . . ." (section 7).

Later this report says:

> The office of Consumer Affairs, they include policy guidance responsibility respecting the relationship of all of the statutes of the Department to the consumer interest.

So this agency is in line with the Reorganization Plan No. 1 of 1953 which was approved and authorized by the Congress, and for that reason it is within the authorization of the law.

THE CHAIRMAN:[14] Could the gentleman from Mississippi give us the statutory citation for this office?

MR. WHITTEN: It is Reorganization Plan No. 1 of 1953.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I would point out that the Appropriations Committee only has authority, and I would say my good friend, the gentleman from Mississippi, is one of the most wise and able Members of this body and he is well aware of the fact that the reorganization plans are not statutory in effect and do not confer the authority on the executive branch to procure and expend appropriated funds. They do not constitute an authorization and, therefore, even though there is a reorganization plan in being it does not constitute the basis upon which the committee may predicate appropriations.

THE CHAIRMAN: Last year when this same point was raised, the authority that was cited was an Executive order. The Chair will state that a reorganization plan—which was not cited as authority on June 15, 1973—once it has become effective, has the effect of law and of statute and, therefore, the point of order would have to be overruled.

MR. DINGELL: Mr. Chairman, if the Chair will permit me further, the gentleman does not cite the Reorganization Act. He recites a reorganization plan which is very different from a Reorganization Act.

THE CHAIRMAN: The Chair understands that if the reorganization plan has become effective, if it was not rejected by the Congress within the time provided, it has the effect of a statute. . . .

The Chair overrules the point of order. The Chair has examined the law and is citing from title V, United States Code, section 906, which prescribes the procedure by which a reorganization plan does become effective. It is clear to the Chair that Reorganization Plan No. 1 of 1953 has the effect of law, and therefore, the point of order is overruled.

14. Sam Gibbons (Fla.).

Executive Order

§ 10.10 Pursuant to Rule XXI clause 2 and 36 USC § 673, commissions and councils must have been established by law—and not merely by Executive order—prior to the expenditure of federal funds therefor.

On June 25, 1974,[15] during consideration in the Committee of the Whole of the Department of Treasury, Postal Service, and Executive Office appropriation bill (H.R. 15544), a point of order was sustained as indicated below:

> THE CHAIRMAN:[16] The Clerk will read.
>
> The Clerk read as follows:
>
> For necessary expenses, including services as authorized by 5 U.S.C. 3109 . . . not to exceed $2,500 for official reception and representation expenses; and advances or reimbursements to applicable funds of the Commission and the Federal Bureau of Investigation for expenses incurred under Executive Order 10422 of January 9, 1953, as amended; $90,000,000 together with not to exceed $18,698,000 for current fiscal year administrative expenses for the retirement and insurance programs to be transferred from the appropriate trust funds of the Commission in amounts determined by the Commission without regard to other statutes: Provided, That the provisions of this appropriation shall not affect the authority to use applicable trust funds for administrative expenses of effecting statutory annuity adjustments. . . .
>
> MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I make a point of order on the language beginning at line 12 on page 12 of this bill with the figures "$90,000,000" through line 20 ending in the word "adjustments.". . .
>
> Mr. Chairman, it is my understanding that there is in fact no authorization for the President's Commission on Personnel interchange for which $353,000 is herein requested. It was created solely by Executive Order 11451 on January 19, 1969.
>
> This House rule is supported in this regard by title 36 of the United States Code, section 673, which also indicates that no funds should be expended by this body without authorization. The full section of the law reads as follows:
>
> TITLE 36, SECTION 673
>
> No part of the public monies, or of any appropriation made by Congress, shall be used for the payment of compensation or expenses of any commission, council or other similar body, or any members thereof, or for expenses in connection with any work or the results of any work or action of commission, council, board, or similar body, unless the creation of the same shall be or shall have been authorized by law; nor shall there be employed any detail hereafter or heretofore made or otherwise personal services from any Executive Department or other Government establishment in connection with any such commission, council, board, or similar body. . . .
>
> THE CHAIRMAN: Does the gentleman from Oklahoma desire to be heard on the point of order?

15. 120 CONG. REC. 21036, 21037, 93d Cong. 2d Sess.

16. B. F. Sisk (Calif.).

MR. [TOM] STEED [of Oklahoma]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The gentleman from Oklahoma (Mr. Steed) concedes the point of order.

The point of order is sustained.

Requirement of Annual Authorization Superceding Organic Law

§ 10.11 Pursuant to law (22 USC § 2680(a)(1)), no funds shall be available to the Department of State for obligation or expenditure unless the appropriation thereof has been authorized by law enacted after February 1972 (thus requiring specific subsequently enacted authorizations for both the direct operations of that Department and related functions delegated to it by laws enacted prior to that date, and not permitting appropriations under Rule XXI clause 2 to be authorized by the "organic statute" or other laws earlier authorizing appropriations for related activities); accordingly several appropriations not specifically authorized as required were conceded to be subject to a point of order.

On June 14, 1978,[17] appropriations in a general appropriation bill for the Department of State, including salaries and expenses, representation allowances, expenses under the Foreign Services Buildings Act, special foreign currency program, emergencies in the diplomatic and consular service, retirement and disability fund, international conferences, international peacekeeping activities, missions to international organizations, international conferences and contingencies, international trade negotiations, international commissions, construction, and general provisions, no authorizations for such appropriations having been enacted for the fiscal year in question as specifically required by law, were conceded to be unauthorized and were ruled out as in violation of Rule XXI clause 2. The proceedings are discussed further in § 17.21, infra. See also § 17.19, infra, discussing unauthorized funds for the Board for International Broadcasting. The Board, having been established independently of the Department of State, was not subject to the provisions of 22 USC § 2680(a).

Parliamentarian's Note: Similarly, pursuant to law (Public Law

17. 124 CONG. REC. 17616, 17617, 17620, 95th Cong. 2d Sess.

No. 94–503, § 204) all appropriations for the Department of Justice and related agencies and bureaus are deemed unauthorized for fiscal 1979 and subsequent fiscal years unless specifically authorized for each fiscal year, and the creation of any subdivision in that department or the authorization of any activity therein, absent language specifically authorizing appropriations for a fiscal year, is not deemed sufficient authorization. Accordingly, on June 14, 1978,[18] appropriations for the Department of Justice and related agencies for fiscal 1979 were conceded to be unauthorized (except for certain agencies for which appropriations had been authorized by separate law).

§ 11 Subject Matter: Agriculture

Language of Permanence in Prior Appropriation Act

Consumption of Domestic Farm Commodities

§ 11.1 An appropriation of $25 million to be used to increase domestic consumption of farm commodities was held authorized by permanent legislation contained in a prior appropriation law providing that "hereafter such sums shall be available as approved by Congress."

On May 20, 1964,[19] the Committee of the Whole was considering H.R. 11202, an Agriculture Department appropriation bill. At one point the Clerk read as follows and proceedings ensued as indicated below:

REMOVAL OF SURPLUS AGRICULTURAL COMMODITIES (SECTION 32)

No funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612C) shall be used for any purpose other than commodity program expenses as authorized therein, and other related operating expenses, except for . . . (5) not in excess of $25,000,000 to be used to increase domestic consumption of farm commodities pursuant to authority contained in Public Law 88–250, the Department of Agriculture and Related Agencies Appropriation Act, 1964, of which amount $2,000,000 shall remain available until expended for construction, alteration and modification of research facilities.

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I make a point of order against the language in this section headed "Removal of Surplus Agricultural Commodities (sec. 32).". . .

My point of order is that the proposition is not in compliance with clause

18. 124 CONG. REC. 17622–24, 95th Cong. 2d Sess.

19. 110 CONG. REC. 11422, 11423, 88th Cong. 2d Sess.

2 rule XXI of the House of Representatives. Clause 2 reads:

> No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditures not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress.

THE CHAIRMAN:[20] May the Chair inquire of the gentleman from Illinois as to whether his point of order is to the entire section or the entire paragraph or that portion which he indicated?

MR. FINDLEY: My point of order is to lines 3 through 9, the portion of the section beginning with the figure in parentheses 5. I will read it. It reads as follows:

> (5) not in excess of $25,000,000 to be used to increase domestic consumption of farm commodities pursuant to authority contained in Public Law 88–250, the Department of Agriculture and Related Agencies Appropriation Act, 1964, of which amount $2,000,000 shall remain available until expended for construction, alteration and modification of research facilities.

There is legislation in an appropriation bill.

THE CHAIRMAN: The gentleman will include the word "and" on line 2, I assume.

MR. FINDLEY: Yes.

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

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I call attention to the section in the bill, last year where Congress passed permanent legislation authorizing this in the appropriation act in which we said hereafter this could be done. It is in last year's appropriation act which was written for this specific purpose and provides hereafter not to exceed $25 million may be appropriated for these purposes. We cite chapter and verse there, so to speak, and it is quite clear. . . .

THE CHAIRMAN: The Chair is ready to rule. The gentleman from Illinois [Mr. Findley] makes a point of order addressed to the language appearing on page 16, line 2, beginning with "and" and continuing through and including line 9, on the ground that it is legislation on an appropriation bill.

The Chair has had called to its attention the section which was contained in Public Law 88–250, in which it appears that the appropriation here, which incidentally is also in the nature of a limitation, was authorized by the Congress by the inclusion of the words pointed out by the gentleman from Mississippi that "hereafter such sums (not in excess of $25,000,000 in any one year) as may be approved by the Congress shall be available for such purpose," and so forth.

The Chair therefore holds that the language in that public law cited is authority for the inclusion in the pending bill of the language to which the point of order was addressed and therefore overrules the point of order.

Centennial of Agriculture Department

§ 11.2 Language in a general appropriation bill providing funds for a celebration of the

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

centennial of the establishment of the Department of Agriculture was held to be not specifically authorized by law and not authorized by the organic act creating the department and permitting dissemination of information.

On June 6, 1961,[1] 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 provision:

The Clerk read as follows:

CENTENNIAL OBSERVANCE OF AGRICULTURE

Salaries and expenses

For expenses necessary for planning, promoting, coordinating, and assisting participation by industry, trade associations, commodity groups, and similar interests in the celebration of the centennial of the establishment of the Department of Agriculture; expenses of an honorary committee established in connection with such celebration; and employment pursuant to 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); $100,000, to remain available until December 31, 1962.

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Chairman, I make the point of order against the language beginning on page 28, line 14, and continuing down to and including line 2 on page 29, that it is not authorized by law.

THE CHAIRMAN:[2] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [JAMIE L.] WHITTEN [of Mississippi]: Yes, Mr. Chairman. May I say we have checked this matter and under the organic act of 1862 creating the Department of Agriculture, authority is granted to disseminate information. It is our argument and our insistence that the language which the gentleman would strike under which a centennial observance of the creation of the Department of Agriculture is to be held here in Washington where visitors from all over the United States may come to see the exhibits and demonstrations and reports and various other things that the Department has brought together over the years is clearly disseminating information, and is within the organic act which created the Department of Agriculture, which act was passed in 1862.

THE CHAIRMAN: The Chair asks the gentleman from Mississippi if he can refer the Chair to any special or specific legislation authorizing the celebration of the centennial of the establishment of the Department of Agriculture or does the gentleman rely on the general organic act?

MR. WHITTEN: I rely upon the general organic act, Mr. Chairman.

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

MR. HOFFMAN of Michigan: I did not find anything in that act which said

1. 107 CONG. REC. 9625, 87th Cong. 1st Sess.

2. Paul J. Kilday (Tex.).

anything about any honorary committee—they never even dreamed of that at that time.

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

MR. WHITTEN: No, Mr. Chairman.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Michigan (Mr. Hoffman) makes a point of order against that portion of the bill appearing in line 14 on page 28 through and including line 2 on page 29. The Chair is constrained to hold that the language does constitute legislation on an appropriation bill and, therefore, sustains the point of order.

Cooperative Range Improvements

§ 11.3 Appropriations for cooperative range improvements (including construction, maintenance of improvements, control of rodents, and eradication of noxious plants in national forests) were authorized by law.

On May 10, 1951,[3] the Committee of the Whole was considering H.R. 3973, a Department of Agriculture appropriation. At one point the Clerk read as follows and proceedings ensued as indicated below:

Amendment offered by Mr. H. Carl Andersen (of Minnesota): Page 26, line 12, insert:

"For artificial revegetation, construction, and maintenance of range improvements, control of rodents, and eradication of poisonous and noxious plants on national forests, as authorized by section 12 of the act of April 24, 1950 (Public Law 478), $700,000, to remain available until expended.". . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: I make [a] point of order.

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

THE CHAIRMAN:[4] The Chair will hear the gentleman.

MR. H. CARL ANDERSEN: I call the Chair's attention to the remarks made by the gentleman from Montana [Mr. D'Ewart] on yesterday, which appear in yesterday's Record which shows that this particular item I am attempting to reinsert is authorized by law.

Mr. Chairman, I refer to section 12 of Public Law 478, Eighty-first Congress, which reads as follows:

Of the moneys received from grazing fees by the Treasury from each national forest during each fiscal year there shall be available at the end thereof when appropriated by Congress an amount equivalent to 2 cents per animal-month for sheep and goats and 10 cents per animal-month for other kinds of livestock under permit on such national forest during the calendar year in which the fiscal year begins, which appropriated amount shall be available until expended on such national forests, under such regulations as the Secretary of Agriculture may prescribe, for (1) artificial revegetation, including the collection or purchase of necessary seed; (2) construction and maintenance of drift or division

3. 97 CONG. REC. 5224, 82d Cong. 1st Sess.

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

fences and stockwatering places, bridges, corrals, driveways, or other necessary range improvements; (3) control of range-destroying rodents; or (4) eradication of poisonous plants and noxious weeds, in order to protect or improve the future productivity of the range.

Mr. Chairman, I maintain and respectfully call your attention to the fact that this distinctly authorizes the section of this particular paragraph which I seek by my amendment to have reinserted. . . .

THE CHAIRMAN: The Chair is of the opinion that the amendment is in order, and therefore overrules the point of order.

Conservation

§ 11.4 An amendment proposing an increase of appropriations contained in the bill for the year 1951 for conservation and use of agricultural land resources under the act of Feb. 29, 1936, was held authorized by law inasmuch as the law itself did not provide a limit on the appropriations.

On Apr. 27, 1950,[5] the Committee of the Whole was considering H.R. 7786, the Department of Agriculture chapter in the general appropriation bill of 1951. The bill stated in part:

To enable the Secretary to carry into effect the provisions of sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, approved February 29, 1936, as amended . . . $282,500,000, to remain available until December 31 of the next succeeding fiscal year for compliance with the program of soil-building practices and soil- and water-conserving practices authorized under this head in the Department of Agriculture Appropriation Act, 1950, carried out during the period July 1, 1949, to December 31, 1950, inclusive: *Provided,* That not to exceed $25,500,000 of the total sum provided under this head shall be available during the current fiscal year for salaries and other administrative expenses for carrying out such program . . . but not more than $5,000,000 shall be transferred to the appropriation account, "Administrative expenses, section 392, Agricultural Adjustment Act of 1938" . . . *Provided further,* That none of the funds herein appropriated or made available for the functions assigned to the Agricultural Adjustment Agency pursuant to the Executive Order Numbered 9069, of February 23, 1942, shall be used to pay the salaries or expenses of any regional information employees or any State information employees, but this shall not preclude the answering of inquiries or supplying of information at the county level to individual farmers: *Provided further,* That such amount shall be available for salaries and other administrative expenses in connection with the formulation and administration of the 1951 program of soil-building practices and soil- and water-conserving practices, under the Act of February 29, 1936, as amended (amounting to $285,000,000, including administration. . . .)

An amendment was offered:

5. 96 CONG. REC. 5949, 81st Cong. 2d Sess.

Amendment offered by Mr. [George H.] Christopher [of Missouri]: On page 190, line 24, strike out "$285,000,000" and insert "$400,000,000."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that this is language that is not authorized by law.

MR. CHRISTOPHER: Mr. Chairman, I am informed by rather reliable sources that the authorization is for a $500,000,000 program.

THE CHAIRMAN:[6] The Chair is prepared to rule. The Chair would invite attention to the fact that this is for the future. Unless there is some limitation of law to which the attention of the Chair has not been called, this amendment is in order.

The Chair overrules the point of order.

Parliamentarian's Note: The burden of proof should have been on the proponent of the amendment to show the total amount authorized or the absence of any limit.

School Lunch Program

§ 11.5 An appropriation to enable the Secretary of Agriculture to carry out the provisions of the National School Lunch Act of 1946 was authorized by law; charges that disbursement of funds did not follow requirements of that law did not detract from authorization.

On Apr. 1, 1947,[7] the Committee of the Whole was considering H.R. 2849, a deficiency appropriation bill. A point of order against the following amendment was overruled:

Amendment offered by Mr. [Clarence] Cannon [of Missouri]: On page 15, after line 21, insert the following:

"For an additional amount, fiscal year 1947, to enable the Secretary of Agriculture to carry out the provisions of the National School Lunch Act of 1946, $6,000,000."

MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[8] The gentleman will state the point of order.

MR. TABER: Mr. Chairman, I make a point of order against the amendment on the ground that it is not authorized by law.

The statute which purports to authorize it provides as follows:

> Such payments to any State in any fiscal year during the period 1947 to 1950, inclusive, shall be made upon condition that each dollar thereof will be matched during such year by $1 from sources within the State determined by the Secretary to have been expended in connection with the school-lunch program under this act. . . .
>
> For the purpose of determining whether the matching requirements of this section and section 10, respectively, have been met, the reasonable value of donated services, supplies, facilities, and equipment as certified, respectively, by the State edu-

6. Jere Cooper (Tenn.).

7. 93 CONG. REC. 2978, 80th Cong. 1st Sess.

8. George A. Dondero (Mich.).

cational agency and in case of schools receiving funds pursuant to section 10, by such schools.

The total appropriation distributed amounts to $72,975,000; the total [amount matched is] $11,470,000.

There has been complete failure of matching by local authorities within the provisions of the statute. Under the circumstances they have not complied with the law and there is no opportunity for a deficiency here. . . .

MR. CANNON: Mr. Chairman, as the amendment indicates, the appropriation proposed here is to enable the Secretary of Agriculture to carry out the provisions of the National School Lunch Act of 1946. The act speaks for itself. Under the law the question of matching is under the jurisdiction of the Secretary of Agriculture. It is not a matter to be determined by this body. That is a function specifically delegated by the act to the executive in charge of the program—the Secretary of Agriculture. There is no question about the amendment being in order. The sole proposition involved is to carry out the provisions of the act. I submit that the point of order is not well taken.

THE CHAIRMAN: The Chair is of the opinion that the amendment offered by the gentleman from Missouri is germane to the bill and the appropriation authorized by law; therefore overrules the point of order presented by the gentleman from New York [Mr. Taber].

Penalty Refunds

§ 11.6 A provision for the refund of certain penalties to the wheat producers from whom the penalties were collected was held unauthorized by law.

On Mar. 24, 1945,[9] the Committee of the Whole was considering H.R. 2689, an Agriculture Department appropriation. When an amendment was offered to a paragraph containing an appropriation for programs under the Agricultural Adjustment Act, proceedings ensued as indicated below:

Amendment offered by Mr. [William] Lemke [of North Dakota]: Page 49, line 2, after the words "as amended" and comma, insert "$16,000,000 to be made available and earmarked for the refund of the wheat-marketing-quota penalities to the producers, their heirs or assigns, from whom the penalties were collected."

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I make the same point of order against this amendment. The fact that it is offered in a different place in the bill makes no difference. It is legislation on an appropriation bill and is out of order.

MR. LEMKE: Mr. Chairman, on that I wish to be heard briefly.

THE CHAIRMAN:[10] The Chair will hear the gentleman.

MR. LEMKE: Mr. Chairman, I wish to state that this is a limitation on the $300,000,000 appropriated and earmarked for the purpose for which it should be used. In the second place,

9. 91 CONG. REC. 2713, 79th Cong. 1st Sess.

10. William M. Whittington (Miss.).

this tax was collected illegally and unconstitutionally from the producers of wheat, and the Department of Agriculture has that money. I feel that the farmers who paid it are entitled to have it returned.

THE CHAIRMAN: The Chair is ready to rule. . . . Under the authorization the $300,000,000 contained in the bill is for compliance with . . . the provisions of the Agricultural Adjustment Act, and under the terms of that act no provisions were made for the refunds embraced in the amendment. Therefore the Chair sustains the point of order.

Compilation of Consumer Statistics

§ 11.7 A section of an appropriation bill providing funds to collect, compile, and analyze data relating to consumer expenditures and savings, and to compile statistics collected by the Department of Agriculture, was conceded not to be authorized by law.

On Dec. 8, 1944,[11] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 5587), a point of order was raised against the following provision:

The Clerk read as follows:

Consumer expenditures and savings study: For all expenses of the Department of Labor necessary to collect, compile, and analyze statistics with respect to the consumer expenditures and savings in predominantly nonrural areas, to publish the results thereof, and to compile statistics collected by the Department of Agriculture in other areas, such expenses to include personal services in the District of Columbia and other items properly chargeable to the appropriations for the Department of Labor for contingent expenses, travel, and printing and binding, fiscal year 1945, $1,532,000, to remain available until June 30, 1946.

MR. H. CARL ANDERSEN [of Minnesota]: Mr. Chairman, I make the point of order against the paragraph beginning on line 8 and ending in line 18, page 31, on the ground that it is legislation on an appropriation bill, not authorized by law.

MR. [JOHN H.] KERR [of North Carolina]: Mr. Chairman, the point of order is conceded.

THE CHAIRMAN:[12] The Chair sustains the point of order.

Equipment Expenses, Soil Conservation Service

§ 11.8 A proviso in the agriculture appropriation bill making certain appropriations in the bill, allocated for work of the Soil Conservation Service, available in part for procurement of equipment for distribution to projects under the super-

11. 90 CONG. REC. 9073, 78th Cong. 2d Sess. See also 90 CONG. REC. 8940, 78th Cong. 2d Sess., Dec. 6, 1944.

12. Herbert C. Bonner (N.C.).

vision of such Service and for sale to other governmental activities, was held to be legislation and to be unauthorized by law.

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:

The Clerk read as follows:

SOIL CONSERVATION SERVICE

To carry out the provisions of an act entitled "An act to provide for the protection of land resources against soil erosion, and for other purposes." . . . *Provided further,* That during the fiscal year for which appropriations are herein made the appropriations for the work of the Soil Conservation Service shall be available for meeting the expenses of warehouse maintenance and the procurement, care, and handling of supplies, materials, and equipment stored therein for distribution to projects under the supervision of the Soil Conservation Service and for sale and distribution to other Government activities, the cost of such supplies and materials or the value of such equipment (including the cost of transportation and handling) to be reimbursed to appropriations current at the time additional supplies, materials, or equipment are procured from the appropriations chargeable with the cost or value of such supplies, materials, or equipment: *Provided further,* That reproductions of such aerial or other photographs, mosaics, and maps as shall be required in connection with the authorized work of the Soil Conservation Service may be furnished at the cost of reproduction to Federal, State, county, or municipal agencies requesting such reproductions, the money received from such sales to be deposited in the Treasury to the credit of this appropriation, as follows:

MR. [CLIFFORD R.] HOPE [of Kansas]: Mr. Chairman, I make the point of order against the language in the paragraph beginning "*Provided further,*" line 12, page 71, and continuing to the end of the paragraph, on the ground that the same is legislation on an appropriation bill, and not authorized by law. . . .

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, the language referred to is unquestionably out of order and for that reason the point of order undoubtedly will lie, and be sustained. We desire to offer an amendment which will include language that is not out of order to replace the language stricken out by the point of order.

THE CHAIRMAN:[14] The gentleman from Kansas makes the point of order that the language indicated by him beginning on page 71, line 12, and concluding with the words "as follows", page 72, line 8, is legislation. The Chair sustains the point of order.

Research on Use of Potatoes

§ 11.9 An appropriation to permit the Department of Agriculture to investigate and develop methods for the manufacture and utilization of

13. 89 CONG. REC. 3580, 78th Cong. 1st Sess.

14. William M. Whittington (Miss.).

starches from cull potatoes and surplus crops was conceded to be unauthorized and was ruled out.

On Feb. 1, 1940,[15] the Committee of the Whole was considering H.R. 8202, an Agriculture Department appropriation. At one point the Clerk read as follows, and an amendment was offered as indicated below:

> Total, salaries and expenses, Bureau of Agriculture Chemistry and Engineering, $868,775, of which amount not to exceed $457,602 may be expended for personal services in the District of Columbia, and not to exceed $3,725 shall be available for the purchase of motor-propelled and horse-drawn passenger-carrying vehicles necessary in the conduct of field work outside the District of Columbia.
>
> MR. [JOHN G.] ALEXANDER [of Minnesota]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> > Amendment offered by Mr. Alexander: On page 50, line 1, after "Columbia", insert "of which amount not less than $25,000 nor more than $50,000 shall be used for the investigation and development of methods for the manufacturing and utilization of starches from cull potatoes and surplus crops."
>
> MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, the amendment is, of course, subject to a point of order. . . .
>
> THE CHAIRMAN:[16] The gentleman from Missouri makes a point of order against the amendment offered by the gentleman from Minnesota, the amendment providing for the investigation and development of methods for the manufacture and utilization of starches. Unless the gentleman from Minnesota can present some authority in law for the appropriation, which has not been called to the attention of the Chair, the Chair is prepared to rule. Does the gentleman from Minnesota desire to be heard on the point of order?
>
> MR. ALEXANDER: I will concede the point of order, Mr. Chairman.
>
> THE CHAIRMAN: The point of order is sustained.

Authorization in Organic Law

§ 11.10 An appropriation for collecting and disseminating information and data with respect to potato production was held authorized by the organic act creating the Department of Agriculture which provided for acquisition and diffusion of information on agriculture.

On Jan. 23, 1936,[17] the Committee of the Whole was considering H.R. 10464, a supplemental appropriation bill. The following proceedings took place:

> MR. [LINDSAY C.] WARREN [of North Carolina]: Mr. Chairman, I offer an amendment, which I send to the desk.

15. 86 CONG. REC. 947, 948, 76th Cong. 3d Sess.

16. William P. Cole, Jr. (Md.).

17. 80 CONG. REC. 964, 965, 74th Cong. 2d Sess.

The Clerk read as follows:

Amendment offered by Mr. Warren: On page 16, after line 5, insert as a new paragraph the following:

"For the purpose of collecting and disseminating useful information and data with respect to potato production and marketing within the United States to be available to the Secretary of Agriculture, the sum of $1,000,000 for the fiscal year 1936: *Provided*, That no part of such fund will be used for the enforcement of the Potato Act of 1935."

MR. [CLAUDE A.] FULLER [of Arkansas]: Mr. Chairman, I desire to make a point of order on the amendment just offered by the gentleman from North Carolina.

THE CHAIRMAN:[18] The gentleman will state it.

MR. FULLER: The amendment just offered is not germane. The bill under consideration is an appropriation bill which appropriates money to carry out legislation that has already been enacted and which is now in force and effect. This is a distinct effort toward new legislation. It calls for an investigation, based upon no law that is now in existence and is not part and parcel of an appropriation bill. Therefore, the amendment offered by the gentleman from North Carolina is not germane to this bill. . . .

THE CHAIRMAN: The Chair is prepared to rule unless the gentleman from Virginia desires to be heard.

MR. [CLIFTON A.] WOODRUM [of Virginia]: No; Mr. Chairman.

THE CHAIRMAN: The amendment offered by the gentleman from North Carolina [Mr. Warren] is to that part of the bill making appropriations for the Department of Agriculture. This would necessarily relate to the organic law creating the Department of Agriculture. The Chair has examined, in the brief time permitted him, the law establishing the Department of Agriculture. The organic act creating the Department may be found in title V, section 511, United States Code, and contains this provision.

Establishing of departments. There shall be at the seat of Government a Department of Agriculture, the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of that word—

And so forth.

It occurs to the Chair that the specific language contained in the organic act creating the Department of Agriculture would clearly authorize an appropriation for the purpose sought to be accomplished by the amendment here offered. The pending bill is an appropriation bill, and the part of the bill now under consideration relates to appropriations for the Department of Agriculture. The Chair therefore feels that the amendment is germane and that the appropriation is authorized by existing law. The Chair overrules the point of order.

Organic Act as Authority for Research and Demonstration Projects

§ 11.11 Appropriations for agricultural engineering research, and demonstration and application of methods

18. Jere Cooper (Tenn.).

for prevention and control of dust explosions and fires during the harvesting and storing of agricultural products were held to be authorized by the organic act creating the Department of Agriculture.

On Feb. 1, 1940,[19] the Committee of the Whole was considering H.R. 8202, an Agriculture Department appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> Agricultural engineering investigations: For investigations, experiments, and demonstrations involving the application of engineering principles to agriculture for the investigation, development, experimental demonstration, for investigating and reporting upon the different kinds of farm power and appliances; upon farm domestic water supply and sewage disposal, upon the design and construction of farm buildings and their appurtenances and of buildings for processing and storing farm products; upon farm power and mechanical farm equipment and rural electrification; upon the engineering problems relating to the processing, transportation, and storage of perishable and other agricultural products; and upon the engineering problems involved in adapting physical characteristics of farm land to the use of modern farm machinery; for investigations of cotton ginning under the act approved April 19, 1930 (7 U.S.C., 424, 425); for giving expert advice and assistance in agricultural and chemical engineering; for collating, reporting, and illustrating the results of investigations and preparing, publishing and distributing bulletins, plans, and reports, $294,469.

MR. [ALFRED L.] BULWINKLE [of North Carolina]: Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

> Amendment offered by Mr. Bulwinkle: On page 48, after line 22, after the word "demonstration", in line 21, insert "and application of methods for the prevention and control of dust explosions and fires during the harvesting, handling, milling, processing, fumigating, and storing of agricultural products, and of other dust explosions and resulting fires not otherwise provided for, including fires in grain mills and elevators, cotton gins, cotton-oil mills, and other structures; the heating, charring, and ignition of agricultural products; fires on farms and in rural communities and other explosions and fires in connection with farm and agricultural operations."

On page 49, line 13, strike out "294,469" and insert $324,469."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it is not authorized by law. . . .

THE CHAIRMAN:[20] The Chair is prepared to rule. . . .

The gentleman from North Carolina offers an amendment which has been read, and against this amendment the gentleman from New York [Mr. Taber] makes the point of order that it is not authorized by law. Title V of the or-

19. 86 CONG. REC. 935, 76th Cong. 3d Sess.

20. William P. Cole, Jr. (Md.).

ganic law establishes the Department of Agriculture, and in section 511 is found this language:

> There shall be at the seat of Government a Department of Agriculture the general design and purpose of which shall be to acquire and diffuse among the people of the United States useful information on subjects connected with agriculture.

Without further reading of the organic law to which the Chair has referred, the Chair is of opinion that the amendment is clearly within the scope of the law.

The point of order is overruled.

Dutch Elm Disease

§ 11.12 An appropriation for control of Dutch elm disease and bestowing certain new discretionary authority on the Secretary of Agriculture to require matching state or local funds was conceded not to be authorized by law and was ruled out on a point of order.

On Mar. 25, 1939,[1] the Committee of the Whole was considering H.R. 5269, an Agriculture Department appropriation. At one point, a point of order was raised against a paragraph in the bill and proceedings ensued as indicated below:

> Dutch elm disease eradication: For determining and applying methods of eradication, control, and prevention of spread of the disease of elm trees known as "Dutch elm disease," $100,000: Provided, That, in the discretion of the Secretary of Agriculture, no expenditures from this appropriation shall be made for these purposes until a sum or sums at least equal to such expenditures shall have been appropriated, subscribed, or contributed by State, county, or local authorities, or by individuals, or organizations concerned: *Provided further*, That no part of this appropriation shall be used to pay the cost or value of trees or other property injured or destroyed.

MR. [MALCOM C.] TARVER [of Georgia]: Mr. Chairman, a point of order.

THE CHAIRMAN:[2] The gentleman will state it.

MR. TARVER: Mr. Chairman, I make a point of order as to the language on pages 56 and 57 of the bill relating to the appropriation for Dutch elm disease eradication on the ground it is not authorized by existing legislation. . . .

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

MR. [CLARENCE] CANNON [of Missouri]: I concede the point of order, Mr. Chairman.

THE CHAIRMAN: The point of order is sustained.

Moth Control

§ 11.13 An appropriation for gypsy and brown-tail moth control was ruled out as not authorized by law.

1. 84 CONG. REC. 3292, 3293, 76th Cong. 1st Sess.

2. Wright Patman (Tex.).

On Mar. 25, 1939,[3] the Committee of the Whole was considering H.R. 5269, an Agriculture Department appropriation. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> Gypsy and brown-tail moth control: For control and prevention of spread of the gypsy and brown-tail moths, $250,000.
>
> MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[4] The gentleman will state it.
>
> MR. TARVER: Mr. Chairman, I make a point of order against lines 5, 6, and 7, on page 56, having to do with gypsy and brown-tail moth control on the ground that there is no legislation authorizing this appropriation. . . .
>
> THE CHAIRMAN: Does the gentleman from Missouri [Mr. Cannon] desire to be heard on the point of order?
>
> MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I concede the point of order.
>
> THE CHAIRMAN: The point of order is sustained.

Purchase of Vehicles

§ 11.14 Language limiting the amount of an appropriation in an Agriculture Department appropriation bill which could be used for necessary vehicles was held authorized by law.

On Apr. 19, 1938,[5] the Committee of the Whole was considering H.R. 10238, a Department of Agriculture appropriation bill. During consideration of the bill, a point of order against the following language was overruled:

> For carrying out the provisions of the act entitled "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes". . .$63,000,000, to be immediately available and to remain available until expended . . . *Provided further,* That not to exceed $45,000 of the funds provided for carrying out the provisions of the Federal Highway Act of November 9, 1921 (23 U.S.C. 21, 23), shall be available for the purchase of motor-propelled passenger-carrying vehicles necessary for carrying out the provisions of said act . . . at a cost . . . not to exceed $1,200. . . .
>
> Mr. [WILBURN] CARTWRIGHT [of Oklahoma]: Mr. Chairman, I make a point of order against the language beginning on line 23, page 70, starting with the words "*Provided further*", and ending on line 7, page 71, with the sign and figures "$1,200", that it is not authorized by law. . . .
>
> THE CHAIRMAN:[6] The Chair is ready to rule.
>
> Since last Thursday, when the Chair passed upon a somewhat similar proposition, an opportunity has been afforded to look more fully into the precedents governing such cases. The

3. 84 CONG. REC. 3292, 76th Cong. 1st Sess.
4. Wright Patman (Tex.).
5. 83 CONG. REC. !5541–43, 75TH CONG. 3D SESS.
6. William L. Nelson (Mo.).

Chair has examined the precedents which may be found in Cannon's Precedents, volume 7, sections 1127, 1193, 1197, 1235, and 1245. The Chair finds that those decisions uniformly hold that an appropriation for the hire or purchase of automobiles is in order on a general appropriation bill. In this connection the Chair desires to call attention to the fact that on February 8, 1929, a point of order was raised against the provision in the naval appropriation bill appropriating money for the hire of automobiles. In overruling the point of order the Chairman, Mr. Luce, of Massachusetts, stated:

> The Chair is of opinion that by an attempt to put into the law minute provision for all possible manner of expenditure the size of the statute books would be largely increased, and that by reason of the impossibility of foresight in matter of detail more harm than good would result. It has been the uniform ruling of preceding Chairmen, so far as the Chair can ascertain, that these minor and incidental objects of expenditures are natural to the conduct of the business establishment concerned.

The Chair also desires to call attention to the fact that on April 23, 1937, Mr. Taber, of New York, made a point of order against an identical provision in the agriculture appropriation bill authorizing the expenditure of not to exceed $45,000 for the purchase of automobiles by the Bureau of Public Roads and contended that there was no authorization of law for the purchase of automobiles by that Bureau.

Mr. Cannon of Missouri and Mr. Umstead argued that the provision was purely a limitation on an appropriation and that, without it, the Bureau would have authority to spend the entire appropriation for automobiles if they so desired.

The Chairman, Mr. Hancock of North Carolina, in overruling the point of order stated:

> The Chair overrules the point of order on the ground that the proviso constitutes a limitation, without which the Secretary could spend any amount within the total of the appropriation for this purpose.

The Chair, in view of the precedents just cited, thinks that the proviso to which the point of order has been directed is in order and overrules the point of order made by the gentleman from Oklahoma.

Shelter-belt Trees to Prevent Erosion

§ 11.15 An appropriation "for completing shelter-belt investigation and for the free distribution of shelter-belt trees to farmers" was held to be authorized by law.

On Feb. 26, 1936,[7] The Committee of the Whole was considering H.R. 11418, an Agriculture Department appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> Forest influences: For investigations at forest experiment stations and elsewhere for determining the possibility of increasing the absorption of rainfall

7. 80 CONG. REC. 2895, 2896, 74th Cong. 2d Sess.

by the soil, and for devising means to be employed in the preservation of soil, the prevention or control of destructive erosion, and the conservation of rainfall on forest or range lands, $99,152. . . .

MR. [PHIL] FERGUSON [of Oklahoma]: Mr. Chairman, I offer an amendment. . . .

The Clerk read as follows:

> Amendment by Mr. Ferguson: Page 48, line 3, after "$99,15", strike out the period, insert a comma, and add the following: "and in addition thereto, $180,000 for completing shelter-belt investigation and for the free distribution of shelter-belt trees to farmers."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it is legislation calling for an appropriation not authorized by law. There is no authority in anything I have ever seen to provide for free distribution of trees or for a shelter belt. . . .

THE CHAIRMAN:[8] The Chair is ready to rule.

The Congress in the last session passed an act—Public, No. 46—to provide for the protection of land resources against soil erosion, and for other purposes. This act provides that—

> It is hereby recognized that the wastage of soil and moisture resources on farm, grazing, and forest lands of the Nation, resulting from soil erosion, is a menace to the national welfare and that it is hereby declared to be the policy of Congress to provide permanently for the control and prevention of soil erosion and thereby to preserve natural resources, control floods, prevent impairment of reservoirs, and maintain the navigability of rivers and harbors, protect public health, public lands, and relieve unemployment, and the Secretary of Agriculture, from now on, shall coordinate and direct all activities with relation to soil erosion, and in order to effectuate this policy is hereby authorized, from time to time—
>
> (1) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive measures needed, to publish the results of any such surveys, investigations, or research, to disseminate information concerning such methods, and to conduct demonstrational projects in areas subject to erosion by wind or water.
>
> (2) To carry out preventive measures, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, and changes in use of lands. . . .

The Chair is of the opinion that this proposed appropriation is authorized by the provision of law just quoted, and, therefore, overrules the point of order.

Weather Bureau Buildings; Equipment and Repair

§ 11.16 An appropriation for the purchase and installation of instruments, and the construction or repair of buildings of the Weather Bureau was held to be authorized by law.

On Feb. 26, 1936,[9] The Committee of the Whole was consid-

8. Sam D. McReynolds (Tenn.).

9. 80 CONG. REC. 2884, 2885, 74th Cong. 2d Sess.

ering H.R. 11418, an Agriculture Department appropriation bill. The Clerk read as follows:

> General weather service and research: For necessary expenses incident to collecting and disseminating meteorological, climatological, and marine information, and for investigations in meteorology, climatology, seismology, evaporation, and aerology in the District of Columbia and elsewhere . . . $2,228,655. . . .
>
> MR. [J. MARK] WILCOX [of Florida]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> > Amendment offered by Mr. Wilcox: Page 21, between lines 20 and 21, add a new paragraph to read as follows:
> >
> > "In addition to all other sums herein appropriated for that purpose, there is hereby appropriated the sum of $25,000 for the purchase and installation of instruments, the construction, extension, and repair of buildings, and payment of wages, salaries, and other expenses incident to the accumulation of information and the issuance of warnings concerning storms and hurricanes originating in the South Atlantic and Caribbean areas.". . .
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I reserve a point of order against the amendment, that it is legislation on an appropriation bill and not authorized by law. . . .
>
> THE CHAIRMAN:[10] The Chair is ready to rule. The statute (U.S.C., title 15, sec. 313) provides, among other things, the following:
>
> > The Chief of the Weather Bureau, under the direction of the Secretary of Agriculture, shall have charge of the forecasting of the weather . . . the distribution of meteorological information in the interest of agriculture and commerce, the taking of such meteorological observations as may be necessary to establish and record the climatic condition of the United States or as are essential to the proper execution of the foregoing duties . . . and for such purposes to . . . establish meteorological offices and stations.
>
> The Chair is of opinion that the amendment does not constitute legislation on an appropriation bill but is an appropriation authorized by the provisions of the statute the Chair has quoted.
>
> The point of order is overruled.

§ 12. Commerce

Census Bureau Data

§ 12.1 The law authorizing the Director of the Bureau of the Census to compile and publish a census of manufacturers, mineral industries, and other businesses was held sufficiently broad to authorize an appropriation for publishing monthly reports on coffee stocks on hand in the United States.

On May 24, 1955,[11] the Committee of the Whole was considering H.R. 6367, a Department of

10. Sam D. McReynolds (Tenn.).

11. 101 Cong. Rec. 6912–14, 84th Cong. 1st Sess.

Commerce and related agencies appropriation bill. The following proceedings took place:

MRS. [LEONOR KRETZER] SULLIVAN [of Missouri]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mrs. Sullivan: On page 2, line 12, strike out "$6,200,000" and insert in lieu thereof the following: "$6,225,000, of which $25,000 shall be for the purpose of gathering and publishing monthly reports of coffee stocks on hand in the United States."

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I make a point of order against the amendment that it places additional responsibilities upon the Secretary to publish monthly reports. I find no basic legislation which would authorize this sort of a survey to be made.

THE CHAIRMAN:[12] Does the gentlewoman from Missouri care to be heard on the point of order?

MRS. SULLIVAN: Yes, Mr. Chairman.

Under Public Law 671 of the 80th Congress, it has been authorized that these reports and statistics be made. I had a letter from the Department of Commerce, Bureau of the Census, stating that they are authorized to make this study, but they do not have sufficient funds. I looked this matter up last year when the same thing was before the House.

MR. BOW: Mr. Chairman, I will reserve the point of order. . .

MRS. SULLIVAN: Mr. Chairman, my amendment is intended to close a serious gap in our statistical information involving America's biggest import item—coffee. Everyone knows how we were victimized from late 1953 to mid-1954 and thereafter by a fake shortage of coffee. Hoarding and speculation ran rampant, and the consumer was held up and robbed. Hundreds of millions of dollars were taken out of the pockets of American consumers in tribute to a shortage which never existed. . . . Also in this connection I wish to include as part of my remarks a letter [sent to Mrs. Sullivan by the Director of the Bureau of the Census]:

> Dear Mrs. Sullivan: This is in reply to your letter concerning the Census Bureau and coffee statistics dictated over the phone to my secretary today.
>
> You ask what the Census Bureau can or will do in regard to collecting statistics on coffee supplies in the United States. The answer in general is that the Census Bureau has the legal authority but lacks the appropriation to conduct a monthly survey on coffee stocks in the hands of importers and roasters. Under the law if the data are gathered more often than once a year the filing of a return is wholly voluntary.
>
> The cost of compiling a monthly report on coffee stocks in the hands of importers and roasters would be approximately $25,000 to $30,000 per annum. The exact figure would depend largely on the amount of effort which would have to be expended in obtaining returns and in keeping the mailing list up-to-date. Incidentally, a quarterly survey would cost approximately $10,000 per annum.
>
> The only appropriation made to the Census Bureau which could be legally employed to finance a coffee survey would be the item "salaries and expenses." There is currently no provision in this item for a coffee survey. . . .

12. Brooks Hays (Ark.).

The Bureau will be glad to consider conducting a quarterly coffee stock reporting program in the coming fiscal year provided there is general concurrence amongst the interested agencies of the Government that this is a desirable project in relation to other projects as yet unfinanced, and as indicated above, provided that the continued cooperation of holders of the coffee stocks can be obtained. . . .

THE CHAIRMAN: The gentleman from Ohio makes a point of order against the amendment offered by the gentlewoman from Missouri on the ground that it is legislation on an appropriation bill and not authorized.

The gentlewoman from Missouri supports her contention by citing Public Law 671 of the 80th Congress. The Chair has had opportunity to refer to this public law. It states that the Director of the Bureau of the Census is authorized to "compile and publish censuses of manufacturers, mineral industries, and other businesses." The Chair is of opinion that the language of this section is sufficiently broad to cover the proposed amendment, and that the amendment offered by the gentlewoman from Missouri is in order.

The point of order is overruled.

Sample Surveys of Labor Force

§ 12.2 Sample surveys by the Census Bureau to estimate the size and characteristics of the nation's labor force and population were conceded to be unauthorized by law, and a point of order against language providing therefore was upheld.

On Mar. 16, 1945,[13] 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. . . .)

MR. [ROBERT F.] JONES [of Ohio]: Mr. Chairman, I make the point of order against the language on page 56, beginning with the words "and for" in line 12, continuing through lines 13, 14, and 15, and so much of line 16 up to and including the word "Government" on the ground that it is legislation on an appropriation bill. There is no authority in law for it.

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

THE CHAIRMAN:[14] The point of order is sustained.

Investigations by Tariff Commission

§ 12.3 The proponent of an amendment to provide funds

13. 91 CONG. REC. 2368, 79th Cong. 1st Sess.

14. Wilbur D. Mills (Ark.).

for the Commission on Tariffs to make investigations abroad "to determine the wage levels, cost of production and working conditions on articles imported to assist the committee in processing claims for injury by domestic producers," having the burden of showing authority for the appropriation, could cite no authorization therefor, and the amendment was held not to be in order. At a later time, the proponent cited the proper authorization and the amendment was considered by unanimous consent.

On May 7, 1957,[15] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7221), a point of order was raised against the following amendment:

MR. [CLEVELAND M.] BAILEY [of West Virginia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Bailey: Page 4, line 5, strike out "$25,000" and insert "$50,000. Of this amount the sum of $25,000 is to be used to make necessary investigations abroad to determine the wage levels, costs of production and working conditions on articles imported from abroad to assist the Commission in processing claims for injury by domestic producers under section 7 of the Reciprocal Trade Agreements Act.". . .

MR. [PRINCE H.] PRESTON [Jr., of Georgia]: Mr. Chairman, I make a point of order against the amendment on the ground that there is no authority for the Tariff Commission to make an investigation abroad into the working conditions under which foreign commodities are produced.

THE CHAIRMAN:[16] will the gentleman from West Virginia cite to the Chair the authority for the Commission to make an investigation?

MR. BAILEY: Mr. Chairman, the original item of $25,000 in the proposal before us now covers not only the payment of salaries but covers the payment of expenses, and I say this would be an expense on the Tariff Commission and, therefore, it is germane to the statement in the appropriations.

THE CHAIRMAN: The Chair was inquiring as to the authority of the Commission to make the investigation that the amendment contemplates.

MR. BAILEY: They have the authority to make investigations. They have no money to make it. I was trying to give them some money.

THE CHAIRMAN: Do they have authority to make investigations abroad?

MR. BAILEY: Well, why not?

THE CHAIRMAN: The Chair is asking the question of the gentleman.

MR. BAILEY: I could not advise the Chairman to that effect. But, I do not see why they should be limited to this country because apparently nobody else is. If somebody wants some information, they go abroad and get it. I

15. 103 CONG. REC. 6430, 6431, 6446, 85th Cong. 1st Sess.

16. Frank N. Ikard (Tex.).

think the Tariff Commission should be afforded the same opportunity. Members of the Congress, if you want to sit idly by and see the major part of your small American industry, which is the backbone of our country, driven out of business, you just ignore a proposition like this.

THE CHAIRMAN: In view of the fact that there is no authority cited for the Commission to make the investigations contemplated in the amendment, the Chair sustains the point of order.

Parliamentarian's Note: After the reading of the bill for amendment, but prior to the rising of the Committee of the Whole, the proponent of the amendment found authority in law for the proposed investigations and, by unanimous consent, the amendment was reoffered and considered. Mr. Bailey stated:

Mr. Chairman, I think I owe it to my colleagues in the House to make clear to them that the Tariff Commission does have authority to make investigations abroad and I shall take a part of the time allotted to me in support of this amendment to read section 704 of the basic Tariff Act of 1916. It reads as follows:

That the commission shall have power to investigate the tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production.

So it is clearly evident that the Tariff Commission does have authority to make these investigations abroad.

Scientific and Technological Aid for Business

§ 12.4 Language in a Departments of State, Justice, Commerce, and the Judiciary appropriation bill providing appropriations "for necessary expenses in the performance of activities and services relating to technological development as an aid to business in the development of foreign and domestic commerce" was conceded to be unauthorized by law.

On May 14, 1947,[17] the Committee of the Whole was considering H.R. 3311. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Technical and scientific services: For necessary expenses in the performance of activities and services relating to technological development as an aid to business in the development of foreign and domestic commerce, including all the objects for which the appropriation "Salaries and expenses, office of the Secretary," is available (not to exceed

17. 93 CONG. REC. 5303, 80th Cong. 1st Sess.

$25,000), for services as authorized by section 15 of the act of August 2, 1946 (Public Law 600), and not to exceed $60,000 for printing and binding, $1,700,000, of which not to exceed $500,000 may be transferred to the National Bureau of Standards for testing and other scientific studies.

MR. [LESLIE C.] ARENDS [of Illinois]: Mr. Chairman, a point of order. I make a point of order against the language on lines 3 to 14, inclusive, on page 42 that it is legislation on an appropriation bill and not authorized by law.

MR. [KARL] STEFAN [of Nebraska]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN:[18] The point of order is conceded, and the Chair sustains the point of order.

Officials' Expenses

§ 12.5 Language in an appropriation bill providing for maintenance and operation of air navigation facilities, appropriating "not to exceed 3 cents per mile for travel in privately owned automobiles within the limits of their official posts of duty, of employees engaged in the maintenance and operation of remotely controlled air-navigation facilities," was ruled out as unauthorized when the manager of the bill conceded the point of order.

On Mar. 16, 1945,[19] 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:

> Maintenance and operation of air-navigation facilities: For necessary expenses of operation and maintenance of air-navigation facilities and air-traffic control, including personal services in the District of Columbia and elsewhere; purchase (not to exceed 15), hire, maintenance, repair, and operation of passenger-carrying automobiles; and not to exceed 3 cents per mile for travel, in privately owned automobiles within the limits of their official posts of duty, of employees engaged in the maintenance and operation of remotely controlled air-navigation facilities; $24,000,000. . . .

MR. [EDWARD H.] REES [of Kansas]: Mr. Chairman, I make the point of order against the language beginning with the words "and not", appearing on page 58, line 25, down to and including the word "facilities" on page 59, line 4, on the ground that it is legislation on an appropriation bill.

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

THE CHAIRMAN:[20] the Chair sustains the point of order.

Earmarking for "Attendance at Meetings"

§ 12.6 An appropriation, for the office of the Secretary of

18. Carl T. Curtis (Nebr.).

19. 91 CONG. REC. 2371, 79th Cong. 1st Sess.

20. Wilbur D. Mills (Ark.).

Commerce, for expenses of attendance at meetings of organizations concerned with the work of the office of the Secretary is authorized by law.

On Mar. 16, 1945,[1] the Committee of the Whole was considering H.R. 2603, an appropriation bill for the Federal Loan Agency and the Departments of State, Justice, Commerce, and the Judiciary. The following proceedings took place:

> Salaries and expenses: For all necessary expenses of the office of the Secretary of Commerce (hereafter in this title referred to as the Secretary) including personal services in the District of Columbia . . . not exceeding $2,000 for expenses of attendance at meetings of organizations concerned with the work of the office of the Secretary; $570,000. . . .
>
> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, that is covered by title V, section 83. . . .
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, section 83 of title V is a restriction upon the use of funds carried in an appropriation bill. It is not in any sense an authority to the Appropriations Committee to make any appropriation. It simply says that none of the funds that are appropriated for any purpose shall be used for attendance at meetings unless there is specific appropriation for that purpose. It in no way and in no manner attempts or does authorize any appropriation to be made for the purpose of attendance at meetings. . . .
>
> THE CHAIRMAN:[2] the Chair is ready to rule.
>
> It is the opinion of the Chair that the language referred to by the gentleman from New York, which the Chair desires to read for the information of the committee, permits the appropriation contained in the language objected to by the gentleman from Pennsylvania.
>
> The Chair will read the language:
>
> > No money appropriated by any act shall be expended for membership fees or dues of any officer or employee of the United States or of the District of Columbia in any society or association or for expenses of attendance by any person at any meeting or convention of members of any society or association unless such fees or expenses are authorized to be paid by specific appropriation for such purposes or are provided for in express terms in some general appropriation.
>
> The Chair will rule, unless the gentleman from New York desires to be heard further.
>
> MR. TABER: Mr. Chairman, I would like to say that the language the Chair has read is prohibitive language, designed to prevent the use of general funds for the purpose of attendance at meetings.
>
> It does not in any way authorize appropriations to be made, and they can only be made as the result of language which is specific for that purpose. It seems to me, Mr. Chairman, that language does not in any way authorize anything to be done.

1. 91 CONG. REC. 2367, 2368, 79th Cong. 1st Sess.

2. Wilbur D. Mills (Ark.).

THE CHAIRMAN: The Chair must hold, however, that the language referred to in the latter part of the sentence clearly permits the Committee on Appropriations to specifically, in express language, appropriate for attendance at meetings of organizations as carried in the bill on page 54, lines 19, 20, and 21, and therefore overrules the point of order made by the gentleman from New York.

Civilian Conservation Corps; Liquidation Expenses of

§ 12.7 The House having refused to appropriate funds for the continuance of the Civilian Conservation Corps, an amendment making an appropriation for the liquidation of the Civilian Conservation Corps was held authorized.

On June 5, 1942,[3] the Committee of the Whole was considering H.R. 7181, a Labor Department and federal security appropriation. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Malcolm C.] Tarver [of Georgia]: On page 18, line 1, after the title "Civilian Conservation Corps", insert "For all necessary expenses to provide for the liquidation of the Civilian Conservation Corps as authorized under the provisions of the act of June 28, 1937, as amended (16 U.S.C. ch. 3A), including personal service in the District of Columbia and elsewhere; the conservation and disposition of all of the property of whatever type in use by said Civilian Conservation Corps, including camp buildings, accessories, equipment, and machinery of all types, and for such travel and other necessary expenses as may be incurred in connection with the conservation and liquidation of said Civilian Conservation Corps, $500,000."

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

THE CHAIRMAN:[4] the gentleman will state it.

MR. CASE of South Dakota: Mr. Chairman, I make the point of order that there is no authority in law for the liquidation of the Civilian Conservation Corps.

THE CHAIRMAN: The Chair overrules the point of order.

Authorization Not Yet Signed into Law

§ 12.8 Funds in a general appropriation bill for expenses of the National Fire Prevention and Control Administration were conceded to be unauthorized by law for fiscal 1979 and were ruled out in violation of Rule XXI clause 2.

On June 14, 1978,[5] during consideration in the Committee of the

3. 88 CONG. REC. 4940, 77th Cong. 2d Sess.

4. Howard W. Smith (Va.).

5. 124 CONG. REC. 17626, 95th Cong. 2d Sess.

Whole of the Departments of State, Justice, Commerce, and the Judiciary appropriation bill (H.R. 12934), a point of order was raised and sustained against the following provision:

The Clerk read as follows:

NATIONAL FIRE PREVENTION AND CONTROL ADMINISTRATION

OPERATIONS, RESEARCH, AND ADMINISTRATIONS

For expenses necessary to carry out the provisions of the Federal Fire Prevention and Control Act of 1974, as amended, $15,660,000, to remain available until expended.

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Chairman, on the basis of clause 2, rule XXI, I make the point of order that this is an unauthorized appropriation, and has not been authorized by law.

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

MR. [JOHN M.] SLACK: Mr. Chairman, I concede the point of order.

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

The paragraph is stricken from the bill.

Parliamentarian's Note: At the time this appropriation bill was considered, both Houses had passed the annual authorization bill for fiscal 1979 but it was not signed into law until Oct. 5, 1978 (Public Law No. 95–422).

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

§ 12.9 Funds for necessary expenses of the National Bureau of Standards (including amounts for the standard reference data program) in a general appropriation bill were conceded to be unauthorized by law for fiscal 1979 and were ruled out in violation of Rule XXI clause 2.

On June 14, 1978,[7] during consideration in the Committee of the Whole of the Departments of State, Justice, Commerce, and the Judiciary appropriation bill (H.R. 12934), a point of order was sustained against the following provision:

The Clerk read as follows:

SCIENCE AND TECHNICAL RESEARCH

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For necessary expenses of the National Bureau of Standards including the acquisition of buildings, grounds, and other facilities; and the National Technical Information Service; $82,780,000, to remain available until expended, of which not to exceed $3,300,000 may be transferred to the "Working Capital Fund", National Bureau of Standards, for additional capital.

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Chairman, on the basis of clause 2, rule XXI, I make a point of order that this is an unauthorized ap-

7. 124 CONG. REC. 17626, 95th Cong. 2d Sess.

propriation and has not been authorized by law.

THE CHAIRMAN:[8] Does the gentleman from West Virginia care to be heard on the point of order?

MR. [JOHN M.] SLACK [of West Virginia]: Mr. Chairman, I concede the point of order.

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

Parliamentarian's Note: At the time this appropriation bill was considered in the House, both Houses had passed a three-year authorization bill for the standard reference data program in the Bureau of Standards, but it was not signed into law until July 21, 1978 (Public Law No. 95–322).

§ 12.10 Pursuant to law (15 USC § 57c) for fiscal years ending after 1977, there may be appropriated to carry out the functions of the Federal Trade Commission only such sums as the Congress may thereafter authorize by law (thus requiring specific subsequently enacted authorizations for the operations of the Commission and not permitting appropriations under Rule XXI clause 2 to be authorized by the "organic statute" creating the Commission); appropriations for the functions of the Federal Trade Commission for fiscal 1979 were conceded not to be authorized by law and were ruled out in violation of Rule XXI clause 2.

On June 14, 1978,[9] during consideration in the Committee of the Whole of H.R. 12934 (Departments of State, Justice, Commerce, and the Judiciary appropriation for fiscal 1979), a point of order was sustained against the following provision in the bill:

The Clerk read as follows:

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and not to exceed $1,500 for official reception and representation expenses; $63,600,000. . . .

MR. [ELLIOTT] LEVITAS [of Georgia]: Mr. Chairman, I make a point of order against page 42, lines 1 through 20, based on rule XXI, clause 2, of the rules of the House. Mr. Chairman, there is currently no authorization for the Federal Trade Commission, and as such the language in this bill providing for the Federal Trade Commission is not in order.

MR. [JOHN M.] SLACK [of West Virginia]: I concede the point of order, Mr. Chairman.

THE CHAIRMAN:[10] The point of order is conceded, sustained, and the paragraph is stricken.

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

9. 124 CONG. REC. 17629, 17630, 95th Cong. 2d Sess.

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

§ 12.11 Pursuant to law (19 USC § 1330(e)), appropriations for the International Trade Commission must be specifically authorized by laws enacted after 1975; funds in a general appropriation bill for the International Trade Commission were conceded to be unauthorized by law for fiscal 1979 and were ruled out in violation of Rule XXI clause 2.

On June 14, 1978,[11] during consideration of H.R. 12934 (Departments of State, Justice, Commerce, and the Judiciary appropriation for fiscal 1979), a point of order was sustained against the following provision:

> For necessary expenses of the International Trade Commission, including hire of passenger motor vehicles and services as authorized by 5 U.S.C. 3109, $12,800,000.
>
> MR. [JOHN H.] ROUSSELOT [of California]: Mr. Chairman, on the basis of rule XXI, clause 2, I make a point of order that this is an unauthorized appropriation and has not been authorized by law.
>
> MR. [JOHN M.] SLACK [of West Virginia]: Mr. Chairman, I concede the point of order.
>
> THE CHAIRMAN:[12] The point of order is conceded, sustained, and the paragraph is stricken.

11. 124 CONG. REC. 17630, 95th Cong. 2d Sess.

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

§ 13. Defense and Veterans

Veterans' Administration

§ 13.1 Language in a general appropriation bill including funds for Veterans' Administration operating expenses, providing expenses for the issuance of memorial certificates to families of deceased veterans, was conceded to be unauthorized by law.

On May 11, 1965,[13] during consideration in the Committee of the Whole of the independent offices appropriations bill (H.R. 7997), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> VETERANS ADMINISTRATION
>
> *General operating expenses*
>
> For necessary operating expenses of the Veterans Administration, not otherwise provided for, including expenses incidental to securing employment for [and recognition of war veterans;] uniforms or allowances therefor, as authorized by law; not to exceed $1,000 for official reception and representation expenses; purchase of one passenger motor vehicle (medium sedan for replacement only) at not to exceed $3,000; and reimbursement of the General Services Administration for security guard services; $157,000,000: *Provided,* That no part of this appropriation shall be used to pay in excess of

13. 111 CONG. REC. 10166, 89th Cong. 1st Sess.

twenty-two persons engaged in public relations work. . . .

MR. [ROBERT J.] DOLE [of Kansas]: Mr. Chairman, I make a point of order against the language on page 39, commencing in line 18 with the words "and recognition of war veterans" on the basis that it is legislating in an appropriation bill and not authorized.

THE CHAIRMAN:[14] Does the gentleman from Texas [Mr. Thomas] wish to be heard on the point of order?

MR. [ALBERT] THOMAS: Does the gentleman wish that the words "war veterans" go with it? If the gentleman does, the gentleman's point of order is good, if the gentleman insists upon it. I hope the gentleman does not. The gentleman knows what the program is. It is not too expensive. It is a recognition to which certainly any deceased veteran's family is entitled. But if my distinguished friend insists upon it, we have to admit the point of order is good, because it is.

MR. DOLE: I will say to the gentleman that I shall insist upon the point of order. There is legislation pending now and the projected cost of this little program is $4.2 million. On that basis, Mr. Chairman, I insist upon the point of order.

THE CHAIRMAN: The gentleman makes a point of order against the language on line 18 and the point of order is good and the Chair sustains it.

Committee on Fair Employment Practice

§ 13.2 An amendment to a war agencies appropriation bill making an appropriation for the Fair Employment Practice Committee was held unauthorized by law.

On June 8, 1945,[15] the Committee of the Whole was considering H.R. 3368, a war agencies appropriation.

Amendment offered by Mr. Marcantonio: Page 35, after line 24, insert the following new paragraph:

"Fair Employment Practice Committee: For all necessary salaries and expenses, $599,000."

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, a point of order.

THE CHAIRMAN:[16] The gentleman will state the point of order.

MR. RANKIN: Mr. Chairman, I make the point of order that the amendment is not germane, it is not in order on this bill, it is legislation on an appropriation bill and it is not authorized by law. . . .

THE CHAIRMAN: The point of order is well taken. It is . . . not authorized by law. The point of order is sustained.

Foreign Military Assistance

§ 13.3 Appropriations to enable the President, through such departments or agencies of the government as he might designate, further to carry out the provisions of the act

14. Richard Bolling (Mo.).

15. 91 CONG. REC. 5831, 79th Cong. 1st Sess.

16. John J. Sparkman (Ala.).

of Mar. 11, 1941, to promote the defense of the United States, were held authorized by the act cited and were not a conferral of new authority on the President.

On Dec. 5, 1941,[17] the Committee of the Whole was considering H.R. 6159, a supplemental appropriation for national defense. At one point the Clerk read as follows:

TITLE III—DEFENSE AID

Sec. 301. To enable the President, through such departments or agencies of the Government as he may designate, further to carry out the provisions of an act to promote the defense of the United States, approved March 11, 1941, and for each and every purpose incident to or necessary therefor, the following sums for the following respective purposes, namely:

(a) For the procurement, by manufacture or otherwise, of defense articles, information, and services for the government of any country whose defense the President deems vital to the defense of the United States, and the disposition thereof, including all necessary expenses in connection therewith, as follows:

(1) Ordnance and ordnance stores, supplies, spare parts, and materials, including armor and ammunition and components thereof, $830,507,246. . . .

(6) Facilities and equipment for the manufacture, production, or operation of defense articles and for otherwise carrying out the purposes of the act of March 11, 1941, including the acquisition of land, and the maintenance and operation of such facilities and equipment, $125,000,000. . . .

(c) Each of the foregoing appropriations shall be additional to, and consolidated with, the appropriations for the same purposes contained in section 1 (a) of the Defense Aid Supplemental Appropriation Act, 1941, and section 101 (a) of the Defense Aid Supplemental Appropriation Act, 1942, and the proviso in section 101 (f) of such latter act shall be applicable to such consolidated appropriations.

Sec. 302. Any defense article procured pursuant to this title shall be retained by or transferred to and for the use of such department or agency of the United States as the President may determine, in lieu of being disposed of to a foreign government, whenever in the judgment of the President the defense of the United States will be best served thereby. . . .

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make the point of order against title III that it is legislation on an appropriation bill.

THE CHAIRMAN:[18] Will the gentleman point out for the benefit of the Chair what there is in the title that is legislation?

MR. RICH: It reads as follows:

> To enable the President, through such departments or agencies of the Government as he may designate, further to carry out the provisions of an act to promote the defense of the United States.

It gives the President of the United States power here.

17. 87 CONG. REC. 9482, 77th Cong. 1st Sess.

18. Robert Ramspeck (Ga.).

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

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, that is merely a repetition of what is in the act of March 11, 1941, which fully authorizes every item in the title with the exception of section 302, and that paragraph is no longer subject to a point of order because consent has been given to consider it and allow amendments to be offered to it. Section 3 of Public Law No. 11 of the Seventy-seventh Congress provides in full for the authorizations necessary to the consideration of this title.

THE CHAIRMAN: The Chair has examined the act of March 11, 1941, which authorizes the appropriations contained in this title, and the Chair overrules the point of order.

Travel and Other Expenses Incidental to Authorized Program

§ 13.4 An appropriation for travel by privately owned automobiles and per diem expenses of personnel of the Office of Contract Settlement, Office of War Mobilization and Reconversion was held authorized by a general provision in the law establishing that office.

On Dec. 6, 1944,[19] the Committee of the Whole was considering H.R. 5587, a supplemental appropriation bill. A point of order was raised against the following provision in the bill:

OFFICE OF WAR MOBILIZATION AND RECONVERSION, OFFICE OF CONTRACT SETTLEMENT

For all necessary expenses, fiscal year 1945, of the Office of Contract Settlement established by the Contract Settlement Act of 1944, including fees and expenses of witnesses; travel expenses, including (1) expenses of attendance at meetings of organizations concerned with the work of said office, (2) actual transportation and other necessary expenses and not to exceed $10 per diem in lieu of subsistence of persons serving while away from their permanent homes or regular places of business in an advisory capacity to or employed by the Office of Contract Settlement without other compensation from the United States, or at $1 per annum, and (3) upon the approval of the Director of Contract Settlement, expenses to and from their homes or regular places of business in accordance with the Standardized Government Travel Regulations, including travel in privately owned automobiles (and including per diem in lieu of subsistence at place of employment), of persons employed intermittently away from their homes or regular places of business as consultants and receiving compensation on a per diem when actually employed basis. . . .

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Chairman, I make the point of order against the paragraph beginning on page 5, line 17, and running down to and including line 17 on page

19. 90 CONG. REC. 8939, 78th Cong. 2d Sess.

6, that it is legislation on an appropriation bill. . . .

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, this provision is in order under the new law, that has just been enacted at this session of Congress, the Office of Contract Settlement law, Public Law No. 395, Seventy-eighth Congress, second session.

MR. HOFFMAN: Mr. Chairman, I call the attention of the Chair to the language on page 6 beginning with "(3)." That is legislation.

MR. CANNON of Missouri: These are merely expenses incidental to the conduct of any office authorized by law, Mr. Chairman, and unquestionably are in order on the bill as proposed. The law itself imposed no restrictions whatever. . . .

THE CHAIRMAN:[20] The Chair refers to lines 7 to 12.

MR. CANNON of Missouri: Mr. Chairman, that is with respect to travel. This is in the nature of a limitation, referring to the limitation set by the standardized Government travel regulations. If that was not included here, there would be no limitation. It could not be subject to a point of order.

THE CHAIRMAN: Does the gentleman maintain that it is an authorization for travel in privately owned automobiles?

MR. CANNON of Missouri: Mr. Chairman, this merely provides in the usual way, as in all the departments, the authority to carry out the law as enacted in Public Law No. 395. I do not see how it could be construed in any other way. It is the method and the means ordinarily provided in all the departments for carrying out legislation of this character.

THE CHAIRMAN: Will the gentleman from Missouri, referring to line 23, on page 5, state whether there is any authority in law for payment of $10 per diem in lieu of subsistence of persons serving while away from their permanent homes?

MR. CANNON of Missouri: Mr. Chairman, when a law is enacted by Congress, the authorization provides for the administration of that law, both as to its spirit and its letter. The authorization here involves and includes all the methods ordinarily used by the departments in the administration of such laws. It would be inconsistent to enact a law and then hold there is no authorization to administer it.

These are not extraordinary provisions. These are ordinary provisions under which all laws of this character are enforced. . . .

THE CHAIRMAN: The Chair wishes to call to the attention of the gentleman from Michigan section 22, "Use of appropriated funds," item (b) of the Contract Settlement Act:

> To use any such funds appropriated, allocated, or available to it for expenditures for or in behalf of any other contracting agency for the purposes authorized in this act.

Therefore the Chairman overrules the point of order.

Construction and Improvement of Barracks

§ 13.5 An appropriation for the construction and improvement of barracks for enlisted men and quarters for noncommissioned officers of the

20. Herbert C. Bonner (N.C.).

Army was held not authorized by law.

On Feb. 13, 1936,[1] the Committee of the Whole was considering H.R. 11035, a War Department appropriation. A point of order was raised against an amendment to the following paragraph:

> For the equipment and conduct of school, reading, lunch, and amusement rooms, service clubs, chapels, gymnasiums, and libraries, including periodicals and other publications and subscriptions for newspapers, salaries of civilians employed in the hostess and library services, transportation of books and equipment for these services, rental of films, purchase of slides for and making repairs to moving-picture outfits, and for similar and other recreational purposes at training and mobilization camps now established or which may be hereafter established, $34,940.

MR. [FRANCIS D.] CULKIN [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Culkin: After the period in line 24, page 9, insert a new paragraph, as follows:
>
> "For the construction or betterments of barracks for enlisted men and quarters for noncommissioned officers, staff or otherwise, the sum of $50,000,000, to be allocated by the Quartermaster General in the manner heretofore authorized by Congress.

MR. [TILMAN B.] PARKS [of Arkansas]: Mr. Chairman, I make the point of order against the amendment that it is not authorized by law and therefore is not in order, and, in addition, it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[2] The Chair is ready to rule. The amendment proposed by the gentleman from New York is for the construction or betterment of barracks for enlisted men and quarters for noncommissioned officers, staff or otherwise, the sum of $50,000,000, to be allocated by the Quartermaster General in the manner heretofore authorized by Congress.

The Chair has been unable to find any law authorizing this appropriation, and the Chair thinks no authorization has been made to include the sum of $50,000,000, and no legislation has been had authorizing the disbursement of the money by the Quartermaster General, and therefore sustains the point of order.

MR. CULKIN: Mr. Chairman, I defer to the Chair's ruling, but may I later present it if I find such legislation? I now offer another amendment.

The Clerk read as follows:

> Amendment by Mr. Culkin: Page 9, after line 24, insert the following: "For the construction or betterment of barracks for enlisted men and quarters for noncommissioned officers, staff or otherwise, the sum of $50,000,000."

MR. PARKS: Mr. Chairman, I make the same point of order stated a moment ago.

THE CHAIRMAN: The Chair is ready to rule. This amendment of the gentleman from New York proposes to appropriate $50,000,000 for the construc-

1. 80 CONG. REC. 1983, 1984, 74th Cong. 2d Sess.

2. Claude V. Parsons (Ill.).

tion or betterment of barracks for enlisted men, and so forth, as the other amendment provided. In the law regarding the construction or improvements of barracks, the Chair finds the following language in title 10, section 1339, of the United States Code:

> Permanent barracks or quarters and buildings and structures of a permanent nature shall not be constructed unless detailed estimates shall have been previously submitted to Congress, and approved by a special appropriation for the same, except when constructed by the troops; and no such structures, the cost of which shall exceed $20,000, shall be erected unless by special authority of Congress.

That special authority the Chair thinks has not been granted and, therefore, sustains the point of order, because it is legislation on an appropriation bill.

Parliamentarian's Note: The Chair evidently construed the cited provision in title 10 to require, for structures over $20,000, a separate authorization in law. For structures under that amount, approval by a special appropriation would have been adequate.

Substituting Conventional for Nuclear Naval Vessel; Both Unauthorized

§ 13.6 For an item in a general appropriation bill containing funds for a nuclear aircraft carrier program, against which points of order had been waived for failure of the authorization bill to be enacted into law, a substitute amendment striking out those funds and inserting unauthorized funds for a conventional-powered aircraft carrier program was ruled out under Rule XXI clause 2, as unprotected by the waiver against the bill.

On Aug. 7, 1978,[3] the Chair ruled that, an unauthorized item in a general appropriation bill being permitted to remain by a special rule waiving points of order, figures in such item may be perfected but the provision may not be changed by an amendment substituting funds for a different and specified unauthorized purpose. The proceedings are discussed in § 3.45, supra.

§ 14. District of Columbia

Office of Corporation Counsel

§ 14.1 A paragraph in a general appropriation bill for the District of Columbia permitting the use of funds in the bill by the Office of the Corporation Counsel to retain professional experts at rates fixed by the commissioner

3. 124 CONG. REC. 24710–12, 95th Cong. 2d Sess.

was conceded to be legislation and was ruled out in violation of Rule XXI clause 2.

On June 18, 1973,[4] during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 8685), the following point of order was raised:

MR. [H.R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language to be found on page 11, lines 5 through 10, as not being a limitation upon an appropriation bill, and not authorized.

The portion of the bill to which the point of order relates is as follows:

Sec. 5. Appropriations in this Act shall be available for services as authorized by 5 U.S.C. 3109 and shall be available to the Office of the Corporation Counsel to retain the services of consultants including physicians, diagnosticians, therapists, engineers, and meteorologists at rates to be fixed by the Commissioner.

THE CHAIRMAN:[5] Does the gentleman from Kentucky desire to be heard on the point of order raised by the gentleman from Iowa (Mr. Gross)?

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Chairman, I should like to say to the members of the Committee that this is a new provision that is carried in the bill at this time. This was sent up from downtown. We at this time, Mr. Chairman, concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Metropolitan Washington Board of Trade

§ 14.2 Language in an appropriation bill providing funds for aid in support of the Greater National Capital Committee of the Metropolitan Washington Board of Trade was not authorized by law.

On July 12, 1961,[6] during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 8072), a point of order was raised against the following provision:

The Clerk read as follows:

GENERAL OPERATING EXPENSES

General operating expenses, plus so much as may be necessary to compensate the Engineer Commissioner at a rate equal to each civilian member of the Board of Commissioners of the District of Columbia, hereafter in this Act referred to as the Commissioners; aid in the support of the Greater National Capital Committee of the Metropolitan Washington Board of Trade; $15,356,600. . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 3, line 16, "aid in the support of the Greater National Capital Committee of the Metropolitan Board of Trade." I make

4. 119 CONG. REC. 20068, 93d Cong. 1st Sess.

5. Dante B. Fascell (Fla.).

6. 107 CONG. REC. 12404, 87th Cong. 1st Sess.

the point of order that the language is legislation on an appropriation bill.

THE CHAIRMAN:[7] Does the gentleman from Michigan desire to be heard on the point of order?

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

THE CHAIRMAN: The gentleman from Michigan concedes the point of order and the Chair sustains the point of order.

American Legion Convention Expenses

§ 14.3 To the District of Columbia appropriation bill, an amendment making funds available for expenditure by the American Legion in connection with its national convention was held not to be authorized by law.

On June 14, 1954,[8] the Committee of the Whole was considering H.R. 9517. A point of order was raised against the following amendment:

Amendment offered by Mr. Norrell. On page 4, line 1, strike out "$258,215" and insert "$283,215 of which $25,000 shall be available for expenditure by the American Legion Convention 1954 Corporation in connection with the 1954 National Convention of the American Legion, subject to reimbursement from the American Legion if receipts exceed expenses."

MR. [GERALD R.] FORD [Jr., of Michigan]: Mr. Chairman, I make the point of order against the amendment inasmuch as the proposed expenditure is not authorized by law and that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[9] The Chair would like to make inquiry of the gentleman from Arkansas if he can furnish the Chair with an authorization covering the language in his amendment.

MR. [WILLIAM F.] NORRELL [of Arkansas]: Mr. Chairman, I frankly say there is no authorization in law covering this item. . . .

THE CHAIRMAN: The Chair is ready to rule.

Upon the statement of the gentleman from Arkansas just made to the Chair that there is no authorization for the amendment, the Chair sustains the point of order.

Schools

§ 14.4 An appropriation for public schools in the District of Columbia was held not subject to the point of order that it was without authorization, where the point of order was based on the contention that funds were not authorized for segregated schools.

On Mar. 2, 1949,[10] the Committee of the Whole was consid-

7. Charles M. Price (Ill.).
8. 100 CONG. REC. 8190, 8191, 83d Cong. 2d Sess.
9. J. Harry McGregor (Ohio).
10. 95 CONG. REC. 1741, 1742, 81st Cong. 1st Sess.

ering H.R. 3082, a District of Columbia appropriation bill. The following proceedings took place:

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, I make a point of order against the language beginning on page 8, concerning all appropriations for public schools, on the general ground that there is no authorization. To be more specific, I mean the following:

The public schools in the District of Columbia are segregated schools. Nowhere in the law is there any authorization for appropriations for general administration, supervision, operation of, and instruction in segregated schools. Since this section of the bill makes appropriations for segregated schools, and since there is no authorization in the law for segregated schools, I submit that this is an appropriation without authorization and these appropriations for segregated schools are not in order.

THE CHAIRMAN:[11] Does the gentleman from Kentucky desire to be heard on the point of order?

MR. [JOE B.] BATES of [Kentucky]: Mr. Chairman, I cannot find anything in this bill which provides that segregation must be practiced in the District of Columbia. As a matter of fact, I look on that as an administrative matter which is handled by the superintendent of schools in the District of Columbia. . . .

THE CHAIRMAN: The Chair is ready to rule. It is the opinion of the Chair that the appropriations provided in this section of the bill are appropriations which are authorized by law; and since, in the language of the bill before us, there is no reference to the basis upon which the gentleman from New York has predicated his point of order, the Chair, therefore, overrules the point of order.

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

School Playgrounds

§ 14.5 An appropriation for expenses of keeping school playgrounds open during the summer months was held authorized by law, and in order.

On Jan. 31, 1938,[12] the Committee of the Whole was considering H.R. 9181, the District of Columbia appropriation bill for 1939. At one point Chairman William J. Driver, of Arkansas, ruled on a point of order as follows:

THE CHAIRMAN: The Chair is ready to rule. On page 26, beginning on line 1, the following language appears in the pending bill:

> For the maintenance and contingent expenses of keeping open during the summer months the public-school playgrounds; for special and temporary services, directors, assistants, and janitor service during the summer vacation, and, in the larger yards, daily after school hours during the school term, $25,000.

To this paragraph the gentleman from Maryland addresses a point of order upon the ground that there is no authority under the law justifying the

12. 83 CONG. REC. 1316, 75th Cong. 3d Sess.

appropriation, and that it is an effort to change by law the jurisdiction of the agency in charge of the particular activities dealt with under this paragraph. The Chair must confess that he is unable to find in this language any change whatever in the jurisdiction over the property of the school institutions of the District and the Chair must necessarily presume that any money appropriated will go into the regular channels the law directs it should follow and be expended by the agency charged under the law with jurisdiction over these grounds. The Chair, therefore, is compelled to reach the conclusion that the point of order is not well taken, and it is therefore overruled.

The gentleman from Virginia [Mr. Smith] also stresses the point of order that is directed to the matter contained in the point raised by the gentleman from Maryland, with this further point, that there is no specific law authorizing an appropriation with respect to the maintenance of the school grounds during the vacation period. The Chair is compelled to reach the conclusion that when jurisdiction is placed for the operation of these institutions, necessarily the agency that is created and given control over the institution continues it at all seasons of the year and therefore the language that authorizes these institutions necessarily is broad enough to cover every activity that the language in this particular paragraph here indicates as the purpose of the appropriation. Again, the Chair is compelled to overrule the point of order made by the gentleman from Virginia.

Claims of Prison Employees

§ 14.6 An amendment to the District of Columbia appropriation bill providing for refunds to certain individuals for meals not taken by employees of a penal institution was held to be unauthorized by law.

On Apr. 5, 1946,[13] the Committee of the Whole was considering H.R. 5990, a District of Columbia appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. Smith of Virginia: On page 31, line 22, after the period, insert a new paragraph, as follows:

"Refunding erroneous deductions: To enable the Commissioners in cases where deductions were made for meals not taken by employees in the penal institutions, Lorton, Va., and has been covered into the Treasury for personal services: *Provided,* That this appropriation shall be available for refunding to employees such deductions made from salaries for meals not taken as follows, not to exceed $1,040:

"Hospital Supervisor T. T. Grimsley, from November 1, 1938, through April 30, 1945, at rate of $80 per annum, $560.

"Special Disbursing Agent Kenneth Dove, from July 1, 1939, through June 30, 1945, at rate of $80 per annum, $480." . . .

MR. [JOHN M.] COFFEE [of Washington]: Mr. Chairman, I make the point of order that this amendment is

13. 92 CONG. REC. 3226, 79th Cong. 2d Sess.

out of order because it is legislation on an appropriation bill. It has to do with claims with reference to employees in a certain institution operated by the District government and should properly come from the Committee on Claims. . . .

THE CHAIRMAN:[14] the Chair is prepared to rule.

It would appear from the information already given to the Committee by both the gentleman from Virginia and the gentleman from Washington that the authorization is nonexistent. Under those circumstances it would seem the advisable course would be to file a claim for this money to be refunded.

The Chair therefore sustains the point of order.

Street Lighting

§ 14.7 An appropriation for street lighting installation and maintenance of public lamps and lampposts, out of the special fund created by the District of Columbia Gasoline Tax Act, was held in order inasmuch as that act authorized appropriations for improvement and maintenance of public highways and protective structures in connection therewith.

On Feb. 1, 1938,[15] the Committee of the Whole was considering H.R. 9181, the District of Columbia appropriation bill for 1939. At one point Chairman William J. Driver, of Arkansas, made the following ruling:

The CHAIRMAN: The Chair is ready to rule.

The gentleman from Mississippi [Mr. Collins] offers an amendment in the following language:

> Street lighting: For purchase, installation, and maintenance of public lamps, lampposts, street designations, lanterns, and fixtures of all kinds on streets, avenues, roads, alleys, and for all necessary expenses in connection therewith, including rental of storerooms, extra labor, operation, maintenance, and repair of motor trucks, this sum to be expended in accordance with the provisions of existing law: *Provided,* That this appropriation shall not be available for the payment of rates for electric street lighting in excess of those authorized to be paid in the fiscal year 1927, and payment for electric current for new forms of street lighting shall not exceed 2 cents per kilowatt-hour for current consumed.

To this amendment the gentleman from Oklahoma [Mr. Nichols] directs a point of order on the ground it is not an appropriation authorized under existing law. It, therefore, becomes necessary for the Chair to look for authority in existing law to justify the amendment.

The law authorizing appropriation out of the gas-tax fund and setting forth the purposes for which appropriations may be made is found in volume 50, Part I, United States Statutes at Large, at page 677, and is as follows:

> For the construction, reconstruction, improvement, and maintenance

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

15. 83 CONG. REC. 1375, 75th Cong. 3d Sess.

of public highways, including the necessary administrative expenses in connection therewith;

(2) For the expenses of the office of the Director of Vehicles and Traffic incident to the regulation and control of traffic and the administration of the same, and

(3) For the expenses necessarily involved in police control, regulation, and administration of traffic upon the highways. . . .

The very language employed with respect to street lighting necessarily leads us to the conclusion that street lighting is regarded as an essential feature necessary in order to establish such safeguards as would maintain these avenues and streets for the benefit, the convenience, and the facility of the people using the same.

The language in the section of the law which the Chair read that imposes a duty and responsibility upon the police force in connection with these highways necessarily pre-supposes that lighting is one of the necessary and essential features to the safety element in the use of the streets and, therefore, is an incident to and is necessarily included in the item of expense for streets, street improvement, and maintenance.

However, the Chair may say to the Committee that he is saved considerable trouble and the necessity of dealing thoroughly with this subject from the standpoint of reasoning by one of the precedents of the House. A similar question to the one now under consideration was raised during consideration of a District appropriation bill in the first session of the Seventy-fifth Congress, at which time the very distinguished gentleman from Tennessee [Mr. Cooper] was Chairman of the Committee of the Whole House on the state of the Union having under consideration that measure. In a very sound opinion, which will be found on page 3111 of the Congressional Record of April 2, 1937, I find this language was used by the then Chairman of the Committee:

> The Chair has pointed out in ruling on a previous point of order that the so-called Gasoline Tax Act provides—
>
> "That the proceeds of the tax, except as provided in section 840 of this title, shall be paid into the Treasury of the United States entirely to the credit of the District of Columbia and shall be available for appropriation by the Congress exclusively for road and street improvement and repair.". . .
>
> The word "improvement," defined to mean "betterment," makes the word broad and general enough to include all of the various activities mentioned in this amendment. They are, therefore, authorized by existing law. For this reason the Chair feels that the amendment offered by the gentleman from Mississippi is in order.
>
> The point of order is overruled.

The Chair feels that the decision as made by the Chairman of the Committee then . . . should be followed in construing the present law.

The Chair is of the opinion that the provision of law pertaining to appropriations from the gas-tax fund is sufficiently broad to authorize appropriations for the purposes set out in the amendment and therefore overrules the point of order.

Airport Lighting

§ 14.8 Language in the District of Columbia appropriation

bill appropriating for street lighting for "public spaces" and "part cost of maintenance of airport and airway lights necessary for operation of the air mail" was held unauthorized by law.

On Feb. 1, 1938,[16] the Committee of the Whole was considering H.R. 9181, a District of Columbia appropriation bill. At one point, a point of order was raised against the following paragraph:

> Street lighting: For purchase, installation, and maintenance of public lamps, lampposts, street designations, lanterns, and fixtures of all kinds on streets, avenues, roads, alleys, and public spaces, part cost of maintenance of airport and airway lights necessary for operation of the air mail, and for all necessary expenses in connection therewith . . . $765,000. . . .
>
> MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, my point of order was directed at the paragraph beginning on page 68, line 21, down to and inclusive of line 19 on page 69, for the reason that it is legislation on an appropriation bill, contrary to existing law, and not authorized by law.
>
> In the interest of time, Mr. Chairman, I shall not argue this point of order at great length at this juncture. It will suffice at this time to point out to the Chair the language contained in lines 24 and 25 of page 68, and ask the Chair to remember that this paragraph proposes to charge $765,000, the cost of street lighting in the District of Columbia, to the highway fund of the District of Columbia. Surely there can be no argument but that the following language is legislation and not authorized by existing law:
>
> And public spaces, part cost of maintenance of airport and airway lights necessary for operation of the air mail. . . .
>
> THE CHAIRMAN:[17] The gentleman from Mississippi concedes the point of order is well taken. All of the paragraph goes out, for if any part of the paragraph is subject to a point of order necessarily the whole paragraph must be eliminated, which will be the ruling in this particular case.

Juvenile Detention Center

§14.9 An appropriation for maintenance of a suitable place for the reception and detention of girls and women, and of boys under 17 years of age, arrested by the police or held as witnesses in the District of Columbia, was held authorized by law.

On Feb. 1, 1938,[18] the Committee of the Whole was considering H.R. 9181, the District of Columbia appropriation for 1939. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> For maintenance of a suitable place for the reception and detention of girls

16. 83 CONG. REC. 1371, 1372, 75th Cong. 3d Sess.

17. William J. Driver (Ark.).

18. 83 CONG. REC. 1359, 1360, 75th Cong. 3d Sess.

and women, and of boys under 17 years of age, arrested by the police on charge of offense against any laws in force in the District of Columbia, or held as witnesses or held pending final investigation or examination, or otherwise, or committed to the guardianship of the Board of Public Welfare, including transportation, clinic supplies, food, clothing, upkeep and repair of buildings, fuel, gas, ice, laundry, supplies and equipment, electricity, and other necessary expenses, $18,500; for personal services, $9,240; in all, $27,740. . . .

MR. [HERBERT S.] BIGELOW [of Ohio]: Mr. Chairman, I make the point of order that the language beginning in line 19 on page 37, and ending at the end of line 4 on page 38, is legislation in an appropriation bill.

In 1929, Public Law 804, Seventieth Congress, provided that children picked up from the streets and held for disposition by the courts should be separated from adult prisoners; and it provided a receiving home of their own. Throughout all the years intervening this receiving home has been maintained and is now in operation, some 40 or 50 children being residents of the home, held there for a period of a day, a week, or a month, or until they are otherwise disposed of.

Conditions at the receiving home admittedly are bad, and something should be done about it; but what should be done is, it seems to me, a matter for the consideration of the legislative committee and not for an appropriations subcommittee. I, therefore, make the point of order against the language in this section and ask that the language be stricken from the bill.

THE CHAIRMAN:[19] does the gentleman from Mississippi desire to be heard on the point of order? And in this connection the Chair will ask the gentleman from Mississippi to indicate the authority for the appropriation to maintain the house of detention.

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, I would like to know the grounds of the gentleman's point of order. The house of detention is merely a police precinct.

THE CHAIRMAN: The gentleman interposes a point of order on the ground that it is an appropriation without authority of law.

MR. COLLINS: The house of detention is a police precinct owned by the District of Columbia.

We may not have specific statutory authority to appropriate for this particular precinct and, as a matter of fact, we may not have specific statutory authority to appropriate for any particular police precinct.

The fact remains, however, that the house of detention has existed since 1901 and appropriations have been made for that purpose since that time. The section against which the point of order is directed proposes appropriations for maintenance of an existing institution. It is a going concern, and under the rule laid down in section 1280 of Cannon's Precedents the Congress has the power to appropriate for the maintenance thereof.

MR. [VINCENT L.] PALMISANO [of Maryland]: Mr. Chairman, I should like to be heard on the point of order.

As I understand it, the point of order is to the effect that under the appro-

19. William J. Driver (Ark.).

priation they are merging, under the act of 1929, as the gentleman stated, the detention home for children into a prison. The children will be placed in a prison.

Merging the two is legislation in an appropriation bill and if they are merging the two in violation of the act of 1929 then I say the appropriation should be taken out. I think that is what my colleague is contending.

MR. [MILLARD F.] CALDWELL [of Florida]: Mr. Chairman, may I speak briefly on the point of order?

The provision complained of here is not legislation in the sense it creates some new activity which is required to be authorized by law. Perhaps it expands one already created. This activity, however, has been on the statute books and has been appropriated for during the past 30 years or more.

MR. BIGELOW: Mr. Chairman, I am not challenging the statement that it may be proper for the Appropriations Committee to appropriate funds for the repair of the detention home. But what that committee is doing by this paragraph is abolishing the receiving home for children. It is abolishing an institution that was established by law for the purpose of segregating children from adult prisoners and I submit it is clearly legislation. If the point of order is sustained I have an amendment that will cure the situation.

THE CHAIRMAN: The Chair is ready to rule.

To the paragraph found on page 37 of the bill, beginning with line 19, the gentleman from Ohio [MR. BIGELOW] directs a point of order on the ground it is legislation in an appropriation bill and attempts to appropriate without legislative authority. The gentleman from Ohio concedes the fact that there is authority under the provisions of an act of 1929 and therefore this is an appropriation based on the authority of that statute. The matter is further clarified for the Chair by the gentleman from Maryland, who states that his fear is the purpose of the paragraph is to eliminate the use of certain quarters or to merge two of the activities conducted with reference to matters dealt with in this paragraph.

There is nothing in the paragraph to indicate that there is the purpose of either abandoning or merging and, of course, the Chair is bound by the language and is unable to indulge in a presumption that there is any such underlying purpose. Furthermore, the purpose of this appropriation in express terms is maintenance, and by maintenance I mean the maintenance of an existing institution or institutions; therefore it would come clearly within the rules to appropriate for that purpose.

The point of order made by the gentleman from Ohio [Mr. Bigelow] is overruled.

Personal Services for Public Buildings

§ 14.10 Language in the District of Columbia appropriation bill appropriating for personal services for the care of the District buildings was held authorized by law and in order.

On Jan. 31, 1938,[20] the Committee of the Whole was consid-

20. 83 CONG. REC. 1303, 1304, 75th Cong. 3d Sess.

ering H.R. 9181, the District of Columbia appropriation bill for 1939. At one point the Clerk read as follows:

> For personal services, including temporary labor, and service of cleaners as necessary at not to exceed 48 cents per hour, $129,000: Provided, That no other appropriation made in this act shall be available for the employment of additional assistant engineers or watchmen for the care of the District buildings.
>
> MR. [BYRON B.] HARLAN [of Ohio]: Mr. Chairman, I wish to make a point of order against the proviso in this paragraph, but first I wish to raise a point of order as to the entire paragraph. . . .
>
> THE CHAIRMAN:[1] The authority for making appropriations for the care of District buildings is found in Fiftieth Statutes at Large, page 377, in this language:
>
> > *Provided,* That all buildings belonging to the District of Columbia shall be under the jurisdiction and control of the Commissioners of the District. . . .
>
> The gentleman from Ohio also directed the point of order against the paragraph the first portion of which includes this language:
>
> > For personal services, including temporary labor, and service of cleaners as necessary at not to exceed 48 cents per hour, $129,000.
>
> Standing alone, as a matter of course, this language is immune from a point of order because it is solely an appropriation for personal services, and so forth. If, therefore, the argument directed to the proviso goes down, necessarily the point of order against the paragraph as a whole must go down.
>
> The Chair overrules the point of order directed against the paragraph.

1. William J. Driver (Ark.).

Employment of People's Counsel

§ 14.11 Employment of a secretary to the People's Counsel before the Public Utilities Commission, and employment of expert aid to such counsel, were found to be authorized by law (though the amendment in question was ruled out on other grounds).

On Jan. 31, 1938,[2] the Committee of the Whole was considering H.R. 9181, the District of Columbia appropriation bill for 1939. At one point the Clerk read the following amendment:

> Amendment by Mr. [Alfred N.] Phillips [Jr., of Connecticut]: On page 11, line 13, after the period, insert two new paragraphs, as follows:
>
> "For the employment of a secretary to the People's Counsel before the public utilities commission, $1,620.
>
> "For the employment of expert aid to the People's Counsel, $5,000.". . .
>
> MR. [VINCENT L.] PALMISANO [of Maryland]: Mr. Chairman, I made a point of order against the language on

2. 83 CONG. REC. 1308, 1309, 75th Cong. 3d Sess.

page 7, line 13, after the figures "$76,000" to the end of the paragraph, which point of order was sustained on the ground that it was legislation in an appropriation bill. The amendment offered by the gentleman from Connecticut would restore the language that was stricken out on the point of order; not only that, but we have passed that particular section and the amendment comes too late. . . .

THE CHAIRMAN:[3] the gentleman from Maryland bases his point of order on two grounds. The first ground, that the amendment is not authorized by law, the Chair will be forced to overrule, because in section 121 of the Public Utilities Act of the District of Columbia under the District Code this language is found:

> The Commission shall have the power in each instance to employ and to prescribe the duties of such officers, clerks, stenographers, typewriters, inspectors, experts, and employees as it may deem necessary to carry out the provisions of this act.

The Chair finds, therefore, that the amendment does seek to provide funds for a purpose authorized by law.

The second ground raised by the gentleman from Maryland, that the amendment comes too late, and the point of order raised by the gentleman from Oklahoma, that the amendment is not germane to the paragraph offered, the Chair will be forced to sustain.

The Chair sustains the point of order that the amendment is not germane to the paragraph offered.

3. William J. Driver (Ark.).

Main Library Building Unauthorized

§ 14.12 An appropriation for the preparation of plans and specifications for a new main library building in the District of Columbia was held unauthorized by law.

On Jan. 31, 1938,[4] the Committee of the Whole was considering H.R. 9181, a District of Columbia appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> For the preparation of plans and specifications for a new main library building to be constructed on square 491 in the District of Columbia, $60,000.
>
> MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order against the language found on page 18, beginning in line 14, and including all of the language in lines 14, 15, and 16, because it is legislation on an appropriation bill and is without authority of existing law.
>
> I may say, Mr. Chairman, that the purpose for making this point of order is that there is now pending before the Committee on the District of Columbia a bill which proposes to authorize an appropriation of two and one-half million dollars for the construction of a library in the District of Columbia. The committee before which the bill is pending has had hearings in the past

4. 83 CONG. REC. 1313, 1314, 75th Cong. 3d Sess.

and will no doubt hold hearings in the future in order to determine whether or not there is a need in the District of Columbia for the construction of this library building. Mr. Chairman, until that committee does decide such a building is necessary, and until that committee authorizes an appropriation for the construction of the building, certainly there is no need for the expenditure of $60,000 to prepare the plans for a building, the authorization of which could only be made by the District of Columbia Committee. I may say there has been no authorization by the District of Columbia Committee for an appropriation of $60,000 for this purpose. . . .

THE CHAIRMAN:[5] the point of order made by the gentleman from Oklahoma (Mr. Nichols) is sustained, and accordingly the provision will be stricken.

Branch Library Building Authorized

§ 14.13 An appropriation for the preparation of plans and specifications for a branch library building in the District of Columbia was held authorized by law.

On Jan. 31, 1938,[6] the Committee of the Whole was considering H.R. 9181, the District of Columbia appropriation bill for 1939. The following ruling was made by the Chairman:[7]

To a clause in the pending appropriation bill to be found beginning on line 14 on page 18, in the following language—

> For the preparation of plans and specifications for a new main library building to be constructed on square 491 in the District of Columbia, $60,000—

the gentleman from Oklahoma [Mr. Nichols] directed a point of order which was sustained by virtue of the language found in section 1421 of the Code of Laws of the District of Columbia, which provided for the construction of a central library and branch libraries. The word "central" as found in this particular law necessarily precludes any legislation for the construction of another main library, as we can well consider it to be the act and intent of Congress to provide for such only in the form of one library. Within this definition and direction of the law the Chair necessarily sustained the point of order.

The gentleman from Mississippi then offered an amendment which provides for the preparation of plans and specifications for the construction of a branch library. The Chair turns again to section 1421 of the code and finds this language:

> Said library shall consist of a central library and such number of branch libraries so located and so supported as to furnish books and other printed matter and information service convenient to the homes and offices of all residents of the said District.

Clearly, this amendment, providing for the plans and specifications for a branch library, comes squarely within the authority of the law the Chair has

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5. William J. Driver (Ark.).

6. 83 CONG. REC. 1314, 75th Cong. 3d Sess.

7. William J. Driver (Ark.).

just read and, therefore, the point of order is overruled.

Use of Gasoline Tax Fund—for Salaries

§ 14.14 An appropriation for the salary and expenses of the office of Director of Vehicles and Traffic out of the District Gasoline Tax Fund was held unauthorized by law, since the Gasoline Tax Act provided that revenue raised through its operation could only be appropriated by Congress for road and street improvements and repairs.

On Apr. 2, 1937,[8] H.R. 5996, the District of Columbia appropriation for 1938, was being considered in the Committee of the Whole. At one point the Clerk read as follows:

> For paving, repaving, grading, and otherwise improving streets, avenues, and roads, including temporary per-diem services, surveying instruments and implements, and drawing materials, and the maintenance of motor vehicles used in this work, including curbing and gutters and replacement of curb-line trees where necessary, and including trees and parkings, assessment and permit work and the several purposes provided for in that paragraph, and salaries and expenses of the office of the Director of Vehicles and Traffic, as follows, to be paid from the special fund created by section 1 of the act entitled "An act to provide for a tax on motor-vehicle fuels sold within the District of Columbia, and for other purposes", approved April 23, 1924 (43 Stat., p. 106), and accretions by repayment of assessments.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make the point of order against the portion beginning in line 11 on page 71 after the word "work", and beginning with the word "including," going through lines 11, 12, and 13, on down to and inclusive of line 21, on the ground that it is legislation and changes existing law. . . .

If there is any provision in the rules of the House which would permit this language to stay in the bill as against the point of order, that it is legislation, it would have to be held under the provisions of the Holman rule. . . .

The organic law which provided for the expenditure of funds derived from the collection of the gasoline tax in the District of Columbia, stating where those funds might be expended, reads as follows:

> A tax of 2 cents per gallon on all motor-vehicle fuels within the District of Columbia sold or otherwise disposed of by an importer or used by him in a motor vehicle operated for hire or for commercial purposes, shall be levied, collected, and paid in the manner hereinafter provided.

I ask the Chair to listen carefully to the reading of the following portion of the law:

> The proceeds of the tax, except as provided in section 840 of this title—

And for the benefit of the Chair let me say that section 840 of this title

8. 81 CONG. REC. 3110, 3111, 75th Cong. 1st Sess.

simply provides certain exemptions of certain classes of motor vehicles from the provisions of this tax law—

> shall be paid into the Treasury of the United States entirely to the credit of the District of Columbia, and shall be available for appropriation by the Congress exclusively for road and street improvements and repair.

In Hinds' Precedents, volume 7, page 411, section 1395, this is stated:

> A provision construing or interpreting existing law is legislation and is not in order on an appropriation bill.

And there follows the ruling where a similar objection to this was made, and it was sustained. My point is this: In answer to this point of order the chairman of the Subcommittee on Appropriations can only say, I believe, that this language is justified because curbs, gutters, parkways, streets, motor vehicles, and other things related thereto are parts of a street and a roadway. If that is the contention, then that is an attempt on the part of this subcommittee to do the thing that section 1394 says cannot be done, to wit:

> A provision construing or interpreting existing law is legislation not in order on an appropriation bill.

In other words, if the District of Columbia up to this time has been using these funds only for a particular purpose, that is an administrative discretion of theirs and this rule provides that if an Appropriations Committee attempts to direct that executive officer that he must use the funds for some other purpose than that for which he is using it, that that is legislation, and I submit, Mr. Chairman, that this under that rule is clearly legislation. . . .

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, the law merely says that the gasoline-tax fund shall be available for road and street improvement and repair. Trees are just as much a part of the street as the center of the street. Assessment and curbing work simply means the paving of sidewalks and gutters. Certainly operation and maintenance of traffic lights is a part of street improvements. . . .

MR. NICHOLS: [Clearly] this is legislation, because that thing cannot be done by an appropriations committee. I will read from volume 7 of Cannon's Precedents, at page 444, section 1438, as follows:

> A provision limiting discretion vested in an executive officer is legislation and not in order on an appropriation bill.

Which goes back to the very thing I stated before. If these gentlemen whose duty it is to spend the funds derived from this gasoline tax are not spending it for the things provided for here, then if you direct them what they shall spend the money for, that makes it legislation, beyond question. Under the admission of the chairman of the subcommittee, certainly it cannot be construed as anything else.

THE CHAIRMAN:[9] The Chair is prepared to rule. The gentleman from Oklahoma [Mr. Nichols] makes a point of order against certain language appearing on page 71, beginning with the word "including", in line 11, and extending to the end of the paragraph.

The gentleman from Mississippi [Mr. Collins] in speaking in opposition to

9. Jere Cooper (Tenn.).

the point of order, has called attention to certain improvements that are provided for by the language included in this part of the bill. The Chair would be inclined to agree with the gentleman in the contention that he presents in all respects except that relating to the question of salaries and expenses of the office of director of vehicles and traffic. The Chair observes that the office of director of vehicles and traffic is provided for in the act to regulate traffic in the District of Columbia, and so forth. An examination of this law clearly shows that the director of vehicles and traffic has rather broad general duties to perform, and it is not related alone to what might be imposed upon him in connection with the Gasoline Tax Act. The Gasoline Tax Act provides, as was pointed out by the gentleman from Oklahoma, that—

> The proceeds of the tax, except as provided in section 840 of this title, shall be paid into the Treasury of the United States entirely to the credit of the District of Columbia and shall be available for appropriations by the Congress exclusively for road and street improvements and repairs.

The Chair is unable to see how that language would be broad enough to authorize the payment of salaries for the director of vehicles and traffic. The Gasoline Tax Act does not make provision for the payment of the salaries to which the Chair has directed attention. Therefore, salaries paid out of this fund would not be authorized by law. For that reason the provision to which the point of order is made would, in the opinion of the Chair, be legislation on a general appropriation bill and would be subject to a point of order

Therefore the Chair sustains the point of order

— *For Street Repair and Improvement*

§ 14.15 An appropriation for paving, grading, and otherwise improving streets, including curbing and gutters, and replacement of curb-line trees where necessary, out of the special fund created by the District of Columbia Gasoline Tax Act, was held to be in order inasmuch as that act authorized appropriations for "road and street improvement and repair."

On Apr. 2, 1937,[10] The Committee of the Whole was considering H.R. 5996, the District of Columbia appropriation bill for 1938. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> Amendment offered by Mr. [Ross A.] Collins [of Mississippi]: Page 71, line 7, insert a new paragraph, as follows:
>
> "For paving, repaving, grading, and otherwise improving streets, avenues, and roads, including temporary per-diem services, surveying instruments and implements, and drawing materials, and the maintenance of motor vehicles used in this work, including curbing and gutters and replacement of curb-line trees where necessary, and

10. 81 CONG. REC. 3111, 75th Cong. 1st Sess.

including trees and parkings, assessment and permit work and the several purposes provided for in that paragraph, as follows, to be paid from the special fund created by section 1 of the act entitled 'An act to provide for a tax on motor-vehicle fuels sold within the District of Columbia, and for other purposes', approved April 23, 1924 (43 Stat., p. 106), and accretions by repayment of assessments."

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order against the amendment. . . . If I properly interpret the amendment, it is the exact language that was heretofore in the bill, with the exception that that portion has been stricken which provides for the payment of the salary of a supervisor of traffic Am I correct in that understanding?

THE CHAIRMAN:[11] The gentleman is correct. . . .

The gentleman from Oklahoma makes the point of order against the amendment offered by the gentleman from Mississippi, the wording of which, as pointed out by the gentleman from Oklahoma, is the same as the wording of the bill excluding the portion to which the Chair invited attention in the ruling made on the previous point of order. It will be remembered that the Chair pointed out in ruling on the previous point of order that the so-called Gasoline Tax Act provides:

> That the proceeds of the tax, except as provided in section 840 of this title, shall be paid into the Treasury of the United States entirely to the credit of the District of Columbia and shall be available for appropriation by the Congress exclusively for road and street improvement and repair.

The Chair has consulted the dictionary and finds that the word "improvement" is there defined to be—

> An act or process of improving, as profitable employment or use, cultivation, development, enhancement, or increase; especially betterment—

And so forth. The word "improvement" appears in the so-called Gasoline Tax Act, and this word is defined in the dictionary as meaning, among other things, "especially betterment." The Chair, therefore, is of the opinion that the various functions mentioned in the language of the amendment and the various things to be provided—trees, parking, curbing, guttering, and so forth—certainly are proper to be included as betterment or improvement of the streets.

The word "improvement", defined to mean "betterment", makes the word broad and general enough to include all of the various activities mentioned in this amendment. They are, therefore, authorized by existing law. For this reason the Chair feels that the amendment offered by the gentleman from Mississippi is in order.

The point of order is overruled.

— *For Personal Services*

§ 14.16 An appropriation for personal services for the Department of Vehicles and Traffic, out of the special fund created by the District of Columbia Gasoline Tax Act, was held not to be authorized by the act

11. Jere Cooper (Tenn.).

On Apr. 2, 1937,[12] the Committee of the Whole was considering H.R. 5996, a District of Columbia appropriation bill. A point of order was raised against the following paragraph:

> For personal services, department of vehicles and traffic, $76,440.
>
> MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I interpose a point of order against the language appearing in line 13, page 80, reading as follows:
>
> > For personal services, department of vehicles and traffic, $76,440.
>
> That this is legislation and contrary to existing law.
>
> THE CHAIRMAN:[13] Does the gentleman from Mississippi desire to be heard?
>
> MR. [ROSS A.] COLLINS [of Mississippi]: I do not.
>
> THE CHAIRMAN: The gentleman from Oklahoma makes the point of order against the language appearing in lines 13 and 14, on page 80, which reads as follows:
>
> "For personal services, department of vehicles and traffic, $76,440."
>
> It will be remembered that on page 71 of the bill a point of order was made against language appearing in lines 15 and 16.[14] For the reasons indicated at the time that point of order was under consideration, the Chair is of opinion that this is an appropriation not authorized by law and therefore sustains the point of order.

— *For Sidewalks and Curbing*

§ 14.17 An appropriation for the construction and repair of sidewalks and curbs around public reservations and municipal and federal buildings, out of a special fund created by the District of Columbia Gasoline Tax Act, was held to be authorized by the language of that act specifying in general terms the purposes of the fund.

On Apr. 2, 1937,[15] the Committee of the Whole was considering H.R. 5996, the District of Columbia appropriation bill for 1938. The following proceedings took place:

> MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order to the language in line 22, page 79, after the comma, as follows:
>
> > And construction and repair of sidewalks and curbs around public reservations and municipal and United States buildings, including purchase or condemnation of streets, roads, and alleys, and of areas less than 250 square feet at the intersection of streets, avenues, or roads in the District of Columbia, to be selected by the Commissioners, and including maintenance of non-pas-

12. 81 CONG. REC. 3112, 75th Cong. 1st Sess.

13. Jere Cooper (Tenn.).

14. See the discussion in § 14.14, supra.

15. 81 CONG. REC. 3112, 75th Cong. 1st Sess.

senger-carrying motor vehicles, $150,000

Mr. Chairman, there might be a portion of that language which may conform to existing law, but I make the point of order because it is legislation and does not conform to existing law. Certainly that portion which provides for the construction of sidewalks around public reservations and municipal and United States buildings cannot be according to existing law. . . .

THE CHAIRMAN:[16] The gentleman from Oklahoma makes a point of order to the language beginning in line 22, page 79, down to and including line 4, on page 80

The Chair has had occasion in several instances during the course of the consideration of this bill to invite attention to the so-called Gas Tax Act and the provisions therein relating to the improvement and betterment of the streets and roads. The Chair feels for the reasons heretofore stated in passing upon several other points of order very similar in application to the pending question that these improvements, such as paving, sidewalk improvement, and all of those various activities, come within the scope of this act to which reference has been made; therefore these activities are authorized by existing law, and the Chair overrules the point of order.

— *For Motor Vehicles Licenses*

§ 14.18 An appropriation for the purchase of motor vehicle identification plates out of the special fund created by the District of Columbia Gasoline Tax Act was held not to be authorized by the act.

On Apr. 2, 1937,[17] the Committee of the Whole was considering H.R. 5996, a District of Columbia appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

For the purchase of motor-vehicle identification number plates, $20,000.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I desire to interpose a point of order against the language beginning in line 16, page 81, "For the purchase of motor-vehicle identification number plates, $20,000", for the reason it is legislation on an appropriation bill, which is contrary to the rules of the House. . . .

THE CHAIRMAN:[18] The gentleman from Oklahoma makes a point of order against the language appearing in lines 16 and 17 on page 81. The Chair is of the opinion the so-called Gas Tax Act, to which reference has been made on several occasions during the consideration of this bill, does not authorize appropriation out of that fund to provide for these identification plates, and so forth. The Chair therefore sustains the point of order.

Purchase of Municipal Asphalt Plant.

§ 14.19 Language in the District of Columbia appropria-

16. Jere Cooper (Tenn.).

17. 81 CONG. REC. 3112, 3113, 75th Cong. 1st Sess.

18. Jere Cooper (Tenn.).

tion bill authorizing the Commissioners to purchase a municipal asphalt plant for which no authorization was cited was ruled out as unauthorized and not in order on a general appropriation bill.

On Apr. 2, 1937,[19] 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:

> The Clerk read as follows:
>
> For current work of repairs to streets, avenues, roads, and alleys, including the reconditioning of existing gravel streets and roads; for cleaning snow and ice from streets, sidewalks, cross walks, and gutters in the discretion of the Commissioners; and including the purchase, exchange, maintenance, and operation of non-passenger-carrying motor vehicles used in this work, $800,000: *Provided,* That the Commissioners of the District of Columbia, should they deem such action to be to the advantage of the District of Columbia, are hereby authorized to purchase a municipal asphalt plant at a cost not to exceed $30,000: *Provided further,* That appropriations contained in this act for highways, sewers, city refuse, and the water department shall be available for snow removal when specifically and in writing ordered by the Commissioners.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order against the paragraph on page 77, beginning in line 9 after the semicolon, the following language:

> And including the purchase, exchange, maintenance, and operation of non-passenger-carrying motor vehicles used in this work, $800,000.

I might make this in sections, Mr. Chairman, but I will make it all at once. I make a point of order against the following language on page 77, line 11:

> *Provided,* That the Commissioners of the District of Columbia, should they deem such action to be to the advantage of the District of Columbia, are hereby authorized to purchase a municipal asphalt plant at a cost not to exceed $30,000: *Provided further,* that appropriations contained in this act for highways, sewers, city refuse, and the water department shall be available for snow removal when specifically and in writing ordered by the Commissioners.

I make a point of order against these provisions on the ground that they are legislation and change existing law. . . .

THE CHAIRMAN:[20] While the Chair is constrained to agree with many of the observations made by the gentleman from Mississippi, yet the Chair is of the opinion that the inclusion of the words in lines 14 and 15, as follows: "and hereby authorized to purchase a municipal asphalt plant", and so forth, together with the failure to point out to the Chair the provision of existing law authorizing such an activity, makes this legislation on an appropriation bill, and therefore sustains the point of order.

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19. 81 CONG. REC. 3111, 3112, 75th Cong. 1st Sess.

20. Jere Cooper (Tenn.).

§ 15. Environment and Interior

Environmental Protection Agency

§ 15.1 A paragraph in a general appropriation bill containing funds to enable the Administrator of the Environmental Protection Agency to obtain reports as to the probable adverse effect on the economy of certain federal environmental actions, and reappropriating funds generally available to the Administrator for the preparation of such reports, was conceded to be unauthorized by law and was ruled out on a point of order.

On June 23, 1971,[1] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9270), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> The sum of $6,300,000, together with such additional funds as may be necessary to be derived from general administrative funds available to the Administrator, is appropriated to enable the Administrator to obtain, except where there is determined to be an imminent hazard to human life, in advance of determination of action to be taken or recommended from those agencies of Government or other entities, governmental or private, which are required to file reports on major Federal actions determined to have a significant effect on the quality of the human environment, reports as to the probable adverse effect on the economy, including employment and unemployment, if such action is taken and the project or proposed action is delayed or terminated. And, if necessary, the Administrator is authorized to reimburse the affected agency of Government or other entities for the reasonable costs of preparing such reports, if additional work is required.[2]

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I rise for the purpose of making a point of order with regard to the language appearing on page 28, lines 8 through 24, of the bill, which constitutes, in my opinion, and also in the language in the report, legislation on an appropriation bill and therefore is violative of the rules of the House.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I would like to be heard on the point of order and say, if I may, the committee agrees as to the point of order on the bill. Of course, we do not agree as to the point of order in the report. We wrote this in the report and, if I may pursue this a little further, we were asked to appropriate all of this money through the agency without any safeguard being written around how it would be handled. We did not ask for a rule on it, but until the gentleman in the well

1. 117 CONG. REC. 21641, 92d Cong. 1st Sess.

2. The whole paragraph was conceded to be subject to a point of order. See H. Rept. No. 92–289.

and others who are responsible, on very fine legislative committees, get around to writing some kind of a restriction or a guideline for this environmental protection agency and for the administrator, we are in a bad way, in my opinion, unless we have this language in here. It was for that reason that we wrote it in here trying to hold the line until the legislative committees could act. We readily concede that it is subject to a point of order, and if the gentleman or others insist on knocking it out, all they have to do is make the point of order. . . .

THE CHAIRMAN:[3] The gentleman from Mississippi (Mr. Whitten), concedes the point of order to the language appearing between lines 8 and 24 on page 28 of the bill on the ground that it does provide funds for carrying out a function not previously authorized by enabling legislation Therefore it does constitute legislation on an appropriation bill, and the Chair sustains the point of order.

Federal Funds for Outside Review Board

§ 15.2 A paragraph in a general appropriation bill making funds available to the Administrator of the Environmental Protection Agency to establish an independent grant and contract review board to review the priorities of the agency and its award of contracts was conceded to be subject to a point of order and was ruled out as unauthorized by law.

On June 23, 1971,[4] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9270), a point of order was raised against the following provision:

The Clerk read as follows:

The sum of $2,500,000, together with such additional funds as may be necessary to be derived from general administrative funds available to the Administrator, is appropriated to provide for an independent grant and contract review board made up of qualified persons selected to review the agency's priorities and to assume that such contracts and grants are awarded only to qualified research agencies or individuals consistent with national economic and environmental needs.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I make the same point of order on which the Chair has just ruled, namely, that the language beginning on page 28 at line 25 and continuing through line 8 on page 29 again constitutes legislation in an appropriation bill, and so is violative of the rules. Again I renew my point of order in that this appropriation has not been previously authorized.

THE CHAIRMAN:[5] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, the committee takes the same view and concedes the point of order.

3. James C. Wright, Jr. (Tex.).

4. 117 CONG. REC. 21641, 21642, 92d Cong. 1st Sess.

5. James C. Wright, Jr. (Tex.).

THE CHAIRMAN: The gentleman from Mississippi concedes the point of order, so the point of order is sustained.

River and Harbor Projects; Lump Sum

§ 15.3 A point of order was held not to lie against a lump-sum appropriation for river and harbor projects on the ground that some of the projects enumerated in the committee report for allocation of funds had not been authorized, since language in the bill limited use of the appropriation to "projects authorized by law."

On June 18, 1958,[6] the Committee of the Whole was considering H.R. 12858. At one point the Clerk read as follows, and proceedings ensued as indicated below:

CONSTRUCTION, GENERAL

For the prosecution of river and harbor, flood control, shore protection, and related projects authorized by law; detailed studies, and plans and specifications, of projects (including those for development with participation or under consideration for participation by States, local governments, or private groups) authorized or made eligible for selection by law (but such studies shall not constitute a commitment of the Government to construction); and not to exceed $1,600,000 for transfer to the Secretary of the Interior for conservation of fish and wildlife as authorized by law; to remain available until expended $577,085,500. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[7] The gentleman will state it.

MR. TABER: Mr. Chairman, I make a point of order against the paragraph.

THE CHAIRMAN: The gentleman will state the paragraph.

MR. TABER: The paragraph beginning page 3, line 22 and ending on page 5, line 9, on the ground it contains funds the appropriation which has not been authorized by law. The figure there is $577,085,500. I am advised by the Corps of Engineers, by letter dated June 11, 1958, that there is contained here $57,702,253 in projects which are not authorized by law. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The language is very specific. As the chairman of the Committee on Appropriations pointed out a moment ago, beginning on line 23, page 3, the language is as follows:

> For the prosecution of river and harbor, flood control, shore protection, and related projects authorized by law.

Then further, as again pointed out by the chairman, there is this language on the bottom of page 4:

> That no part of this appropriation shall be used for projects not authorized by law.

Now, that language, in the opinion of the Chair, is quite specific in that none

6. 104 CONG. REC. 11646, 85th Cong. 2d Sess.

7. Hale Boggs (La.).

of these funds, regardless of the amount involved, can be used for any project which is not authorized by law.

The Chair overrules the point of order.

§ 15.4 To an appropriation bill providing a lump sum for construction of river and harbor projects authorized by law, an amendment to allocate part of the lump-sum appropriation to three projects not authorized by law (although provided for in an authorization bill which had passed the House) was ruled out of order.

On June 19, 1958,[8] the Committee of the Whole was considering H.R. 12858, a bill making appropriations for civil functions administered by the Department of the Army and certain agencies of the Department of the Interior. During consideration, a point of order was raised and sustained against an amendment, as follows:

CONSTRUCTION, GENERAL

For the prosecution of river and harbor, flood control, shore protection, and related projects authorized by law . . . $577,085,500. . . .

MR. [FRANK J.] BECKER [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Becker: Page 4, line 8, immediately preceding the colon, insert the following: "of which $1,370,000, shall be used to initiate (1) the Fire Island Inlet beach erosion project, in accordance with the recommendations of the Chief of Engineers contained in House Document No. 411, 84th Congress; (2) the Irondequoit Bay dredging and beach erosion project in accordance with the recommendations of the Chief of Engineers contained in House Document No. 332, 84th Congress; and (3) the Eel River, Calif., flood control project in accordance with recommendations of the Chief of Engineers contained in House Document No. 80, 85th Congress." . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill and is not authorized by law.

THE CHAIRMAN:[9] Will the gentleman from New York [Mr. Becker], as author of the amendment, cite the authority wherein these projects are authorized by law?

MR. BECKER: Mr. Chairman, these projects are not authorized by law any more than the question which was raised yesterday on the point of order on the previous projects and surveys. These are authorized in the bill that was passed yesterday, the omnibus public works bill. Therefore, I know it is not signed into law, but it was passed by the House yesterday and this method is being used to try to expedite the work and get the projects done.

THE CHAIRMAN: The gentleman has pointed out that these projects are in-

8. 104 CONG. REC. 11646, 11763, 11764, 85th Cong. 2d Sess.

9. Wilbur D. Mills (Ark.).

cluded in the bill which passed the House on yesterday, but as the gentleman knows that bill has not yet become law. These projects, therefore, do not meet the requirements of eligibility and the Chair must, therefore, under the rules sustain the point of order made by the gentleman from New York [Mr. Taber].

Protection of Deer; Leasing of Land For

§ 15.5 A provision of law giving general authorization for wildlife conservation activities was held not to authorize earmarking part of an appropriation to be expressly "for the leasing and management of the lands for the protection of the Florida Key deer."

On Apr. 28, 1953,[10] the Committee of the Whole was considering H.R. 4828, an Interior Department appropriation. A point of order was raised against the following amendment:

Amendment offered by Mr. Lantaff: On page 20, line 6, immediately following the semicolon and preceding the word "and", insert the following: "not to exceed $10,000 for the leasing and management of the lands for the protection of the Florida Key deer, 16 U.S.C. 661."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I hate to do it, but I must make a point of order against this amendment. It is not authorized by law.

THE CHAIRMAN:[11] Does the gentleman from Florida desire to be heard on the point of order?

MR. [WILLIAM C.] LANTAFF [of Florida]: Yes, Mr. Chairman. The reference to the United States Code authorizes the leasing of lands by the Department of Interior and is so cited for that purpose This specific authorization is to authorize the leasing of land in this particular area for this particular project and classifies it much the same as the authorization contained in the bill for the Wichita Mountains Wildlife Refuge and for the Crab Orchard National Wildlife Refuge. In the bill you will find the statutory authority cited the same as the statutory authority cited in the amendment which I have offered. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair has inspected section 661 of title 16 of the United States Code, the provision which the gentleman from Florida cites as authorizing the proposal contained in his amendment. That code section gives fairly broad authorization to the Fish and Wildlife Service for wildlife conservation, but it does not authorize leasing of lands or the protection of key deer. The gentleman's amendment would earmark funds for a narrow, specific purpose, a purpose not mentioned in the code section which is general. Reference is made to volume VII, section 1452, of Cannon's Precedents, under which the Chair sustains the point of order.

Parliamentarian's Note: Where the authorizing law confers discre-

10. 99 CONG. REC. 4148, 83d Cong. 1st Sess.

11. J. Harry McGregor (Ohio).

tion on an executive in allotting funds, authorization for a general appropriation is not to be construed as authorizing an appropriation for a specific purpose. 7 Cannon's Precedents § 1452 states that, while the appropriation of a lump sum for a general purpose authorized by law is in order, a specific appropriation for a particular item included in such general purpose is a limitation on the discretion of the executive charged with allotment of the lump sum and is not in order on an appropriation bill.

New Function of Government Created by Executive Order

§ 15.6 An appropriation for the Division of Geography in the Department of the Interior, for the performance of duties imposed by Executive order with respect to uniform usage in orthography throughout the federal government was conceded and held not to be authorized by law.

On May 10, 1946,[12] the Committee of the Whole was considering H.R. 6335, an Interior Department appropriation. A point of order was raised against the following paragraph in the bill:

> DIVISION OF GEOGRAPHY
>
> Salaries and expenses: For all necessary expenses of the Division of Geography, in performing the duties imposed upon the Secretary by Executive Order 6680, dated April 17, 1934, relating to uniform usage in regard to geographic nomenclature and orthography throughout the Federal Government, including personal services in the District of Columbia, stationery and office supplies, and printing and binding, $12,956.
>
> MR. [EVERETT M.] DIRKSEN [of Illinois]: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[13] The gentleman will state it.
>
> MR. DIRKSEN: I make a point of order against the language appearing in lines 3 to 11 on page 3, on the ground that there is no authority of law for the inclusion of this item. . . .
>
> MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, as much as it deeply pains me to do so, I must concede the point of order.
>
> THE CHAIRMAN: The gentleman from Illinois makes a point of order, which is conceded by the gentleman from Oklahoma. The point of order is sustained.

Appropriation for Presidential Committee

§ 15.7 Appropriations for the National Power Policy Committee to be used by the com-

12. 92 CONG. REC. 4828, 79th Cong. 2d Sess.

13. Jere Cooper (Tenn.)

mittee in the performance of functions prescribed by the President, were conceded not to be authorized by law.

On Mar. 25, 1942,[14] the Committee of the Whole was considering H.R. 6845, an Interior Department appropriation. At one point a point of order was raised against a portion of the following paragraph:

> Salaries: For the Secretary of the Interior, Under Secretary, First Assistant Secretary, Assistant Secretary, and other personal services in the District of Columbia, including a special assistant to the Secretary of the Interior to be appointed without reference to civil-service requirements, at a salary of not to exceed $5,000, and including $28,520 for the National Power Policy Committee, to be used by said committee in the performance of the functions prescribed for it by the President of the United States, $1,027,170: *Provided*, That no part of the appropriation made available to the office of the Secretary by this section shall be used for the broadcast of radio programs designed for or calculated to influence the passage or defeat of any legislation pending before the Congress.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the words beginning in line 8, on page 74, with the word "and" and including the following words which I shall read—
>
> and including $28,520 for the National Power Policy Committee, to be used by said committee in the performance of the functions prescribed for it by the President of the United States—
>
> on the ground that this is not authorized by law, that it is legislation on an appropriation bill, and that there is no authority anywhere for this appropriation to the National Power Policy Committee.
>
> MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, the words to which the gentleman refers are conceded by the committee to be subject to a point of order. . . .
>
> THE CHAIRMAN:[15] The gentleman from New York makes a point of order against certain language quoted by him. The point of order is conceded by the chairman in charge of the bill, and therefore the point of order is sustained.

Storage Buildings; Limitation on Funds for Unauthorized Project

§ 15.8 An appropriation for the construction of buildings for storage of equipment used for forest roads and trail construction and including a stated limit of cost for construction of any such building was held unauthorized by law and to be legislation establishing a total cost of construction.

On Mar. 28, 1939,[16] the Committee of the Whole was consid-

14. 88 CONG. REC. 2926, 77th Cong. 2d Sess.

15. Jere Cooper (Tenn.)

16. 84 CONG. REC. 3458, 76th Cong. 1st Sess.

ering H.R. 5269, an Agriculture Department appropriation. At one point the Clerk read as follows, and proceedings ensued as indicated below:

FOREST ROADS AND TRAILS

For carrying out the provisions of section 23 of the Federal Highway Act approved November 9, 1921 (23 U.S.C. 23), including not to exceed $59,500 for departmental personal services in the District of Columbia, $10,000,000, which sum consists of the balance of the amount authorized to be appropriated for the fiscal year 1939 by the act approved June 16, 1936 (Stat. 1520), and $3,000,000 of the amount authorized to be appropriated for the fiscal year 1940 by the act approved June 8, 1938 (52 Stat 635), to be immediately available and to remain available until expended: *Provided*, That this appropriation shall be available for the rental, purchase, or construction of buildings necessary for the storage of equipment and supplies used for road and trail construction and maintenance, but the total cost of any such building purchased or constructed under this authorization shall not exceed $7,500.[17]

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph that this is legislation on an appropriation bill providing for the construction of a building at a limit beyond that authorized by law.

THE CHAIRMAN:[18] Does the gentleman make the point of order against the proviso or against the entire paragraph?

MR. TABER: Against the paragraph.

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

MR. [CLARENCE] CANNON of Missouri: I may say, Mr. Chairman, that this provision in the bill is the only limiting authority. If the gentleman can cite us to some other authority establishing the limitation, I should be pleased to have the citation. There is no other limitation, Mr. Chairman, and the point of order is not well taken.

MR. TABER: There is no authorization for it at all.

THE CHAIRMAN: The point of order is sustained.

Authority to Make Payroll Deductions

§ 15.9 Language in a general appropriation bill providing that the Secretary of the Interior, in his administration of the Bureau of Reclamation, is authorized to contract for medical services for employees and to make necessary payroll deductions agreed to by the employees, was held unauthorized by law.

The provision and the ruling thereon by the Chairman are discussed in the following section.[19]

17. The latter provision could be considered an interference with executive discretion, therefore legislation.

18. Wright Patman (Tex.).

19. § 15.10, infra.

Authority to Settle Claims

§ 15.10 Language in a general appropriation bill providing in part an appropriation for payment of damages caused to the owners of lands by reason of the operations of the United States in the construction of irrigation works which may be "compromised by agreement between the claimants and the Secretary of the Interior, or such officers as he may designate," was held to constitute legislation.

On Mar. 1, 1938,[20]) the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. At one point points of order were directed to portions of the following paragraph:

> Administrative provisions and limitations: For all expenditures authorized by the act of June 17, 1902, and acts amendatory thereof or supplementary thereto, known as the reclamation law, and all other acts under which expenditures from said fund are authorized, including . . . payment of damages caused to the owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of irrigation works, and which may be compromised by agreement between claimant and the Secretary of the Interior, or such officers as he may designate . . . *Provided,* That the Secretary of the Interior in his administration of the Bureau of Reclamation is authorized to contract for medical attention and service for employees and to make necessary pay-roll deductions agreed to by the employees therefor. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph that it is legislation on an appropriation bill and contains items not authorized by law.

I call the attention of the Chair to the language on page 72, line 22, "examination of estimates for appropriations in the field," and at the bottom of the page, "for lithographing, engraving, printing, and binding," and in line 20 of the same page, "for photographing and making photographic prints," and then at the top of page 73, "purchase of rubber boots for official use by employees," and in the middle of the page, at line 12, "and which may be compromised by agreement between the claimant and the Secretary of the Interior or such officers as he may designate," giving him authority to do things that the law does not authorize. . . .

THE CHAIRMAN:[1] The Chair is of opinion that the paragraph is subject to the point of order for two reasons. First, page 73, line 12, after the word "works", the language—

> and which may be compromised by agreement between the claimant and the Secretary of the Interior, or such officers as he may designate.

20. 83 CONG. REC. 2655, 75th Cong. 3d Sess.

1. Marvin Jones (Tex.)

Then, going down to the last line on page 73, after the colon, the language:

> *Provided*, That the Secretary of the Interior in his administration of the Bureau of Reclamation is authorized to contract for medical attention and services for employees and to make necessary pay-roll deductions agreed to by the employees therefor.

For these reasons the Chair sustains the point of order.

Division of Grazing; Travel and Per Diem

§ 15.11 Language in a general appropriation bill providing payment of a salary of $5 per diem and necessary travel expenses of members of advisory committees of local stockmen under the Division of Grazing in the Department of the Interior, was held unauthorized by law.

On Feb. 28, 1938,[2] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation, when the following paragraph was read:

DIVISION OF GRAZING

> For carrying out the provisions of the act entitled "An act to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes," . . . not to exceed $1,000 for expenses of attendance at meetings concerned with the work of the Division of Grazing when authorized by the Secretary of the Interior, $550,000; (for payment of a salary of $5 per diem while actually employed and for the payment of necessary travel expenses, exclusive of subsistence, of members of advisory committees of local stockmen, $100,000); in all, $650,000.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the language beginning with the word "for" [following the figure of $550,000] down to the dollar sign "$100,000", in line 12, on the ground it is not authorized by law.

MR. [JED] JOHNSON [of Oklahoma]: Mr. Chairman, we admit this is legislation, but it is extremely desirable and I hope the gentleman will not press the point of order.

MR. TABER: Mr. Chairman, the appropriation for this item is all out of line with the justification given at the hearings and, frankly, I shall have to insist on my point of order.

THE CHAIRMAN:[3] The Chair is ready to rule.

The gentleman from New York [Mr. Taber] makes a point of order against the language beginning with the word "for", line 8, page 5, and continuing down to and including the word "$650,000", in line 12 of the same page.

This being in the form of legislation it is clearly subject to the point of order, and the Chair therefore sustains the point of order.

2. 83 CONG. REC. 2548, 75th Cong. 3d Sess.

3. Marvin Jones (Tex.)

Fund for Emergencies of Confidential Character

§ 15.12 Language in a general appropriation bill providing for an appropriation for the Division of Investigations in the Department of the Interior, to be expended under the direction of the Secretary of the Interior to meet unforeseen emergencies of a confidential character was held unauthorized by law.

On Feb. 28, 1938,[4] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. A point of order was sustained against the following paragraph because of language included therein:

> For investigating official matters under the control of the Department of the Interior; for protecting timber on the public lands, and for the more efficient execution of the law and rules relating to the cutting thereof; for protecting public lands from illegal and fraudulent entry or appropriation; for adjusting claims for swamplands and indemnity for swamplands; and for traveling expenses of agents and others employed hereunder, $440,000, including not exceeding $34,000 for personal services in the District of Columbia; not exceeding $38,000 for the purchase, exchange, operation, and maintenance of motor-propelled passenger-carrying vehicles and motorboats for the use of agents and others employed in the field service; [and not to exceed $5,000 to meet unforeseen emergencies of a confidential character,] to be expended under the direction of the Secretary of the Interior, who shall make a certificate of the amount of such expenditure as he may think is advisable not to specify, and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended.
>
> MR. [ROBERT L.] BACON [of New York]: Mr. Chairman, I make the point of order against the paragraph, because it sets up a new division of investigation for which there is no authority of law. This division of investigation was originally created as an emergency in connection with the work of the Public Works program. They now seek to continue it as a permanent proposition, although the Public Works program is on its way out, and no new contracts are being let. This is an entirely new provision for which there is no authority of law, and it is clearly legislation on an appropriation bill. . . .
>
> THE CHAIRMAN:[5] The Chair is ready to rule. The provision on page 4, lines 5 and 6, which provides that not to exceed $5,000 to meet unforeseen emergencies of a confidential character may be expended, is clearly not authorized by existing law. The Chair sustains the point of order to the paragraph, without considering the other points.

Timber Protection

§ 15.13 An appropriation for a Division of Investigations,

4. 83 CONG. REC. 2545, 75th Cong. 3d Sess.

5. Marvin Jones (Tex.).

for protecting timber on public lands, was held authorized under existing law.

On Feb. 28, 1938,[6] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. A point of order was raised against the following amendment:

DIVISION OF INVESTIGATIONS

For protecting timber on the public lands, and for the more efficient execution of the law and rules relating to the cutting thereof; for protecting public lands from illegal and fraudulent entry or appropriation; for adjusting claims for swamplands and indemnity for swamplands; and for traveling expenses of agents and others employed hereunder, $440,000, including not exceeding $34,000 for personal services in the District of Columbia; not exceeding $38,000 for the purchase, exchange, operation, and maintenance of motor-propelled passenger-carrying vehicles and motorboats for the use of agents and others employed in the field service.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph. There is no authority of law for a division of investigating. Some of the things that are specified there may be authorized, but a division of investigation is not authorized.

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, this is merely the name of the organization which is carrying on this work, which is clearly authorized by title XVI, chapter 4, United States Code, and certainly is not subject to the point of order.

THE CHAIRMAN:[7] The Chair is ready to rule. The language embodied in the amendment proper is clearly authorized by existing law for protecting timber, and so forth. It seems clear that incidental to such authority the power to conduct the investigation in the handling of that and to properly handle it, would be entirely in order. The Chair overrules the point of order.

Virgin Islands Deficits

§ 15.14 An appropriation for defraying the deficits in the treasuries of the municipal governments of the St. Thomas and St. John Islands was held not to be authorized by law.

On May 20, 1937,[8] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation. A point of order was sustained against the following paragraph for the reasons stated:

For defraying the deficits in the treasuries of the municipal governments because of the excess of current expenses over current revenues for the fiscal year 1938, municipality of St. Thomas and St. John, $60,000, and municipality of St. Croix, $50,000; in

6. 83 CONG. REC. 2545, 75th Cong. 3d Sess.

7. Marvin Jones (Tex.).

8. 81 CONG. REC. 4873, 75th Cong. 1st Sess.

all, $110,000, to be paid to the said treasuries in monthly installments.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Chairman, I reserve the point of order on lines 9 to 14, page 126, to ask some questions of the chairman of the committee. What provision of law is there providing that we should pay the deficits of the municipalities of the Virgin Islands, as carried in lines 9 to 14?

Mr. [JED] JOHNSON of Oklahoma: I will say to the gentleman that the authority for the administration of the Virgin Islands is to be found in title 48, section 1391, United States Code. Although there is no specific provision of law providing for the payment of deficits of a municipality, the committee felt that the law is sufficiently broad to grant authority for this purpose. . . .

Mr. Chairman, I read from section 1391:

> Under jurisdiction of the Governor; except as provided in this chapter, all military, civil, and judicial powers of the United States to govern the West India Islands acquired from Denmark, shall be vested in the Governor and in such person or persons as the President shall direct. The Congress shall provide for the government of said islands; provided that the President may assign an officer of the Army or the Navy to serve as such Governor—

And so forth. This is the section that the Budget referred the committee to, and it will be noted that the authority is general but broad in its scope.

MR. SNELL: I do not see anything in there that says that the Federal Government is responsible for all municipal deficits.

MR. JOHNSON of Oklahoma: Nor do I see the specific authority, but I will say to the gentleman that this item has been carried in the bill year after year and no one has ever raised the question as to the authority heretofore. Undoubtedly it was the intent of Congress to confer that authority. . . .

THE CHAIRMAN:[9] The Chair is prepared to rule.

The gentleman from New York [Mr. Snell] makes a point of order against the paragraph appearing in lines 9 to 14, inclusive, on page 126 of the bill on the ground that the appropriation there sought to be made is not authorized by existing law.

The Chair has examined section 1391 of title 48 of the United States Code, to which reference was made by the gentleman from Oklahoma [Mr. Johnson]. It appears to the Chair that this provision of law authorizes the establishment of a government for the West Indies Islands, acquired from Denmark, and vests certain discretionary authority in the President until the Congress shall provide for the government of said islands. The Chair is unable to find any definite, specific provision of law included in this section which, in the opinion of the Chair, would authorize the appropriation here sought to be made.

The Chair has likewise examined the act of Congress approved June 22, 1936, to provide a civil government for the Virgin Islands of the United States, and in neither the provision of law cited by the gentleman from Oklahoma nor the act to which the Chair has referred does the Chair find sufficient authority of law to authorize appropriations for municipal deficits in the municipalities set out in this provision of the bill.

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9. Jere Cooper (Tenn.).

The Chair is of the opinion that the appropriation is not authorized by existing law, as it is here sought to be made, and therefore sustains the point of order.

Streets Adjacent to National Park

§ 15.15 A proposition to resurface city streets adjacent to Hot Springs National Park was held to be without authority of law.

On May 14, 1941,[10] the Committee of the Whole was considering H.R. 4590, an Interior Department appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Hot Springs National Park, Ark.: For administration, protection, maintenance, and improvement, including not exceeding $1,400 for the purchase, maintenance, operation, and repair of motor-driven passenger-carrying vehicles for the use of the superintendent and employees in connection with general park work, $77,890.

MR. [WILLIAM F.] NORRELL [of Arkansas]: Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. Norrell: On page 109, line 8, after the word "work", strike out the sum "$77,890", and insert "including not exceeding $7,000 for payment of the Federal Government's share of resurfacing and reconstructing of Reserve Avenue from its intersection with Cottage Street at the entrance to the Army and Navy Hospital northeasterly to its intersection with Palm Street and that portion of Spring Street and Laurel Street immediately adjacent to and surrounding the grounds on which the Government free bathhouses are located, $84,890."

MR. [ALBERT E.] CARTER [of California]: Mr. Chairman, I make a point of order against the amendment on the ground it is not authorized by law. . . .

THE CHAIRMAN:[11] Permit the Chair to inquire of the gentleman from Arkansas who owns the street that is here sought to be paved? . . .

MR. [JED] JOHNSON of Oklahoma: Answering the Chair, I am compelled to say that the Park Service advises the committee that the city has jurisdiction over that street, and in fact owns the street. That is the information given the committee. The title is in the city. . . .

MR. NORRELL: I am prepared to advise the Chairman that the Federal Government owns the fee-simple title to one-half of that street, notwithstanding anything that the Department of the Interior might say.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Arkansas offers an amendment which has been reported by the Clerk. The gentleman from California [Mr. Carter] makes the point of order against the amendment on the ground that it is not authorized by law. The Chair in-

10. 87 CONG. REC. 4057, 4058, 77th Cong. 1st Sess.

11. Jere Cooper (Tenn.).

vites the attention of the gentleman from Arkansas to section 3779, volume 4, Hinds' Precedents, which appears to the Chair to be directly in point on the question presented. This section reads as follows:

> A proposition to repair paving originally laid by the Government in a city street adjacent to a public building was held not to be in continuation of a public work.
>
> A proposition to pave city streets adjacent to a public building was held to be without authority of law.
>
> By reason of that decision and that precedent, the Chair feels that he is compelled to sustain the point of order. The Chair therefore sustains the point of order, and the Clerk will read.

Telephones in Government-owned Residences

§ 15.16 Installation of telephones in government-owned residences occupied by employees of the National Park Service was held to be authorized by law.

On Mar. 16, 1939,[12] the Committee of the Whole was considering H.R. 4852, an Interior Department appropriation. The following amendment was the subject of a point of order:

> Amendment offered by Mr. [Jed] Johnson of Oklahoma: On page 117, after line 8, insert:
>
> Appropriations herein made for the National Park Service shall be available for the installation and operation of telephones in Government-owned residences, apartments, or quarters occupied by employees of the National Park Service.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against that amendment in that it goes so far as to include quarters occupied by employees of the National Park Service, which is beyond the authority of the law.

MR. JOHNSON of Oklahoma: Mr. Chairman, these are Government-owned residences and this service is a necessary incident to the proper carrying out of the work of the Department of the Interior. If the residences in question were privately owned, there might be a question about the point of order, but certainly the language to which the gentleman objects could not possibly be construed as being subject to a point of order under the circumstances and facts stated.

THE CHAIRMAN:[13] The Chair is ready to rule. If the cottages, residences, and so forth, were privately owned, the point of order made by the gentleman from New York [Mr. Taber] might lie, but these are entirely Government-owned residences and the installation appears to be necessary and incident to the operation of the National Park Service, and for that reason the point of order is overruled.

Park Service—Educational Services

§ 15.17 An appropriation for the development of edu-

12. 84 CONG. REC. 2893, 76th Cong. 1st Sess.

13. Frank H. Buck (Calif.).

cational work of the National Park Service was held authorized under the law stating the fundamental purpose of parks, monuments, and reservations to be to conserve the scenery and the natural and historic objects and to provide for the enjoyment of the same in such manner as would leave them unimpaired for the enjoyment of future generations.

On Mar. 16, 1939,[14] the Committee of the Whole was considering H.R. 4852, an Interior Department appropriation. A point of order was directed against the bracketed language in the following paragraph:

NATIONAL PARK SERVICE

Salaries: For the Director of the National Park Service and other personal services in the District of Columbia, including accounting services in checking and verifying the accounts and records of the various operators, licensees, and permittees conducting utilities and other enterprises within the national parks and monuments, and including the services of specialists and experts for investigations and examinations of lands to determine their suitability for national-park and national-monument purposes: *Provided,* That such specialists and experts may be employed for temporary service at rates to be fixed by the Secretary of the Interior to correspond to those established by the Classification Act of 1923, as amended, and without reference to the Civil Service Act of January 16, 1883, $259,580, of which amount not to exceed $19,200 may be expended for the services of field employees engaged in examination of lands [and in developing the educational work of the National Park Service. . . .]

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the language appearing in lines 3 and 4, on page 105, reading, "and in developing the educational work" on the ground that there is no law authorizing the Department to go into educational work. . . .

THE CHAIRMAN:[15] The Chair is ready to rule.

The section that the gentleman from Oklahoma has called attention to is the basic law governing the National Park Service, and provides for the enjoyment of the same in such manner and by such means as will leave it unimpaired for the enjoyment of future generations.

Certainly the education that may be offered by the National Park Service in dealing with its own features and wildlife is a means which will leave the parks unimpaired for the enjoyment of future generations.

In addition to that, may the Chair call the attention of the Committee to a ruling made on March 2, 1938, in the Committee of the Whole when it was considering the Interior Department appropriation bill, at which time a point of order was made against the paragraph that follows this one be-

14. 84 CONG. REC. 2890, 2891, 76th Cong. 1st Sess.

15. Frank H. Buck (Calif.).

cause of the motion-picture feature. The Chairman at that time ruled that this was a necessary incident to the carrying on of the activities of the National Park Service and certainly must be regarded as in part, at least, educational.

Under that precedent and with the Chair's present understanding of the purport of the basic law, the Chair overrules the point of order.

— *Educational Lectures*

§ 15.18 An appropriation for educational lectures in national parks and other reservations under the National Park Service was held authorized under the law stating the fundamental purpose of such parks and reservations to be to conserve the natural and historical objects and to provide for the enjoyment of the same in such manner as to leave them unimpaired for the enjoyment of future generations.

On Mar. 16, 1939,[16] the Committee of the Whole was considering H.R. 4852, an Interior Department appropriation At one point the Clerk read as follows, and proceedings ensued as indicated below:

Appropriations herein made for the national parks, national monuments, and other reservations under the jurisdiction of the National Park Service, shall be available for the giving of educational lectures therein; for the services of field employees in cooperation with such nonprofit scientific and historical societies engaged in educational work in the various parks and monuments as the Secretary, in his discretion, may designate; and for travel expenses of employees attending Government camps for training in forest-fire prevention and suppression.

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, on page 116, at line 23, where it states "shall be available for the giving of educational lectures therein," I make a point of order against that language.

THE CHAIRMAN:[17] The Chair overrules the point of order for the same reason that a similar point of order has been overruled.[18]

Park Service Photographic Supplies

§ 15.19 Language in a general appropriation bill providing appropriations for photographic supplies, prints, and motion picture films for the National Park Service was held authorized by law since incidental to the work of the Service.

On Mar. 2, 1938,[19] the Committee of the Whole was consid-

16. 84 CONG. REC. 2893, 76th Cong. 1st Sess.

17. Frank H. Buck (Calif.).

18. See § 15.17, supra.

19. 83 CONG. REC. 2715, 2716, 75th Cong. 3d Sess.

ering H.R. 9621, an Interior Department appropriation. The following paragraph was the subject of a point of order:

> General expenses: For every expenditure requisite for and incident to the authorized work of the office of the Director of the National Park Service not herein provided for, including traveling expenses, telegrams, photographic supplies, prints, and motion-picture films, necessary expenses of attendance at meetings concerned with the work of the National Park Service when authorized by the Secretary of the Interior, and necessary expenses of field employees engaged in examination of lands and in developing the educational work of the National Park Service, $28,500: *Provided*, That necessary expenses of field employees in attendance at such meetings, when authorized by the Secretary, shall be paid from the various park and monument appropriations.
>
> MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make a point of order against this paragraph, because the motion-picture feature of it is not authorized by law. . .
>
> THE CHAIRMAN: [20] The Chair is of the opinion that this is a necessary incident to the carrying on of the National Park Service, and, therefore, overrules the point of order.

Boulder Canyon Project

§ 15.20 An appropriation for the continuation of construction of a diversion dam and main canal as part of the Boulder Canyon project was held to be authorized by the Boulder Canyon Act.

On Jan. 31, 1936,[1] the Committee of the Whole was considering H.R. 10630, a Department of the Interior appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> Amendment by Mr. [Edward T.] Taylor of Colorado for the committee: On page 69, after line 9, insert a new paragraph to read as follows:
>
> "Boulder Canyon project (All-American Canal): For continuation of construction of a diversion dam and main canal (and appurtenant structures) located entirely within the United States connecting the diversion dam with the Imperial and Coachella Valleys in California; to acquire by proceedings in eminent domain or otherwise all lands, rights-of-way, and other property necessary for such purposes; and for incidental operations, as authorized by the Boulder Canyon Project Act, approved December 21, 1928 (U.S.C., Supp. VII, title 43, ch. 12-a), to be immediately available and to remain available until advanced to the Colorado River Dam fund, $6,500,000, and for all other objects of expenditure that are specified for projects included in the Interior Department Appropriation Act for the fiscal year 1937 under the caption 'Bureau of Reclamation.' '
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of

20. Marvin Jones (Tex.).

1. 80 CONG. REC. 1312, 1313, 74th Cong. 2d Sess.

order against the amendment that it is an appropriation not authorized by law. . .

THE CHAIRMAN:[2] The Chair will state that the appropriation proposed in the amendment offered by the gentleman from Colorado (Mr. Taylor) is authorized by the Boulder Canyon Project Act (U.S.C., title 43, sec. 617), a portion of which the Chair will read:

> And incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon adequate to create a storage reservoir of a capacity of not less than 20,000,000 acre-feet of water and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, which the Secretary of the Interior is hereby authorized to construct if deemed necessary or advisable by him upon engineering or economic consideration with the Imperial and Coachella Valleys, Calif.

That provision of law seems to the Chair to authorize the appropriation; therefore, the point of order is overruled.

Indian Affairs

§ 15.21 An amendment making an appropriation for financial assistance to public school districts, for the construction and equipment of public school facilities for Navaho Indian children from reservation areas not included in such districts, was held to be authorized by law.

On July 22, 1954,[3] he Committee of the Whole was considering H.R. 9936, a supplemental appropriation bill. The following proceedings took place:

MR. [JOHN J.] RHODES of Arizona: Mr. Chairman, I offer a further amendment:

> Page 10, line 7, strike out "$3,900,000" and insert in lieu thereof "$6,900,000."
>
> Page 10, line 8, after the word "expended", insert the following: "which sum is composed of $3,000,000 to provide financial assistance to public-school districts, for the construction and equipment of public-school facilities for Navaho Indian children from reservation areas not included in such districts, and $3,900,000 for payments under contracts or other obligations entered into pursuant to section 6 of the Federal Aid Highway Act of 1954 (38 Stat. 73)."

MR. [WILLIAM F.] NORRELL [of Arkansas]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill. . .

THE CHAIRMAN:[4] The Chair is ready to rule. The Chair has examined the Rehabilitation Act of the Indian tribes and feels that it is broad enough to cover the amendment. In title 25 of the United States Code, where the Navaho and Hopi Rehabilitation Act is codified, section 631 authorizes a broad program of rehabilitation, expressly including "school buildings and equipment, and other educational measures" and funds appropriated for such pur-

2. Robert L. Doughton (N.C.).

3. 100 CONG. REC. 11451, 11452, 83d Cong. 2d Sess.

4. Leo E. Allen (Ill.).

poses are authorized to be available "for all other objects necessary for or appropriate to the carrying out of the provisions of this section." Section 452 of title 25 of the United States Code authorizes the Secretary of the Interior to contract with States or subdivisions thereof for the education of Indians. Therefore, the appropriation set forth in the amendment in the opinion of the Chair is authorized by law, and the point of order is overruled.

Smithsonian Institution

§ 15.22 An appropriation for salaries and expenses for anthropological research among the American Indians and the natives of Hawaii "and other lands under the jurisdiction or protection of the United States" was held unauthorized by law.

On Feb. 8, 1945,[5] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 1984), a point of order was sustained against the following provision:

The Clerk read as follows:

[SMITHSONIAN INSTITUTION]

Salaries and expenses: For all salaries and expenses necessary for continuing preservation, exhibition, and increase of collections from the surveying and exploring expeditions of the Government and from other sources; for the system of international exchanges between the United States and foreign countries; for anthropological researches among the American Indians and the natives of Hawaii and other lands under the jurisdiction or protection of the United States, and the excavation and preservation of archeological remains. . . .

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I make a point of order against certain language on page 50, lines 18 and 19, under the heading "Smithsonian Institution," as follows:

And other lands under the jurisdiction and protection of the United States.

MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, I concede the point of order.

THE CHAIRMAN:[6] The point of order is sustained.

Expenses of Indian Tribal Councils

§ 15.23 Appropriations for expenses of tribal councils for travel, including supplies and equipment, $5 per day in lieu of subsistence, and 5 cents per mile for use of automobiles (including visits to Washington, D.C.) when authorized and approved by the Commissioner of Indian Affairs, was held not authorized by law and to include legislation.

5. 91 CONG. REC. 953, 79th Cong. 1st Sess.

6. William M. Whittington (Miss.)

On Mar. 1, 1938,[7] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. When the following amendment was offered, a point of order was raised against certain of its provisions:

> Amendment offered by Mr. Johnson of Oklahoma: Page 63, line 8, insert:
>
> "Expenses of tribal councils or committees thereof (tribal funds): For traveling and other expenses of members of tribal councils, business committees, or other tribal organizations, when engaged on business of the tribes, including supplies and equipment, not to exceed $5 per diem in lieu of subsistence, and not to exceed 5 cents per mile for use of personally owned automobiles, and including visits to Washington, D.C., when duly authorized or approved in advance by the Commissioner of Indian Affairs, $50,000, payable from funds on deposit to the credit of the particular tribe interested: *Provided,* That except for the Navajo Tribe, not more than $5,000 shall be expended from the funds of any one tribe or band of Indians for the purposes herein specified."
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it is not authorized by law and that it creates additional duties for the Commissioner of Indian Affairs and, generally, that the entire matter is unauthorized.
>
> MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, this is authorized under the Snyder Act, and I call attention to title 25, section 13, which clearly authorizes this expenditure. . . .
>
> THE CHAIRMAN:[8] The Chair is ready to rule. . . .
>
> The item to which attention has been called in the last paragraph of section 13, title 25, United States Code, includes the following language:
>
> > And for general and incidental expenses in connection with the administration of Indian affairs.
>
> It does not seem to the Chair that this language is sufficient to include the various items that are included in the amendment offered by the gentleman from Oklahoma, and the Chair therefore feels constrained to sustain the point of order.

Assistance to Indians

§ 15.24 Language in a general appropriation bill providing an appropriation for advances to Indians having irrigable allotments, to assist them in the development and cultivation thereof and thereby to enable Indians to become self-supporting, was held to be within the broad authority to appropriate for assistance of Indians, authorized by law and in order.

On Mar. 1, 1938,[9] the Committee of the Whole was considering H.R. 9621, an Interior De-

7. 83 CONG. REC. 2646, 75th Cong. 3d Sess.

8. Marvin Jones (Tex.).

9. 83 CONG. REC. 2638, 75th Cong. 3d Sess.

partment appropriation. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Jed] Johnson of Oklahoma: Page 28, after line 10, insert a new paragraph as follows:

"For the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops, $240,000, which sum may be advanced to Indians for the purchase of seeds, animals, machinery, tools, implements, and other equipment necessary, and for advances to Indians having irrigable allotments to assist them in the development and cultivation thereof, in the discretion of the Secretary of the Interior, to enable Indians to become self-supporting: *Provided,* That not to exceed $75,000 of the amount herein appropriated, together with $50,000 made available for this purpose under this head in the Interior Department Appropriation Act for the fiscal year 1938, and hereby continued available for the same purpose for the fiscal year 1939, may be advanced to the Navajo Tribe of Indians for the purchase, feeding, sale, or other disposition of sheep, goats, and other livestock belonging to the Navajo Indians."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill, not authorized by law. I make the point of order particularly to that part of the amendment which relates to advances to the Indians having irrigable lands. There is no authority for that provision. . . .

THE CHAIRMAN:[10] The Chair is ready to rule.

The point of order is made to that provision of the amendment which authorizes advances to Indians having irrigable allotments, to assist them in the development and cultivation thereof, in the discretion of the Secretary of the Interior.

Referring to title 25, United States Code, section 13, under the heading "Expenditure of appropriations by Bureau of Indian Affairs," the Chair finds that the Bureau is authorized to spend—

> such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes.

Among these purposes are listed the following:

> General support and civilization, including education.
>
> For industrial assistance and advancement and general administration of Indian property.
>
> For extension, improvement, operation, and maintenance of existing Indian irrigation systems, and for development of water supplies.

It seems clear to the Chair the appropriation is authorized under the terms of that act, and the point of order is, therefore, overruled.

Parliamentarian's Note: The discretionary authority given to the Secretary was not specifically mentioned in the point of order and was not the basis of the Chair's ruling.

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10. Marvin Jones (Tex.).

Indian Forest Lands

§ 15.25 An appropriation for the administration of Indian forest lands from which timber was sold, to be available for the expenses of such administration "to the extent only that proceeds from the sales of timber . . . are insufficient for that purpose," was authorized by the Snyder Act.

On May 14, 1937,[11] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation bill. A point of order against the following paragraph was overruled:

> For the preservation of timber on Indian reservations and allotments other than the Menominee Indian Reservation in Wisconsin, the education of Indians in the proper care of forests, and the general administration of forestry and grazing work, including fire prevention and payment of reasonable rewards for information leading to arrest and conviction of a person or persons setting forest fires, or taking or otherwise destroying timber, in contravention of law on Indian lands, $260,000: *Provided*, That this appropriation shall be available for the expenses of administration of Indian forest lands from which timber is sold to the extent only that proceeds from the sales of timber from such lands are insufficient for that purpose. . . .[12]

MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr Chairman, I make the point of order.

THE CHAIRMAN:[13] The gentleman will state the point of order.

MR. WIGGLESWORTH: I make the point of order on the paragraph upon the ground that it is legislation on an appropriation bill.

THE CHAIRMAN: Will the gentleman kindly indicate just what there is in the paragraph that constitutes legislation on an appropriation?

MR. WIGGLESWORTH: I call the Chair's attention particularly to the proviso at the conclusion of the paragraph.

THE CHAIRMAN: In what respect does the gentleman hold that that proviso constitutes legislation?

MR. WIGGLESWORTH: It seems to me that the language is clearly legislative in character and imposes additional duties to those now in existence. . . .

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Massachusetts [Mr. Wigglesworth] makes a point of order against the proviso beginning in line 24, page 23, of the pending bill, and assigns as ground for the point of order that it is legislation on an appropriation bill.

The Chair invites the gentleman's attention to section 13 of title 25 of the United States Code, commonly known as the Snyder Act, which provides for industrial assistance and advancement and general administration of Indian property. Further, the same act provides "and for general and incidental expenses in connection with the administration of Indian affairs."

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11. 81 CONG. REC. 4596, 4597, 75th Cong. 1st Sess.

12. The latter provision could actually be regarded as a limitation.

13. Jere Cooper (Tenn.).

It is the opinion of the Chair that the provisions of existing law, to which attention has been invited, contain legislative authority for the appropriation appearing in the item to which the gentleman makes a point of order.

Therefore the Chair is of the opinion that it is not legislation on an appropriation bill and overrules the point of order.

Indians—Extent of Authority Under Snyder Act

§ 15.26 Language providing an appropriation for the purpose of encouraging industry and self-support among the Indians and outlining areas of discretionary authority to be exercised by the Secretary of the Interior was held to be authorized by the Snyder Act although other language of the paragraph in question caused the entire paragraph to be ruled out as legislation.

On May 14, 1937,[14] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

For the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops, $165,000, which sum may be used for the purchase of seeds, animals, machinery, tools, implements, and other equipment necessary, and for advances to Indians having irrigable allotments to assist them in the development and cultivation thereof, in the discretion of the Secretary of the Interior, to enable Indians to become self-supporting: *Provided*, That the expenditures for the purposes above set forth shall be under conditions to be prescribed by the Secretary of the Interior for repayment to the United States on or before June 30, 1943, except in the case of loans on irrigable lands for permanent improvement of said lands, in which the period for repayment may run for not exceeding 20 years, in the discretion of the Secretary of the Interior: . . . *Provided further*, That the Secretary of the Interior is hereby authorized, in his discretion and under such rules and regulations as he may prescribe, to make advances from this appropriation to old, disabled, or indigent Indian allottees, for their support, to remain a charge and lien against their lands until paid. . . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph beginning on page 26, line 4. The point of order is that this is legislation on an appropriation bill and it imposes discretionary duties upon the Secretary of the Interior. The language at the bottom of the bill, beginning with "*Provided further*", line 22, and the last proviso are entirely the same. They provide that the Secretary of the Interior shall make rules and regulations and there is no question but what it imposes additional duties upon the Secretary of the Interior all the way through.

14. 81 CONG. REC. 4598, 4599, 75th Cong. 1st Sess.

In lines 17 and 18 the terms of repayment are made subject to the discretion of the Secretary of the Interior and in lines 9 and 10 it is subject to that same discretion. This is all on page 26. The whole paragraph is subject to discretion and imposes duties upon the Secretary.

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, the Committee feels that this provision is in order. It provides only a method by which the appropriation might be expended. I have no further comment to make.

THE CHAIRMAN:[15] The Chair would like to inquire of the gentleman from Oklahoma as to the authority for the language appearing in lines 1 and 2, page 27, which the Chair will quote:

> To remain a charge and lien against their land until paid—

Is there provision in some existing law creating a lien upon these lands, to which this provision refers?

MR. JOHNSON of Oklahoma: I cannot say there is provision in existing law. The only existing law would be the fact this has been in the bill for several years and, of course, that is not controlling. . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York makes a point of order against the entire paragraph beginning in line 4, page 26, extending down to and including line 9, page 27. The gentleman from New York [Mr. Taber] in making his point of order invited attention to certain language appearing in lines 10 and 11, page 26, with reference to the discretion of the Secretary of the Interior.

The Chair has examined the act commonly referred to and known as the Snyder Act and invites attention to section 13 of that act, in which the following appears:

> Expenditures of appropriations by Bureau of Indian Affairs: The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate for the benefit, care, and assistance of the Indians throughout the United States for the following purposes: General support and civilization, including education; for industrial assistance and advancement and general administration of Indian problems. Further, for general and incidental expenses in connection with the administration of Indian affairs.

It is the opinion of the Chair that the act to which attention has been invited confers upon the Secretary of the Interior rather broad discretionary authority. The Chair is of opinion that the language to which the gentleman invited attention is not subject to a point of order, but that the language to which the Chair invited the attention of the gentleman from Oklahoma with reference to the provisos does constitute legislation on an appropriation bill not authorized by the rules of the House. It naturally follows that as the point of order has to be sustained as to these two provisos, it has to be sustained as to the entire paragraph. The Chair therefore sustains the point of order made by the gentleman from New York.[16]

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15. Jere Cooper (Tenn.).

16. This precedent, with reference to language ruled out as legislation, is also discussed in §§ 38.14 (reimbursements), 46.13 (imposition of

Indian Agent Under Contract

§ 15.27 An appropriation in the Interior Department appropriation bill for the payment of an Indian agent employed under a contract approved by the Secretary was held to be authorized by the Snyder Act and to be merely descriptive of contract authority contained in existing law and therefore not legislative in character.

On May 14, 1937,[17] the Committee of the Whole was considering H.R. 6958. A point of order against the following language in the bill was overruled:

> Utah: Uintah and Ouray, $7,100, of which amount not to exceed $3,000 shall be available for the payment of an agent employed under a contract, approved by the Secretary of the Interior.
>
> MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I make the point of order on the paragraph beginning in line 11 and ending in line 14 of page 57 that there is no authorization in law for the appropriation recommended. . . .
>
> THE CHAIRMAN:[18] The Chair is prepared to rule.

The gentleman from Massachusetts [Mr. Wigglesworth] makes a point of order against the language appearing on page 57, lines 11 to 14, inclusive, on the ground it is legislation on an appropriation bill and not authorized by existing law.

The Chair has examined the statement in the hearings to which the gentleman from Massachusetts has invited attention, and especially is impressed by the following statement contained in the hearings:

> The contract was approved on March 2, 1937, by the Commissioner of Indian Affairs and the Secretary of the Interior in accordance with sections 2103 and 2106 of the Revised Statutes of the United States.

This would clearly indicate to the Chair that the law to which reference is here made would be authority for the contract. It appears that the contract was made and the discharge of the duty entered upon under the provisions of the contract.

Attention is also invited again to the so-called Snyder Act which, among other things, provides for the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees. The language of the bill to which the point of order is directed provides for the sum of $7,100, of which amount not to exceed $3,000 shall be available for the payment of an agent employed under a contract approved by the Secretary of the Interior.

The Chair is of the opinion that this provision is clearly within the scope of existing law to which attention has been invited, and therefore is not legislation on an appropriation bill in viola-

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lien against lands as legislation), and 62.10 (provisions affecting executive authority), infra.

17. 81 CONG. REC. 4605, 75th Cong. 1st Sess.

18. Jere Cooper (Tenn.).

tion of the rules of the House. The Chair overrules the point of order.

Reclamation Law—Appropriations From "General Funds" Instead of "Reclamation Fund"

§ 15.28 Language in a general appropriation bill appropriating funds "out of the general funds of the Treasury" (and not the reclamation fund) for general investigations of proposed federal reclamation projects was held unauthorized by law and to be legislation on an appropriation bill and not in order.

On Mar. 2, 1938,[19] the Committee of the Whole was considering H.R. 9621, Interior Department appropriations for 1939.

The Clerk read as follows:

> For general investigations, $200,000, to enable the Secretary of the Interior, through the Bureau of Reclamation, to carry on engineering and economic investigations of proposed Federal reclamation projects, surveys for reconstruction, rehabilitation, or extension of existing projects and studies of water conservation and development plans, such investigations, surveys, and studies to be carried on by said Bureau either independently, or, if deemed advisable by the Secretary of the Interior, in cooperation with State agencies, and other Federal agencies, including the Corps of Engineers, National Resources Committee, and the Federal Power Commission.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph beginning on line 18, page 85, ending with line 4, page 86, upon the ground that it is legislation on an appropriation bill and is not authorized by law.

MR. [JAMES G.] SCRUGHAM [of Nevada]: Mr. Chairman, this is authorized in my opinion in the general terms of the Reclamation Act. It has been in effect for many years.

MR. TABER: Mr. Chairman, an appropriation in accordance with the authorization under the Reclamation Act is provided on page 77, line 8, down to and including line 3 on page 78. The appropriation is $25,000. That is the authorized appropriation. I do not believe there is any authority for this out of the general fund of the Treasury.

THE CHAIRMAN:[20] The Chair has examined sections 411 and 396, United States Code, title 43, and it seems to the Chair that under the terms of these two sections which are rather broad in their application, this appropriation may be authorized.

MR. TABER: Is not that limited to the reclamation fund?

THE CHAIRMAN: The Chair was looking particularly with reference to that. The Chair will read the entire section 411:

> The Secretary of the Interior is authorized and directed to make examinations and surveys for, and to locate and construct, as provided in

19. 83 CONG. REC. 2710, 2711, 75th Cong. 3d Sess.

20. Marvin Jones (Tex.).

> this chapter, irrigation works for the storage, diversion, and development of waters, including artesian wells, and to report to Congress at the beginning of each regular session as to the results of such examinations and surveys, giving estimates of cost of all contemplated works, the quantity and location of the lands which can be irrigated therefrom, and all facts relative to the practicability of each irrigation project; also the cost of works in process of construction as well as of those which have been completed.

MR. TABER: I call the attention of the Chair to the language:

> The Secretary of the Interior is authorized under the provisions of this chapter—

That is where the authority of the Secretary of the Interior and the reclamation fund are defined. That would imply that it is to be done under the provisions of the reclamation fund. It would seem to me that that is the authority under which they operated in providing the appropriation that is to be found on page 77.

THE CHAIRMAN: Does the gentleman from Nevada desire to comment on this, or the gentleman from Oklahoma? On consideration it seems to the Chair that this comes out of the general fund in the Treasury and not the reclamation fund, and this is limited in the way suggested by the gentleman from New York.

MR. SCRUGHAM: Section 411 seems to cover the matter.

THE CHAIRMAN: If this were out of the reclamation fund, there would be no question about it, but this appropriation is out of the general fund in the Treasury. The Chair is of opinion that the paragraph is subject to the point of order inasmuch as the appropriation is made out of the general fund and not the reclamation fund. The Chair sustains the point of order.

The ruling above was expressly followed on Apr. 27, 1945.[1] In the 1945 proceedings, Mr. Francis H. Case, of South Dakota, contended that legislation passed subsequently to the 1938 ruling did authorize the language in question on the 1945 bill. The Chair, however, decided that the provisions objected to on that bill still went beyond the language of the authorizing law. The proceedings on Apr. 27, 1945, relating to H.R. 3024, an Interior Department appropriation, were as follows:

> General investigations: For engineering and economic investigations of proposed Federal reclamation projects and surveys, investigations, and other activities relating to reconstruction, rehabilitation, extensions, or financial adjustments of existing projects, and studies of water conservation and development plans, such investigations, surveys, and studies to be carried on by said Bureau either independently, or in cooperation with State agencies and other Federal agencies, including the Corps of Engineers, and the Federal Power Commission, $1,485,000: *Provided,* That the expenditure of any sums from this appropriation for investigations of any nature requested by States, municipalities, or other interests shall be upon the basis of the

1. 91 CONG. REC. 3908–10, 79th Cong. 1st Sess.

State, municipality, or other interest advancing at least 50 percent of the estimated cost of such investigations.

MR. [ROBERT F.] JONES [of Ohio]: Mr. Chairman, a point of order

THE CHAIRMAN:[2] The gentleman will state it.

MR. JONES: Mr. Chairman, I make a point of order against all the language in the paragraph starting with line 14 on page 57 and continuing to the words and figures "$1,485,000," for the reason that it is legislation on an appropriation bill and for the further reason that the amount "$1,485,000" is beyond the authorization of the statute to wit, title 43, sections 411 and 411a–1 of the United States Code. The sections of the statute to which I refer are as follows:

The section is as follows:

> 411. Surveys for, location, and construction of irrigation works generally—Reports to Congress:
>
> The Secretary of the Interior is authorized and directed to make examinations and surveys for, and to locate and construct as provided in sections 372, 373 . . . and 498, of this title, irrigation works for the storage, diversion, and development of waters, including artesian wells, and to report to Congress at the beginning of each regular session all results of such examinations and surveys, giving estimates of cost of all contemplated works; the quantity and location of lands which can be irrigated therefrom, and all facts relative to the practicability of each irrigation project; also the cost of works in process of construction as well as those which have been completed.

Section 411a–1 reads as follows:

The title provides:

> Appropriations for investigations of the feasibility of reclamation projects: The sum of $125,000 annually is hereby authorized to be provided for cooperative and miscellaneous investigations of the feasibility of reclamation projects.

Mr. Chairman, I have sought Webster's definition of the words in the statutes, sections 411 and 411a–1 of title 43 of the United States Code. The definitions of the various words are as follows:

> Practicable: That may be practiced or performed; capable of being put into practice, done, or accomplished; capable of being used; readily practiced on; gullible; or pliant.
>
> Practical: Fit for doing; of, pertaining to, or consisting or manifested in, practice or action; opposed to theoretical, ideal, or speculating; available, usable, or valuable in practice or action; capable of being turned to use or account; useful; skillful or experienced from practice; given or disposed to action as opposed to speculation; capable of applying knowledge to some useful end.
>
> Practicability: A quality or state of being practicable; feasibility or an instance of it.
>
> Feasibility: Quality of being feasible; practicability; also that which is feasible.
>
> Feasible: Capable of being done, executed, or effected; practicable; fit to be used or dealt with successfully; suitable; likely; probable; reasonable.
>
> Examination: Act of examining, or state of being examined; a search or investigation; scrutiny by study or experiment; a process prescribed or assigned for testing qualification.
>
> Investigation: Act of investigating; process of inquiring into or following up; research, especially patient or thorough inquiry or examination.
>
> Survey: Act of surveying; an examination, especially an official exam-

2. Jere Cooper (Tenn.).

ination of all the parts or particulars of a thing to ascertain its condition, quantity, or quality; the operation of finding and delineating the contour, dimensions, positions, etc., as of any part of the earth's surface; to inspect; to view attentively, as from a high place; to view with a scrutinizing eye; to examine; to examine as to conditions, situation, value, etc., to examine and ascertain state of.

Following are Black's Law Dictionary definitions of such terms as appear therein:

Survey: The process by which a parcel of land is measured and its contents ascertained; also a statement of the result of such survey, with the courses and distances and the quantity of the land. . . . The land included in field notes. . . . (Black's Dictionary, p. 1689.)

Investigation: To follow up step by step by patient inquiry or observation; to trace or track mentally; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry. . . .

I find that the language against which I made a point of order is not within the terms of the sections of the statute which I have read. The words I referred to which are beyond the authorization of the statutes are as follows:

Engineering, economic investigations, and other activities relating to reconstruction, rehabilitation, and extension, or financial adjustments of existing projects and studies.

Then down further there is a provision in the section that the development plans, such investigations, surveys, and studies to be carried on by said Bureau, "either independently or in cooperation with State agencies and other Federal agencies, including the Corps of Engineers and the Federal Power Commission." These provisions to which I have lastly referred are beyond the terms of the statute and beyond the limitation in money as outlined in 411 and 411a–1 of the United States Code.

So, summarizing, I make the point of order against this language which I have indicated for the reason that it is legislation on an appropriation bill; for the further reason that words go in the bill beyond the amount allowed to be appropriated; and for the further reason that it is in contradiction of existing law as outlined in these two sections.

THE CHAIRMAN: The gentleman from Ohio has made a point of order against the language appearing in the pending bill beginning in line 14 and extending to the colon in line 23 on the grounds stated by him. The gentleman from Oklahoma, chairman of the subcommittee in charge of the pending bill, has conceded the point of order.

The Chair invites attention to the fact that this same question was presented when a point of order was made on March 2, 1938. Without reviewing the decision made at that time, but citing it as a precedent as guiding the Chair in the present instance, the Chair feels that the decision then made is sound and is applicable to the question here presented, and sustains the point of order. . . .

MR. CASE of South Dakota: Mr. Chairman, did I understand the Chair to state that his decision was based on the precedent made in March 1938?

THE CHAIRMAN: One of the guiding features of the decision on the pending

point of order is the decision appearing on page 2710 and 2711 of volume 83, part 3, of the Congressional Record, Seventy-sixth Congress, Third Session, March 2, 1938.

MR. CASE of South Dakota: My reason for asking the question is that the basic Reclamation Act of August 4, 1939, was passed subsequently to the basis on which that decision was made. In addition to that, the Wheeler-Case Act, as amended in 1940, also placed on the Secretary of the Interior an obligation to make investigations of potential projects. And further, the Flood Control Act of last year, finally passed in December 1944, in several places specifically places on the Secretary of the Interior a responsibility and authority for making such investigations, in cooperation with the Secretary of War and with the States. The law that relates to the revision and adjustment of obligations on irrigation districts was a part of the act passed in 1939. The 5-year limitation on that authority expired in 1944, but Congress renewed it in a bill passed this year in the early days of this Congress. All three of these acts specifically authorize the activities on the part of the Bureau of Reclamation or the Secretary of Interior, involved in this point of order, and all these laws were passed subsequent to the precedent which the Chair has cited.

THE CHAIRMAN: The Chair did not deem it necessary or appropriate to go into too great detail in deciding the question here presented, but in the opinion of the Chair there is language appearing in that part of the bill against which the point of order was made, which is legislation on an appropriation bill and goes further than the provisions of existing law. As previously stated, the Chair sustains the point of order and the Clerk will read.

Reclamation Law—Submission of Report Constitutes Authorization

§ 15.29 An appropriation for the Arizona-Nevada Bullshead Project was held to be authorized by section 9 of the Reclamation Act of 1939 which authorized expenditures to be made following submission to Congress of a favorable report on the project's feasibility.

On May 14, 1941,[3] the Committee of the Whole was considering H.R. 4590, an Interior Department appropriation At one point the Clerk read as follows, and proceedings ensued as indicated below:

> Bullshead project, Arizona-Nevada, $5,000,000, for the purposes and substantially in accordance with the report thereon heretofore submitted under section 9 of the Reclamation Project Act of 1939, and subject to the terms of the Colorado River compact.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order that the item contained in this project is not authorized by law. I make the point of order against the entire paragraph which has just been

3. 87 CONG. REC. 4047, 77th Cong. 1st Sess.

read, beginning in line 22, page 84, and ending in line 2, page 85.

MR. [JAMES G.] SCRUGHAM [of Nevada]: Mr. Chairman, the project is fully authorized. It is stated in the hearings, page 729, that the project has been thoroughly investigated and was not authorized at the time of the report, but it has now been authorized in accordance with section 9 of the Reclamation Act of 1939. I call attention to the Congressional Record of April 28, 1941, page 3367, under the head of "Executive communications," item 473, which fully conforms to the requirements of law. The project is authorized.

MR. TABER: Mr. Chairman, I call the attention of the Chair to the hearings at page 731, the last paragraph at the bottom of the page:

> MR. PAGE: It has not had as yet the certification of the Secretary and the approval of the President, as required by law.

THE CHAIRMAN:[4] What is the date of the page to which the gentleman refers?

MR. TABER: The date is April 3, 1941. . . .

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from New York makes the point of order against the paragraph appearing in the pending bill beginning on line 22, page 84, and concluding in line 2, page 85, on the ground that it is not authorized by law. The Chair has examined section 9 of the Reclamation Act, approved August 4, 1939, which appears to be adequate authority for the Secretary of the Interior to recommend the project here in question. That section reads in part as follows:

> Sec. 9. (a) No expenditures for the construction of any new project, new division of a project, or new supplemental works on a project shall be made, nor shall estimates be submitted therefor, by the Secretary until after he has made an investigation thereof and has submitted to the President and to the Congress his report and findings on—
>
> (1) the engineering feasibility of the proposed construction . . .
>
> If the proposed construction is found by the Secretary to have engineering feasibility and if the repayable and returnable allocations to irrigation, power, and municipal water supply or other miscellaneous purposes found by the Secretary to be proper, together with any allocation to flood control or navigation made under subsection (b) of this section, equal the total estimated cost of construction as determined by the Secretary, then the new project, new division of a project, or supplemental works on a project, covered by his findings, shall be deemed authorized and may be undertaken by the Secretary. If all such allocations do not equal said total estimated cost, then said new project, new division, or new supplemental works may be undertaken by the Secretary only after provision therefor has been made by act of Congress enacted after the Secretary has submitted to the President and the Congress the report and findings involved.

The Chair invites attention to the fact that on April 28, 1941, the Secretary of the Interior transmitted to the Congress a communication including the project here in question. The gentleman from New York states that the statements made by the Commissioner of the Bureau of Reclamation were made on April 3. Thereafter, the

4. Jere Cooper (Tenn.).

Secretary of the Interior complied with the provisions of the act by transmitting a communication on April 28, 1941, recommending this project. Therefore, the Chair is constrained to overrule the point of order and does overrule the point of order.

§ 15.30 The Reclamation Act was held to authorize appropriations for irrigation projects which had been recommended by the Secretary of the Interior and approved by the President of the United States.

On May 17, 1937,[5] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation bill. A point of order was raised against the following paragraph and was overruled:

> Provo River project, Utah, $750,000.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against this paragraph that the appropriation is not authorized by law. No construction has been started and no law is in force authorizing the project. I call the attention of the Chairman to the latter part of page 245 of the record of the hearings and to the following words:
>
> > Construction program through fiscal year 1937. The starting of actual construction work has been delayed by the necessity of organization and negotiating repayment and water-subscription contracts.
>
> It is expected that bids will be received for the construction—

And so forth. This means there has been no actual construction on this job and that it has not been authorized by specific legislation. Therefore, I make the point of order against it that it is legislation on an appropriation bill, and has not been authorized by law.

THE CHAIRMAN:[6] The Chair invites attention to the provision of the United States Code in title 43, section 413, which reads as follows:

> Approval of projects by President. No irrigation project shall be begun unless and until the same shall have been recommended by the Secretary of the Interior and approved by direct order of the President of the United States.

This is the act of June 25, 1910, commonly referred to as the Reclamation Act.

The Chair would like to inquire of the gentleman from Utah, or someone else in position to give the information, whether or not this item against which a point of order has been made has been recommended by the Secretary of the Interior and approved by the direct order of the President of the United States, and the Chair would like to have some evidence on this point.

MR. [JAMES W.] ROBINSON of Utah: Mr. Chairman, I hold in my hand, in answer to the statement of the Chair, a letter——

MR. [JAMES G.] SCRUGHAM [of Nevada]: Mr. Chairman, I offer such documentary evidence.

MR. ROBINSON of Utah: I am submitting, Mr. Chairman, a letter from Sec-

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5. 81 CONG. REC. 4680, 4681, 75th Cong. 1st Sess.

6. Jere Cooper (Tenn.).

retary Ickes, together with the approval of this project by the President.

MR. [CASSIUS C.] DOWELL [of Iowa]: Mr. Chairman, if documentary evidence is offered for the purpose of showing compliance with the law, it seems to me it should be presented to the committee.

THE CHAIRMAN: The Chair has in mind referring to the document in passing upon the question here presented.

The Chair feels he has examined sufficient evidence to supply the information requested. Does the gentleman from Utah desire to be heard further?

MR. ROBINSON of Utah: Does the Chair care to hear argument on the other proposition of whether or not work has actually been commenced on this project?

THE CHAIRMAN: The Chair does not feel that particular point is involved with respect to this particular item.

The Chair is prepared to rule.

There has been presented to the Chair a letter from the Secretary of the Interior, under date of November 13, 1935, which consists of three pages, and the Chair will only refer to the pertinent part of the letter which applies to the particular item under consideration. The letter is addressed to the President of the United States by the Secretary of the Interior. Among other things, it is stated in the letter:

> I recommend that the Provo River project, consisting of the Deer Creek division and the Utah Lake division, be approved and that authority be issued to this Department to proceed with the work and to make contracts and to take any necessary action for the construction of said projects or either division thereof.
>
> Sincerely yours,
> HAROLD L. ICKES,
> *Secretary of the Interior.*

There appears on this letter "Approved November 16, 1935, Franklin D. Roosevelt, President."

Therefore the Chair is of the opinion that the evidence is sufficient to meet the requirements in that this item in the pending bill has been recommended by the Secretary of the Interior and approved by the President of the United States, in accordance with the provisions of existing law, as cited by the Chair, appearing in section 413, title 43, of the United States Code. The Chair therefore overrules the point of order.

Reclamation Law—Incidental Administrative Expenses Authorized

§ 15.31 An amendment to the Interior Department appropriation bill proposing an appropriation for certain expenses incidental to the main purpose of carrying out the reclamation law was held to be authorized by that law.

On Mar. 1, 1938,[7] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation During consideration of the bill, a point of order against the following amendment was overruled:

> Amendment offered by Mr. [James G.] Scrugham [of Nevada]: Page 72, be-

7. 83 CONG. REC. 2655, 2656, 75th Cong. 3d Sess.

ginning with line 12, insert the following:

"Administrative provisions and limitations: For all expenditures authorized by the act of June 17, 1902, and acts amendatory thereof or supplementary thereto, known as the reclamation law, and all other acts under which expenditures from said fund are authorized, including not to exceed $100,000 for personal services and $15,000 for other expenses in the office of the chief engineer, $20,000 for telegraph, telephone, and other communication service, $5,000 for photographing and making photographic prints, $41,250 for personal services, and $7,500 for other expenses in the field legal offices; examination of estimates for appropriations in the field; refunds of overcollections and deposits for other purposes; not to exceed $15,000 for lithographing, engraving, printing, and binding; purchase of ice; purchase of rubber boots for official use by employees; maintenance and operation of horse-drawn and motor-propelled passenger vehicles; not to exceed $20,000 for purchase and exchange of horse-drawn and motor-propelled passenger-carrying vehicles; packing, crating, and transportation (including drayage) of personal effects of employees upon permanent change of station, under regulations to be prescribed by the Secretary of the Interior; payment of damages caused to the owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of irrigation works, payment for official telephone service in the field hereafter incurred in case of official telephones installed in private houses when authorized under regulations established by the Secretary of the Interior; not to exceed $1,000 for expenses, except membership fees, of attendance, when authorized by the Secretary, upon meetings of technical and professional societies required in connection with official work of the Bureau; payment of rewards, when specifically authorized by the Secretary of the Interior, for information leading to the apprehension and conviction of persons found guilty of the theft, damage, or destruction of public property. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment upon the ground that it is legislation upon an appropriation bill, that it includes items not authorized by law, as, for instance, $5,000 for making photographic prints, not authorized by law in line 20 and in line 22, provision for examination of estimates for appropriations in the field, which is not authorized by law; $15,000 for lithographing and engraving, not authorized by law; the purchase of ice, the purchase of rubber boots for official use by employees, not authorized by law.

THE CHAIRMAN:[8] The Chair is ready to rule. This amendment provides for all expenditures authorized by the act of June 17, 1902, and acts amendatory thereof or supplementary thereto, known as the reclamation law, and all other acts under which expenditures from said fund are authorized, and so forth. The Chair thinks that the items to which the gentleman from New York objects specifically are incidental to the main purpose of carrying

8. Marvin Jones (Tex.).

out the reclamation law. These incidental items it seems to the Chair are necessary to carry out the major purposes of the reclamation law, and the Chair, therefore, overrules the point of order.

Granting New Authority to Cover Incidental Costs

§ 15.32 Language in an appropriation bill permitting the Secretary of the Interior, when in his judgment it is necessary, to utilize appropriations made for the Indian field service to purchase certain equipment for the use of employees and to pay travel expenses of employees on official business was held unauthorized by law.

On Mar. 1, 1938,[9] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 9621), a point of order was raised against the following provision:

The Clerk read as follows:

When, in the judgment of the Secretary of the Interior, it is necessary for accomplishment of the purposes of appropriations herein made for the Indian field service, such appropriations shall be available for purchase of ice, for rubber boots for use of employees, for travel expenses of employees on official business, and for the cost of packing, crating, drayage, and transportation of personal effects of employees upon permanent change of station.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph beginning with line 9, page 71, and ending with line 16, page 71. It is legislation on an appropriation bill; it requires additional duties on the part of the Secretary of the Interior and is not authorized by law.

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, I do not care to be heard.

THE CHAIRMAN:[10] The Chair sustains the point of order.

The Clerk will read.

Alaska Reindeer Industry

§ 15.33 A direction in law to an executive official to acquire, by purchase or otherwise, "necessary" cold storage plants and other equipment for purposes of developing the Alaskan Reindeer industry, was held to permit an appropriation for that object to be implemented in such manner as the official shall determine.

On Mar. 15, 1939,[11] the Committee of the Whole was considering H.R. 4852, an Interior Department appropriation At one

9. 83 CONG. REC. 2653, 75th Cong. 3d Sess.

10. Marvin Jones (Tex.).

11. 84 CONG. REC. 2789, 2790, 76th Cong. 1st Sess.

point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Jed] Johnson of Oklahoma: Page 60, line 23, insert a new paragraph, as follows:

"Reindeer industry, Alaska: For the purchase, in such manner as the Secretary of the Interior shall deem advisable, 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 amendment on the ground that it is legislation on an appropriation bill, unauthorized by law, and it delegates to the Department additional authority which it does not now have. . . .

MR. [ALBERT E.] CARTER [of California]: Mr. Chairman, I would like to be heard on the point of order.

THE CHAIRMAN:[12] The gentleman from California is recognized.

MR. CARTER: The opening sentence of the amendment reads:

> For the purchase in such manner as the Secretary of the Interior shall deem advisable.

Now, certainly there is nothing in the statute that gives the Secretary of the Interior that much discretion. In addition to that, Mr. Chairman, I desire to call the attention of the Chair to the proviso in the amendment which reads as the proviso in the bill, which is clearly legislation. Therefore I say the point of order must be sustained against the proposed amendment.

THE CHAIRMAN: The Chair is ready to rule. The act of September 1, 1937, on which the appropriation contained in this paragraph is based, reads in part as follows:

> Sec. 2. The Secretary of the Interior is hereby authorized and directed to acquire, in the name of the United States, by purchase or other lawful means, including exercises of power of eminent domain, for and on behalf of the Eskimos and other natives of Alaska, reindeer, reindeer range, equipment, abattoirs, cold-storage plants, warehouses and other property, real or personal, the acquisition of which he determines to be necessary to the effectuation of the purposes of this act.

This seems to be a broad, all-inclusive grant of power. The language used in the amendment offered by the gentleman from Oklahoma merely restates, in slightly different words, the authorization contained in the act of September 1, 1937.

The proviso to which the gentleman from California [Mr. Carter] refers ap-

12. Frank H. Buck (Calif.).

pears to the Chair to be nothing more than a limitation, in the strictest sense of the word.

For these reasons the Chair overrules both points of order.

Bituminous Coal Commission

§ 15.34 Language permitting an appropriation to be used for public instruction and information deemed necessary by the Bituminous Coal Commission, in the course of conducting research on coal, was held authorized by a law conferring broad discretionary authority on the Commission to undertake acts deemed "necessary" for coal promotion.

On Feb. 28, 1938,[13] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. A point of order was raised against the following paragraph in the bill:

NATIONAL BITUMINOUS COAL COMMISSION

Salaries and expenses: For all necessary expenditures of the National Bituminous Coal Commission in performing the duties imposed upon said Commission by the Bituminous Coal Act of 1937, approved April 26, 1937 (50 Stat. 72), including personal services and rent in the District of Columbia and elsewhere . . . miscellaneous items, including those for public instruction and information deemed necessary by the Commission; and not to exceed $8,500 for purchase and exchange of newspapers, law books, reference books, and periodicals, $2,700,000.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the language beginning with the word "including" in line 11 on page 11, and running down through the word "Commission", in line 13, that it is not authorized by law, is legislation on an appropriation bill, and requires additional duties of the Commission. . . .

THE CHAIRMAN:[14] The Chair is ready to rule.

The Chair will call attention to the fact that volume 50, Statutes at Large, page 74, section 2, of the Bituminous Coal Commission Act, the last paragraph, contains this provision:

> The Commission is hereby authorized to initiate, promote, and conduct research designed to improve standards and methods used in the mining, preparation, conservation, distribution, and utilization of coal and the discovery of additional uses for coal, and for such purposes shall have authority to assist educational, governmental, and other research institutions in conducting research in coal, and to do such other acts and things as it deems necessary and proper to promote the use of coal and its derivatives.

It seems to the Chair that clearly the appropriation to which the point of order is directed is authorized by the provisions of the paragraph just read.

13. 83 CONG. REC. 2553, 75th Cong. 3d Sess.

14. Marvin Jones (Tex.).

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

THE CHAIRMAN: The Chair will be pleased to hear the gentleman further.

MR. TABER: It seems to me the language in this bill is much broader than the language in the enabling act, in that this item may permit action way beyond the range of the enabling act. With reference to particular activities like research with respect to coal, which the Commission may conduct, the Commission undoubtedly has that power; but the language in the provision against which I have made the point of order is not limited to the scope of the act. Under it the Commission may go into any conceivable subject. Therefore, it seems to me this particular language is way beyond the scope of the authorization act. If this language were limited to the scope of the authorization act, of course, it would be in order.

THE CHAIRMAN: The Chair is unable to see how broader terms could be used than are used in the enabling act, which reads:

> To assist educational, governmental, and other research institutions in conducting research in coal, and to do such other acts and things as it deems necessary and proper to promote the use of coal and its derivatives.

This provision covers not only educational, governmental, and other research institutions, but such other acts as the Commission may deem necessary.

It seems to the Chair the language of the act is fully as broad as the terms embodied in the pending bill, and, therefore, the Chair overrules the point of order.

§ 16. Federal Employment

Overseas Allowances

§ 16.1 Language in a general appropriation bill providing funds and authority for an overseas allowance for employees of the Foreign Claims Settlement Commission, "similar to the allowance established by law for Foreign Service personnel," was conceded to be unauthorized and not in order in a general appropriation bill.

On Aug. 26, 1960,[15] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 12740) the following point of order was raised:

> MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language in the bill on page 7, beginning on line 11, running through line 4 on page 8, as being legislation on an appropriation bill. The language referred to is as follows:
>
> FOREIGN CLAIMS SETTLEMENT COMMISSION
>
> *Salaries and expenses*
>
> For an additional amount for "Salaries and expenses," including allowances and benefits similar to those provided by title nine of the Foreign Service Act of 1946, as amended, as

15. 106 CONG. REC. 17899, 86th Cong. 2d Sess.

determined by the Commission; expenses of packing, shipping, and storing personal effects of personnel assigned abroad; rental or lease, for such periods as may be necessary, of office space and living quarters for personnel assigned abroad; maintenance, improvement, and repair of properties rented or leased abroad, and furnishing fuel, water, and utilities for such properties; hire of passenger motor vehicles abroad; insurance on official motor vehicles abroad; and advances of funds abroad; $145,000: *Provided*, That the limitation under this head in the General Government Matters Appropriation Act, 1961, on the amount available for expenses of travel, is increased from "$10,000" to "$20,000".

THE CHAIRMAN:[16] Does the gentleman from Texas desire to be heard on the point of order?

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, the gentleman from Iowa is right. This is the first time that these people have operated overseas and they asked for a little overseas allowance The Bureau of the Budget recommended it. We did not feel that we wanted to be the least bit oppressive on it. Mr. Chairman, the point of order is conceded.

THE CHAIRMAN: The point of order made by the gentleman from Iowa is sustained.

Representation Allowances

§ 16.2 Language in a general appropriation bill providing funds for the National Aeronautics and Space Administration for "representation allowances overseas and official entertainment expenses, to be expended upon the approval or authority of the Administrator," was held to be legislation and not in order.

On June 29, 1959,[17] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 7978), a point of order was raised against the following provision:

The Clerk read as follows:

For contractual research, development, operations, technical services, repairs, alterations, and minor construction, and for supplies, materials, and equipment necessary for the conduct and support of aeronautical and space research and development activities of the National Aeronautics and Space Administration, including not to exceed $5,000 for representation allowances overseas and official entertainment expenses, to be expended upon the approval or authority of the Administrator. . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order against the language on page 4, beginning with the word "including" in line 10 and running through the word "Administrator" in line 13, on the ground that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[18] The Chair recognizes the gentleman from Texas (Mr. Thomas) on the point of order.

MR. [ALBERT] THOMAS: I cannot recall that there was any legislation au-

16. Herbert C. Bonner (N.C.).

17. 105 CONG. REC. 12125, 12126, 86th Cong. 1st Sess.

18. Paul J. Kilday (Tex.).

thorizing this entertainment fund for the Administrator. We reduced it drastically as it was sent up by the Bureau of the Budget. Perhaps it would serve a useful purpose. I think the gentleman's point of order is good and I concede it.

THE CHAIRMAN: The gentleman from Texas concedes the point of order. The Chair sustains the point of order.

§ 16.3 A section of a general appropriation bill authorizing the Secretaries of Labor and Health, Education, and Welfare to use funds in the bill for official reception and representation expenses was conceded to be unauthorized and was ruled out in violation of Rule XXI clause 2.

On June 27, 1974,[19] during consideration in the Committee of the Whole of H.R. 15580 (Departments of Labor and Health, Education, and Welfare appropriations), a point of order was sustained against the following provision:

The Clerk read as follows:

Sec. 404. The Secretary of Labor and the Secretary of Health, Education, and Welfare are each authorized to make available not to exceed $7,500 from funds available for salaries and expenses under titles I and II, respectively, for official reception and representation expenses.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language to be found on page 37, beginning with line 21 and running through line 25 as being appropriation not authorized by law. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: It is the entire section 404?

Mr. Chairman, we concede the point of order.

THE CHAIRMAN:[20] The point of order is conceded and sustained.

Funds for Presidential Commission

§ 16.4 A lump-sum amount for the Civil Service Commission contained in a general appropriation bill was conceded to be in violation of Rule XXI clause 2 where it was shown that a portion of that amount was intended to fund the President's Commission on Personnel Interchange—a Commission established solely by Executive order and not created by law.

On June 25, 1974,[1] during consideration in the Committee of the Whole of the Department of Treasury, Postal Service, and Executive Office appropriation bill, a

19. 120 CONG. REC. 21686, 21687, 93d Cong. 2d Sess.

20. James C. Wright, Jr. (Tex.).

1. 120 CONG. REC. 21036, 21037, 93d Cong. 2d Sess.

point of order was sustained as indicated below:

THE CHAIRMAN:[2] The Clerk will read.

The Clerk read as follows:

> For necessary expenses, including services as authorized by 5 U.S.C. 3109 . . . not to exceed $2,500 for official reception and representation expenses; and advances or reimbursements to applicable funds of the Commission and the Federal Bureau of Investigation for expenses incurred under Executive Order 10422 of January 9, 1953, as amended; $90,000,000 together with not to exceed $18,698,000 for current fiscal year administrative expenses for the retirement and insurance programs to be transferred from the appropriate trust funds of the Commission in amounts determined by the Commission without regard to other statutes: *Provided*, That the provisions of this appropriation shall not affect the authority to use applicable trust funds for administrative expenses of effecting statutory annuity adjustments. . . .

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I make a point of order on the language beginning at line 12 on page 12 of this bill with the figures "$90,000,000" through line 20 ending in the word "adjustments.". . .

Mr. Chairman, it is my understanding that there is in fact no authorization for the President's Commission on Personnel Interchange for which $353,000 is herein requested. It was created solely by Executive Order 11451 on January 19, 1969.

This House rule is supported in this regard by title 36 of the United States Code, section 673, which also indicates that no funds should be expended by this body without authorization. The full section of the law reads as follows:

TITLE 36, SECTION 673

> No part of the public monies, or of any appropriation made by Congress, shall be used for the payment of compensation or expenses of any commission, council or other similar body, or any members thereof, or for expenses in connection with any work or the results of any work or action of commission, council, board, or similar body, unless the creation of the same shall be or shall have been authorized by law; nor shall there be employed any detail hereafter or heretofore made or otherwise personal services from any Executive Department or other Government establishment in connection with any such commission, council, board, or similar body. . . .

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

MR. [TOM] STEED [of Oklahoma]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The gentleman from Oklahoma (Mr. Steed) concedes the point of order.

The point of order is sustained.

§ 17. Foreign Relations

Fishermen's Protective Act

§ 17.1 The Fishermen's Protective Act of 1957 was held sufficient authorization for an appropriation to compensate certain vessel owners whose vessels were seized by Ecuador.

2. B. F. Sisk (Calif.).

On June 28, 1971,[3] the Committee of the Whole was considering H.R. 9271, an appropriation bill for the Department of the Treasury, the Postal Service, the Executive Office, and independent agencies. The following proceedings took place:

Amendment offered by Mr. Dingell: On page 32, after line 19, insert:

"TITLE V—CLAIMS UNDER FISHERMEN'S PROTECTIVE ACT OF 1967

"Sec. 501. For payment of claims settled and determined in accord with the Fishermen's Protective Act of 1967 (22 U.S.C. 1971 and fol.) for amounts paid to the Government of Ecuador and certified to the Secretary of the Treasury by the Secretary of State in respect of the *Ocean Queen* (certified April 23, 1971), the *Day Island* (certified May 10, 1971), the *Apollo* (certified May 4, 1971), the *John F. Kennedy* (certified May 4, 1971), the *Quo Vadis* (certified May 12, 1971), and the *Sun Europa* (certified May 3, 1971), $387,190.". . .

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I reserve a point of order against the amendment. . . .

THE CHAIRMAN:[4] Does the gentleman from Ohio wish to be heard on his point of order?

MR. BOW: I do, Mr. Chairman, and I shall be very brief.

Mr. Chairman, there is no question but that the law does provide for the payment to these fishermen who have had their ships seized in Ecuador.

But I call the attention of the Chair to what the gentleman from Michigan has said, which is quite correct, that the law has been amended—that is, the original law of 1926 has been amended—the law of 1927—to provide where there is a seizure of this kind that the payment shall be made from the withholding of foreign aid funds from the recipient country. The law so provides, and this has not been done. So the amendment of the law would provide the method of payment in those countries which receive foreign aid and Ecuador is one of them. So it would seem to me that at this time there is no authority for an appropriation, because the law provides that it shall be paid out of foreign aid funds and not by an appropriation here.

I point this out simply to call attention to what the distinguished gentleman from Michigan has stated, and I think he will agree that this is what the law is. . . .

THE CHAIRMAN: Does the gentleman from Michigan (Mr. Dingell) desire to be heard further on the point of order?

MR. [JOHN D.] DINGELL: Yes, Mr. Chairman. Mr. Chairman, I happen to have before me the two statutes which are relevant here and I will cite them to the Chair at this particular time.

The first is that the act of August 27, 1954, 68 Stat. 883–22 U.S. 3 71–76—the relevant part of that statute reads as follows—and this is section 2:

In any case where—

(a) a vessel of the United States is seized by a foreign country on the basis of rights or claims in territorial waters or the high seas which are not recognized by the United States; and

(b) there is no dispute of material facts with respect to the location or

3. 117 CONG. REC. 22439–42, 92d Cong. 1st Sess.

4. John S. Monagan (Conn.).

activity of such vessel at the time of such seizure, the Secretary of State shall as soon as practicable take such action as he deems appropriate to attend to the welfare of such vessel and its crew while it is held by such country and to secure the release of such vessel and crew. . . .

[Subsequent language provides] that once the Secretary of State has certified the amounts paid to the Secretary of the Treasury . . . the Secretary of the Treasury shall procure an appropriation from the Congress and shall pay from appropriated funds the fine and other charges necessary.

Then subsequently, Mr. Chairman, in the statute of the 90th Congress, Public Law 90–482, dated August 12, 1968—and this appears at 75 Stat. 424, 22 U.S.C. 2151—we amended the statute then to add to the word "fine," which the United States is supposed to compensate these fishermen for; in addition to that, license fee, registration fee, or any other direct charge, and the committee in this report interpreted this as being anything that is necessary to release the vessel from the holding of the foreign government—in each of these cases, I believe, the Government of Ecuador. I would be happy to read the statute further if the gentleman desires.

MR. BOW: Mr. Chairman, will the gentleman yield to permit me to read that part which says that the fine and charges shall be paid out of the foreign aid funds?

MR. DINGELL: There is such a statute, but I would tell my good friend from Ohio the statute to which he is now addressing himself is another statute which says that the Secretary of State shall withhold and shall compensate the United States for the amounts paid out. We were very careful, I want my good friend from Ohio to know, in drafting the statute not to set it up so that the Secretary of State would have to withhold the fine from foreign aid funds so as to leave our fishermen naked and destitute. I do not believe the committee felt that we should trust the Secretary, making the commercial fishermen subject to that kind of whim or mercy. . . .

THE CHAIRMAN: The Chair is ready to rule.

Under section 1973 of the United States Code, title 22, there is an authorization, as the gentleman from Michigan has said, which does permit the payment of charges and authorizes these payments.

In spite of the fact that there is a reference in section 1975 to action by the Secretary of State, nevertheless the Chair does not find that the condition as contended for by the gentleman from Ohio is contained in this section. The Chair believes the law cited by the gentleman from Michigan would authorize the appropriation carried in the amendment. The Chair finds the point of order is not well taken and overrules the point of order.

International Organizations and Conferences

§ 17.2 An appropriation for "International Conferences and Contingencies" which included a provision earmarking a certain amount for a contribution to the International Secretariat on Middle Level Manpower was

held to be authorized by a law allowing the Secretary of State to generally participate in international activities in conducting foreign affairs.

On Apr. 10, 1963,[5] the Committee of the Whole was considering H.R. 5517, a supplemental appropriation bill containing the following paragraph:

For an additional amount for "International conferences and contingencies," $315,000, of which $250,000 shall be available for expenses of organizing and holding the World Food Congress in the United States, as authorized by the act of October 18, 1962 (Public Law 87–841), and $65,000 shall be available for the U.S. contribution to the International Secretariat on Middle Level Manpower.

MR. [GLENARD P.] LIPSCOMB [of California]: Mr. Chairman, I make a point of order against the language in the bill on page 23, lines 8 through 15, under the heading "International Conferences and Contingencies" on the ground that it is not authorized by law. The authorizations for appropriations for international conferences and contingencies under section 5 of Public Law 84–885 conveys authority for a general appropriation and not authority for a specific appropriation such as proposed under this section which provides that of the $315,000 for "International conferences and contingencies," $65,000 shall be available for the U.S. contributions to the International Secretariat on Middle Level Manpower.

THE CHAIRMAN:[6] Does the gentleman from New York desire to be heard on the point of order?

MR. [JOHN J.] ROONEY [of New York]: I do, Mr. Chairman.

Mr. Chairman, I respectfully submit that this appropriation is authorized by law. It is authorized by Public Law 885, 84th Congress, in section 5 of which we find the following:

> The Secretary of State is authorized to (a) provide for participation by the United States in international activities which arise from time to time in the conduct of foreign affairs for which provision has not been made by the terms of any treaty, convention or special act of Congress. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The language cited by the gentleman from New York is, indeed, very broad. The Chair believes that the point of order is not well taken.

The point of order is overruled.

Authority to Join International Organization Implies Authority for Expenses

§ 17.3 An act authorizing the President to accept membership in an international organization was held to be sufficient authorization to support an appropriation for the obligation assumed by the United States in accepting such membership.

5. 109 CONG. REC. 6157, 6158, 88th Cong. 1st Sess.

6. Richard Bolling (Mo.).

On Feb. 7, 1935,[7] the following proceedings took place:

MR. [GEORGE H.] TINKHAM [of Massachusetts]: Mr. Chairman, in relation to the appropriation of $174,630 for the International Labor Organization, I make the point of order that there is no legislative authority to support this appropriation and, Mr. Chairman, I make the further point of order that the appropriation in any event is limited to the terms of the instrument which sets up the International Labor Organization, namely title XIII of the Versailles Treaty. . . .

THE CHAIRMAN:[8] The point of order raised by the gentleman from Massachusetts (Mr. Tinkham) involves the question as to the authorization of an appropriation under title I of the bill (H.R. 5255) granting to the International Labor Organization the sum of $174,630.

In order that we may not be confused, the Chair feels it proper to state that the reference to the Versailles Treaty in regard to the legality of this appropriation, and the point of order raised thereon, is absolutely irrelevant. The Versailles Treaty is no part of the law of the United States of America, is not mentioned in the paragraph providing this appropriation, and is not referred to in the joint resolution passed in the Seventy-third Congress and approved June 19, 1934. The law under which this appropriation is proposed results from the joint resolution approved June 19, 1934, which provided that the President of the United States was authorized to accept membership for the Government of the United States of America in the International Labor Organization which, through its general conference of representatives and its members and through its International Labor Office, collects information concerning labor throughout the world, and prepares international conventions for the consideration of member governments, with a view of improving conditions of labor. The Versailles Treaty and other matters of that kind are not referred to in that joint resolution.

The question, it seems to the Chair, resolves itself into whether or not a reasonable interpretation of the law passed during the Seventy-third Congress includes therein an authorization of the Congress of the United States, which enacted that legislation, to make reasonable appropriations to carry it into effect. Bearing on the generally recognized standard of interpretation of legislation of this kind, the Chair thinks that it is proper to refer to the language of the distinguished gentleman from Massachusetts [Mr. Tinkham] when this bill was under debate in this House on June 16, 1934, when he said:

> Let me ask the chairman of the committee, on which I have the honor to serve, has there been an estimate of the cost to the American people of our annual contribution to this organization; if so, how much?

The gentleman from Tennessee [Mr. McReynolds] said:

That will depend on a number of circumstances.

Then the gentleman from Massachusetts made this remark:

> Mr. Speaker, I may say that it is estimated that we shall contribute to

7. 79 CONG. REC. 1616, 1677–80, 74th Cong. 1st Sess.

8. William N. Rogers (N.H.).

the support of this organization from $150,000 to $400,000 a year.

At that time it seems to have been contemplated that a reasonable appropriation to be made by Congress was involved in the passage of that legislation. In view of that interpretation it seems to the Chair that the joint resolution approved June 19, 1934, is sufficient authorization for this appropriation, and the Chair is of the opinion that the point of order should be overruled The Chair therefore overrules the point of order should be over-ruled.

The Chair therefore overrules the point of order.

Foreign Currency Program—Preservation of Nubian Monuments

§ 17.4 An appropriation added by the Senate to a general appropriation bill and included in a conference report, for the purchase of Egyptian pounds accruing under the Agricultural Trade Development and Assistance Act of 1954, to be used for the preservation of ancient Nubian monuments on the Nile was held to be authorized by a provision of the act allowing foreign currencies to be used "to promote and support programs of . . . cultural and educational development" and further specifying that "foreign currencies shall be available for purposes of this subsection . . . only in such amounts as may be specified from time to time in appropriation acts."

On the legislative day of Sept. 25, 1961,[9] the House was considering a conference report on H.R. 9169, a supplemental appropriation. The following proceedings took place:

MR. [ALBERT] THOMAS (of Texas): Mr. Speaker, I call up the conference report on the bill (H.R. 9169) and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:[10] Is there objection to the request of the gentleman from Texas?

MR. [JOHN] TABER [of New York]: Mr. Speaker, I object

The Clerk read the conference report.

MR. TABER: Mr. Speaker, I make a point of order against the conference report, and I refer especially to the paragraph on page 30, under the title of "Preservation of Ancient Nubian Monuments—Special Foreign Currency Program". . .

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The gentleman from New York makes a point of order against the conference report in connection with the

9. 107 CONG. REC. 21521, 21522, 87th Cong. 1st Sess., Sept. 27, 1961 (Calendar Day)

10. John W. McCormack (Mass.).

amendment on page 30, which reads as follows:

> For the purchase of Egyptian pounds which accrue under title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, for the purposes authorized by section 104(k) of that Act, $4 million to remain available until expended

The Chair has carefully studied the provisions of section 104(k), the organic law, which include among other things:

> To promote and support programs of medical and scientific research, cultural and educational development, health, nutrition, and sanitation: *Provided*, That foreign currencies shall be available for the purpose of this subsection (in addition to funds otherwise made available for such purposes) only in such amounts as may be specified from time to time in appropriation acts. . .

Continuing what the Chair has said, it is the opinion of the Chair that section 104(k) justifies the language contained in the conference report, and the Chair overrules the point of order.

Foreign Currencies for Children's Hospital in Poland

§ 17.5 In a bill appropriating funds for the mutual security program, a provision earmarking a part of the funds of the "special assistance" appropriation for the purchase of foreign currencies to be used for the construction of a children's hospital in Poland was held to be authorized by a provision in the 1954 Mutual Security Act.

On June 17, 1960,[11] the Committee of the Whole was considering H.R. 12619, a bill making appropriations for mutual security and related agencies. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> Special assistance, general authorization: For assistance authorized by section 400(a), $206,000,000, of which not to exceed $1,500,000 may be used to purchase foreign currencies or credits owed to or owned by the Treasury of the United States for assistance authorized by section 400(c) for construction of the American Research Hospital for Children in Poland at the University of Krakow. . .
>
> MR. [H.R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order against the language beginning on page 3, line 7, and ending on line 12 which reads as follows: "of which not to exceed $1,500,000 may be used to purchase foreign currencies or credits owed to or owned by the Treasury of the United States for assistance authorized by section 400(c) for construction of the American Research Hospital for Children in Poland at the University of Krakow:"
>
> Mr. Chairman, this language is legislation on an appropriation bill. The authorizing act, the Mutual Security Act of 1959, provides for the utilization

11. 106 CONG. REC. 13132, 13133, 86th Cong. 2d Sess.

of "foreign currencies for hospitals abroad designed to serve as centers for medical treatment, education and research founded or sponsored by citizens of the United States". . .

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Chairman, may I read the provision of law authorizing it? It is section 400(c) of the Mutual Security Act of 1954 as amended. It provides:

> The President is authorized to use not to exceed $20 million of the funds appropriated pursuant to subsection (a) of this section for assistance on such terms and conditions as he may specify to schools and libraries abroad founded or sponsored by citizens of the United States and serving as study and demonstration centers for ideas and practices of the United States notwithstanding any other act authorizing assistance of this kind

And further:

> In addition to the authority contained in this subsection it is the sense of Congress that the President should make a special and a particular effort to utilize foreign currencies accruing under title I of the Agricultural Trade, Development and Assistance Act of 1954 as amended and notwithstanding the provisions of Public Law 213, 82d Congress, the President is authorized to utilize foreign currencies accruing to the United States under this or any other act for the purposes of this subsection and for hospitals abroad designed to serve as centers for medical treatment, education, and research, founded or sponsored by citizens of the United States.

THE CHAIRMAN:(12) the Chair is of the opinion that the language of section 400(c) as read by the gentleman from Virginia [Mr. Gary] is sufficient to establish the point that this language is authorized by law; and therefore the Chair overrules the point of order made by the gentleman from Iowa [Mr. Gross].

Presidential Authority to Provide for Participation in International Exhibition

§ 17.6 An amendment providing funds for a health exhibit at the Universal and International Exhibition of Brussels was held to be authorized by law.

On Feb. 26, 1958,(13) during consideration in the Committee of the Whole of H.R. 10881, a supplemental appropriation bill, a point of order against an amendment was overruled. The proceedings were as follows:

> FUNDS APPROPRIATED TO THE PRESIDENT
>
> *President's special international program*
>
> Not to exceed $1 million of the funds previously appropriated under this head for the trade fair exhibit in Gorki Park, Moscow, may be used for the Universal and International Exhibition of Brussels, 1958, and the limitation thereon as contained in the Supplemental Appropriation Act, 1958, is increased from "$7,045,000" to "$8,045,000."

12. Wilbur D. Mills (Ark.).

13. 104 CONG. REC. 2910, 85th Cong. 2d Sess.

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Fogarty: On page 17, lines 21 and 22, strike out "$8,045,000" and insert in lieu thereof the following: "$9,045,000, and in addition there is hereby appropriated $1,000,000 to establish and conduct a health exhibit in connection with the Universal and International Exhibition of Brussels."

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I am constrained to make a point of order against this amendment for the reason that the purpose of it is not authorized. . . .

THE CHAIRMAN:[14] the Chair is ready to rule.

The amendment offered by the gentleman from Rhode Island provides:

> To establish and conduct a health exhibit in connection with the Universal and International Exhibition of Brussels.

In the statute authorizing our participation in this exhibition it is provided:

> Sec. 2. The President is authorized to provide for United States representation in artistic, dramatic, musical, sports, and other cultural competitions and like exhibitions abroad

The phrase "like exhibitions abroad" in the opinion of the present occupant of the Chair, is sufficiently broad to include the object of the amendment offered by the gentleman from Rhode Island, particularly in view of the fact that in the stated purpose—and, of course, the purpose is not binding, however, it is provided:

> The purpose of this chapter is to strengthen the ties which unite us with other nations by demonstrating the cultural interests, developments, and achievements of the people of the United States.

It certainly would seem to the present occupant of the Chair that one of the things we could point to with greatest pride would be our accomplishments in the medical field and the contributions being made by the United States economic and social system toward the peaceful and more fruitful life for its own people, and so on.

Reading the broad general purpose together with the statement in the statute concerning the President's authorization, leads the Chair to conclude that the appropriation is authorized by law.

The point of order is overruled.

Translation of Foreign Literature

§ 17.7 An amendment proposing to earmark part of the appropriation for the United States Information Agency for the establishment of a nonprofit book corporation to provide facilities for the translation and publication of books and other printed matter in various foreign languages was held to be unauthorized by law.

On Apr. 14, 1955,[15] the Committee of the Whole was consid-

14. Francis E. Walter (Pa.).

15. 101 CONG. REC. 4504, 84th Cong. 1st Sess.

ering H.R. 5502, an appropriation bill for the Departments of State and Justice, the Judiciary, and related agencies. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. O'Hara of Illinois: On page 35, line 14 strike out "Provided" and insert in lieu thereof the following: "*Provided*, That not to exceed $350,000 shall be used for the establishment of a nonprofit book corporation to provide facilities for the translation and publication of books and other printed matter in the various foreign languages: *Provided further*,"

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I reserve a point of order against the amendment.

MR. [BARRATT] O'HARA of Illinois: Mr. Chairman, I had hoped that this amendment would be accepted by the Committee.

All that this amendment seeks to do is to make available to the peoples of the world the classics of American democracy that were the inspiration of our forefathers and have been an inspiration in our own lives. . . .

MR. ROONEY: Mr. Chairman, I insist on the point of order There is no authority in law for the appropriation, and it is legislation on an appropriation bill.

The Chairman:[16] The gentleman from Illinois [Mr. O'Hara] offers an amendment which the Clerk has reported, against which the gentleman from New York [Mr. Rooney] makes a point of order on the ground that it is not authorized by law. Can the gentleman from Illinois, the author of the amendment, cite to the Chair any authority in law for this appropriation?

MR. O'HARA of Illinois: Mr. Chairman, I am embarrassed by replying that I cannot.

THE CHAIRMAN: The Chair appreciates the gentleman's reply.

Obviously, the amendment is not in order. The Chair therefore sustains the point of order.

Appropriations to Nations Which Are Not Authorized to Receive Aid

§ 17.8 To a bill making appropriations for mutual security, 1952, to countries party to the North Atlantic Treaty and to countries determined by the President to be eligible for such assistance, an amendment providing that a part of the appropriations should be available for Spain, which was not included in either of the two categories, was held to be unauthorized.

On Oct. 11, 1951,[17] the Committee of the Whole was considering H.R. 5684. During consideration of the bill, a point of order was sustained against an amendment as indicated below:

Military assistance, title I: For assistance authorized by section

16. Jere Cooper (Tenn.).

17. 97 CONG. REC. 13020, 13025, 13026, 82d Cong. 1st Sess.

101(a)(1), $5,072,476,271, of which $44,476,271 is for payment of obligations incurred under authority granted in the Second Supplemental Appropriation Act, 1950, and extended in the Foreign Aid Appropriation Act, 1951, to enter into contracts under the Mutual Defense Assistance Act of 1949, as amended (22 U.S.C. 1571–1604); and, in addition, unexpended balances of appropriations heretofore made for carrying out the purposes of title I of the Mutual Defense Assistance Act of 1949, as amended, shall remain available through June 30, 1952, and such unexpended balances of appropriations shall be consolidated with this appropriation; . . .

MR. [WILLIAM J.] GREEN [Jr., of Pennsylvania]: Mr. Chairman, I offer an amendment which is at the Clerk's desk

The Clerk read as follows:

> Amendment offered by Mr. Green: On page 2, line 12, after the word "appropriation" and before the semicolon, insert *"Provided,* That of the amount appropriated by this paragraph the amount of $200,000,000 shall be available for military assistance to Spain."

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Chairman, I raise a point of order against the amendment. . . .

THE CHAIRMAN:[18] The first section of title I of the Mutual Security Act of 1951 provides authorization for appropriation for military assistance to European countries only in the following categories:

First. To countries party to the North Atlantic Treaty, and

Second. To countries determined by the President to be eligible for such assistance under conditions spelled out by the act.

The act does not authorize appropriations to be available for countries other than those in the categories indicated. The Chair understands that Spain in not a party to the North Atlantic Treaty, and that the President has not designated Spain as an eligible country.

Therefore, the amendment provides for an appropriation which has not been authorized by law, and the point of order is sustained.

Expenses Incident to Treaty

§ 17.9 A treaty providing that representatives of the participating countries were to determine and record amounts of water available for purposes of the treaty and "to record the amounts of water used for power diversions" was held to authorize an appropriation for "investigations, pending authorization for construction, of projects for development . . . for power purposes of waters of the Niagara River"; and a reservation to the treaty that "no project for redevelopment of the United States share of such waters shall be undertaken until it be specifically authorized by Act of Congress" was held not to nullify such authorization.

18. Francis E. Walter (Pa.).

On Apr. 10, 1951,[19] the Committee of the Whole was considering H.R. 3587, a supplemental appropriation bill. The following proceedings took place:

NIAGARA POWER DEVELOPMENT

For engineering and economic investigations, pending authorization for construction, of projects for development and utilization for power purposes of the waters of the Niagara River, allocated to the United States under the treaty between the United States of America and Canada signed February 27, 1950, and ratified by the United States Senate on August 9, 1950, to remain available until expended, $450,000.

MR. [IVOR D.] FENTON [of Pennsylvania]: Mr. Chairman, a point of order.

THE CHAIRMAN:[20] The gentleman will state it.

MR. FENTON: Mr. Chairman, I raise a point of order to the language appearing on page 17, lines 9 to 18, inclusive, as an appropriation not authorized by law. . . .

THE CHAIRMAN: The Chair is ready to rule.

The point of order has been made that the item appearing on page 17, lines 9 to 18, inclusive, for Niagara power development is not authorized by law. It will be noted that the language of the proposed appropriation provides for investigations pending authorizations for construction of projects for power purposes of the waters of the Niagara River allocated to the United States under the treaty between the United States of America and Canada signed February 27, 1950, and ratified by the United States Senate on August 9, 1950.

The Chair has examined a copy of the treaty and finds that the treaty provides in some detail for distribution of the water which flows over the Niagara Falls between the United States and Canada and then in article 7 provides:

> The United States of America and Canada shall each designate a representative, who, acting jointly, shall ascertain and determine the amounts of water available for the purposes of this treaty, and shall record the same, and shall also record the amounts of water for power diversions.

It has long been settled that a duly ratified treaty to which the United States is party constitutes authority of law for appropriations. And it has also been settled by decisions of the Chair that the treaty need not specifically authorize specific appropriations. It is necessary only that the proposed appropriations be directly necessary to enable the United States to carry out the obligations it has assumed under the treaty For example, in volume 7 of Cannon's Precedents, section 1138, a decision is recorded holding that where the United States has entered into a treaty establishing an international institute it is in order to appropriate the necessary funds to send delegates to the institute. It was further held in section 1142, volume 7, Cannon's Precedents, that a treaty providing for mutual reports by contracting parties to an international bureau was held to

19. 97 CONG. REC. 3575, 82d Cong. 1st Sess.

20. James J. Delaney (N.Y.).

sanction appropriations for the bureau's maintenance although no treaty had been entered into providing for the establishment of the bureau itself.

It seems clear, therefore, that the proposed appropriation is entirely within the purview of the treaty, as its only purpose is to provide the necessary funds for the United States to pay the expenses of the duly authorized representative of the United States acting under article 7 of the treaty.

The Chair, therefore, overrules the point of order.

Cultural Relations Program

§ 17.10 To a bill making appropriations for the Department of State, an amendment providing an appropriation for an information and cultural program to be disseminated in foreign countries was held to be unauthorized.

On May 14, 1947,[1] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 3311), a point of order was raised against the following amendment:

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Gary: Page 2, line 18, after the semicolon insert "acquisition, production, and free distribution of informational materials for use in connection with the operation, independently or through individuals, including aliens, or public or private agencies (foreign or domestic), and without regard to section 3709 of the Revised Statutes, of an information program outside of the continental United States, including the purchase of radio time . . . and the purchase, rental . . . and operation of facilities for radio transmission and reception, the acquisition of land and interests in land . . . for radio broadcasting and relay facilities, and the acquisition or construction of buildings and necessary improvements on such lands; purchase and presentation of various objects of a cultural nature suitable for presentation (through diplomatic and consular offices) to foreign governments, schools, or other cultural or patriotic organizations . . . not to exceed $13,000 for entertainment."

MR. [KARL] STEFAN [of Nebraska]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[2] The gentleman will state his point of order.

MR. STEFAN: Mr. Chairman, I make the point of order this is not authorized by law and it is legislation on an appropriation bill. . . .

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

MR. GARY: I do not, Mr. Chairman.

THE CHAIRMAN: The Chair is prepared to rule. It is the opinion of the Chair that the amendment does propose legislation on an appropriation bill, the functions therein referred to not being authorized by law. The point of order is sustained.

1. 93 CONG. REC. 5291, 5292, 80th Cong. 1st Sess.

2. Carl T. Curtis (Nebr.).

§ 17.11 An appropriation to enable the Secretary of State to carry out a program of "cultural relations with China and countries of the Near East and Africa" was held unauthorized by law and to be legislation waiving existing law.

On Mar. 15, 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:

> Cultural relations with China and the neighboring countries and countries of the Near East and Africa: For all expenses, without regard to section 3709 of the Revised Statutes, necessary to enable the Secretary of State independently or in cooperation with other agencies of the Government to carry out a program of cultural relations with China and the neighboring countries and with countries of the Near East and Africa, $1,390,000 (payable from the appropriation "Emergency fund for the President," contained in the First Supplemental National Defense Appropriation Act, 1943, as supplemented and amended). . . .
>
> MR. [HENRY C.] DWORSHAK [of Idaho]: Mr. Chairman, I make a point of order against all of the paragraph beginning line 25, page 29, to and including line 17, on page 31, on the ground it is legislation on an appropriation bill and there is no authority in law for such an appropriation.
>
> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I concede the point of order.
>
> THE CHAIRMAN:[4] The point of order is sustained

International Conference on Education

§ 17.12 Appropriations for a Conference of Allied Ministers of Education in London were conceded and held to be unauthorized by law.

On Mar. 15, 1945,[5] the Committee of the Whole was considering H.R. 2603, a bill making appropriations for the State, Judiciary, and Commerce Departments, and the Federal Loan Agency. The following proceedings took place:

> Conference of Allied Ministers of Education in London: For all necessary expenses of the participation by the United States in the Conference of Allied Ministers of Education in London, or its successor, and in addition for surveys and studies related to the work thereof, including personal services in the District of Columbia and elsewhere without regard to civil-service and classification laws; travel expenses without regard to the Standardized Government Travel Regulations and the Subsistence Expense Act of 1926, as amended; entertainment,

3. 91 CONG. REC. 2307, 79th Cong. 1st Sess.

4. Wilbur D. Mills (Ark.).

5. 91 CONG. REC. 2307, 79th Cong. 1st Sess.

stenographic reporting and other services by contract, books of reference and periodicals, and rent of office space, without regard to section 3709 of the Revised Statutes; printing and binding; and the share of the United States in the expenses of the secretariat of the Conference; $172,000, payable from the appropriation "Emergency fund for the President," contained in the First Supplemental National Defense Appropriation Act, 1943, as supplemented and amended.

MR. [ROBERT F.] JONES [of Ohio]: Mr. Chairman, I make a point of order against the entire paragraph, beginning line 7, page 29, and continuing through line 24, on the ground this is not authorized by law.

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

THE CHAIRMAN:[6] The point of order is sustained.

Foreign Service Incidental Expenses

§ 17.13 "Representation" allowances for ambassadors and foreign service officers were held authorized by law.

On Feb. 26, 1943,[7] the Committee of the Whole was considering H.R. 1975, a deficiency appropriation bill Proceedings were as follows:

Foreign Service, auxiliary (emergency): For an additional amount for Foreign Service, auxiliary (emergency), Department of State, fiscal year 1943, including the objects specified under this head in the Department of State Appropriation Act, 1943, $491,000: *Provided*, That cost of living and representation allowances, as authorized by the act approved February 23, 1931, as amended, may be paid from this appropriation to American citizens employed hereunder.

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, a point of order.

THE CHAIRMAN:[8] The gentleman will state it.

MR. REES of Kansas: Mr. Chairman, I make a point of order against the words "and representation," in line 11 on page 23, on the ground that they are legislation on an appropriation bill.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, the item is authorized by law. Paragraph 12 of title XXII, found on page 1877 of the United States Code, provides specific authorization for the item.

MR. REES of Kansas: As I understand, this appropriation is for a new auxiliary service, not the regular service.

THE CHAIRMAN: Will the gentleman from Missouri advise the Chair whether the auxiliary service referred to in the paragraph is authorized by law?

MR. CANNON of Missouri: This comes within the provisions of the statute, which reads:

> Under such regulations as the President may prescribe, and within the limitations of such appropriations as may be made therefor, which appropriations are authorized, ambassadors, ministers, Diplomatic,

6. Wilbur D. Mills (Ark.).

7. 89 CONG. REC. 1369, 78th Cong. 1st Sess.

8. Howard W. Smith (Va.).

Consular, and Foreign Service officers may be granted allowances for representation; and also post allowances wherever the cost of living may be proportionately so high that, in the opinion of the Secretary of State, such allowances are necessary to enable such Diplomatic, Consular, and Foreign Service officers to carry on their work efficiently.

THE CHAIRMAN: The Chair has advised itself on the language referred to by the gentleman from Missouri, but the point on which the Chair would like to be enlightened is the language in the last sentence of the paragraph referring to the fact that moneys may be paid from this appropriation to American citizens employed thereunder.

MR. CANNON of Missouri: Mr. Chairman, there is no specific legislation authorizing the Foreign Service Auxiliary, but it is in existence and is in operation at this time for this fiscal year. No point of order was made by the gentleman on that score. The point of order was directed at the provision for representation allowances, which are authorized by law, as I have indicated.

MR. REES of Kansas: Not for this kind of organization, Mr. Chairman.

THE CHAIRMAN: Will the gentleman from Missouri kindly answer one more questions the Chair has in mind? Is there legislative authorization for representation allowances to be made to American citizens employed in accordance with this paragraph?

MR. CANNON of Missouri: Mr. Chairman, language could not be more explicit than that just cited from paragraph 12 of title XXII, which specifically covers authorization of appropriations for cost of living and representation allowances under such circumstances.

THE CHAIRMAN: What the Chair is concerned about is, Does the term "American citizens" as used in this paragraph refer to ambassadors, ministers, diplomatic, consular, and Foreign Service officers. Is that what the committee has in mind?

MR. CANNON OF MISSOURI: Unless they were American citizens they could not be serving as representatives of this Government.

THE CHAIRMAN: Are they employees under the terms of this law?

MR. CANNON OF MISSOURI: Certainly; there can be no question about it.

THE CHAIRMAN: In view of the explanation made by the chairman of the Committee on Appropriations as to the existing law, the Chair is constrained to overrule the point of order made by the gentleman from Kansas.[9]

Foreign Service Auxiliary.

§ 17.14 Appropriations for the Foreign Service Auxiliary were not authorized by law.

On Feb. 26, 1943,[10] the Committee of the Whole was considering H.R. 1975, a deficiency appropriation. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Foreign Service, auxiliary (emergency): For an additional amount for

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9. A further point of order made by Mr. Rees is discussed in § 17.14, infra.

10. 89 CONG. REC. 1369, 78th Cong. 1st Sess.

Foreign Service, auxiliary (emergency), Department of State, fiscal year 1943, including the objects specified under this head in the Department of State Appropriation Act, 1943, $491,000: *Provided,* That cost of living and representation allowances, as authorized by the act approved February 23, 1931, as amended, may be paid from this appropriation to American citizens employed hereunder.

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I make the . . . point of order against the language in lines 6 to 13 on page 23 that it is legislation on an appropriation bill not authorized by law. . . .

MR. [CLARENCE] CANNON of Missouri: We have passed the proposition, Mr. Chairman; we are now on the proviso. The point of order made by the gentleman did not apply to the first portion, which is a separate entity as against the proviso. Inasmuch as the point of order was not interposed at the time, it now comes too late.(11)

THE CHAIRMAN:(12) The Chair advises the gentleman from Missouri that he will hold that the point of order does not come too late, in view of the fact that the proviso is a part of the paragraph. Does the gentleman desire to advise the Chair any further on the paragraph?

MR. CANNON of Missouri. The point has been covered.

THE CHAIRMAN: Will the gentleman from Missouri point out to the Chair the legislative authority for the Foreign Service Auxiliary? The section referred to by the gentleman from Missouri, which has been analyzed by the Chair, refers to the language ["and representation"] on line 11, page 23. Is there legislation to which the gentleman can refer the Chair authorizing the Foreign Service Auxiliary?

MR. CANNON of Missouri: There is no specific legislation on that, Mr. Chairman.

THE CHAIRMAN: In view of the statement of the gentleman from Missouri, the Chair sustains the point of order made by the gentleman from Kansas.

International Committee on Political Refugees

§ 17.15 An appropriation for expenses of participation by the United States in the International Committee on Political Refugees was not authorized by law.

On June 23, 1939,(13) the Committee of the Whole was considering H.R. 6970, a deficiency and supplemental appropriation bill. The following proceedings took place:

International Committee on Political Refugees: For the expenses of participation by the United States in the International Committee on Political Refugees, including personal services in the District of Columbia and elsewhere without regard to the civil service laws and regulations or the Classification Act of 1923, as amended; sten-

11. The prior point of order is discussed in § 17.13, supra.

12. Howard W. Smith (Va.).

13. 84 CONG. REC. 7827, 76th Cong. 1st Sess.

ographic reporting, translating, and other services by contract if deemed necessary, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5); rent; traveling expenses; purchase of necessary books, documents, newspapers, and periodicals; stationery, equipment; official cards; printing and binding; entertainment; and such other expenses as may be authorized by the Secretary of State, including the reimbursement of other appropriations from which payments may have been made for any of the purposes herein specified, fiscal year 1940, $20,000, together with the unexpended balance of the appropriation for this purpose for the fiscal years 1938 and 1939 contained in the Second Deficiency Appropriation Act, fiscal year 1938: *Provided*, That no salary shall be paid hereunder at a rate in excess of $10,000 per annum.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order on the paragraph on the ground that it is not authorized by law.

THE CHAIRMAN:[14] Does the gentleman from Virginia wish to be heard upon the point of order?

MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, I think the point of order is well taken.

THE CHAIRMAN: The point of order is sustained.

Ambassadors' and Ministers' Pay

§ 17.16 Where the President at will has raised a legation to an embassy or reduced an embassy to a legation and followed it with an appointment under his constitutional authority in article II section 2, that has been approved by the Senate, an appropriation for the salary of the appointee has been held in order if the rate of pay was not in contravention of law.

On May 19, 1939,[15] the Committee of the Whole was considering H.R. 6392, a State, Justice, Judiciary, and Commerce Departments appropriation. The following proceedings took place:

FOREIGN INTERCOURSE

Salaries, Ambassadors and Ministers: Ambassadors Extraordinary and Plenipotentiary to Argentina, Brazil, Chile, China, Colombia, Cuba, France, Germany, Great Britain, Italy, Japan, Mexico, Panama, Peru, Poland, Spain, Turkey, Union of Soviet Socialist Republics, and Venezuela, at $17,500 each;

MR. [JOHN M.] VORYS of Ohio: Mr. Chairman, I make the point of order in the paragraph to the words "Columbia" in line 21, "Panama" in line 22, "Union of Soviet Socialist Republics" and "Venezuela" in line 23. I make the point of order that each is an appropriation not authorized by law. Title 22, section 31, of the Code sets forth the act of March 2, 1909, which provides:

> No new ambassadorships shall be created unless the same shall be provided for by act of Congress.

14. R. Ewing Thomason (Tex.).

15. 84 CONG. REC. 5846, 5847, 76th Cong. 1st Sess.

As to the other ambassadorships which are listed in this paragraph, they have been provided for by acts of Congress. As to these four, the Union of Soviet Socialist Republics has no statutory authorization, and the other three are new ambassadorships created in South America during last fall by the Department of State, for which there is no authority in law. There is not only no authority, but the appropriation is in clear violation of the act of Congress which I have quoted, which forbids the creation of new ambassadorships unless the same shall be provided for by act of Congress. . . .

THE CHAIRMAN:[16] Will the gentleman permit the Chair to ask the gentleman from Ohio a question? The Chair would like to know whether or not the gentleman has taken the position that the Ambassadors or Ministers referred to have not been actually appointed and confirmed.

MR. VORYS of Ohio: Oh, no, Mr. Chairman, that is not the point at all.

THE CHAIRMAN: The gentleman concedes that these Ambassadors have been appointed and confirmed by the Senate?

MR. VORYS of Ohio: I concede that.

THE CHAIRMAN: The Chair feels justified in taking judicial notice of the appointment of these Ambassadors to these various countries named. . . .

The Chair is prepared to rule. This specific question seems to have been passed upon on a former occasion. In Cannon's Precedents, volume 7, section 1248, we find the following language:

> The power of the President to appoint diplomatic representatives to foreign governments and to determine their rank is derived from the Constitution and may not be circumscribed by statutory enactments.
>
> Where the President has appointed a diplomatic representative and the appointment has been approved by the Senate, a point of order does not lie against an appropriation for the salary of such representative unless the rate of pay has been otherwise fixed by law.
>
> A statute prohibiting the creation of new ambassadorships except by act of Congress is in contravention of the President's constitutional prerogatives and will not support a point of order against an appropriation for the salary of an ambassadorship not created by act of Congress but appointed by the President and confirmed by the Senate.
>
> The President, at will, may raise a legation to an embassy or reduce an embassy to a legation, any statute to the contrary notwithstanding, and where the President has made such change and followed it with an appointment which has been approved by the Senate, an appropriation for the salary of the appointee is in order unless the rate of pay is in contravention of law.

In the decision to which the Chair has referred the Honorable Horace M. Towner, of Iowa, Chairman of the Committee of the Whole House on the state of the Union, referred to the identical statute referred to by the gentleman from Ohio, and that was taken into consideration at the time the decision was rendered.

In view of the precedents of the House, the Chair overrules the point of order.

§ 17.17 An appropriation for the salary of a particular U.S minister to a foreign country

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

is not authorized by law (the Constitution) if the President has made an appointment but the Senate has not confirmed the appointee.

On Aug. 17, 1937,[17] the Committee of the Whole was considering H.R. 8245, a deficiency appropriation bill. The following proceedings took place:

> Salaries of ambassadors and ministers: For an additional amount for salaries of ambassadors and ministers, fiscal year 1938, for the salary of an envoy extraordinary and minister plenipotentiary to Lithuania at $10,000 per annum, $8,333.34: *Provided,* That the appropriation for salaries of ambassadors and ministers, fiscal year 1938, shall be available for payment of the salary of an envoy extraordinary and minister plenipotentiary to Estonia and Latvia at $10,000 per annum. . . .
>
> MR. [HAMILTON] FISH [Jr., of New York]: Mr. Chairman, I make a point of order against the language on page 28, lines 4 to 12, inclusive, as constituting legislation on an appropriation bill, not authorized by law. It creates a new position, that of Minister of Lithuania. The President has no constitutional right and is empowered by no act of Congress to create additional positions. . . .
>
> THE CHAIRMAN:[18] The Chair is ready to rule As stated by the gentleman from Virginia, the President has the right to appoint. At the present time, however, the Senate has not confirmed the appointment. The appropriation, therefore, is subject to a point of order.
>
> The Chair sustains the point of order.

Arms Control and Disarmament

§ 17.18 A paragraph in a general appropriation bill containing funds for the Arms Control and Disarmament Agency was conceded to be unauthorized by law for the fiscal year in question and was ruled out in violation of Rule XXI clause 2.

On June 14, 1978,[19] during consideration in the Committee of the Whole of the Departments of State, Justice, Commerce, and Judiciary appropriation bill (H.R. 12934) a point of order was raised and sustained against the following provision:

> ARMS CONTROL AND DISARMAMENT AGENCY
>
> ARMS CONTROL AND DISARMAMENT ACTIVITIES
>
> For necessary expenses, not otherwise provided for, for arms control and disarmament activities, including not to exceed $15,000 for official reception and representation expenses, author-

17. 81 CONG. REC. 9175, 9176, 75th Cong. 1st Sess.

18. Claude V. Parsons (Ill.).

19. 124 CONG. REC. 17629, 95th Cong. 2d Sess.

ized by the Act of September 26, 1961, as amended (22 U.S.C. 2551 et seq.), $16,395,000.

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Chairman, I make a point of order on the basis of clause 2, rule XXI, that this is an unauthorized appropriation and is not authorized by law.

MR. [JOHN M.] SLACK [of West Virginia]: Mr. Chairman, I concede the point of order.

THE CHAIRMAN:[20] The gentleman from West Virginia (Mr. Slack) concedes the point of order, the paragraph is stricken, and the Clerk will read.

Parliamentarian's Note: 22 USC § 2589 contains specific authorization for this agency on a fiscal year basis, and the bill amending this law to authorize appropriations for fiscal 1979 had passed both Houses prior to June 14 but had not yet been enacted into law (Public Law No. 95–338). This agency was not covered by the State Department authorization restriction cited supra, but is an independent agency governed solely by 22 USC §§ 2551–2589.

Board for International Broadcasting

§ 17.19 A paragraph in a general appropriation bill containing funds for the Board for International Broadcasting was conceded to be unauthorized by law for the fiscal year in question and was ruled out in violation of Rule XXI clause 2.

On June 14, 1978,[1] during consideration in the Committee of the Whole of the Departments of State, Justice, Commerce, and Judiciary appropriation bill (H.R. 12934), a point of order was sustained against the following provision:

The Clerk read as follows:

BOARD FOR INTERNATIONAL BROADCASTING

GRANTS AND EXPENSES

For expenses of the Board for International Broadcasting, including grants to RFE/RL, Inc., $85,000,000, of which $2,000,000, to remain available until expended, shall be available only for fluctuations in foreign currency exchange rates in accordance with the provisions of section 8 of the Board for International Broadcasting Act of 1973, as amended: *Provided*, That not to exceed $40,000 shall be available for official reception and representation expenses.

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Chairman, I make a point of order on the basis of clause 2, rule XXI, that this is an unauthorized appropriation and has not been authorized by law.

MR. [JOHN M.] SLACK [of West Virginia]: Mr. Chairman, I concede the point of order.

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

1. 124 CONG. REC. 17629, 95th Cong. 2d Sess.

THE CHAIRMAN:[2] The gentleman from West Virginia (Mr. Slack) concedes the point of order.

The paragraph is stricken and the Clerk will read.

Parliamentarian's Note: 22 USC § 2877 contains specific authorization for the Board on a fiscal year basis, and the fiscal 1979 authorization bill for this Board was part of H.R. 12598, State Department and other agencies authorization bill, which had passed the House but not the Senate on this date (see Public Law No. 95–426). Under 22 USC Sec. 2872, however, the Board was established independently of the Department of State and was not therefore subject to the restrictions in 22 USC § 2680(a) requiring specific authorization for State Department activities.

International Communications Agency

§ 17.20 The creation of the International Communications Agency by Reorganization Plan No. 2 of 1977 was conceded not to constitute sufficient authorization in law for appropriations for that agency for fiscal 1979, where under section 2 of that plan the agency remained subject to direction of the Department of State and thus subject to the requirement for specific authorization in law applicable to the Department, where the specific authorization bill for the fiscal year in question had not yet been enacted, and where the reorganization plan contained no specific authorization for appropriations.

On June 14, 1978,[3] during consideration in the Committee of the Whole of the Departments of State, Justice, Commerce, and Judiciary appropriation bill (H.R. 12934), a point of order was sustained against the following provision:

The Clerk read as follows:

INTERNATIONAL COMMUNICATION AGENCY

SALARIES AND EXPENSES

For expenses, not otherwise provided for, necessary to enable the International Communication Agency, as authorized by Reorganization Plan No. 2 of 1977, the Mutual Educational and Cultural Exchange Act (22 U.S.C. 2451 et seq.), and the United States Information and Educational Exchange Act, as amended (22 U.S.C. 1431 et seq.), to carry out international communication, educational and cultural activities. . . .

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Chairman, I make a point

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

3. 124 CONG. REC. 17630, 95th Cong. 2d Sess.

of order on the basis of rule XXI, clause 2, that this is an unauthorized appropriation and has not been authorized by law.

MR. [JOHN M.] SLACK [of West Virginia]: Mr. Chairman, I concede the point of order.

THE CHAIRMAN:[4] The point of order is conceded, sustained, and the paragraph is stricken.

Department of State, Requirement for Annual Authorization

§ 17.21 Appropriations in a general appropriation bill for the Department of State, including salaries and expenses, representation allowances, expenses under the Foreign Services Buildings Act, special foreign currency program, emergencies in the diplomatic and consular service, retirement and disability fund, international conferences, international peacekeeping activities, missions to international organizations, international conferences and contingencies, international trade negotiations, international commissions, construction, and general provisions, no authorizations for such appropriations having been enacted for the fiscal year in question as specifically required by law, were conceded to be unauthorized and were ruled out as in violation of Rule XXI clause 2.

Pursuant to law [22 USC § 2680(a)(1)], no funds shall be available to the Department of State for obligation or expenditure unless the appropriation thereof has been authorized by law enacted after February 1972 (thus requiring specific subsequently enacted authorizations for both the direct operations of that Department and related functions delegated to it by laws enacted prior to that date, and not permitting appropriations under Rule XXI clause 2 to be authorized by the "organic statute" or other laws earlier authorizing appropriations for related activities). Accordingly, on June 14, 1978,[5] during consideration of H.R. 12934 (Departments of State, Justice, Commerce, and the Judiciary, and related agencies appropriations for fiscal 1979), several points of order made against paragraphs of the bill were conceded and sustained. Among the provisions subject to points of order were the following:

The Clerk read as follows:

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

5. 124 CONG. REC. 17616, 17617, 17620, 95th Cong. 2d Sess.

For necessary expenses of the Department of State and the Foreign Service, not otherwise provided for, including allowances as authorized by 5 U.S.C. 5921–5925; expenses of binational arbitrations arising under international air transport agreements; expenses necessary to meet the responsiblities and obligations of the United States in Germany (including those arising under the supreme authority assumed by the United States on June 5, 1945, and under contractual arrangements with the Federal Republic of Germany) . . . $659,000,000. . . .

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Chairman, I make a point of order against this language in this paragraph in that it amounts to an unauthorized appropriation, and it cannot be contained in an appropriation bill unless authorized by law. . . .

MR. [JOHN M.] SLACK [of West Virginia]: . . . Mr. Chairman, the gentleman is correct if he insists on his point of order, in which event I would concede the point of order.

THE CHAIRMAN:[6] The point of order is conceded and sustained. The paragraph in question is stricken from the bill. . . .

The Clerk read as follows:

For necessary expenses of carrying into effect the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 292–300), including personal services in the United States and abroad; salaries and expenses of personnel and dependents as authorized by the Foreign Service Act of 1946, as amended (22 U.S.C 801–1158); allowances as authorized by 5 U.S.C. 5921–5925; and services as authorized by 5 U.S.C. 3109; $125,000,000, to remain available until expended: *Provided*, That not to exceed $2,544,000 may be used for administrative expenses during the current fiscal year. . . .

MR. ROUSSELOT: Mr. Chairman, I make a point of order against the language in this paragraph in that it amounts to an unauthorized appropriation, and it cannot be contained in an appropriation bill unless authorized by law. . . .

MR. SLACK: . . . Mr. Chairman, again, if the gentleman from California insists on his point of order, I concede the point of order. . . .

The Clerk read as follows:

For payment to the Foreign Service Retirement and Disability Fund, as authorized by law, $38,107,000.

MR. ROUSSELOT: Mr. Chairman, on the basis of clause 2, rule XXI, I make the same point of order. . . .

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

THE CHAIRMAN: The Chair makes the same ruling. . . .

The Clerk read as follows:

INTERNATIONAL TRADE NEGOTIATIONS

For necessary expenses of participation by the United States in international trade negotiations, including not to exceed $25,000 for representation allowances, as authorized by section 901 of the Act of August 13, 1946, as amended (22 U.S.C. 1131), and for official entertainment, $4,717,000: *Provided*, That this appropriation shall be available in accordance with the authority provided in the current appropriation for "International conferences and contingencies".

MR. ROUSSELOT: Mr. Chairman, on the basis of clause 2, rule XXI, I make the same point of order once again. . . .

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

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

THE CHAIRMAN: The Chair sustains the point of order. In each case the paragraph will be stricken.

§ 18. Justice

Training of United States Attorneys

§ 18.1 An appropriation for the training of United States attorneys and other officials was held not authorized by a law empowering the Attorney General to exercise supervision over United States attorneys.

On Apr. 3, 1936,[7] the Committee of the Whole was considering H.R. 12098, an appropriation bill for the State, Justice, Commerce, and Labor Departments. During consideration, a point of order was sustained against a paragraph in the bill as indicated below:

> Salaries and expenses: For salaries and expenses incident to the special instruction and training of the United States attorneys and United States marshals, their assistants and deputies, and United States commissioners, including personal services, supplies, and equipment in the District of Columbia, traveling expenses, including expenses of attendance at meetings when specifically authorized by the Attorney General, $35,000.

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Chairman, I make a point of order against the paragraph beginning on page 38, line 17, ending on line 26, embracing the proposed appropriation of $35,000, because there is no law authorizing it and it is legislation upon an appropriation bill, unauthorized by law.

THE CHAIRMAN:[8] the Chair will hear the gentleman from South Carolina [Mr. MCMILLAN] on the point of order.

MR. [JOHN L.] MCMILLAN: Mr. Chairman, this item is carried in the bill, I may say to the Committee, on the authority of law as we find it in section 317 of title V of the Code of Laws of the United States in force January 3, 1935, in which I find this language:

> The Attorney General shall exercise general superintendence and direction over the attorneys and marshals in the districts of the United States and Territories as to the manner of discharging their respective duties—

And so forth. We take it that, in view of the language I have just read, the Attorney General would have discretion under this substantive law to provide for these men, marshals and district attorneys, and what not, to be brought to Washington for such a course of instruction or training as they may need. The purpose of this language is to make uniform a policy to apply to district attorneys and marshals throughout the country.

7. 80 CONG. REC. 4926, 4927, 74th Cong. 2d Sess.

8. Byron B. Harlan (Ohio).

MR. BLANTON: Mr. Chairman, that language in the statute read by the gentleman from South Carolina [Mr. MCMILLAN] in no way embraces authority for "special instruction and training of United States attorneys and United States marshals, their assistants and deputies, and United States commissioners" and their trips to Washington. There is nothing in that language read by my colleague that embraces or authorizes anything like that. This is nothing in the world but providing for junket trips, pure and simple, and such junket trips to Washington have been turned down by the Comptroller General in the past. I have some of the accounts in my office, certified to by his office, showing where he has turned them down because there is no authority of law. This $35,000 provision is an attempt to get around the Comptroller General of the United States.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Chairman, will the gentleman yield?

THE CHAIRMAN: The Chair is ready to rule. Does the gentleman from Massachusetts wish to address the Chair on the point of order?

MR. MCCORMACK: Not necessarily on the point of order, but I should like to ask the gentleman from Texas to yield, if he will.

MR. BLANTON: Certainly I yield to my friend from Massachusetts.

MR. MCCORMACK: I just wish to make this observation: I do not think the gentleman means to let it remain in the Record that these are junket trips. I think what the Attorney General has in mind is something which is a very desirable objective, namely, to create uniformity throughout the country in the offices of the United States district attorneys. I know something about the objective of the Attorney General in this respect. It seems to me that, independent of the point of order, it should not be permitted to go into the Record, without an expression of view to the contrary, that this is nothing but a junket trip.

MR. BLANTON: I will say to the gentleman that he has not given the attention to this matter that I have. I have gotten some of these accounts in the past from the Comptroller General's office, because it was my duty to look into those things as a member of this committee. I have found out where they have attempted to put these junket trips over and they have been approved by the Department of Justice, but when they reached Comptroller General McCarl he turned them down, and they were not paid out of Government funds.

THE CHAIRMAN: The Chair is ready to rule on the point of order.

The question to be decided is the interpretation of the phrase, "special instruction and training", contained in this appropriation bill, the question being whether that phrase comes under the statutory authorization to the Attorney General in the section referred to by the gentleman from South Carolina [Mr. MCMILLAN], section 317 of title 5, in which the Attorney General is authorized to exercise "general superintendence and direction" over the attorneys.

This section has been on the statute books certainly for more than half a century. So far as the records disclose, up to the present time there has been

no attempt to organize or operate a school for instructing district attorneys under that authorization. There is very little in the decisions interpreting this phrase of the statute. In the case of *Fish* v. *U.S.* (36 Federal Reporter, 680), however, in a decision by the District Court for the Eastern District of New York, the court, by way of obiter, spoke as follows:

> The section no doubt confers upon the Attorney General power to superintend any criminal prosecution instituted by the district attorney, and to direct the district attorney in regard to the method of discharging his duties in any particular prosecution instituted by him. But it does not, in my opinion, authorize the attorney general to control the action of the district attorney in criminal cases by general regulations. The supervision and direction contemplated by section 362 must, as I think, be a particular instruction, given in a particular case, and based on the facts of the particular case. To hold otherwise would in many instances deprive the court of the aid of counsel, learned in the law, which is contemplated by the statute, and substitute in place of counsel a set of general regulations issued by the Attorney General; and in some cases the ends of justice would be defeated by such a practice. A general regulation of the Department of Justice that all district attorneys should in all cases refuse to consent to any postponement of a trial, should never admit a fact, should always move for the infliction of the extreme penalty of the law, would hardly be upheld. The statute must have some limit; and one proper limitation, as it seems to me, is to require, for the validity of any direction by the Attorney General in criminal cases, that it be made in a particular case, and with reference to the duties of the district attorney in that particular case.

If this decision is to be followed, there is no authority under present statutes for the Attorney General to operate a school for district attorneys.

The point of order is sustained.

Civil Rights Commission

§ 18.2 A paragraph in a general appropriation bill containing funds for the Civil Rights Commission for fiscal 1979 was conceded to be unauthorized in violation of Rule XXI clause 2 where the law extending the existence and authorizations for the Commission beyond fiscal 1978 had not yet been enacted (42 USC Sec. 1975c, 1975e).

On June 14, 1978,[9] during consideration in the Committee of the Whole of the Departments of State, Justice, Commerce, and Judiciary appropriation bill (H.R. 12934), a point of order was sustained against the following provision:

The Clerk read as follows:

COMMISSION ON CIVIL RIGHTS

SALARIES AND EXPENSES

For expenses necessary for the Commission on Civil Rights, including hire of passenger motor vehicles, $10,752,000.

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Chairman, on the basis of

9. 124 CONG. REC. 17629, 95th Cong. 2d Sess.

clause 2, rule XXI, I make a point of order that this is an unauthorized appropriation and has not been authorized by law.

MR. [JOHN M.] SLACK [of West Virginia]: I concede the point of order, Mr. Chairman.

THE CHAIRMAN:[10] the point of order is conceded, sustained, and the paragraph is stricken.

Parliamentarian's Note: The authorization extension had not passed either House as of June 14 (see Public Law No. 95–444).

Department of Justice—Annual Authorizations Required

§ 18.3 Appropriations in a general appropriation bill for fiscal 1979 for the Department of Justice and its related agencies were conceded to be unauthorized (where the authorization bill had been reported in the House but not enacted into law) and were ruled out in violation of Rule XXI clause 2.

Pursuant to law (Public Law No. 94–503, § 204), all appropriations for the Department of Justice and related agencies and bureaus are deemed unauthorized for fiscal 1979 and subsequent fiscal years unless specifically authorized for each fiscal year, and the creation of any subdivision in that department or the authorization of any activity therein, absent language specifically authorizing appropriations for a fiscal year, is not deemed sufficient authorization. Accordingly, on June 14, 1978,[11] during consideration of H.R. 12934 (Departments of State, Justice, Commerce, and the Judiciary appropriations for fiscal 1979), points of order were made and conceded, as follows:

The Clerk read as follows:

For expenses necessary for the administration of the Department of Justice, including hire of passenger motor vehicles; and miscellaneous and emergency expenses authorized or approved by the Attorney General or the Assistant Attorney General for Administration; $28,500,000, of which $4,837,000 is for the United States Parole Commission and $2,000,000 is for the Federal justice research program, the latter amount to remain available until expended.

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Chairman, on the basis of clause 2, rule XXI, I make the point of order that this is an unauthorized appropriation and has not been authorized by law.

MR. [JOHN M.] SLACK [of West Virginia]: Mr. Chairman, I concede the point of order.

THE CHAIRMAN:[12] the point of order is conceded and sustained. The paragraph is stricken.

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

11. 124 CONG. REC. 17622–24, 95th Cong. 2d Sess.

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

The Clerk will read.

The Clerk read as follows:

LEGAL ACTIVITIES

SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES (INCLUDING TRANSFER OF FUNDS)

For expenses necessary for the legal activities of the Department of Justice, not otherwise provided for, including miscellaneous and emergency expenses authorized or approved by the Attorney General or the Assistant Attorney General for Administration. . . .

MR. ROUSSELOT: Mr. Chairman, on the basis of clause 2, rule XXI, I make the point of order that this is an unauthorized appropriation and has not been authorized by law.

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

THE CHAIRMAN: The point of order is conceded and sustained The paragraph is stricken. . . .

The Clerk read as follows:

SALARIES AND EXPENSES, ANTITRUST DIVISION

For expenses necessary for the enforcement of antitrust, consumer protection and kindred laws. . . .

MR. ROUSSELOT: Mr. Chairman, on the basis of clause 2, rule XXI, I make the point of order that this is an unauthorized appropriation and has not been authorized by law.

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

THE CHAIRMAN: The point of order is conceded and sustained. The paragraph is stricken. . . .

The Clerk read as follows:

For necessary expenses of the Community Relations Service. . . .

MR. ROUSSELOT: Mr. Chairman, I make a point of order on the basis of clause 2, rule XXI, that this is an unauthorized appropriation and has not been authorized by law.

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

THE CHAIRMAN: The point of order is conceded and sustained. The paragraph is stricken.

§ 19. Public Works

Public Buildings Not Approved by Public Works Committee

§ 19.1 Language in a general appropriation bill providing an additional amount for the construction of public buildings not yet authorized pursuant to law was held not to be in order.

On June 7, 1961,[13] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7445), a point of order was raised, as follows:

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a point of order.

THE CHAIRMAN:[14] the gentleman will state it.

MR. GROSS: Mr. Chairman, I make a point of order against the language on page 19 beginning with line 9 and run-

13. 107 CONG. REC. 9678, 87th Cong. 1st Sess.

14. Richard Bolling (Mo.).

ning through line 16, reading as follows:

SITES AND EXPENSES, PUBLIC BUILDINGS PROJECTS

For an additional amount for expenses necessary in connection with the construction of public buildings projects not otherwise provided for, as specified under this head in the Independent Offices Appropriation Acts of 1959, 1960 and 1961, including preliminary planning of public buildings projects by contract or otherwise, $25,000,000, to remain available until expended.

I base the point of order on the ground that the appropriation herein called for is not justified, is not authorized; and I respectfully call the attention of the Chair to the language in the report on page 10 under the title "Sites and expenses, public buildings projects."

This amount is needed for financing the site and expense costs of projects that are now pending or will be submitted to the Public Works Committees this year.

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

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, the point of order is good; it has not been authorized. But is it needed. They testified to that effect. It has not been authorized, however, and on that basis it is subject to a point of order.

THE CHAIRMAN: The point of order is sustained.

§ 19.2 Appropriations for certain federal office buildings in the District of Columbia were ruled out as unauthorized where not approved by the Public Works Committees of the House and Senate as required by the Public Buildings Act of 1959 [73 Stat. 479].

On Apr. 19, 1960,[15] the Committee of the Whole was considering H.R. 11776, a bill making appropriations for sundry independent executive bureaus. At one point the Clerk read as follows, and proceedings ensued as indicated below:

CONSTRUCTION, PUBLIC BUILDINGS PROJECTS

For expenses, not otherwise provided for, necessary to construct public buildings projects and alter public buildings by extension or conversion where the estimated cost for a project is in excess of $200,000 pursuant to the Public Buildings Act of 1959 (73 Stat. 479), including equipment for such buildings, $144,836,000, to remain available until expended: *Provided*, That the foregoing amount shall be available for public buildings projects at locations and at maximum construction improvement costs (excluding funds for sites and expenses) as follows:

Post office and Federal office building, Camden, Arkansas, $633,250; . . .

Federal Office Building Numbered Nine, District of Columbia, $20,031,100;

Federal Office Building Numbered Ten, District of Columbia, $38,326,500; and

15. 106 CONG. REC. 8230, 86th Cong. 2d Sess.

United States Court of Claims and Court of Customs and Patent Appeals building, $6,375,000: *Provided further,* That the foregoing limits of costs may be exceeded to the extent that savings are effected in other projects, but by not to exceed 5 per centum.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order against the language beginning with line 9 on page 16 of the bill and running through line 14 to and including the "$6,375,000" that it is not authorized by law.

THE CHAIRMAN:[16] Does the gentleman from Texas care to be heard on the point of order?

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, there is no question about it. The point of order is good.

THE CHAIRMAN: The Chair sustains the point of order.

Post Office Construction

§ 19.3 To an appropriation bill providing funds for the Post Office Department and transfer of not to exceed a certain sum to the General Services Administration for repair, preservation, improvement and equipment of federally owned property used for postal purposes, an amendment providing funds for construction of a post office annex, approved under the Lease-Purchase Act, but for which there had been no legislation authorizing appropriations, was held to be unauthorized.

On Mar. 4, 1958,[17] the Committee of the Whole was considering H.R. 11085, a bill making appropriations for the U.S. Treasury and the Post Office. During consideration, a point of order was sustained against an amendment as indicated below:

Sec. 204. Not exceeding $22 million of appropriations in this title shall be available for payment to the General Services Administration of such additional sums as may be necessary for the repair, alteration, preservation, renovation, improvement, and equipment of federally owned property used for postal purposes, of which not to exceed $20 million shall be available for improving lighting, color, and ventilation for the specialized conditions in space occupied for postal purposes.

MR. [BYRON G.] ROGERS of Colorado: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Rogers of Colorado: Page 14, after line 6, add:

"Sec. 205. There is appropriated the sum of $8,209,000 for the construction of a terminal annex at Denver, Colo."

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Chairman, I reserve a point of order against the amendment.

THE CHAIRMAN:[18] Does the gentleman from Colorado desire to be heard on the point of order?

16. Frank N. Ikard (Tex.).

17. 104 CONG. REC. 3420, 85th Cong. 2d Sess.

18. Brooks Hays (Ark.).

MR. ROGERS of Colorado: Yes. I contend that the amendment is in order as provided by Public Law 519 dated July 22, 1954, which is commonly referred to as the lease-purchase law. . . .

MR. GARY: Mr. Chairman, in the first place, the law cited by the gentleman from Colorado expired on June 30 last year. That is the lease-purchase law. In the second place, the lease-purchase law did not authorize any appropriations whatever. It merely authorized the construction of projects under a lease-purchase contract. In the third place, even if there were an authorization of construction, that comes under General Services Administration and the General Services Administration appropriation is not before this committee. We are considering the appropriation for the Post Office Department. There is absolutely no authorization whatever for the project in question. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair is grateful to both the gentleman from Colorado and the gentleman from Virginia for their presentation. The Chair thinks reference to the legislation referred to by the gentleman from Colorado would develop the fact that the lease-purchase procedure is a distinctive type of construction procedure that does not yield to ordinary appropriation treatment. Consequently, the argument advanced by the gentleman from Virginia [Mr. Gary] appeals to the Chair. For the reason that no prior legislation authorizing this appropriation has been enacted by the Congress, the Chair sustains the point of order.

Airport Services

§ 19.4 An appropriation for necessary advisory services to state and other public and private agencies with regard to construction and operation of airports and landing areas was held to be authorized by law.

On Mar. 16, 1945,[19] the Committee of the Whole was considering H.R. 2603, an appropriation bill for the Federal Loan Agency and the Departments of State, Justice, Commerce, and the Judiciary. A point of order was overruled against the following paragraph:

> Airport advisory service: For necessary expenses in furnishing advisory services to State and other public and private agencies in connection with the construction and operation of airports and landing areas, including personal services in the District of Columbia and elsewhere, and the operation, repair, and maintenance of passenger automobiles, $300,000.
>
> MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I make a point of order against the words "and private agencies" on lines 6 and 7, page 60, on the ground that it is legislation on an appropriation bill and is not authorized by law. . . .
>
> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, that is authorized under the provisions of Forty-ninth United States Code, section 451, under authority to foster and promote the development of aviation. . . .

19. 91 CONG. REC. 2373, 79th Cong. 1st Sess.

THE CHAIRMAN:[20] The gentleman from Michigan, the chairman of the subcommittee, called to the attention of the Chair certain language which the Chair desires to read:

> The Administrator of Civil Aeronautics is empowered and directed to encourage and foster the development of civil aeronautics and air commerce in the United States and abroad, encourage the establishment of civil airways, landing areas, and other air navigation facilities. The Administrator shall cooperate with the Board in the administration and enforcement of this chapter.

It seems to the Chair that the language referred to is at least broad enough to authorize the appropriation objected to by the gentleman from Kansas.

The Chair overrules the point of order.

Alaskan Highway

§ 19.5 An appropriation for construction of a connecting highway between the United States and Alaska was unauthorized by law and not a continuation of a public work in progress.

On Mar. 10, 1942,[1] the Committee of the Whole was considering H.R. 6736, a War Department civil functions appropriation. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> Amendment offered by Mr. Case of South Dakota: On page 4, after line 10, insert "Alaskan Highway: For prosecuting the construction of a connecting highway from the States to and into Alaska, $5,000,000."
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I reserve a point of order against the amendment. . . .
>
> MR. [FRANCIS H.] CASE of South Dakota: In the first place, I doubt that it requires an authorization for the Corps of Engineers to carry on this work. The paragraph immediately preceding this was a paragraph dealing with the Signal Corps, for which we made an appropriation to carry on the Alaska Communications System.
>
> Even if this project were one which required authorization by law the rules of the House provide that where a project is under construction and an appropriation is made for continuing construction, the appropriation is in order and is not subject to a point of order.
>
> I call the Chair's attention to an Associated Press dispatch that appeared throughout the country in the papers of March 7, in which this statement was made:
>
> > An advance crew of American engineers is at Dawson Creek, and dozens of freight cars carrying construction equipment are expected to pass through Alberta in the next few weeks. . . .
>
> THE CHAIRMAN:[2] The Chair is ready to rule.
>
> The mere fact that press reports show that certain groups are in Alaska

20. Wilbur D. Mills (Ark.).

1. 88 CONG. REC. 2223, 2224, 77th Cong. 2d Sess.

2. Alfred L. Bulwinkle (N.C.).

does not constitute in the mind of the Chair that there is really a working performance going on in this project at all.

The Chair, therefore, sustains the point of order.

Appropriation Language Limiting Expenditures to Authorized Projects

§ 19.6 A point of order was held not to lie against an amendment proposing to increase a lump-sum appropriation for river and harbor projects where language in the bill limited use of the lump-sum appropriation to "projects authorized by law."

On June 19, 1958,[3] during consideration in the Committee of the Whole of H.R. 12858, a point of order against an amendment to the bill was overruled as indicated below:

Amendment offered by Mr. [Frank J.] Becker [of New York]: On page 4, line 8, after "expended", strike out "$577,085,500" and insert "$578,455,-500." . . .

Mr. [John] Taber [of New York]: Mr. Chairman, I make the point of order against this amendment on the ground that it is legislation on an appropriation bill. It appears to be for three projects which have not been authorized by law although a bill did pass the House. Frankly, I do not like the situation where I am obliged to make this point of order, but I feel that I would not be conscientious in the performance of my duty if I did not do so.

THE CHAIRMAN:[4] Does the gentleman from New York [Mr. Becker] desire to be heard on the point of order?

MR. BECKER: Yes, Mr. Chairman. My understanding in trying to evaluate the various points of order in the last 2 days is that it is possible to increase the sum, that is, it is possible to increase the total sum of the appropriation if I do not include any specific authorization. I have not offered any authorization here or legislation on this bill. I am merely increasing the amount and the total sum of the appropriation in order that there will be a sum of money and in order that these three projects can be initiated. I hope the chairman will overrule the point of order. . . .

THE CHAIRMAN: The gentleman from New York [Mr. Becker] offers an amendment, on page 4, line 8, to which the gentleman from New York [Mr. Taber] raises a point of order.

The Chair has had an opportunity to examine the amendment and to review the ruling of the Chair on yesterday with respect to the language in the bill to which these figures on line 8, page 4, apply. The Chair will point out, as did the Chair on yesterday, that the language to which these figures apply is very specific in that the moneys are to be spent on projects authorized by law. So it would appear to the Chair

3. 104 CONG. REC. 11766, 11767, 85th Cong. 2d Sess. See also 105 Cong. Rec. 10061, 86th Cong. 1st Sess., June 5, 1959.

4. Wilbur D. Mills (Ark.).

that the amendment offered by the gentleman from New York [Mr. Becker] raising the amount of the appropriation would be in order.

The Chair therefore overrules the point of order.

Parliamentarian's Note: See also the discussion of related rulings in §§ 7.10 et seq., supra; and see Ch. 25, § 2.17, volume 7, supra.

Rivers and Harbors

§ 19.7 An appropriation for an "experimental cut" in connection with a survey under the Rivers and Harbors Act was held not to be authorized by law inasmuch as conditions set forth in the act had not been met.

On June 15, 1937,[5] the Committee of the Whole was considering H.R. 7493, an appropriation for civil functions of the War Department. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. Peterson of Florida: Page 7, after line 16, add a new paragraph as follows:

"For experimental cut, Big Pass-Clearwater, Fla., in connection with survey authorized by the Rivers and Harbors Act approved August 30, 1935, $21,000: *Provided,* That local interest shall contribute not less than $10,000 toward such project.". . . .

MR. [J. BUELL] SNYDER of Pennsylvania: . . . Mr. Chairman, the point of order is that the matter covered by the proposed amendment is not authorized by law.

THE CHAIRMAN:[6] Does the gentleman from Florida desire to be heard on the point of order?

MR. [J. HARDIN] PETERSON of Florida: Mr. Chairman, the Rivers and Harbors Act of 1935 authorized a survey. This provides an appropriation for the purpose of carrying out that survey. . . .

THE CHAIRMAN: The Chair is ready to rule:

Section 3 of the act of August 30, 1935, gives to the Secretary of War—

Authority to cause preliminary examinations and surveys to be made at the following-named localities, the cost thereof to be paid from appropriations heretofore or hereafter made for such purposes: *Provided,* That no further examination, survey project, or estimate for new works other than those designated in this or some prior act or joint resolution shall be made: *Provided further,* That after the regular or formal reports made as required by law on any examination, survey, project, or work under way or proposed or submitted no supplemental or additional report or estimate shall be made unless authorized by law. . . .

The provision (authorizes) preliminary examinations and surveys, and specifically (provides):

That the Government shall not be deemed to have entered upon any project for the improvement of any waterway or harbor mentioned in this act until the project for the proposed work shall have been adopted by law.

5. 81 CONG. REC. 5787, 5788, 75th Cong. 1st Sess.

6. John W. McCormack (Mass.).

No law having been cited by the gentleman from Florida showing that Congress has adopted any program as the result of the recommendations of the Secretary of War by reason of the authority vested in the Secretary and contained in the section to which the Chair has referred, the Chair sustains the point of order.

Bureau of Reclamation

§ 19.8 To a paragraph of an appropriation bill making appropriations to the Army Corps of Engineers for flood control, an amendment making part of such appropriation available for studying specified work of the Bureau of Reclamation was held to be unauthorized as well as not germane to the paragraph to which offered.

On June 13, 1951,[7] during consideration in the Committee of the Whole of an appropriation bill (H.R. 4386), a point of order was raised against the following amendment:

MR. [THOMAS H.] WERDEL [of California]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Werdel: On page 7, line 3, strike out the colon and insert "of which $15,000 shall be utilized for the study of the specifications used by the Bureau of Reclamation in connection with controls for laterals and sublaterals to distribute water from the Friant Kern Canal, and to estimate the cost of correcting specification errors."

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from California, which I will reserve so that the gentleman may speak on his amendment. . . .

May I be heard, Mr. Chairman? I feel constrained to speak to the point of order.

THE CHAIRMAN:[8] The Chair will hear the gentleman from Michigan.

MR. RABAUT: Mr. Chairman, this deals with the Reclamation Department of the Government and not with the Corps of Engineers It involves a project in reclamation, and we are not talking about reclamation projects here at all.

I insist on the point of order. It is legislation on an appropriation bill. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair has examined the amendment. As far as any argument which he has heard is concerned, there is no reference to any authority which exists in law for this study and there is nothing in this bill on this subject.

Therefore the Chair sustains the point of order.

Tennessee-Tombigbee Waterway

§ 19.9 An appropriation for the Tennessee-Tombigbee inland

7. 97 CONG. REC. 6522, 6523, 82d Cong. 1st Sess.

8. Porter Hardy, Jr. (Va.).

waterway was authorized by law.

On Mar. 24, 1949,[9] the Committee of the Whole was considering H.R. 3734, a Department of the Army civil functions appropriation. A point of order was raised against the following amendment:

Amendment offered by Mr. [John E.] Rankin [of Mississippi]: Page 8, after line 8, insert the following new paragraph:

"Tennessee-Tombigbee inland waterway: For the prosecution of the works of improvement with respect to the Tombigbee and Tennessee Rivers heretofore authorized by law (Public Law 525, 79th Cong.) $3,000,000."

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, a point of order.

THE CHAIRMAN:[10] The gentleman will state it.

MR. CANNON: I make the point of order, Mr. Chairman, that the amendment is not germane at this point in the bill, and therefore not in order.

THE CHAIRMAN: Does the gentleman from Mississippi desire to be heard?

MR. RANKIN: Yes, Mr. Chairman, it is germane to this part of the bill and is in order.

This is the part of the bill that covers projects of this kind. I have prepared this amendment to carry out the mandate of Congress 2 years ago and the recommendation of the Army engineers. This amendment merely introduces a new section after line 8 on page 8 and provides for funds to begin construction of this great inland waterway, this missing link in our great internal waterway system.

I submit that it is in order and properly presented at this time.

MR. [JOHN] TABER [of New York]: Mr. Chairman, a further point of order.

THE CHAIRMAN: The gentleman will state it.

MR. TABER: The provision for rivers and harbors is entirely included in the paragraph beginning at line 10 on page 5 of the bill and ending on line 8, page 8, and all amendments relating to additional rivers and harbors projects would have to be offered within that paragraph. This goes outside of that and is not germane at this point or elsewhere in the bill.

MR. RANKIN: Mr. Chairman, that is where it is offered.

THE CHAIRMAN: Can the gentleman from New York advise the Chair as to a more appropriate place that he thinks the amendment should be offered to this bill?

MR. TABER: I think it must be offered as an amendment to the figure $176,000,000 on page 6, line 22, where all provisions for rivers and harbors are included.

THE CHAIRMAN: The Chair is prepared to rule. The Chair invites attention to the fact that the paragraph of the bill now under consideration relates to rivers and harbors, maintenance and improvements of existing river and harbor works. The gentleman from Mississippi offers an amendment which has been reported by the Clerk which seeks to add a new paragraph under the same heading of rivers and

9. 95 CONG. REC. 3141, 81st Cong. 1st Sess.

10. Jere Cooper (Tenn.).

harbors, maintenance and improvements of existing river and harbor work. The Chair invites attention to the fact that the pending amendment relates to the prosecution of work on improvements with respect to certain rivers as heretofore authorized by law. The Chair is constrained to believe that the amendment is in order as a new paragraph and, therefore, overrules the point of order.

Diversion Dam, Missouri Basin

§ 19.10 An appropriation for the diversion dam, in the Missouri-Souris division of the Missouri River Basin project, was authorized by law.

On Mar. 30, 1949,[11] the Committee of the Whole was considering H.R. 3838, an Interior Department appropriation. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [William] Lemke [of North Dakota]: Page 47, line 7, after the word "Congress", insert a colon and add the following: "*Provided*, That not less than $1,500,000 of the sums hereby appropriated under this head shall be reserved for the diversion dam, Missouri-Souris division, Missouri River Basin project."

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I make the point of order that this particular amendment is legislation on an appropriation bill. . . .

THE CHAIRMAN:[12] Does the gentleman from North Dakota [Mr. Burdick] desire to be heard on the point of order?

MR. [USHER L.] BURDICK: Yes, Mr. Chairman. This project was authorized in the 1944 Flood Control Act with an appropriation of $200,000,000 for the dams and $200,000,000 for diversion. It is authorized, and there was an appropriation on that authorization.

THE CHAIRMAN: Can the gentleman cite the law relating to the project in question?

MR. LEMKE: Public Law 534. . . .

MR. BURDICK: Mr. Chairman, the matter before us now came into this Congress in a peculiar way. Document 475 came before this Congress authorizing the building of the Garrison Dam by the Army engineers. Senate Document 191 came in authorizing diversion of the waters, to which this amendment alludes. Those two documents, with the consent of the engineers on both sides, resulted in the law which we passed, which was known as Document No. 247. On that document the law was based. That program was authorized. . . .

THE CHAIRMAN: The Chair is prepared to rule.

In light of the information given the Chair, the Chair would invite attention to section 9 of the Flood Control Act of 1944. It would appear from the best examination the Chair has been able to make that the project mentioned in the pending amendment is authorized under that provision. Therefore, the Chair overrules the point of order.

11. 95 CONG. REC. 3525, 3526, 81st Cong. 1st Sess.

12. Jere Cooper (Tenn.).

Transmission Lines, Bonneville Power

§ 19.11 An appropriation for construction of transmission lines from Grand Coulee Dam to Spokane was held authorized by language in the Rivers and Harbors Act of 1935 under "incidental works necessary to such project."

On May 13, 1941,[13] during consideration in the Committee of the Whole of H.R. 4590, an Interior Department appropriation, a point of order against language in the bill was overruled. The proceedings were as follows:

BONNEVILLE POWER ADMINISTRATION

For all expenses necessary to enable the Bonneville Power Administrator to exercise and perform the powers and duties imposed upon him by the act "to authorize the completion, maintenance, and operation of the Bonneville project, for navigation, and for other purposes," approved August 20, 1937 [50 Stat. 731), including personal services, travel expenses, purchase and exchange of equipment, printing and binding, and purchase and exchange maintenance, and operation of motor-propelled passenger-carrying vehicles, to remain available until expended, $22,858,500, of which amount not exceeding $4,000,000 shall be immediately available, not exceeding $15,000 shall be available for personal services in the District of Columbia and $885,600 shall be available for expenses of marketing and transmission facilities, and administrative costs in connection therewith: *Provided*, That $2,000,000 of the foregoing amount shall be available only for the construction of additional transmission lines from the Grand Coulee Dam to Spokane, Wash.

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make a point of order against the language on page 13, beginning in line 25, "that $2,000,000 of the foregoing amount shall be available only for the construction of additional transmission lines from the Grand Coulee Dam to Spokane, Wash.," that it is not authorized by law. . . .

THE CHAIRMAN:[14] The gentleman from Washington is recognized on the point of order.

MR. [CHARLES H.] LEAVY [of Washington]: Mr. Chairman, the basic act providing for the construction of Grand Coulee Dam provides in this language:

> For the purpose of controlling floods, improving navigation, regulating the flow of streams of the United States, providing for storage, for the delivering of stored waters thereof, for the reclamation of the public lands and Indian reservations, and other beneficial uses, and for the generation of electrical energy as a means of financially aiding and assisting. . . .

Then omitting a portion of the language—

> The President, acting through such agents as he may designate, is hereby authorized to construct, operate, and maintain dams, structures, canals, and incidental works nec-

13. 87 CONG. REC. 4004, 77th Cong. 1st Sess.

14. Jere Cooper (Tenn.).

essary to such projects, and in connection therewith to make and enter into any and all necessary contracts, including among other things, structures, canals, and incidental works necessary in connection therewith.

In August 1940 the President by Executive order provided that the power generated at Grand Coulee should be distributed by the Administrator for Bonneville, and the responsibility for marketing that power was placed in the Bonneville Administration.

If by law we can appropriate money for this activity in its entirety, and if we have that responsibility, then certainly by law we can appropriate money for a particular phase of such activity and so designate that appropriation for a particular purpose.

I submit, Mr. Chairman, that the point of order should be overruled.

MR. [JOHN] TABER [of New York]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The Chair will be pleased to hear the gentleman, but the Chair would first like to inquire of the gentleman from Washington where he read the Executive order of the President? Is that in the hearings?

MR. LEAVY: That is in the hearings on page 159, the first paragraph.

THE CHAIRMAN: The Chair would be pleased to hear the gentleman from New York [Mr. Taber] on the point of order.

MR. TABER: Mr. Chairman, I just want to call attention to the fact that not one single word of the language of the authorization act that was read authorizes the construction of a power line. It authorizes canals, approaches, and incidental structures, but not one single word authorizes the construction of a power dam.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Pennsylvania [Mr. Rich] makes a point of order against the language appearing in line 25, page 13, extending through line 3 on page 14 of the pending bill, on the ground that the appropriation there included is not authorized by law.

The Chair has examined with some degree of care the act to which reference was made by the gentleman from Washington [Mr Leavy], in his discussion on the point of order, which is the Rivers and Harbors Act approved August 30, 1935. The gentleman from Washington very kindly assisted the Chair in citing the language of this act with respect to the Grand Coulee Dam. Without repeating the language quoted by the gentleman from Washington the Chair desires to invite especial attention to the following provision included in the act, which is a part of the language quoted by the gentleman from Washington:

> And incidental works necessary to such projects.

The Chair is of the opinion that that language, taken with the entire act and the clear purpose of the act as stated, would form a sufficient basis to sustain the appropriation included in this item of the pending bill. Therefore the Chair is of the opinion that this item is authorized by existing law, and the Chair therefore is constrained to overrule the point of order.

Tennessee Valley Authority Act

§ 19.12 An appropriation for the construction of a dam on the lower Tennessee River

was held authorized by the Tennessee Valley Authority Act.

On May 8, 1936,[15] the Committee of the Whole was considering H.R. 12624, a deficiency appropriation bill.

The Clerk read as follows:

TENNESSEE VALLEY AUTHORITY

For the purpose of carrying out the provisions of the entitled "The Tennessee Valley Authority Act of 1933", approved May 18, 1933 (U.S.C., title 16, ch. 12a), as amended by the act approved August 31, 1935 (49 Stat. 1075–1081), including the continued construction of Norris Dam, Wheeler Dam, Pickwick Landing Dam, Guntersville Dam, and Chickamauga Dam (hereafter to be known as McReynolds Dam), and the beginning of construction on a dam on the Hiwassee River, a tributary of the Tennessee River, at or near Fowler Bend, and the continuation of preliminary investigations as to the appropriate location and type of a dam on the lower Tennessee River, and the acquisition of necessary land, the clearing of such land, relocation of highways, and the construction or purchase of transmission lines and other facilities, and all other necessary works authorized by such acts, and for printing and binding, law books, books of reference, newspapers, periodicals, purchase, maintenance, and operation of passenger-carrying vehicles, rents in the District of Columbia and elsewhere, and all necessary salaries and expenses connected with the organization, operation, and investigations of the Tennessee Valley Authority, fiscal year 1937, $39,900,000: *Provided*, That this appropriation and any unexpended balance on June 30, 1936, in the "Tennessee Valley Authority Fund, 1936", and the receipts of the Tennessee Valley Authority from all sources during the fiscal year 1937 (except as limited by sec. 26 of the Tennessee Valley Authority Act of 1933, as amended), shall be covered into and accounted for as one fund to be known as the "Tennessee Valley Authority Fund, 1937", to remain available until June 30, 1937, and to be available for the payment of obligations chargeable against the "Tennessee Valley Authority Fund, 1936.". . .

MR. [HERRON C.] PEARSON [of Tennessee]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Pearson: On page 19, line 8, after the word "river", insert the words "and the beginning of construction of a dam on the lower Tennessee River."

[Mr. John Taber, of New York, having reserved a point of order[16] against the amendment, the following exchange occurred:[17]]

THE CHAIRMAN:[18] oes the gentleman from New York insist upon his point of order?

MR. TABER: I do, Mr. Chairman.

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

MR. TABER: That it is legislation on an appropriation bill and is an item not authorized by law.

MR. [DONALD H.] MCLEAN [of New Jersey]: Mr. Chairman, may I ask the gentleman from New York to withhold his point of order?

15. 80 CONG. REC. 6964, 74th Cong. 2d Sess.

16. *Id.* at p. 6968.

17. *Id.* at p. 6969.

18. John W. McCormack (Mass.).

THE CHAIRMAN: The Chair would like to have some information from the gentleman from Tennessee. Will the gentleman from Tennessee point out to the Chair any existing law which authorizes the construction contemplated by the amendment of the gentleman from Tennessee?

MR. PEARSON: The act which created the Tennessee Valley Authority provided for the construction of necessary dams on the river to carry out the projects stated therein—that is, for national defense and navigation.

MR. TABER: Mr. Chairman, in order to make my point of order clear, let me say that this is beyond the scope of the Tennessee Valley Authority. The word "necessary" requires the fact to be established in ruling upon the language.

It was stated by the Tennessee Valley Authority in the hearings that this Gilbertville proposition involved a dam and a canal—a large dam in the Ohio which would cover operation of both the Cumberland and the Ohio as well as the Tennessee. This Tennessee Valley Authority relates only to the dams entirely within their authority covering the Tennessee only. This goes beyond the scope of the Tennessee Valley Authority.

Mr. [Lister] Hill of Alabama rose.

THE CHAIRMAN: Does the gentleman from Alabama wish to be heard on the point of order?

MR. HILL of Alabama: I do. Mr. Chairman, the amendment is clearly in order. I call the Chair's attention to section 2, subsection (j), of Public Law 412, Seventy-fourth Congress, which is the amendatory act of the Tennessee Valley Authority. . .

I think under the language there can be no question but that the amendment offered by the gentleman from Tennessee is in order. The language authorizes construction of any and all dams that may be needed for flood control and navigation of the Tennessee River. All dams from Knoxville to the mouth of the river are authorized. The amendment of the gentleman from Tennessee is undoubtedly in order.

THE CHAIRMAN: The Chair is prepared to rule. The amendment of the gentleman from Tennessee [Mr. Pearson] inserts, after the word "river", line 8, page 19, the words "and the beginning of construction on a dam on the lower Tennessee River." The question as it appears to the Chair is whether or not there is any existing law which authorizes the construction of such a dam. The gentleman from Alabama [Mr. Hill] has referred to Public, No. 412, of the first session of the Seventy-fourth Congress, which the Chair reads—and, by the way, it is an amendment to the original Tennessee Valley Act:

> Sec. 2. That subdivision (j) of said section 4 of said act be, and the same is hereby, amended to read as follows:
>
> "(j) Shall have power to construct such dams and reservoirs in the Tennessee River and its tributaries, as in conjunction with Wilson Dam, and Norris, Wheeler, and Pickwick Landing Dams, now under construction, will provide a 9-foot channel in the said river and maintain a water supply for the same from Knoxville to its mouth, and will best serve to promote navigation on the Tennessee River and its tributaries and control destructive flood waters in the Tennessee and Mississippi River drainage basins; and shall have power to acquire or construct power-houses, power structures, transmission lines, navigation projects, and incidental

works in the Tennessee River and its tributaries, and to unite the various power installations into one or more systems by transmission lines. The directors of the Authority are hereby directed to report to Congress their recommendations not later than April 1, 1936, for the unified development of the Tennessee River system."

In the opinion of the Chair, the language just read constitutes an authorization for the appropriation, and the Chair overrules the point of order and holds the amendment to be in order.

Public Buildings, Requirement for Committee Approval

§ 19.13 Where existing law (40 USC § 606) specifically prohibits the making of an appropriation to construct or alter any public building involving more than $500,000 unless approved by resolutions adopted by House and Senate Committees on Public Works, an appropriation in a general appropriation bill for public building construction or renovation not previously authorized by both committees is in violation of Rule XXI clause 2(a), notwithstanding the "work in progress" exception stated in that rule and readopted subsequent to enactment of 40 USC § 606, since the law specifically precludes the appropriation from being made and the "work in progress" exception is only applicable where there is no authorization in law.

On June 8, 1983,[19] a paragraph of a general appropriation bill containing funds for the General Services Administration for construction of new buildings at two sites and repair of two existing projects was conceded to be unauthorized and was ruled out on a point of order, since the construction and repair had not been authorized by the Committee on Public Works and Transportation as required by statute for projects in excess of $500,000 (40 USC § 606), and since the public works in progress exception for unauthorized construction and repair does not countervail a statute requiring specific authorization before an appropriation can be made. The proceedings were as follows:

MR. [ROBERT A.] YOUNG of Missouri: Mr. Chairman, I rise to make a point of order against four provisions found in title IV in which the paragraph is entitled "General Services Administration, Federal Buildings Fund, Limitations on Availability of Revenue."

THE CHAIRMAN:[20] The gentleman from Missouri (Mr. Young) is recognized on his point of order.

19. 129 CONG. REC. ——, 98th Cong. 1st Sess.
20. Gerry E. Studds (Mass.).

The portion of the bill to which the point of order relates is as follows:

> The revenues and collections deposited into the fund pursuant to section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(f)), shall be available for necessary expenses of real property management and related activities not otherwise provided for, including operation, maintenance, and protection of federally owned and leased buildings, rental of buildings in the District of Columbia . . . repair and alteration of federally owned buildings, including grounds, approaches and appurtenances, care and safeguarding of sites, maintenance, preservation, demolition, and equipment . . . preliminary planning and design of projects by contract or otherwise; construction of new buildings (including equipment for such buildings); and payment of principal, interest, taxes, and any other obligations for public buildings acquired by purchase contract, in the aggregate amount of $2,023,143,000 of which (1) not to exceed $132,510,000 shall remain available until expended for construction of additional projects as authorized by law at locations and at maximum construction improvement costs (including funds for sites and expenses) as follows:
>
> New Construction: . . .
>
> Oregon: Portland, Bonneville Power Administration Federal Building, $67,475,000. . . .
>
> Tennessee: Knoxville, Federal Building, $14,990,000. . . .
>
> *Provided further*, That funds in the Federal Buildings Fund for Repairs and Alterations shall, for prospectus projects, be limited to the amount by project as follows, except each project may be increased by an amount not to exceed 10 per centum unless advance approval is obtained from the Committees on Appropriations of the House and Senate for a greater amount: . . .
>
> New York: New York, Federal Office Building, 252 Seventh Avenue, $579,000. . . .
>
> Pennsylvania: Pittsburgh, Post Office, $8,974,000. . . .

MR. YOUNG of Missouri: Mr. Chairman, specifically, on page 18, lines 13 through 17 of the bill, H.R. 3191, under consideration, there appears an appropriation in the amount of $67,475,000 for the construction of the Bonneville Power Administration Federal Building in Portland, Oreg., and $14,990,000 for the construction of a Federal building in Knoxville, Tenn.

In addition, on page 20, lines 18 and 19, there appears an appropriation in the amount of $579,000 for renovation of the Federal Office Building at 252 Seventh Avenue in New York, N.Y.; as well as on page 20, lines 23 and 24, there appears an appropriation in the amount of $8,974,000 for the repair and alteration of the post office in Pittsburgh, Pa.

These four appropriations appear to be in violation of rule XXI, clause 2, of the rules of the House of Representatives. . . .

Mr. Chairman, section 7(a) of the Public Buildings Act of 1959, as amended, 40 U.S.C. 606, states:

> In order to insure the equitable distribution of public buildings throughout the United States with due regard for the comparative urgency of need for such buildings, except as provided in Section 4, no appropriation shall be made to construct, alter, purchase, or to acquire any building to be used as a public building which involves a total expenditure in excess of $500,000 if such construction, alteration, pur-

chase, or acquisition has not been approved by resolutions adopted by the Committees on Public Works of the Senate and House of Representatives, respectively.

Mr. Chairman, the law is clear that prior to the appropriation of funds for the construction or alteration of a public building which cost shall exceed $500,000, a resolution must be reported by your House Committee on Public Works and Transportation approving such authorization. This action has not occurred to date. . . .

MR. [EDWARD R.] ROYBAL [of California]: . . . It is my understanding that the prospectuses for the construction that is in the bill have not been approved; is that correct?

MR. YOUNG of Missouri: Mr. Chairman, they have not been approved by our subcommittee nor by the full committee.

MR. ROYBAL: Since they have not been approved by any of the committees, I will concede the point of order, Mr. Chairman. . . .

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

§ 20. Other Purposes

Civil Defense

§ 20.1 Language in an appropriation bill making funds available for distribution of radiological instruments and detection devices to states by loan or grant, for civil defense purposes, was conceded to be without authorization and was ruled out on a point of order.

On Mar. 20, 1957,[1] during consideration in the Committee of the Whole of H.R. 6070, a bill making appropriations for sundry executive bureaus, a point of order was sustained against language therein, as indicated below:

Emergency supplies and equipment: For expenses necessary for warehousing and maintenance of reserve stocks of emergency civil-defense materials as authorized by subsection (h) of section 201 of the Federal Civil Defense Act of 1950, as amended, and for distribution of radiological instruments and detection devices to the several States, and the District of Columbia, and the Territories and possessions of the United States, by loan or grant, for training and educational purposes, under such terms and conditions as the Administrator shall prescribe, $3,300,000.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a point of order.

THE CHAIRMAN:[2] The gentleman will state it.

MR. GROSS: Mr. Chairman, I make the point of order against the following language, beginning in line 19 of page 5, "for distribution of radiological instruments and detection devices to the several States, the District of Columbia, and the Territories and possessions of the United States, by loan or grant, for training and educational

1. 103 CONG. REC. 4046, 85th Cong. 1st Sess.

2. Frank N. Ikard (Tex.).

purposes, under such terms and conditions as the Administrator shall prescribe," on the ground that the distribution of such radiological instruments and detection devices is not authorized in the organic legislation governing the Federal Civil Defense Administration, Public Law 920 of the 81st Congress, 2d session, as amended, and therefore is in violation of rule XXI, paragraph 2, of the Rules of the House of Representatives.

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Congressional Committee Investigative Staff

§ 20.2 An appropriation for employment by the Committee on Appropriations of 50 qualified persons to check upon progress of contracts let by the United States and to report upon any waste, unnecessary additions to cost, or negligence, was not authorized by law.

On June 16, 1942,[3] the Committee of the Whole was considering H.R. 7232, a deficiency appropriation. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. Voorhis of California: Page 2, line 22, insert:

"For the purpose of enabling the Appropriations Committee to employ the services of not to exceed 50 highly qualified persons to maintain a constant check upon the progress of contracts let by the United States, or any department thereof, and to report upon any avoidable waste, unnecessary additions to cost, negligence, or other matters increasing the cost of such contracts to the United States, $500,000."

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make a point of order against the amendment that it proposes legislation on an appropriation bill. . . .

THE CHAIRMAN:[4] Will the gentleman from California state to the Chair whether he knows of any legislation authorizing the appropriations proposed in this amendment?

MR. [H. JERRY] VOORHIS of California: No; I do not know of any legislation authorizing such expenditures.

THE CHAIRMAN: Unless there is legislation authorizing the appropriation, the Chair is constrained to sustain the point of order made by the gentleman from Missouri.

Congressional Parking Lot

§ 20.3 To the legislative appropriation bill, an amendment providing funds for a parking lot for the use of Members and employees of Congress was ruled out because unauthorized by law.

On May 15, 1952,[5] during consideration in the Committee of the

3. 88 CONG. REC. 5252, 77th Cong. 2d Sess.

4. Wilbur D. Mills (Ark.).

5. 98 CONG. REC. 5283, 82d Cong. 2d Sess.

Whole of the legislative appropriation (H.R 7313), a point of order was raised against the following amendment:

MR. [WALTER F.] HORAN [of Washington]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Horan: On page 15, line 9, after the semicolon and after the word "and", insert the following new language: "for converting reservations 6–C and 6–E on Canal Street into a parking lot for the use of Members and employees of Congress."

On page 15, line 13, strike out the amount "$218,500" and insert in lieu thereof the amount "$69,500."

MR. [CHRISTOPHER C.] MCGRATH [of New York]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill. I will reserve the point of order. . . .

Mr. Speaker, I insist on my point of order.

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

THE CHAIRMAN:[6] The gentleman from Washington concedes the point of order.

The point of order is sustained.

Expenses of Presidential Committee on Education

§ 20.4 To an appropriation bill, an amendment providing for expenses of the President's Committee on Education Beyond High School was admitted to be unauthorized and was ruled out on this basis.

On July 12, 1956,[7] the Committee of the Whole was considering H.R. 12138, a supplemental appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Antonio M.] Fernandez [of New Mexico]: On page 21, at the end of line 6, add a new paragraph as follows:

"PRESIDENT'S COMMITTEE ON EDUCATION BEYOND THE HIGH SCHOOL, EXECUTIVE OFFICE OF THE PRESIDENT"

"For necessary expenses of the President's Committee on Education Beyond the High School, including services authorized by section 15 of the act of August 2, 1946 (5 U.S.C. 55a), at rates not to exceed $50 per diem for individuals; expenses of attendance at meetings concerned with the purposes of the committee; and actual transportation expenses and an allowance of not to exceed $12 per diem in lieu of subsistence while away from their homes or regular places of business, for persons attending conferences called by the committee: $300,000.". . .

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I insist on the point of order that this is not authorized by law and that the gentleman's

6. J. Percy Priest (Tenn.).

7. 102 CONG. REC. 12555, 12556, 84th Cong. 2d Sess.

amendment is legislation on an appropriation bill.

THE CHAIRMAN:[8] The gentleman from New Mexico [Mr. Fernandez] has offered an amendment which has been reported by the Clerk. The gentleman from Rhode Island [Mr. Fogarty] has made the point of order that this appropriation is not authorized.

The gentleman from New Mexico in his remarks on his amendment stated that authorization had not been had, and that it was not authorized by law.

Therefore the Chair sustains the point of order.

Executive Departments—Travel Expenses

§ 20.5 Language in an appropriation bill making all appropriations for the executive departments and independent establishments available under Presidential regulations for expenses of transportation of new appointees and their families from their places of residence to places of employment outside the continental United States and back was held unauthorized by law and legislation on an appropriation bill.

On Feb. 8, 1945,[9] the Committee of the Whole was considering H.R. 1984, an independent offices appropriation. When the following paragraph was reached in the reading, a point of order was raised against it and conceded by the manager of the bill.

(c) Appropriations of the executive departments and independent establishments for the fiscal year 1946 shall be available for expenses of travel of new appointees and of transportation of their immediate families in accordance with regulations prescribed by the President, and expenses of transportation of household goods and personal effects in accordance with the act of October 10, 1940 (5 U.S.C. 73c–1), from the places of their actual residence at the time of appointment to places of employment outside continental United States, and for such expenses on return of civilian officers and employees from their posts of duty outside continental United States to the places of their actual residence at time of assignment to duty outside the United States.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I make a point of order against subparagraph (c) on the ground that it is legislation on an appropriation bill.

MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, I concede the point of order.

MR. CASE of South Dakota: I may state in this connection that the only reason I made the point of order to this paragraph and not to the previous paragraph is because subparagraph (b) is limited to transfer where permanent duty is involved. Subparagraph (c) is not so limited. . . .

8. Paul J. Kilday (Tex.).

9. 91 CONG. REC. 964, 79th Cong. 1st Sess.

THE CHAIRMAN:[10] The point of order made against subparagraph (c) on page 65 is sustained.

§ 20.6 Language in an appropriation bill making funds available for reimbursements of employees and others, for use by them of their privately owned automobiles on official business, was conceded to be unauthorized and was held not in order on an appropriation bill.

On Feb. 8, 1945,[11] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 1984), a point of order was raised against the following provision:

The Clerk read as follows:

(d) Appropriations of the executive departments and independent establishments for the fiscal year 1946 shall be available for reimbursement, at not to exceed 3 cents per mile (unless otherwise permitted by law), of employees or others rendering service to the Government for use by them of privately owned automobiles for transportation on official business within the limits of their official stations or places of service.

MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I make a point of order against the paragraph on the ground that it is legislation on an appropriation bill.

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Chairman, I concede the point of order. It is legislation, but, Mr. Chairman, it was placed in the bill for the purpose of uniformity. This provision is carried in practically every appropriation bill.

THE CHAIRMAN:[12] The point of order . . . is sustained.

§ 20.7 Language in an appropriation bill providing for the payment of actual transportation expenses not to exceed $10 per diem in lieu of subsistence for the Council of Personnel Administration was held not to be authorized by existing law.

On Jan. 17, 1940,[13] the Committee of the Whole was considering H.R. 7922, an independent offices appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Salaries and expenses: For every expenditure requisite for and incident to the work of the Council of Personnel Administration, created by section 7 of Executive Order No. 7916, dated June 24, 1938, including personal services in the District of Columbia; traveling expenses, including, when specifically directed by the chairman, not exceeding $800 for expenses of attendance at meetings concerned with the furtherance of the work of the council; printing and binding; books of reference and

10. William M. Whittington (Miss.).

11. 91 CONG. REC. 964, 79th Cong. 1st Sess.

12. William M. Whittington (Miss.).

13. 86 CONG. REC. 439, 76th Cong. 3d Sess.

periodicals; and the payment of actual transportation expenses and not to exceed $10 per diem in lieu of subsistence and other expenses of persons serving while away from their homes, without other compensation from the United States, in an advisory capacity to the council, $25,040.

MR. [EVERETT M.] DIRKSEN [of Illinois]: Mr. Chairman, I make the point of order against the section beginning on line 20, page 15, and ending on line 9, page 16, that it is not authorized by law.

MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, undoubtedly there is language in this section which changes existing law, particularly the language on page 16 beginning . . . after the word "periodicals" and reading as follows:

> and the payment of actual transportation expenses and not to exceed $10 per diem in lieu of subsistence.

This language unquestionably changes existing law and would make the paragraph subject to a point of order. I concede the point of order, Mr. Chairman.

THE CHAIRMAN:[14] The gentleman from Illinois makes a point of order against the paragraph, and the gentleman from Virginia concedes the point of order. The point of order is therefore sustained.

Government Corporation Reserve Fund

§ 20.8 A provision of a general appropriation bill requiring a certain amount of the sum authorized therein for administrative expenses of a government corporation to be placed in reserve and used only when and in the amounts required for designated operations of the corporation in excess of budget estimates therefor was ruled out when no authorization was cited in support of the appropriation.

On May 1, 1952,[15] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 7314) the following point of order was raised:

MR. [ABRAHAM J.] MULTER [of New York]: Mr. Chairman, may I make my point of order now?

THE CHAIRMAN:[16] The gentleman will state it.

MR. MULTER: I make the point of order against title II and specifically against that portion beginning at line 18 on page 45, on the ground that it is legislation in an appropriation bill. . . . The language placing $2,500,000 in a reserve fund is legislation and not an appropriation. As a matter of fact, I think the point of order could be raised against the entire title, because it is an authorization to make expenditures, as appears at line 3 on page 45. However, I desire to direct the point of order at this moment to the provision beginning in line 18.

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14. Lindsay C. Warren (N.C.).

15. 98 CONG. REC. 4741, 82d Cong. 2d Sess.

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

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

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, the appropriation for the Commodity Credit Corporation is not in actuality an appropriation, but it is a limitation on how much of their funds they can use for administrative expenses. In the absence of such limitation they could spend all their money for their operations.

The committee has fixed a limitation at $16,500,000 as the limit of their funds which they can spend; otherwise they could spend all of their funds. . . .

MR. MULTER: The difficulty with the argument made against the point of order is that this authorization now makes the reservation and then provides that this sum of $2,500,000 shall be expended for sums in excess of the budget estimates. I am now referring to line 24, same page. In other words, they take the money out and reserve it, then provide it shall be spent for purposes in excess of budget estimates. That is the real vice of this provision. . . .

THE CHAIRMAN: Can the gentleman from Mississippi cite specific law authorizing the committee to set aside these funds in reserve?

MR. WHITTEN: I do not know of any law that authorizes the committee to do so; no. I had not anticipated this would arise This leaves, if the point of order is sustained, $16,500,000 to carry on the administrative work instead of $14,500,000 as now provided.

THE CHAIRMAN: In the absence of any citation on the part of the gentleman, the Chair is constrained to sustain the point of order.

NASA—Scientific Consultations

§ 20.9 Where legislation authorizing the National Aeronautics and Space Administration to use appropriated funds for scientific consultations had not become law, language in an appropriation bill to permit use of "not to exceed $10,000 of appropriations in this act . . . for scientific consultations" was ruled out on a point of order as not yet authorized.

On Apr. 19, 1960,[17] the Committee of the Whole was considering H.R. 11776, a bill making appropriations for sundry independent executive bureaus. When the Clerk read the following paragraph, a point of order was raised as indicated:

> Not to exceed $10,000 of appropriations in this Act for the National Aeronautics and Space Administration shall be available for scientific consultations and any emergency or extraordinary expense pursuant to section 1(f) of the legislative authorization for appropriations for the fiscal year 1961.
>
> MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a point of order.

17. 106 CONG. REC. 8232, 86th Cong. 2d Sess.

THE CHAIRMAN:[18] The gentleman will state it.

MR. GROSS: The language on page 27, beginning with line 14 through line 19, I contend is legislation providing for an appropriation not authorized by law.

THE CHAIRMAN: Does the gentleman from Texas desire to be heard?

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, we will have to admit the point of order as good, the entire legislation has not been cleared by both bodies or signed by the President, so if the gentleman wants to make a point of order against any section of it, to be perfectly frank about it, it is good.

THE CHAIRMAN: The gentleman from Texas concedes the point of order and the Chair sustains the point of order.

National Resources Planning Council

§ 20.10 An amendment making an appropriation for the National Resources Planning Council was held not authorized by law.

On Feb. 17, 1943,[19] the Committee of the Whole was considering H.R. 1362, an independent offices appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. Magnuson: On page 63, line 14, insert a new title:

"NATIONAL RESOURCES PLANNING COUNCIL

"For all salaries, expenses, including postwar planning research, there shall be appropriated for the National Resources Planning Council the sum of $415,000."

MR. [EVERETT M.] DIRKSEN [of Illinois]: Mr. Chairman, I make the point of order on the paragraph on the ground that it is not authorized by law. . . .

THE CHAIRMAN:[20] The Chair is ready to rule. . . . No law has been pointed out to the Chair, and the Chair is aware of no statute that would authorize the appropriation. The Chair, therefore, sustains the point of order.

Post Office—Substitute Mail Carriers

§ 20.11 An appropriation for payment to substitute mail carriers for work on all holidays except Sundays was not authorized by law.

On Feb. 9, 1943,[1] the Committee of the Whole was considering H.R. 1648, a Treasury and Post Office Departments appropriation. During consideration of the bill, a point of order against an amendment was sustained as indicated below:

Rural Delivery Service: For pay of rural carriers, auxiliary carriers, sub-

18. Frank N. Ikard (Tex.).

19. 89 CONG. REC. 1072, 78th Cong. 1st Sess.

20. William M. Whittington (Miss.).

1. 89 CONG. REC. 742, 743, 78th Cong. 1st Sess.

stitutes for rural carriers on annual and sick leave, clerks in charge of rural stations, and tolls and ferriage, Rural Delivery Service, and for the incidental expenses thereof, $92,200,000 of which not less than $200,000 shall be available for extensions and new service.

MR. [BUTLER B.] HARE [of South Carolina]: Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

> Amendment offered by Mr. Hare: Page 39, line 20, strike out "$92,200,000" and insert "$94,000,000", and at the end of line 21, strike out the period, insert a comma, and add "including delivery service by substitute carriers on all holidays except Sundays."

MR. [EMMETT] O'NEAL [of Kentucky]: Mr. Chairman, I rise to make a point of order against the amendment. The second provision of the amendment is not authorized by law. . . .

THE CHAIRMAN:[2] Is there any law at the present time authorizing the payment to substitute carriers on Sunday? Is there any law presently that authorizes that payment?

MR. HARE: No, except city carriers and clerks, a general authorization under the law. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The amendment offered by the gentleman from South Carolina reads as follows:

> Strike out "$92,200,000" and insert "$94,000,000", and at the end of line 21 strike out the period, insert a comma, and add "including delivery service by substitute carriers on all holidays except Sundays."

The Chair knows of no authorization for the payment of such services. The gentleman from South Carolina very frankly concedes that he knows of no such authorization. The burden of proof being upon the gentleman from South Carolina, who offered the amendment, the Chair is of the opinion that the point of order is well taken and sustains the point of order.

President's Emergency Fund

§ 20.12 Language in a general appropriation bill appropriating $5 million for the Emergency Fund for the President was held unauthorized by law.

On Jan. 24, 1946,[3] The Committee of the Whole was considering H.R. 5201, an independent offices appropriation. A point of order was raised against the paragraph which follows:

EMERGENCY FUND FOR THE PRESIDENT

> Emergency fund for the President: Not to exceed $5,000,000 of the appropriation "Emergency fund for the President," contained in the First Supplemental National Defense Appropriation Act, 1943, as supplemented and amended, is hereby continued available until June 30, 1947.

MR. [HENRY C.] DWORSHAK [of Idaho]: Mr. Chairman, I make a point

2. Wirt Courtney (Tenn.).

3. 92 CONG. REC. 355, 79th Cong. 2d Sess.

of order against the paragraph just read on the ground there is no legislative authority for the appropriation proposed.

THE CHAIRMAN:[4] Does the gentleman from Florida desire to be heard on the point of order made by the gentleman from Idaho?

MR. [JOE] HENDRICKS [of Florida]: Mr. Chairman, I will leave that to the discretion of the Chair.

THE CHAIRMAN: The gentleman from Idaho [Mr. Dworshak] makes a point of order against the paragraph on the ground that the appropriation is not authorized by law. The Chair has stated to the gentleman in charge of the bill, the gentleman from Florida [Mr. Hendricks], that he would be glad to hear him. In the absence of any statement to the contrary, the Chair is bound by the statement of the gentleman from Idaho and, therefore, sustains the point of order.

President's Wife—Salary

§ 20.13 An amendment to a general appropriation bill providing for a salary of $10,000 per year for the wife of the President for maintaining the White House was held not authorized by law.

On Jan. 24, 1946,[5] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 5201), a point of order was made against the following amendment:

MR. [JAMES G.] FULTON [of Pennsylvania]: Mr. Chairman, I offer an amendment, which is at the desk.

The Clerk read as follows:

> Amendment offered by Mr. Fulton: On page 2, line 15, after the semicolon, insert "to the wife of the President a salary of $10,000 per year as services for maintaining the White House establishment, not to be expended as the President may determine"; and in line 21 strike out "$883,660" and insert "$893,660."

MR. [JOE] HENDRICKS [of Florida]: Mr. Chairman, while I may concede there is some merit to the proposal of the gentleman from Pennsylvania, I make the point of order against the amendment that it is an appropriation not authorized by law.

THE CHAIRMAN:[6] The gentleman from Pennsylvania [Mr. Fulton] offers an amendment in the following language:

> On page 2, line 15, after the semicolon, insert "to the wife of the President a salary of $10,000 per year as services for maintaining the White House establishment, not to be expended as the President may determine"; and in line 21 strike out "$883,660" and insert "$893,660."

The gentleman from Florida makes the point of order that it is an appropriation not authorized by law. Clearly it is an appropriation not authorized by law.

The Chair sustains the point of order.

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4. William M. Whittington (Miss.).

5. 92 CONG. REC. 352, 79th Cong. 2d Sess.

6. William M. Whittington (Miss.).

Public Health Service—Mineral Disease Treatment

§ 20.14 An amendment to an appropriation bill seeking to appropriate funds to the Public Health Service, Division of Venereal Diseases, for the purpose of continuing the operation of the Hot Springs Transient Medical Center Infirmary at Hot Springs, Arkansas, was held not to be authorized by law.

On Jan. 17, 1938,[7] the Committee of the Whole was considering H.R. 8947, a U.S. Treasury and Post Office Departments appropriation bill. At one point a point of order was raised after the Clerk read an amendment.

Amendment offered by Mr. McClellan: On page 39, after line 11, insert a new title and paragraph, as follows:

"Public Health Service, Division of Venereal Diseases: For the purpose of continuing the operation and maintenance of the Hot Springs Transient Medical Center Infirmary, located at Hot Springs National Park, Ark., $180,000.". . .

MR. [LOUIS] LUDLOW [of Indiana]: Mr. Chairman, I make the point of order against the amendment that it is not authorized by existing law, and in doing so I would like to compliment the gentleman on the splendid fight he has made for his local community and for his very able presentation of his case, but this would be an irregular proceeding. . . .

THE CHAIRMAN:[8] The Chair would like to ask the gentleman from Arkansas if there has been an authorization heretofore passed with reference to this project?

MR. [JOHN L.] MCCLELLAN [of Arkansas]: Nothing but a relief appropriation, but a bill is now pending for that purpose.

THE CHAIRMAN: The Chair is ready to rule.

The Chair sustains the point of order because it is legislation on an appropriation bill, there having been no authorization act heretofore passed.

Student Aid

§ 20.15 An appropriation to assist students, in such numbers as the Chairman of the War Manpower Commission would determine, who were participating in accelerated college programs in engineering, physics, and other subjects was not authorized by law.

On June 5, 1942,[9] the Committee of the Whole was considering H.R. 7181, a Labor Department and Federal Security Agency appropriation. At one point the Clerk read the following amendment:

Amendment offered by Mr. Keefe: Page 25, after paragraph (2), insert a

7. 83 CONG. REC. 649, 650, 75th Cong. 3d Sess.

8. Arthur H. Greenwood (Ind.).

9. 88 CONG. REC. 4959, 77th Cong. 2d Sess.

new paragraph, as follows: "To assist students (in such numbers as the chairman of the War Manpower Commission shall determine) participating in accelerated programs in degree-granting colleges and universities in engineering, physics, chemistry, medicine (including veterinary), dentistry, and pharmacy and such other technical and professional fields as said chairman may determine to be necessary in connection with the national war effort, by providing part-time employment, $5,000,000."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the amendment on the ground that it is not authorized by law. . . .

THE CHAIRMAN:[10] The Chair is ready to rule.

In the bill under consideration, which provides an appropriation for the N.Y.A., there is no authority in law setting up the N.Y.A.; and, therefore, in order that this appropriation for that agency might not be thrown out on a point of order it was necessary to have a special rule waiving points of order against that particular appropriation. That rule waived points of order on that clause in the bill.

The gentleman's amendment undertakes to make another appropriation which is to be administered under the Chairman of the Manpower Commission. It is the opinion of the Chair that there is no authority in law for the appropriation proposed in the amendment and the Chair is therefore constrained to sustain the point of order.

Surgeon General—Entertainment Expenses

§ 20.16 Language in a general appropriation bill providing funds "not to exceed $1,000 for entertainment of officials . . . when authorized by the "Surgeon General" was held to be unauthorized and to constitute legislative authority.

On Mar. 29, 1960,[11] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 11390), a point of order was raised against the following provision:

The Clerk read as follows:

ASSISTANCE TO STATES, GENERAL

To carry out the purposes, not otherwise specifically provided for, of section 314(c) of the Act; to provide consultative services to States pursuant to section 311 of the Act; to make field investigations and demonstrations pursuant to section 301 of the Act; to provide for collecting and compiling mortality, morbidity, and vital statistics; not to exceed $1,000 for entertainment of officials of other countries when specifically authorized by the Surgeon General; and to provide traineeships pursuant to section 306 of the Act; $22,620,000.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language to be found on

10. Howard W. Smith (Va.).

11. 106 CONG. REC. 6863, 86th Cong. 2d Sess. See also 106 CONG. REC. 6864, 6865, 86th Cong. 2d Sess., Mar. 29, 1960.

page 23 of the bill, line 1, reading as follows: "not to exceed $1,000 for entertainment of officials of other countries when specifically authorized by the Surgeon General."

I make the point of order that this is legislation on an appropriation bill.

THE CHAIRMAN:[12] Does the gentleman from Rhode Island [Mr. John E. Fogarty] desire to be heard on the point of order?

MR. FOGARTY: Mr. Chairman, as I read this language, it is just a limitation in this appropriation bill that they shall not exceed $1,000 for this purpose. . . .

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

It would appear to the Chair that this is language intended to permit of the making available of the sum of $1,000 for entertainment of officials of other countries. It is not in essence or in words a limitation on any appropriation made here. In the absence of the citation of any substantive authority for this, the Chair is compelled to sustain the point of order.

Higher Education Programs

§ 20.17 Funds claimed by the report of the Committee on Appropriations to be available, inter alia, to expand educational grants to middle income students but not specifically so earmarked in the paragraph, were held to be generally authorized by the Higher Education Act, although separate legislation modifying those grant programs had not yet been enacted into law, since the paragraph in question referred only to programs authorized by law and since authorizations under all sections of law proposed to be modified by that separate legislation had been extended by law for the fiscal year in question.

On June 8, 1978,[13] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 12929), the following proceedings occurred as indicated above:

The Clerk read as follows:

STUDENT ASSISTANCE

For carrying out subparts 1 ($3,373,100,000), 2 ($340,100,000), and 3 ($86,750,000) of part A, and parts C ($520,000,000) and E ($328,900,000) of Title IV of the Higher Education Act, and, to the extent not otherwise provided, the General Education Provisions Act, $4,675,750,000, of which $4,651,350,000 shall remain available until September 30, 1980: *Provided,* That amounts appropriated for basic opportunity grants shall be available first to meet any insufficiencies in entitlements resulting from the payment schedule for basic opportunity grants published

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

13. 124 CONG. REC. 16778, 95th Cong. 2d Sess.

by the Commissioner of Education during the prior fiscal year: *Provided further*, That pursuant to section 411(b)(4)(A) of the Higher Education Act, amounts appropriated herein for basic opportunity grants which exceed the amounts required to meet the payment schedule published for any fiscal year by 15 per centum or less shall be carried forward and merged with amounts appropriated the next fiscal year.

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: Mr. Chairman, I have a point of order. . . .

. . . [D]uring the discussion of the rule on this bill, I asked if there was money in this portion of the bill for the so-called Middle Income Student Assistance Act. The distinguished chairman of the subcommittee informed me that there indeed was money in the bill for that act.

I indicated at that time that the Middle Income Student Assistance Act was not authorized. In fact, the House specifically refused to consider that act and has subsequently passed the Tuition Tax Credit Act. I was informed that was not necessary because this could be done under current law.

Mr. Chairman, the Middle Income Student Assistance Act is not current law. If the Middle Income Student Assistance Act is current law, why did the President propose it as a new program?

Mr. Chairman, the committee report says that this appropriation is based on the House version of the Middle Income Student Assistance Act and will expand student aid for middle income students. It will not expand aid for middle income students without increasing the middle income student limitation, and there is no authorization for that.

Mr. Chairman, I would like to know whether the Middle Income Student Assistance Act is or is not in existence and whether it is or is not necessary, and I make the point of order that the $1.4 billion in this section that is for expanded aid to middle income students is not authorized. . . .

MR. [DAVID R.] OBEY [of Wisconsin]: . . . Mr. Chairman, let me just point out that the Middle Income Student Assistance Act, which has not yet passed, simply gives direction and makes certain changes in an already existing program. The bill before us today funds programs which are in existing law, and the gentleman's point of order is, therefore, not well taken.

THE CHAIRMAN:[14] The Chair is ready to rule.

The gentleman stated quite accurately that the report of the committee on this appropriation bill indicated that the Middle Income Student Assistance Act H.R. 11274 had not become law. It also says, and I quote, on page 74:

> Even though this legislation is still pending, appropriations can be made under existing authority to expand student aid for middle income students, as expressed in the bill and accompanying report.

The Chair has had an opportunity to examine the report on H.R 11274 and the basic law. This is Public Law 94–482, 94th Congress, the Education Amendment of 1976.

Section 121, Part D, Student Assistance Basic Educational Opportunity Grants, extends the authorizations of the basic act to September 30, 1979.

Considering all of the authorizations for fiscal 1979 under part D—Student

14. Richard Bolling (Mo.).

Assistance—together, it would appear that the funds in the paragraph in question are authorized.

Therefore, the Chair believes that the Committee is correct in its view that there is extant authorization justifying this appropriation, and he overrules the point of order.

Parliamentarian's Note: H.R. 11274, the Middle Income Student Assistance Act, had been reported from the Committee on Education and Labor but had not passed the House. The report on that bill indicated that all of the five existing programs of student financial assistance which that bill would modify had been extended through fiscal 1979 by Public Law No. 94–482. The purpose of H.R. 11274 was merely to redirect emphasis toward assistance for middle income students, but not to provide new authorization.

Public Service Jobs—Earmarking

§ 20.18 Where existing law authorized appropriations for employment of persons by public employers to provide public services, an amendment appropriating funds for railroad maintenance employment "pursuant to contracts with railroads" was held unauthorized where its sponsor failed to cite specific authority for the program.

On Mar. 12, 1975,[15] during consideration in the Committee of the Whole of H.R. 4481 [the Emergency Employment Appropriation Act of 1975], a point of order was sustained against an amendment, as follows:

The Clerk read as follows:

Amendment offered by Mr. [Samuel L.] Devine [of Ohio]: Page 7, line 6, strike out the period and insert in lieu thereof the following: "; of which amount $250,000,000 shall be available only for use by State and local prime sponsors to provide emergency jobs for unemployed workers to perform needed railroad maintenance of way services pursuant to contracts with railroads located within the geographical jurisdiction of such sponsors."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment on the ground that there is no authorization for this action and it violates clause 2 of rule XXI. . . .

MR. DEVINE: . . . I recognized when this amendment would be offered it might be construed as legislation on an appropriation measure, but I have gone back to the act and I have looked at the act. The purpose of the act we passed in 1946, the Employment Act, was consistent with those needs and obligations and other essential considerations of national policy for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions under

15. 121 CONG. REC. 6338, 6339, 94th Cong. 1st Sess.

which there will be afforded useful employment opportunities—and I repeat, useful employment opportunities. That is the purpose of the act.

What we are doing in this amendment is providing useful employment opportunities—not leaf raking and not make work jobs, but useful employment opportunities.

The whole purpose of the bill is to provide funds for public service jobs. That is exactly the purpose of the amendment, except it earmarks that. In my opinion, Mr. Chairman, this does not violate the rules and I think the point of order should be overruled. . . .

THE CHAIRMAN:[16] The Chair is prepared to rule.

The amendment specifies that this quarter billion dollars shall be available for use only by State and local prime sponsors to provide emergency jobs for unemployed workers to perform railroad maintenance. The Chair has examined Public Law 93–567, and there is no specific authorization for such purpose. The Chair finds that the proposed amendment further changes the allocation formula contained in Public Law 93–567, which is described on pages 34 and 35 of the report, and further interferes with the discretion given the Secretary under section 603(b) of the public law as to the utilization of the final 10 percent of the authorized amounts. In chapter 26, section 6 of "Deschler's Procedure," it provides very clearly that there is ample precedent that such reallocations in appropriation bills are legislation, and the point of order is sustained.

16. Jack Brooks (Tex.).

Officials' Representation Expenses

§ 20.19 A section of a general appropriation bill authorizing the Secretaries of Labor and Health, Education, and Welfare to use funds in the bill for official reception and representation expenses was conceded to be unauthorized and was ruled out in violation of Rule XXI clause 2.

On June 27, 1974,[17] during consideration in the Committee of the Whole of H.R. 15580 (Departments of Labor and Health, Education, and Welfare appropriations), a point of order was sustained against the following provision:

The Clerk read as follows:

> Sec. 404. The Secretary of Labor and the Secretary of Health, Education, and Welfare are each authorized to make available not to exceed $7,500 from funds available for salaries and expenses under titles I and II, respectively, for official reception and representation expenses.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language to be found on page 37, beginning with line 21 and running through line 25 as being appropriation not authorized by law. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: It is the entire section 404?

17. 120 CONG. REC. 21686, 21687, 93d Cong. 2d Sess.

Mr. Chairman, we concede the point of order.

THE CHAIRMAN:[18] The point of order is conceded and sustained.

§ 21. Increasing Amount Beyond Authorization

Generally

§ 21.1 An amendment proposing to appropriate a sum in addition to that authorized by law for a specific purpose is not in order on an appropriation bill.

On Mar. 12, 1942,[19] The Committee of the Whole was considering H.R. 6709, an Agriculture Department appropriation bill. During consideration, a point of order against an amendment was sustained as indicated below:

MR. [H. JERRY] VOORHIS of California: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Voorhis of California: Page 79, line 11, after the period, add the following paragraph:

"To enable the Secretary of Agriculture to further carry out the provisions of section 32, as amended, of the act entitled 'An act to amend the Agricultural Adjustment Act, and for other purposes,' approved August 24, 1935, and subject to all provisions of law relating to the expenditure of funds appropriated by such section, $40,000,000. Such sum shall be immediately available and shall be in addition to, and not in substitution for, other appropriations made by such section or for the purpose of such section."

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from California on the ground that there is no authority of law for making an appropriation in addition to the permanent appropriation made by section 32 of the Agricultural Adjustment Act. There is no legislative basis for the amendment which the gentleman offers.

THE CHAIRMAN:[20] Does the gentleman from California wish to be heard on the point of order?

MR. VOORHIS of California: No, Mr. Chairman; I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Increase in Lump Sum Beyond Authorization

§ 21.2 An amendment proposing an increase in the amount of an appropriation authorized by law was held to be unauthorized: to the appropriation for compensation of Members of the House, an amendment proposing to increase the total amount beyond that authorized was held to be in violation of Rule XXI clause 2.

18. James C. Wright, Jr. (Tex.).

19. 88 CONG. REC. 2346, 77th Cong. 2d Sess.

20. Robert Ramspeck (Ga.).

On Apr. 19, 1950,[1] during consideration in the Committee of the Whole of the legislative branch appropriation bill (H.R. 7786), a point of order was raised against the following provision:

CHAPTER II, LEGISLATIVE BRANCH

The Clerk read as follows:

For compensation of Members of the House of Representatives, Delegates from Territories, and the Resident Commissioner from Puerto Rico, $5,492,500. . . .

MR. [ABRAHAM J.] MULTER [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Multer: Page 3, line 6, strike out "$5,492,500" and insert in lieu thereof "$7,135,000."

MR. [CHRISTOPHER C.] MCGRATH [of New York]: Mr. Chairman, I make the point of order against the amendment that there is no authority in law for this increase.

THE CHAIRMAN:[2] Does the gentleman from New York [Mr. Multer] desire to be heard on the point of order?

MR. MULTER: No; I do not care to be heard on the point of order.

THE CHAIRMAN: Can the gentleman from New York [Mr. Multer] cite any authorization of law for the increase proposed by his amendment?

MR. MULTER: Only the fact that this body has the authority to fix the salary of its Members. I think it does not matter how or in what bill the House does it. It may do so as part of an appropriation bill. This item being the item appropriating for the pay of Members of Congress I think it is subject to amendment.

THE CHAIRMAN: Does the gentleman from New York [Mr. McGrath] desire to be heard on the point of order?

MR. MCGRATH: Mr. Chairman, while I recognize that the Members of the House are deserving of an increase in compensation, yet my position at this time is of a legislative capacity and I must support the rules of the House.

I respectfully submit that the point of order lies against the amendment.

MR. [JOHN] TABER [of New York]: Mr. Chairman, will the gentleman from New York yield for a question?

MR. MCGRATH: I yield.

MR. TABER: As I understand, this is an amendment to the gross amount for salaries. It is not in order, of course, because the only authority we have is to appropriate an amount equivalent to the product of the fixed salary times the number of Members. The effect of the amendment would not even be to increase the salary.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from New York [Mr. Multer] has offered an amendment which has been reported; the gentleman from New York [Mr. McGrath] has made a point of order against the amendment on the ground that the amount sought to be included by the amendment is not authorized by law.

The Chair has examined the question to some extent, and it appears that the amount carried in the bill re-

1. 96 CONG. REC. 5392, 5393, 81st Cong. 2d Sess.
2. Jere Cooper (Tenn.).

flects the amount authorized by existing law. Therefore, the amendment offered by the gentleman from New York would be in excess of existing authority of law.

The point of order is sustained.

Where Part of Lump Sum is Unauthorized

§ 21.3 Instance where a point of order was conceded against a paragraph of an appropriation bill on the ground that a lump-sum figure therein included funds for one organization in excess of the authorization therefor even though all funds in the lump sum were to be available only as authorized by law.

On Apr. 12, 1960,[3] the Committee of the Whole was considering H.R. 11666, an appropriation for the Departments of State, Justice, and the Judiciary. At one point the Clerk read as follows, and proceedings ensued as indicated below:

MISSIONS TO INTERNATIONAL ORGANIZATIONS

For expenses necessary for permanent representation to certain international organizations in which the United States participates pursuant to treaties, conventions, or specific acts of Congress, including expenses authorized by the pertinent acts and conventions providing for such representation; salaries, expenses, and allowances of personnel and dependents as authorized by the Foreign Service Act of 1946, as amended (22 U.S.C. 801–1158); hire of passenger motor vehicles; printing and binding, without regard to section 11 of the act of March 1, 1919 (44 U.S.C. 111); and purchase of uniforms for guards and chauffeurs; $1,850,000.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 7 beginning with line 1 and running through line 12 on the ground that it contains an appropriation not authorized by law. . . .

THE CHAIRMAN:[4] Does the gentleman from New York desire to be heard on the point of order?

MR. [JOHN J.] ROONEY [of New York]: Yes, Mr. Chairman. This is going to be a great deal of tweedledee and tweedledum. It is the fact, and we concede, that the Interparliamentary Union, which has been in existence for some 70-odd years, does not have an authorization for expenditure beyond $15,000 per annum, whereas the newly created NATO Interparliamentary Union and the Canadian Interparliamentary Union have authorizations for $30,000. The committee felt that the oldest one, the 70-year-old one, should be put on the same basis as the two lately formed ones, and for that reason inserted in the bill $30,000.

Mr. Chairman, I am now constrained to concede that the point of order is

3. 106 CONG. REC. 7941, 86th Cong. 2d Sess.

4. W. Homer Thornberry (Tex.).

well taken and I shall immediately offer an amendment.

THE CHAIRMAN: The point of order is conceded and sustained.[5]

Committee Funds Above Authorized Level

§ 21.4 A provision in an appropriation bill providing funds for the Joint Committee on Reduction of Nonessential Federal Expenditures in excess of the amount authorized by law was ruled out as in violation of Rule XXI clause 2.

On Apr. 10, 1964,[6] during consideration in the Committee of the Whole of the legislative branch appropriation bill (H.R. 10723), a point of order was raised against the following provision:

The Clerk read as follows:

JOINT COMMITTEE ON REDUCTION OF NONESSENTIAL FEDERAL EXPENDITURES

For an amount to enable the Joint Committee on Reduction of Nonessential Federal Expenditures to carry out the duties imposed upon it by section 601 of the Revenue Act of 1941 (55 Stat. 726), to remain available during the existence of the Committee, $29,750, to be disbursed by the Secretary of State.

MR. [JOHN J.] ROONEY of New York: Mr. Chairman, I make a point of order against the language relating to the Joint Committee on Reduction of Nonessential Federal Expenditures which appears on page 9, line 15 through line 2 on page 10, inclusive. There is no authority in the basic law to appropriate such an amount. The joint committee was established by the provisions of section 601 of the Revenue Act of 1941 and appears in volume 55 of the Statutes at Large, on page 726. Subsection (e) of section 601 limits the total appropriations that can be made to this joint committee to the sum of $10,000, or less, and I will quote the subsection as follows:

> There is hereby authorized to be appropriated, the sum of $10,000, or so much thereof as may be necessary, to carry out the provisions of this section.

This joint committee was clearly intended to be a temporary thing of short duration. As a matter of fact, it has not been carried into the United States Code although that is not a matter of great importance to this question, even though it indicates that in the eyes of the people who prepare the code it was to be a temporary thing. I trust that the Chair will sustain the point of order which I have made. . . .

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5. *Parliamentarian's Note:* The language of the bill specified that appropriations in the paragraph were available only for "expenses authorized by the pertinent acts" providing for United States participation in the organizations. Under a ruling of the Chair on June 18, 1960 (106 CONG. REC. 11646, 86th Cong. 2d Sess.) and similar precedents, the quoted language arguably would have limited the amount which could be used to the amount actually authorized, in which case the point of order would not have lain.

6. 110 CONG. REC. 7636, 7637, 88th Cong. 2d Sess.

THE CHAIRMAN:[7] Does the gentleman from Oklahoma concede the point of order?

MR. [THOMAS J.] STEED [of Oklahoma]: Reluctantly, Mr. Chairman. We have no other point to stand on except the fact that this has been done for many years without protest. If that does not give it life and legality, I know of no way that would give it life and legality as of this moment. I certainly cannot with any logic offer a substitute of only $10,000. That is so far from the realities of the moment that I will just have to let it pass for the moment.

THE CHAIRMAN: The Chair is prepared to rule.

Inasmuch as the authorization is for $10,000 and the appropriation is for considerably more than that, the Chair believes the point of order is well taken.

The point of order is sustained.

§ 21.5 Language in a general appropriation bill providing funds for the Joint Committee on Defense Production in excess of the amount authorized by law was conceded to be subject to a point of order.

On Apr. 10, 1964,[8] during consideration in the Committee of the Whole of the legislative branch appropriation bill (H.R. 10723), a point of order was sustained against the following provision:

The Clerk read as follows—page 10, line 21:

JOINT COMMITTEE ON DEFENSE PRODUCTION

For salaries and expenses of the Joint Committee on Defense Production as authorized by the Defense Production Act of 1950, as amended, $90,520.

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I make a point of order against the paragraph relating to the Joint Committee on Defense Production which appears on page 10, lines 21 to 24, inclusive, on the grounds that the amount proposed to be appropriated, $90,520, exceeds the amount that is authorized to be appropriated in the basic law. In title 50 of the United States Code, section 2162(e), authorization for this committee is limited to not to exceed $65,000 in any fiscal year, and I quote subsection (e) as follows:

> The expenses of the committee under this section, which shall not exceed $65,000 in any fiscal year, shall be paid from the contingent fund of the House of Representatives upon vouchers signed by the chairman or vice chairman.

In view of this limitation, the proposed appropriation in the pending bill is, in my opinion, clearly subject to a point of order and I trust the Chair will so rule.

THE CHAIRMAN:[9] Does the gentleman from Oklahoma desire to be heard on the point of order?

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, I would have to concede the point of order. The only way I know to meet this situation is to offer an amendment at this point.

THE CHAIRMAN: Did I understand correctly that the gentleman from Oklahoma concedes the point of order?.

7. Clark W. Thompson (Tex.).

8. 110 CONG. REC. 7640, 88th Cong. 2d Sess.

9. Wilbur D. Mills (Ark.).

MR. STEED: That is correct, Mr. Chairman.

THE CHAIRMAN: The gentleman concedes the point of order.

The point of order is sustained.

§ 22. In General; Burden of Proof

The sections that follow discuss application of the rule prohibiting provisions "changing existing law" in general appropriation bills. The rule itself, and the broad qualifications on its use, are discussed in detail at the beginning of this chapter.[10]

By way of contrast, some rulings which belong under part F of this chapter, "Permissible Limitations on Use of Funds," are carried in parts C, D, and E, which discuss provisions "changing existing law," to permit the reader to better understand the subtle distinctions between these two lines of precedent.

As noted in prior sections of this chapter, clause 2 of Rule XXI proscribes both (1) appropriations not authorized by law, and (2) provisions changing existing law. Some rulings interrelate these two separate proscriptions more than is technically necessary, and this chapter is intended, in part, to place the proper emphasis on the most appropriate portion of Rule XXI clause 2 relied upon by the Chair in its ruling.

Availability of Appropriation Contingent on Further Legislative Action

§ 22.1 Language in an appropriation bill changing existing law by imposing a new committee approval requirement for the availability of funds is legislation and not in order.

On June 29, 1959,[11] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7978), a point of order was raised against the following provision:

The Clerk read as follows:

For contractual research, development, operations, technical services, repairs, alterations, and minor construction, and for supplies, materials, and equipment necessary for the conduct and support of aero-

10. See § 1, supra.

See supplements to this edition as they appear for discussion of recently adopted rules, including the requirement that the Committee on Appropriations include, in its reports on general appropriation bills, a statement describing the effect of any provision changing the application of existing law.

11. 105 CONG. REC. 12125, 86th Cong. 1st Sess.

nautical and space research and development activities of the National Aeronautics and Space Administration, including not to exceed $5,000 for representation allowances overseas and official entertainment expenses, to be expended upon the approval or authority of the Administrator; not to exceed $500 for newspapers and periodicals; and purchase of thirty-two passenger motor vehicles, of which nineteen shall be for replacement only; $300,000,000, to remain available until expended: *Provided,* That this appropriation shall also be available for other items of a capital nature only after such items in excess of $250,000 shall first receive the approval in writing of the Committee on Science and Astronautics of the House of Representatives and the Committee on Aeronautical and Space Sciences of the Senate: *Provided further,* That no part of this appropriation shall be available for payment of salaries of National Aeronautics and Space Administration personnel.

MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[12] The gentleman will state it.

MR. TABER: I make the point of order against the language on page 4, lines 16 to 22, inclusive, beginning with the word, "*Provided*" and ending with the word "Senate" on the ground that it is legislation on an appropriation bill and requires additional duties.

THE CHAIRMAN: Does the gentleman from Texas [MR. THOMAS] desire to be heard on the point of order?

MR. [ALBERT] Thomas: Mr. Chairman, unquestionably the point of order is good. We were merely trying to straighten out some language in that Act, and I send an amendment to the Clerk's desk.

THE CHAIRMAN: The gentleman from Texas concedes the point of order, and the Chair sustains the point of order.

Extending Availability of Funds Beyond That Specified in Existing Law

§ 22.2 Language in an appropriation bill making an appropriation for a census of agriculture available beyond the time for which it was originally authorized was held to be legislation on an appropriation bill and not in order.

On Dec. 7, 1944,[13] the Committee of the Whole was considering H.R. 5587, a supplemental appropriation. A point of order was raised against a paragraph of the bill providing for a census of agriculture:

Census of agriculture: For an additional amount for census of agriculture, including the objects specified under this head in the Department of Commerce Appropriation Act, 1945, $5,500,000, to remain available until December 31, 1946.

MR. [FRANK B.] KEEFE [of Wisconsin]: Mr. Chairman, I make the point of order against the paragraph and call attention to the language on page 23, line 3, "$5,500,000 to remain available until December 31, 1946," as not being authorized by law and being legislation on an appropriation bill.

12. Paul J. Kilday (Tex.).

13. 90 CONG. REC. 8995, 8996, 78th Cong. 2d Sess.

THE CHAIRMAN:[14] does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. [J. BUELL] SNYDER [of Pennsylvania]: The title of the bill provides for just what the gentleman states. This work is under way, and this is just an additional amount to carry on.

THE CHAIRMAN: Does the gentleman from Pennsylvania hold that this amount is authorized?.

MR. SNYDER: I do, Mr. Chairman.

THE CHAIRMAN: Will the gentleman cite the authorization?.

MR. SNYDER: The authorization is the Agricultural Appropriation Act for the current fiscal year.

THE CHAIRMAN: Does the gentleman from Wisconsin further contend that the amount is not authorized?.

MR. KEEFE: I contend, Mr. Chairman, that the provision making the amount available until December 31, 1946, makes it objectionable, as it carries it beyond any authorization.

THE CHAIRMAN: Does the gentleman from Pennsylvania wish to be heard further on the point of order?.

MR. SNYDER: Nothing further, Mr. Chairman.

THE CHAIRMAN: The Chair sustains the point of order.

Amending Dates in Authorization Law

§ 22.3 To a paragraph of an appropriation bill making appropriations for the United Nations Relief and Rehabilitation Administration, an amendment seeking to extend the dates named in the proviso clause of the first paragraph of the UNRRA Act for 90 days was held to be legislation on an appropriation bill and not in order.

On June 27, 1946,[15] during consideration in the Committee of the Whole of a deficiency appropriation bill (H.R. 6885), a point of order was raised against the following amendment:

MR. [EMMET] O'NEAL [of Kentucky]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. O'Neal: On page 4, line 14, after "1947", insert "*Provided*, That the dates named in the proviso clause of the first paragraph of the United Nations Relief and Rehabilitation Administration Participation Act, 1946, are each hereby extended for 90 days."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill not authorized by existing law.

MR. O'NEAL: Mr. Chairman, I should like to be heard on the point of order.

The gentleman makes the point of order that it is legislation on an appropriation bill. The amendment offered applies directly to the legislation referred to in the same paragraph, the Rehabilitation Administration Participation Act, 1946. The provisions of

14. Herbert C. Bonner (N.C.).

15. 92 CONG. REC. 7758, 79th Cong. 2d Sess.

that act are referred to in this paragraph, and the amendment affects one of the parts of the Participation Act. It seems clear to me, since it touches on the very matter referred to in the paragraph, that it is certainly not legislation which is not in conformity with the rest of the paragraph.

MR. TABER: The law now provides a period within which certain things may be done. This changes the law so as to make that period 90 days longer. There is nothing in the bill at the present time to which this amendment is germane.

THE CHAIRMAN:[16] The Chair is ready to rule. In the opinion of the Chair, the amendment is clearly legislation on an appropriation bill. The point of order is sustained.

Conferring Discretion

§ 22.4 An amendment to an appropriation bill, providing that no appropriations in the bill be available for contracts for procurements from private contractors except where a federal official determines to the contrary was held to confer new discretionary authority and to be legislation.

On Apr. 13, 1949,[17] during consideration in the Committee of the Whole of the military establishment appropriation bill (H.R. 4146), a point of order was raised against an amendment containing the following provision:

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Page 90, following line 21, insert a new section, as follows:

"Sec. 629. No part of the appropriations made in this act shall be available . . . and no moneys herein appropriated for the Naval Establishment or made available therefor shall be used or expended under contracts hereafter made for the repair, purchase, or acquirement, by or from any private contractor, of any naval vessel, machinery, article, or articles that at the time of the proposed repair, purchase, or acquirement can be repaired, manufactured, or produced in each or any of the Government naval shipyards or arsenals of the United States, when time and facilities permit, and when, in the judgment of the Secretary, such repair, purchase, acquirement, or production would not involve an appreciable increase in cost to the Government, except when the repair, purchase, or acquirement, by or from any private contractor, would, in the opinion of the Secretary, be advantageous to the national defense."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, the proposed amendment clearly imposes additional duties.

THE CHAIRMAN:[18] Does the gentleman from Rhode Island desire to be heard on the point of order?

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

17. 95 CONG. REC. 4534, 4535, 81st Cong. 1st Sess.

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

MR. FOGARTY: Mr. Chairman, in offering this amendment today I am not attempting to offer something that has not been in previous appropriation bills. The exact language of the amendment I am offering has appeared in appropriation bills for the military and the naval establishments for the past 25 or 30 years. Without any hearings on this particular section of the bill it was stricken out by the subcommittee handling the bill before use this afternoon. The House has acted upon this very same amendment in the past, and it was considered germane. In a conference between the House and the Senate a year ago this provision was agreed on. I think the amendment is in order at the present time.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Rhode Island offers an amendment against which a point of order is made on the ground that it is legislation on an appropriation bill. While it would seem to be a limitation of appropriation, the Chair calls the attention of the Committee to the fact that the amendment does confer discretionary authority upon the Secretary. It is the opinion of the Chair that to that extent the amendment is legislation on an appropriation bill. Therefore, the Chair sustains the point of order.

Incorporation of Legislative Language by Reference

§ 22.5 The incorporation by reference of a legislative provision in a former appropriation act is not in order in a general appropriation bill: language in the D.C. appropriation bill providing that employment on playgrounds shall be distributed in accordance with corresponding employment provided for in the D.C. appropriation act for a former fiscal year was held to be legislation.

On Apr. 2, 1937,[19] during consideration in the Committee of the Whole of the District of Columbia appropriation bill, a point of order was raised against the first clause in the proviso in the following paragraph:

COMMUNITY CENTER DEPARTMENT

For personal services of the director, general secretaries, and community secretaries in accordance with the act approved June 4, 1924 (43 Stat., pp. 369, 370); clerks and part-time employees, including janitors on account of meetings of parent-teacher associations and other activities; for personal services for public playgrounds adjacent to and in the vicinity of school buildings: *Provided*, That employments on such playgrounds, except directors who shall be employed for 12 months, shall be distributed as to duration in accordance with corresponding employments provided for in the District of Columbia Appropriation Act for the fiscal year 1924; for keeping open public-school playgrounds, including playgrounds operated during the summer months and daily after school hours;

19. 81 CONG. REC. 3107, 75th Cong. 1st Sess.

for general maintenance, repairs, improvements, equipment, supplies, lighting fixtures, and other incidental and contingent expenses, including labor; and including $10,000 for health and physical education teachers to supervise play in schools of the central area bounded by North Capitol Street on the east, Florida Avenue on the north, the Mall on the south, and Twelfth Street on the west, $216,565.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order against the paragraph beginning in line 23, on page 26, down to and inclusive of line 18, on page 27, for the reason that it changes existing law and is, therefore, legislation on an appropriation bill.

THE CHAIRMAN:[20] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [ROSS A.] COLLINS [of Mississippi]: I do not, Mr. Chairman, except to say that the only provision of the paragraph subject to the point of order is the proviso.

THE CHAIRMAN: Does the gentleman from Oklahoma make the point of order against the entire paragraph?

MR. NICHOLS: Mr. Chairman, I modify my point of order and direct it to that portion of the paragraph beginning in line 4, page 27, which is the proviso.

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

The proviso on page 27, beginning at line 4 and continuing through the figures "1924" in line 9, is the language against which the point of order is made. The appropriation act of 1924 was law for that year and did not become permanent law. This provision would incorporate into this bill the legislative provision of the act of 1924, and is therefore legislation on an appropriation bill.

The Chair sustains the point of order.

20. Jere Cooper (Tenn.).

§ 22.6 A provision making restrictions and conditions imposed on similar programs in other appropriation acts applicable to the funds being appropriated in the bill under consideration was conceded to be legislation and was ruled out as in violation of Rule XXI clause 2.

On May 15, 1957,[1] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 7441), the following point of order was raised:

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I make a point of order with regard to the language beginning with the words "*Provided further,*" on line 8, at page 10, down to and including the word "Service" on line 14, the language being as follows:

> *Provided further,* That provisions of the act of August 1, 1956 (70 Stat. 890–892), and provisions of a similar nature in appropriation acts of the Department of State for the current and subsequent fiscal years which facilitate the work of the Foreign

1. 103 CONG. REC. 7012, 85th Cong. 1st Sess.

Service shall be applicable to funds available to the Foreign Agricultural Service.

I make the point of order, Mr. Chairman, on the ground that this language is legislation on an appropriation bill.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, may I be heard?

THE CHAIRMAN:[2] The Chair recognizes the gentleman from Mississippi [Mr. Whitten].

MR. WHITTEN: Mr. Chairman, the committee concedes the point of order.

THE CHAIRMAN: The gentleman from Mississippi concedes the point of order. The point of order is sustained.

House Resolution Made Permanent Law

§ 22.7 Language in a general appropriation bill prescribing that the provisions of a House-passed resolution "shall be the permanent law with respect thereto" was conceded to be legislation in violation of Rule XXI clause 2 and was ruled out on a point of order.

On June 4, 1971,[3] during consideration in the Committee of the Whole of the legislative branch appropriation bill (H.R. 8825), a point of order was raised against the following provision:

POSTAGE STAMP ALLOWANCES

Postage stamp allowances for the second session of the Ninety-second Congress, as follows: Clerk, $1,120; Sergeant at Arms, $840; Doorkeeper, $700; Postmaster, $560; each Member, the Speaker, the majority and minority leaders, the majority and minority whips, and each standing committee, as authorized by law; $321,090: *Provided*, That the provisions of House Resolution 420, Ninety-second Congress, shall be the permanent law with respect thereto.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language to be found on page 7, line 7, which states as follows:

Provided, That the provisions of House Resolution 420, Ninety-second Congress shall be the permanent law with respect thereto.

I make a point of order against that language on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN:[4] The Chair will inquire of the gentleman from Alabama if he wishes to be heard on the point of order.

MR. [GEORGE W.] ANDREWS of Alabama: Again we were following the intent of the House and a custom which is established.

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

MR. ANDREWS of Alabama: We do.

THE CHAIRMAN: The point of order against the proviso is sustained, and the Clerk will read.

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2. Paul J. Kilday (Tex.).

3. 117 CONG. REC. 18040, 92d Cong. 1st Sess.

4. John M. Murphy (N.Y.).

Reference to Legislative Provision Elsewhere in Bill

§ 22.8 To a bill appropriating emergency funds for the President, an amendment to make the provisions of another section of the bill [which contained legislation subject to a point of order] applicable to the appropriation was held to be legislation.

On May 25, 1959,[5] during consideration in the Committee of the Whole of the general government matters appropriation bill (H.R. 7176), a point of order was raised against an amendment to the following section:

EMERGENCY FUND FOR THE PRESIDENT, NATIONAL DEFENSE

For expenses necessary to enable the President, through such officers or agencies of the Government as he may designate, and without regard to such provisions of law regarding the expenditure of Government funds or the compensation and employment of persons in the Government service as he may specify, to provide in his discretion for emergencies affecting the national interest, security, or defense which may arise at home or abroad during the current fiscal year, $1,000,000: *Provided,* That no part of this appropriation shall be available for allocation to finance a function or project for which function or project a budget estimate of appropriation was transmitted pursuant to law during the Eighty-sixth Congress, and such appropriation denied after consideration thereof by the Senate or House of Representatives or by the Committee on Appropriations of either body. . . .

MR. [PORTER] HARDY [Jr., of Virginia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Hardy: On page 5, line 6, strike the period, insert a colon and the following: "*Provided further,* That section 209 of this Act shall be fully applicable to this appropriation.". . .

[Note: Section 209 of the bill provided: "No part of any appropriation contained in this Act, or of the funds available for expenditure by any individual, corporation, or agency included in this Act, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress."]

MR. [IVOR D.] FENTON [of Pennsylvania]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[6] Does the gentleman desire to be heard on the point of order?

MR. FENTON: I do, Mr. Chairman. It is legislation on an appropriation bill. . . .

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

MR. HARDY: Yes, Mr. Chairman. I do not know how it can be said that this

5. 105 CONG. REC. 9006, 9007, 9011, 86th Cong. 1st Sess.

6. Carl Albert (Okla.).

is legislation on an appropriation bill when it refers to a section of the bill itself.

THE CHAIRMAN: The Chair will advise the gentleman that that section may have legislation in it and the fact that the amendment refers to a section of the bill is not an answer to the point of order.

MR. HARDY: That may be true, Mr. Chairman, but I would certainly have to express the feeling to ask how is it improper anywhere in a piece of legislation to say that a section of the legislation is applicable to the rest of it.

THE CHAIRMAN: Under the rules of the House, any language in an appropriation bill or any amendment to an appropriation bill which contains legislation is subject to a point of order. Therefore, the point of order is sustained.

Exceeding Limitation in Permanent Law

§ 22.9 Where a limitation on the amount of an appropriation to be annually available for expenditure by an agency has become law, language in a subsequent appropriation bill seeking to change this limitation on such funds was held to change existing law and therefore to be legislation on an appropriation bill.

On Mar. 15, 1945,[7] 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:

Foreign Service Buildings Fund: For the purpose of carrying into effect the provisions of the act of May 25, 1938, entitled "An act to provide additional funds for buildings for the use of the diplomatic and consular establishments of the United States" (22 U.S.C. 295a), including the initial alterations, repair, and furnishing of buildings acquired under said act, $1,466,000, notwithstanding the amount [of the] limitation in the act of May 25, 1938 (22 U.S.C. 295a), to remain available until expended: *Provided*, That expenditures for furnishing made from appropriations granted pursuant to the act of May 7, 1926, and subsequent acts providing funds for buildings for the use of diplomatic and consular establishments of the United States shall not be subject to the provisions of section 3709 of the Revised Statutes.

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I make a point of order against the paragraph beginning in line 14, page 16, down to and including line 3, page 17, on the ground it is a violation of the basic law.

Appropriation is asked notwithstanding the amount (of the) limitation in the act of May 25, 1938 (22 U.S. Code, sec. 295a), as follows:

Sections 292 et seq. authorized the acquisition of properties abroad for the State Department, and section 295a authorized "to be appropriated, in addition to the amount authorized by such act, an amount not to exceed $5,000,000, of which not more than $1,000,000 shall be appropriated for any 1 year," and so forth.

7. 91 CONG. REC. 2305, 79th Cong. 1st Sess.

No necessity or reason is shown for the lifting of that $1,000,000 yearly limitation on these appropriations, and the present proposal amounts to, and is, permanent and repealing legislation on an appropriation act.

THE CHAIRMAN:[8] Does the gentleman from Michigan [Mr. Rabaut] desire to be heard?

MR. [LOUIS C.] RABAUT: Mr. Chairman, I think the point of order might apply to the language appearing in lines 20 and 21. That is because of the excesses.

THE CHAIRMAN: Permit the Chair to understand the gentleman. The gentleman concedes that the language in lines 20 and 21 is bad and subject to a point of order?

MR. RABAUT: Yes.

THE CHAIRMAN: Does the gentleman from Kansas [Mr. Rees] insist on his point of order against the entire paragraph? . . .

MR. REES of Kansas: I insist on the point of order to the entire paragraph, Mr. Chairman.

THE CHAIRMAN: In view of the fact that certain language in the paragraph is conceded to be subject to a point of order, the entire paragraph is subject to a point of order.

The Chair sustains the point of order.

§ 22.10 An amendment to an appropriation bill seeking to change a limitation on expenditures carried in a previous appropriation bill was held to be legislation and not in order.

8. Wilbur D. Mills (Ark.).

On Dec. 6, 1944,[9] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 5587), a point of order was raised against the following amendment:

Amendment offered by Mr. [Malcolm C.] Tarver [of Georgia]: On page 19, line 3, insert a new paragraph, as follows:

CONSERVATION AND USE OF AGRICULTURAL LAND RESOURCES

"The limitation on expenditures under the 1944 program of soil-building practices and soil- and water-conservation practices established in the fourth proviso clause of appropriation Conservation and use of agricultural land resources, in the Department of Agriculture Appropriation Act, 1944, is hereby increased from $300,000,000 to $313,000,000 (exclusive of the $12,500,000 provided in the Department of Agriculture Appropriation Act, 1945, for additional seed payments)."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill. The change of a limitation is a change of existing law, and it has been so held repeatedly.

MR. TARVER: Mr. Chairman, the Soil Conservation and Domestic Allotment Act authorizes the promulgation of programs to cost not in excess of $500,000,000 annually. In the Agricultural Appropriation Act of 1944 the Congress undertook to impose a limitation of $300,000,000 upon the adminis-

9. 90 CONG. REC. 8940, 8941, 78th Cong. 2d Sess.

trative authorities in the promulgation of the over-all program for the calendar year 1944, which program included not only payments and grants for soil-conservation and water-conservation practices, but the furnishing in advance of seeds, limes, fertilizers, trees and other agricultural materials to be used in soil-conservation work and to be charged against the benefits accruing to the farmers in subsequent crop years.

. . . [T]his amendment, if adopted, does not appropriate or make available to the administrative authorities one single dollar of moneys which are not already available to them but it simply authorizes the use by them of moneys which have been allocated to the seed, fertilizer, lime, and tree program for the discharge of liabilities incurred under the program for the payments and grants for soil- and water-conservation practices. It is, therefore, in effect a reallocation of the funds which have already been appropriated by Congress.

I may say that that original allocation of funds was not made by the Congress in the enactment of the Agricultural Appropriation Act of 1944, but was made by departmental authorities without mandatory instructions from the Congress to make such allocations, although it probably was a matter within their administrative discretion. So I insist that the Congress by the imposition of the limitation in the Agricultural Appropriation Act of 1944 did not so tie its hands as to make it impossible for the same Congress or for a subsequent Congress to appropriate funds or to review and revise the allocation of funds already appropriated for the purposes outlined in the Soil Conservation and Domestic Allotment Act, so long as it does not exceed the limitation for maximum appropriation provided in that act, which, as I have pointed out, is $500,000,000.

I respectfully insist, Mr. Chairman, that the amendment is in order and the point of order should be overruled.

THE CHAIRMAN:[10] Does the gentleman from New York insist on his point of order?

MR. TABER: I do, Mr. Chairman.

THE CHAIRMAN: The point of order raised by the gentleman from New York is correct, and the Chair sustains the point of order.

Striking Out Language in Legislation Permitted to Remain

§ 22.11 An amendment merely striking out descriptive language in an appropriation bill may not be subject to a point of order as being legislation, if germane and if it does not broaden the appropriation beyond its authorized purpose.

On May 25, 1959,[11] during consideration in the Committee of the Whole of the general government matters appropriation bill (H.R. 7176), a point of order was raised against an amendment to the following language:

The Clerk read as follows:

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10. Herbert C. Bonner (N.C.).

11. 105 CONG. REC. 9013, 86th Cong. 1st Sess.

Sec. 202. Unless otherwise specified and during the current fiscal year, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in continental United States unless such person (1) is a citizen of the United States, (2) is a person in the service of the United States on the date of enactment of this Act who, being eligible for citizenship, had filed a declaration of intention to become a citizen of the United States prior to such date, (3) is a person who owes allegiance to the United States, or (4) is an alien from the Baltic countries lawfully admitted to the United States for permanent residence: *Provided,* That for the purpose of this section, an affidavit signed by any such person shall be considered prima facie evidence that the requirements of this section with respect to his status have been complied with. . . .

MR. [JAMES G.] O'HARA of Michigan: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. O'Hara of Michigan: On page 9, lines 5 and 6, after "alien" strike out the words "from the Baltic countries".

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Chairman, a point of order.

THE CHAIRMAN:[12] The gentleman will state it.

MR. GARY: Mr. Chairman, that is legislation on an appropriation bill.

THE CHAIRMAN: The Chair would advise the gentleman that the amendment simply strikes out certain language in the bill.

The point of order is overruled.

Construing the Use of Funds To Be in Conformity With Existing Law

§ 22.12 A provision in a general appropriation bill making appropriations therein available for purchase of station wagons without such vehicles being considered as passenger motor vehicles was held to constitute legislation.

On May 2, 1951,[13] during consideration in the Committee of the Whole of the Department of the Interior appropriation bill (H.R. 3709), a point of order was raised against the following provision:

The Clerk read as follows:

GENERAL PROVISIONS—DEPARTMENT OF THE INTERIOR

Sec. 102. Appropriations made in this act shall be available for the purchase of station wagons without such vehicles being considered as passenger motor vehicles.

MR. [PAUL C.] JONES of Missouri: Mr. Chairman, I make the point of order against this section on the ground that it is legislation on an appropriation bill.

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I concede the point of order.

THE CHAIRMAN:[14] The gentleman from Washington concedes the point of

12. Carl Albert (Okla.).

13. 97 CONG. REC. 4737, 4738, 82d Cong. 1st Sess.

14. Wilbur D. Mills (Ark.).

order and the Chair sustains the point of order.

§ 22.13 Where an appropriation bill placed a limit on administrative expenses, a provision defining certain expenses now or hereafter incurred as "non-administrative," for purposes of making the computation under any applicable limitation was held to be legislative and was ruled out on a point of order.

On Jan. 17, 1940,[15] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7922), a point of order was raised against the following provision:

The Clerk read as follows:

Electric Home and Farm Authority, salaries and administrative expenses: Not to exceed $600,000 of the funds of the Electric Home and Farm Authority, established as an agency of the Government by Executive Order No. 7139 of August 12, 1935, and continued as such agency until June 30, 1941 by the act of March 4, 1939 (Public Act No. 2, 76th Cong.), shall be available during the fiscal year 1941 for administrative expenses of the Authority, including personal services in the District of Columbia and elsewhere; travel expenses, in accordance with the Standardized Government Travel Regulations and the act of June 3, 1926, as amended (5 U.S.C. 821–833); not exceeding $3,000 for expenses incurred in packing, crating, and transporting household effects (not exceeding 5,000 pounds in any one case) of personnel when transferred in the interest of the service from one official station to another for permanent duty when specifically authorized in the order directing the transfer; printing and binding; law books and books of reference; not to exceed $200 for periodicals, newspapers, and maps; procurement of supplies, equipment, and services; typewriters, adding machines, and other labor-saving devices, including their repair and exchange; rent in the District of Columbia and elsewhere; and all other administrative expenses: *Provided*, That all necessary expenses (including legal and special services performed on a contract or fee basis, but not including other personal services) in connection with the acquisition, care, repair, and disposition of any security or collateral now or hereafter held or acquired by the Authority shall be considered as nonadministrative expenses for the purposes hereof.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I make the point of order against the paragraph that it contains legislation in the proviso beginning on page 21, line 3, and reading as follows:

Provided, That all necessary expenses (including legal and special services performed on a contract or fee basis, but not including other personal services) in connection with the acquisition, care, repair, and disposition of any security or collateral now or hereafter held or acquired by the Authority shall be considered as nonadministrative expenses for the purposes hereof.

I make the point of order merely against the proviso, Mr. Chairman, not against the paragraph.

15. 86 CONG. REC. 439, 76th Cong. 3d Sess.

The Chairman:[16] Does the gentleman from Virginia desire to be heard on the point of order?

MR. [CLIFTON A.] WOODRUM of Virginia: I do not, Mr. Chairman.

THE CHAIRMAN: As the language pointed out by the gentleman from South Dakota [Mr. Case] attempts to construe existing law, the Chair believes the point of order is well taken. The point of order is, therefore, sustained, and the proviso is stricken out.

Change in Contract Authorization

§ 22.14 Language in an appropriation bill seeking to change a contract authorization contained in a previous appropriation bill passed by another Congress was held to be legislation and not a retrenchment of funds in the bill.

On Apr. 25, 1947,[17] during consideration in the Committee of the Whole of the Department of the Interior appropriation bill for fiscal year 1948 (H.R. 3123), the following point of order was raised:

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I wish to reserve the point of order first in order that I may get some information before I make the point of order finally, and that is with respect to the language which appears at the bottom of page 51, which reads as follows:

> *Provided further,* That the contract authorization of $15,000,000 contained in the Interior Department Appropriation Act, fiscal year 1946, is hereby reduced to $9,750,000.

My point of order, Mr. Chairman, is that that is legislation amending a previous act and not within the purview of this bill making appropriations for fiscal 1948. It constitutes legislation on an appropriation bill for it destroys existing legislation.

Before I make the point of order, may I ask the chairman of the committee what the reason is for carrying that language? I feel that the development of the synthetic liquid fuel program is very essential to national defense and is probably the cheapest money we can spend in that direction.

MR. [ROBERT F.] JONES of Ohio: The purpose of this language is to limit the amount to be expended further on this project to the authorization provided in the basic act. In other words, the amount remaining after this appropriation will be the amount of $9,750,000, and will tie the entire appropriation to the basic authorization.

MR. CASE of South Dakota: What was the reason, then, for the increase of the authorization to $15,000,000 in the act of 1946 and establishment of contract authority?

MR. JONES of Ohio: That was to tie the appropriations to the $30,000,000 authorization

MR. CASE of South Dakota: Mr. Chairman, having introduced a bill which seeks to accomplish about that very thing, I am constrained to make the point of order and do make the point of order.

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16. Lindsay C. Warren (N.C.).

17. 93 CONG. REC. 4098, 80th Cong. 1st Sess.

THE CHAIRMAN:[18] Does the gentleman from Ohio desire to be heard on the point of order?

MR. JONES of Ohio: Mr. Chairman, the only purpose of the language is to limit the amount appropriated over all to the $30,000,000 authorization. It seems to me it is merely a restatement of the basic law and clearly in order under the Holman rule because on its face it saves money.

THE CHAIRMAN: This language changes a contract authorization contained in a previous appropriation bill passed by another Congress. The Chair sustains the point of order.

Delegation of Statutory Authority

§ 22.15 Language in an appropriation bill providing that the head of the department or establishment concerned may delegate to such officials his authority to authorize payment of expenses of travel and of transportation of household goods and immediate families of civilian officers and employees on change of official station was held legislation on an appropriation bill and not in order.

On Feb. 8, 1945,[19] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 1984), a point of order was raised against the following provision:

The Clerk read as follows:

(e) During the fiscal year 1946 the head of the department or establishment concerned may delegate to such officials as he may designate his authority to authorize payment of expenses of travel and of transportation of household goods and immediate families of civilian officers and employees on change of official station.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I make the point of order against the paragraph, particularly the words "may designate," that it is legislation on an appropriation bill, I believe it is a matter that ought to be covered by general legislation.

MR. [CLIFTON A.] Woodrum of Virginia: Mr. Chairman, I concede the point of order.

Bestowing Discretion to Waive Law

§ 22.16 Language in an appropriation bill providing funds for additional court facilities and waiving provisions of existing law where this is "determined to be necessary by the judicial council of the appropriate circuit" was conceded to be legislation and was ruled out on a point of order.

18. Earl C. Michener (Mich.).

19. 91 CONG. REC. 965, 79th Cong. 1st Sess.

On Sept. 15, 1961,[20] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9169), a point of order was raised against the two provisions in the following paragraph:

ADDITIONAL COURT FACILITIES

For expenses, not otherwise provided for, necessary to provide, directly or indirectly, additional space, facilities and courtrooms for the judiciary, including alteration and extension of Government-owned buildings and acquisition of additions to sites of such buildings; rents; furnishings and equipment; repair and alteration of rented space; moving Government agencies in connection with the assignment and transfer of space; preliminary planning; preparation of drawings and specifications by contract or otherwise; and administrative expenses; $1,000,000, to remain available until expended: *Provided,* That buildings constructed pursuant to the Public Buildings Purchase Contract Act of 1954 (40 U.S.C. 356) shall be considered to be Government-owned buildings for the purposes of this appropriation: *Provided further,* That this appropriation shall be available for the provision of court facilities in places which are otherwise subject to the restrictions of section 142 of title 28, United States Code, but only if such facilities are determined to be necessary by the judicial council of the appropriate circuit.

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Chairman, I make the point of order against the language on page 11 from line 6 on down to the bottom of the page, including line 25. It is legislation It changes existing legislation. . . .

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I cannot do anything but concede the point of order.

THE CHAIRMAN:[1] The gentleman from Texas concedes the point of order. The point of order is sustained.

Delegating Authority to Suspend Existing Law

§ 22.17 To a general appropriation bill an amendment providing that in reducing personnel the determination as to which individual employees shall be retained shall be made by the head of the agency concerned was held to be legislation.

On June 28, 1952,[2] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 8370), a point of order was raised against the following amendment:

Amendment offered by Mr. [Abraham A.] Ribicoff [of Connecticut] to the amendment offered by Mr. [Ben F.] Jensen [of Iowa]: After (b), No. 3, add a new paragraph as follows:

"4. That 90 days after the enactment of this act, the number of civilian em-

20. 107 CONG. REC. 19729, 87th Cong. 1st Sess.

1. Oren Harris (Ark.).

2. 98 CONG. REC. 8503, 82d Cong. 2d Sess.

ployees who are United States citizens, receiving compensation or allowances from the administrative expense appropriations provided by this act, employed in the United States and overseas by or assigned to the Mutual Security Agency, or employed by or assigned to the Department of State or the Department of Defense for carrying out programs the appropriations for which are provided by this act, and the military personnel assigned to such programs, shall be in the aggregate at least 15 percent less than the number so employed or assigned on June 1, 1952, except for such personnel of the Department of Defense engaged in the manufacturing, repair, rehabilitation, packing, handling, crating, or delivery of materiel: *Provided further,* That after the Director has determined the reduction to be effected in each agency, the determination as to which individual employees shall be retained shall be made by the head of the agency concerned.". . .

THE CHAIRMAN:[3] Does the gentleman from Virginia make his point of order?

MR. [J. VAUGHAN] GARY [of Virginia]: Yes. Mr. Chairman, as I understand the amendment, it leaves the discharge of employees entirely to the Administrator, which contravenes existing laws with reference to veterans' preference and also the civil-service laws. It is legislation; it contravenes existing legislation.

MR. [JOHN] TABER [of New York]: Mr. Chairman, the point of order comes too late; the amendment had been debated.

MR. GARY: I will say to the gentleman from New York that I reserved the point of order at the time the amendment was offered.

THE CHAIRMAN: The Chair is ready to rule. Part of the language of the amendment offered by the gentleman from Connecticut, after the proviso, reads:

> That after the Director has determined the reduction to be effected in each agency, the determination as to which individual employees shall be retained shall be made by the head of the agency concerned.

This portion of the amendment does, in the opinion of the Chair, alter the civil-service laws and laws relating to veterans' preferences, and therefore constitutes legislation on an appropriation bill. The point of order is sustained.

Funding Through Different Department

§ 22.18 Where a law authorizes an appropriation to one department for the purpose of prosecuting a certain activity itself or through another department it was held that an amendment proposing to appropriate money directly to the latter department for the purpose of prosecuting such activity changed existing law and was, therefore, not in order on an appropriation bill.

On Mar. 25, 1937,[4] during consideration in the Committee of the

3. Francis E. Walter (Pa.).

4. 81 CONG. REC. 2775–77, 75th Cong. 1st Sess.

Whole of a general appropriation bill providing funds for the Department of Labor (H.R. 5779), a point of order was raised against the following amendment:

MR. [JAMES M.] MEAD [of New York]: Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

> Page 103, line 8, after the word "labor", insert "to enable the Division of Labor Standards in the Department of Labor to engage in a program to formulate and promote the furtherance of standards of apprenticeship and apprentice training, $50,000."

MR. [ROBERT L.] BACON [of New York]: Mr. Chairman, I make a point of order against the amendment. . . .

THE CHAIRMAN:[5] The Chair is ready to rule.

The gentleman from New York [Mr. Mead] has offered an amendment to insert a new paragraph, as follows:

> To enable the Division of Labor Standards in the Department of Labor to engage in a program to formulate and promote the furtherance of standards of apprenticeship and apprentice training, $50,000.

To this amendment the gentleman from New York [Mr. Bacon] has made the point of order that the amendment is not germane to the paragraph to which it is offered, and the further point of order that it is legislation on an appropriation bill.

Unquestionably the amendment is not germane to the paragraph to which it is offered, and on that ground the Chair could sustain the point of order. It is the understanding of the Chair, however, that the gentleman from New York [Mr. Mead] under these circumstances would desire to return to the appropriate paragraph by unanimous consent of the Committee and again offer the amendment, and for this reason the Chair desires to state that, after an examination of the authorities and the precedents existing and of the act of February 23, 1917, which the gentleman from New York has cited, the Chair feels that the rules and precedents of the House have well established that a general statement of the purpose for which a department is established, as the Department of Labor, as set forth in its organic act, is not to be construed as an authorization for an appropriation which is not definitely and specifically provided for either in that act or in subsequent legislation creating bureaus within such Department. No authority has been cited to the Chair, other than the new suggestion made by the gentleman from New York with reference to the Vocational Education Act, which would take this particular amendment out of the ruling cited by the gentleman from New York (Mr. Bacon) made by Chairman Garner in the Committee of the Whole House some years ago. The Vocational Education Act, insofar as it applies to the point raised by the gentleman from New York, reads as follows:

> When the Interior Department deems it advisable, such studies, investigations, and reports concerning trades and industries for purposes of trade and industrial education may be made in cooperation with or through the Department of Labor.

The act, however, makes such investigations, studies, and so forth, de-

5. Frank H. Buck (Calif.).

pendent upon the determination of the Department of Interior for which the pending bill does not purport to make any appropriation.

Without desiring to bind any future occupant of the chair who may preside over the Interior Department appropriation bill as to the germaneness of such an amendment as the gentleman from New York offers today, the Chair feels it is entirely beyond the scope of the present bill and that it would be definite legislation on an appropriation bill, transferring from the Interior Department to the Department of Labor these particular activities which would be obnoxious to the rules of the House. For this reason the Chair sustains the point of order.

Granting Discretion to Approve Expenditure

§ 22.19 Language in a paragraph of a general appropriation bill providing for the expenditure of funds therein "on the approval or authority of the Secretary of the Air Force, and payment may be made on his certificate of necessity for confidential military purposes" was held to change existing law and was ruled out in violation of Rule XXI clause 2 when the Committee on Appropriations failed to cite statutory authority for that method of payment.

On Nov. 30, 1973,[6] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 11575), a point of order was raised against the following provision:

THE CHAIRMAN:[7] the Clerk will read.

The Clerk read as follows:

OPERATION AND MAINTENANCE, AIR FORCE

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law; as follows: for Strategic forces, $1,124,154,000; for General purpose forces, $1,014,091,000; for Intelligence and communications, $532,343,000; for Airlift and sealift, $179,240,000; for Central supply and maintenance, $2,318,938,000; for Training operations and other general personnel activities, $517,736,000; for Medical activities, $377,398,000; for Administration and associated activities, $211,467,000; and for the Support of other nations, $256,733,000; in all: $6,532,100,000: *Provided,* That of the total amount of this appropriation, not to exceed $2,343,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Air Force, and payment may be made on his certificate of necessity for confidential military purposes: *Provided further,* That not less than $215,000,000 of the total amount of this appropriation shall be available only for the maintenance of real property facilities. . . .

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, I make a point

6. 119 CONG. REC. 38821, 38822, 93d Cong. 1st Sess.

7. Daniel D. Rostenkowski (Ill.).

of order on the language commencing on page 8, line 15, "to be expended on the approval of authority of the Secretary of the Air Force, and payment may be made on his certificate of necessity for confidential military purposes:".

The point of order is based on rule XXI, clause 2, in that such language is a provision in an appropriation bill for an existing law and is not contained in the authorization legislation and for other reasons. It is in violation of rule XXI. . . .

MR. [WILLIAM E.] MINSHALL of Ohio: Mr. Chairman, I cannot cite the actual legislative authority, but we do have general legislative authority for just this provision in the bill. It has been in the bill for many, many previous years.

THE CHAIRMAN: Did the gentleman from Ohio state that he cannot cite any authority for this language?

MR. MINSHALL of Ohio: Mr. Chairman, I said I could not, right at this moment. It has been in the previous bill for many, many year.

THE CHAIRMAN: The language to which the point of order is directed is the language the gentleman from Texas cited on line 15, as follows:

> To be expended on the approval or authority of the Secretary of the Air Force and payment may be made on his certificate of necessity for confidential military purposes.

If there is no authority in law for this language, the Chair holds that it must be construed as legislation in violation of clause 2, rule XXI.

The Chair sustains the point of order.

Sufficiency of Vouchers for Expenditure

§ 22.20 In a paragraph appropriating funds for general operating expenses for the District of Columbia, a proviso stating that certificates of the Commissioner and Chairman of the City Council shall be sufficient vouchers for expenditure from that appropriation was conceded to be legislation in violation of Rule XXI clause 2 and was ruled out on a point of order.

On June 7, 1972,[8] during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 15259), the following point of order was raised:

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, I raise a point of order.

THE CHAIRMAN:[9] The gentleman from Missouri will state his point of order.

MR. HALL: Mr. Chairman, my point of order should lie on page 3, line 8, following the colon, against the phrase:

> *Provided,* That the certificate of the Commissioner (for $2,500) and of the Chairman of the City Council (for $2,500) shall be sufficient voucher for expenditures from this appropriation for such purposes, exclusive of ceremony expenses, as they may respectively deem necessary:

In other words, Mr. Chairman, I am raising a point of order against all after the colon on line 8, through the colon on line 13.

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8. 118 CONG. REC. 19900, 19901, 92d Cong. 2d Sess.

9. Dante B. Fascell (Fla.).

This was not authorized, and it is an appropriation bill without authorization

THE CHAIRMAN: The Chair will state to the gentleman from Missouri that that part of the bill to which the gentleman has raised his point of order was previously read prior to the unanimous-consent request.

MR. HALL: But, Mr. Chairman, I submit that the unanimous-consent request was granted to the entire bill, that it be open to amendment and open for points of order at any point. This request was granted and therefore I have gone back to this point of order.

THE CHAIRMAN: Does the gentleman from Kentucky desire to be heard on the point of order raised by the gentleman from Missouri?

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Chairman, the gentleman from Missouri (Mr. Hall) is correct, and we concede the point of order.

THE CHAIRMAN: The point of order is conceded, and the point of order is sustained.[10]

Various Grounds for Objection

§ 22.21 An entire title in an appropriation bill for the Atomic Energy Commission which included, in part, provisions for (1) the employment of aliens; (2) rental of space upon a determination of need by the Administrator of General Services; (3) use of unexpended balances of previous years; (4) transfer of sums to other agencies; (5) a sum to remain available until expended; (6) reappropriation of funds for plant and equipment; and (7) a power reactor project not authorized by law, was held to be in violation of Rule XXI clause 2.

On July 24, 1956,[11] during consideration in the Committee of the Whole of the second supplemental appropriation bill, a point of order was raised against a title containing provisions as described above. The proceedings were as follows:

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I ask unanimous consent that the bill be considered as read and now be open to points of order and amendments to any part of the bill.

THE CHAIRMAN:[12] Is there objection to the request of the gentleman from Missouri?

There was no objection.

MR. CANNON: Mr. Chairman, I make a point of order against title I and also the item for the Bureau of Reclamation on page 7.

THE CHAIRMAN: Is the gentleman making a point of order against the entire title I?

10. See also 119 CONG. REC. 20068, 93d Cong. 1st Sess., June 18, 1973 [H.R. 8658].

11. 102 CONG. REC. 14289, 84th Cong. 2d Sess.

12. Oren Harris (Ark.).

MR. CANNON: Title I and the material indicated as well as on page 7.

THE CHAIRMAN: Let us pass on one point of order at a time, please. Does anybody wish to be heard on the point of order made by the gentleman from Missouri [Mr. Cannon] against title I?

MR. [WALTER H.] JUDD [of Minnesota]: On what basis is the point of order made?

MR. CANNON: Not authorized by law and is legislation on an appropriation bill.

MR. JUDD: A lot of it is authorized by law.

MR. [JOHN] TABER [of New York]: Mr. Chairman, the items in title I, with the exception of the several provisos, are entirely within the statute and are authorized. I thought I had an understanding that the only item to go out was the $400 million item, but as long as the point of order is made on that, I will offer an amendment to cover everything except that last proviso after the point of order is disposed of.

MR. CANNON: Mr. Chairman, title I, in its entirety, is subject to a point of order. Part of the paragraph being subject to a point of order, the entire paragraph is subject to a point of order.

Title I is subject to a point of order on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Missouri makes the point of order against title I of the pending bill on the ground that it is legislation on an appropriation bill or contains appropriations not authorized by law. The Chair has gone through title I and has observed that every paragraph in it either contains legislation on an appropriation bill, which is in violation of the rules of the House, or contains appropriations which are not authorized by law, which is also in violation of the rules of the House.

The Chair sustains the point of order.

Change in Policy by Negative Restriction on Use of Funds

§ 22.22 While a limitation may not involve a permanent change of existing law, the allegation that it may result in a change of administrative policy would not itself render it subject to a point of order if only a negative limitation on use of funds.

On May 11, 1960,[13] 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 section:

> Sec. 408. No part of the funds appropriated by this Act shall be used to pay the compensation of any employee or officer of the Department, except the Secretary of Agriculture, who, in addition to other regularly assigned responsibilities, serves as a member of the Board of Directors or as an officer of the Commodity Credit Corporation after February 1, 1961.

13. 106 CONG. REC. 10053, 10054, 86th Cong. 2d Sess.

MR. [PAUL] BROWN of Georgia: Mr. Chairman, a point of order.

THE CHAIRMAN:[14] The gentleman will state it.

MR. BROWN of Georgia: Mr. Chairman, section 408 provides that none of the funds appropriated by H.R. 12117, making appropriations for the Department of Agriculture and Farm Credit Administration, shall be used to pay the salary of any officer or employee of the Department—except the Secretary—who serves as a member of the Board of Directors of CCC, or as an officer of CCC, in addition to other regular duties with the Department.

This reverses a decision made by the Banking and Currency Committee and the Congress in 1949, when the CCC Charter Act was amended to strike out a similar restriction which had been enacted in 1948. It is, therefore, legislation, and the mere fact it is put in the form of a limitation on the use of funds appropriated by the bill does not save it. As paragraph 1691, volume 7, of Cannon's Precedents of the House of Representatives puts it:

> The purpose rather than the form of a proposed limitation is the proper criterion by which its admissibility should be judged, and if its purpose appears to be a restriction of executive discretion to a degree that may be fairly termed a change of policy rather than a matter of administrative detail it is not in order.

Again in paragraph 1606 of the same volume, the following is found:

> Whenever a purported limitation makes unlawful that which before was lawful or makes lawful that which before was unlawful it changes existing law and is not in order on an appropriation bill.
>
> A proper limitation is negative and in the nature of a veto, and when it assumes affirmative form by direction to an executive in the discharge of his duties under existing law it ceases to be a limitation and becomes legislation.

Section 408 in effect requires the Secretary to take affirmative action. To carry out the farm programs financed by CCC, the Secretary would have to appoint new Board members, recruited from private life, to replace the six Department officers other than himself who now serve on the Board. He would also have to recruit and appoint new personnel to serve as officers of the Corporation. This not only means the section constitutes legislation, but also means it is not entitled to the protection of the Holman rule, because it would not save the Government money. On the contrary, it would require hiring new employees at additional expense to the Government.

THE CHAIRMAN: Does the gentleman from Mississippi [Mr. Whitten] desire to be heard on the point of order?

MR. [JAMIE L.] WHITTEN: Mr. Chairman, the section clearly provides a limitation on the use of funds that are appropriated in this bill. It does not change the Commodity Credit Corporation charter. It does not change any basic law. It just simply limits what the money in this bill can be used for. It has been my experience and observation during the years here that the Chair has many times said that it is a negative limitation on the use of money and that it is clearly in order, and on that I rest the committee's position.

14. Paul J. Kilday (Tex.).

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Georgia [Mr. Brown] makes a point of order against the language in section 408 of the bill on the ground that it constitutes legislation on an appropriation bill.

The Chair has had an opportunity to examine the precedents in this connection, including the precedents to which the gentleman from Georgia has referred and from which he has read. The Chair would also refer to paragraph 1694 of Cannon's Precedents, volume 7, the language being:

> While a limitation may not involve change of existing law or affirmatively restrict executive direction, it may properly effect a change of administrative policy and still be in order.

The Chair has examined additional precedents bearing on this question. The Chair is constrained to hold that section 408 is a restriction on a manner in which the funds can be used, and constitutes a negative limitation, and therefore, overrules the point of order.

Parliamentarian's Note: There are other recent rulings in which the Chair has chosen to rely on the headnote in 7 Cannon's Precedents

§ 1694 rather than on

§ 1691 in permitting limitations on use of funds. See 118 CONG. REC. 30749, 30750, 92d Cong. 2d Sess., Sept. 14, 1972; 120 CONG. REC. 20601, 20602, 93d Cong. 2d Sess., June 21, 1974; 120 CONG. REC. 34716, 93d Cong. 2d Sess., Oct. 9, 1974.

Changing Limitation in Prior Law

§ 22.23 A limitation in an appropriation bill having become law, a provision in a subsequent appropriation bill for that fiscal year seeking to change this limitation was conceded to be legislation and was ruled out on a point of order.

On Aug. 26, 1960,[15] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 12740), the following point of order was raised:

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language in the bill on page 7, beginning on line 11, running through line 4 on page 8, as being legislation on an appropriation bill. The language referred to is as follows:

FOREIGN CLAIMS SETTLEMENT COMMISSION

Salaries and expenses

For an additional amount for "Salaries and expenses," including allowances and benefits similar to those provided by title IX of the Foreign Service Act of 1946, as amended, as determined by the Commission . . . hire of passenger motor vehicles

15. 106 CONG. REC. 17899, 86th Cong. 2d Sess.

abroad; insurance on official motor vehicles abroad; and advances of funds abroad; $145,000: *Provided,* That the limitation under this head in the General Government Matters Appropriation Act, 1961, on the amount available for expenses of travel, is increased from "$10,000" to "$20,000".

THE CHAIRMAN:[16] Does the gentleman from Texas desire to be heard on the point of order?

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, the gentleman from Iowa is right. This is the first time that these people have operated overseas and they asked for a little oversea allowance The Bureau of the Budget recommended it. We did not feel that we wanted to be the least bit oppressive on it. Mr. Chairman, the point of order is conceded.

THE CHAIRMAN: The point of order made by the gentleman from Iowa is sustained.[17]

Provision Applicable "Hereafter"

§ 22.24 Language in an appropriation bill imposing duties upon an executive not contemplated by law is legislation and not in order.

On Mar. 30, 1955,[18] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 5240), the following point of order was raised:

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Chairman, I make a point of order against the language on page 20 of the bill at line 18 running through line 1, on page 21.

THE CHAIRMAN:[19] The gentleman will state the point of order.

MR. HOFFMAN of Michigan: Mr. Chairman, the proviso beginning on page 20 of H.R. 5240 at line 18 and running through line 1, on page 21, as follows: "*Provided,* That the clause under this head in the 'Independent Offices Appropriation Act, 1955,' relating to the Administrator's general supervision and coordination responsibilities, is amended to read as follows: 'and the Administrator's general supervision and coordination responsibilities under Reorganization Plan No. 3 of 1947 shall hereafter carry full authority, where applicable, to promote economy, efficiency, and fidelity in the operations of the Housing and Home Finance Agency,'" is legislation on an appropriation bill in that—

First. It changes existing law—see House Report No. 304, page 17—by amending permanent legislation enacted in the Independent Offices Appropriation Act, 1955, and by amending Reorganization Plan No. 3 of 1947.

Second. It imposes new duties on an administrative official. . . .

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The Chair is ready to rule. Obviously, the language

16. Herbert C. Bonner (N.C.).

17. See also 111 CONG. REC. 7128, 89th Cong. 1st Sess., Apr. 6, 1965 [H.R. 7091].

18. 101 CONG. REC. 4067, 4068, 84th Cong. 1st Sess.

19. Albert Rains (Ala.).

against which the point of order is made is legislation upon an appropriation bill and the point of order is sustained.

Proponent of Amendment Has Burden if Point of Order Is Raised Requiring New Execution Determination

§ 22.25 The burden of proof is on the proponent of an amendment to a general appropriation bill to show that a proposed executive determination is required by existing law, and the mere recitation that the determination is to be made pursuant to existing law and regulations, absent a citation to the law imposing that responsibility, is not sufficient to overcome a point of order that the amendment constitutes legislation.

On Sept. 16, 1980,[20] during consideration in the Committee of the Whole of H.R. 8105, the Defense Department appropriation bill, a point of order was sustained against an amendment offered to a provision of the bill as indicated below:

> *Provided further,* That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations: *Provided further,* That none of the funds appropriated in this Act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

The Clerk read as follows:

> Amendment offered by Mr. [Joseph P.] Addabbo [of New York]: Page 41, line 23, strike out "*Provided further*" and all that follows through "economic dislocations:" on page 42, line 1, and insert in lieu thereof "*Provided further,* That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations other than contracts made by the Defense Logistics Agency and such other contracts of the Department of Defense as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations:". . . .

MR. [JACK] EDWARDS of Alabama: Mr. Chairman, I make a point of order against the amendment as legislation in a general appropriation bill, and therefore in violation of clause 2 of rule XXI.

I respectfully direct the attention of the Chair to Deschler's Procedure, chapter 25, section 11.2 which states:

> It is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by an executive official which he is not otherwise required by law to make.

I also respectfully direct the attention of the Chair to section 843 of the House Manual, which states in part:

20. 126 CONG. REC. 25606, 25607, 96th Cong. 2d Sess.

> The fact that a limitation on the use of funds may . . . impose certain incidental burdens on executive officials does not destroy the character of the limitation as long as it does not directly amend existing law and is descriptive of functions and findings already required to be undertaken under existing law.

The amendment prohibits the payment of price differentials on contracts except "as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations."

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense which is not now required under current law.

Although the determination is limited "pursuant to existing laws and regulations", there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law, and require this new determination. . . . Mr. Chairman, the amendment prohibits the payment of price differentials on contracts except—and I quote:

> As may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations.

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense which is not now required under the current law. Although the determination is limited "pursuant to existing laws and regulations," there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law and require this new determination.

I would urge that the Chair rule that this amendment is out of order. . . .

THE CHAIRMAN:[1] The Chair is ready to rule.

The amendment would appear to call for a determination by the Secretary of Defense as to appropriateness by reason of national security considerations. Unless the gentleman from New York (Mr. Addabbo) can cite to the Chair those provisions of existing law requiring such determinations with respect to defense contracts, the Chair must conclude that the amendment would impose new duties upon the Secretary and would constitute legislation.

MR. ADDABBO: I accept the point of order, Mr. Chairman.

THE CHAIRMAN: The Chair has sustained the point of order.

Amendment's Proponent Carries Burden of Showing No Change in Existing Law

Restrictions on Apportionment of Funds as Distinguished From Limitation on Amount, Purpose, or Object of Funds

§ 22.26 The proponent of an amendment to a general appropriation bill has the burden of proving that the amendment does not change existing law and, if in the form of a limitation, falls

1. Daniel D. Rostenkowski (Ill.).

within the category of permissible limitations described by precedents arising under Rule XXI clause 2; and if the amendment is susceptible to more than one interpretation, it is incumbent on the proponent to show that it is not in violation of the rule.

On July 28, 1980,[2] the Committee of the Whole having under consideration the Department of Housing and Urban Development and independent agencies appropriation bill (H.R. 7631), an amendment was offered and ruled upon as follows:

MR. [HERBERT E.] HARRIS [II, of Virginia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Harris: Page 45, after line 23, insert the following:

Sec. 413. No more than an amount equal to 20 percent of the total funds appropriated under this Act for any agency for any fiscal year and apportioned to such agency pursuant to section 3679 of the Revised Statutes of the United States (31 U.S.C. 665) may be obligated during the last two months of such fiscal year. . . .

THE CHAIRMAN:[3] Does the gentleman from Indiana [MR. MYERS] insist on his point of order?

MR. [JOHN T.] MYERS of Indiana: I do, Mr. Chairman.

Mr. Chairman, the gentleman has offered an amendment to limit the appropriations to a specific time; but I respectfully suggest that the fact the gentleman has added the words, "No more than" is still not, in fact, a limitation. . . .

Mr. Chairman, the fact that you are limiting here, not directing, but limiting the authority to the last 2 months how much may be spent takes away the discretionary authority of the Executive which might be needed in this case. It clearly is more than an administrative detail when you limit and you take away the right of the Executive to use the funds prudently, to take advantage of saving money for the Executive, which we all should be interested in, and I certainly am, too; but Mr. Chairman, rule 843 provides that you cannot take away that discretionary authority of the Executive.

This attempt in this amendment does take that discretionary authority to save money, to wisely allocate money prudently and it takes away, I think, authority that we rightfully should keep with the Executive, that you can accumulate funds and spend them in the last quarter if it is to the advantage of the taxpayer and the Executive. . . .

MR. HARRIS: . . . Mr. Chairman, let me first address the last point, probably because it is the weakest that the gentleman has made with respect to his point of order.

With respect to the discretion that we are in any way limiting the President, we cannot limit the discretion which we have not given the President directly through legislation. There is no discretion with regard to legislation

2. 126 CONG. REC. 19924, 19925, 96th Cong. 2d Sess.

3. Elliott H. Levitas (Ga.).

that we have overtly legislated and given to the President.

Mr. Chairman, section 665(c)(3) of title 31 of the United States Code, which states the following:

> Any appropriation subject to apportionment shall be distributed as may be deemed appropriate by the officers designated in subsection (d) of this section to make apportionments and reapportionments.

Clearly grants agency budget officers the discretionary authority to apportion the funds in a manner they deem appropriate. My amendment would not interfere with this authority to apportion funds. On the contrary, my amendment reaffirms this section of the United States Code, as Deschler's Procedures, in the U.S. House of Representatives, chapter 26, section 1.8, states:

> The provision of the rule forbidding in any general appropriation bill a "provision changing existing law" is construed to mean the enactment of law where none exists, or a proposition for repeal of existing law. Existing law may be repeated verbatim in an appropriation bill, but the slightest change of the text causes it to be ruled out.

My amendment, Mr. Chairman, as the Chair will note, specifically restates by reference the existing law, which in no way gives discretion as to spending, but gives discretion as to apportionment.

Mr. Chairman, as the Chair knows, the budget execution cycle has many steps. Whereas the Chair's earlier ruling related to the executive branch authority to apportion, my amendment addresses the obligation rate of funds appropriated under the fact. As OMB circular No. A–34 (July 15, 1976) titled "Budget Execution" explains:

> Apportionment is a distribution made by OMB.
>
> Obligations are amounts of orders placed, contracts awarded, services received, and similar transactions.

Mr. Chairman, my amendment proposes some additional duties, but only a very minimal additional duty upon the executive branch.

Deschler's chapter 26, section 11.1 says:

> The application of any limitation on an appropriation bill places some minimal extra duties on Federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation. . . .

THE CHAIRMAN: . . . In the first instance, the Chair would observe that it is not the duty of the Chair or the authority of the Chair to rule on the wisdom or the legislative effect of amendments.

Second, the Chair will observe that the gentleman from Virginia, in the way in which his amendment has been drafted, satisfies the requirements of the Apportionment Act, which was the subject of a prior ruling[4] of the Chair in connection with another piece of legislation.

The Chair agrees with the basic characterization made by the gentleman from Indiana that the precedents of the House relating to limitations on general appropriation bills stand for the proposition that a limitation to be in order must apply to a specific purpose, or object, or amount of appropriation. The doctrine of limita-

4. See § 51.23, infra.

tions on a general appropriation bill has emerged over the years from rulings of Chairmen of the Committee of the Whole, and is not stated in clause 2, rule XXI itself as an exception from the prohibition against inclusion of provisions which "change existing law." Thus the Chair must be guided by the most persuasive body of precedent made known to him in determining whether the amendment offered by the gentleman from Virginia (Mr. Harris) "changes existing law." Under the precedents in Deschler's Procedure, chapter 26, section 1.12, the proponent of an amendment has the burden of proving that the amendment does not change existing law.

The Chair feels that the basic question addressed by the point of order is as follows: Does the absence in the precedents of the House of any ruling holding in order an amendment which attempts to restrict not the purpose or object or amount of appropriation, but to limit the timing of the availability of funds within the period otherwise covered by the bill require the Chair to conclude that such an amendment is not within the permissible class of amendments held in order as limitations? The precedents require the Chair to strictly interpret clause 2, rule XXI, and where language is susceptible to more than one interpretation, it is incumbent upon proponent of the language to show that it is not in violation of the rule (Deschler's chapter 25, section 6.3).

In essence, the Chair is reluctant, based upon arguments submitted to him, to expand the doctrine of limitations on general appropriation bills to permit negative restrictions on the use of funds which go beyond the amount, purpose, or object of an appropriation, and the Chair therefore and accordingly sustains the point of order.

Committee Has Burden of Defending Provisions of Bill

§ 22.27 Provisions in a general appropriation bill described in the accompanying report pursuant to Rule XXI clause 3 as directly or indirectly changing the application of existing law are presumably legislation in violation of Rule XXI clause 2(c), in the absence of rebuttal by the committee.

On May 31, 1984,[5] during consideration in the Committee of the Whole of the Departments of State, Justice, and Commerce appropriation bill (H.R. 5172), a point of order was made and sustained, as follows:

> MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I have a point of order.
>
> The portion of the bill to which the point of order relates is as follows:
>
> ADMINISTRATION OF FOREIGN AFFAIRS
>
> SALARIES AND EXPENSES
>
> For necessary expenses of the Department of State and the Foreign Service, not otherwise provided for, including obligations of the United

5. 130 CONG. REC. ——, 98th Cong. 2d Sess.

States abroad pursuant to treaties, international agreements, and binational contracts (including obligations assumed in Germany on or after June 5, 1945) and notwithstanding section 602 of this Act for administering the contribution to the United States India Fund for Cultural, Educational, and Scientific Cooperation; expenses authorized by section 9 of the Act of August 31, 1964, as amended (31 U.S.C. 3721), and section 2 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669). . . .

Mr. Chairman, I refer to the committee report in which this particular section is listed as a change in the application of existing law. Therefore, that would be in violation of rule XXI and therefore I think my point of order should be sustained.

THE CHAIRMAN:[6] Does the gentleman from Iowa wish to be heard any further?

MR. [NEAL] SMITH of Iowa: No, Mr. Chairman.

THE CHAIRMAN: It is the opinion of the Chair that since the committee report concedes that this is a change in existing law, the point of order should be upheld, and the point of order is upheld.

Language Requiring Official to Apply Standards Held Unconstitutional by Competent Court

§ 22.28 Rule XXI clause 2 prohibits an amendment to a general appropriation bill which changes existing court-made as well as statutory law; an amendment to a general appropriation bill containing funds for the Internal Revenue Service, to deny use of funds therein to formulate or carry out any regulation which would cause loss of tax-exempt status to private religious schools, unless in effect prior to Aug. 22, 1978, was ruled out of order as legislation, since a federal court had enjoined the Internal Revenue Service from applying the regulations in effect on Aug. 22, 1978, and the amendment had the effect of requiring the Internal Revenue Service to apply interpretations of the Internal Revenue Code no longer in accordance with the law.

On Aug. 19, 1980,[7] during consideration in the Committee of the

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

7. 126 CONG. REC. 21978–80, 96th Cong. 2d Sess. See also the note in § 77.10, infra, as to the effect of rulings under clause 5(b) of Rule XXI, which provides that no bill or joint resolution carrying a tax or tariff measure shall be reported by any committee not having jurisdiction to report tax and tariff measures, nor shall an amendment in the House or proposed by the Senate carrying a tax or tariff measure be in order during the consideration of a bill or joint

Whole of the Department of Treasury and Postal Service appropriation bill, a point of order was sustained against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [JOHN M.] ASHBROOK [of Ohio]: On page 8, after line 22, insert the following new section:

"Sec. 103. None of the funds made available pursuant to the provisions of this Act shall be used to formulate or carry out any rule, policy, procedure, guideline, regulation, standard, or measure which would cause the loss of tax-exempt status to private, religious, or church-operated schools under section 501(c)(3) of the Internal Revenue Code of 1954 unless in effect prior to August 22, 1978.". . . .

MR. [LOUIS] STOKES [of Ohio]: Mr. Chairman, I make a point of order against the proposed amendment on the grounds that it is legislation on an appropriation bill in violation of clause 2 of rule XXI.

Chapter 26, section 11.1 of Deschler's Procedure states:

When an amendment . . . explicitly places new duties on officers of the government, or implicitly requires them to make investigations, compile evidence or make judgments and determinations not otherwise required of them by law then it assumes the character of legislation and is subject to a point of order.

This amendment would impose additional executive duties. Under the provisions of this amendment the Commissioner and employees of IRS would be required to make a determination as to whether or not "any policy, procedure, guideline, regulation, standard, or measure" that the IRS proposed to "formulate or carry out" would cause the "loss of tax exempt status" of private schools. It would require Federal officials to make new determinations as to the current tax-exempt status of each private school, what that tax-exempt status was on August 22, 1978 and whether the proposed action would cause the loss of that tax exemption. This amendment places new duties on executive officials to make judgments and determinations not required under existing law.

In addition, Mr. Chairman, rule XXI, clause 2 specifically states that no "amendment changing existing law" shall be in order. The proposed amendment does change existing law. The application of section 501(c)(3) of the Internal Revenue Service Code (title 26 of the U.S. Code) has been modified over the years by court decision.

For example, in Green against Connally in 1971 the Supreme Court held that a segregative private school is not entitled to tax-exempt status even though that section of the code says absolutely nothing directly or indirectly about racial discrimination or segregative schools. It is clear, Mr. Chairman, that the Federal courts, through their interpretation of the Constitution, have the authority under the Constitution to change the application of existing law through judicial interpretation. I would maintain that section 501(c)(3) as it was applied on August 22, 1978 has now been changed by Federal court interpretation of that section. I refer specifically to the recent Federal court order Green against Mil-

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resolution reported by a committee not having that jurisdiction.

ler, which is referred to as Green II, decided on May 5, 1980. I need not go into the specific details relative to that case, but it is certainly apparent, Mr. Chairman, I think, that this decision has changed the application of section 501(c)(3). Thus, the proposed amendment by the gentleman from Ohio would require that the Internal Revenue Service return to the law as it was interpreted on August 22, 1978. This then would be a change from the interpretation now given that section.

A recent precedent, Mr. Chairman, is the ruling by the Chair on an amendment to the Treasury, Postal Service appropriation bill for 1979 which can be found on page H5096 in the Congressional Record of June 7, 1978. That amendment attempted to prohibit the Internal Revenue Service from determining whether or not an individual is an employee "other than under the audit practices, interpretations, regulations and Federal court decisions in effect on December 31, 1975." The Chair ruled that the amendment would "require a return to the law as it existed prior to" that date and therefore changed existing law and was not in order.

For those reasons, Mr. Chairman, I believe the amendment to be in violation of rule XXI, clause 2, and urge the approval of the point of order. . . .

MR. ASHBROOK: . . . As we all know, there are three primary tests of germaneness in the House rules. They are:

First, subject matter. "An amendment must relate to the subject matter under consideration." This amendment deals with the exercise of authority by the IRS, the funding for which is included in H.R. 7583. There is no holding by the Parliamentarian that, in a similar case, would find the amendment to be nongermane. . . .

"The primary tests of germaneness are not exclusive though; an amendment and the matter to which it is offered may be related to some degree under the tests of subject matter, purpose, and jurisdiction, and still not be considered under the precedents." Neither of the precedents cited in either the rules and Deschler's would indicate that the Ashbrook amendment is nongermane. . . .

On the point he made regarding changing existing law, I would call the Chair's attention to Revenue Procedure 7550. It clearly cites the decision that he had indicated that is preserved by this particular ruling, and that ruling is in effect prior to the time that is listed in my amendment. My amendment does not require IRS to make any new judgments not already being made or able to be made pre-August 1978.

Probably the best argument for defeating the point of order on this amendment is that it has been adopted by the House in the fiscal year 1980 Treasury appropriations bill and the fiscal year 1980 supplemental appropriations bill. Likewise, controversial amendments restricting the use of funds appropriated in an appropriations bill have been consistently adopted in the past, the most well known of these, of course, being the Hyde amendment to restrict Federal funds on abortion, and several amendments to restrict the use of Federal funds to support the busing of school children. . . .

MR. [CHARLES B.] RANGEL [of New York]: I would like to speak in support

of the point of order. Mr. Chairman, this amendment is not a limitation on the use of money but actually is legislation. What it does in fact do is to nullify an administrative law court decision after the date that is in the amendment, and it also restricts the IRS from issuing rulings that would allow charitable organizations to allow their contributors to deduct these charitable deductions that are made. So what it actually does is nullify existing law, and by doing that, it nullifies a Federal court decision. In addition to that, Mr. Chairman, this amendment interferes with the non-discretionary authority of the executive branch of Government. As pointed out by my colleague, the gentleman from Ohio (Mr. Stokes), the courts did not tell the IRS what they could or could not do but mandated by giving guidelines that they must remove the tax exemptions from institutions that were racially discriminating against groups of people.

In addition to that, Mr. Chairman, this amendment violates the separation of powers. There is no question that the judiciary has the obligation, the constitutional responsibility, to review legislation enacted by this Congress and to give their opinions, and if in fact we dislike any opinion given by the court, whether it is the Green case, one or two, or any other judiciary decision, we have the authority to legislate, but we cannot do that with an appropriations bill. . . .

THE CHAIRMAN:[8] the Chair is prepared to rule.

The gentleman from Ohio [Mr. Stokes] makes the point of order that the amendment offered by the gentleman from Ohio [Mr. Ashbrook] is legislation on an appropriation bill in violation of clause 2, rule XXI. . . .

The gentleman from Ohio (Mr. Ashbrook) has cited precedents relating to germaneness. The Chair is of the opinion that this is not a germaneness question.

The Chair is aware that in a currently binding Federal court order and permanent injunction in the case of Green against Miller, the Internal Revenue Service has been enjoined and restrained from according tax-exempt status to, and from continuing the tax-exempt status now enjoyed by, all Mississippi private schools or the organizations that operate them which have been determined to discriminate racially. This is the uncontroverted status of the law as interpreted by the courts with respect to the authority of the IRS in according tax-exempt status.

As indicated on page 533 of the House Rules and Manual, on June 7, 1978, an amendment by the gentleman from California (Mr. Panetta) denying the use of funds for the Treasury Department to apply certain provisions of the Internal Revenue Code other than under regulations and court decisions in effect on a prior date was held to be legislation, since requiring an official to apply interpretations no longer current or legal in order to render the appropriation applicable. In the opinion of the Chair, the pending amendment falls within the same category and is, therefore, legislation in violation of clause 2, rule XXI.

The Chair sustains the point of order.

8. Richardson Preyer (N.C.).

Where Amendment Is Challenged as Changing Law, Proponent Has Burden of Refuting

§ 22.29 The proponent of an amendment against which a point of order has been raised and documented as constituting legislation on an appropriation bill has the burden of proving that the amendment does not change existing law.

Precedents are few on the burden of proof where an amendment is challenged as being legislative, but by analogy to precedents under Rule XXI clause 2, requiring the committee or Member offering an amendment to show an authorization for a proposed appropriation, it may be concluded that the proponent of the amendment must prove to the satisfaction of the Chair that language which has been challenged is not legislative, after an initial argument has been made, pursuant to a point of order, that it does change existing law. The Chair so concluded in a ruling on July 17, 1975,[9] in sustaining a point of order against an amendment to H.R. 8597 (Treasury, Postal Service, and general governmental appropriations for fiscal 1976). The proceedings are discussed in § 51.22, infra.

Where Provision in Bill Challenged as Legislation, Committee Has Burden

§ 22.30 Where a point of order is raised against a provision in a general appropriation bill as constituting legislation in violation of Rule XXI clause 2, the burden of proof is on the Committee on Appropriations to show that the language constitutes a valid limitation under the precedents which does not change existing law.

On Nov. 30, 1982,[10] a provision in a general appropriation bill prohibiting the use of funds therein by the Office of Management and Budget to "interfere with" the rulemaking authority of any regulatory agency was ruled out as legislation which would implicitly require that agency to make determinations not required by law in evaluating and executing its responsibilities mandated by law. In the course of its ruling, the Chair stated:

> The Committee on Appropriations has not sustained the burden of show-

9. 121 CONG. REC. 23239, 94th Cong. 1st Sess.

10. 128 CONG. REC. 28063, 97th Cong. 2d Sess.

ing that the proposed language would not change and augment the responsibilities imposed by law on the Office of Management and Budget and, therefore, [the Chair] sustains the point of order.

The proceedings are discussed in

§ 52.43, infra.

§ 23. Incorporating or Restating Existing Law

Reference as Merely Descriptive

§ 23.1 It is in order in a general appropriation bill to include language descriptive of authority provided in law for the operation of government corporations and agencies funded in the bill so long as the description is precise and does not change that authority in any respect.

On June 15, 1973,[11] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 8619), a point of order was raised against the following provision:

CORPORATIONS

The following corporations and agencies are hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the budget for the current fiscal year for such corporation or agency, except as hereinafter provided:

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I make a point of order against the language found in line 13, through line 22, on page 20, on the basis that it is legislation in an appropriation bill.

THE CHAIRMAN:[12] The gentleman from Ohio (Mr. Vanik) makes a point of order against the language found on page 20, line 13 through line 22.

Does the gentleman from Ohio wish to be heard?

MR. VANIK: Mr. Chairman, it is legislation on an appropriation bill. It clearly says, "The following corporations," meaning the Federal Crop Insurance Corporation and the Commodity Credit Corporation, "are authorized to make expenditures."

This is the work of the legislative committee, and I contend that this is legislation on an appropriation bill and that this ought to be handled by the legislative committee rather than made a part of the appropriation bill.

THE CHAIRMAN: Does the gentleman from Mississippi (Mr. Whitten), desire to be heard?

MR. [JAMIE L.] WHITTEN: Mr. Chairman, I rise to make the point that the

11. 119 CONG. REC. 19843, 19844, 93d Cong. 1st Sess.

12. James C. Wright, Jr. (Tex.).

point of order should not lie. We have language in the original act to make this authorization, and by reason of repeating it in this act, that does not change the basic law. It is already authorized.

In this situation the committee is setting a ceiling rather than creating an authority. While we use the same words and repeat the same words, the committee has, in effect, set a ceiling, so I submit that it is not subject to a point of order, because it merely repeats the law which is already authorized.

THE CHAIRMAN: The Chair has gone to the original source—the Government Corporation Control Act—to which reference is made on page 20 in this appropriation bill.

The Chair discovers that the budget programs transmitted by the President to the Congress under this act shall be considered and legislation shall be enacted making necessary appropriations as may be authorized by law for expenditures of such corporations.

Clearly there is no question as to the right of the Congress to include in this annual appropriation bill funds for these Government corporations, several of which are included in the bill.

It appears to the Chair that this is descriptive or introductory language only and that the language does not constitute change in existing law. Therefore it is in order, and for those reasons the Chair overrules the point of order.

Descriptive Language Not Derived From Existing Law

§ 23.2 An amendment proposing to insert the words "known as 'Rankin Dam' " following an appropriation for Pickwick Landing Dam was held to be legislation and not in order on an appropriation bill.

On May 8, 1936,[13] during consideration in the Committee of the Whole of a deficiency appropriation bill (H.R. 12624), a point of order was raised against the following amendment:

The Clerk read as follows:

Page 19, line 2, after the words "Pickwick Landing Dam", insert the following: "(known as 'Rankin Dam')."

MR. [JOHN J.] MCSWAIN [of South Carolina]: Mr. Chairman, I make a point of order on the amendment that it is legislation on an appropriation bill. It is evidently an attempt to change the name and call it "Rankin Dam." It is in the teeth of legislation that has been attempted time and time again. There are bills before the Committee on Military Affairs to change the name of this dam to "Rankin Dam."

MR. [HAROLD] KNUTSON [of Minnesota]: I should like to ask the gentleman if it is not customary to wait until the man is dead before they name a dam for him?

MR. MCSWAIN: Yes; it is.

THE CHAIRMAN:[14] Does the gentleman from Mississippi wish to be heard on the point of order?

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13. 80 CONG. REC. 6964–67, 74th Cong. 2d Sess.

14. John W. McCormack (Mass.).

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, if the Chair will permit.

THE CHAIRMAN: The Chair recognizes the gentleman from Missouri.

MR. CANNON of Missouri: Mr. Chairman, this amendment is not legislation. It is language merely descriptive, and such amendments have been repeatedly held not to be legislation.

I recall two decisions on this point. They were made by one of the greatest parliamentarians who has served in the House, James R. Mann, of Illinois.

The first was made in 1905 when an amendment was offered, I think, to the Naval bill.

The language provided that ships or armament should be of "native manufacture.". . . Mr. James R. Mann, of Illinois, held that those words were merely descriptive and that it was not legislation.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Chairman, will the gentleman yield?

MR. CANNON of Missouri: I yield with pleasure to the distinguished leader on the other side of the House.

MR. SNELL: If the words are merely descriptive, why will they have the effect of changing the name of the dam?

MR. CANNON of Missouri: They do not change the name of the dam. It is not proposed to change the name of the dam.

MR. SNELL: But is not that the intention? I call it legislation. Is not that the intention of the amendment?

MR. CANNON of Missouri: The gentleman from New York, being one of the ablest parliamentarians in the House, knows that the Chairman of the Committee of the Whole may not speculate as to the intention of an amendment. He must predicate his decision on the amendment before him in the language in which it is written. He cannot go back of what is on the face of it to surmise what is the purpose of a Member in offering an amendment. This amendment merely further describes the Pickwick Landing Dam; it does not propose a change in the name; it merely adds the descriptive language "known as the Rankin Dam.". . .

THE CHAIRMAN: The Chair is prepared to rule. The Chair entirely agrees with the gentleman from Missouri [Mr. Cannon], with reference to the use of descriptive words. Therefore, the question in the mind of the present occupant of the chair is whether the amendment is descriptive or whether it constitutes legislation. Without regard to whether or not it brings about a change in the name of the dam from "Pickwick Landing Dam" to "Rankin Dam", it is the opinion of the Chair, with profound respect for the opinion of the gentleman from Missouri, one of the outstanding parliamentarians of all time, that the amendment does not constitute descriptive language; that it constitutes legislation It is an addition to the language used in this bill. The Chair would rule the same whether or not the legislation referred to by the gentleman from South Carolina [Mr. McSwain] contained the words "Pickwick Landing Dam" or not, because that name is included in the bill now before the House.

Profoundly respecting the views of the gentleman from Missouri, and with considerable hesitation in disagreeing with him, it is the opinion of the Chair that the point of order is well taken, and the Chair therefore sustains the point of order.

Presumption of New Legislative Effect—Authority to Enter Into Contracts

§ 23.3 Although under existing law it may be in order to appropriate money for entering into contracts it is not in order to grant authority to enter into contracts to carry out the provisions of a legislative act.

On Jan. 18, 1940,[15] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7922), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> In addition to the contract authorizations of $115,000,000 contained in the Third Deficiency Appropriation Act, fiscal year 1937, and $230,000,000 in the Independent Offices Appropriation Act, 1940, the Commission is authorized to enter into contract for further carrying out the provisions of the Merchant Marine Act, 1936, as amended, in an amount not to exceed $150,000,000.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph on the ground that it is legislation on an appropriation bill. I refer to the paragraph beginning in line 22, page 71, and ending in line 3, page 72.
>
> MR. [SCHUYLER OTIS] BLAND [of Virginia]: Mr. Chairman, I desire to be heard upon the point of order. . . .
>
> MR. TABER: Mr. Chairman, there is something to say on the point of order. Almost every one of the sections that has been read specifically says "out of available funds." The general situation is that these contracts cannot be entered into without specific authority, and those things are not provided for in the general legislation.
>
> THE CHAIRMAN:[16] The Chair is ready to rule.
>
> The gentleman from New York [Mr. Taber] makes the point of order that the paragraph now under consideration is legislation on an appropriation bill. Of course, it is well known that the United States Maritime Commission has authority under the law to enter into contracts. Assuming that to be true, what would be the purpose in that Commission having authority under an appropriation bill to enter into contracts, unless it was for some new purpose?
>
> An almost similar proposition of this kind came up on the second deficiency bill on April 28, 1937, at which time the Committee of the Whole was presided over by Mr. Vinson of Kentucky, when an amendment was offered dealing with the Tennessee Valley Authority. The Chair, at that time, construed it to be legislation on an appropriation bill. The present occupant of the chair so construes it, and sustains the point of order.

Parliamentarian's Note: Pursuant to section 401(a) of the Congressional Budget Act of 1974 (Pub. L. No. 93–344) which prohibits the inclusion of new contract spending or borrowing au-

15. 86 CONG. REC. 508, 509, 76th Cong. 3d Sess.

16. Lindsay C. Warren (N.C.).

thority in legislative bills unless such authority is limited to the extent or in amounts provided in appropriation acts, the inclusion of proper limiting language in a general appropriation bill, if specfically permitted by law, would not render that language subject to a point of order under Rule XXI clause 2, since it would no longer "change existing law."

— *Incorporating or Mandating Full Funding Levels*

§ 23.4 Language in a general appropriation bill requiring that the mandatory funding levels prescribed by existing law shall be effective during the fiscal year was ruled out as legislation, in violation of Rule XXI clause 2, on the theory that if the language were an exact restatement of the law it was unnecessary and that its inclusion in the appropriation act indicated that it was presumed to have a legislative effect beyond that in existing law.

On Feb. 19, 1970,[17] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 15931), a point of order was raised against the following provision:

> MR. [NEAL] SMITH of Iowa: Mr. Chairman, I make a point of order against the language on page 57, lines 9 through 16, which reads as follows:
>
> > *Provided further*, That those provisions of the Economic Opportunity Amendments of 1967 and 1969 that set mandatory funding levels, including newly authorized programs for alcoholic counseling and recovery and for drug rehabilitation, shall be effective during the fiscal year ending June 30, 1970: *Provided further*, That of the sums appropriated not less than $22,000,000 shall be used for the family planning program.
>
> Mr. Chairman, I make the point of order on the ground that it is legislation on an appropriation bill. . .
>
> THE CHAIRMAN:[18] Does the gentleman from Michigan seek recognition on this point of order?
>
> MR. [JAMES G.] O'HARA [of Michigan]: I do, Mr. Chairman.
>
> Mr. Chairman, it seems to me the amendment simply restates existing law in the authorizing legislation, and if that is indeed the case, I do not think it is subject to a point of order.
>
> THE CHAIRMAN: The Chair will say that if this restates existing law, there is no point in its being in the bill, and the fact that it is in the bill on its face would indicate there must be legislation in it in addition to that contained in existing law. The Chair, therefore, sustains the point of order.

17. 116 CONG. REC. 4019, 91st Cong. 2d Sess.

18. Chet Holifield (Calif.).

— *Granting Authorization for Project*

§ 23.5 Language in an appropriation bill authorizing the Director of Selective Service to destroy records accumulated under the Selective Training and Service Act was held to be legislation and not in order.

On Mar. 30, 1955,[19] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 5240), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Appropriations for the Selective Service System may be used for the destruction of records accumulated under the Selective Training and Service Act of 1940, as amended, which are hereby authorized to be destroyed by the Director of Selective Service after compliance with the procedures for the destruction of records prescribed pursuant to the Records Disposal Act of 1943, as amended (44 U.S.C. 366–380): *Provided,* That no records may be transferred to any other agency without the approval of the Director of Selective Service.
>
> MR. [CLARE E.] HOFFMAN of Michigan: Mr. Chairman, I make the point of order that the first 7 words in line 18, page 27, "which are hereby authorized to be destroyed" is legislation on an appropriation bill, because it authorizes the Director to destroy records.
>
> THE CHAIRMAN:[20] That is the specific language to which the gentleman makes his point of order?
>
> MR. HOFFMAN of Michigan: Yes.
>
> THE CHAIRMAN: Does the gentleman from Texas [Mr. Thomas] desire to be heard on this point of order?
>
> MR. [ALBERT] THOMAS: Mr. Chairman, we ask for the ruling of the Chair. We doubt that this is legislation.
>
> THE CHAIRMAN: The Chair is ready to rule. This is clearly legislation on an appropriation bill.
>
> MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, may I be heard very briefly on that? Apparently the Chair feels this is legislation, but this follows the Records Disposal Act of 1943 Does it become legislation if it is a repetition of a statute?
>
> THE CHAIRMAN: Why is it necessary to have it if it is already in the law? The Chair thinks it is clearly legislation and sustains the point of order.

Language Either Legislation or Not Necessary

§ 23.6 Language in a general appropriation bill providing that funds for the construction of Indian health facilities could be expended "through the Department of Interior at the option" of the Secretary of the Department of Health, Education, and Welfare was held to be legislation and not in order.

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19. 101 CONG. REC. 4070, 84th Cong. 1st Sess.

20. Albert Rains (Ala.).

On Mar. 29, 1960,[1] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 11390), a point of order was raised against the following provision:

The Clerk read as follows:

CONSTRUCTION OF INDIAN HEALTH FACILITIES

For construction, major repair, improvement, and equipment of health and related auxiliary facilities, including quarters for personnel; preparation of plans, specifications, and drawings; acquisition of sites; purchase and erection of portable buildings; purchase of trailers; and provision of domestic and community sanitation facilities for Indians; $8,964,000, to remain available until expended: *Provided*, That such expenditures may be made through the Department of the Interior at the option of the Secretary of the Department of Health, Education, and Welfare.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order against the language on page 28, line 22, which reads "*Provided*, That such expenditures may be made through the Department of the Interior at the option of the Secretary of the Department of Health, Education, and Welfare' on the ground that that, too, is legislation on an appropriation bill. . . .

MR. [WALTER H.] JUDD [of Minnesota]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN:[2] The Chair will be pleased to hear the gentleman from Minnesota on the point of order.

MR. JUDD: Mr. Chairman, I am sorry we do not have here the text of the law which transferred the medical care of our Indian population to the Public Health Service. As the author of the original bill, I am sure that it had language which authorized the Public Health Service to carry on medical care for the Indians through the Department of the Interior and its existing agencies when that could be done to greater advantage and without greater cost. Whether that language in the original bill was retained in the final law, I do not recall, and we do not have the text of it here.

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

The Chair is of the opinion that the language is obviously legislation on an appropriation bill and therefore sustains the point of order; making the observation with respect to the arguments raised by two of the gentlemen that if the language is in existing law then it is not necessary in this bill.

§ 23.7 Language in an appropriation bill authorizing the Secretary of the Navy to enter into contracts for new construction of aircraft and equipment, including expansion of public or private plants, was held to be legislation on an appropriation bill and not in order.

On Apr. 13, 1949,[3] during consideration in the Committee of the

1. 106 CONG. REC. 6863, 6864, 86th Cong. 2d Sess.

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

3. 95 CONG. REC. 4521, 81st Cong. 1st Sess.

Whole of the military establishment appropriation bill (H.R. 4146), a point of order was raised against the following provision:

The Clerk read as follows:

For new construction and procurement of aircraft and equipment, spare parts and accessories therefor, including expansion of public plants or private plants (not to exceed $500,000), and Government-owned equipment and installation thereof in public or private plants, and for the employment of personnel in the Bureau of Aeronautics necessary for the purposes of this appropriation, to remain available until expended, $523,070,000, of which $418,000,000 is for liquidation of obligations incurred under authority heretofore granted to enter into contracts for the foregoing purposes; and in addition, the Secretary of the Navy is authorized to enter into contracts for the purposes of this appropriation in an amount not to exceed $576,546,000.

MR. [FREDERIC R.] COUDERT [Jr., of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[4] The gentleman will state it.

MR. COUDERT: Mr. Chairman, I reserve a point of order with respect to the last three lines of that paragraph—lines 8, 9, and 10, on page 65, as legislation on an appropriation bill. . . . In other words, Mr. Chairman, my point of order is to the following language: "and in addition, the Secretary of the Navy is authorized to enter into contracts for the purposes of this appropriation in an amount not to exceed $576,546,000."

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

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, of course there is authorization by law for the procurement and contracts of procurement of munitions, armaments and airplanes. It seems to me that there is ample justification for the provision contained in this bill. I insist, Mr. Chairman, that the point of order is not well taken.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York makes the point of order to the language appearing on page 65, line 8, after the word "purposes" down to and including the figure on line 10 on the ground that it is legislation on an appropriation bill. The Chair is of the opinion that if in existing law the Secretary of the Navy were authorized to enter into such contracts, this language in the bill would not be necessary; if the Secretary of the Navy is without that power, this language is legislation on an appropriation bill.

The Chair sustains the point of order.

Restriction of Discretion

§ 23.8 Where existing law established priorities to be followed by an executive official in the distribution of funds authorized thereby (but did not explicitly preclude distribution of *some* funds for lower priority projects), an amendment to an appropriation bill requir-

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

ing that those appropriated funds shall be distributed in accordance with such priorities may be regarded as constituting a stronger mandate as to the use of those funds and as a modification of the authorizing law, and therefore out of order.

On June 15, 1972,[5] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill, a point of order was raised against the following amendment:

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Yates: at page 22, line 4, change the period to a semicolon and add the following: "Provided that the funds herein appropriated for bilingual education under the Bilingual Education Act shall be distributed in accordance with the authority contained in Section 703(b) of said Act requiring that the Commissioner shall give highest priority to states and areas within states having the greatest need for programs under the Act, and that such priority shall take into consideration the number of children of limited English-speaking ability between the ages of three (3) and eighteen (18) in each state;"

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I make a point of order to the amendment on the ground it is obviously legislation on an appropriation bill. The amendment applies to a specific provision of the act, and any time you do that, that is patently, obviously, and clearly legislation upon an appropriation bill.

MR. YATES: Mr. Chairman, I think the gentleman is indulging in double talk. I do not quite understand what his point of order is. This is a repetition of the statute itself and is therefore completely clear.

MR. FLOOD: There is a deviation.

MR. YATES: There is not a deviation. It is an actual quotation.

MR. FLOOD: There was a slight change, which was ruled on by the Chair in ruling on the point of order, and it is out of order for that reason.

THE CHAIRMAN:[6] The Chair is ready to rule. The language of the gentleman's amendment states that the Commissioner shall give the highest priority to States and areas within the States having the greatest need for the program under the act. But the amendment goes further and also states that the funds in the pending bill shall be distributed in accordance with the authority contained in Section 703 of the act. While the statute states priorities, the amendment is mandatory and directs the Commissioner to follow those priorities. It thus goes beyond the law, is a modification of existing law, and is, therefore, legislation.

MR. YATES: Mr. Chairman, will the Chair indulge me and permit me to read what the act states?

THE CHAIRMAN: The Chair has just read the act. The gentleman may read it again.

5. 118 CONG. REC. 21131, 92d Cong. 2d Sess.

6. Chet Holifield (Calif.).

MR. YATES: Here is what the act states. I read from section 703:

> In determining distribution of funds under this title, the Commissioner shall give highest priority to States and areas within States having the greatest need for programs under this title. Such priority shall take into consideration the number of children of limited English-speaking ability between the ages of 3 and 18 in each state.

I incorporated that language in my amendment, Mr. Chairman, and I am not deviating from it. I am following the act and asking that the funds be allocated in accordance with the authority of that section

THE CHAIRMAN: The gentleman's language is different from the language in the act although it is similar. There is a mandate in the gentleman's language that the funds shall be distributed in accordance with the priorities stated in the act, and the statute only says the Commissioner shall give the highest priority to States and areas within the States having the greatest need for programs pursuant to this title. Therefore, the Chair finds that the amendment carries a stronger mandate than that in the statute and is, therefore, legislation on an appropriation bill.

The Chair, therefore, sustains the point of order.

§ 23.9 To an appropriation for the purchase of reindeer, an amendment limiting the purchase to an average price of $4 per head was held to be a limitation restricting the availability of funds and in order.

On Mar. 15, 1939,[7] the Committee of the Whole was considering H.R. 4852, an Interior Department appropriation. The Clerk read as follows, and proceedings ensued as indicated below:

> Reindeer industry, Alaska: For the purchase, in such manner as the Secretary of the Interior shall deem advisable and without regard to sections 3709 and 3744 of the Revised Statutes, reindeer, abattoirs, cold-storage plants . . . and communication and other equipment, owned by nonnatives in Alaska, as authorized by the act of September 1, 1937 (50 Stat. 900), $820,000 . . . *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:[8] Does the gentleman from Oklahoma desire to be heard?

MR. [JED] JOHNSON of Oklahoma: No; I concede the point of order.

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7. 84 CONG. REC. 2789, 2790, 76th Cong. 1st Sess.

8. Frank H. Buck (Calif.).

THE CHAIRMAN: The point of order is sustained.

MR. JOHNSON of Oklahoma: Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

> Amendment offered by Mr. Johnson of Oklahoma: Page 60, line 23, insert a new paragraph, as follows:
>
> "Reindeer industry, Alaska: For the purchase, in such manner as the Secretary of the Interior shall deem advisable, of reindeer . . . as authorized by the act of September 1, 1937 (50 Stat. 900), $820,000 . . . *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. SCHAFER of Wisconsin: Mr. Chairman, I make the point of order against the amendment on the ground that it is legislation on an appropriation bill, unauthorized by law, and it delegates to the Department additional authority which it does not now have. . . .

MR. JOHNSON of Oklahoma: Mr. Chairman, I feel that it is unnecessary to make an extended argument, as I am sure the Chair is fully advised and ready to rule. Certainly there is no question but that this item is clearly authorized by existing law. Authority will be found in the act of September 1, 1937, Fiftieth Statutes, page 900. It plainly authorizes an appropriation of $2,000,000. I call the attention of the Chair to section 16 which reads as follows:

> The sum of $2,000,000 is hereby authorized to be appropriated for the use of the Secretary of the Interior in carrying out the provisions of this act.

MR. [HAROLD] KNUTSON [of Minnesota]: What more authority do you want? That is enough.

MR. [ALBERT E.] CARTER [of California]: Mr. Chairman, I would like to be heard on the point of order.

THE CHAIRMAN: The gentleman from California is recognized.

MR. CARTER: The opening sentence of the amendment reads:

> For the purchase in such manner as the Secretary of the Interior shall deem advisable.

Now, certainly there is nothing in the statute that gives the Secretary of the Interior that much discretion. In addition to that, Mr. Chairman, I desire to call the attention of the Chair to the proviso in the amendment which reads as the proviso in the bill, which is clearly legislation. Therefore I say the point of order must be sustained against the proposed amendment.

THE CHAIRMAN: The Chair is ready to rule. The act of September 1, 1937, on which the appropriation contained in this paragraph is based, reads in part as follows:

> Sec. 2. The Secretary of the Interior is hereby authorized and directed to acquire, in the name of the United States, by purchase or other lawful means, including exercises of power of eminent domain, for and on behalf of the Eskimos and other natives of Alaska, reindeer, reindeer range, equipment, abattoirs, cold-storage plants, warehouses and other property, real or personal, the acquisition of which he determines to be necessary to the effectuation of the purposes of this act.

This seems to be a broad, all-inclusive grant of power. The language used

in the amendment offered by the gentleman from Oklahoma merely restates, in slightly different words, the authorization contained in the act of September 1, 1937.

The proviso to which the gentleman from California [Mr. Carter] refers appears to the Chair to be nothing more than a limitation, in the strictest sense of the word.

For these reasons the Chair overrules both points of order.

§ 23.10 Where existing law authorized the expenditure of funds for the benefit and existence of Indians, under broad supervisory powers given to the Secretary of the Interior, provisions in an appropriation bill which imposed further conditions affecting both the exercise of those powers and the use of funds were ruled out as legislation.

On May 14, 1937,[9] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 6958), a point of order was raised against the following provision:

The Clerk read as follows:

For the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops, $165,000, which sum may be used for the purchase of seeds, animals, machinery, tools, implements, and other equipment necessary, and for advances to Indians having irrigable allotments to assist them in the development and cultivation thereof, in the discretion of the Secretary of the Interior, to enable Indians to become self-supporting: *Provided,* That the expenditures for the purposes above set forth shall be under conditions to be prescribed by the Secretary of the Interior for repayment to the United States on or before June 30, 1943, except in the case of loans on irrigable lands for permanent improvement of said lands, in which the period for repayment may run for not exceeding 20 years, in the discretion of the Secretary of the Interior: *Provided further,* That not to exceed $25,000 of the amount herein appropriated shall be expended on any one reservation or for the benefit of any one tribe of Indians: *Provided further,* That the Secretary of the Interior is hereby authorized, in his discretion and under such rules and regulations as he may prescribe, to make advances from this appropriation to old, disabled, or indigent Indian allottees, for their support, to remain a charge and lien against their lands until paid: *Provided further,* That not to exceed $15,000 may be advanced to worthy Indian youths to enable them to take educational courses, including courses in nursing, home economics, forestry, and other industrial subjects in colleges, universities, or other institutions, and advances so made shall be reimbursed in not to exceed 8 years, under such rules and regulations as the Secretary of the Interior may prescribe.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph beginning on page 26, line 4. The point of order is that this is legislation on an appropria-

9. 81 CONG. REC. 4598, 4599, 75th Cong. 1st Sess.

tion bill and it imposes discretionary duties upon the Secretary of the Interior. The language at the bottom of the bill, beginning with "*Provided further*", line 22, and the last proviso are entirely the same. They provide that the Secretary of the Interior shall make rules and regulations and there is no question but what it imposes additional duties upon the Secretary of the Interior all the way through.

In lines 17 and 18 the terms of repayment are made subject to the discretion of the Secretary of the Interior and in lines 9 and 10 it is subject to that same discretion. This is all on page 26. The whole paragraph is subject to discretion and imposes duties upon the Secretary.

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, the Committee feels that this provision is in order. It provides only a method by which the appropriation might be expended. I have no further comment to make.

THE CHAIRMAN:[10] The Chair would like to inquire of the gentleman from Oklahoma as to the authority for the language appearing in lines 1 and 2, page 27, which the Chair will quote:

> To remain a charge and lien against their land until paid—

Is there provision in some existing law creating a lien upon these lands, to which this provision refers?

MR. JOHNSON of Oklahoma: I cannot say there is provision in existing law. The only existing law would be the fact this has been in the bill for several years and, of course, that is not controlling.

THE CHAIRMAN: The Chair would like to inquire further of the gentleman with reference to the language appearing in lines 7 and 8, page 27, reading as follows:

And advances so made shall be reimbursed in not to exceed 8 years under such rules and regulations as the Secretary of the Interior may prescribe.

Will the gentleman advise the Chair as to any provision of existing law upon which this language is based?

MR. JOHNSON of Oklahoma: Mr. Chairman, this is the exact language that has been used for several years and the gentleman from Oklahoma knows of no specific basis of law for it.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York makes a point of order against the entire paragraph beginning in line 4, page 26, extending down to and including line 9, page 27. The gentleman from New York [Mr. Taber] in making his point of order invited attention to certain language appearing in lines 10 and 11, page 26, with reference to the discretion of the Secretary of the Interior.

The Chair has examined the act commonly referred to and known as the Snyder Act and invites attention to section 13 of that act, in which the following appears:

> Expenditures of appropriations by Bureau of Indian Affairs: The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate for the benefit, care, and assistance of the Indians throughout the United States for the following purposes: General support and civilization, including education; for industrial assistance and advancement and gen-

10. Jere Cooper (Tenn.).

eral administration of Indian problems. Further for general and incidental expenses in connection with the administration of Indian affairs.

It is the opinion of the Chair that the act to which attention has been invited confers upon the Secretary of the Interior rather broad discretionary authority. The Chair is of opinion that the language to which the gentleman invited attention is not subject to a point of order, but that the language to which the Chair invited the attention of the gentleman from Oklahoma with reference to the provisos does constitute legislation on an appropriation bill not authorized by the rules of the House. It naturally follows that as the point of order has to be sustained as to these two provisos, it has to be sustained as to the entire paragraph. The Chair therefore sustains the point of order made by the gentleman from New York.

Restatement of Law Applying to Other Funds

§ 23.11 Where the Foreign Assistance Act of 1961 contained a prohibition against the furnishing of assistance to countries supplying or shipping certain items to North Vietnam, a similar but not identical provision in a general appropriation bill was ruled out as legislation in violation of Rule XXI clause 2.

On June 4, 1970,[11] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 116. No assistance shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country that sells, furnishes or permits any ships under its registry to carry to North Vietnam any of the items mentioned in subsection 107(a) of this Act.

MR. [PETER H. B.] FRELINGHUYSEN [Jr., of New Jersey]: Mr. Chairman, I rise to make a point of order.

THE CHAIRMAN:[12] The gentleman will state his point of order.

MR. FRELINGHUYSEN: Mr. Chairman, I make the point of order against section 116 in that it constitutes legislation in an appropriation bill. I would like to add, furthermore, it is almost word for word part of a prohibition which is already contained in existing law, and that is section 620(n) of the Foreign Assistance Act. The fact is the existing law is stronger and broader in its restriction than the language in this appropriation bill.

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

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I ask for a ruling on the point of order.

THE CHAIRMAN: The Chair is prepared to rule on the point of order.

The language is similar and almost like the language contained in the Foreign Assistance Act of 1961. However, it is clearly legislation on an appro-

11. 116 CONG. REC. 18406, 91st Cong. 2d Sess.

12. Hale Boggs (La.).

priation bill, and the point of order is sustained.

Sense of Congress That Existing Law Should Apply

§ 23.12 Language in a foreign aid appropriation bill expressing the sense of Congress in opposition to discrimination by foreign nations on the basis of race or religion against American citizens traveling abroad, and requiring negotiations with such nations to be conducted in accordance with that congressional policy, was conceded to be legislation in violation of Rule XXI clause 2.

On June 4, 1970,[13] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

> Sec. 106. It is the sense of Congress that any attempt by foreign nations to create distinctions because of their race or religion among American citizens in the granting of personal or commercial access or any other rights otherwise available to United States citizens generally is repugnant to our principles; and in all negotiations between the United States and any foreign state arising as a result of funds appropriated under this title these principles shall be applied as the President may determine.

MR. [PETER H. B.] FRELINGHUYSEN [Jr., of New Jersey]: Mr. Chairman, I make a point of order against section 106, lines 17 through 25 on page 8 on the ground that it constitutes legislation in an appropriation bill.

Mr. Chairman, I would like to add further that the essential wording of this section is already in existing law, and has been so for many years. I refer to section 102 of the Foreign Assistance Act. That section reads as follows:

> The Congress further declares that any distinction made by foreign nations between American citizens because of race, color or religion in the granting of, or in the exercise of personal or other rights available to American citizens, is repugnant to our principles.

THE CHAIRMAN:[14] Does the gentleman from Louisiana (Mr. Passman) desire to be heard on the point of order?

MR. [OTTO E.] PASSMAN: Yes, Mr. Chairman; we concede the point of order. . .

THE CHAIRMAN: The gentleman from Louisiana concedes the point of order, and the Chair sustains the point of order.

§ 23.13 A provision in a general appropriation bill, restating, but not in identical language, a declaration of the sense of Congress on a matter of foreign policy [a

13. 116 CONG. REC. 18403, 91st Cong. 2d Sess.

14. Hale Boggs (La.).

declaration found originally in the Foreign Assistance Act of 1962], was held to be legislation and was ruled out on a point of order.

On Sept. 20, 1962,[15] during consideration in the Committee of the Whole of the foreign aid appropriation bill (H.R. 13175), the following point of order was raised:

MR. [PETER H. B.] FRELINGHUYSEN [Jr., of New Jersey]: Mr. Chairman, I make a point of order against section 112 on page 8.

The language of that section is as follows:

> Sec. 112. It is the sense of Congress that in the administration of these funds great attention and consideration should be given to those nations which share the view of the United States on the world crisis.

THE CHAIRMAN:[16] The gentleman will state the point of order.

MR. FRELINGHUYSEN: Mr. Chairman, that language is already embodied in the basic act[17] and is legislation on an appropriation bill. . . .

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I ask for a ruling.

THE CHAIRMAN: The Chair sustains the point of order made by the gentleman from New Jersey.

Limiting Discretion Bestowed by Law

§ 23.14 Language in a general appropriation bill providing that none of the funds therein should be used unless certain procurement contracts were awarded on a formally advertised basis to the lowest responsible bidder was held to be legislation where existing law provided an exception from such procedure.

On June 28, 1961,[18] during consideration in the Committee of the Whole of the defense appropriation bill (H.R 7851), the following point of order was raised:

MR. [JAMES E.] VAN ZANDT [of Pennsylvania]: Mr. Chairman, I make a point of order against the legislation contained in lines 15 to 19 on page 38, reading as follows:

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15. 108 CONG. REC. 20181, 87th Cong. 2d Sess.

16. Wilbur D. Mills (Ark.)

17. See Public Law No. 87–565, § 101, which stated in part: "It is the sense of Congress that in the administration of these funds great attention and consideration should be given to those countries which share the view of the United States on the world crisis and which do not, as a result of United States assistance, divert their own economic resources to military or propaganda efforts, supported by the Soviet Union or Communist China, and directed against the United States or against other countries receiving aid under this Act."

18. 107 CONG. REC. 11502, 87th Cong. 1st Sess.

> That none of the funds appropriated in this act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

THE CHAIRMAN:[19] Does the gentleman from Texas desire to be heard on the point of order?

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the point of order, as I understand, is against the following language:

> That none of the funds appropriated in this act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

This is a provision in the act which has been, I believe, in the act since about 1953, but there is a slight change in the wording of the proviso this year in line 18.

This language more or less repeats existing law. I refer to chapter 137 under "Procurement Generally," volume 10, United States Code 2304(a):

> Purchases of and contracts for property or services covered by this chapter shall be made by formal advertising. However, the head of an agency may negotiate . . . if . . . (10) the purchase or contract is for property or services for which it is impracticable to obtain competition.

So we call for the formally advertised bids wherever practical. It seems to me this is a restatement of the law. It has a tendency to reduce the funds in the bill, and I believe it is not subject to a point of order.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Pennsylvania [Mr. Van Zandt] makes a point of order to the language appearing on page 38, lines 15 to 19 inclusive on the ground that it is legislation in an appropriation act.

The Chair has listened with attention to the gentleman from Texas and would say to him that if this is a restatement of existing law the language in this bill is not necessary. But in line with the argument advanced by the gentleman from Texas, that it is a restatement setting out existing law, in the opinion of the Chair it imposes affirmative obligations on an executive branch of the Government and is, therefore, legislation on an appropriation act.

The Chair sustains the point of order.

Restrictive Modification of Authority in Law; Rural Electrification

§ 23.15 Where existing law authorized the use of funds for the Rural Electrification Administration for a certain purpose, a restriction in an appropriation bill making funds therein for the REA available "only" for that purpose was held a limitation as containing only the language of existing law.

On Mar. 24, 1944,[20] the Committee of the Whole was consid-

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

20. 90 CONG. REC. 3105–07, 78th Cong. 2d Sess.

ering H.R. 4443, an Agriculture Department appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [Lyle H.] Boren [of Oklahoma]: Page 78, line 5, add the following: "*Provided,* That the moneys appropriated or otherwise authorized under this caption ('Rural Electrification Administration') and expended or loaned under the authority conferred by section 4 of the act approved May 20, 1936, shall be used only to finance the construction and operation of generating plants, electric transmission and distribution lines, or systems, for the furnishing of electric energy to persons in rural areas who are not now receiving central station service: *Provided further,* That none of the moneys appropriated or otherwise authorized under this caption ('Rural Electrification Administration') shall be used to finance the construction and operation of generating plants, electric transmission and distribution lines, or systems in any area of the United States included within the boundaries of any city, village, or borough having a population in excess of 1,500 inhabitants."

MR. [WILLIAM R.] POAGE [of Texas]: Mr. Chairman, a point of order.

THE CHAIRMAN:[21] The gentleman will state his point of order.

MR. POAGE: Mr. Chairman, I make the point of order that, rather than being a limitation on the appropriation, this is a change in the substantive law that authorized the Rural Electrification Administration; and I call the attention of the Chair to a ruling that was handed down on April 19, 1943, when substantially the same amendment was offered, the only difference being that the word "exclusively" has now been changed to "only." I submit those words have exactly the same meaning and that the ruling applied at that time would be applicable at this time. . . .

MR. BOREN: Mr. Chairman, I submit that the proposed amendment merely reaffirms existing law. It does not change existing law. It does not change existing law or the substantive law that created the Rural Electrification Administration or that governs its organization and I submit that the proposals are limiting to the appropriation in that the sole purpose and object of the proposals are to prevent the use of this particular money outside the provisions of existing law. That is, that they cannot use the particular money involved in the appropriation in line 5, page 78, to buy out electrical systems in towns in excess of a population of 1,500.

Mr. Chairman, to support my contention that this is existing law I want to say that the language of the first proviso is lifted directly from section 4 of the R.E.A. Act approved May 20, 1936, section 4 of which reads as follows:

Sec. 4. The Administrator is authorized and empowered, from the sums hereinbefore authorized, to make loans to persons, corporations, States, Territories, and subdivisions and agencies thereof, municipalities, peoples, utility districts and cooperatives, nonprofit, or limited-dividend associations organized under the laws of any State or Territory of the United States, for the purpose of financing the construction and operation of generating plants, electric

21. William M. Whittington (Miss.).

> transmission and distribution lines or systems for the furnishing of electric energy to persons in rural areas who are not receiving central station service.

That language is the language that is in the act of May 20, 1936, substantially word for word.

THE CHAIRMAN: If the Chair may interrupt the gentleman, if it is existing law what is the necessity for it being in the amendment?

MR. BOREN: Mr. Chairman, the Chair anticipates the point of my discussion in justifying the amendment. The reason is that so far as appropriations are concerned, they have issued opinions down there by a circuitous route and have managed to go ahead and buy electrical systems in towns with a population in excess of 1,500. They have done it in connection with other appropriations. So I want to pick up this particular $20,000,000 and say that this $20,000,000 shall not be expended in that illegal fashion.

Mr. Chairman, the language of the second proviso is lifted directly from section 13 of the R.E.A. Act approved May 20, 1936. Section 13 reads as follows:

> Sec. 13. As used in this act the term "rural area" shall be deemed to mean any area of the United States not included within the boundaries of any city, village, or borough having a population in excess of 1,500 inhabitants, and such term shall be deemed to include the farm and nonfarm population thereof.

Mr. Chairman, it so happens that I served on the committee which created the R.E.A. and I was a member of the subcommittee that created it. I have a thorough familiarity with the act and with the amendments that have been made to the act since its original creation. I know what was in the mind of the committee when this organization was created. But in spite of that, they are spending this money to buy electrical plants in towns with a population as high as 10,000 people. I want to limit the use of this appropriation so that they cannot buy out existing facilities in cities having populations of ten or twenty thousand.

Mr. Chairman, I submit that the point of order is not substantiated by the facts in this case. First, this is a limitation and, second, the language used has been lifted verbatim from the substantive act creating this organization. . . .

MR. POAGE: . . . The amendment states, as I understand it, that this money shall be used only for these purposes. When you refer to the existing law the word "only" is not in existing law. I wonder if the gentleman will tell us whether the word "only" has been inserted in the proposed amendment? . . .

MR. BOREN: Mr. Chairman, just one final word in explanation of my position. In the first instance, we inserted the word "only" which is a limiting word only. They have been doing it not for this purpose but for other purposes.

THE CHAIRMAN: Does the word "only" appear in the statute, in response to the question asked by the gentleman from Texas [Mr. Poage)?

MR. BOREN: The word "only" does not appear in the statute That is in the second proviso. Neither do the words "shall not be used for other purposes" but I make the contention that is the thing that makes it limiting. . . .

MR. [FRANCIS H.] CASE [of South Dakota]: Would the gentleman's amendment expand the basic law and authorize expenditures for anything not authorized in the basic law?

MR. BOREN: It does not. It is solely limiting.

MR. CASE: In the use of the word "only," does that word "only" limit the appropriation to expenditures for only a particular purpose?

MR. BOREN: It does not. It does not preclude any of the purposes in the substantive law.

MR. CASE: I wonder if the gentleman would explain this. My understanding of a limitation is that it restricts the appropriation to a portion of the original purposes. You cannot expand an appropriation but you can restrict it. If the use of the word "only" limits to only a certain part of the basic appropriation, then it is a restriction and a limitation.

MR. BOREN: My amendment does not in any iota expand or take in any new purposes. It limits the practice that is going on.

The reason I answered the gentleman as I did is, I am unwilling, in my own judgment, to hold that the other practices outside of this limitation are justified by law, but it does limit them in some of the practices they are carrying on that they are claiming come under the law. . . .

THE CHAIRMAN: The Chair is ready to rule.

Reference has been made to similar amendments that have been heretofore presented. It has also been stated that the language of the amendment offered is identical with an amendment presented on April 19, 1943, but an examination of the amendment offered at that time will show that the language was considerably and materially different than the language of the proposed amendment. Aside from that, the Chair is more anxious to be correct than perhaps consistent.

MR. POAGE: Mr. Chairman, I do not want it to be understood that I said that the wording of these amendments were identical.

THE CHAIRMAN: The Chair did not so state that the gentleman or any other Member said that. That was brought to the attention of the Chair a few minutes ago. As the Chair stated, he is more interested in being correct than consistent.

Inasmuch as it is conceded that the language of the first proviso is the language of the substantive law except for the word "only," the first proviso is a limitation, and in view of the fact the second proviso is also a limitation, the point of order is overruled.

Parliamentarian's Note: The ruling referred to by Mr. Poage, of Apr. 19, 1943, and the amendment that was ruled out as legislation, were as follows: (1)

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Oklahoma offers an amendment to the amendment offered by the gentleman from Mississippi [Mr. Rankin] in the following words:

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1. Under consideration was H.R. 2481, the Agriculture Department appropriation bill of 1944. The Chairman on that occasion also was William M. Whittington (Miss.)

Provided, That these loans shall be exclusively for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems for the furnishing of electric energy to persons in rural areas who are not receiving central station service.

The Chair is unable to see where there is any limitation in the language used and concludes it is legislation, therefore sustains the point of order.

Renegotiation Act Made Applicable to Contracts Under the Appropriation

§ 23.16 To the appropriation for the Tennessee Valley Authority, an amendment proposing to make contracts entered into by the Authority and by the Atomic Energy Commission subject to the Renegotiation Act was held to be legislation on an appropriation bill and not in order.

On Dec. 15, 1950,[2] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 9920), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Case of South Dakota: Page 11 after line 12, insert a new section, as follows:

"RENEGOTIATION OF CONTRACTS

"Sec. 602. (a) All negotiated contracts for procurement in excess of $1,000 entered into during the current fiscal year by or on behalf of the Atomic Energy Commission and the Tennessee Valley Authority, and all subcontracts thereunder in excess of $1,000, are hereby made subject to the Renegotiation Act of 1948 in the same manner and to the same extent as if such contracts and subcontracts were required by such act to contain the renegotiation article prescribed in subsection (a) of such act. Each contract and subcontract made subject to the Renegotiation Act of 1948 by this section shall contain an article stating that it is subject to the Renegotiation Act of 1948. . . ."

MR. [ALBERT A.] GORE [of Tennessee]: . . . Mr. Chairman, the amendment offered by the distinguished and able gentleman from South Dakota, is a lengthy, complicated, and far-reaching one. . . . It operates as an amendment of the renegotiation law. . . .

THE CHAIRMAN:[3] The gentleman from South Dakota [Mr. Case] has offered an amendment which has been reported. The gentleman from Tennessee [Mr. Gore] has made a point of order against the amendment, on the ground that it contains legislation on an appropriation bill.

MR. CASE of South Dakota: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The gentleman concedes the point of order, and therefore the Chair sustains the point of order.

2. 96 CONG. REC. 16672–74, 81st Cong. 2d Sess.

3. Jere Cooper (Tenn.).

Exception From Limitation Applying Standard of Existing Law

§ 23.17 To a paragraph in a general appropriation bill denying use of funds in the bill for direct assistance to several designated countries, an amendment permitting availability of those funds for assistance to some of those countries in accordance with the requirements of section 116 of the Foreign Assistance Act (which prohibits assistance under part I thereof to all countries engaging in patterns of violations of internationally recognized human rights unless such assistance will directly benefit the needy people in such country) was held a proper exception from a limitation which did not add legislation since the amendment would allow assistance only pursuant to determinations already required by existing law as to the qualifications of all recipient countries.

On Aug. 3, 1978,[4] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 12931), a point of order was raised against the following amendment:

> The Clerk read as follows:
>
> Amendment offered by Mr. [Tom] Harkin [of Iowa]: Page 11, strike out the period on line 17 and insert in lieu thereof", except that funds appropriated or made available pursuant to this Act for assistance under part I of the Foreign Assistance Act of 1961 (other than funds for the Economic Support Fund or peacekeeping operations) may be provided to any country named in this section (except the Socialist Republic of Vietnam) in accordance with the requirements of section 116 of the Foreign Assistance Act of 1961.". . .

MR. [CLARENCE D.] LONG of Maryland: Mr. Chairman, I do make a point of order against the Harkin amendment. . . .

The gentleman's amendment clearly would place substantial additional new duties on officers of the Government. Mr. Chairman, in chapter 26, section 11.1, of "Deschler's Procedures," the following is stated:

> But when an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order.

Mr. Chairman, the gentleman's amendment intends that aid should be provided to certain countries if such assistance will directly benefit the needy people in such countries. Several legislative provisions currently exist that presently provide for such deter-

4. 124 CONG. REC. 24249, 24250, 95th Cong. 2d Sess.

minations, but these provisions do not apply to all the funds appropriated in this bill.

In addition, the gentleman's amendment would require officials to make judgments and determinations that they are not required to make at the present time. We presently have no AID programs or AID missions in any of these countries. In two of the countries we do not have diplomatic relations, Vietnam and Cambodia. In one country we have no U.S. Government representative, and that country is Uganda. The gentleman's amendment would not only allow direct assistance to flow to these countries, which is not now possible, but also would require some U.S. Government official to determine if the assistance is reaching the needy. This would require a U.S. Government official to travel to these countries to make an onsite inspection since there are no AID missions in any of these countries and no U.S. Government representation present in three of the countries. The gentleman's amendment definitely places substantial additional duties on U.S. Government officials.

Also current law prohibits any direct assistance to Vietnam, Laos, Cambodia, Uganda, Mozambique, or Angola. The gentleman's amendment would allow direct assistance to flow to these countries if the assistance would benefit the needy people. This in effect changes the existing law. The amendment is legislative in nature and in violation of clause 2, rule XXI. . . .

MR. HARKIN: Mr. Chairman, by the fact that I have included section 116 of the Foreign Assistance Act of 1961, by that very inclusion those four countries so named and listed are then put in the category of being gross violators of human rights, and because of the inclusion, then, of section 116, which I have laid out in my amendment, there are no new duties imposed in my amendment—only the requirements of existing law. . . .

MR. LONG of Maryland: I would simply say that we do not have missions in these countries, and the duties that would be required, to find out whether needy people would get the money, would require us to send people there. That clearly imposes duties on the Government which are not implied in the current legislation.

THE CHAIRMAN:[5] The Chair is ready to rule.

According to the amendment, the only funds that the amendment refers to are funds provided for in the bill, and the only exception would be to the Socialist Republic of Vietnam; but funds are to be provided in accordance with the requirements of law and the law cited is, on its face, applicable to the countries covered by the amendment; so the Chair does not see that there are any new duties imposed on anyone by the amendment. Therefore, the Chair respectfully overrules the point of order.

Restriction of Funds—But Requiring Finding of Intent Not Required by Law

§ 23.18 An amendment to the District of Columbia appropriation bill denying use of funds to grant business licenses to persons who offer

5. Abraham Kazen, Jr. (Tex.).

for sale in the course of business drug paraphernalia, as defined in a Model Drug Paraphernalia Act which required findings of intent that certain articles for sale be intended for use in drug preparation or use, was ruled out as legislation requiring new duties and judgments of government officials.

On Sept. 22, 1981,[6] during consideration in the Committee of the Whole of the District of Columbia appropriation for fiscal year 1982 (H.R. 4522), a point of order against an amendment was sustained as follows:

The Clerk read as follows:

Amendment offered by Mr. [Charles E.] Bennett [of Florida]: Page 20, after line 25, insert the following new section:

Sec. 124. None of the funds appropriated in this Act may be used to grant a business license to any person who, after the date of enactment of this Act, offers drug paraphernalia (as defined in the Model Drug Paraphernalia Act drafted by the United States Department of Justice, August 1979) for sale in the course of the business for which such license is required.

MR. [JULIAN C.] DIXON [of California]: Mr. Chairman, I make a point of order that the amendment of the gentleman violates clause 2 of rule XXI of the House in that it would impose additional duties on the District's licensing officials who have to either inspect all places that are doing business to determine whether they are selling such items; but probably more importantly, they would have to determine the intent for which such items would be used. . . .

MR. BENNETT: . . . [T]he amendment does not impose any additional duties, because the term drug paraphernalia is very specifically defined in the DEA's Model Act, which has been adopted already by 23 States and, of course, it would not create additional duties, because the District already employs license inspectors who routinely visit establishments of vendors who have such a license.

THE CHAIRMAN:[7] . . . The question is a difficult one, but after consultation with the Parliamentarian and in reviewing precedents, the Chair finds, and quotes directly from page 537 of the House Rules and Manual:

> Where an amendment to or language in a general appropriation bill implicitly places new duties on officers of the government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, such as to judge intent or motives, then it assumes the character of legislation and is subject to a point of order.

The Model Act incorporated by reference in the amendment requires a determination that the drug equipment being sold be intended for use in connection with drug preparation or use.

The Chair, therefore, rules that the point of order is well taken and the point of order is sustained.

6. 127 CONG. REC. 21576, 21577, 97th Cong. 1st Sess.

7. William R. Ratchford (Conn.).

Restricting Discretion and Requiring Determinations—Where Legal Rrequirement for Such Duties Is Not Explicit

Requiring New Determination "In Accordance With Existing Law"—Burden of Citing Law

§ 23.19 The burden of proof is on the proponent of an amendment to a general appropriation bill to show that a proposed executive determination is required by existing law, and the mere recitation that the determination is to be made pursuant to existing law and regulations, absent a citation to the law imposing that responsibility, is not sufficient to overcome a point of order that the amendment constitutes legislation.

On Sept. 16, 1980,[8] during consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 8105), a point of order against an amendment was sustained as follows:

> . . . No funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations: *Provided further,* That none of the funds appropriated in this Act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

The Clerk read as follows:

> Amendment offered by Mr. [Joseph P.] Addabbo [of New York]: Page 41, line 23, strike out "*Provided further,*" and all that follows through 'economic dislocations:' on page 42, line 1, and insert in lieu thereof "*Provided further,* That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations other than contracts made by the Defense Logistics Agency and such other contracts of the Department of Defense as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations:". . .

MR. [JACK] EDWARDS1 OF Alabama: Mr. Chairman, I make a point of order against the amendment as legislation in a general appropriation bill, and therefore in violation of clause 2 of rule XXI.

I respectfully direct the attention of the Chair to Deschler's Procedure, chapter 25, section 11.2 which states:

> It is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by an executive official which he is not otherwise required by law to make.

I also respectfully direct the attention of the Chair to section 843 of the House Manual, which states in part:

> The fact that a limitation on the use of funds may . . . impose certain

8. 126 CONG. REC. 25606, 25607, 96th Cong. 2d Sess.

incidental burdens on executive officials does not destroy the character of the limitation as long as it does not directly amend existing law and is descriptive of functions and findings already required to be undertaken under existing law. . . .

Mr. Chairman, the amendment prohibits the payment of price differentials on contracts except—and I quote:

As may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations.

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense which is not now required under the current law. Although the determination is limited "pursuant to existing laws and regulations," there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law and require this new determination. . . .

THE CHAIRMAN:[9] The Chair is ready to rule.

The amendment would appear to call for a determination by the Secretary of Defense as to appropriateness by reason of national security considerations. Unless the gentleman from New York (Mr. Addabbo) can cite to the Chair those provisions of existing law requiring such determinations with respect to defense contracts, the Chair must conclude that the amendment would impose new duties upon the Secretary and would constitute legislation.

9. Daniel D. Rostenkowski (Ill.).

Restriction on Use of Funds Language Implying Cooperation With Other Government Agencies "Where Authorized by Law"

§ 23.20 A provision in an amendment to a general appropriation bill containing funds for an FTC collection of line-of-business data from not more than 250 firms including data presently made available to the Bureau of Census, Securities and Exchange Commission and other government agencies where authorized by law was held not to change existing law relating to agency authority for collection of such data.

On June 21, 1974,[10] during consideration in the Committee of the Whole of H.R. 15472 (Department of Agriculture, environment and consumer appropriation bill), an amendment was held in order as follows:

The Clerk read as follows:

Amendment offered by Mr. [Jamie L.] Whitten [of Mississippi]: Page 47, line 6, after the word "data" add the following: "*Provided*, That none of these funds shall be used for collecting line-of-business data from not [sic] more than 250 firms, including

10. 120 CONG. REC. 20601, 20602, 93d Cong. 2d Sess.

> data presently made available to the Bureau of the Census, the Securities and Exchange Commission and other government agencies where authorized by law.". . .

MR. [BOB] ECKHARDT [of Texas]: Mr. Chairman, the point of order is under House Rule XXI, clause 2, second sentence. . .

Now, under existing law and without the limitations reported to be added in this bill the Federal Trade Commission could and had intended—and, of course, what it actually intended is not material here, because the question is what it could have done—it could have used the funds as appropriated here for either 250 firms or 500 firms or any other number of firms. So what is done by this amendment is to restrict the Federal Trade Commission with respect to powers and duties and authorities which it would have but for this limitation.

The authorities on this point appear in volume VII of Cannon's Precedents, section 1675, which reads:

> A proper limitation does not interfere with executive discretion or require affirmative action on the part of the Government officials. . . .

It would also require liaison with the Bureau of Census, the Securities and Exchange Commission, and other Government agencies which are not here designated but which would cover the whole gamut of such agencies.

So it both provides a limitation on executive discretion and affirmative acts on the part of Government officials. . . .

MR. [JOHN] MELCHER [of Montana]: . . . Public Law 93–153 authorizes line-of-business data to be collected by independent regulatory agencies subject to certain procedures. It did not limit or restrict the collection of this data to any specific number of firms, as the gentleman's amendment would; he would change this policy by arbitrarily limiting the collection of the data specifically to 250 firms.

In addition, Mr. Chairman, Public Law 93–153 does not authorize the collection of line-of-business data from the Bureau of the Census of the Security and Exchange Commission. This authority was placed in an "independent regulatory agency.". .

THE CHAIRMAN:[11] The Chair is ready to rule.

First, let the Chair state that this subject contains a very vexing point, and it is one that has required a lot of attention of the Chair, even prior to the arguments here.

The words in contest on this point of order are the following words added by the amendment:

> . . . provided that none of the funds shall be used for collecting line-of-business data from not more than 250 firms, including data presently made available by the Bureau of the Census, the Securities and Exchange Commission, and other government agencies where authorized by law.

It is clear to the Chair that the words "provided that none of these funds shall be used for collecting line of business data of not more than 250 firms" may clearly be added as an amendment to a general appropriation bill, and it is in order. The Committee on Appropriations could have refused to bring in any appropriation at all for

11. Sam Gibbons (Fla.).

this agency, and the committee seeks by this amendment to put a limitation upon the use of funds available to the FTC. The limitation is drafted as a restriction on the use of funds, and not as an affirmative restriction on the scope of the FTC investigation, as was the case in the language stricken from the bill on the preceding point of order.[12]

The remainder of the amendment raises some question, but in the opinion of the Chair, these words are clearly limited by "where authorized by law," and do not permit the Census Bureau or the SEC to initiate line of business investigations, so the Chair is going to rule that the amendment is in order and that the points of order are overruled.

Restriction of Funds Based on Determinations Already Required by Law

§ 23.21 An amendment to a general appropriation bill prohibiting the use of funds therein to pay salaries of federal employees who assess civil penalties on small farmers for violations of the Occupational Health and Safety Act which are neither willful, repeated, nor serious was held not to require new determinations and not to violate Rule XXI clause 2, where it was shown that existing law (29 USC § 666) already required those precise determinations to be made in assessing penalties under that act.

On June 24, 1976,[13] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill, a point of order against an amendment was overruled as follows:

> The Clerk read as follows:
>
> Amendment offered by Mr. [William D.] Ford of Michigan as a substitute for the amendment offered by Mr. Skubitz: In lieu of the matter proposed to be inserted by the amendment offered by Mr. Skubitz, insert the following: ": *Provided*, That none of the funds appropriated under this paragraph shall be used to pay the salary of any employee of the Department of Labor who proposes the assessment of monetary penalties for any violation which, under the provisions of section 17 of the Occupational Safety and Health Act of 1970 is neither (1) willful, (2) repeated, nor (3) serious, to any employer who is engaged in a farming operation and employs 5 or fewer employees.". . .
>
> MR. [PAUL] FINDLEY [of Illinois]: I make a point of order that the amendment is not in order. It does not fall within the Holman rule, and I would like to be heard on the point of order. . . .
>
> Mr. Chairman, I have listened to the amendment. It was clear to me that

12. See § 51.18, infra, for discussion of the earlier point of order referred to by the Chair.

13. 122 CONG. REC. 20373, 20374, 94th Cong. 2d Sess.

this would require that a determination be made, first of all, that a violation is willful; second, that a violation is repeated; third, that a violation is serious. One of the conditions of the Holman rule is that it not impose a burden upon the administration. If this language does not impose a burden upon the administration, I do not know what would. . . .

MR. FORD of Michigan: . . . With all due respect to the gentleman who is an expert on the amendment procedure, I am afraid he did not fully hear the amendment as read, because what the amendment says is that no employee of the Department of Labor who proposes the assessment of monetary penalties for any violation—any violation—which under the provisions of section 17 of the Occupational Safety and Health Act of 1970 is defined as—and the determination is already made by that section of the act. There is no duty imposed on the Secretary that is in any way different from the duty imposed presently by the statutory law that we are appropriating this money for. We do not impose any new duty. He did not draw any new definitions. It is simply a question of whether he will assess monetary damages against a person who is accused of a violation that falls within the purview of any one of these section 17 definitions. . .

MR. [DAVID R.] OBEY [of Wisconsin]: . . . If we are going to talk about additional duties imposed, then certainly if this amendment is out of order, the original amendment ought to be out of order because we have a letter from the U.S. Department of Labor which outlines some of the additional duties required in fact by the original amendment. Under the amendment offered by the gentleman from Kansas (Mr. Skubitz) they would have to issue new regulations, they would have to draw up new forms, they would have to monitor recordkeeping by farmers, they would have to change the inspector instruction manual, they would have to verify employment records, and a number of other duties. So I certainly think the same latitude extended to the original amendment ought to be extended to the substitute.

THE CHAIRMAN:[14] May the Chair inquire of the gentleman from Michigan, did the Chair understand the gentleman from Michigan to declare that section 17 of the Occupational Safety and Health Act of 1970 in its present form already requires the determinations on the part of the Administrator as to willfulness, repetition, or seriousness of offenses?

MR. FORD: That is correct.

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

Basing the Chair's assumption upon the interpretation of existing law as described by the gentleman from Michigan, the Chair finds that there would be no additional duties imposed upon the Administrator, no additional determinations required of him, and the amendment merely describes determinations already required by existing law and is essentially, therefore, a limitation upon the appropriation.

Under the rules the Chair would overrule the point of order.

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14. James C. Wright, Jr. (Tex.).

Denial of Funds to Implement Executive Order

Limitation May Contain Language Conforming to Legal Authority it Seeks to Restrict

§ 23.22 As it is in order by way of a limitation on an appropriation bill to deny the use of funds therein for implementation of an Executive order, an amendment precisely describing the contents of the Executive order does not for that reason violate Rule XXI clause 2.

On Mar. 16, 1977,[15] an amendment to a general appropriation bill prohibiting the use of funds therein for salaries or expenses connected with dismissal of any pending indictments, or termination of any pending investigation of violations of the Military Selective Service Act, or to permit persons to enter the United States who committed or apparently committed violations of that act—the exact determinations required by an Executive order issued pursuant to law by the President to implement his pardon program for draft evaders—was held in order as a limitation, not requiring new determinations by federal officials, which merely denied the availability of funds to implement the Executive order. The proceedings were as indicated below:

> The Clerk read as follows:
>
> Amendment offered by Mr. John T. Myers [of Indiana]: On page 72, after line 27, add the following new section:
>
> "Sec. 305. None of the funds appropriated or otherwise made available in this Act shall be obligated or expended for salaries or expenses in connection with the dismissal of any pending indictments for violations of the Military Selective Service Act alleged to have occurred between August 4, 1964 and March 28, 1973, or the termination of any investigation now pending alleging violations of the Military Selective Service Act between August 4, 1964 and March 28, 1973, or permitting any person to enter the United States who is or may be precluded from entering the United States under 8 U.S.C. 1182 (a)(22) or under any other law, by reason of having committed or apparently committed any violation of the Military Selective Service Act." . . .
>
> MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make a point of order that [the amendment] is legislation in an appropriations bill, obviously legislation in an appropriations bill. . . .
>
> MR. JOHN T. MYERS . . . This is a limiting amendment. This Congress has adopted similar language a great many times limiting how the funds so appropriated may be used. I do not by any means wish to challenge or question the authority the Executive has in issuing a pardon. That is a constitutional responsibility or right that the Executive has. But this Congress has the constitutional responsibility and right to appropriate money. All this

15. 123 CONG. REC. 7748, 7749, 95th Cong. 1st Sess.

amendment does is limit how that money shall be spent again by an exercise that this Congress has used a great many times.

It is a negative restriction of funds. It is consistent exactly with the language that was used in the Executive order relating to the program of pardon. This amendment does not change existing law nor does it impose additional duties. The language of the amendment conforms exactly to the language of that Executive order. . . .

The constitutional argument is a moot one, I feel. Whatever the constitutional powers of the President may be, there is no obligation upon the Congress, there never has been, that we have to appropriate the money. . . .

THE CHAIRMAN:[16] . . . The Chair is constrained to rule that the amendment does not directly impose additional duties upon the Executive, the amendment may have the effect of restricting Executive discretion by a simple negative use of the appropriation but the determinations to be made are already required by law and the Executive order and are not new determinations. The point of order is overruled.

Exception to Limitation if President Makes a Determination Already Required by Law

§ 23.23 Where existing law (50 USC App. 2403(c), 2406(g)) permitted the President to impose export controls, specifically on agricultural commodities not in short domestic supply, unless he and the Secretary of Agriculture determined that the absence of controls would be detrimental to the foreign policy or national security of the United States, an amendment to a general appropriation bill prohibiting the use of funds therein for export controls on agricultural commodities unless subsequently imposed solely for those reasons was allowed; the amendment's impact on discretionary authority with respect to commodities in short supply was, however, subsequently cited in debate and, if cited earlier, might have led to modification of the Chair's ruling.

On July 23, 1980,[17] during consideration in the Committee of the Whole of H.R. 7584 (Departments of State, Justice, Commerce, and the Judiciary appropriation bill), the following amendment was held in order:

The Clerk read as follows:

Amendment offered by Mr. [E. Thomas] Coleman [of Missouri] to the amendment offered by Mr.

16. Walter Flowers (Ala.).

17. 126 CONG. REC. 19295, 96th Cong. 2d Sess.

[Mark] Andrews of North Dakota:[18] after the word "commodity" in the last line insert: "unless on or subsequent to October 1, 1980, the President imposes a restriction on the export of any such commodity solely on the basis that such export would prove detrimental to the foreign policy or national security of the United States". . . .

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I make a point of order against the amendment in that it exceeds the limitation and imposes additional duties upon the President of the United States. . . .

MR. COLEMAN: . . . Mr. Chairman, the point of order is not well taken because my amendment does not establish any new additional duties. It simply says that if the President of the United States subsequent to October 1, 1980, imposes an embargo then none of these funds shall be used to fund that embargo. It imposes absolutely no new duties. It simply states that if the President on his own takes some action, that none of these funds shall be used to support that action. . . .

THE CHAIRMAN:[19] The Chair is prepared to rule.

The gentleman from Massachusetts (Mr. Conte) makes a point of order against the amendment of the gentleman from Missouri (Mr. Coleman) on the grounds that it imposes an additional duty, and constitutes legislation on an appropriation bill. Ordinarily, such Presidential determination language on an appropriation bill would constitute legislation, but the amendment only repeats verbatim the determination authority contained in the section of existing law (section 4(c) of the Export Administration Act of 1979) which has been called to the Chair's attention.

Therefore, the amendment does not constitute new legislation in any way discernible to the Chair.

Limitation Restating Language in Authorization Bill

§ 23.24 While a limitation on the use of funds in a general appropriation bill does not constitute a violation of Rule XXI clause 2 if it merely restates identical language in existing law, the legislation in question must have been signed into law.

On Aug. 4, 1978,[20] during consideration in the Committee of the Whole of the foreign aid appropriation bill (H.R. 12931), a point of order against the following amendment was sustained:

The Clerk read as follows:

Amendment offered by Mr. [Henry A.] Waxman [of California]: On page 13 of the bill after line 16, insert the following new section:

"Sec. 116. Funds appropriated or made available in this act for inter-

18. The Andrews amendment provided: "None of the funds appropriated by this Act may be used to carry out or enforce any restriction on the export of any agricultural commodity." See 126 CONG. REC. 19087, 96th Cong. 2d Sess., July 22, 1980.

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

20. 124 CONG. REC. 24436, 24437, 95th Cong. 2d Sess.

national narcotics control shall not be used for the eradication of marijuana through the use of the herbicide paraquat, unless the paraquat is used in conjunction with another substance or agent which will effectively warn potential users of marijuana that paraquat has been used on it." . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I make a point of order against the amendment because it is not a proper limitation on an appropriation bill but is legislation on an appropriation bill. It requires additional duties of some person or persons in the Government, not only to determine whether or not the herbicide named is being used but to go beyond that and also determine whether it is being used in conjunction with another substance as a warning, and so on. None of this is authorized by law. It is legislation on an appropriation bill. . . .

MR. WAXMAN: Mr. Chairman, the authorization bill has similar language that would provide for this kind of restriction in the use of the money and I would consider it an essential point of what we are trying to accomplish in the appropriation bill. . . .

Mr. Chairman, the authorization bill has similar language that would provide for this kind of restriction of the use of money I would consider it an essential part of what we are trying to accomplish in the appropriations bill.

THE CHAIRMAN:[1] The Chair is ready to rule.

The Chair will inform the gentleman from California (Mr. Waxman) that the authorization bill is not as yet law. Were it law, the gentleman's amendment might be authorized and in order, but at this point the Chair will, very respectfully, sustain the point of order.

1. Abraham Kazen, Jr. (Tex.).

§ 24. Construing Existing Law; Repealing Existing Law

Generally, language in an appropriation bill proposing to repeal existing law is legislation and not in order. Similarly, an amendment in the form of a limitation but construing or interpreting existing law is legislation and not in order on an appropriation bill.

It is important to note, however, that some amendments have been permitted which resulted in an application or use of funds different from that contemplated in existing law. This may occur where the language of the amendment is drafted strictly as a negative limitation or restriction on the use of funds, and does not explicitly change a formula for distribution or allocation of funds that is prescribed in existing law.[2]

2. For discussion of criteria applicable in determining whether a provision comprises language of "negative limitation," see § 64, infra.

Also of interest is a ruling on Mar. 4, 1954, discussed in § 74.3, infra. In

General Rule

§ 24.1 Language in an appropriation bill proposing to repeal existing law is legislation and not in order.

On Jan. 31, 1936,[3] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 10630), a point of order was raised against the following amendment:

MR. [ROY E.] AYERS [of Montana]: Mr. Chairman, I offer an amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. Ayers: Page 48, line 14, insert a paragraph, as follows:

"That portion of section 1 of the act approved August 12, 1935 (49 Stat. 571–584), known as the Second Deficiency Appropriation Act, fiscal year 1935, providing $806,000 for construction, enlargement, or improvement of public-school buildings as authorized by and in conformity with numerous acts of the Seventy-fourth Congress, approved June 7, 1935, fiscal year 1936, is hereby amended so as to repeal the provisions for recoupment by the United States, on account of expenditures thereunder, and the amounts appropriated for assistance of the said public-school districts are hereby declared to be an outright grant to the various public-school districts mentioned therein."

MR. [EDWARD T.] TAYLOR [of Colorado]: Mr. Chairman, I make a point of order against the amendment on two grounds; first, it is clearly legislation and has no business in this bill; and, secondly, it is not germane, because we have considered and passed the provision in the bill where it should have been offered.

THE CHAIRMAN:[4] The Chair is ready to rule. The amendment offered by the gentleman from Montana [Mr. Ayers] proposes to repeal legislation; therefore the point of order is sustained.

Limit on Number of Housing Units

§ 24.2 To an appropriation bill an amendment repealing a provision of existing law (contained in a prior appropriation bill) which had placed a limit upon the number of dwelling units which the Public Housing Administration could authorize to be constructed in certain years was held to be legislation.

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that instance the Chair ruled that, where an amendment to an appropriation bill provided that no part of any appropriation in the bill be used for compensation of any officer or employee of a designated bureau who for the purposes of the Hatch Act, "shall not be included within the construction of the term "officer" or "employee," the language was in order as a limitation. The determinations of employment status were, it should be noted, already required by law.

3. 80 CONG. REC. 1308, 74th Cong. 2d Sess.

4. Robert L. Doughton (N.C.).

On Mar. 30, 1954,[5] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 8583), a point of order was raised against the following amendment:

Amendment offered by Mr. [Abraham J.] Multer [of Illinois]: On page 29, at line 12, insert a new section:

"That part of Public Law 176 of the 83d Congress (an appropriation measure), reading: '*Provided further*, That notwithstanding the provisions of the United States Housing Act of 1937, as amended, the Public Housing Administration shall not, with respect to projects initiated after March 1, 1949, (1) authorize during the fiscal year 1954 the commencement of construction of in excess of 20,000 dwelling units or (2) after the date of approval of this act, enter into any new agreements, contracts, or other arrangements, preliminary or otherwise, which will ultimately bind the Public Housing Administration during fiscal year 1954 or for any future years with respect to loans or annual contributions for any additional dwelling units or projects unless hereafter authorized by the Congress to do so, and during the fiscal year 1954 the Housing and Home Finance administrator shall make a complete analysis and study of the low-rent public housing program and, on or before February 1, 1954, shall transmit to the Appropriations Committees of the House and Senate his recommendations with respect to such low-rent public program,' is hereby repealed."

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, a point of order.

THE CHAIRMAN:[6] The gentleman will state it.

MR. PHILLIPS: Mr. Chairman, I make a point of order against the amendment, that the Chair has already ruled against similar amendments twice on the ground that it is legislation on an appropriation bill. I make the same point now. It changes existing law, Mr. Chairman. . . .

THE CHAIRMAN: The Chair is prepared to rule. The language of the amendment is obnoxious to the rule prohibiting legislation on an appropriation bill. It seeks to repeal existing legislation, and therefore the amendment is itself legislation.

The Chair sustains the point of order.

Ending Future Authorization

§ 24.3 In an appropriation bill, where an appropriation is authorized by a law which would remain effective in the future, words designating an appropriation as "a final appropriation" for "completing" acquisition of certain land under authority of such law were held to constitute legislation.

On Mar. 30, 1954,[7] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 8538), a point of order was raised against the following provision:

The Clerk read as follows:

5. 100 CONG. REC. 4128, 83d Cong. 2d Sess.

6. Louis E. Graham (Pa.).

7. 100 CONG. REC. 4128, 83d Cong. 2d Sess.

Land acquisition, National Capital park, parkway, and playground system: As a final appropriation under authority of the act of May 29, 1930 (46 Stat. 482), as amended, for necessary expenses for the National Capital Planning Commission for completing acquisition of land for the park, parkway, and playground system of the National Capital, to remain available until expended, $545,000, of which (a) $135,000 shall be available for the purposes of section 1 (a) of said act of May 29, 1930, (b) $126,000 shall be available for the purposes of section 1(b) thereof, and (c) $284,000 shall be available for the purposes of section 4 thereof: *Provided*, That not exceeding $26,450 of the funds available for land acquisition purposes shall be used during the current fiscal year for necessary expenses of the Commission (other than payments for land) in connection with land acquisition.

MR. [HOWARD W.] SMITH of Virginia: Mr. Chairman, a point of order.

THE CHAIRMAN:[8] The gentleman will state it.

MR. SMITH of Virginia: Mr. Chairman, I desire to interpose a point of order to the language contained in line 17 on page 35: "as a final appropriation"; and on line 20 against the word "completing." . . .

MR. [JOHN] PHILLIPS [of California]: I will concede the point of order.

THE CHAIRMAN: The Chair sustains the point of order.

Rescission of Contract Authority

§ 24.4 Language in an appropriation bill rescinding a contract authorization carried in a prior appropriation act is legislation and not in order.

On May 1, 1951,[9] during consideration in the Committee of the Whole of the Department of the Interior appropriation bill (H.R. 3790), a point of order was raised against the following provision:

For construction and improvement of facilities under the jurisdiction of the Bureau of Mines, to remain available until expended, $1,250,000: *Provided*, That the unused balance of the contract authorization of $15,000,000 granted in the Interior Department Appropriation Act, 1946, under the head "Synthetic liquid fuels," is hereby rescinded.

MR. [CLEVELAND M.] BAILEY [of West Virginia]: Mr. Chairman, I make a point of order.

THE CHAIRMAN:[10] The gentleman will state the point of order.

MR. BAILEY: Mr. Chairman, I make the point of order against the language contained in line 19, page 25, beginning with the word "*Provided*," and continuing through lines 19, 20, 21, and 22, inclusive, on the ground that it is legislation on an appropriation bill.

MR. [MICHAEL J.] KIRWAN [of Ohio]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The Chair sustains the point of order.

Parliamentarian's Note: Rescissions or deferrals of budget au-

8. Louis E. Graham (Pa.).

9. 97 CONG. REC. 4662, 82d Cong. 1st Sess.

10. Wilbur D. Mills (Ark.).

thority contained in general appropriation bills of previously appropriated funds remain legislative despite jurisdiction conferred upon the Appropriations Committee in Rule X to report separate rescission bills under the Impoundment Control Act of 1974. The rules change in 1974, which gave the Appropriations Committee jurisdiction over rescissions of *appropriations* would not affect cases like the 1951 ruling above, involving rescission of a contract authorization.

Waiver of Previous Limitation

§ 24.5 A limitation in an appropriation bill having become law, a provision in a subsequent appropriation bill for that fiscal year seeking to waive this limitation was conceded to be legislation and was ruled out on a point of order.

On Sept. 15, 1961,[11] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9169), a point of order was raised against the following provision:

The Clerk read as follows:

EXECUTIVE OFFICE OF THE PRESIDENT

Council of Economic Advisers

Salaries and Expenses

For an additional amount for "Salaries and expenses," $170,000: *Provided*, That the appropriations under this head shall be available during the current fiscal year without regard to the limitation on salaries appearing under this head to the General Government Matters, Department of Commerce, and Related Agencies Appropriation Act, 1962.

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Chairman, I make a point of order against the language on page 8, lines 14 to 22 inclusive, on the ground that it is legislation on an appropriation bill.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the further point of order against the language that it, in effect, amends previous law by waiving limitations. . . .

MR. [ALBERT] THOMAS [of Texas]: I hope my colleagues will not force us to offer an amendment. But we will accept it, if you insist on it.

THE CHAIRMAN:[12] The Chair is ready to rule. The gentleman from Texas concedes the point of order.

The point of order is sustained.

Repealing Restriction in Prior Appropriation Law

§ 24.6 An amendment to a supplemental appropriation bill, proposing to repeal a provision of a prior appropriation act and having the effect of

11. 107 CONG. REC. 19728, 87th Cong. 1st Sess.

12. Oren Harris (Ark.).

changing restrictions on the use of funds under that prior act, was held to be legislation and was ruled out as in violation of Rule XXI clause 2.

On Dec. 2, 1971,[13] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 11955), a point of order was raised against the following amendment:

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Steed of Oklahoma.

On Page 15 after line 17 add the following sentence: The first proviso in the second paragraph of title I of Public Law 92–48 is amended by striking the first proviso therein.

MR. [NEAL] SMITH of Iowa: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[14] The gentleman will state his point of order.

MR. SMITH of Iowa: My point is that the amendment refers to a provision that was in an appropriations act but is now a public law. Therefore, the gentleman is trying to amend a public law, and that would be legislation upon an appropriation bill.

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

MR. STEED: Yes, Mr. Chairman. The amendment deals with an office which is included in the bill and involves funds that are under the jurisdiction of the provisions of this bill. It is a limitation and deals with a limitation.

MR. [JAMES G.] O'HARA [of Michigan]: Mr. Chairman, I ask to be heard on the point of order. The provisions which the gentleman from Oklahoma is now offering to strike was carried in the Education Appropriation Act. An effort was made to strike the provision out of the Education Appropriation Act on the ground it was legislation on an appropriation. That point of order was overruled. I do not see how an amendment offering to strike that provision from the Education Appropriation bill could possibly be legislation.

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

Clearly, the amendment offered by the gentleman from Oklahoma would repeal a provision in existing law and would thereby constitute a change in the restrictions on the availability of funds imposed by that law. The Chair holds that the amendment constitutes legislation on an appropriation bill in violation of clause 2, rule XXI, and sustains the point of order.

Repealing Expenditure Limit on Salaries and Expenses for Current Year

§ 24.7 A provision in an appropriation bill repealing a legislative provision in a prior appropriation law that certain expenditures during the fiscal year 1939 by the Na-

13. 117 CONG. REC. 44316, 92d Cong. 1st Sess.

14. Jack B. Brooks (Tex.).

tional Bituminous Coal Commission "shall not exceed an amount equal to the aggregate receipts covered into the Treasury under the provisions of" a specified statute was held to be legislation on an appropriation bill and not in order.

On Mar. 22, 1939,[15] during consideration in the Committee of the Whole of a deficiency appropriation bill (H.R. 5219), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> The paragraph in the Second Deficiency Appropriation Act, fiscal year 1938, under the caption "National Bituminous Coal Commission," is hereby amended by striking out the following proviso: "*Provided*, That expenditures during the fiscal year 1939 under this head and under the head 'Salaries and expenses, office of the Consumers' Counsel, National Bituminous Coal Commission,' shall not exceed an amount equal to the aggregate receipts covered into the Treasury under the provisions of section 3 of the Bituminous Coal Act of 1937."
>
> MR. [J. WILLIAM] DITTER [of Pennsylvania]: Mr. Chairman, I make the point of order against the paragraph that it is legislation on an appropriation bill.
>
> MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, I concede the point of order.
>
> THE CHAIRMAN:[16] The point of order of the gentleman from Pennsylvania is conceded by the gentleman from Virginia, and is therefore sustained.

Sums Appropriated "Without Regard to" Specified Statutes

§ 24.8 In an appropriation for purchases related to the reindeer industry in Alaska, a provision appropriating sums for the purchase, in such manner as the Secretary of the Interior shall deem advisable and without regard to sections 3709 and 3744 of the Revised Statutes, of specified items, was conceded to be legislation and not in order.

On Mar. 15, 1939,[17] the Committee of the Whole was considering H.R. 4852, an Interior Department appropriation The Clerk read as follows, and proceedings ensued as indicated below:

> Reindeer industry, Alaska: For the purchase, in such manner as the Secretary of the Interior shall deem advisable and without regard to sections 3709 and 3744 of the Revised Statutes, reindeer, abattoirs, cold-storage plants . . . and communication and other equipment, owned by nonnatives in Alaska, as authorized by the act of

15. 84 CONG. REC. 3123, 76th Cong. 1st Sess.

16. William P. Cole, Jr. (Md.).

17. 84 CONG. REC. 2789, 2790, 76th Cong. 1st Sess.

September 1, 1937 (50 Stat. 900), $820,000 . . . *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:[18] 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.

§ 25. Construction or Definition of Terms of Bill or Law

Descriptive Term

§ 25.1 An amendment proposing to insert the words "known as 'Rankin Dam'" following an appropriation for Pickwick Landing Dam was held to be legislation and not in order on an appropriation bill.

On May 8, 1936,[19] during consideration in the Committee of the Whole of a deficiency appropriation bill (H.R 12624), a point of order was raised against the following amendment:

MR. [AARON L.] Ford of Mississippi: Mr. Chairman, I offer another amendment.

The Clerk read as follows:

Page 19, line 2, after the words "Pickwick Landing Dam", insert the following: "(known as 'Rankin Dam')."

MR. [JOHN J.] MCSWAIN [of South Carolina]: Mr. Chairman, I make a point of order on the amendment that it is legislation on an appropriation bill. It is evidently an attempt to change the name and call it "Rankin Dam." It is in the teeth of legislation that has been attempted time and time again. There are bills before the Committee on Military Affairs to change the name of this dam to "Rankin Dam."

MR. [HAROLD] KNUTSON [of Minnesota]: I should like to ask the gentleman if it is not customary to wait until the man is dead before they name a dam for him?

MR. MCSWAIN: Yes; it is

THE CHAIRMAN:[20] Does the gentleman from Mississippi wish to be heard on the point of order?

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, if the Chair will permit.

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18. Frank H. Buck (Calif.).

19. 80 CONG. REC. 6965–67, 74th Cong. 2d Sess.

20. John W. McCormack (Mass.).

THE CHAIRMAN: The Chair recognizes the gentleman from Missouri.

MR. CANNON of Missouri: Mr. Chairman, this amendment is not legislation. It is language merely descriptive, and such amendments have been repeatedly held not to be legislation.

I recall two decisions on this point. They were made by one of the greatest parliamentarians who has served in the House, James R. Mann, of Illinois.

The first was made in 1905 when an amendment was offered, I think, to the Naval bill.

The language provided that ships or armament should be of "native manufacture." . . . Mr. James R. Mann, of Illinois, held that those words were merely descriptive and that it was not legislation.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Chairman, will the gentleman yield?

MR. CANNON of Missouri: I yield with pleasure to the distinguished leader on the other side of the House.

MR. SNELL: If the words are merely descriptive, why will they have the effect of changing the name of the dam?

MR. CANNON of Missouri: They do not change the name of the dam. It is not proposed to change the name of the dam.

MR. SNELL: But is not that the intention? I call it legislation. Is not that the intention of the amendment?

MR. CANNON of Missouri: The gentleman from New York, being one of the ablest parliamentarians in the House, knows that the Chairman of the Committee of the Whole may not speculate as to the intention of an amendment. He must predicate his decision on the amendment before him in the language in which it is written. He cannot go back of what is on the face of it to surmise what is the purpose of a Member in offering an amendment. This amendment merely further describes the Pickwick Landing Dam; it does not propose a change in the name; it merely adds the descriptive language "known as the Rankin Dam.". . .

THE CHAIRMAN: The Chair is prepared to rule. The Chair entirely agrees with the gentleman from Missouri [Mr. Cannon], with reference to the use of descriptive words. Therefore, the question in the mind of the present occupant of the chair is whether the amendment is descriptive or whether it constitutes legislation. Without regard to whether or not it brings about a change in the name of the dam from "Pickwick Landing Dam" to "Rankin Dam", it is the opinion of the Chair, with profound respect for the opinion of the gentleman from Missouri, one of the outstanding parliamentarians of all time, that the amendment does not constitute descriptive language; that it constitutes legislation. It is an addition to the language used in this bill. The Chair would rule the same whether or not the legislation referred to by the gentleman from South Carolina [Mr. McSwain] contained the words "Pickwick Landing Dam" or not, because that name is included in the bill now before the House.

Profoundly respecting the views of the gentleman from Missouri, and with considerable hesitation in disagreeing with him, it is the opinion of the Chair that the point of order is well taken, and the Chair therefore sustains the point of order.

Appropriation Carrying Waiver of Limitations Contained Elsewhere in Same Bill

§ 25.2 Where specific appropriations in an appropriation bill were expressly subjected to certain limitations, it was held that subsequent language in the bill might appropriate for other objects "without regard to the amounts of the limitations" so imposed.

On May 17, 1937,[1] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

> Boulder Canyon project: For the continuation of construction of the Boulder Canyon Dam and incidental works in the main stream of the Colorado River at Black Canyon, to create a storage reservoir, and of a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from such reservoir $2,550,000, to be immediately available and there shall also be available from power and other revenues not to exceed $500,000 for operation and maintenance of the Boulder Canyon Dam, power plant, and other facilities; which amounts of $2,550,000 and $500,000 shall be available for personal services in the District of Columbia . . . and for all other objects of expenditure that are specified for projects hereinbefore included in this act, under the caption "Bureau of Reclamation, Administrative provisions and limitations", without regard to the amounts of the limitations therein set forth.
>
> MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I reserve a point of order for the purpose of asking the chairman of the subcommittee the effect of the language in lines 19 and 20 of the paragraph under consideration, "without regard to the amounts of the limitations therein set forth." . . .
>
> MR. [JAMES G.] SCRUGHAM [of Nevada]: Mr. Chairman, the paragraph applies to limitations on appropriations, and I hold it to be clearly in order.
>
> THE CHAIRMAN:[2] The Chair is prepared to rule.
>
> The gentleman from Massachusetts makes the point of order against the language appearing in lines 19 and 20.
>
> There is no point made here that the provisions referred to are not covered by authorization of law. It is apparent from examining this provision, and referring back to the provisions contained on page 68, that the purpose here is to remove certain limitations imposed by the language on page 68 under the heading "Administrative provisions and limitations." Therefore the Chair is of the opinion that this language is not subject to a point of order and overrules the point of order.

1. 81 CONG. REC. 4685, 4686, 75th Cong. 1st Sess. See 83 Cong. Rec. 2707, 75th Cong. 3d Sess., Mar. 2, 1938, for a similar ruling.

2. Jere Cooper (Tenn.).

Army Publications; Exception From Valid Limitation

§ 25.3 A provision in a general appropriation bill providing that no part of the appropriation for pay of the Army shall be available for pay of any officer or enlisted man who is engaged with any publication issued by or for any branch of the Army in which such officers or enlisted men have membership and which carries paid advertising of firms doing business with the War Department and also providing that 'nothing herein . . . shall be construed to prohibit officers from writing . . . articles in accordance with regulations issued by the Secretary of War" was held in order as a valid exception from a limitation (excepting certain activity undertaken in accordance with regulations issued pursuant to existing law).

On Mar. 28, 1938,[3] the Committee of the Whole was considering H.R. 9995, a military appropriation bill. During consideration of the bill, a point of order was overruled as indicated below:

No appropriation for the pay of the Army shall be available for the pay of any officer or enlisted man on the active list of the Army who is engaged in any manner with any publication which is or may be issued by or for any branch or organization of the Army or military association in which officers or enlisted men have membership and which carries paid advertising of firms doing business with the War Department: *Provided, however,* That nothing herein contained shall be construed to prohibit officers from writing or disseminating articles in accordance with regulations issued by the Secretary of War.

Mr. [CHARLES I.] FADDIS [of Pennsylvania]: Mr. Chairman, I make a point of order against the language contained in lines 12 to 22, inclusive, on page 13, that it is legislation on an appropriation bill.

THE CHAIRMAN:[4] Does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. FADDIS: I do not believe that is necessary, Mr. Chairman. This does not decrease any appropriation and does not provide for a decrease in personnel or anything of that kind, and is purely legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Pennsylvania (Mr. Snyder) desire to be heard on the point of order?

MR. [JOHN B.] SNYDER of Pennsylvania: Mr. Chairman, I believe this is just a straight-out limitation, and I do not believe it comes within the provision referred to.

THE CHAIRMAN: What about the last proviso in the last three or four lines of the paragraph:

3. 83 CONG. REC. 4243, 4244, 75th Cong. 3d Sess.

4. Luther A. Johnson (Tex.).

That nothing herein contained shall be construed to prohibit officers from writing or disseminating articles in accordance with regulations issued by the Secretary of War?

MR. SNYDER of Pennsylvania: I may say to the Chair that that does not give any more authority than now exists. It just accepts the authority now existing.

THE CHAIRMAN: Then, under existing law, why is it necessary to have that provision?

MR. [JOHN] TABER [of New York]: Mr. Chairman, it would seem to me that that proviso is clearly a part of the limitation above, because it simply excepts an officer publishing something already permitted by regulations of the Secretary of War. The language is clearly a limitation on an appropriation bill. There is no attempt at legislation, no additional duties required of any officer, or anything of that kind. . . .

THE CHAIRMAN: The Chair is of opinion that the explanation made by the gentleman from New York (Mr. Taber) is correct; that the last proviso is simply an exception from the limitation, and the Chair, therefore, overrules the point of order and holds that the paragraph is a proper limitation.

Defining Expenses as Non-administrative

§ 25.4 Where an appropriation bill placed a limit on administrative expenses, a provision defining certain expenses as "nonadministrative," for purposes of making the computation under the limitation was held to be legislative and was ruled out on a point of order.

On Jan. 17, 1940,[5] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7922), a point of order was raised against the following provision:

The Clerk read as follows:

Electric Home and Farm Authority, salaries and administrative expenses: Not to exceed $600,000 of the funds of the Electric Home and Farm Authority, established as an agency of the Government by Executive Order No. 7139 of August 12, 1935, and continued as such agency until June 30, 1941 by the act of March 4, 1939 (Public Act No. 2, 76th Cong.), shall be available during the fiscal year 1941 for administrative expenses of the Authority, including personal services in the District of Columbia and elsewhere; travel expenses, in accordance with the Standardized Government Travel Regulations and the act of June 3, 1926, as amended (5 U.S.C. 821-833); not exceeding $3,000 for expenses incurred in packing, crating, and transporting household effects (not exceeding 5,000 pounds in any one case) of personnel when transferred in the interest of the service from one official station to another for permanent duty when specifically authorized in the order directing the transfer; printing and binding; lawbooks and books of reference; not to exceed $200 for periodicals, newspapers, and maps; procurement of supplies, equipment, and services; typewriters, adding machines, and other labor-saving devices, including

5. 86 CONG. REC. 439, 76th Cong. 3d Sess.

their repair and exchange; rent in the District of Columbia and elsewhere; and all other administrative expenses: *Provided,* That all necessary expenses (including legal and special services performed on a contract or fee basis, but not including other personal services) in connection with the acquisition, care, repair, and disposition of any security or collateral now or hereafter held or acquired by the Authority shall be considered as non-administrative expenses for the purposes hereof.

MR. [FRANCIS H.] Case of South Dakota: Mr. Chairman, I make the point of order against the paragraph that it contains legislation in the proviso beginning on page 21, line 3, and reading as follows:

Provided, That all necessary expenses (including legal and special services performed on a contract or fee basis, but not including other personal services) in connection with the acquisition, care, repair, and disposition of any security or collateral now or hereafter held or acquired by the Authority shall be considered as nonadministrative expenses for the purposes hereof.

I make the point of order merely against the proviso, Mr. Chairman, not against the paragraph.

THE CHAIRMAN:[6] Does the gentleman from Virginia desire to be heard on the point of order?

MR. [CLIFTON A.] WOODRUM of Virginia: I do not, Mr. Chairman.

THE CHAIRMAN: As the language pointed out by the gentleman from South Dakota [Mr. Case] attempts to construe existing law, the Chair believes the point of order is well taken. The point of order is, therefore, sustained, and the proviso is stricken out.

6. Lindsay C. Warren (N.C.).

Exceptions to Limitations

§ 25.5 In making an appropriation it is in order to except from the operation of a limitation thereon propositions authorized by law by language not changing the application of that law.

On Apr. 17, 1943,[7] the Committee of the Whole was considering H.R. 2481, an Agriculture Department appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [Edward H.] Rees of Kansas: On page 63, line 2, after the colon, insert as follows: "*Provided further,* That no payment or payments hereunder to any one person or corporation shall be in excess of the total sum of $500: *And provided further,* That this limitation shall not be construed to deprive any share renter of payments not exceeding the amount to which he would otherwise be entitled.". . .

MR. [CLIFFORD R.] HOPE [of Kansas]: Mr. Chairman, I offer an amendment to the amendment

The Clerk read as follows:

Amendment offered by Mr. Hope to the amendment offered by Mr. Rees of Kansas: Add the following:

"*And provided further,* That in applying this limitation there shall be excluded amounts representing landlord's share of a payment made with respect to land operated under a tenancy or sharecropper relationship if the division of the payment between

7. 89 CONG. REC. 3526, 3527, 78th Cong. 1st Sess.

the landlord and tenant or sharecropper is determined by the local committee to be in accord with fair and customary standards of rent and sharecropping prevailing in the locality. In the case of payments to any person on account of performance on farms in different States, Territories, or possessions, the limitation shall be applied to the total of the payments for each State, Territory, or possession for a year and not to the total of all payments.". . .

MR. [MALCOLM C.] TARVER [of Georgia]: As I understood the reading of the amendment, the amendment clearly contains legislation. It changes the terms of existing law with reference to the method of computation of payments of the kind provided for in the paragraph. It does not on its face indicate any saving of funds carried in this paragraph of the bill so as to come within the provisions of the Holman rule. It places upon administrative authorities additional duties to perform to those duties which are now required by law, and it seems to me that it is for these reasons clearly legislative in character. . . .

MR. HOPE: I submit, Mr. Chairman, that the amendment is purely a limitation. It is a modification of the limitations contained in the amendment offered by the gentleman from Kansas [Mr. Rees]. It provides simply that under certain circumstances the Rees amendment shall not be operative. It is not legislation, it is simply a modification of the Rees amendment.

THE CHAIRMAN:[8] The Chair will ask the gentleman from Kansas and also the gentleman from Georgia whether or not it is true that under the Soil Conservation and Allotment Act or under regulations provided by the law there is a method for ascertaining the relationship between the shares accruing to landlords and tenants and the amounts that are to be paid to landlords and tenants? In other words, the question is whether or not any additional provision or legislation to those now existing by law or by rules and regulations are embraced in the gentleman's limitation?

MR. HOPE: There is a provision in the Triple A Act—I cannot quote it word for word—which does relate to the relationship between landlord and tenant and provides that the relationship shall not be changed where it once exists.

THE CHAIRMAN: Does the gentleman from Georgia desire to make any response to the inquiry?

MR. TARVER: I have no further statement to make, Mr. Chairman.

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

A point of order is made to the amendment on the ground that it is legislation on an appropriation bill. It is replied that under the Soil Conservation Act and under the rules authorized by that act, as stated by the gentleman from Kansas [Mr. Hope] and in response to the Chair's inquiry, that the rules and regulations provide now for determination by local committees substantially as provided in this limitation. The Chair understands that in the Soil Conservation and Domestic Allotment Act there is a limitation with respect to the total payments in the several States or territories. In view of the statements made by the gentleman from Kansas [Mr. Hope]

8. William M. Whittington (Miss.).

that are not controverted by any statute or regulation brought to the attention of the Chair, and in view of the construction placed upon the act and the rules and regulations under the act, the Chair is constrained to hold that the pending amendment is a further limitation upon the limitation pending as proposed by the gentleman from Kansas [Mr. Rees].

As the Chair interprets the amendment of the gentleman from Kansas [Mr. Hope] it does not change the terms of existing law with respect to the method of ascertaining payments or the duties of local committees. It does not place upon the administrative authorities any additional duties to perform. No duties will be performed except those now required by law. The local committees under rules and regulations now pass upon the standards of rent and sharecropping. Under the rules and regulations as authorized by the Soil Conservation Allotment Act these committees would pass upon the leasing and sharecropping under the Rees amendment. The said committees would do no more and no less under the Hope amendment. Under existing law and under the Rees amendment the landlord's share would be determined and the tenant's share would be determined by the local committees. Under existing law and under the Hope amendment the local committees would perform the same functions that they would perform under the Rees amendment. No additional legislation is contained in the amendment. No additional duties are prescribed. The Rees amendment and the Hope amendment neither contemplate any additional duties nor any additional obligations. They require the performance of no additional duties. The Rees amendment is a limitation and the Hope amendment is a further limitation, and as such is a limitation of the same kind as the Rees amendment, with no additional functions to be performed by the local committee.

The Chair overrules the point of order.

Education; Language Defining the Scope of Busing Limitation

§ 25.6 To provisions prohibiting the use of funds in the bill for purposes, in part, of promoting busing in school districts, amendments limiting the application of such provisions to school districts which are not formed on the basis of race or color were held in order as not imposing additional duties on the federal official administering the funds.

On Feb. 19, 1970,[9] the Committee of the Whole was consid-

9. 116 CONG. REC. 4029, 91st Cong. 2d Sess. The provisions which the proposed amendments sought to modify stated:

"Sec. 408. No part of the funds contained in this Act may be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of any student attending any elementary or secondary school to a particular school against

ering H.R. 15931, a Departments of Labor and Health, Education, and Welfare appropriation bill. The following proceedings took place:

Amendments offered by Mr. [James G.] O'Hara [of Michigan]: On page 60, line 20 after the words "school district" insert "in which students are assigned to particular schools on the basis of geographic attendance areas drawn without consideration of the race or color of prospective students and in which personnel are assigned without regard to race or color" and on line 23 after the words "particular school" insert the words "other than his neighborhood school.". . .

MR. GERALD R. FORD [of Michigan]: Mr. Chairman, I reserve a point of order against the amendments as legislation on an appropriation bill. . . .

But to refer to the point of order, as I read the language proposed in the amendment, it seems crystal clear to me that the language imposes on the executive branch additional burdens and consequently is contrary to the rules of the House as far as legislation on an appropriation bill is concerned. . . .

MR. O'HARA: . . . Mr. Chairman, the limitation is in sections 408 and 409. It is a bona fide limitation. All my amendment seeks to do is to prescribe with particularity the school districts to which the limitation in sections 408 and 409 will apply. . . .

THE CHAIRMAN:[10] The Chair is prepared to rule.

The Chair has had occasion to study both of the amendments and the language contained therein. It is clear to the Chair that the language relates to the limitations which are already a part of sections 408 and 409. It defines the limitations further by adding an additional definition to the limitations and in the opinion of the Chair is negative insofar as additional action is concerned on the ground that it really is a description of the school district as it exists at the present time. Therefore, the Chair is constrained to overrule the point of order.

Definition of "Person" in Agriculture Appropriation Bill

§ 25.7 To an agricultural appropriation bill, an amendment curtailing the use of funds therein for price support payments to any person in excess of $30,000 per year and providing that "for the purpose of this [amendment] the term 'person' shall mean an individual, partnership, firm, joint stock company," or the like, was ruled out as legislation.

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the choice of his or her parents or parent.

"Sec. 409. No part of the funds contained in this Act shall be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of students to a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school."

10. Chet Holifield (Calif.).

On May 26, 1965,[11] 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 H.] MICHEL [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Michel: On page 33, line 24, after the word "hereof", strike the period, insert a colon and the following: "*Provided further:* (a) That none of the funds herein appropriated may be used to formulate or carry out price support programs during the period ending June 30, 1966, under which a total amount of price support payments in excess of $30,000 would be made to any person . . . (b) That for the purposes of this proviso 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.". . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I should like to read, if I may, the first part of the amendment, as I make the point of order against it:

Provided, That none of the funds herein appropriated may be used to formulate or carry out price support programs during the period ending June 30, 1966, under which a total amount of price support payments in excess of $30,000 would be made to any person.

I respectfully submit that this not only would require some new duties but also would require the opening up of individual accounts. This makes it quite clearly subject to a point of order.

I might point out that subsection (b), where the definitions are given, would require a determination and also would call for special duties.

THE CHAIRMAN:[12] Does the Chair correctly understand that the gentleman from Mississippi has stated his point of order against the pending amendment?

MR. WHITTEN: Yes.

MR. MICHEL: Mr. Chairman, I should like to be heard on the point of order. I submit, Mr. Chairman, it falls strictly within the Holman rule on retrenching, as a limitation. The Department of Agriculture has all kinds of statisticians. We appropriate money for them. They have the wherewithal to make any kind of determination we see fit to legislate. In this sense, it is a retrenchment, in my opinion.

THE CHAIRMAN: . . . The Chair has read the amendment offered by the gentleman from Illinois. The Chair is of the opinion that even though any limitation imposed upon an executive agency may add to the burdens of that executive agency, a limitation of an appropriation is in good order. The Chair, therefore, would say to the gentleman from Illinois that in the opinion of this occupant of the chair, he has offered an amendment which is in form a limitation. But in addition thereto, he has added language which defines a person, and in the opinion of the Chair that language is legislation on an appropriation bill and is therefore out of order.

The Chair sustains the point of order.

11. 111 CONG. REC. 11655, 11656, 89th Cong. 1st Sess.

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

Parliamentarian's Note: For a provision held in order as a limitation, see the ruling on Mar. 4, 1954, discussed in § 74.3, infra. In that instance the Chair ruled that, where an amendment to an appropriation bill provided that no part of any appropriation in the bill be used for compensation of any officer or employee of a designated bureau who for the purposes of the Hatch Act, "shall not be included within the construction of the term 'officer' or 'employee'," the language was in order as a limitation. The determinations of employment status were, it should be noted, already required by law.

Public Buildings Administration—Teletype Service

§ 25.8 Language broadening beyond existing law the definition of services to be funded by an appropriation was held to be legislation.

On Dec. 6, 1944,[13] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 5587), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> PUBLIC BUILDINGS ADMINISTRATION
>
> The words "other services" appearing in the proviso clause under the head "Salaries and expenses, public buildings and grounds in the District of Columbia and adjacent area," fiscal year 1945, shall be deemed to include teletype service and telephone switchboards or equivalent telephone-switching equipment serving one or more governmental activities in buildings operated by the Public Buildings Administration where it is found that such service is economical and in the interest of the Government.

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Chairman, I make a point of order against the words "Teletype service and" in the paragraph just read, on the ground that they constitute legislation and would make funds available for projects not authorized by law.

I may say in this connection, Mr. Chairman, that I think there is no objection to the installation of teletype services in certain agencies of the Government, but as provided in this paragraph and in the paragraph immediately following there would be established a broad authorization to install teletype services wherever they could be put in any building administered by the Public Buildings Administration. It seems to me entirely too broad. This question has been discussed before the Independent Offices Committee and the belief there was that teletype installations should be permitted only in specific instances where a definite need is shown.

THE CHAIRMAN:[14] The Chair will hear the gentleman from Missouri [Mr. Cannon] on the point of order.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, there is no ground upon which the point of order

13. 90 CONG. REC. 8940, 78th Cong. 2d Sess.

14. Herbert C. Bonner (N.C.).

against this provision can be sustained. This is a regularly established and recognized means of communication which any department is authorized to use in furtherance of the administration of its duties. There is no law under which it is denied, no provision of law under which it can be excluded. It is merely one of the regularly included provisions for carrying out the law and I see no grounds at all on which the point of order can be sustained.

MR. CASE: Mr. Chairman, I call the Chair's attention to the following colloquy in the hearings on this item, page 125:

> THE CHAIRMAN: Why should it be necessary to make this modification?
>
> MR. CAMERON: That is a change in language for the P.B.A. in order to facilitate the handling of the reimbursable services transferred from O.E.M. Their communication and leasing services were transferred to the Public Buildings Administration as of October 1, 1944.
>
> THE CHAIRMAN: You could not handle it under the present limitations?
>
> MR. CAMERON: That is right

On the record of the hearings, then, this bill at the point cited is a change of law. It changes existing legislation by providing that the words "'Other services' shall be deemed to include teletype services." On the record of the hearings themselves, as brought out by the chairman, an existing limitation is proposed to be changed. Consequently, it does change existing law.

MR. CANNON of Missouri: That, of course, is true. Of course, you have to put it in the bill; but there is no law against including it in the bill, the committee having reported it. It does not change existing law.

THE CHAIRMAN: On the basis of the statement made by the gentleman from Missouri, the Chair must sustain the point of order.

Grant of Authority Based on Determination of National Defense Needs

§ 25.9 To an appropriation bill, an amendment construing language therein to grant authority to withdraw or withhold funds for specific military construction projects upon a determination that elimination of such projects would not adversely affect national defense, was held to be legislation and therefore not in order.

On July 12, 1956,[15] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 12138), a point of order was raised against the following amendment:

> Amendment offered by Mr. (John) Taber (of New York): On page 10, line 7, strike out the period, insert a semicolon "*Provided further,* That nothing herein shall be so construed as to prohibit withholding or withdrawing funds for specific projects or installations when such projects or installations can be eliminated or deferred without adverse effect on the national interest."

15. 102 Cong. Rec. 12551, 12552, 84th Cong. 2d Sess.

MR. (HARRY R.) SHEPPARD (of California): Mr. Chairman, I reserve a point of order on the amendment.

MR. TABER: Mr. Chairman, I have offered this amendment to follow the language and the word "installation" on line 7. I have offered it because, although it is not as good as what I had in mind myself, it would permit the armed services to stop the use of funds upon projects that had gone sour or had been dropped because they were not needed any longer.

The way the language in section 309 reads they would not have the power to do that. No one else would have the power to do it, and it would be a menace to our whole military situation.

I am in hopes that the gentleman on the other side of the aisle will agree to accept this amendment. It is in the nature of a compromise. Frankly, it can be drawn so that it will not in the slightest degree be subject to a point of order, but I thought perhaps those who misconstrue the language that they have brought in here might be willing to accept this. I do not think it would be safe for us to pass this kind of a provision. For that reason. I have offered this amendment and I hope it will be adopted.

MR. SHEPPARD: Mr. Chairman, due to the fact that as far as I know the only complaint comes from Assistant Secretary McNeil and not from either of the three services, I insist upon my point of order.

MR. TABER: Mr. Chairman, I do not think this is subject to a point of order. It does not call for additional duties. It is simply a limitation upon a restriction that is set up in the language. It is clearly germane to the language.

THE CHAIRMAN:[16] Does the gentleman from California desire to be heard on the point of order?

MR. SHEPPARD: I merely wish to call the Chair's attention to the fact that it imposes additional duties and that it also is legislation on an appropriation bill.

THE CHAIRMAN: The gentleman from New York has offered an amendment to which the gentleman from California has interposed the point of order that the amendment imposes additional duties and is legislation on an appropriation bill.

The Chair is prepared to rule

In the opinion of the Chair the amendment proposed by the gentleman from New York does impose an additional burden upon the person administering the funds, and, therefore, constitutes legislation on an appropriation bill.

The point of order is sustained.

Construing Language in Exception to Limitation

§ 25.10 Where a limitation in an amendment to an appropriation bill prohibited certain payments to persons in "excess of . . . $500," a further provision stating that such limitation would not be "construed to deprive any share renter of payments" to which he might be otherwise entitled was held to be in order as an exception to a limitation.

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16. Paul J. Kilday (Tex.).

On Mar. 24, 1944,[17] during consideration of the Agriculture Department appropriation bill for 1945 (H.R. 4443), the following proceedings occurred:

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Rees of Kansas: On page 62, line 5, after the colon following the word "inclusive", insert the following: "Provided further, That no payment or payments hereunder to any one person or corporation shall be in excess of the total sum of $500: And provided further, That this limitation shall not be construed to deprive any share renter of payments not exceeding the amounts to which he would otherwise be entitled."

MR. [MALCOLM C.] TARVER (of Georgia): Mr. Chairman, I make a point of order against the amendment because of the inclusion of the second proviso therein, which, in my judgment, constitutes legislation upon an appropriation bill. It is in effect a construction of the preceding proviso, and which legislatively provides that the preceding proviso in the case of tenants shall not be taken at its face value but that a different rule shall be applicable to them. Because that provision is included, I think the entire amendment is subject to a point of order because of its being legislative in character. . . .

[I]t is my opinion, having heard the amendment read, although I have not had the opportunity to examine it carefully, that the second proviso does not constitute merely an exception to the limitation made in the first proviso, but it is legislative in character and constitutes a legislative construction of the language contained in the first proviso and is, therefore, clearly in itself legislation. I know no reason why the gentleman from Kansas should not offer or be permitted to offer the first proviso. But I think the second proviso which reads, "*And provided further,* That this limitation shall not be construed to deprive any share renter of payments not exceeding the amount to which he would otherwise be entitled," is clearly a legislative construction of the preceding proviso and, therefore, in itself constitutes legislation.

THE CHAIRMAN:[18] Does the gentleman from Kansas desire to be heard further?

MR. REES of Kansas: Just one point. Let me observe that the so-called limitation is a limitation only on the first proviso of the amendment and does not constitute legislation on the bill.

THE CHAIRMAN: The Chair is ready to rule. The Chair is of the opinion that the second proviso constitutes an exception to the provisions of the amendment as contained in the first proviso. The Chair overrules the point of order.

Mr. Rees subsequently made the following remarks concerning the amendment:

MR. REES of Kansas: Mr. Chairman, this amendment is identical with one I submitted and was adopted by the House last year. It went to another

17. 90 CONG. REC. 3095, 78th Cong. 2d Sess. For discussion of exceptions from limitations generally, see § 66, infra.

18. William M. Whittington (Miss.).

body and was eliminated by the members of the conference committee. The amendment simply limits the payment under this program to any one person, firm, or corporation to a maximum of $500. Share renters also participate up to $500.

Mr. Chairman, there is a considerable misunderstanding with regard to what is known as the soil-conservation program in the Department of Agriculture. The Soil Conservation Service has its own organization and has been in effect for many years. We appropriate approximately $30,000,000 per year for it. That agency employs hundreds of soil experts, and other trained men to render assistance with respect to soil conditions, crops, conservation, crop rotation, and any and all kinds of advice and information is furnished free to the farmers. This agency, although not so much publicized, has done a great amount of real constructive work.

This section of the legislation deals with payments that are allowed by the Government for following certain land programs and practices laid out by the Agricultural Adjustment Agency. These payments are, as the legislation suggests, in compliance with the Agricultural Adjustment Act of 1936 as amended in 1938. Now, Mr. Chairman, all I am asking is that since this money is paid by taxpayers, from the Federal Treasury, that payments be limited to $500.

Parliamentarian's Note: Although the above ruling indicates that it is in order to except from the operation of a specific limitation on expenditures, certain of those expenditures which are authorized by law, by prohibiting a construction of the limitation in a way which would prevent compliance with that law, this principle should be applied in the light of a further ruling, on Aug. 27, 1980.[19] In the 1980 ruling, it was held that an amendment to a general appropriation bill which does not limit or restrict the use or expenditure of funds carried in the bill, but which provides directions on the way in which the bill must be interpreted or construed, is legislation.

Defining Terms in Limitation; Reference to President's Budget

§ 25.11 An amendment in the form of a limitation on funds in the bill but measured against a provision in the President's budget request, and also containing definitions of the terms of the limitation, was held to be legislative in effect

On July 26, 1951,[20] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 4740), a point of order

19. 126 CONG. REC. 23535, 96th Cong. 2d Sess.

20. 97 CONG. REC. 8981, 8982, 82d Cong. 1st Sess.

was raised against the following amendment:

Amendment offered by Mr. [Lawrence H.] Smith of Wisconsin: Page 58, line 14, insert a colon at the end of the sentence and add the following: "*Provided further*, That any funds provided by this act shall not be available for the compensation of persons performing information functions or related supporting functions in excess of 75 percent (on an annual basis) of the amount budgeted therefor in the President's budget for 1952. For the purposes of this section the term 'information function' means functions usually performed by a person designated as an information specialist, information and editorial specialist, publications and information coordinator, press relations officer or counsel, or publicity expert, or designated by any similar title; and the term 'related supporting functions' means functions performed by persons who assist persons performing information functions in the drafting, preparing, editing, typing, duplicating, or disseminating of public information, publications or releases, radio or television scripts, magazine articles, and similar materials."

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from Wisconsin (Mr. Smith) on the ground it is legislation on an appropriation bill, legislation defining terms and functions; therefore, contrary to the rules of the House. . . .

MR. SMITH of Wisconsin: Mr. Chairman, it is my view that this amendment is in order and that it is germane to the bill now under consideration. It provides merely for a limitation on this appropriation bill of 25 percent in the amount that can be used. . . .

THE CHAIRMAN:[1] the Chair is prepared to rule. . . .

While the gentleman may intend the amendment as a limitation, it certainly contains language that goes further than a mere limitation on an appropriation bill. The provision in the amendment seeking to provide a definition, and other language contained in the amendment, is beyond the scope of a limitation on an appropriation bill. Therefore the Chair sustains the point of order.

Defining Terms in Price Support Program Limitation

§ 25.12 To a general appropriation bill, an amendment limiting the use of funds for payments to farmers, but at 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,[2] 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

1. Jere Cooper (Tenn.).
2. 107 CONG. REC. 9626, 9627, 87th Cong. 1st Sess.

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:[3] 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 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

3. Paul J. Kilday (Tex.).

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.

Limitation Containing Statement of Purpose

§ 25.13 A paragraph in a general appropriation bill limiting the use of funds therein to pay certain employees above a certain rate of pay, but also containing a proviso "to assure" that the limitation did not reduce compensation in certain circumstances, was ruled out as legislation since containing a legislative statement of purpose.

On Aug. 8, 1978,[4] the Committee of the Whole had under consideration the Defense Department appropriation bill (H.R. 13635), when a point of order was sustained against a provision in the bill as indicated below:

The Clerk read as follows:

Sec. 860. None of the funds appropriated by this Act shall be available for the pay of a prevailing rate employee, as defined in paragraph (A) of section 5342(a)(2) of title 5, United States Code, at a rate that is greater than 104 percent of the rate of pay payable to an employee in the second step of the grade of the regular, supervisory, or special wage schedule, in which the prevailing rate employee is serving: *Provided*, That to assure that this limitation does not (1) reduce the rate of pay of a prevailing rate employee, continuously employed after September 30, 1978, as set forth hereafter, below the rate of pay for that employee in effect on September 30, 1978, or (2) prevent such employee from receiving the first 5.5 percent increase in rate of pay as the result of any adjustments in pay pursuant to section 5343 of title 5, United States Code, that become effective on or after October 1, 1978, the pay of a prevailing rate employee who was employed before October 1, 1978, shall not be reduced by this limitation (1) below that to which the employee was entitled based on his or her rate of pay on September 30, 1978. . . .

MR. [RICHARD C.] WHITE [of Texas]: Mr. Chairman, I raise a point of order to section 860, that the provisions of this section constitute legislation in an appropriation bill in violation of rule XXI, clause 2 of the rules and regulations of the House of Representatives.

In support, I cite Deschler's Procedures, page 367, section 1.2, in which it states:

4. 124 CONG. REC. 24969, 24970, 95th Cong. 2d Sess.

Language in an appropriation bill changing existing law is legislation and not in order.

And Cannon's Precedents, section 704, which states that the language controlling executive discretion is legislation and is not in order on an appropriation bill.

I believe that section 860 enacted into law can be construed as requiring lower payment of salaries than may be required by law, specifically Public Law 93–952, and thus it changes existing law. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the object of the provision is to limit expenditures and retrench programs and expenditures, it is a limitation on an appropriation bill, which is designed to save tremendous sums of money over the long run.

THE CHAIRMAN:[5] The Chair is ready to rule.

The first part of the section seems to be a proper limitation, however the proviso placed on line 3, page 57, certainly is a legislative statement of purpose and not merely an exception from the limitation.

The Chair sustains the point of order against the entire section.

Definition of Term in Abortion Limitation; Requiring Finding of Intent

§ 25.14 An amendment to a general appropriation bill prohibiting the use of funds therein for abortions or abortion-related material and services, and defining "abortion" as the intentional destruction of unborn human life, which life begins at the moment of fertilization was conceded to impose affirmative duties on officials administering the funds (requiring determinations of intent of recipients during abortion process) and was ruled out as legislation in violation of Rule XXI clause 2.

On June 27, 1974,[6] during consideration of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 15580), a point of order was sustained against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [Angelo D.] Roncallo of New York: Amend H.R. 15580 by adding a new section 412 on page 39 of the bill as follows:

Sec. 412. No part of the funds appropriated under this Act shall be used in any manner directly or indirectly to pay for abortions or abortion referral services, abortifacient drugs or devices, the promotion or encouragement of abortion, or the support of research designed to develop methods of abortion, or to force any State, school or school district or any other recipient of Federal funds to provide abortions or health or disability insurance abortion benefits. As used in this section, abortion

5. Daniel D. Rostenkowski (Ill.).

6. 120 CONG. REC. 21687, 93d Cong. 2d Sess.

means the intentional destruction of unborn human life, which life begins at the moment of fertilization. . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make a point of order against the amendment on the ground that this is legislation in an appropriation bill and it requires the imposition of new duties upon members of the executive branch, upon other officers of the Federal Government in order to determine when life begins. When does fertilization occur?

As part of this amendment, the Chair will note that abortion means the intentional destruction of unborn human life, which life begins at the moment of fertilization. That imposes duties upon somebody to determine as of what point, as of what moment in time that occurs.

For these reasons, Mr. Chairman, and also it restricts the definition of the term and it imposes new duties on outside officials in determining whether the definition has been complied with. . . .

MR. RONCALLO of New York: Mr. Chairman, I am conceding the point of order and offering another amendment.

THE CHAIRMAN:[7] The gentleman concedes the point of order and the Chair sustains the point of order. The amendment is ruled out.

Directions on Interpretation of Bill

§ 25.15 An amendment to a general appropriation bill which does not limit or restrict the use or expenditure of funds carried in the bill, but which provides directions on the way in which the bill must be interpreted or construed, is legislation.

On Aug. 27, 1980,[8] an amendment to a general appropriation bill, providing that nothing in the act shall restrict the authority of the Secretary of Education to carry out the provisions of title VI of the Civil Rights Act of 1964, was ruled out as legislation. The proceedings were as follows:

The Clerk read as follows:

Amendment offered by Mr. [Leon E.] Panetta [of California]: On page 51, after section 308, insert the following new section:

"Sec. 309. Nothing in this Act shall restrict the authority of the Secretary of Education to carry out the provisions of title VI of the Civil Rights Act of 1964." . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I make the point of order that [the amendment] is legislation on an appropriation bill. . . .

MR. PANETTA: . . . I believe this is in line. As a proviso it does not in effect constitute legislation. It really would be a proviso with regard to the other amendments that were in fact adopted. I believe that it is parliamentarily acceptable.

THE CHAIRMAN:[9] The gentleman from Maryland (Mr. Bauman) makes a point of order on the amendment of-

7. James C. Wright, Jr. (Tex.)

8. 126 CONG. REC. 23535, 96th Cong. 2d Sess.

9. Don Fuqua (Fla.).

fered by the gentleman from California (Mr. Panetta).

In reviewing the amendment, it appears that it is not in the form as submitted a restriction or a limitation on the expenditure of funds, or an exception therefrom, but rather does provide certain directions as the way in which the bill must be interpreted and, therefore, is legislation on an appropriation bill.

The Chair sustains the point of order.

§ 26. Authorizing Statute as Permitting Certain Language in Appropriation Bill

Conferral of Discretion as Contemplated by Existing Law

§ 26.1 Appropriations for traveling expenses, including expenses of attendance at meetings considered necessary by the National Bituminous Coal Commission, in the exercise of its discretion, for the efficient discharge of its responsibilities were held authorized by a law permitting inclusion of such language in a general appropriation bill.

On Mar. 14, 1939,[10] the Committee of the Whole was considering H.R. 4852, an Interior Department appropriation. The Clerk read as follows, and proceedings ensued as indicated below:

Salaries and expenses: For all necessary expenditures of the National Bituminous Coal Commission in performing the duties imposed upon said Commission by the Bituminous Coal Act of 1937, approved April 26, 1937 (50 Stat. 72), including personal services and rent in the District of Columbia and elsewhere; traveling expenses, including expenses of attendance at meetings which, in the discretion of the Commission, are necessary for the efficient discharge of its responsibilities . . . $2,900,000. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[11] The gentleman will state it.

MR. TABER: I make a point of order against the paragraph on the ground it delegates additional power and discretion to the Commission, and I call particular attention to lines 23, 24, and 25 of page 9, which also contain the words "in the discretion of the Commission."

It seems to me this makes an appropriation and leaves the amount of the appropriation which shall be spent to the discretion of the Commission or gives the Commission power to determine whether the appropriation should be made. It is the same thing as delegating authority to the Commission to make an appropriation, and is clearly legislation.

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, I desire to be heard in opposition to the point of order.

10. 84 CONG. REC. 2739, 2740, 76th Cong. 1st Sess.

11. Frank H. Buck (Calif.).

If the distinguished gentleman from New York will read title V, section 83, he will find full and ample authority for the language to which he objects. . . .

THE CHAIRMAN: The Chair is ready to rule. The Chair rules that the inclusion of the words "in the discretion of the Commission" is probably covered by the citation given by the gentleman from Oklahoma [Mr. Johnson]. Title V, section 83, of the United States Code provides:

> That no money appropriated by any act shall be expended for membership fees or dues of any officer or employee of the United States in any society or association, etc., or for the expenses or attendance of any person at any meeting or convention of members of any society or association unless such fees, dues, or expenses are authorized to be paid by specific appropriations for such purpose and are provided for in express terms in some general appropriation.

The language in the paragraph under consideration seems to comply with that provision, and the point of order is overruled.

Parliamentarian's Note: This statutory authority is now contained in 5 USC § 5946, and 5 USC § 4110 also specifically authorizes appropriations for attendance at any meetings necessary to improve an agency's efficiency. Thus, *new* discretionary authority is not conferred by this language, since the law provides for its inclusion in a general appropriation bill.

Explicit Waiver of Law; Restrictions on Newspaper Advertisements

§ 26.2 Language in the District of Columbia appropriation bill providing that an appropriation shall not be available for costs of advertisements in newspapers published outside the District of Columbia "notwithstanding the requirement for such advertising provided by existing law" was held not in order on a general appropriation bill.

On Apr. 2, 1937,[12] 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:

The Clerk read as follows:

> For general advertising, authorized and required by law, and for tax and school notices and notices of changes in regulations, $7,000: *Provided,* That this appropriation shall not be available for the payment of advertising in newspapers published outside of the District of Columbia, notwithstanding the requirement for such advertising provided by existing law.

MR. [VINCENT L.] PALMISANO [of Maryland]: Mr. Chairman, I make the point of order to the proviso beginning on line 11, page 13:

12. 81 CONG. REC. 3105, 3106, 75th Cong. 1st Sess.

Provided, That this appropriation shall not be available for the payment of advertising in newspapers published outside of the District of Columbia, notwithstanding the requirement for such advertising provided by existing law.

I make the point of order that that is legislation on an appropriation bill.

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, the law provides that all purchases over $1,000 shall be advertised in newspapers outside the District of Columbia. The purpose of this amendment is to save the District a little money, and if the gentleman from Maryland does not want to do that, it suits me.

MR. PALMISANO: Mr. Chairman, it is not that the gentleman from Maryland does not want to save the District any money. This is a question of whether or not we are going to permit the Committee on Appropriations to come in here and change laws that are now on the statute books. If we are going to permit that in the case of the District of Columbia, we might as well wipe out all legislative committees in this House. That is the question involved.

THE CHAIRMAN:[13] The Chair inquires of the gentleman from Maryland whether his point of order is made to the proviso, beginning on line 11 and extending through line 14?

MR. PALMISANO: It is.

THE CHAIRMAN: The Chair is prepared to rule. The Chair is of opinion that especially the last part of the proviso, beginning with the word "notwithstanding" clearly weighs the provisions of existing law, and therefore changes existing law and would be legislation on a general appropriation bill, which is prohibited by the rules of the House. The Chair, therefore, sustains the point of order.

Waiver of Law; Cultural Relations Program

§ 26.3 To a bill making appropriations for the Department of State, an amendment providing an appropriation for an information and cultural program to be disseminated in foreign countries was held to be unauthorized.

On May 14, 1947,[14] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 3311), a point of order was raised against the following amendment:

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Gary: Page 2, line 18, after the semicolon insert "acquisition, production, and free distribution of informational materials for use in connection with the operation, independently or through individuals, including aliens, or public or private agencies (foreign or domestic), and without regard to section 3709 of the Revised Statutes, of an information program outside of the continental United States, including the purchase of radio time . . . and the purchase,

13. Jere Cooper (Tenn.).

14. 93 CONG. REC. 5291, 5292, 80th Cong. 1st Sess.

rental . . . and operation of facilities for radio transmission and reception, the acquisition of land and interests in land . . . for radio broadcasting and relay facilities, and the acquisition or construction of buildings and necessary improvements on such lands; purchase and presentation of various objects of a cultural nature suitable for presentation (through diplomatic and consular offices) to foreign governments, schools, or other cultural or patriotic organizations . . . not to exceed $13,000 for entertainment."

MR. [KARL] STEFAN [of Nebraska]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[15] The gentleman will state his point of order.

MR. STEFAN: Mr. Chairman, I make the point of order this is not authorized by law and it is legislation on an appropriation bill. . . .

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

MR. GARY: I do not, Mr. Chairman.

THE CHAIRMAN: The Chair is prepared to rule. It is the opinion of the Chair that the amendment does propose legislation on an appropriation bill, the functions therein referred to not being authorized by law.

The point of order is sustained

Consultant Salaries; Setting Limit on Per Diem Permitted by Law

§ 26.4 A provision in a general appropriation bill authorizing expenditures of funds provided in the bill for temporary services of consultants at rates not in excess of $100 per day was held to be in order as a limitation.

On Apr. 24, 1951,[16] the Committee of the Whole was considering H.R. 3790, an Interior Department appropriation bill. The following proceedings took place:

ADMINISTRATIVE PROVISIONS

Appropriations of the Bonneville Power Administration shall be available to carry out all the duties imposed upon the Administrator pursuant to law, including not to exceed $40,000 for services as authorized by section 15 of the act of August 2, 1946 (5 U.S.C. 55a), including such services at rates not to exceed $100 per diem for individuals; purchase of not to exceed 16 passenger motor vehicles of which 12 shall be for replacement only; and purchase (not to exceed 2) of aircraft. . . .

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I make a point of order against the language appearing in the bill beginning with line 24, page 5, and continuing through to line 12, page 6, on the ground it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[17] For the information of the gentleman from Kansas the Chair will read from the United States Code, title 5, on page 79, section 35a:

Temporary employment of experts or consultants; rate of compensation:

15. Carl T. Curtis (Nebr.).

16. 97 CONG. REC. 4307, 82d Cong. 1st Sess.

17. Wilbur D. Mills (Ark.).

The head of any department, when authorized in an appropriation or other act, may procure the temporary (not in excess of 1 year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract and in such cases such service shall be without regard to the civil service and classification laws (but as to agencies subject to sections . . . at rates not in excess of the per diem equivalent of the highest rate payable under said sections, unless other rates are specifically provided in the appropriation or other law) and except in the case of stenographic reporting services by organizations without regard to section 5 of title 41. . . .

As the Chair understands, there is no per diem ceiling fixed in the provision to which the Chair has alluded. The gentleman from New York mentions a ceiling, and then the authority of the committee to place a limitation under that ceiling. Does the gentleman from New York know of some ceiling provided in law for per diem pay?

MR. [JOHN] TABER [of New York]: I do not, but there is legislation to fix the rate of pay, and the authority contained in the legislation would not give the Committee on Appropriations jurisdiction because the jurisdiction of the committee is governed by the rules of the House. You cannot change the rules of the House by legislation.

THE CHAIRMAN: The gentleman from New York is correct that you cannot change the rules of the House by legislation, but the language referred to by the Chair seems to authorize beyond any doubt the per diem payment by this service to individuals. There does not appear to be any ceiling fixed upon what the payment per day may be. So it appears to the Chair that the language contained in the bill in line 4 through "individuals" in line 5 on page 6 is actually in the form of a limitation. Therefore, the Chair overrules the point of order made by the gentleman from Kansas.

Restrictions on Authority of Executive

§ 26.5 In an appropriation bill provisions limiting certain housing starts, prohibiting the use of an appropriation unless certain regulations are adopted, requiring that expenditures of such appropriation be subject to audit, and requiring the performance of duties by local housing authorities were held to be legislation.

On Mar. 30, 1954,[18] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 8583), a point of order was raised against the following provision:

The Clerk read as follows:

Annual contributions: For the payment of annual contributions to public housing agencies . . . $63,950,000: *Provided*, That except for payments required on contracts entered into prior to April 18, 1940, no part of this appropriation shall be available for payment to any public housing agency for expenditure in

18. 100 CONG. REC. 4123, 4124, 83d Cong. 2d Sess.

connection with any low-rent housing project, unless the public housing agency shall have adopted regulations prohibiting [occupancy by] any person other than a citizen of the United States . . . *Provided further,* That all expenditures of this appropriation shall be subject to audit and final settlement by the Comptroller General of the United States under the provisions of the Budget and Accounting Act of 1921, as amended: *Provided further,* That unless the governing body of the locality agrees to its completion, no housing shall be authorized by the Public Housing Administration, or, if under construction continue to be constructed, in any community where the people of that community, by their duly elected representatives, or by referendum, have indicated they do not want it, and such community shall negotiate with the Federal Government for the completion of such housing, or its abandonment . . . and shall agree to repay to the Government the moneys expended prior to the vote or other formal action whereby the community rejected such housing project for any such projects not to be completed . . . *Provided further,* That the record of expenditure of the Public Housing Administration and of the local housing authority on any public housing project shall be open to examination by the responsible authorities of any community in which such project is located, or by the local public housing authority, or by any firm of public accountants retained by either of the foregoing . . . *Provided further,* That notwithstanding the provisions of the United States Housing Act of 1937, as amended, the Public Housing Administration shall not, with respect to projects initiated after March 1, 1949, authorize during the fiscal year 1955 the commencement of construction of in excess of 20,000 dwelling units. . . .

[Points of order were heard.]

THE CHAIRMAN:[19] Does the gentleman from California desire to be heard on these points of order?

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, may I take them up in the order in which they were made.

The effect of the point of order made against the proviso on page 31, line 12, is this, as the committee understands it. It is to remove the limitation and leave the opinion of the Comptroller General to stand that there could then be built no more than 33,000 or 34,000 houses—whatever the exact number is—that were contracted for prior to the adoption of the appropriation bill of 2 years ago for the fiscal year 1953. We concede the point of order. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair has in mind Public Law 176 of the 83d Congress which has been referred to, and the sections which have been quoted here. The Chair also has in mind the provisos and will pass upon the point of order raised by the gentleman from Virginia [Mr. Smith] and the points of order raised by the gentleman from New York [Mr. Multer] beginning on page 29, line 12 and extending to the end of the paragraph. In the opinion of the Chair, the language is purely legislation on an appropriation bill and the Chair sustains the points of order.

Waiver of Law; Requiring Testimony of Congressmen

§ 26.6 To an amendment to a general appropriation bill, an amendment providing

19. Louis E. Graham (Pa.).

that notwithstanding the provisions of any other law, the Constitution or court decisions, no Member of Congress shall refuse to respond to demands for information by executive agencies or private persons or groups was held to be legislation.

On June 22, 1972,[20] during consideration in the Committee of the Whole of a general appropriation bill (H.R 15585), a point of order was raised against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [Garry E.] Brown of Michigan to the amendment offered by Mr. Moorhead: At end of that amendment, insert: "*Provided further,* Notwithstanding the provisions of any other law, the Constitution, or any precedent of the courts, no Member of the Congress shall refuse to answer and appropriately respond to any demand for his presence, his papers, or his records, made by any agency, commission, Department or person of the executive branch, or any proper citizen oriented organization or interested person, making such demand."

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I make a point of order against the amendment to the amendment, and I do not think I need to argue it.

THE CHAIRMAN:[1] Does the gentleman from Michigan (Mr. Brown) desire to be heard on the point of order?

MR. BROWN of Michigan: Mr. Chairman, I defer to my very eloquent and intelligent colleague, and I think he makes a good point.

THE CHAIRMAN: The point of order is sustained.

Waiver of Provision of Procurement Law

§ 26.7 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,[2] it was held that, while 41 USC § 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 appropriation 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

20. 118 CONG. REC. 22107, 92d Cong. 2d Sess.

1. John S. Monagan (Conn.).

2. 121 CONG. REC. 36271, 94th Cong. 1st Sess.

appropriation or other law, but not a bill, to waive its provisions. The proceedings are discussed in § 37.13, infra.

§ 27. Provisions Affecting or Affected by Funds in Other Acts

In General; Language Not Limited to Funds in Bill

§ 27.1 It is not in order, in the guise of a limitation on a general appropriation bill, to deny the use of funds not contained in the bill to pay salaries of persons connected with agencies not covered by the bill.

On June 28, 1971,[3] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9271), a point of order was raised against the following amendment:

MR. WILLIAM D. FORD [of Michigan]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. William D. Ford: On page 36, insert "(a)" immediately after "Sec. 508." in line 10; and immediately below line 14 on page 36 insert the following:

"(b) No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the United States Postal Service, or any officer or employee of the Government of the United States outside the United States Postal Service, who—

"(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any officer or employee of the United States Postal Service from having any direct oral or written communication or contact with any member or committee of Congress in connection with any matter pertaining to the employment of such officer or employee or pertaining to the United States Postal Service in any way, irrespective of whether such communication or contact is at the initiative of such officer or employee or in response to the request or inquiry of such Member or committee; or

"(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, status, pay, or performance or efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any officer or employee of the United States Postal Service, or attempts or threatens to commit any of the foregoing actions with respect to such officer or employee, by reason of any communication or contact of such officer or employee with any Member or committee of Congress as described in paragraph (1) of this subsection."

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I make a point of order against the amendment, and I should like to be heard on the point of order.

THE CHAIRMAN:[4] At this point?

MR. BOW: Yes, Mr. Chairman.

3. 117 CONG. REC. 22442, 22443, 92d Cong. 1st Sess.

4. John S. Monagan (Conn.).

Mr. Chairman, this, it seems to me, is subject to a point of order in several instances. First of all, there is paragraph (b) of the amendment. There is a provision that no part of any appropriation contained in this or any other act shall be available for the payment of the salary of any officer or employee of the U.S. Postal Service. It is not limited to this act but to any other act, which I think makes it subject to a point of order.

Furthermore, under the next provision, which prohibits or prevents, or attempts or threatens to prohibit or prevent, that puts such additional duties on the director of the Postal Service that it becomes almost impossible for him to administer this, particularly as to further threats in the future.

I believe it is very apparent from reading this that additional duties are placed on the executive branch of the Government, on the Postal Service, and in addition to any objections to part (b) or the rest of the amendment, I believe it is sufficient to sustain the point of order.

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

MR. WILLIAM D. FORD: Yes, I do, Mr. Chairman.

First of all, it is not necessary to legislate with this amendment, because the law that this amendment attempts to enforce has been on the books and it has been the law of this country since 1912. We now have substantive law which now very substantially says that you shall not do any of the things set forth in this act. What this amendment proposes to do is withhold the expenditure of the supplemental funds being appropriated by this bill to the operation of the Postal Service from anyone who violates the law that has been the law since 1912. The only determination that is necessary to be made by anybody is not to violate the law. . . .

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

The Chair finds that this amendment does not impose additional duties to the extent that is objectionable under the precedents relating to limitations on appropriation bills. However, the Chair also finds that the amendment does seek to cover matters beyond those which are in the purview of this bill since it provides that no part of any appropriation contained in this or any other act shall be available for certain purposes with respect to officers or employees of the Government whether inside or outside the U.S. Postal Service or agencies covered by this bill.

Therefore, this constitutes legislation on the pending appropriation bill and the Chair sustains the point of order.

Restriction on Corporate Funds Other Than Those Appropriated

§ 27.2 An amendment to an appropriation bill in the form of a limitation which is applicable also to moneys appropriated in other acts is legislation and not in order: an amendment to an appropriation bill providing that no part of any appropriation contained in this act, or of the funds available for ex-

penditure by any corporation included in this act, shall be used for a stated purpose was held to be legislation and not in order.

On May 10, 1950,[5] during consideration in the Committee of the Whole of the general appropriation bill (H.R. 7786), a point of order was raised against the following amendment:

MR. [JACOB K.] JAVITS [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Javits: On page 417, after line 14, insert a new section 1110, and appropriately renumber succeeding sections. The new section to read as follows:

"Sec. 1110. No part of any appropriation contained in this act, or of the funds available for expenditure by any corporation included in this act, shall be used to pay the salary or wages of any person who advocates, or practices the denial to any citizen of the United States of the right to apply for, hold or be promoted in any Government position or office on the grounds of race, color, religion, or national origin."

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I make the point of order against the amendment that it goes beyond the scope of the bill.

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

THE CHAIRMAN:[6] The Chair will hear the gentleman.

MR. JAVITS: Mr. Chairman, I point out that the provision which I have suggested as an amendment will result in retrenchment because it may result in withholding wages or salaries from employees of the United States. That is all that this refers to. It would affect the appropriations made under this act and therefore comes within the rules of propriety as an amendment to an appropriation bill.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from New York [Mr. Javits] has offered an amendment which has been reported. The gentleman from Michigan [Mr. Rabaut] makes a point of order against the amendment on the ground that it goes beyond the scope of the pending bill.

The Chair has examined the amendment offered by the gentleman from New York, and is of the opinion that it does go beyond the scope of the pending bill. The Chair invites attention to the fact that it seeks to affect funds of corporations not necessarily appropriated for in this bill.

The Chair therefore sustains the point of order.

§ 27.3 To an appropriation bill, an amendment in the form of a limitation providing that no funds available for expenditure by any corporation or agency included in this act shall be used for publicity or propaganda purposes was held to go to funds not in the bill and therefore was legislation not in order.

5. 96 CONG. REC. 6834, 81st Cong. 2d Sess.

6. Jere Cooper (Tenn.).

On July 22, 1958,[7] the Committee of the Whole was considering H.R. 13450, a supplemental appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [H. R.] Gross [of Iowa]: On page 29, after line 17, add the following new chapter and paragraph:

"CHAPTER XIV

"No part of any appropriation contained in this act, or any funds available for expenditure by any corporation or agency included in this act, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the Congress."

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, a point of order.

The gentleman's amendment refers to expenditure of funds not in this bill. Therefore, it is legislation on an appropriation bill.

MR. GROSS: It is the same amendment I have offered to previous appropriation bills. It is a limitation upon spending. It has been accepted in other appropriation bills by the Chairman of the Committee. It is simply a limitation, that they cannot spend money for propaganda purposes for the promotion of legislation.

THE CHAIRMAN:[8] It is a limitation on the funds available for expenditure by any corporation or agency included in this act. For that reason the Chair sustains the point of order made by the gentleman from Michigan.

Restriction on Future Funds

§ 27.4 An amendment to a general appropriation bill permanently limiting amounts of farm program payments to producers, even though the money for such payments was not carried in the pending bill, and requiring certain determinations to be made by the Secretary of Agriculture, was held to be legislation and was ruled out on a point of order.

On May 26, 1969,[9] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 11612), a point of order was raised against the following amendment:

MR. [ANCHER] NELSEN [of Minnesota]: Mr. Chairman, I offer a substitute amendment to the amendment offered by the gentleman from Massachusetts [Mr. Conte]:

The Clerk read as follows:

Substitute amendment offered by Mr. Nelsen to the amendment offered by Mr. Conte: On page 22, line 17, strike the period and add a colon and the following: *Provided further,* That notwithstanding any other provision of law, in the case of any pro-

7. 104 CONG. REC. 14664, 85th Cong. 2d Sess.

8. James J. Delaney (N.Y.).

9. 115 CONG. REC. 13759, 13760, 91st Cong. 1st Sess.

ducer entitled to payments for any calendar year after 1969, under price support or commodity program, the Incentive payments, Diversion payments, Price support payments, and Wheat marketing certificate payments to any single recipient, exceeding in the aggregate the amount of $10,000, the amount of such payments with respect to that year to which the producer would otherwise be entitled shall be reduced in accordance with this subsection. If the aggregate amount of the payment is—

"(1) over $10,000 but not over $15,000, the reduction is 10 percent of the excess over $10,000

"(2) over $15,000 but not over $25,000, the reduction is $500 plus 15 percent of the excess over $15,000

"(3) over $25,000 but not over $50,000, the reduction is $2,000, plus 20 percent of the excess over $25,000

"(4) over $50,000 but not over $100,000, the reduction is $7,000 plus 25 percent of the excess over $50,000

"(5) over $100,000 but not over $500,000, the reduction is $19,500, plus 35 percent of the excess over $100,000

"(6) over $500,000 but not over $1,000,000, the reduction is $159,500, plus 45 percent of the excess over $500,000

"(7) over $1,000,000, the reduction is $384,500 plus 55 percent of the excess over $1,000,000.

"For the purposes of this section, payments include the dollar value (as determined by the Secretary of Agriculture) of any payments-in-kind made to a producer, but do not include the amount of any price support loan made to a producer."

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

THE CHAIRMAN:[10] The gentleman will state his point of order.

MR. WHITTEN: Mr. Chairman, this amendment, on its face, will usurp completely the jurisdiction of the Committee on Agriculture. It is not only legislation, but is rather complete, complex, and lengthy. It is certainly not only legislation on an appropriation bill, but it is a substitute on an appropriation bill in the nature of legislation.

THE CHAIRMAN: Does the gentleman from Minnesota wish to be heard on the point of order?

MR. NELSEN: Mr. Chairman, I would submit to this body that if a limitation as provided in the previous amendment is in order, certainly this amendment would also be in order and I ask for a ruling by the Chair.

THE CHAIRMAN: The Chair is prepared to rule. This substitute offered by the gentleman from Minnesota (Mr. Nelsen) is clearly distinguishable from the amendment offered by the gentleman from Massachusetts (Mr. Conte).

The gentleman from Massachusetts (Mr. Conte) offered an amendment which provided that no part of the funds appropriated by this act should be used for certain specific purposes.

The substitute offered by the gentleman from Minnesota (Mr. Nelsen) goes much further than this. It does not constitute a limitation upon this act but indeed applies to other acts and amounts. Clearly in the opinion of the Chair it proposes legislation such as is prohibited in an appropriation bill. Therefore, the Chair sustains the point of order against the substitute.

10. James C. Wright, Jr. (Tex.).

Limitation Must Be Applicable Solely to Funds in Bill

§ 27.5 To a paragraph making appropriations for parity payments, an amendment providing that total payments to any person under soil conservation and parity payments shall not exceed $2,500 was held to be not confined to funds in the bill and therefore legislation.

On Mar. 28, 1939,[11] the Committee of the Whole was considering H.R. 5269, an Agriculture Department appropriation. The Clerk read as follows:

> Amendment offered by Mr. [Edward H.] Rees of Kansas to the amendment offered by Mr. [Clarence] Cannon of Missouri: At the end of Mr. Cannon's amendment add the following: "*Provided*, That total payments to any person, firm, or corporation under soil conservation and parity payments shall not exceed $2,500."
>
> MR. CANNON of Missouri: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill.
>
> THE CHAIRMAN:[12] Does the gentleman from Kansas desire to be heard on the point of order?
>
> MR. REES of Kansas: No, I do not believe I do, Mr. Chairman, although I do not believe it is legislation.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, this is a pure limitation, as I understand it, limiting the amount that can be paid out under the bill to any one person and therefore is clearly in order.
>
> THE CHAIRMAN: The Chair is of the opinion that the amendment is entirely too broad in that it would not only include this appropriation but other appropriations as well and the point of order is therefore sustained.

§ 27.6 To an appropriation bill an amendment providing that no payments shall be made for soil conservation practices on land respecting which such payments have been made within the past 10 years was held to restrict the use of funds not contained in the pending bill and therefore to be legislation.

On Apr. 14, 1954,[13] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 8779), a point of order was raised against the following amendment:

> MR. [Karl C.] KING of Pennsylvania: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. King of Pennsylvania: On page 24, in line 24, change the period to a colon and add the following: "*Provided further*, That no payments or grants shall be made for approved practices on land

11. 84 CONG. REC. 3446, 76th Cong. 1st Sess.

12. Wright Patman (Tex.).

13. 100 CONG. REC. 5175, 5176, 83d Cong. 2d Sess.

which during any 1 of the previous 10 years has been the location of a practice for which payments or grants were made under this program."

MR. H. CARL ANDERSEN [of Minnesota]: Mr. Chairman, I make a point of order.

THE CHAIRMAN:[14] The gentleman will state it.

MR. H. CARL ANDERSEN: In my opinion, this is clearly legislation upon an appropriation bill. . . .

THE CHAIRMAN: The Chair is ready to rule

The gentleman from Pennsylvania [Mr. King] has offered an amendment to which a point of order has been made by the gentleman from Minnesota [Mr. H. Carl Andersen].

The Chair has examined the amendment. In view of the fact that the language of the amendment would seem to impose further duties and apparently provide a restriction on the use of funds not contained in the pending bill, the Chair sustains the point of order.

§ 27.7 Limitations on appropriations must apply solely to the money of the appropriation under consideration, and may not be made applicable to money appropriated in other acts: to the Agriculture Department appropriation bill for 1944 an amendment in the form of a limitation limiting the payments for programs under the Agriculture Act of 1938, but not limiting the money in the pending bill was held as legislation on an appropriation bill and not in order.

On Apr. 17, 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 and sustained against the following amendment:

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I offer the following amendment which I send to the desk.

The Clerk read as follows:

Page 65, line 2, after the word "inclusive", insert "*Provided,* That no total payments for programs under the Agricultural Act of 1938, and for soil conservation and water conservation practices, for any year to any person, firm, or corporation under this section shall exceed $500: *Provided further,* That this limitation shall not be construed to deprive any share renter of payments not exceeding $500 to which he would otherwise be entitled." . . .

MR. [MALCOLM C.] TARVER [of Georgia]: Very well. Mr. Chairman, I make the point of order that the amendment is in the nature of legislation insofar that it involves the question of payments of $500 or less, as I understood it, when it was read—I have not had time to examine it. It does not show retrenchment upon its face. While portions of it might be construed as limitations under the Holman rule, the amendment as a whole does include

14. Harris Ellsworth (Oreg.).

15. 89 CONG. REC. 3525, 3526, 78th Cong. 1st Sess.

legislative provisions and for that reason is not in order. . . .

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Chairman, the amendment would apply to funds other than those covered by this act. Consequently it would be legislation on an appropriation bill.

THE CHAIRMAN:[16] Does the gentleman from Kansas desire to be heard further on the point of order?

MR. REES of Kansas: The language of this amendment follows the language of the bill.

THE CHAIRMAN: The Chair is prepared to rule. The Chair would call attention to the fact that under the amendment cited by the gentleman during the consideration of an appropriation bill in 1942, the language of that amendment was confined to the appropriation then under consideration. The first two lines of that amendment read as follows:

> *Provided,* That no total payments for any year to any person, firm, or corporation under this section shall exceed $500.

That is under the act then pending. The Chair would remind the gentleman that under the amendment he now proposes, and I read from that amendment:

> *Provided,* That no total payments for programs under the Agricultural Act of 1938, and for soil conservation and water conservation practices, for any year to any person, firm or corporation under this section shall exceed $500; and provided that this limitation shall not be construed to deprive any share renter of payments not exceeding $500 to which he would otherwise be entitled.

It is clearly in violation of the rule, because it is not limited to the appropriation under consideration. The Chair is constrained to sustain the point of order, and the Chair sustains the point of order.

§ 27.8 A limitation in an appropriation bill must apply solely to the money of the appropriation under consideration and may not be applicable to money appropriated in other acts: language in the Agriculture Department appropriation bill in the form of a limitation seeking to appropriate not to exceed $175,000 of the permanent appropriation under the Agriculture Adjustment Act of 1933 to enable the Secretary to protect the interests of consumers and maintain a stable supply of agriculture commodities at fair prices, was held to be a limitation on the Act of 1933 rather than a limitation on money in the pending bill and therefore legislation on an appropriation bill and not in order.

On Apr. 19, 1943,[17] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 2481), a point of order was sus-

16. William M. Whittington (Miss.).

17. 89 CONG. REC. 3583, 3584, 78th Cong. 1st Sess.

tained against the following provision:

The Clerk read as follows:

CONSUMERS' COUNSEL DIVISION

ADMINISTRATIVE EXPENSES

Not to exceed $175,000 of the unobligated balance of the appropriation made by section 12(a), title I, of the Agricultural Adjustment Act, approved May 12, 1933, as amended (7 U.S.C. 612), shall be available during the fiscal year 1944 to enable the Secretary to further perform the duty imposed upon him under applicable laws to protect the interests of consumers with due regard to the maintenance of a continuous and stable supply of agricultural commodities adequate to meet consumer demand at prices fair to both producers and consumers, which sum shall be available for administrative expenses (including not to exceed $37,200 for printing and binding) in accordance with the provisions of subsection (a) of the aforesaid section 392.

MR. [STEPHEN] PACE [of Georgia]: Mr. Chairman, a point of order.

THE CHAIRMAN:[18] The gentleman will state it.

MR. PACE: Mr. Chairman, I make the point of order against the section just read on the ground that it is legislation on an appropriation bill and seeks to appropriate funds not authorized by law. . . .

MR. [JOHN] TABER [of New York]: Will the gentleman yield?

MR. PACE: I yield to the gentleman from New York.

MR. TABER: Is it not a fact that that money was not available for a Consumers' Counsel Division and this language that is in here is not a reappropriation which would have to be made in order to make the money available?

MR. PACE: Not only that, but if this $100,000,000 appropriated in 1933 is still available it does not have to be reappropriated. It is just like the gentleman from Georgia [Mr. Tarver] said, at the time the matter was presented to the committee, and let me read again his words:

> This language is legislative in character because if you are already authorized to do that you do not need it

That is, part of the $100,000,000 is still there.

> If you are not authorized to do it, we cannot give you such authorization in an appropriation bill.

Mr. Chairman, I submit that it is no more than an effort on the part of the Department of Agriculture to secure an additional $175,000 in excess of the 4 percent, which is a direct violation of the law and is not authorized by law and is legislative in character. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Georgia [Mr. Pace] makes a point of order against the pending paragraph that it is legislation not authorized by law. The paragraph undertakes to reappropriate $175,000 of the permanent appropriation under an act of 1933 and to limit the appropriation by the language of the pending paragraph to the purpose set forth in the pending paragraph, and thus undertakes to limit the reappropriation of $175,000 unallocated to the previous appropriation by a limitation that would apply to that act rath-

18. William M. Whittington (Miss.).

er than a limitation that would apply to an amount appropriated under the terms of this bill.

The Chair sustains the point of order.

Social Security Supplemental; Restriction on "Funds Under This Head"

§ 27.9 Language in a supplemental appropriation bill providing that not to exceed a sum certain "available under this head for the fiscal year . . . shall be expended for State and local administration," was held to apply to funds not carried in the bill and therefore not in order.

On Feb. 5, 1957,[19] during consideration in the Committee of the Whole of a deficiency appropriation bill (H.R 4249), a point of order was raised and sustained against the following provision:

The Clerk read as follows:

SOCIAL SECURITY ADMINISTRATION

Grants to States for public assistance

For an additional amount for "Grants to States for public assistance," $275,000,000: *Provided*, That not to exceed $99,000,000 of the funds available under this head for the fiscal year ending June 30, 1957, shall be expended for State and local administration.

MRS. [EDITH S.] GREEN of Oregon: Mr. Chairman, I make a point of order against that part of the chapter following the colon in line 7 and reading: "*Provided*, That not to exceed $99,000,000 of the funds available under this head for the fiscal year ending June 30, 1957, shall be expended for State and local administration," on the ground that it is legislation on an appropriation bill.

MR. [HENDERSON L.] LANHAM [of Georgia]: Mr. Chairman, the point of order is conceded.

THE CHAIRMAN:[20] The Chair has examined the language and feels that it is legislation on an appropriation bill.

The point of order is sustained

Military Pay; Limitation Not on Funds But Total Compensation

§ 27.10 Language in an appropriation bill limiting, not funds in the bill, but the percentages of military and civilian employees in the Department of Defense, and not limiting the appropriation to those carried in the bill, was held to be legislation and not in order.

On Apr. 9, 1952,[1] The Committee of the Whole was considering H.R. 7391, a Department of Defense appropriation bill. The Clerk read as follows:

Sec. 634. No pay, compensation, or allowances shall be paid for commis-

19. 103 CONG. REC. 1549, 85th Cong. 1st Sess.

20. Wilbur D. Mills (Ark.).

1. 98 CONG. REC. 3890, 82d Cong. 2d Sess.

sioned officer personnel in excess of the following percentages of total personnel of the Department concerned: [A table showing the percentages was included at this point.]

MR. [CARL] VINSON [of Georgia]: Mr. Chairman, I make the point of order that section 634 is legislation on an appropriation bill and, therefore, subject to a point of order. . . .

MR. [GLENN R.] DAVIS of Wisconsin: . . . Mr. Chairman, I concede the point of order against the section as now written.

THE CHAIRMAN:[2] The gentleman from Wisconsin concedes the point of order. The point of order is sustained.

Tennessee Valley Authority

§ 27.11 To an appropriation bill, an amendment providing that not to exceed a specific amount of the funds available to the Tennessee Valley Authority shall be used for personal services, but not limiting it to funds in the bill, was held to be legislation and not in order.

On Mar. 21, 1952,[3] The Committee of the Whole was considering H.R. 7072, an independent offices appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [Kenneth B.] Keating [of New York]: On page 35, line 24, strike out the period, insert a comma, and add the following: "and not to exceed $99,131,125 of the funds available to the Tennessee Valley Authority shall be used for personal services."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make a point of order against the amendment but will reserve it to permit the gentleman from New York to make his statement. . . .

THE CHAIRMAN:[4] The Chair is ready to rule.

The Chair has before him the amendment offered by the gentleman from New York on page 35, line 24, to which the gentleman from Texas [Mr. Thomas] makes a point of order. The amendment says not to exceed so many dollars of funds available to the Tennessee Valley Authority shall be used for personal services. As the Chair reads the amendment it is not limited to funds contained in the bill now before the Committee. The fact that the amendment may be patterned after language in the bill would still not make the amendment in order if it goes to funds beyond those contained in the bill before the Committee, thus adding legislation

The Chair is not called upon to rule on the question of legislative provisions allowed to remain in the bill, in view of the rule adopted waiving points of order. The Chair is of the opinion that this amendment applies a new restriction on funds not contained in the bill thus adding legislation and therefore sustains the point of order.]

§ 27.12 A limitation to be in order on an appropriation

2. Aime J. Forand (R.I.).
3. 98 CONG. REC. 2673, 2674, 82d Cong. 2d Sess.
4. Wilbur D. Mills (Ark.).

bill must apply solely to the funds made available by the pending bill; thus, an amendment providing that "none of the funds herein or elsewhere made available" shall be used for a certain purpose was held to be legislation and not a limitation.

On June 21, 1935,[5] the Committee of the Whole was considering H.R. 8554, a deficiency appropriation bill. At one point the Clerk read as follows:

> Amendment offered by Mr. [John] Taber [of New York]: On page 48, line 16, strike out "$34,675,192" and insert in lieu thereof "$23,675,192"; page 48, line 16, strike out the period, insert a colon and the following: "*Provided,* That none of the funds herein or elsewhere made available to the Tennessee Valley Authority or the Tennessee Valley fund shall be used for the construction of any new dam or power lines until further action by Congress."
>
> MR. [JAMES P.] BUCHANAN [of Texas]: Mr. Chairman, I make the point of order against the amendment that it is additional legislation on an appropriation bill and changes existing law, for it broadens the language of the pending bill by use of the words "or elsewhere."
>
> THE CHAIRMAN:[6] Does the gentleman from New York desire to be heard on the point of order?
>
> MR. TABER: I desire to be heard briefly, if the Chair please. The first portion of the amendment to the effect that none of the funds shall be available for the construction of any new dam or power lines until further action by Congress, is purely a limitation and strictly within the Holman rule.
>
> MR. BUCHANAN: Mr. Chairman, the word "elsewhere" used in the amendment constitutes additional legislation.
>
> THE CHAIRMAN: The Chair is ready to rule.
>
> In the opinion of the Chair, while the amendment is in the form of a limitation, yet the words "or elsewhere" contained in the amendment apply to other appropriations, and is therefore legislation; and for this reason the point of order is sustained.

Trade With Cuba; Restriction on Authorization, Not Appropriation

§ 27.13 Language in a general appropriation bill prohibiting aid under the Foreign Assistance Act of 1961 to any country which furnishes or permits ships under its registry to carry certain strategic materials to Cuba was ruled out as legislation, since the provision was a permanent restriction on the authorization rather than upon the funds carried in the pending bill.

On June 4, 1970,[7] during consideration in the Committee of the

5. 79 CONG. REC. 9854, 74th Cong. 1st Sess.

6. Franklin W. Hancock, Jr. (N.C.).

7. 116 CONG. REC. 18403, 91st Cong. 2d Sess.

Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 107. (a) No assistance shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry to Cuba, so long as it is governed by the Castro regime, in addition to those items contained on the list maintained by the Administrator pursuant to title I of the Mutual Defense Assistance Control Act of 1951, as amended, any arms, ammunition, implements of war, atomic energy materials, or any other articles, materials or supplies of primary strategic significance used in the production of arms, ammunition, and implements of war or of strategic significance to the conduct of war, including petroleum products.

MR. [PETER H. B.] FRELINGHUYSEN [of New Jersey]: Mr. Chairman, I make a point of order against section 107(a) on the ground that it is legislation in an appropriations bill. . . . Mr. Chairman, section 620 of the Foreign Assistance Act contains similar restrictions, but they are much more detailed, specific, and restricted than those contained in the provision which I am seeking to strike from the appropriation bill.

THE CHAIRMAN:[8] Does the gentleman from Louisiana care to be heard?

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, your committee felt that the language contained a very definite limitation. The language itself states—

No assistance shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry to Cuba—

That provision has stood up over the years as being a limitation. We feel that it is, and we ask the Chair for a ruling.

THE CHAIRMAN: The Chair is ready to rule. As the gentleman from New Jersey has pointed out, the language is similar but it is not identical with the provisions of section 620 of the Foreign Assistance Act as amended. In addition, it relates to provisions other than those contained in this bill, and the Chair sustains the point of order.

Ratios of U.S. Contribution to International Organizations to Total

§ 27.14 To a provision in a general appropriation bill, an amendment providing that in no case shall the United States contribution to any international organization exceed one-third of the estimated total annual cost was held to change existing law and, therefore, to be legislation on an appropriation bill.

On July 25, 1951,[9] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 4740), a point of order

8. Hale Boggs (La.).

9. 97 CONG. REC. 8881, 8885, 82d Cong. 1st Sess.

was raised and sustained against the following amendment:

MR. [JOHN BELL] WILLIAMS of Mississippi: Mr. Chairman, I offer an amendment which is at the desk.

The Clerk read as follows:

Amendment offered by Mr. Williams of Mississippi: Page 6, line 6, after the period add a new proviso to read: "*Provided further,* That in no case shall the United States contribution to any international organization exceed one-third of the estimated total annual cost."

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I am constrained to insist upon the point of order that this is legislation on an appropriation bill. We already have basic legislation setting a ceiling on these contributions to international organizations.

THE CHAIRMAN:[10] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. WILLIAMS of Mississippi: Mr. Chairman, I have nothing to say except that I insist it is a limitation of appropriations. The amendment speaks for itself.

THE CHAIRMAN: The amendment certainly goes far beyond being a limitation.

The gentleman from Mississippi has offered an amendment; the gentleman from New York has made a point of order against the amendment on the ground that it is legislation on an appropriation bill. The Chair invites attention to the fact that the amendment provides for changes in existing law with respect to international organizations and, of course, is legislation and not in order on an appropriation bill.

The Chair sustains the point of order.[11]

Funds From Any Other Source

§ 27.15 To a paragraph of a general appropriation bill, an amendment providing that no additional funds from "any other source" shall be expended for these purposes was held to go beyond the scope of the bill, not germane to it, and legislation on an appropriation bill.

On Apr. 24, 1951,[12] during consideration in the Committee of the Whole of the Department of the Interior appropriation bill (H.R. 3790), a point of order was raised against the following amendment:

MR. [BOYD] TACKETT [of Arkansas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Tackett: Page 4, line 3, after the word "granted", strike out the period, insert a semicolon and the following: "And no additional funds from any other source shall be expended for these purposes."

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from Arkansas

10. Jere Cooper (Tenn.).

11. The ruling would also be justified on grounds that the language at issue was not limited to funds in the bill.

12. 97 CONG. REC. 4300, 4301, 82d Cong. 1st Sess.

(Mr. Tackett) on the ground the amendment is not germane and that it is legislation on an appropriation bill. I make the further point of order, Mr. Chairman, that it goes beyond the scope of the bill as presented at this time. . . .

THE CHAIRMAN:[13] The Chair is prepared to rule.

The gentleman from Arkansas [Mr. Tackett] offers an amendment to line 3, page 4, of the bill. The provision of the bill sought to be amended has to do with construction by the Southwestern Power Administration. The bill before the House provides an appropriation of a specific amount of money for this purpose. The amendment offered by the gentleman from Arkansas [Mr. Tackett] has reference to funds from sources other than those contained in the bill before the committee; therefore it goes beyond the scope and the purposes of the bill presently before the committee.

The gentleman from Washington [Mr. Jackson] makes a point of order against the amendment. The Chair sustains the point of order.

Limitation on Any Appropriation for Department

§ 27.16 To be in order, a limitation must relate to the particular appropriation to which the words of limitation apply, and may not be applicable to funds not covered by the pending bill; thus, a provision in a general appropriation bill in the form of a limitation providing that no part of "any appropriation" for a department shall be expended for a specific purpose was held to be legislation since not confined solely to funds in the bill.

On Feb. 18, 1938,[14] the Committee of the Whole was considering H.R. 9544, a State, Justice, Commerce, and Labor Departments appropriation. At one point the Clerk read as follows:

No part of any appropriation for the Immigration and Naturalization Service shall be expended for any expense incident to any procedure by suggestion or otherwise, for the admission to any foreign country of any alien unlawfully in the United States for the purpose of endeavoring to secure a visa for readmission to the United States, or for the salary of any employee charged with any duty in connection with the readmission to the United States of any such alien without visa. . . .

MR. [SAMUEL] DICKSTEIN [of New York]: Mr. Chairman, I make the point of order that the language appearing on page 105 in lines 1 to 9 is legislation on an appropriation bill, which changes statutory law and creates new regulations without properly being before any committee or properly being passed upon by the Congress. . . .

MR. [JOHN W.] MCCORMACK [of Massachusetts]: . . . There is precedent to

13. Wilbur D. Mills (Ark.).

14. 83 CONG. REC. 2172–74, 75th Cong. 3d Sess.

the effect that a limitation must not give affirmative direction, and must not affect the discretion of an official of the executive branch of the Government; that the limitation must relate to the particular appropriation with reference to which the words of limitation apply.

The burden of proof is on the Committee on Appropriations to show that this is a limitation upon existing law. If any part of the limitation does not apply to existing law, although the greater part of the limitation might apply, then the point of order should be sustained. . . .

THE CHAIRMAN:[15] The Chair is ready to rule. . . .

. . . [T]he Chair sustains the point of order on the ground the Chair has just suggested, that the use of the words "any appropriation" in the bill makes this legislation on an appropriation bill. The Chair, therefore, sustains the point of order against the entire paragraph.

No Appropriation After Date of Enactment

§ 27.17 A limitation stating that no part of any appropriation shall be obligated for printing the Yearbook of Agriculture for 1942 was held to be legislation and not in order on an appropriation bill.

On Mar. 18, 1942,[16] the Committee of the Whole was considering H.R. 6802, a legislative branch appropriation bill. The Clerk read as follows:

. . . *Provided further,* That notwithstanding the provisions of section 73 of the act of January 12, 1895 (44 U.S.C. 241), no part of the foregoing sum of $3,985,000 shall be used for printing and binding part 2 of the annual report of the Secretary of Agriculture (known as the Yearbook of Agriculture) and no part of any appropriation shall be obligated after the date of the enactment of this act for printing the Yearbook of Agriculture for 1942. . . .

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I make a point of order against the language contained in the proviso beginning on line 21, page 44, and ending with line 3 on page 45, and particularly to that portion of the proviso which reads as follows:

> And no part of any appropriation shall be obligated after the date of the enactment of this act for printing the Yearbook of Agriculture for 1942. . . .

THE CHAIRMAN:[17] Does the gentleman from Kentucky desire to be heard on the point of order?

MR. [EMMET] O'NEAL [of Kentucky]: Mr. Chairman, we are perfectly willing to concede the point of order to the second part of the proviso. If the Chair holds that the entire proviso must be stricken, then I will offer an amendment to take care of the situation.

THE CHAIRMAN: The Chair sustains the point of order on the ground that if part of a proviso is faulty the entire proviso falls.

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15. Frank H. Buck (Calif.).

16. 88 CONG. REC. 2676, 2677, 77th Cong. 2d Sess.

17. William R. Thom (Ohio).

The point of order is sustained.

Limitation on "Any" Appropriation

§ 27.18 Language in an appropriation bill placing a limitation on funds not carried in the bill was held to be legislation: language in an appropriation bill providing that no part of "any appropriation" shall be used for a specified purpose was held to apply to funds not carried in the bill and therefore not in order.

On Mar. 30, 1955,[18] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 5240), the following point of order was raised:

MR. [OLIN E.] TEAGUE of Texas: Mr. Chairman, I make the point of order that it is legislation on an appropriation bill against the following language appearing on page 28, lines 15 through 19:

Provided further, That no part of any appropriation shall be used to pay educational institutions for reports and certifications of attendance at such institutions an allowance at a rate in excess of $1 per month for each eligible veteran enrolled in and attending such institution.

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, I do not believe that language is subject to a point of order. It is a limitation. It permits the spending of $1 instead of the previous amount of $1.50. This has been contemplated by the Veterans' Administration in setting up its budget. This has been in for 2 years.

The CHAIRMAN:[19] The Chair is ready to rule.

The Chair calls the attention of the gentleman to the fact that in line 15 the words "no part of any appropriation" are used. That goes beyond this appropriation bill. This is legislation on an appropriation bill, and the Chair sustains the point of order.

No Fund in This or Any Other Act

§ 27.19 In an appropriation bill a provision in the form of a limitation that no funds in this or any other act shall be available for payment of grants for development of a project for predominantly residential uses unless incidental uses are restricted to those normally essential for residential uses was conceded to be legislation.

On Mar. 30, 1954,[20] the Committee of the Whole was considering H.R. 8583, an independent offices appropriation bill. The Clerk read as follows:

Capital grants for slum clearance and urban redevelopment: For an addi-

18. 101 CONG. REC. 4077, 84th Cong. 1st Sess.

19. Albert Rains (Ala.).

20. 100 CONG. REC. 4108, 4109, 83d Cong. 2d Sess.

tional amount for payment of capital grants as authorized by title I of the Housing Act of 1949, as amended (42 U.S.C 1453, 1456), $39,000,000, to remain available until expended: *Provided*, That no funds in this or any other act shall be available for payment of capital grants under any contract involving the development or redevelopment of a project for predominantly residential uses unless incidental uses are restricted to those normally essential for residential uses. . . .

MR. [JACOB K.] JAVITS [of New York]: Mr. Chairman, I make a point of order against the proviso appearing on page 28, lines 13 to 18, on the ground it is legislation on an appropriation bill.

The CHAIRMAN:[1] Does the gentleman from California desire to be heard on the point of order?

MR. [JOHN] PHILLIPS [of California]: No, Mr. Chairman. I think we are compelled to concede the point of order and I submit an amendment to replace it.

§ 27.20 Language in an appropriation bill in the form of a limitation providing no part of the appropriation contained in this or any other act shall be used for a certain purpose is legislation and not in order.

On Feb. 8, 1939,[2] the Committee of the Whole was considering H.R. 3743, an independent offices appropriation. The Clerk read as follows:

Sec. 6. No part of any appropriation contained in this or any other act for the fiscal year ending June 30, 1940, shall be available for the payment of enlistment allowance to enlisted men for reenlistment within a period of 3 months from date of discharge as to reenlistments made during the fiscal year ending June 30, 1940, notwithstanding the applicable provisions of sections 9 and 10 of the act entitled "An act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," approved June 10, 1922 (37 U.S.C. 13, 16).

MR. [EDOUARD V.M.] IZAC [of California]: Mr. Chairman, I make a point of order against the inclusion of this section in the bill.

MR. [CLIFTON A.] WOODRUM of Virginia: I concede the point of order, Mr. Chairman.

THE CHAIRMAN:[3] The point of order is well taken. . . . The Chair sustains the point of order.

Previous Appropriations

§ 27.21 A limitation, to be in order, may not apply to money already appropriated: an amendment in the guise of a limitation providing that "No appropriation heretofore made" shall be used for a certain purpose was held to

1. Louis E. Graham (Pa.).
2. 84 CONG. REC. 1263, 76th Cong. 1st Sess.
3. Fritz G. Lanham (Tex.).

embody legislation and therefore not in order on a general appropriation bill.

On Jan. 24, 1936,[4] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 10464), a point of order was raised against the following amendment:

> MR. [HENRY] ELLENBOGEN [of Pennsylvania]: Mr. Chairman, I offer the following substitute, which I send to the desk and ask to have read.
>
> The Clerk read as follows:
>
> > Substitute amendment offered by Mr. Ellenbogen: Page 16, line 6, strike out all of lines 6 to 12, inclusive, and insert in lieu thereof the following: "No appropriation heretofore made or contained in this bill shall be used for the enforcement of the provisions of the Potato Act of 1935, approved August 24, 1935."
>
> MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Chairman, I make the point of order that that is legislation on an appropriation bill and is not germane to the amendment to which it is offered. It undertakes to put a limitation on money heretofore appropriated and not covered in this bill.
>
> MR. ELLENBOGEN: The appropriation contained on page 16 of the deficiency appropriation bill is for the purpose of enforcing the provisions of the Potato Act. Therefore, any amendment that seeks to limit or prevent the Department from enforcing that act is a proper amendment.
>
> THE CHAIRMAN:[5] The Chair is prepared to rule. The amendment offered by the gentleman from Pennsylvania, in the opinion of the Chair, goes further than indicated by the gentleman's statement in support of his amendment. The amendment, in the opinion of the Chair, very clearly embraces legislation which is not in order on an appropriation bill. The Chair, therefore, sustains the point of order.

Improvement of Capitol Limitation on "Funds Provided"

§ 27.22 To an appropriation bill providing for necessary expenditures for the Capitol Building, including minor improvements, an amendment to prohibit use of funds appropriated in a previous appropriation act for extension of the East Front of the Capitol, and an amendment providing that none of the funds provided shall be used for prosecuting the project of lifting out the front of the Capitol, were held to be legislation since not explicitly confined to funds provided in the bill.

On May 21, 1957,[6] The Committee of the Whole was considering H.R. 7599, a legislative branch appropriation bill. The Clerk read as follows:

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4. 80 CONG. REC. 989, 74th Cong. 2d Sess

5. Jere Cooper (Tenn.).

6. 103 CONG. REC. 7326, 7327, 85th Cong. 1st Sess

CAPITOL BUILDINGS AND GROUNDS

Capitol Buildings: For necessary expenditures for the Capitol Building and electrical substations of the Senate and House Office Buildings, under the jurisdiction of the Architect of the Capitol, including minor improvements, maintenance, repair, equipment, supplies, material, fuel, oil, waste, and appurtenances; furnishings and office equipment; special and protective clothing for workmen; uniforms or allowances therefor as authorized by the act of September 1, 1954, as amended (5 U.S.C. 2131); personal and other services; cleaning and repairing works of art, without regard to section 3709 of the Revised Statutes, as amended; purchase or exchange, maintenance and operation of passenger motor vehicle; not to exceed $300 for the purchase of necessary reference books and periodicals; not to exceed $500 for expenses of attendance, when specifically authorized by the Architect of the Capitol, at meetings or conventions in connection with subjects related to work under the Architect of the Capitol; $897,100. . . .

Amendment offered by Mr. [Edgar W.] Hiestand [of California]: On page 14, immediately after line 2, insert the following: "*Provided*, That no funds provided in this section and no funds heretofore appropriated shall be expended to carry out the extension, reconstruction and replacement of the central portion of the United States Capitol authorized by the paragraph of the legislative appropriation act, 1956, which is under the heading 'Capitol Buildings and Grounds' and which begins with the words 'Extension of the Capitol'."

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I make a point of order against the amendment on the ground that it is not germane to this bill. It refers to funds which are not included in this bill, and further it is legislation upon an appropriation bill. . . .

THE CHAIRMAN:[7] The gentleman from New York [Mr. Rooney] makes the point of order that the amendment is not in order. The amendment very definitely relates to an appropriation heretofore made. Therefore, the Chair is of the opinion that the amendment is legislation and therefore subject to the point of order. The Chair sustains the point of order

MR. HIESTAND: Mr. Chairman, I offer an amendment which is at the Clerk's desk

The Clerk read as follows:

> Amendment offered by Mr. Hiestand: On page 14, line 2, after the period, insert "None of the funds provided shall be used for prosecuting the project of lifting out the front of the Capitol."[8] . . .

MR. ROONEY: Mr. Chairman, I renew the point of order against the amendment, that it is legislation on an appropriation bill.

THE CHAIRMAN: The Chair is of the opinion that the same objection applies to this amendment as applied to the last amendment, and the Chair therefore sustains the point of order.

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7. Francis E. Walter (Pa.).

8. The Chair apparently construed this language to apply arguably to funds previously appropriated, as well as funds in the present bill. If the language had referred more explicitly only to funds in the bill it might have been allowed as a limitation.

MR. HIESTAND: Mr. Chairman, may I speak to that point?

May I suggest that the amendment just submitted deals with $897,100, which has just been read this morning? I submit it is in order because it could not have been applied to any other fund. The first amendment did apply to previous appropriations.

THE CHAIRMAN: But the Chair would call attention to the fact that there is nothing in this paragraph, as the Chair understands it, that relates to that particular project or work.

MR. [JOHN] TABER [of New York]: Mr. Chairman, if the Chair will hear me just a moment.

THE CHAIRMAN: The gentleman from New York is recognized.

MR. TABER: Beginning on line 8, page 13, it reads:

> For necessary expenditures for the Capitol Building and electrical substations of the Senate and House Office Buildings, under the jurisdiction of the Architect of the Capitol.

That means that money is available for all sorts of activities of the Architect of the Capitol, relating to the entire group of buildings.

THE CHAIRMAN: Of course, the gentleman conveniently stops at the comma on line 11 and did not read up to the next comma, "including minor improvements."

By no stretch of the imagination could this be considered a minor improvement.

The Chair sustains the point of order.

Termination of Existing Revolving Fund

§ 27.23 Language in an appropriation bill amounting to a limitation and providing that after June 30, 1959, unobligated funds in the revolving fund, Defense Production Act, be covered into the Treasury was held to be legislation and not in order

On Mar. 31, 1958,[9] the Committee of the Whole was considering H.R. 10589, a bill making appropriations for the Executive Office of the President, among other things. The Clerk read as follows:

REDUCTION IN BALANCES

Revolving fund, Defense Production Act: The unobligated balances available in the fund as of June 30, 1959, shall be withdrawn and covered into the Treasury as of the close of business June 30, 1959.

MR. [PAUL] BROWN of Georgia: Mr. Chairman, I make a point of order against the section beginning on line 9, page 5, and ending in line 13, page 5, as legislation on an appropriation bill.

THE CHAIRMAN:[10] Does the gentleman from Alabama desire to be heard?

MR. [GEORGE W.] ANDREWS [of Alabama]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is conceded.

The Chair sustains the point of order.

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9. 104 CONG. REC. 5817, 85th Cong. 2d Sess.

10. Richard Bolling (Mo).

Rescission; Disaster Relief

§ 27.24 To an appropriation bill, an amendment providing a rescission of funds for "Disaster Relief" appropriated in other acts was held to be not germane and to be legislation on an appropriation bill.

On Mar. 19, 1952,[11] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7072), a point of order was raised against the following amendment:

MR. [TOM] PICKETT [of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Pickett: On page 3, after line 14, insert a new heading and the following language:

DISASTER RELIEF

"The unobligated balances at the end of June 30, 1952, of appropriations heretofore made for Disaster Relief under the act of September 30, 1950 (Public Law 875); the Independent Offices Appropriation Act of 1952; act of July 18, 1951 (Public Law 80); and the act of October 24, 1951 (Public Law 202), shall to the extent that they exceed in the aggregate $5,000,000, not be available for obligation after June 30, 1952, and shall be recovered to the Treasury as miscellaneous receipts."

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I make the point of order, first, that the amendment is not germane to the bill. It has no relation to any item in the bill.

Second, it is legislation on an appropriation bill.

On both counts, or on either count, it is subject to a point of order.

THE CHAIRMAN:[12] Does the gentleman from Texas [Mr. Pickett] desire to be heard on the point of order?

MR. PICKETT: Mr. Chairman, it occurs to me that this is a limitation of an appropriation. Its effect certainly is to recover into the Treasury moneys which are just floating around, and apparently serving no purpose at this time. It never occurred to me, of course, notwithstanding whatever the rule might be, that we would avoid trying to save money here just by raising points of order. It seems to me that we might save a little money by even legislating some time. I hope the point of order will be overruled.

THE CHAIRMAN: The Chair is ready to rule. The gentleman from Texas [Mr. Pickett] has offered an amendment. The gentleman from Missouri [Mr. Cannon] makes a point of order against the amendment on the ground it is not germane to the bill before the Committee and that it is legislation on an appropriation bill. The Chair has had an opportunity to read the amendment proposed by the gentleman from Texas. The amendment does not, as the Chair understands, apply to funds contained in the pending bill H.R. 7072, but has reference to funds which have been made available by the Congress in other legislation. Therefore, the amendment is not germane and is clearly legislation on an appropriation

11. 98 CONG. REC. 2543, 82d Cong. 2d Sess.

12. Wilbur D. Mills (Ark.).

bill. The Chair is constrained to sustain the point of order.

Words of Permanency; Funds "Hereafter" Appropriated

§ 27.25 An amendment to an appropriation bill in the form of a limitation but containing the word "hereafter" was held to be legislation and not in order.

On Jan. 31, 1936,[13] the Committee of the Whole was considering H.R. 10630, an Interior Department appropriation. At one point the Clerk read as follows:

> For reimbursable loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools, including colleges and universities offering recognized vocational, trade, and professional courses, in accordance with the provision of the act of June 18, 1934 (48 Stat., p. 986), the unexpended balance of the appropriation for the fiscal year 1936 is continued available until June 30, 1937: *Provided*, That no more than $50,000 of such unexpended balance shall be available for loans to Indian students pursuing liberal-arts courses in high schools and colleges. . . .
>
> Amendment offered by Mr. [Byron N.] Scott [of California]: On page 48, line 13, after the word "Interior", add: "*Provided*, That hereafter no part of any appropriation for these Indian schools shall be available for the salary of any person teaching or advocating the legislative program of the American Liberty League."
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> MR. [EDWARD T.] TAYLOR of Colorado: Mr. Chairman, I make a point of order against the amendment. It is legislation on an appropriation bill. . . .
>
> THE CHAIRMAN:[14] The Chair is ready to rule. The word "hereafter" in the amendment makes the provision permanent legislation. Permanent legislation on an appropriation bill would not be in order. The language of the amendment here offered not only applies to the appropriations of this bill but it would apply to subsequent appropriations. Therefore, the amendment contains legislation; and the point of order is sustained.

Change of Prior Limitation

§ 27.26 An amendment to an appropriation bill seeking to change a limitation on a previous appropriation bill was held to be legislation and not in order.

On Dec. 6, 1944,[15] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 5587), a point of order was raised against the following amendment:

> Amendment offered by Mr. [Malcolm C.] Tarver [of Georgia]: On page 19, line 3, insert a new paragraph, as follows:

13. 80 CONG. REC. 1300, 1305, 1306, 74th Cong. 2d Sess.

14. Robert L. Doughton (N.C.).

15. 90 CONG. REC. 8940, 8941, 78th Cong. 2d Sess.

"CONSERVATION AND USE OF AGRICULTURAL LAND RESOURCES

"The limitation on expenditures under the 1944 program of soil-building practices and soil- and water-conservation practices established in the fourth proviso clause of appropriation 'Conservation and use of agricultural land resources,' in the Department of Agriculture Appropriation Act, 1944, is hereby increased from $300,000,000 to $313,000,000 (exclusive of the $12,500,000 provided in the Department of Agriculture Appropriation Act, 1945, for additional seed payments)."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill. The change of a limitation is a change of existing law, and it has been so held repeatedly.

MR. TARVER: Mr. Chairman, the Soil Conservation and Domestic Allotment Act authorizes the promulgation of programs to cost not in excess of $500,000,000 annually. In the Agricultural Appropriation Act of 1944 the Congress undertook to impose a limitation of $300,000,000 upon the administrative authorities in the promulgation of the over-all program for the calendar year 1944, which program included not only payments and grants for soil-conservation and water-conservation practices, but the furnishing in advance of seeds, limes, fertilizers, trees and other agricultural materials to be used in soil-conservation work and to be charged against the benefits accruing to the farmers in subsequent crop years.

I think that a correct understanding of the amendment which I have proposed involves reference to the Budget document in which it was submitted to the Congress, House Document 793, Seventy-eighth Congress, second session, in which this identical language was recommended by the Budget, and in the explanation of the language it is clearly pointed out that it does not involve the expenditure of any additional moneys. In other words, this amendment, if adopted, does not appropriate or make available to the administrative authorities one single dollar of moneys which are not already available to them but it simply authorizes the use by them of moneys which have been allocated to the seed, fertilizer, lime, and tree program for the discharge of liabilities incurred under the program for the payments and grants for soil and water-conservation practices. It is, therefore, in effect a reallocation of the funds which have already been appropriated by Congress.

I may say that that original allocation of funds was not made by the Congress in the enactment of the Agricultural Appropriation Act of 1944, but was made by departmental authorities without mandatory instructions from the Congress to make such allocations, although it probably was a matter within their administrative discretion. So I insist that the Congress by the imposition of the limitation in the Agricultural Appropriation Act of 1944 did not so tie its hands as to make it impossible for the same Congress or for a subsequent Congress to appropriate funds or to review and revise the allocation of funds already appropriated for the purposes outlined in the Soil Conservation and Domestic Allotment Act, so long as it does not exceed the limitation for maximum appropriation provided in that act, which, as I have pointed out, is $500,000,000.

I respectfully insist, Mr. Chairman, that the amendment is in order and the point of order should be overruled.

THE CHAIRMAN:[16] Does the gentleman from New York insist on his point of order?

Mr. TABER: I do, Mr. Chairman.

THE CHAIRMAN: The point of order raised by the gentleman from New York is correct, and the Chair sustains the point of order.

Acquisition of Property by Gift "Hereafter" Contingent Upon Prior Appropriation for Maintenance.

§ 27.27 Language in an appropriation bill providing that "hereafter the authority of the Secretary of the Interior . . . to acquire by gift on behalf of the United States any historic site, building, object, and antiquity of national significance, shall not be effective until an appropriation has been made for the operation and maintenance thereof subsequently to such proposed acquisition," was held to be a change in law and legislation on an appropriation bill.

On Mar. 20, 1939,[17] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 4852), a point of order was sustained against the following provision:

The Clerk read as follows:

Historic sites and buildings: For carrying out the provisions of the act entitled "An act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes," approved August 21, 1935 (49 Stat. 666), including personal services in the District of Columbia, $24,000: Provided, That hereafter the authority of the Secretary of the Interior contained in such act, to acquire by gift on behalf of the United States any historic site, building, object, and antiquity of national significance, shall not be effective until an appropriation has been made for the operation and maintenance thereof subsequently to such proposed acquisition.

MR. [SCHUYLER OTIS] BLAND [of Virginia]: Mr. Chairman, I desire to make a point of order against the proviso, commencing with the word "*Provided*," line 17, page 119, down to the end of the paragraph, in that it is legislation on an appropriation bill. According to the report, it expressly changes the language of the act.

THE CHAIRMAN:[18] Does the gentleman from Oklahoma [Mr. Johnson] desire to be heard?

MR. [JED] JOHNSON: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

16. Herbert C. Bonner (N.C.).

17. 84 CONG. REC. 3000, 76th Cong. 1st Sess.

18. Frank H. Buck (Calif.).

Restriction on "Contribution to U.N."

§ 27.28 A provision in a general appropriation bill directing the President to "assure that no contribution to the United Nations Development Program authorized by the Foreign Assistance Act of 1961 . . . shall be used for projects for economic or technical assistance to the Government of Cuba, so long as Cuba is governed by the Castro regime," was ruled out as legislation [constituting a directive to the President and not confined to the funds carried in the bill].

On June 4, 1970,[19] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

> Technical assistance: For necessary expenses as authorized by law $310,000,000, distributed as follows:
>
> (1) World-wide, $151,000,000 (section 212);
>
> (2) Alliance for Progress, $75,000,000 (section 252(a)); and
>
> (3) Multilateral organizations, $85,000,000 (section 302(a)), of which not less than $13,000,000 shall be available only for the United Nations Children's Fund: *Provided,* That no part of this appropriation shall be used to initiate any project or activity which has not been justified to the Congress, except projects or activities relating to the reduction of population growth; *Provided further,* That the President shall seek to assure that no contribution to the United Nations Development Program authorized by the Foreign Assistance Act of 1961, as amended, shall be used for projects for economic or technical assistance to the Government of Cuba, so long as Cuba is governed by the Castro regime. . . .
>
> Mr. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[20] . . . The Chair will hear the gentleman from Wisconsin on his point of order.
>
> Mr. ZABLOCKI: Mr. Chairman, I make the point of order that the entire proviso beginning on line 20 and ending on line 25 of page 2 is legislation in an appropriation. I am for its objectives, but in effect it simply says that the President should try to enforce existing law. The provisions in existing law, section 620 of the Foreign Assistance Act are stronger and there is no sense in this useless repetition in an appropriation
>
> Mr. Chairman, I make the point of order that this is legislation on an appropriation bill.
>
> THE CHAIRMAN: Does the gentleman from Louisiana wish to be heard on the point of order?
>
> Mr. [OTTO E.] PASSMAN [of Louisiana]: Yes, sir, Mr. Chairman The

19. 116 CONG. REC. 18395, 18396, 91st Cong. 2d Sess.

20. Hale Boggs (La.).

proviso was added by the Committee on Appropriations in the foreign assistance appropriation bill for fiscal year 1965 in order to insure that no U.S. contribution to the UNDP would be used to give any type of economical or technical assistance to Cuba as long as Cuba is governed by the Castro regime.

I would like to interpret this as a limitation on an appropriation bill and ask for a ruling.

THE CHAIRMAN: The language in question is as follows: Line 20, page 2:

> *Provided further,* That the President shall seek to assure. . . .

And so forth.

That is obviously a directive to the President of the United States, it is not limited in application to the funds appropriated in this bill or any section thereof, and the Chair sustains the point of order.

Restricting "Amounts for Education Grants"

§ 27.29 In a paragraph of a general appropriation bill containing funds for higher education assistance, language restricting the availability of "amounts for basic opportunity grants" to full-time students in the first three years of college was held not to be confined to funds in the bill and was ruled out as legislation affecting amounts appropriated under other acts.

On June 27, 1974,[1] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill, the proceedings as indicated above occurred as follows:

> For carrying out, to the extent not otherwise provided, titles I, III, IV, section 745 of title VII, and parts A, B, C, and D of title IX, and section 1203 of the Higher Education Act . . . *Provided,* That amounts for basic opportunity grants shall be available only for full-time students at institutions of higher education who are not enrolled as regular students (as defined by the Commissioner of Education) at such institutions prior to April 1, 1973. . . .
>
> MRS. [EDITH] GREEN of Oregon: Mr. Chairman, I make a point of order against the language which occurs on page 18, beginning on line 7 and continuing through line 11 as legislation on an appropriation bill. The law at the present time, the general law says that the basic opportunity grants should be available to all students in freshmen, sophomore, junior, and senior years and students in the 5th year, part-time students, and last year we had restricted it to apply to freshmen and sophomores. This language further changes the law by saying basic opportunity grants shall be available only to freshmen, sophomores, and juniors, and therefore it is legislation on an appropriation bill changing the intent of the original law.
>
> MR. [DANIEL J.] FLOOD [of Pennsylvania]: . . . I believe this language in

1. 120 CONG. REC. 21670, 21671, 93d Cong. 2d Sess.

question is clearly conditioned on the use of funds in the bill and therefore not subject to a point of order.

It is a well-established principle and I quote:

> The House in the Committee of the Whole has the right to refuse to appropriate for any object either in whole or in part even though the object is authorized by law.

Mr. Chairman, in this case we are very simply eliminating the payments for these basic opportunity grants to students who are enrolled at institutions of higher learning after April 1, 1973, and excluding, expressly excluding students who were enrolled prior to April 1, 1973. . . .

THE CHAIRMAN:[2] . . . The gentleman from Pennsylvania makes some interesting and indeed some valid points with respect to what has been in the past and is uniformly accepted as a limitation on an appropriation bill.

The Chair must observe, however, that there is one distinguishing characteristic with regard to this proviso as it is presently written which differentiates it from valid limitations. The proviso as presently written does not specify that it is a limitation upon amounts appropriated in this bill. This, indeed, may have been the intention of those who drafted the bill, but the proviso is not drafted negatively and the Chair observes that the proviso as presently drafted would stipulate that amounts for basic opportunity grants shall be made available only to certain students.

If the Chair is correctly advised, the Chair believes that the language, literally read, could subject this proviso to the interpretation of being a limitation upon amounts previously appropriated under other acts in that it does not stipulate that its application would be intended specifically to funds provided in this bill or in this paragraph.

For that reason, the Chair sustains the point of order of the gentlewoman from Oregon.

Disapproval of Deferral

§ 27.30 A paragraph in a general appropriation bill providing congressional disapproval of a deferral of budget authority proposed by the President pursuant to the Impoundment Control Act is legislation in violation of Rule XXI clause 2.

On July 29, 1982,[3] During consideration in the Committee of the Whole of H.R. 6863 (supplemental appropriation bill), a point of order was sustained against the following provision in the bill:

> The Clerk read as follows:
>
> The Congress disapproves $100,000 of the proposed deferral D82–225 relating to the Department of Commerce, Bureau of the Census, "Periodic censuses and programs" as set forth in the message of February 5, 1982, which was transmitted to the Congress by the President. This disapproval shall be effective upon enactment into law of this bill and the amount of the proposed deferral

2. James C. Wright, Jr. (Tex.).

3. 128 CONG. REC. 18625, 97th Cong. 2d Sess.

disapproved herein shall be made available for obligation.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I raise a point of order against this section of the bill. . . .

[I]n clause 2 of rule XXI, it states that legislation in an appropriation bill is not appropriate. This is a disapproval of a deferral, which is legislation in an appropriation bill, therefore, I think, Mr. Chairman, it is subject to a point of order against it under clause 2 of rule XXI. . . .

MR. [NEAL] SMITH of Iowa: Mr. Chairman, I will point out that there are three or four deferrals in here, and obviously, that is true. We could report separate bills and take up the time of the House, but all we are doing here is avoiding that. The committee is in full agreement on both sides of the aisle. This is just avoiding taking up the time of the House with a number of separate bills. So there is no need for it. We just put that in here to do it in an easier way.

MR. WALKER: . . . The point that this gentleman from Pennsylvania is making is that they are inappropriate in a bill which makes appropriations under the rules of the House, and I am simply trying to sustain the rules.

THE CHAIRMAN:[4] Does the gentleman from Pennsylvania (Mr. Walker) insist on his point of order?

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

THE CHAIRMAN: The Chair sustains the point of order.

Parliamentarian's Note: While the Impoundment Control Act (Public Law No. 93–344, title X) provided a procedure for privileged consideration of resolutions of disapproval of Presidential deferrals of budget authority, and while the Committee on Appropriations is an appropriate committee for referral of such resolutions, such provisions when included in general appropriation bills are nevertheless legislation changing the procedure for congressional disapproval.

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

§ 28. Provisions Affecting Funds Held in Trust

Diverting From Highway Trust Fund

§ 28.1 The appropriation for a new purpose not authorized by law of funds held in trust in the Treasury for a different purpose, is legislation, changing the nature of the trust fund and not in order on an appropriation bill.

On May 28, 1959,[5] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 7349), a point of order was raised against the following provision:

5. 105 CONG. REC. 9351, 86th Cong. 1st Sess.

FOREST HIGHWAYS (TRUST FUND) (LIQUIDATION OF CONTRACT AUTHORIZATION)

For payment of obligations incurred in carrying out the provisions of title 23, United States Code, section 204, pursuant to contract authorization granted by title 23, United States Code, section 203, to remain available until expended, $37,100,000, to be derived from the "Highway trust fund", which sum is composed of $33,350,000, the remainder of the amount authorized to be appropriated for the fiscal year 1959, and $3,750,000, a part of the amount authorized to be appropriated for the fiscal year 1960: *Provided,* That the unexpended balances as of June 30, 1959, of appropriations heretofore granted under the head "Forest highways" or "Forest highways (liquidation of contract authorization)" are rescinded and shall be credited to miscellaneous receipts of the Treasury: *Provided further,* That this appropriation shall be available for the rental, purchase, construction, or alterations of buildings and sites necessary for the storage and repair of equipment and supplies used for road construction and maintenance, but the total cost of any such item under this authorization shall not exceed $15,000.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Chairman, a point of order.

THE CHAIRMAN:[6] The gentleman will state it.

MR. MILLS: Mr. Chairman, I make the point of order against the language in the bill beginning on line 22, page 12, and ending with line 17, page 13, on the ground that the paragraph contains language which proposes to change existing law and is therefore legislation on an appropriation bill.

I direct the Chairman's attention to this particular language on page 13, line 3: "to be derived from the highway trust fund." There is no authorization for expenditure from the highway trust fund for the purposes proposed in this paragraph.

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

MR. [PRINCE H.] PRESTON [Jr., of Georgia]: Mr. Chairman, the point of order is well taken. We concede the point of order.

THE CHAIRMAN: The Chair sustains the point of order.

In a similar case, on May 20, 1958,[7] language in an appropriation bill appropriating funds for the federal aid highway trust fund for expenses of forest roads and trails, had been held to be unauthorized and not in order. On that day, during consideration in the Committee of the Whole of the commerce appropriation bill (H.R. 12540), a point of order was raised against the following provision:

Forest highways (trust fund)

For expenses, not otherwise provided for, necessary for carrying out the provisions of section 23 of the Federal Highway Act of November 9, 1921, as amended (23 U.S.C. 23, 23a), to remain

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

7. 104 CONG. REC. 9065, 85th Cong. 2d Sess.

available until expended, $30 million, to be derived from the highway trust fund; which sum is composed of $22,250,000, the remainder of the amount authorized to be appropriated for the fiscal year 1958, and $7,750,000, a part of the amount authorized to be appropriated for the fiscal year 1959: *Provided*, That this appropriation shall be available for the rental, purchase, construction, or alterations of buildings and sites necessary for the storage and repair of equipment and supplies used for road construction and maintenance, but the total cost of any such item under this authorization shall not exceed $15,000.

MR. [ROBERT E.] JONES [Jr.] of Alabama: Mr. Chairman, I make a point of order against the language contained on line 16 immediately following the language "$30 million to be derived from the 'highway trust fund'" as being legislation on an appropriation bill and therefore subject to a point of order.

THE CHAIRMAN:[8] Does the gentleman from Georgia desire to be heard on the point of order?

MR. [PRINCE H.] PRESTON [Jr., of Georgia]: Briefly, Mr. Chairman. The reason this language was included in the bill is that it was requested by the Bureau of the Budget, and for the reason further that 95 percent of all forest highways are part of the Federal aid system. The committee felt, since that was true, it was a logical step to put the whole thing under the Federal aid system rather than make a direct appropriation for forest highways and public lands highways.

I do concede that the point of order is well taken; it is legislation.

THE CHAIRMAN: The Chair has examined the question and finds that the language is subject to a point of order and therefore sustains the point of order.

Forest Roads and Trails

§ 28.2 Language in an appropriation bill appropriating funds in the federal aid highway trust fund for expenses of forest roads and trails was held not in order where no authorization existed for the expenditure from the highway trust fund for those proposed purposes

On Feb. 9, 1960,[9] during consideration in the Committee of the Whole of a general appropriation bill (H.R 10234), a point of order was raised against the following provision:

The Clerk read as follows:

FOREST HIGHWAYS (TRUST FUND) (LIQUIDATION OF CONTRACT AUTHORIZATION)

For payment of obligations incurred in carrying out the provisions of title 23, United States Code, section 204, pursuant to contract authorization granted by title 23, United States Code, section 203, to remain available until expended, $36,000,000, to be derived from the "Highway trust fund"; which sum is composed of $2,250,000, the remainder of the amount authorized to be

8. Herbert C. Bonner (N.C.).

9. 106 CONG. REC. 2348, 86th Cong. 2d Sess.

appropriated for the fiscal year 1959, and $33,000,000, the amount authorized to be appropriated for the fiscal year 1960, and $750,000, a part of the amount authorized to be appropriated for the fiscal year 1961: *Provided,* That the unexpended balance as of June 30, 1960, of appropriations heretofore granted under the head "Forest highways (liquidation of contract authorization)" is hereby rescinded: *Provided further,* That this appropriation shall be available for the rental, purchase, construction, or alterations of buildings and sites necessary for the storage and repair of equipment and supplies used for road construction and maintenance but the total cost of any such item under this authorization shall not exceed $15,000

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Chairman, I rise to make a point of order against the language appearing in the bill on page 13, line 16, through line 11 on page 14

The language therein contained is, in my opinion, subject to a point of order on the ground that there is no authorization for this action by the Appropriations Committee. The language is legislation in an appropriation bill.

THE CHAIRMAN:[10] Does the gentleman from Georgia desire to be heard on the point of order?

MR. [PRINCE H.] PRESTON [Jr., of Georgia]: Yes, Mr. Chairman.

I would like to say that the language carried in the bill is as it was presented to the committee by the Bureau of Roads. The language was carried in the bill last year, and a point of order was made against it, and we conceded the point of order, which we do in this instance, because it clearly is subject to a point of order. But it is a continuing difficulty that we have to deal with later on.

THE CHAIRMAN: The Chair sustains the point of order.

Highway Trust Fund, Administrative Expenses

§ 28.3 Language in an appropriation bill appropriating funds in the federal aid highway trust fund for administrative expenses of the Internal Revenue Service for collection and allocation of taxes to the fund was held to be unauthorized by law and therefore legislation and not in order.

On Mar. 4, 1958,[11] the Committee of the Whole was considering H.R. 11085, a bill making appropriations for the U.S. Treasury and the Post Office Departments. At one point the Clerk read as follows:

INTERNAL REVENUE SERVICE

Salaries and Expenses

For necessary expenses of the Internal Revenue Service, including purchase (not to exceed 100 for replacement only) and hire of passenger motor vehicles; and services as authorized by section 15 of the act of August 2, 1946 (5 U.S.C. 55a), and of expert witnesses at such rates as may be determined by

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

11. 104 CONG. REC. 3410–12, 85th Cong. 2d Sess.

the Commissioner; $322 million, together with $3,500,000 to be derived from the fund established pursuant to section 209 of the Highway Revenue Act of 1956: *Provided,* That not to exceed $200,000 of the amount appropriated herein shall be available for expenses of instruction and facilities for the training of employees by contract, subject to such regulations as may be prescribed by the Secretary of the Treasury.

MR. [HALE] BOGGS [of Louisiana]: Mr. Chairman, I make the point of order against the language appearing on page 3, in lines 19 and 20, and the portion of line 21 preceding the proviso, that the language proposes to change existing law and is legislation on an appropriation bill. . . .

THE CHAIRMAN:[12] The Chair thanks the gentlemen for their able presentation and is prepared to rule.

This matter does present some difficulty, of course, and requires an interpretation of section 209 of the Federal-Aid Highway Act of 1956. Reference to the legislative history would indicate that it was the intention of the Congress to preserve inviolate trust funds for highway purposes, with such indirect use as appeared clearly from the act itself. And, when we take that into account and the precedents with reference to the disposition of trust funds, I think it appears that the language is not sufficiently broad to cover the proposed appropriation in this case, and in the absence of an authorization otherwise, the point of order should be sustained

§ 28.4 Language in an appropriation bill appropriating funds in the federal aid highway trust fund for payment of obligations incurred pursuant to the contract authorization granted for public lands highways, was held to be legislation and not in order.

On May 20, 1958,[13] during consideration in the Committee of the Whole of the Commerce Department appropriation bill (H.R. 12540), a point of order was raised against the following provision:

The Clerk read as follows:

Public lands highways (trust fund)

For payment of obligations incurred pursuant to the contract authorization granted by section 106 of the Federal-Aid Highway Act of 1956 (23 U.S.C. 155), to remain available until expended, $2,692,000, to be derived from the highway trust fund; which sum is composed of $692,000, the balance of the amount authorized to be appropriated for the fiscal year 1958, and $2 million, a part of the amount authorized for the fiscal year 1959.

MR. [ROBERT E.] JONES [Jr.] of Alabama: Mr. Chairman, I make a point of order against the language appearing on line 8, '$2,692,000, to be derived from the "highway trust fund" as being legislation on an appropriation bill.

MR. [PRINCE H.] PRESTON [Jr., of Georgia]: Mr. Chairman, the situation is the same with this item as the pre-

12. Brooks Hays (Ark.).

13. 104 CONG. REC. 9067, 85th Cong. 2d Sess.

vious item, and we concede the point of order.

THE CHAIRMAN:[14] The Chair has examined the language and sustains the point of order.

Transfer From Unemployment Trust Fund

§ 28.5 Language in an appropriation bill providing for transfer from the unemployment trust fund a sum for expenses of the Bureau of Employment Security was held to be legislation and not in order.

On Mar. 27, 1958,[15] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 11645), a point of order was raised against the following provision:

The Clerk read as follows:

BUREAU OF EMPLOYMENT SECURITY

Salaries and Expenses

For expenses necessary for the general administration of the employment service and unemployment compensation programs, including temporary employment of persons, without regard to the civil-service laws, for the farm placement migratory labor program; $6,219,000, of which $6,093,400 shall be derived by transfer from the Federal unemployment account in the unemployment trust fund, and of which $1,145,800 shall be for carrying into effect the provisions of title IV (except section 602) of the Servicemen's Readjustment Act of 1944.

MR. [MELVIN R.] LAIRD [of Wisconsin]: Mr. Chairman, I make a point of order against the language on page 4 line 13 starting with the word "of" and continuing through the word "and" on line 16. I am not objecting to the provision to provide for the $6,093,400, but rather the way in which it is being provided.

On page 4 of this bill dealing with appropriations to the Bureau of Employment Security in the Labor Department line 14 reads as follows:

$6,093,400 shall be derived by transfer from the Federal unemployment trust fund.

There is no provision in substantive law authorizing the transfer of any sums from the unemployment account except to the account of a State in the unemployment trust fund, which State has applied for and been certified as eligible to receive an interest-free repayable advance for the purpose of replenishing its depleted reserve account

The Federal unemployment account is commonly referred to as a State's loan fund. There is no valid basis for the transfer of these funds from the unemployment trust fund to take care of the expenses and salaries of the Bureau of Employment Security. This transfer contravenes the intent and purpose of the provision for the loan fund to assist the States which are in financial difficulty to continue to make benefit payments.

The Federal unemployment account is in no manner analogous to the OASI

14. Herbert C. Bonner (N.C.).

15. 104 CONG. REC. 5630, 85th Cong. 2d Sess.

and railroad retirement trust funds, which trust funds specifically earmark all tax collections for crediting to the trust funds and specifically authorize a transfer out of these trust funds of amounts necessary to defray the cost of the OASI and railroad retirement administration.

An examination of section 904(h), which establishes the Federal unemployment account in the unemployment trust fund, and of sections 901 and 902, which provide for the computation of any positive balance which is to go into the trust fund, and of section 903, which provides for the crediting of the positive balance to the trust fund, and of section 1201, which provides for the making of advances out of the Federal unemployment account, and of section 1202, which provides for the crediting of certain tax collections directly to the Federal unemployment account, will clearly disclose that there is no provision whatsoever for the use of funds in the Federal unemployment account except for the single and sole purpose of making repayable interest-free advances to the States.

MR. [JOHN E.] FOGARTY [of Rhode Island]: We concede the point of order, Mr. Chairman.

THE CHAIRMAN:[16] The point of order is sustained.

District of Columbia Gasoline Tax Fund

§ 28.6 An appropriation for the salary and expenses of the office of Director of Vehicles and Traffic out of the District of Columbia Gasoline Tax Fund was held to be legislative since the Gasoline Tax Act provides that revenue raised through its operation could only be appropriated by Congress for road and street improvements and repairs.

On Apr. 2, 1937,[17] 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:

The Clerk read as follows:

For paving, repaving, grading, and otherwise improving streets, avenues, and roads, including temporary per-diem services, surveying instruments and implements, and drawing materials, and the maintenance of motor vehicles used in this work, including curbing and gutters and replacement of curb-line trees where necessary, and including trees and parkings, assessment and permit work and the several purposes provided for in that paragraph, and salaries and expenses of the office of the Director of Vehicles and Traffic, as follows, to be paid from the special fund created by section 1 of the act entitled "An act to provide for a tax on motor-vehicle fuels sold within the District of Columbia, and for other purposes", approved April 23, 1924 (43 Stat., p. 106), and accretions by repayment of assessments.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make the point of

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

17. 81 CONG. REC. 3110, 3111, 75th Cong. 1st Sess.

order against the portion beginning in line 11 on page 71 after the word "work", and beginning with the word "including", going through lines 11, 12, and 13, on down to and inclusive of line 21, on the ground that it is legislation and changes existing law. . . .

THE CHAIRMAN:[18] The Chair is prepared to rule. The gentleman from Oklahoma [Mr. Nichols] makes a point of order against certain language appearing on page 71, beginning with the word "including", in line 11, and extending to the end of the paragraph.

The gentleman from Mississippi [Mr. Collins] in speaking in opposition to the point of order, has called attention to certain improvements that are provided for by the language included in this part of the bill. The Chair would be inclined to agree with the gentleman in the contention that he presents in all respects except that relating to the question of salaries and expenses of the office of director of vehicles and traffic. The Chair observes that the office of director of vehicles and traffic is provided for in the act to regulate traffic in the District of Columbia, and so forth. An examination of this law clearly shows that the director of vehicles and traffic has rather broad general duties to perform, and it is not related alone to what might be imposed upon him in connection with the Gasoline Tax Act. The Gasoline tax Act provides, as was pointed out by the gentleman from Oklahoma, that—

> The proceeds of the tax, except as provided in section 840 of this title, shall be paid into the Treasury of the United States entirely to the credit of the District of Columbia and shall be available for appropriations by the Congress exclusively for road and street improvements and repairs.

The Chair is unable to see how that language would be broad enough to authorize the payment of salaries for the director of vehicles and traffic. The Gasoline Tax Act does not make provision for the payment of the salaries to which the Chair has directed attention. Therefore, salaries paid out of this fund would not be authorized by law. For that reason the provision to which the point of order is made would, in the opinion of the Chair, be legislation on a general appropriation bill and would be subject to a point of order.

Therefore the Chair sustains the point of order.

Indians' Judgment Fund

§ 28.7 Language in an appropriation bill providing that a specific amount of the appropriation shall be available from the judgment fund appropriated for the Indians of California to be advanced in part for payment of attorneys employed by any tribe under contracts approved by the Secretary of the Interior, was held to be legislation and not in order.

On May 3, 1950,[19] during consideration in the Committee of the Whole of the Interior Department

18. Jere Cooper (Tenn.).

19. 96 CONG. REC. 6304, 6305, 81st Cong. 2d Sess.

appropriation bill (H.R. 7786), the following proceedings took place:

TRIBAL FUNDS

In addition to the tribal funds authorized to be expended by existing law, there is hereby appropriated $2,525,465 from tribal funds not otherwise available for expenditure for the benefit of Indians and Indian tribes, including pay and travel expenses of employees . . . compensation and expenses of attorneys and other persons employed by Indian tribes under approved contracts; pay, travel and other expenses of tribal officers, councils, and committees thereof . . . and employment of a recreational director for the Menominee Reservation and a curator for the Osage Museum . . . *Provided,* That $100,000 of the amount appropriated herein shall be available from the judgment fund appropriated for the Indians of California by section 203 of the act of April 25, 1945 (59 Stat. 77), to be advanced for compensation and expenses of attorneys and other persons employed by any tribe, band, or other identifiable groups of Indians of California under contracts approved by the Secretary . . . *Provided further,* That in addition to the amount appropriated herein, tribal funds may be advanced to Indian tribes for such purposes as may be designated by the governing body of the particular tribe involved and approved by the Secretary. Any tribal funds advanced under this authority shall be reported to the Congress in the annual budget for the next succeeding fiscal year

MR. [THOMAS H.] WERDEL [of California]: Mr. Chairman, I make a point of order, on the ground that it is legislation on an appropriation bill, against the language commencing with the word "*Provided*" in line 3, page 229, reading:

> That $100,000 of the amount appropriated herein shall be available from the judgment fund appropriated for the Indians of California by section 203 of the Act of April 25, 1945 (59 Stat. 77), to be advanced for compensation and expenses of attorneys. . . .

THE CHAIRMAN:[20] Does the gentleman from Washington desire to be heard on the point of order?

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The Chair sustains the point of order.

Farm Labor Supply Revolving Fund

§ 28.8 Language in an appropriation bill providing for transfer of funds from the farm labor supply revolving fund for expenses of the Mexican farm labor program was held to be legislation and not in order.

On Mar. 27, 1958,[1] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R.

20. Jere Cooper (Tenn.).

1. 104 CONG. REC. 5630, 85th Cong. 2d Sess.

11645), a point of order was raised against the following provision:

The Clerk read as follows:

Salaries and expenses, Mexican farm labor program

For expenses, not otherwise provided for, necessary to carry out the functions of the Department of Labor under the act of July 12, 1951, as amended, $1,550,000, to be derived by transfer from the farm labor supply revolving fund: *Provided,* That reimbursement to the United States under agreements hereafter entered into pursuant to section 502 of the act of July 12, 1951, as amended, shall include all expenses of program operations except those compliance activities separately provided for herein.

MR. [WILLIAM R.] POAGE [of Texas]: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill. . . .

THE CHAIRMAN:[2] Does the gentleman from Rhode Island desire to be heard on the point of order?

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, we must concede the point of order.

THE CHAIRMAN: The point of order is sustained.

§ 29. Transfer of Funds Within Same Bill

Transfers of appropriations within the confines of the same bill are normally considered in order on a general appropriation bill if not accompanied by legislative language.

Bestowing New Authority on Bureau of the Budget

§ 29.1 Language in a general appropriation bill authorizing the Secretary of Labor to allot or transfer, with the approval of the Director of the Budget, funds from a certain appropriation in the bill to any bureau of the Department of Labor, to enable such agency to perform certain services, was held to be legislation and not in order on a general appropriation bill.

On Jan. 20, 1939,[3] the Committee of the Whole was considering H.R. 2868, a deficiency appropriation bill. The Clerk read a paragraph providing an appropriation for the Department of Labor, Wage and Hour Division, which contained the following proviso:

Provided, That the Secretary of Labor may allot or transfer, with the approval of the Director of the Bureau of the Budget, funds from this appropriation to any bureau or office of the

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

3. 84 CONG. REC. 591, 592, 76th Cong. 1st Sess.

Department of Labor to enable such agency to perform services for the Wage and Hour Division.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the proviso beginning in line 3, page 5, and including the rest of the section on the ground that it is legislation on an appropriation bill that imposes additional duties upon the Bureau of the Budget.

THE CHAIRMAN:[4] Does the gentleman from Virginia desire to be heard on the point of order?

MR. [CLIFTON A.] WOODRUM of Virginia: No.

THE CHAIRMAN: The Chair sustains the point of order.

In General; Permissive Authority to Transfer Indefinite Amount

§ 29.2 On one occasion, a provision in a general appropriation bill which permitted the transfer to an appropriation therein of amounts contained in other items in that bill, while not constituting a reappropriation proscribed by Rule XXI clause 6 (then clause 5), was conceded to be in violation of the rules (as legislative in character) and was therefore ruled out on a point of order.

On June 4, 1971,[5] during consideration in the Committee of the Whole of the legislative branch appropriation bill (H.R. 8825), a point of order was raised against the following provision:

GOVERNMENT CONTRIBUTIONS

For contributions to employees life insurance fund, retirement fund, and health benefits fund, as authorized by law, $5,245,000, and in addition, such amount as may be necessary may be transferred from the preceding appropriation for "miscellaneous items".

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language to be found on page 6, line 7, after the figure "$5,245,000." It is this language:

> And in addition, such amount as may be necessary may be transferred from the preceding appropriation for "miscellaneous items".

Mr. Chairman, I make a point of order against this language on the grounds that it is legislation on an appropriation bill.

THE CHAIRMAN:[6] Does the gentleman from Alabama desire to be heard on the point of order?

MR. [GEORGE W.] ANDREWS of Alabama: Mr. Chairman, I will say to the gentleman from Iowa this is merely a facilitating provision. This is an amount that must be paid. It is subject to a point of order, but it is going to be paid one way or the other, because it is provided by law for Government contributions. We have no way of determining precisely what amount will be needed.

Some Members have 15 employees. Some have 16. Some have four or five.

4. Wall Doxey (Miss.).

5. 117 CONG. REC. 18039, 92d Cong. 1st Sess.

6. John M. Murphy (N.Y.).

Regardless of the amount, it has to be paid.

MR. GROSS: Then I submit, Mr. Chairman, the Members of the House have no way of knowing what constitutes "miscellaneous items."

MR. ANDREWS of Alabama: It refers to the "preceding appropriation for 'miscellaneous items'." This is transfer authority. That is what it amounts to.

Does the gentleman insist on his point of order?

MR. GROSS: Yes, Mr. Chairman; I insist on the point of order.

MR. ANDREWS of Alabama: Mr. Chairman, we concede the point of order.

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

MR. ANDREWS of Alabama: We do, Mr. Chairman.

THE CHAIRMAN: The point of order is sustained.

Transfer of Funds to Account in Bill

§ 29.3 A provision in an appropriation bill that the Secretary may transfer funds, from appropriations available for authorized activities of the Department of Agriculture, for use in formulating programs for such authorized activities, was held in order.

On Mar. 25, 1939,[7] the Committee of the Whole was considering H.R. 5269, an Agriculture Department appropriation bill. Proceedings were as follows:

Economic investigations: For acquiring and diffusing useful information among the people of the United States, and for aiding in formulating programs for authorized activities of the Department of Agriculture, relative to agricultural production, distribution, land utilization, and conservation in their broadest aspects, including farm management and practice, utilization of farm and food products, purchasing of farm supplies, farm population and rural life, farm labor, farm finance, insurance and taxation, adjustments in production to probable demand for the different farm and food products; land ownership and values, costs, prices, and income in their relation to agriculture, including causes for their variations and trends, $839,100: Provided, That the Secretary may transfer to this appropriation from the funds available for authorized activities of the Department of Agriculture such sums as may be necessary for aiding in formulating programs for such authorized activities, including expenditures for employment of persons and means in the District of Columbia and elsewhere. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I renew the point of order [that the provision] is legislation

7. 86 CONG. REC. 3306, 3307, 76th Cong. 1st Sess. Admistinction may be made between actual permissible transfer of funds and the conferral of a general discretionary authority to make transfers which might be impermissible if having reference to transfer of funds not contained within the same bill.

upon an appropriation bill and a delegation to the Secretary of authority to transfer funds, and delegates to or requires of the Secretary of Agriculture additional duties in violation of the rules. . . .

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, no funds are affected here except funds which have been appropriated by Congress, and the Secretary of Agriculture under the terms of the organic law is authorized to administer the Department, and he may, as administrator of that Department at any time transfer such funds from one activity to another. The point of order is not well taken, Mr. Chairman, the appropriation is for the use of the Secretary of Agriculture in the discharge of his official duties, as provided by law. . . .

THE CHAIRMAN:[8] . . . The first point of order made by the gentleman from New York [Mr. Taber] is overruled because an examination of section 511 of title 5 of the United States Code discloses that it is certainly in order. The last part is related to the transfer of funds. The Chair quotes from Cannon's Precedents, volume VII, section 1470, the following:

> A proposition to transfer funds from one department of the Government to another for purposes authorized by law was held not to involve legislation and to be in order in an appropriation bill.

The gentleman makes the point of order that it is legislation in an appropriation bill. The point of order is overruled.

Granting Transfer Authority

§ 29.4 Language in the District of Columbia appropriation bill authorizing the commissioners to transfer money from a specific appropriation to another appropriation was held to be legislative in nature and not in order on an appropriation bill.

On Apr. 2, 1937,[9] 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:

The Clerk read as follows:

POLICE COURT

> Salaries: For personal services, $107,030: *Provided* That upon occupancy of the new police court building the Commissioners are authorized to transfer such part of this appropriation for payment of custodial employees as may be necessary to the appropriation in this act for "Care of the District Buildings."—

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make the point of order on the language contained in the paragraph beginning in line 22 of page 48, after the "$107,030", which reads:

> *Provided*, That upon occupancy of the new police court building the Commissioners are authorized to transfer such part of this appropriation for payment of custodial employees as may be necessary to the appropriation in this act for "Care of the District buildings"—

That it is legislation and changes existing law. . . .

8. Wright Patman (Tex.).

9. 81 CONG. REC. 3108, 3109, 75th Cong. 1st Sess.

THE CHAIRMAN:[10] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [ROSS A.] COLLINS [of Mississippi]: I do not, Mr. Chairman.

THE CHAIRMAN: The gentleman from Oklahoma makes a point of order against the proviso on page 48, line 22, which reads:

> *Provided*, That upon occupancy of the new police-court building the Commissioners are authorized to transfer such part of this appropriation for payment of custodial employees as may be necessary to the appropriation in this act for "Care of the District buildings."

This provision seeks to authorize the Commissioners of the District of Columbia to transfer funds appropriated for one specific purpose to another purpose, and, apparently, seeks also to impose an additional duty on the Commissioners. Therefore, it is legislation on a general appropriation bill, and the Chair sustains the point of order.

Limiting Amounts Transferred Within Accounts in Bill

§ 29.5 A general provision in an appropriation bill permitting transfers of sums appropriated therein from one subhead to another in the same enactment was held not to constitute legislation.

On June 29, 1959,[11] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7978), a point of order was raised against the following provision:

The Clerk read as follows:

GENERAL PROVISIONS

> Not to exceed 5 per centum of any appropriation made available to the National Aeronautics and Space Administration by this Act may be transferred to any other such appropriation, but the "Salaries and expenses" appropriation shall not be thereby increased.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a point of order.

THE CHAIRMAN:[12] The gentleman will state it.

MR. GROSS: Mr. Chairman, I make a point of order against the language on page 5, lines 17 to 21, inclusive, as being legislation on an appropriation bill.

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

MR. [ALBERT] THOMAS [of Texas]: Yes, Mr. Chairman. We think this is not legislation. It refers entirely to funds within this bill. It starts off as a limitation and applies only to funds in this bill.

MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, will the gentleman yield?

MR. THOMAS: I yield to my friend from Iowa.

MR. JENSEN: This is nothing more nor less than a limitation on an appropriation bill.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from

10. Jere Cooper (Tenn.).

11. 105 CONG. REC. 12131, 86th Cong. 1st Sess.

12. Paul J. Kilday (Tex.).

Iowa [Mr. Gross] makes a point of order against that portion of the bill appearing on page 5, lines 17 through 21, that it constitutes legislation on an appropriation bill. It appears to the Chair that the transfer applies to funds only within this bill, that it is not legislation on an appropriation bill, and overrules the point of order.

§ 29.6 An amendment to a title of an appropriation bill providing that not to exceed five percent of any appropriation in the title may be transferred to any other appropriation therein, but no such appropriation shall be increased by more than five percent by any such transfer was held not to constitute legislation.

On Apr. 25, 1950,[13] the Committee of the Whole was considering H.R. 7786, the Labor Department and Federal Security Agency chapter of the general appropriation bill for 1951. The Clerk read as follows:

Amendment offered by Mr. [John E.] Fogarty [of Rhode Island]: On page 124, line 13, insert "Sec. 106. Not to exceed 5 percent of any appropriation in this title may be transferred to any other such appropriation, but no such appropriation shall be increased by more than 5 percent by any such transfer: *Provided*, That no such transfer shall be used for creation of new functions within the Department."

MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[14] The gentleman will state it.

MR. TABER: Mr. Chairman, this is legislation upon an appropriation bill in that it gives authority to somebody else to perform a budgetary act in a department. It goes beyond the pale of a direct appropriation or a limitation and it gives authority to the department to transfer funds. That authority does not exist without this language and it is clearly a delegation of additional duties to the department that do not already exist. . . .

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Rhode Island has offered an amendment which has been reported. The gentleman from New York has made a point of order against the amendment on the ground that it is legislation on an appropriation bill in violation of the rules of the House.

The Chair has examined the amendment offered by the gentleman from Rhode Island and has listened to the argument presented by the gentleman from New York. The Chair is of the opinion that the language contained in this amendment does not constitute legislation, and invites attention to section 1468 of Cannon's Precedents, volume 7, in which it is stated:

> A proposition to transfer a sum previously appropriated from one subhead to another in the same enactment was held not to constitute legislation.

There are quite a number of decisions cited in approval of that holding.

13. 96 CONG. REC. 5732, 81st Cong. 2d Sess.

14. Jere Cooper (Tenn.).

Therefore the Chair overrules the point of order.

29.7 Language in a general appropriation bill permitting appropriations to be used interchangeably among several offices with approval of the Bureau of the Budget provided that no office exceed the amount appropriated for it by more than a designated percentage, was held to be legislative in character.

On Mar. 16, 1945,[15] 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, and proceedings ensued as indicated below:

> Not to exceed 5 percent of the foregoing appropriations for personal services shall be available interchangeably, subject to the approval of the Bureau of the Budget, for expenditures in the various offices and divisions named, but not more than 5 percent shall be added to the amount appropriated for any one of said offices or divisions and any interchange of appropriations hereunder shall be reported to Congress in the annual Budget, and not to exceed $250,000 of said appropriations shall be available for the employment, on duties properly chargeable to each of said appropriations, of special assistants to the Attorney General without regard to the Classification Act of 1923, as amended.
>
> MR. [ROBERT F.] JONES [of Ohio]: Mr. Chairman, I make a point of order against the language on page 36 beginning with line 23 and continuing to the end of the page, and on page 37, the first 10 lines, inclusive, on the ground that it is legislation on an appropriation bill not provided for by law.
>
> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I concede the point of order. It has been in the bill for many years, however.
>
> THE CHAIRMAN:[16] The point of order is sustained.

Parliamentarian's Note: The language in this paragraph giving approval authority to the Bureau of the Budget, requiring reporting to Congress, and waiving the Classification Act of 1923 was clearly legislation.

Interchange of Appropriations

§ 29.8 Language in an appropriation bill permitting interchange of appropriations in the bill for purposes authorized by law was in order on an appropriation bill.

On Mar. 28, 1939,[17] the Committee of the Whole was considering H.R. 5269, an Agriculture

15. 91 CONG. REC. 2353, 79th Cong. 1st Sess.

16. Wilbur D. Mills (Ark.).

17. 84 CONG. REC. 3458, 3459, 76th Cong. 1st Sess.

Department appropriation bill. The Clerk read as follows:

INTERCHANGE OF APPROPRIATIONS

Not to exceed 5 percent of the foregoing amounts for the miscellaneous expenses of the work of any bureau, division, or office herein provided for shall be available interchangeably for expenditures on the objects included within the general expenses of such bureau, division, or office, but not more than 5 percent shall be added to any one item of appropriation except in cases of extraordinary emergency.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph that it is legislation on an appropriation bill and delegates authority and requires the performance of further duties on the part of the Secretary of Agriculture.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, the Chair ruled on that point of order when a similar provision was before the Committee Friday.

THE CHAIRMAN:[18] On a number of occasions a similar point of order has been overruled. The Chair overrules the point of order.

Restrictions on Transfers Between Accounts in Paragraph

§ 29.9 A provision restricting the amount which could be transferred between accounts under that paragraph was held in order as a limitation.

On Aug. 1, 1973,[19] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9590), a point of order was raised against the proviso in the following paragraph:

PROPERTY MANAGEMENT AND DISPOSAL SERVICE

OPERATING EXPENSES

For expenses, not otherwise provided for, necessary for carrying out the functions of the Administrator with respect to the utilization of excess property; the disposal of surplus property; the rehabilitation of personal property . . . the supplemental stockpile established by section 104(b) of the Agricultural Trade Development and Assistance Act of 1954 (68 Stat. 456, as amended by 73 Stat. 607); including services as authorized by 5 U.S.C. 3109 and reimbursement for security guard services, $33,000,000, to be derived from proceeds from transfers of excess property, disposal of surplus property, and sales of stockpile materials . . . *Provided further*, That none of the funds available under this heading shall be available for transfer to any other account nor for the funding of any activities other than those specifically authorized under this heading.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, a point of order.

THE CHAIRMAN:[20] The gentleman will state it.

After points of order had been conceded with respect to other language in the paragraph (omit-

18. Wright Patman (Tex.).

19. 119 CONG. REC. 27288, 27289, 93d Cong. 1st Sess.

20. Richard Bolling (Mo.).

ted here),[1] the following colloquy occurred:

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, the points of order made against the language are conceded down to line 7, page 23, but the language of that "*Provided further,*" is a simple limitation on an appropriation bill and is not subject to a point of order.

THE CHAIRMAN: The Chair agrees with the gentleman from Oklahoma.

The various points of order that are conceded are sustained, and that language is stricken. The language:

> *Provided further,* That none of the funds available under this heading shall be available for transfer to any other account nor for the funding of any activities other than those specifically authorized under this heading.

Which is a proper limitation and appears beginning in line 7, page 23, through line 10, remains in the bill, since the point of order has not been made against the entire paragraph.

1. Points of order were directed against provisions in a paragraph of the appropriation bill (1) authorizing the General Services Administration to acquire lease-hold interests in property; (2) removing limitations imposed by law on the value of surplus strategic materials which may be transferred without reimbursement to the national stockpile; and (3) authorizing materials in certain stockpiles and inventories to be available without reimbursement for transfer to contractors as payment for expenses. These provisions were conceded to be legislation and were stricken from the bill.

See § 38.7, infra, for more detailed treatment of the points of order.

Unallocated Funds in Pending Bill

§ 29.10 To a general appropriation bill making appropriations for certain public works, an amendment providing that a particular authorized project should be financed out of "any available unallocated funds contained in this act" was held to be in order.

On June 5, 1959,[2] during consideration in the Committee of the Whole of a bill (H.R. 7509), making appropriations for the civil functions of the Department of the Army, a point of order was raised against the following amendment:

MR. [ROBERT L.F.] SIKES [of Florida]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Sikes: On page 4, line 16, strike out the period, add a semicolon and the words "*Provided further,* That the improvement of the Escambra River, Fla., according to authorized specification may be undertaken with any available unallocated funds contained in this act." . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it

2. 105 CONG. REC. 10054, 10055, 86th Cong. 1st Sess.

changes existing law. It attempts to control funds that have been appropriated in previous acts in a way that is different from the way those acts now stand and as those old appropriations stood.

THE CHAIRMAN:[3] The Chair would like to be informed as to whether or not the particular project referred to in the amendment offered by the gentleman from Florida is authorized by law.

MR. TABER: That I do not know.

MR. SIKES: May I respectfully state, Mr. Chairman, that the project is authorized by law. It was carried in the last rivers and harbors omnibus bill, which was signed by the President, and I am informed the number of that law is 500 of the 85th Congress. I further point out that this is permissive and as such would not constitute legislation upon an appropriation bill.

MR. TABER: The previous act carried a provision "to remain available until expended." This particular amendment would mean that they would be using it for something that was not in the original bill, and that would result in a change in existing law That is the idea that I had in making the point of order.

THE CHAIRMAN: The Chair is prepared to rule.

Apparently the gentleman from New York is not making the point of order on whether or not the project is authorized. The Chair has been informed by the gentleman from Florida that the project is authorized by law.

Insofar as the point of order made by the gentleman from New York is concerned, the Chair overrules the point of order because this language is quite specific in that it makes available unallocated funds contained in this act, the act now being debated before the committee, and does not affect heretofore made appropriations.

3. Hale Boggs (La.).

Discretionary Transfer of Funds

§ 29.11 Language in an appropriation bill making an appropriation for specific objects "together with such amounts (transferred) from other appropriations . . . as may be determined by the Secretary," was held to be legislation on an appropriation bill and not in order.

On May 17, 1951,[4] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 3973), a point of order was raised against the following provision:

The Clerk read as follows:

OFFICE OF INFORMATION

For necessary expenses in connection with the publication . . . and distribution of bulletins, documents, and reports, the preparation, distribution, and display of agricultural motion and sound pictures . . . and the coordination of informational work and programs authorized by Congress in the Department, $1,271,000, together with such

4. 97 CONG. REC. 5468, 5469, 82d Cong. 1st Sess.

amounts from other appropriations or authorizations as are provided in the schedules in the budget for the current fiscal year for such expenses, which several amounts or portions thereof, as may be determined by the Secretary, not exceeding a total of $16,200, shall be transferred to and made a part of this appropriation, of which total appropriation amounts not exceeding those specified may be used for the purposes enumerated as follows: For preparation and display of exhibits, $104,725. . . .

MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make a point of order against the language in lines 4 to 9, inclusive, page 46, on the ground that it involves additional duties on the part of the Secretary of Agriculture.

THE CHAIRMAN:[5] Does the gentleman from Mississippi care to be heard on the point of order?

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Transfer With Approval of Committee on Appropriations

§ 29.12 A paragraph in a general appropriation bill authorizing the transfer of funds within an appropriation for allowances and expenses, with the approval of the Committee on Appropriations, was conceded to constitute legislation in violation of Rule XXI clause 2 and was stricken from the bill on a point of order.

On Mar. 16, 1977,[6] during consideration in the Committee of the Whole of H.R. 4877 (supplemental appropriation bill), a point of order was sustained against a provision in the bill, as follows:

The Clerk read as follows:

Such amounts as deemed necessary for the payment of allowances and expenses within this appropriation may be transferred among accounts upon approval of the Committee on Appropriations of the House of Representatives.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I make a point of order against the language on page 29, lines 17 through 20, inclusive, on the grounds that the language as it is written constitutes legislation on an appropriation bill.

In previous instances where an appropriation bill has contained similar language—and I emphasize the word "similar"—the Chair has held that it is permissible to allow language that would transfer appropriations from one subhead to another in the same enactment.

The language before us, if it is read carefully, makes it rather clear that what is being permitted is the transfer of amounts, and they may be transferred, as the language says, among accounts upon approval.

It is not in fact an authorization to transfer amongst the various moneys in this bill, but in fact could be used to

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

6. 123 CONG. REC. 7747, 95th Cong. 1st Sess.

authorize the transfer of previously appropriated amounts not in this bill.

Therefore, it exceeds the authority of the committee to in fact consider it. . . .

MR. [GEORGE E.] SHIPLEY [of Illinois] . . . The committee will concede the point of order.

THE CHAIRMAN:[7] The gentleman from Illinois [Mr. Shipley] concedes the point of order. Therefore, the Chair sustains the point of order raised by the gentleman from Maryland [Mr. Bauman] and the language is stricken from the bill.

§ 30. Transfer of Funds Not Limited to Same Bill

Section 139(c) of the Legislative Reorganization Act of 1946, later incorporated into the standing rules as clause 5 (now clause 6) of Rule XXI in 1953, sought to prohibit inclusion in general appropriation bills of reappropriations, which were understood to be legislative methods (1) for making an appropriation available after the period in which it may be obligated has expired, or (2) for transferring to a given appropriation an amount not needed in another appropriation. See Chapter 25, § 3, supra, for further discussion of decisions involving reappropriations of unexpended balances on general appropriation bills. In that section, the emphasis is on the prohibition against reappropriations, while in the precedents cited in this section, the Chair's rulings focus on the proposed language as changing existing law. This section includes rulings wherein the Chair has relied upon both clauses 2 and 6 of Rule XXI to rule out provisions which sought to authorize the transfer of previously appropriated funds into new accounts (see §§ 30.17, 30.19, and 30.20, infra).

Prior to enactment of the Legislative Reorganization Act of 1946, provisions which reappropriated in a direct manner unexpended balances and continued their availability for the same purpose for an extended period of time were not prohibited by Rule XXI because they were not deemed to change existing law by conferring new authority (see, e.g., 4 Hinds' Precedents § 3592; 7 Cannon's Precedents § 1152; Ch. 25, § 3.14, supra). Indeed, some precedents indicated that provisions in or amendments to general appropriation bills were in order which not only constituted reappropriations of unexpended balances, but which conferred new authority on federal officials to expend such balances for purposes different from those for which originally appropriated. (See, e.g., 4 Hinds'

7. Walter Flowers (Ala.).

Precedents § 3591; 7 Cannon's Precedents § 1153–1156, 1158.) Other precedents, however, indicated that propositions to make an appropriation payable from funds already appropriated for a different purpose were considered legislation (see, e.g., 7 Cannon's Precedents § 1466). On Dec. 14, 1921, Speaker Frederick H. Gillett, of Massachusetts, stated that "there are several decisions in print which are contradictory. There are decisions both ways." (7 Cannon's Precedents § 1158).

In light of the more recent precedents contained in this section, it is apparent that provisions on a general appropriation bill are in violation of Rule XXI clause 2 if they confer new authority to expend previously appropriated funds for a new purpose, or to expend funds for unauthorized projects, by mandating or permitting transfers between accounts.

Transfer From Previous Appropriations

§ 30.1 An amendment to an appropriation bill proposing the transfer of funds previously appropriated in another appropriation bill is legislation. [An amendment proposing transfer of funds appropriated under one heading in the Supplemental Appropriation Act, 1959 (Pub. L. No. 85–766) for use under another heading in the District of Columbia Appropriation Act, 1959 (Pub. L. No. 85–594), was held to be legislation.]

On Mar. 24, 1959,[8] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 5916), a point of order was raised against the following amendment:

> MR. [CARL T.] DURHAM [of North Carolina]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Durham: After line 24, page 13, add the following:
>
> "OFFICE OF CIVIL DEFENSE AND MOBILIZATION
>
> "Federal contributions: For an additional amount for 'Federal contributions' to the States pursuant to section 205 of the Federal Civil Defense Act of 1950, as amended, to be equally matched with State funds, $3 million to be derived by transfer from the appropriation for 'emergency supplies and equipment,' fiscal year 1959."
>
> THE CHAIRMAN:[9] The gentleman from North Carolina is recognized.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the amendment.

8. 105 CONG. REC. 5102, 86th Cong. 1st Sess.
9. Hale Boggs (La.).

THE CHAIRMAN: The gentleman will state it.

MR. TABER: Mr. Chairman, I make the point of order that the amendment is legislation on an appropriation bill.

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

MR. DURHAM: Mr. Chairman, this is a transfer of funds, a matter that I understand appears all through the bill, and I was so advised by the clerk of the committee.

THE CHAIRMAN: This is a little more than that; it affects the transfer of funds for the fiscal year 1959 for this new purpose, and as such would constitute legislation.

MR. DURHAM: If that is the Chair's interpretation, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

§ 30.2 In an appropriation bill a provision transferring funds previously appropriated under another subhead in a prior enactment was held to be legislation.

On Mar. 18, 1955,[10] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 4903), a point of order was raised against the following provision:

The Clerk read as follows:

Contributions to the United Nations expanded program of technical assistance

For an additional amount for "Contributions to the United Nations expanded program of technical assistance," for United States contributions during the period ending June 30, 1955, $4 million, to be derived by transfer from the appropriation contained in Public Law 778, 83d Congress, for assistance authorized by section 121 of Public Law 665, 83d Congress. . . .

See § 29.6, supra, where transfers between accounts in the pending bill, rather than from an account in a prior act were held in order, citing 7 Cannon's Precedents § 1468.

THE CHAIRMAN:[11] What is the gentleman's point of order?

MR. [CLARE E.] HOFFMAN of Michigan: That it is legislation on an appropriation bill because in line 19 it provides that the "$4 million, to be derived by transfer from the appropriation contained in Public Law 778, 83d Congress, for assistance authorized by section 121 of Public Law 665, 83d Congress." That section which I have before me expressly provides that the money is given to the President for his own purposes. Down in the next section a limitation is put on the fund. The President's control over it is limited to certain specific purposes. . . .

MR. [PRINCE H.] PRESTON [of Georgia]: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Transfer From Fund Created From Bond Proceeds

§ 30.3 Language in an appropriation bill providing addi-

10. 101 CONG. REC. 3197, 3198, 84th Cong. 1st Sess.

11. Clark W. Thompson (Tex.).

tional funds for rural electrification to be made available from the loan authority for 1956 for rural housing (not an appropriated account), was held to be legislation and not in order.

On Apr. 15, 1957,[12] during consideration in the Committee of the Whole of a deficiency appropriation bill (H.R 6870), a point of order was raised against the following provision:

The Clerk read as follows:

RURAL ELECTRIFICATION ADMINISTRATION

Loan authorizations

For an additional amount for loans for the rural-electrification program, $200 million, to be borrowed from the Secretary of the Treasury in accordance with section 3(a) of the Rural Electrification Act of 1936, as amended, and to be made available from the loan authorization contained in section 606(a) of the act of August 7, 1956 (Public Law 1020).

Mr. [ROBERT E.] JONES [Jr.] of Alabama: Mr. Chairman, a point of order.

THE CHAIRMAN:[13] The gentleman will state it.

MR. JONES of Alabama: Mr. Chairman, I make a point of order against the language commencing on page 2, line 23, after the word, "as amended" and reading: "And to be made available from the loan authorization contained in section 606(a) of the act of August 7, 1956 (Public Law 1020)."

Mr. Chairman, the public law referred to has nothing whatsoever to do with the authorization of REA, but is a loan authorization for construction of rural housing as provided in the Rural Housing Act of 1949, as amended by the act of 1956, which gives authorization to the Secretary of Agriculture to issue such debentures as necessary to carry out the authority contained in section 11 of the act of 1949.

I submit that this is legislation on an appropriation bill and is subject to a point of order. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The point of order made by the gentleman from Alabama on line 23, page 2, is against the three lines beginning with the word "and" as being legislation upon an appropriation bill, which it obviously is.

Transfer From Funds Available to Commodity Credit Corporation

§ 30.4 To an appropriation bill an amendment making available to the Secretary of the Army for furnishing a specified milk ration certain available funds of the Commodity Credit Corporation was held to be legislation and therefore not in order.

On Apr. 29, 1954,[14] during consideration in the Committee of the

12. 103 CONG. REC. 5684–86, 85th Cong. 1st Sess.

13. Howard W. Smith (Va.).

14. 100 CONG. REC. 5749, 4750, 83d Cong. 2d Sess.

Whole of the Defense Department appropriation bill (H.R. 8873), a point of order was raised against the following amendment:

MR. [FRANKLIN D.] ROOSEVELT [Jr., of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Roosevelt: At line 12, page 6, after the figure "$4,150,479,000", insert the following: "plus such other amounts, from the funds available to the Commodity Credit Corporation for price support to producers of milk, butterfat and the products of milk and butterfat, which the Secretary of the Army requires in order to make available to each of the persons herein described, a minimum daily ration of 1 quart of whole fluid milk in addition to such other amounts of milk products to which he is entitled."

MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from New York. . . .

Mr. Chairman, I press the point of order, based on the fact that this amendment seeks to change existing law, first; secondly, it seeks to provide funds other than those provided in the act; and, thirdly, I believe it seeks to place additional duties on the Secretary of the Army.

THE CHAIRMAN:[15] Does the gentleman from New York [Mr. Roosevelt] desire to be heard on the point of order?

MR. ROOSEVELT: Yes, Mr. Chairman.

May I say in opposition to my friend on the point of order that this does not change existing law insofar as appropriations have been made. As I pointed out, this does not call for any new appropriation. It merely marks the transfer of existing appropriations for dispensation in accordance with the amendment.

THE CHAIRMAN: The Chair is ready to rule.

The Chair is of the opinion that the amendment is legislation on an appropriation bill, and that the point of order is well taken. The Chair sustains the point of order.

Transfer to Previous Appropriation.

§ 30.5 To an appropriation bill an amendment adding an appropriation and providing for transferring funds therefrom to an appropriation made by a prior enactment but without regard to the limitations applicable to the previously appropriated funds was held to be legislation and not in order.

On July 20, 1954,[16] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 9936), a point of order was raised against the following amendment:

Amendment offered by Mr. [Richard B.] Wigglesworth [of Massachusetts]: Page 6, line 11, after the words "ship construction" strike out all of lines 11,

15. William M. McCulloch (Ohio).

16. 100 CONG. REC. 11123, 83d Cong. 2d Sess.

12, and 13, and insert in lieu thereof the following:

"For payment of construction-differential subsidy and cost of national defense features incident to construction of four passenger-cargo ships under title V of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1154); for reconditioning and betterment of not to exceed four ships in the national defense reserve fleet; and for necessary expenses for the acquisition of used tankers pursuant to section 510 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1160), and the payment of cost of national defense features incorporated in new tankers constructed to replace such used tankers, $82,600,000, to remain available until expended: *Provided*, That transfers may be made to the appropriation for the current fiscal year for 'Salaries and expenses' for administrative expenses (not to exceed $500,000) and for reserve fleet expenses (in such amounts as may be required), and any such transfers shall be without regard to the limitations under that appropriation on the amounts available for such expenses: *Provided further*, That appropriations granted herein shall be available to pay construction-differential subsidy granted by the Federal Maritime Board, pursuant to section 501(c) of the Merchant Marine Act, 1936, as amended, to aid in the reconstruction of any Mariner-class ships sold under the provisions of title VII of the 1936 act."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order that the amendment contains legislation. The language "and any such transfers shall be without regard to the limitations under that appropriation of the amounts available for such expenses" makes it clearly subject to a point of order.

THE CHAIRMAN:[17] Does the gentleman from Massachusetts desire to be heard on the point of order?

MR. WIGGLESWORTH: Mr. Chairman, the language submitted is the language that was received from the Bureau of the Budget. It seemed to me that if this step was to be taken this was the desirable way to do. However, if the gentleman from New York insists, I concede that the language in question is subject to a point of order.

THE CHAIRMAN: The Chair sustains the point of order on the ground that the amendment does contain legislation.

Lifting Appropriation Ceiling; Allowing Transfer to New Project

§ 30.6 A provision in an appropriation bill changing the dollar limitation on a project and transferring previously appropriated funds from one project to another was conceded to be legislation and was ruled out on a point of order.

On Aug. 26, 1960,[18] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 12740), the

17. Leo E. Allen (Ill.).

18. 106 CONG. REC. 17899, 86th Cong. 2d Sess.

following point of order was raised:

MR. [H.R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order on the language on page 12, beginning on line 11, running through line 19, as being legislation on an appropriation bill, the language being as follows:

CONSTRUCTION AND REHABILITATION

The limitation under this head in the Interior Department Appropriation Act, 1955, on the amount available toward the emergency rehabilitation of the Crescent Lake Dam project, Oregon, is increased from "$297,000" to $305,000", and not to exceed $300,000 of funds available under this head for fiscal year 1961 shall be used for advance planning activities on the Canadian River project, Texas.

THE CHAIRMAN:[19] Does the gentleman from Texas desire to be heard on the point of order?

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, the point of order is good, but for the all-powerful reason that it does not appropriate any money, but simply transfers money appropriated several years ago and we concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Change in Purpose of Permanent Appropriation

§ 30.7 Language in an appropriation bill authorizing the Secretary of Agriculture to pay out of funds made available by section 32 of the Act of Aug. 24, 1935, transportation and handling charges on surplus commodities owned by the department and its agencies for the purpose of distribution to public welfare agencies was held to be legislation and not in order.

On Apr. 27, 1950,[20] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 7786), a point of order was directed against the following language of the bill:

The Department of Agriculture is authorized to pay out of funds made available by section 32 of the Act of August 24, 1935 (7 U.S.C. 612(c)) transportation and handling charges on surplus commodities owned by the Department or any of its instrumentalities or agencies for the purpose of distribution to public welfare agencies.

MR. [STEPHEN] PACE [of Georgia]: Mr. Chairman, I make the point of order against the language on page 193, lines 18 through 24, that it is legislation on an appropriation bill and therefore is contrary to the rules of the House, in that it seeks to add an additional purpose for which section 32 funds may be expended.

Section 32 of the act of August 24, 1935, is the section which sets aside 30 percent of the gross customs receipts to

19. Herbert C. Bonner (N.C.).

20. 96 CONG. REC. 5911–13, 81st Cong. 2d Sess.

be expended for certain purposes; namely, to increase the export and the consumption of agricultural commodities. The purposes for which the funds may be expended are set out. They may be used by paying indemnities to exporters, and by making payments to producers. The further authority proposed to be set forth in this bill is to pay the transportation and handling charges on certain agricultural commodities. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: While there is much merit to the intent of our friend, the gentleman from Minnesota, I am rather of the same opinion as my colleague, the gentleman from Georgia, so far as the use of section 32 funds is concerned. Further, it has been my purpose and the purpose of our committee to cooperate with the legislative committee and in no case to usurp or try to usurp their prerogatives. The provision put in here is a stop-gap and it was done only on the basis that the legislative committee was now considering this matter. I think the committee is so considering it. I wonder if it would not be better to let the whole thing go out and let the legislative committee handle it by substantive law. I think that is the way it properly should be handled. I did yield to the desires of our colleagues of the committee to try to meet this situation by putting it in here. But if there is any objection on the part of the legislative committee, certainly it is their business. We are trying to help out rather than try to usurp their prerogatives. That is the position I take.

THE CHAIRMAN:[1] The Chair is prepared to rule on the point of order. . . .

The Chair has examined the language referred to and is definitely of the opinion that it does include legislation on an appropriation bill. The Chair is very favorably impressed with the last statement made by the gentleman from Georgia in reply to the observation made by the gentleman from South Dakota to the effect that if existing law provided for this there would be no useful purpose to be served by having this provision in the bill. It does appear very clearly to the Chair that the inclusion of this language would result in a diversion of certain funds from the purpose provided by existing law for the use of those funds. It therefore appearing to the Chair that it is legislation on an appropriation bill, in violation of the rules of the House, the Chair sustains the point of order.

New Purpose For Previously Appropriated Funds

§ 30.8 Language in an appropriation bill providing that funds for two reclamation projects be derived by transfer from appropriations previously made available to the Department of the Interior was held to be legislation and not in order.

On Feb. 26, 1958,[2] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 10881), a point

1. Jere Cooper (Tenn.).

2. 104 CONG. REC. 2899, 85th Cong. 2d Sess.

of order was raised against the following provision:

The Clerk read as follows:

BUREAU OF RECLAMATION

For an additional amount for the "Upper Colorado River Basin Fund" for the Glen Canyon project, not to exceed $10 million; and for the Trinity River division of the Central Valley project, not to exceed $10 million; to be derived by transfer from any definite annual appropriations available to the Department of the Interior for the fiscal year 1958 and from the appropriation "Construction and Rehabilitation": *Provided*, That no part of any funds allocated to these two project activities shall be used for contracts not in effect as of February 20, 1958.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph beginning on line 20, page 14, and ending on page 15, line 7, on the ground that it changes existing law and is legislation on an appropriation bill.

MR. [CLARENCE] CANNON [of Missouri]: We concede the point of order, Mr. Chairman.

THE CHAIRMAN:[3] The Chair sustains the point of order.

§ 30.9 Language in a general appropriation bill authorizing the President to allocate a certain sum from funds made available by the Emergency Relief Appropriations Act of 1937 was held to be legislation and not in order.

On Aug. 17, 1937,[4] during consideration in the Committee of the Whole of the third deficiency appropriation bill (H.R. 8245), the following point of order was raised:

MR. [HARRY L.] ENGLESBRIGHT [of California]: Mr. Chairman, I make the point of order against that portion of the title appearing on page 18, beginning on line 5, and reading as follows:

Yosemite National Park, Calif.: For the acquisition of certain lands, including expenses incidental thereto, as set forth in the act approved July 9, 1937 (Public, No. 195, 75th Cong.), the President is authorized to allocate not to exceed $2,005,000, from funds made available by section 1 of the Emergency Relief Appropriation Act of 1937, such amount having been heretofore earmarked for such purpose.

That it is legislation on an appropriation bill, that it is directory in character, that it changes existing law, and is unauthorized.

If the Chair will permit, may I call the attention of the Chair to certain authorities?

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Chairman, if the matter is subject to a point of order, there is no use prolonging the agony.

THE CHAIRMAN:[5] The Chair is ready to rule.

The language in this paragraph seeks to authorize the President to allocate funds not heretofore allocated to this park. This is purely legislation

3. Francis E. Walter (Pa.).

4. 81 CONG. REC. 9171, 9172, 75th Cong. 1st Sess.

5. Claude V. Parsons (Ill.).

upon an appropriation bill. Therefore, the point of order is sustained with reference to that portion of the title "Department of the Interior" which appears on page 18, lines 5 to 12, inclusive, under the heading, "National Park Service."

Continuation of Previous Appropriations; New Purpose

§ 30.10 Language in a supplemental appropriation bill which is applicable to funds appropriated in another act constitutes legislation and is not in order.

On June 29, 1959, [6] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7978), a point of order was raised against the following provision:

The Clerk read as follows:

DEPARTMENT OF COMMERCE

Bureau of the Census

SALARIES AND EXPENSES

The appropriation granted under this head for the fiscal year 1960 shall be available to finance, through advances or on a reimbursable basis, the procurement of materials, services, or costs of activities which relate to, or benefit, two or more appropriations to the Bureau of the Census.

MR. [JOSEPH F.] HOLT [of California]: Mr. Chairman, I make the point of order that the following language, on page 7, lines 11 to 15, "The appropriation granted under this head for the fiscal year 1960 shall be available to finance, through advances or on a reimbursable basis, the procurement of materials, services, or costs of activities which relate to, or benefit, two or more appropriations to the Bureau of the Census" constitutes legislation on an appropriation bill and is subject to a point of order.

It refers to funds that are not in this bill but in another; and I noted in the report that the Comptroller General expresses the opinion that specific legislative authorization should be obtained. I maintain that the place to obtain it is not here but in the legislative committee.

THE CHAIRMAN: [7] does the gentleman from Texas desire to be heard on the point of order?

MR. [ALBERT] THOMAS [of Texas]: I might say that the committee had no deep feeling one way or the other on this provision. It was inserted in the bill because the Bureau of the Budget said the Census Bureau must have this language in order to expend their own funds. We are merely trying to help the agency out. It does not call for 5 cents expenditure; it does not call for either an increase or a decrease in the appropriation. It is merely the way costs are applied within the agency.

THE CHAIRMAN: The Chair is prepared to rule. The point of order is made that the following language, appearing on page 7, lines 11 to 15, "The appropriation granted under this head for the fiscal year 1960 shall be available to finance, through advances or on

6. 105 CONG. REC. 12132, 12133, 86th Cong. 1st Sess.

7. Paul J. Kilday (Tex.).

a reimbursable basis, the procurement of materials, services, or costs of activities which relate to, or benefit, two or more appropriations to the Bureau of the Census" constitutes legislation on an appropriation bill, and has no reference to the bill before the Committee.

The Chair sustains the point of order.

Appropriation Continued Without Warrant Action

§ 30.11 Language in an appropriation bill for establishment of air-navigation facilities providing that the appropriation for a preceding year "is hereby continued available without warrant action" and merged with this appropriation, was held unauthorized by law.

On Mar. 16, 1945,[8] 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:

Establishment of air-navigation facilities: For the acquisition and establishment by contract or purchase and hire of aid-navigation facilities, including the equipment of additional civil airways for day and night flying . . . the alteration and modernization of existing air-navigation facilities; the acquisition of the necessary sites by lease or grant . . . and hire, maintenance, repair, and operation of passenger-carrying automobiles, $9,400,000: *Provided,* That the consolidated appropriation under this head for the fiscal year 1945 is hereby continued available without warrant action until June 30, 1946, and is hereby merged with this appropriation, the total amount to be disbursed and accounted for as one fund.

MR. [ROBERT F.] JONES [of Ohio]: Mr. Chairman, a point of order.

THE CHAIRMAN:[9] The gentleman will state it.

MR. JONES: Mr. Chairman, I make a point of order against the language appearing on page 58, line 16, "without warrant action" on the ground that it is an appropriation not authorized by law.

THE CHAIRMAN: Does the gentleman from Michigan desire to be heard on the point of order.

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

THE CHAIRMAN: The point of order is sustained.

§ 30.12 A provision in an appropriation bill for development of landing areas making available funds from a prior appropriation bill "without warrant action" was held unauthorized by law.

On Mar. 16, 1945,[10] during consideration in the Committee of

8. 91 CONG. REC. 2370, 79th Cong. 1st Sess.

9. Wilbur D. Mills (Ark.).

10. 91 CONG. REC. 2373, 79th Cong. 1st Sess.

the Whole of a general appropriation bill (H.R. 2603), a point of order was raised against the following provision:

> Development of landing areas: For completion of the program for the construction, improvement, and repair of public airports for national defense the consolidated appropriation under this head in the Department of Commerce Appropriation Act, 1943; shall remain available until June 30, 1946, without warrant action, and the portion thereof available for administrative expenses shall be available also for the operation, maintenance, and repair of passenger-carrying automobiles, and not to exceed $3,000 for printing and binding. . . .
>
> MR. [ROBERT F.] JONES [of Ohio]: Mr. Chairman, a point of order. I make a point of order against the words on page 61, line 10, "without warrant action", that it is legislation on an appropriation bill.
>
> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I concede the point of order.
>
> THE CHAIRMAN:[11] The Chair sustains the point of order.

Making Available Other Funds by Reference to the Budget Estimates Submitted by the President

§ 30.13 Language in an appropriation bill appropriating for the Office of the Solicitor, Department of Agriculture, a specific amount "together with such amounts from other appropriations or authorizations as are provided in the . . . Budget . . . which several amounts . . . as may be determined by the Secretary . . . shall be transferred to . . . this appropriation," was conceded to be legislation on an appropriation bill and held not in order.

On Apr. 27, 1950, [12] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 7786), the following point of order was raised:

> MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make a point of order against the language on page 205, beginning with line 8:
>
> > together with such amounts from other appropriations or authorizations as are provided in the schedules in the Budget for the current fiscal year for such expenses, which several amounts or portions thereof, as may be determined by the Secretary, not exceeding a total of $207,000, shall be transferred to and made a part of this appropriation: *Provided, however,* That if the total amounts of such appropriations or authorizations for the current fiscal year shall at any time exceed or fall below the amounts estimated, respectively, therefor in the budget for such year, the amounts transferred

11. Wilbur D. Mills (Ark.).

12. 96 CONG. REC. 5913, 81st Cong. 2d Sess.

or to be transferred therefrom to this appropriation shall be increased or decreased in such amounts as the Bureau of the Budget, after a hearing thereon with representatives of the Department, shall determine are appropriate to the requirements as changed by such reductions or increases in such appropriations or authorizations.

I make a point of order against all of the remainder of the provision relating to the Office of Solicitor on the ground that the provision therein contained is legislation on an appropriation bill. . . .

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

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I can only say that this is the usual and customary way of carrying these funds. In fairness to the Chair, I think it does appear to be legislation.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from New York has made a point of order against the language appearing on page 205 beginning with the words "together with such amounts" in line 8 and through the remainder of that paragraph, on the ground it is legislation on an appropriation bill and in violation of the rules of the House. The gentleman from Mississippi concedes the point of order; therefore, the Chair sustains the point of order.

Transfers Within Department

§ 30.14 Language in an appropriation bill authorizing any appropriation therein for the Treasury Department to be transferred to any other appropriation for that department, with approval of the Bureau of the Budget, and requiring the reporting of such transfers to the Committees on Appropriations of the House and Senate, was conceded to be legislation and ruled out on a point of order.

On Apr. 5, 1965,[14] during consideration in the Committee of the Whole of the Treasury and Post Office Departments appropriation bill (H.R. 7060), Mr. H. R. Gross, of Iowa, made a point of order against the provision described above, as being legislation on an appropriation bill and bestowing authority not previously granted by law. The following exchange then took place:

THE CHAIRMAN:[15] Does the gentleman from Oklahoma desire to be heard on the point of order?

13. Jere Cooper (Tenn.).

14. 111 CONG. REC. 6869, 89th Cong. 1st Sess. The provision in question stated: "Not to exceed 2½% of any appropriation herein for the Treasury Department . . . may be transferred with approval of Bureau of the Budget, to any other appropriation of the Department . . . and such transfers shall be reported promptly to the Committees on Appropriations of the House and Senate."

15. John A. Blatnik (Minn.).

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, obviously the language is subject to a point of order, if the gentleman insists on his point of order.

THE CHAIRMAN: The paragraph does contain legislation, as maintained by the gentleman from Iowa; and the Chair sustains the point of order.

§ 30.15 Language in an appropriation bill permitting the transfer of any appropriation available to the Post Office Department for the current fiscal year to be transferred to any other such appropriation was ruled out as legislation.

On Apr. 5, 1965,[16] during consideration in the Committee of the Whole of the Treasury and Post Office Departments appropriation bill (H.R. 7060), a point of order was raised by Mr. H. R. Gross, of Iowa, against the language described above. The following exchange then took place:

THE CHAIRMAN:[17] Does the gentleman from Oklahoma desire to be heard on the point of order?

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, this language has been in the bill for many years. I believe the gentleman will find that the transfer authority within this Department is considerably different from the point he raised in the case of the Treasury,[18] where there was transferability between agencies.

The language probably is subject to a point of order, but it can take from the Department the only device it has to cope with unexpected and unforeseen changes in mail flow volume which can and frequently do occur. That makes transferability almost vital to the efficient functioning of the Department.

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

MR. GROSS: Mr. Chairman, I insist upon the point of order.

THE CHAIRMAN: The paragraph does contain legislative matter, and the point of order is sustained.

Transfers Between Departments

§ 30.16 A provision in a general appropriation bill authorizing the head of any department of the government having funds available for scientific investigations to transfer such funds, under certain conditions, to the Interior Department for expenditure by such department was held to be legislation and ruled out of order.

On May 2, 1951,[19] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3790), a

16. 111 CONG. REC. 6869, 89th Cong. 1st Sess.

17. John A. Blatnik (Minn.).

18. See § 30.14, supra.

19. 97 CONG. REC. 4738, 82d Cong. 1st Sess.

point of order was raised against the following provision:

The Clerk read as follows:

Sec. 109. During the current fiscal year the head of any department or establishment of the Government having funds available for scientific and technical investigations within the scope of the functions of the Department of the Interior may, with the approval of the Secretary, transfer to the Department such sums as may be necessary therefor, which sums so transferred may be expended for the same objects and in the same manner as sums appropriated herein but without their limitations.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the language in section 109 on the ground that it is legislation upon an appropriation bill.

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, we concede the point of order.

THE CHAIRMAN:[20] The point of order is sustained.

Funds in Other Acts Available for New Purpose

§ 30.17 A section in a general appropriation bill requiring that funds provided in other acts be available for employment of guards for government buildings and conferring certain powers on those guards and on the Postmaster General was conceded to be subject to a point of order and was ruled out as in violation of Rule XXI clauses 2 and 5 (5 now clause 6).

On Aug. 1, 1973,[1] during consideration in the Committee of the Whole of the Department of the Treasury, Postal Service, and Executive Office appropriation bill (H.R. 9590) for fiscal 1974, Mr. John D. Dingell, of Michigan, raised a point of order against certain language in the bill:

Sec. 610. Funds made available by this or any other Act to the "Building management fund" (40 U.S.C. 490(f)), and the "Postal service fund" (39 U.S.C. 2003), shall be available for employment of guards for all buildings and areas owned or occupied by the United States or the Postal Service and under the charge and control of the General Services Administration or the Postal Service, and such guards shall have, with respect to such property, the powers of special policemen provided by the first section of the Act of June 1, 1948 (62 Stat. 281; 40 U.S.C. 318), but shall not be restricted to certain Federal property as otherwise required by the proviso contained in said section, and, as to property owned or occupied by the Postal Service, the Postmaster General may take the same actions as the Administrator of General Services may take under the provisions of sections 2 and 3 of the Act of June 1, 1948 (62 Stat. 281; 40 U.S.C. 318a, 318b) attaching thereto penal consequences under the authority and within the limits provided in section 4 of the Act of June 1, 1948 (62 Stat. 281; 40 U.S.C. 318c).

20. Wilbur D. Mills (Ark.).

1. 119 CONG. REC. 27291, 93d Cong. 1st Sess.

MR. DINGELL: Mr. Chairman, I make, again, the same point of order against the entirety of section 610, beginning with line 4 on page 36.

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN:[2] The point of order is conceded and sustained.

§ 30.18 A provision in an appropriation bill permitting an appropriation previously made in another act to be used for a new purpose was conceded to be legislation.

On Dec. 11, 1969,[3] during consideration in the Committee of the Whole of a bill (H.R. 15209) making supplemental appropriations for fiscal year 1970, Mr. H. R. Gross, of Iowa, raised a point of order against certain language in the bill:

MEMBERS' CLERK HIRE

After June 1, 1970, but without increasing the aggregate basic clerk hire monetary allowance to which each Member and the Resident Commissioner from Puerto Rico is otherwise entitled by law, the appropriation for "Members' clerk hire" may be used for employment of a "student congressional intern" in accord with the provisions of House Resolution 416, Eighty-ninth Congress.

MR. GROSS: Mr. Chairman, I make a point of order against the language on page 6, beginning with line 11 and through line 18, as being legislation on an appropriation bill.

THE CHAIRMAN:[4] Does the gentleman desire to be heard in support of the point of order?

MR. GROSS: I thought I made the point of order, Mr. Chairman.

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

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the Committee on Appropriations put this legislation in the bill for the purpose of accommodating Members. It is subject to a point of order, and the point of order is conceded.

THE CHAIRMAN: The gentleman from Texas has conceded the point of order, and the Chair sustains the point of order.

Funds Carried Forward for Same Purpose

§ 30.19 Where the bill providing an annual authorization for the Coast Guard Reserve had not yet been enacted into law, an amendment to a general appropriation bill containing funds for Coast Guard Reserve training and providing that amounts equal to prior year appropriations for that purpose should be transferred to

2. Richard Bolling (Mo.).
3. 115 CONG. REC. 38541, 48542, 91st Cong. 1st Sess.
4. James G. O'Hara (Mich.).

that appropriation was held to contain an unauthorized appropriation in violation of Rule XXI clause 2, and a reappropriation of unexpended balances in violation of Rule XXI clause 5 (now clause 6).

On June 20, 1973,[5] during consideration in the Committee of the Whole of the Department of Transportation appropriation bill for fiscal 1974 [H.R. 8760], Mr. George H. Mahon, of Texas, raised a point of order against an amendment offered by Mr. Silvio O. Conte, of Massachusetts. Proceedings were as follows:

> Amendment offered by Mr. Conte: Page 4, after line 23, insert:
>
> RESERVE TRAINING
>
> For all necessary expenses for the Coast Guard Reserve, as authorized by law; maintenance and operation of facilities; and supplies, equipment, and services; $25,000,000: *Provided*, That amounts equal to the obligated balances against appropriations for "Reserve training" for the two preceeding years shall be transferred to and merged with this appropriation, and such merged appropriation shall be available as one fund, except for accounting purposes of the Coast Guard, for payment of obligations properly incurred against such prior year appropriations and against this appropriation. . . .
>
> MR. MAHON: Mr. Chairman, I insist on my point of order against the amendment. The amendment, in my opinion, is legislation on an appropriation bill and the funds are not authorized by law, so I make the point of order against the amendment. . . .
>
> THE CHAIRMAN:[6] The Chair is prepared to rule.
>
> Clause 2, rule XXI, prohibits unauthorized items from being included in amendments to a general appropriation bill, and also clause 5, rule XXI, has a prohibition against the reappropriation of unexpended balances of sums appropriated in prior years. The amendment is subject to a point of order for these reasons and the Chair sustains the point of order.

Funds Continued Available for Same Purpose

§ 30.20 In an appropriation bill a provision that "the unexpended balance of appropriations heretofore reserved for moving the International Broadcasting Service to the District of Columbia or its environs shall remain available for such purpose until December 31, 1954," was ruled out, being a reappropriation in violation of Rule XXI clause 5 [now clause 6], the Chair also construing the language to be legislation in violation of Rule XXI clause 2.

5. 119 CONG. REC. 20538, 20539, 93d Cong. 1st Sess.

6. John M. Murphy (N.Y.).

On Mar. 3, 1954,[7] the Committee of the Whole was considering H.R. 8067, a State, Justice, and Commerce Departments appropriation. Proceedings were as follows:

MR. [JOHN J.] ROONEY [of New York]: Yes, Mr. Chairman. On page 49, lines 11 to 14, I make a point of order against that language.

THE CHAIRMAN:[8] Will the gentleman explain his point of order?

MR. ROONEY: This would make available into another fiscal year funds appropriated in the current year. There is no authority in law for this.

THE CHAIRMAN: Does the gentleman from Ohio wish to be heard on the point of order?

MR. [CLIFF] CLEVENGER [of Ohio]: I concede the point of order, Mr. Chairman.

THE CHAIRMAN: The Chair thinks this is legislation on an appropriation bill. Therefore, the point of order is sustained.

Transfer of Funds to Other Agencies of Government for Authorized Work

§ 30.21 A provision in a general appropriation bill permitting reimbursement (or advance transfer) of funds therein between federal agencies for purposes authorized by law is in order as a direction to the reimbursing agency as to the manner in which such funds are to be expended—where existing law permits the reimbursing agency to requisition services of other federal agencies.

On June 21, 1974,[9] during consideration of H.R 15472, the Department of Agriculture, Environmental and Consumer Protection appropriation bill, language authorizing the Environmental Protection Agency to transfer funds to other federal agencies for certain services rendered to the EPA was held not to change provisions of existing law permitting reimbursements between agencies, where the Committee on Appropriations cited statutory authority for such interagency agreements.[10]

The Clerk read as follows:

ENERGY RESEARCH AND DEVELOPMENT

For energy research and development activities, including hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; uniforms, or allowances therefor, as authorized by section 5901–5902, United States Code, title 5; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the

7. 100 CONG. REC. 2600, 83d Cong. 2d Sess.

8. Leroy Johnson (Calif.).

9. 120 CONG. REC. 20592, 20593, 93d Cong. 2d Sess.

10. See 31 USC § 686.

rate of GS–18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; $103,000,000, to remain available until expended: [*Provided*, That the Environmental Protection Agency may transfer so much of the funds appropriated herein as it deems appropriate to other federal agencies for energy research and development activities that they may be in a position to supply, or to render:] *Provided further*, That the amount appropriated for "Energy Research and Development" in the Special Energy Research and Development Appropriation Act, 1975, shall be merged, without limitation, with this appropriation: *Provided further*, That none of the funds contained in this Act shall be used to fund the development of automotive power systems: *Provided further*, That this appropriation shall be available only within the limits of amounts authorized by law for fiscal year 1975.

POINT OF ORDER

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I rise to a point of order.

THE CHAIRMAN:[11] The gentleman will state it.

MR. DINGELL: Mr. Chairman, I make a point of order against the language at page 33, commencing with the word "provided" at line 17 down through the end of page 33, line 21.

The point of order, Mr. Chairman, is that the language complained of constitutes legislation in an appropriation bill and is, as such, violative of rule XXI, clause 2.

Mr. Chairman, I am prepared, at the convenience of the Chair, to be heard on this point of order.

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

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

Mr. Chairman, the basic authority for interagency agreements is the Economy Act of 1932, which, subject to the limitation noted below, permits the requisitioning of goods and services between Federal agencies. Additionally, there are other statutes applicable to EPA which authorize cooperation and coordination with other Federal agencies, these include section 104(a), (b), (c), (i), (h), (p), and (t) of the Federal Water Pollution Control Act; section 204 of the Solid Waste Disposal Act; section 102(b) and 103 of the Clean Air Act; section 14(1) of the Noise Control Act of 1972; and sections 20(a), 22(b); and 23(b) of the Federal Pesticide Control Act of 1972.

So, the language to which the gentleman objects, while it might be repetitious, is clearly authorized in numerous instances and is not legislation on an appropriation bill, but a repetition of the law as it now exists.

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

MR. DINGELL: I do, Mr. Chairman.

Mr. Chairman, the point of order lies, not to the authority to transfer, but the authority of the receiving agency. As the Chair will note, the Environmental Protection Agency may transfer funds as it deems appropriate to other Federal agencies for energy research and development activities.

First of all, I am not aware of EPA having any development responsibilities in any of the statutes cited. Sec-

11. Sam M. Gibbons (Fla.).

ond, I am not aware of any statutory authority for EPA to transfer as it deems appropriate. This constitutes excessive authority far beyond that existing in present law.

In addition to this, the agencies to whom EPA might transfer funds are not identified, and it is not clear who will be the recipient agencies or what energy research and development activities they shall go into. This is far beyond the authorities under existing law, and I believe that the burden under the Rules of the House is upon the proponents of the legislation to establish the authority under which: First, the funds shall be transferred; and second, under which the activities referred to in the section will be carried out.

One of the principal questions around which the point of order revolves, Mr. Chairman, is the question of, First, who shall conduct the activity; second, what shall be the activity conducted; and third, under what authority will the agency's recipient of the funds spent receive the funds and carry out the development and research projects.

I believe there has been no legislation cited by my good friend from Mississippi which would indicate the authority for other agencies to receive the funds or to engage in development and research activities.

THE CHAIRMAN: The Chair is prepared to rule on the point of order.

The Chair has listened to the arguments of the gentleman from Michigan (Mr. Dingell) and the gentleman from Mississippi (Mr. Whitten), and believes that the arguments are fully covered by Cannon's Precedents, House of Representatives, volume 7, page 468, section 1470, which states:

> A proposition to transfer funds from one department of government to another for the purposes authorized by law was held not to involve legislation and to be in order in an appropriation bill.

Such reimbursement authority, where shown to be authorized by law is therefore in order.

The Chair overrules the point of order.[12]

Transfer of Funds Specifically Authorized for One Agency to Other Unspecified Agencies

§ 30.22 A paragraph in a general appropriation bill containing funds for the official residence of the Vice President and permitting advances, repayments, or transfers of those funds to other departments or agencies to carry out those activities (where existing law authorized appropriations only to the General Services Administration) was conceded to change existing law and was ruled out in violation of Rule XXI clause 2.

On June 14, 1976,[13] the following proceedings took place dur-

12. Compare with §§ 30.22 and 30.24, infra.

13. 122 CONG. REC. 17854, 94th Cong. 2d Sess.

ing consideration of H.R. 14261 (Treasury, Postal Service, and general government appropriations for fiscal 1977):

The Clerk read as follows:

OFFICIAL RESIDENCE OF THE VICE PRESIDENT

OPERATING EXPENSES

For the care, maintenance, repair and alteration, furnishing, improvement, heating and lighting, including electric power and fixtures, of the official residence of the Vice President, $61,000: *Provided,* That advances or repayments or transfers from this appropriation may be made to any department or agency for expenses of carrying out such activities.

POINT OF ORDER

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, a point of order.

THE CHAIRMAN:[14] The gentleman will state the point of order.

MR. DINGELL: Mr. Chairman, I make a point of order against the language of the bill on page 8, lines 17 through 23, and page 9, lines 1 and 2, as violative of rule XXI, clause 2, constituting legislation in an appropriation bill, referring specifically to the words following the word "Provided", at line 22, "*Provided,* That advances or repayments or transfers from this appropriation may be made to any department or agency for expenses of carrying out such activities."

THE CHAIRMAN: Does the gentleman from Oklahoma (Mr. Steed) desire to be heard on the point of order?

MR. [THOMAS J.] STEED: Mr. Chairman, we concede the point of order and again leave the responsibility on the shoulders of the gentleman who raises it and we will try to make the final bill comply therewith.

THE CHAIRMAN: The gentleman from Oklahoma (Mr. Steed) concedes the point of order. For that reason the point of order is sustained, and the entire paragraph is stricken.

14. B.F. Sisk (Calif.).

§ 30.23 A paragraph in a general appropriation bill providing for advances, repayments, and transfers from the appropriation therein to any department or agency was ruled out in violation of Rule XXI clause 2 as constituting legislation on an appropriation bill.

On June 8, 1977,[15] the Committee of the Whole had under consideration H.R. 7552, Departments of Treasury, Postal Service, and general government appropriations for 1978.

The Clerk read as follows:

OFFICIAL RESIDENCE OF THE VICE PRESIDENT

OPERATING EXPENSES

For the care, maintenance, repair and alteration, furnishing, improvement, heating and lighting, including electric power and fixtures, of the official residence of the Vice President, $61,000: *Provided,* That advances or repayments or transfers from this appropriation may be made to any

15. 123 CONG. REC. 17922, 17923, 95th Cong. 1st Sess.

department or agency for expenses of carrying out such activities:

POINTS OF ORDER

MR. [HERBERT E.] HARRIS [II, of Virginia]: Mr. Chairman, I make a point of order against this portion of the bill on the basis previously stated.

THE CHAIRMAN:[16] Does the gentleman from Oklahoma (Mr. Steed) desire to be heard on the point of order?

MR. [THOMAS J.] STEED: I do, Mr. Chairman.

Mr. Chairman, in this case there is authorization for the item. In the 93d Congress, Senate Joint Resolution 202, passed July 12, 1974, provides for the inclusion of this item in the bill. It is Public Law 93–346.

THE CHAIRMAN: Let the Chair direct a question to the gentleman from Virginia (Mr. Harris) so that the gentleman may clarify his point.

Against what portion of this paragraph does the gentleman make his point of order?

MR. HARRIS: Mr. Chairman, we are dealing with official entertaining expenses in this item, and that is not authorized under law.

THE CHAIRMAN: To what line is the gentleman referring? Will the gentleman from Virginia (Mr. Harris) explain it so we will know to what specific lines of the paragraph he directs his point of order?

MR. STEED: Mr. Chairman, if I may be heard, I believe the gentleman from Virginia (Mr. Harris) made the point of order against the entire item.

MR. HARRIS: Mr. Chairman, this is the item on the Official Executive Residence of the Vice President, Operating Expenses.

THE CHAIRMAN: Let the Chair state to the gentleman from Virginia (Mr. Harris) that there is authorization for appropriations for the official residence of the Vice President, if that is the point the gentleman is attempting to address in this matter. Therefore, that portion of the paragraph would not be subject to a point of order.

MR. HARRIS: I thank the Chair.

THE CHAIRMAN: The Chair, therefore, overrules the point of order.

MR. [EDWARD J.] DERWINSKI [of Illinois]: Mr. Chairman, I rise to make a point of order.

THE CHAIRMAN: The gentleman from Illinois (Mr. Derwinski) will state his point of order.

MR. DERWINSKI: Mr. Chairman, let me read this to be sure we are speaking of the same item.

I make a point of order against the language of the bill on page 8, lines 20 through 25, and on page 9, lines 1 and 2. That item is entitled "Official Residence of the Vice President—Operating Expenses," and this language violates rule XXI, clause 2, of the Rules of the House. That is the basis for the point of order.

Mr. Chairman, if I may be heard further, we have had previous points of order sustained against this item, and, in fact, in last year's appropriation bill a similar point of order was sustained.

THE CHAIRMAN: Let the Chair state that the present occupant of the chair was the occupant of the chair last year and considered the proviso starting on line 25 of page 8 and continuing through line 26 and lines 1 and 2 on page 9. On that basis the point of

16. B.F. Sisk (Calif.).

order was sustained. However, the earlier designation, as the Chair understood the statement of the gentleman from Virginia (Mr. Harris), would not follow, because basically there is authority for the Vice President's residence.

That is the reason the Chair is giving ample opportunity to the Members to clarify the point of order. A point of order was in fact sustained on the proviso mentioned last year. I understand the gentleman from Illinois (Mr. Derwinski) is making a point of order based on that proviso.

MR. STEED: Mr. Chairman, if I may be heard on the point of order, if we read section 3 of this act, it says that the Secretary of the Navy shall, subject to the supervision and control of the Vice President, provide for the staffing, upkeep, alteration, and furnishing of an official residence and grounds for the Vice President.

Mr. Chairman, I do not know what more authority we need.

THE CHAIRMAN: The Chair will state that in line with the like ruling last year, a paragraph in a general appropriation bill containing funds for the official residence of the President and of the Vice President and providing for advances, repayments or transfers of those funds to other departments or agencies—not just to General Services Administration—was conceded to change existing law and was ruled out as being in violation of clause 2, rule XXI.

Therefore, on the basis of the proviso, the point of order issustained against the entire paragraph.

Parliamentarian's Note: Under Public Law No. 93–346, appropriations for the Vice President's residence are authorized only to GSA, and not to other departments and agencies. If money is authorized only for a purpose and not to an agency, the Chair's ruling would be different.

Transfer Among Accounts Upon Approval of Committee

§ Sec. 30.24 A paragraph in a general appropriation bill authorizing the transfer of funds for allowances and expenses with the approval of the Committee on Appropriations was conceded to constitute legislation in violation of Rule XXI clause 2 and was stricken from the bill on a point of order.

On Mar. 16, 1977,[17] the Committee of the Whole had under consideration H.R. 4877, supplemental appropriations for fiscal year 1977.

The Clerk read as follows:

Such amounts as deemed necessary for the payment ofallowances and expenses within this appropriation may be transferred among accounts upon approval of the Committee on Appropriations of the House of Representatives.

POINT OF ORDER

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I make a point of

17. 123 CONG. REC. 7747, 95th Cong. 1st Sess.

order against the language on page 29, line 17 through 20, inclusive, on the grounds that the language as it is written constitutes legislation on an appropriation bill.

In previous instances where an appropriation bill has contained similar language—and I emphasize the word "similar"—the Chair has held that it is permissible to allow language that would transfer appropriations from one subhead to another in the same enactment.

The language before us, if it is read carefully, makes it rather clear that what is being permitted is the transfer of amounts, and they may be transferred, as the language says, among accounts upon approval.

It is not in fact an authorization to transfer amongst the various moneys in this bill, but in fact could be used to authorize the transfer of previously appropriated amounts not in this bill.

Therefore, it exceeds the authority of the committee to in fact consider it.

I would make that point of order.

THE CHAIRMAN:[18] Does the gentleman from Illinois wish to be heard on the point of order?

MR. [GEORGE E.] SHIPLEY [of Illinois]: Mr. Chairman, I will say to the gentleman from Maryland (Mr. Bauman) that this language has been carried for several years in the bill and is subject to a point of order. The committee will concede the point of order.

THE CHAIRMAN: The gentleman from Illinois (Mr. Shipley) concedes the point of order raised by the gentleman from Maryland (Mr. Bauman) and the language is stricken from the bill.

18. Walter Flowers (Ala.).

Transfer of Defense "Funds Available" to State

§ 30.25 A paragraph in a general appropriation bill transferring available funds from a department to another department and directing the use to which those funds must be put was conceded to be legislation in violation of Rule XXI clause 2, as well as a reappropriation violating Rule XXI clause 6.

On Dec. 8, 1982,[19] during consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 7355), a point of order was sustained to a portion of that bill, as follows:

MR. [WILLIAM] NICHOLS [of Alabama]: Mr. Chairman, I have a point of order.

The portion of the bill to which the point of order relates is as follows:

> Sec. 793. Of the funds available to the Department of Defense, $200,000 shall be transferred to the Department of Education which shall grant such sum to the Board of Education of the Highland Falls-Fort Montgomery, New York, central school district. The funds transferred by this section shall be in addition to any assistance to which the Board may be entitled under subchapter 1, chapter 13 of Title 20 United States Code. . . .

I make a point of order against section 793, which provides appropria-

19. 128 CONG. REC. 29449, 29450, 97th Cong. 2d Sess.

tions without authorization, and constitutes legislation on an appropriation bill, which I believe to be in violation of clause 2 of rule XXI. . . .

MR. [JOSEPH P.] ADDABBO [of New York]: . . . Mr. Chairman, the section is subject to a point of order, but this is a special case. These are children of men and women at West Point who are attending the public schools. If these funds are not allocated, the school will close and there will be no school for these young people to attend. . . .

THE CHAIRMAN PRO TEMPORE:[20] The gentleman insists on his point of order, and the Chair is ready to rule.

The Chair will have to rule that, for the reasons conceded, the point of order to section 793 as stated by the gentleman from Alabama (Mr. Nichols) is sustained.

§ 31. Transfers or Disposition of Property

Transfer of Federal Property From One Agency to Another Without Exchange of Funds

§ 31.1 A provision of a general appropriation bill authorizing the transfer of title to power facilities from one agency of government to another without exchange of funds was conceded and held to constitute legislation in violation of Rule XXI clause 2.

On Apr. 24, 1951,[(1)] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3790), a point of order was raised against the following provision:

The Clerk read as follows:

TRANSFER OF CERTAIN FACILITIES, DENISON DAM PROJECT

The Secretary of the Army is hereby authorized to transfer to the Secretary of the Interior under arrangements satisfactory to said Secretaries, without exchange of funds, all right, title, and interest, including rights-of-way, of the Department of the Army in and to the Denison-Payne 132-kilovolt transmission line.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the language appearing in the bill beginning line 20, page 4, over to line 2, page 5, on the ground that it is legislation in an appropriation bill.

THE CHAIRMAN:[(2)] Does the gentleman from Washington (Mr. Jackson) desire to be heard on the point of order?

Mr. [HENRY M.] JACKSON of Washington: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Excess Property to Department of the Interior

§ 31.2 A provision in a general appropriation bill author-

20. Don Bailey (Pa.).

1. 97 CONG. REC. 4301, 82d Cong. 1st Sess.

2. Wilbur D. Mills (Ark.).

izing transfers of excess property by federal agencies to the Department of the Interior at the request of the Secretary of the Interior without reimbursement or transfer of funds when required by the Interior Department for operations conducted in territories and island possessions was conceded to constitute legislation and ruled out of order.

On May 2, 1951,[3] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3790), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Sec. 111. Transfers to the Department of the Interior, pursuant to the Federal Property and Administrative Services Act of 1949, of equipment, material and supplies, excess to the needs of Federal agencies may be made at the request of the Secretary without reimbursement or transfer of funds when required by the Department for operations conducted in Territories and island possessions.
>
> MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make a point of order against section 111 on the ground that it is legislation on an appropriation bill.
>
> MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I concede the point of order.
>
> THE CHAIRMAN:[4] The point of order is sustained.

Federal Property Transferred to Territory

§ 31.3 A provision in an appropriation bill authorizing property of the Public Health Service to be transferred to the Territory of Alaska without reimbursement in the discretion of the Surgeon General was conceded to be legislation and held not in order.

On Mar. 25, 1952,[5] during consideration in the Committee of the Whole of the federal security appropriation bill (H.R. 7151), a point of order was raised against the following amendment:

> The Clerk read as follows:
>
> Disease and sanitation investigations and control, Territory of Alaska: To enable the Surgeon General to conduct, in the Service, and to cooperate with and assist the Territory of Alaska in the conduct of, activities necessary in the investigation, prevention, treatment, and control of diseases, and the establishment and maintenance of health and sanitation services pursuant to and for the purposes specified in sections 301, 311, 314 (without regard to the provisions of subsections (d), (f), (h), and (j) and the limitations set forth in subsection (c) of such section), 361,

3. 97 CONG. REC. 4739, 82d Cong. 1st Sess.

4. Wilbur D. Mills (Ark.).

5. 98 CONG. REC. 2859, 82d Cong. 2d Sess.

363, and 704 of the Act, including the purchase of one passenger motor vehicle, and hire, operation, and maintenance of aircraft, $1,200,000: *Provided*, That property of the Public Health Service located in Alaska and used in carrying out the activities herein authorized may be transferred, without reimbursement, to the Territory of Alaska at the discretion of the Surgeon General.

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, I wish to make a point of order against the proviso appearing on page 21, beginning with line 9; but pending the Chairman's ruling, I would like to ask a question.

May I ask the chairman of the subcommittee, or the ranking minority member, if either one can explain the provision which gives the Surgeon General, at his own discretion, the right to transfer property of the United States to the Territory of Alaska. It seems to me a delegation of authority of the Congress, especially when there is no indication of the value of the property, might be dangerous. I cannot find anything in the report, nor can I recall that there was anything in the bill of the preceding session.

I make the point of order this is legislation on an appropriation bill, and a delegation of authority. May I ask the chairman what this is all about?

MR. [JOHN E.] FOGARTY [of Rhode Island]: As far as the committee is concerned, I may say that a point of order lies there and we are willing to accept it. I cannot give the gentleman the figures. . . .

THE CHAIRMAN:[6] The gentleman from California [Mr. Phillips] makes a point of order against the language on page 21, line 9 through 13, beginning with the word "*Provided*." The gentleman from Rhode Island [Mr. Fogarty] concedes the point of order. The point of order is sustained.

6. William M. Colmer (Miss.).

Appropriation of Property

§ 31.4 Existing law authorizing the appropriation of funds for a certain purpose "including U.S. contributions in funds or otherwise" does not permit inclusion in an amendment to a general appropriation bill of language directly appropriating property in lieu of funds, such a matter being within the legislative jurisdiction of another committee of the House and not being an appropriation of revenue.

On June 3, 1944,[7] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 4937), a point of order was raised against the following amendment:

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Case: Page 5, line 11, strike out "$450,000,000" and insert "$428,300,000 in funds and 61,740,000 pounds of raw wool from

7. 90 CONG. REC. 5246, 5247, 78th Cong. 2d Sess.

stocks owned by the Commodity Credit Corporation."

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I desire to make a point of order against the amendment. It is not germane, and is legislation on an appropriation bill. It involves legislation pertaining to the appropriation of wool whereas the pending bill relates exclusively to the appropriation of money.

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

THE CHAIRMAN:[8] The Chair will hear the gentleman.

MR. CASE: Mr. Chairman, I have in my hand Public Law 267 of the Seventy-eighth Congress, which is the U.N.R.R.A. Act, under which the appropriation in this section is proposed. The first paragraph of that Act reads as follows:

> *Resolved, etc.,* That there is hereby authorized to be appropriated to the President such sums, not to exceed $1,350,000,000 in the aggregate, as the Congress may determine from time to time to be appropriate for participation by the United States (including contributions in funds or otherwise and all necessary expenses related thereto) in the work of the United Nations Relief and Rehabilitation Administration.

Further, section 6 of the act specifically sets forth that Congress may determine the character of our contributions as well as the amount by using this language:

> In adopting this joint resolution the Congress does so with the following reservation:
>
> "That in the case of the United States the appropriate constitutional body to determine the amount and character and time of the contributions of the United States is the Congress of the United States."

I submit to the Chair that the basic act under which this entire appropriation is authorized specifically, in the first paragraph, uses the words "including contributions in funds or otherwise." Unless something like raw wool or something else might be offered as part of the aggregate of the $1,350,000,000, the words "or otherwise" as contrasted with "funds" would have no meaning.

That is buttressed by the language in section 6, which provides that the Congress may determine the amount, which relates to the aggregate, and the character. Obviously the word "character" is intended to include contributions of character other than money.

MR. CANNON of Missouri: The authorization for this appropriation is Public Law 267 of the Seventy-eighth Congress, an act which authorizes the appropriation of sums of money. We are authorized under this law to appropriate money and nothing else. Later on, after the money is appropriated then, as the gentleman suggests, if you want to substitute commodities, that is permissible, but the authorization is to appropriate money, and money only.

Any proposition to appropriate commodities is not authorized by law and is not germane to the bill.

MR. CASE: Mr. Chairman, I agree that the basic authorization for this appropriation is Public Law 267, which is what I cited, but the gentleman from Missouri read only a part of the first paragraph and ignored the last part of it to which I called the gentleman's at-

8. William M. Whittington (Miss.).

tention, where it specifically provides for "funds or otherwise"; and he certainly ignored section 6, which reserved for Congress the right to determine not only the amount but the character of the contribution.

THE CHAIRMAN: The authorization, as has been stated, is under Public Law 267, Seventy-eighth Congress. The first paragraph of that law reads:

> That there is hereby authorized to be appropriated to the President such sums, not to exceed $1,350,000,000 in the aggregate as the Congress may determine from time to time to be appropriate for participation by the United States (including contributions in funds or otherwise).

The Chair is of the opinion that inasmuch as this is an appropriation, and inasmuch as the Committee on Appropriations is limited to making appropriations of money, this bill could provide only for an appropriation of money, and that if Congress should determine to make other property owned by the Government available, it would have to be under legislation submitted to the Congress by an appropriate committee.

In view of that interpretation, the Chair is constrained to sustain the point of order.

Transfer of Facilities and Property Rights

§ 31.5 Language in an appropriation bill transferring certain facilities of the Fort Peck Project, Montana, from the Department of the Army to the Department of the Interior was conceded to be legislation on an appropriation bill and held not in order.

On May 1, 1951,[9] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3790), the following point of order was raised:

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the language on page 18, lines 7 to 21, on the ground that it is legislation on an appropriation bill.

The language is as follows:

> TRANSFER OF CERTAIN FACILITIES, FORT PECK PROJECT, MONTANA
>
> The Secretary of the Army is hereby authorized to transfer to the Department of the Interior without exchange of funds, all of the right, title, and interest of the Department of the Army in and to the following facilities, including rights-of-way (except that portion of the rights-of-way within the Fort Peck Reservoir area), but there shall be reserved the right to use the power facilities for the purpose of transmitting power to the Fort Peck project during emergency periods when the Fort Peck power plant is not functioning: (a) the Fort Peck-Rainbow (Great Falls) 161-kilovolt transmission line; (b) the Rainbow (Great Falls) terminal facilities; and (c) the Fort Peck-Whatley 50-kilovolt-transmission line and substation.

MR. [MICHAEL J.] KIRWAN [of Ohio]: Mr. Chairman, I submit that the point

9. 97 CONG. REC. 4659, 82d Cong. 1st Sess.

of order made by the gentleman from New York comes too late.

THE CHAIRMAN:[10] The point of order made by the gentleman from New York (Mr. Taber) is timely. Does the gentleman from Ohio desire to be heard on the point of order?

MR. KIRWAN: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is sustained.

District of Columbia, Transfer of Hospitals Between Agencies

§ 31.6 Language in the District of Columbia appropriation bill appropriating for hospitals and sanatoria coupled with language transferring hospitals and sanatoria from the Board of Public Welfare to the Board of Commissioners was held to be legislative in nature and not in order on an appropriation bill.

On Apr. 2, 1937,[11] The following proceedings took place:

> For the following hospital and sanatoria, which, on and after July 1, 1937, shall be under the direction and control of the health department of the District of Columbia and subject to the supervision of the Board of Commissioners.

MRS. [MARY T.] NORTON [of New Jersey]: Mr. Chairman, I make the point of order against the language on page 46 beginning in line 1, after the word "sanatoria", ending with the word "Commissioners", in line 5 of the same page, that it is clearly legislation on a general appropriation bill, which is contrary to the rules of the House.

THE CHAIRMAN:[12] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [ROSS A.] COLLINS [of Mississippi]: I do not, Mr. Chairman.

THE CHAIRMAN: The gentlewoman from New Jersey makes a point of order against certain language in the first paragraph on page 46. Under existing law these hospitals and institutions are under the Board of Public Welfare. This provision seeks to transfer these hospitals and institutions to the Department of Health. It is obviously legislation on a general appropriation bill.

The Chair therefore sustains the point of order.

No Property To Be Withheld From Distribution

§ 31.7 Where existing law directed a federal official to provide for the sale of certain government property to private organizations in "necessary" amounts, but did not require that all such property shall be distributed by sale, an amendment to a general appropriation bill providing that no such property shall be withheld from

10. Wilbur D. Mills (Ark.).

11. 81 CONG. REC. 3108, 75th Cong. 1st Sess.

12. Jere Cooper (Tenn.).

distribution from qualifying purchasers was ruled out as legislation requiring disposal of all property and restricting discretionary authority to determine "necessary" amounts and not constituting (as required by the Holman rule) a certain retrenchment of funds in the bill.

On Aug. 7, 1978,[13] during consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 13635), a point of order was sustained against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. John T. Myers [of Indiana]: On page 8, after line 10, add the following new section:

None of the funds appropriated or otherwise made available in this Act shall be obligated or expended for salaries or expenses during the current fiscal year in connection with the demilitarization of any arms as advertised by the Department of Defense, Defense Logistics Agency sale number 31–8118 issued January 24, 1978, and listed as "no longer needed by the Federal Government" and that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308. . . .

MR. [ABNER J.] MIKVA [of Illinois]: Mr. Chairman, I make a point of order on the amendment on the ground that I believe that it is legislation within a general appropriation bill and, therefore, violates the rules of the House. . . .

MR. JOHN T. MYERS: Mr. Chairman, this is a simple limitation amendment. It merely limits the Secretary of the Treasury to continue to carry out existing law. It does not provide any new law. It simply says that the Secretary of the Treasury shall carry out the prevailing, existing law. . . .

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Chairman, rule 21, clause 2, of the Rules of the House [House Rules and Manual pages 426–427] specifies that an amendment to an appropriation bill is in order if it meets certain tests, such as:

First. It must be germane;

Second. It must be negative in nature;

Third. It must show retrenchment on its face;

Fourth. It must impose no additional or affirmative duties or amend existing law.

First. [The amendment] is germane. As the amendment applies to the distribution of arms by the Defense Logistics Agency, it is not exclusively an Army of civilian marksmanship amendment, so should not be placed elsewhere in the bill. . . .

Second. It is negative in nature. It limits expenditure of funds by the Defense Department by prohibiting the destruction and scrapping of arms which qualify for sale through the civilian marksmanship program, which is a division of the executive created by statute.

Third. It shows retrenchment on its face. Retrenchment is demonstrated in

13. 124 CONG. REC. 24707, 24708, 95th Cong. 2d Sess.

that the Department of Defense if prohibited from expending funds to destroy surplus military arms, and that the arms previously earmarked for destruction will be made available in accordance with existing statute. . . . The House, in adding this amendment, will secure additional funds for the Treasury which the General Accounting Office has determined is adequate to pay costs of handling the arms. For example, the M-1 rifles are to be sold at a cost of $110 each. These are the arms most utilized by the civilian marksmanship program. The Defense Department will not be required to spend additional funds to process the sale of additional arms. . . .

. . . [The amendment] does not impose additional or affirmative duties or amend existing law. . . .

Regulations issued . . . AR 725–1 and AR 920–20 provide for the issuance of arms by application and qualification through the Director of Civilian Marksmanship. The DCM shall then submit sale orders for the Armament Readiness Military Command [ARMCOM] to fill the requests of these qualified civilians. Thus, the amendment simply requires the performance of duties already imposed by the Army's own regulation. . . .

MR. MIKVA: Mr. Chairman, I particularly call attention of the Chair to the second half of the amendment, which imposes an affirmative duty on the Secretary, saying that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308.

Under the general existing law, there are all kinds of discretions that are allowed to the Secretary to decide whether or not such arms shall be distributed. Under this amendment, the existing law is to be changed and those arms may not be withheld. The practical purpose is to turn loose 400,000 to 500,000 rifles into the body politic.

But the parliamentary effect is clearly to change the existing law under which the Secretary can exercise all kinds of discretion in deciding whether or not those arms will be distributed. Under this amendment it not only limits the fact that the funds may be obligated but it specifically goes on to affirmatively direct the Secretary to distribute such arms under title X, which is an affirmative obligation, which is exactly the kind of obligation the rules prohibit, and I renew my point of order. . . .

THE CHAIRMAN:[14] The Chair is ready to rule.

The Chair has read the section to which the gentleman refers, title 10, United States Code, section 4308, and is of the opinion that it does not require that all firearms be distributed to qualified purchasers. The Chair further feels that while the first part of the amendment is a limitation, the last part of the amendment is a curtailment of Executive discretion, and the Chair sustains the point of order.

§ 32. Appropriations Prior to or Beyond Fiscal Year

Statutes provide that appropriations in annual appropriation acts are not permanent. Thus, no spe-

14. Daniel D. Rostenkowski (Ill.).

cific or indefinite appropriation made subsequent to Aug. 24, 1912, in any regular annual appropriation act shall be construed to be permanent or available continuously without reference to a fiscal year unless it belongs to one of the following four classes: "Rivers and harbors," "lighthouses," "public buildings," and "pay of the Navy and Marine Corps," or unless it is made in terms expressly providing that it shall continue to be available beyond the fiscal year covered by the appropriation act in which it is contained.[15] Except as otherwise provided by law, all balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year.[16] Thus, provisions in general appropriation bills which make funds available for the payment of obligations chargeable against prior appropriations are legislative in character. But appropriations for public buildings are available until completion of the work. A statute provides:[17]

> All moneys appropriated for the construction of public buildings shall remain available until the completion of the work for which they are, or may be, appropriated; and upon the final completion of each or any of said buildings, and the payment of all outstanding liabilities therefor, the balance or balances remaining shall be immediately covered into the Treasury.

General Rule—Public Building Construction Funds

§ 32.1 Although it is generally not in order in a general appropriation bill to require that funds therein shall be "available until expended" or beyond the fiscal year covered by the bill unless the authorizing law contains that provision, such language may be included where other existing law can be interpreted to permit that availability. Thus, a provision in a general appropriation bill that funds therein for the construction of the west front of the U.S. Capitol shall "remain available until expended" was held not to constitute legislation in violation of Rule XXI clause 2 where an existing law provided that funds for public building construction shall remain available until the completion of the work.

15. 31 USC § 1301.
16. 31 USC § 1502.
17. 31 USC § 1307.

On Apr. 17, 1973,[18] during consideration in the Committee of the Whole of the legislative branch appropriation bill [H.R. 6691], a point of order was raised against a provision as follows:

MR. [J. EDWARD] ROUSH [of Indiana]: Mr. Chairman, I have a point of order against the language found on page 17 of the bill, lines 14 through 22.

The portion of the bill to which the point of order relates is as follows:

EXTENSION OF THE CAPITOL

For an amount, additional to amounts heretofore appropriated, for "Extension of the Capitol", in substantial accordance with plans for extension of the West Central front heretofore approved by the Commission for Extension of the United States Capitol, to be expended as authorized by law, by the Architect of the Capitol under the direction of such Commission, $58,000,000, to remain available until expended.

MR. ROUSH: Mr. Chairman, I would like to be heard on the point of order.

THE CHAIRMAN:[19] The Chair will hear the gentleman.

MR. ROUSH: Mr. Chairman, my point of order is based upon these following facts: The appropriation as proposed lacks legislative authority and, secondly, the language "$58,000,000 to remain available until expended" constitutes legislation on a general appropriation bill.

Mr. Chairman, I point to rule XXI [which] prohibits an appropriation in a general appropriation bill unless previously authorized [as well as] provisions changing existing law. I will take my second point first, Mr. Chairman, the prohibition against changing existing law.

I would refer to the appropriation bill last year, which would be Public Law 92–342, under the section "Extension of the Capitol:"

Funds available under this appropriation may be used for the preparation of preliminary plans for the extension of the west central front: *Provided, however,* That no funds may be used for the preparation of the final plans or initiation of construction of said project until specifically approved and appropriated therefor by the Congress.

I point out to the Chairman that the plans have not been specifically approved.

Second, Mr. Chairman, I would point to an old provision of the law which is found in the United States Code, 1970 edition, title 40, section 162 (providing that) no change in the architectural features of the Capitol Building or landscape features of the Capitol Grounds shall be made except on plans to be approved by the Congress.

Now, Mr. Chairman, I am again going back to rule XXI. The question then arises as to whether or not the Congress has passed authorizing legislation. Mr. Chairman, I have searched this matter diligently and the only authority that I can find for the extension of the west front of the Capitol necessarily has to be inferred from the language of a bill which was passed in 1955. I would like to read that section of that bill. Again it is entitled "Extension of the Capitol":

18. 119 CONG. REC. 12781, 12782, 93d Cong. 1st Sess.

19. John M. Murphy [N. Y.].

> The Architect of the Capitol is hereby authorized, under the direction of a Commission for Extension of the United States Capitol . . . to provide for the extension, reconstruction, and replacement of the central portion of the United States Capitol in substantial accordance with scheme B of the architectural plan submitted by a joint commission of Congress and reported to Congress on March 3, 1905 (House Document numbered 385, Fifty-eighth Congress), but with . . . modifications and additions . . .

Mr. Chairman, I submit that this is the authority for the extension of the East Front and Scheme B is the key reference in the 1955 statute, and those words are in substantial accord with Scheme B of the architectural plan, et cetera. Scheme B, as it is referred to, provides that the building—referring to the Capitol Building—should be projected eastward 32 feet, 6 inches from the wall of the Supreme Court and statuary hall—should be projected eastward, Mr. Chairman.

The question then arises can authority be inferred? Certainly there is no specific authority granted by this authority by inferring from that wording, which affects the rest of Scheme B. And I respectfully submit that the answer is "no," that that is not the effect of the statute. It is not another program, it is not another sentence, it is a continuation of the same sentence, and the only possible inference is that the language was inserted to implement Scheme B, which calls for an extension of the East Front.

Finally, Mr. Chairman, the bill provides for the appropriation of $58 million, to remain available until expended. The precedents of the House are explicit that an appropriation made available until expended is in the nature of legislation and not in order on a general appropriations bill, and thus is in violation of rule 21. . . .

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

MR. [BOB] CASEY OF TEXAS: Mr. Chairman, I do.

Mr. Chairman, this project is authorized, and I would point out that the gentleman from Indiana (Mr. Roush) who is making the point of order, failed to read all of Public Law 242 of the 84th Congress.

The law reads:

Extension of the Capitol: The Architect of the Capitol is hereby authorized. . . .

Et cetera.

> In substantial accordance with Scheme B of the architectural plan submitted by a joint commission of Congress and reported to Congress on March 3, 1905 (House Document Numbered 385, Fifty-Eighth Congress), but with such modifications and additions, including provisions for restaurant facilities and such other facilities in the Capitol Grounds, together with utilities. . . .

It does not just refer to one item. I think this gives great latitude.

> Together with utilities, equipment, approaches, and other appurtenant or necessary items . . . there is hereby appropriated $5,000,000, to remain until expended: *Provided*, that the Architect of the Capitol under the direction of said commission and without regard to the provisions of section 3709 of the Revised Statutes, as amended, is authorized to enter into contracts.

Et cetera.

This law was amended February 14, 1956, and there was added this amendment under "Extension of the Capitol." This was Public Law 406, 84th Congress:

> The paragraph entitled "Extension of the Capitol" in the Legislative Appropriation Act, 1956, is hereby amended by inserting after the words "to remain available until expended" and before the colon, a comma and the following: "and there are hereby authorized to be appropriated such additional sums as may be determined by said Commission to be required for the purposes hereof.

Mr. Chairman, I think it is quite clear that the authority is here for any and all changes under plan B as put together in the architectural plan, because there is language in there "with such modifications and additions" as well as "other appurtenant or necessary items, as may be approved by said Commission," and the Capitol building includes not only the East Front, but it includes the West Front. I submit the point of order is not well taken.

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

The Chair has listened carefully to the debate and the laws and precedents cited by the gentlemen from Indiana and Texas; and the Chair has had an opportunity to examine the authorizing legislation for the West Front construction, and would note that in 1956—Public Law 84–406—the basic statute was amended to provide that—

> There are hereby authorized to be appropriated such additional sums as may be determined by said Commission to be required for the purposes hereof.

The Chair would also call the Members' attention to the provisions of 31 U.S. Code 682,[20] which provides that all moneys appropriated for construction of public buildings shall remain available until the completion of the work for which they are, or may be appropriated. Therefore, the inclusion of the language "to remain available until expended" in the appropriation bill, although not contained in the basic authorizing statute for the West Front, cannot be considered a change in existing law since other existing law—31 U.S.C. 682—already permits funds for public building construction to remain available until work is completed.

The gentleman from Indiana also contends that Public Law 92–342 requires "specific" approval by Congress of preparation of final plans or initiation of construction prior to an appropriation therefor. The Chair has examined the legislative history of the provision relied upon by the gentleman from Indiana in support of his argument that the appropriation must be specifically approved by Congress prior to the appropriation, and it is clear from the debate in the Senate on March 28, 1972, that approval in an appropriation bill was all that was required by the provision in Public Law 92–342. The Chair feels that there is sufficient authorization contained in Public Law 92–342 as amended by Public Law 84–406 for the appropriation contained in the pending bill, and that no further specific authorization is required prior to an appropriation for final plans and construction for the West Front.

For these reasons the Chair overrules the point of order.

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20. Now 31 USC § 1307.

Parliamentarian's Note: As noted in the introduction to this section, certain exceptions are made to the general provision of 31 USC § 718 that "no specific or indefinite appropriation . . . in any regular annual appropriation Act shall be construed to be permanent or available continuously without reference to a fiscal year," one of the exceptions being appropriations for "public buildings."

Where Authorization for Continued Availability is Lacking

§ 32.2 An appropriation for railroad research "to remain available until expended" was conceded to be legislation on an appropriation bill where the authorizing statute (Pub. L. No. 91–458) did not make those funds available beyond the fiscal year for which appropriated.

On July 14, 1971,[1] during consideration in the Committee of the Whole of the Department of Transportation appropriation bill (H.R. 9667), the following point of order was raised:

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, I make a point of order as to the language on page 16, lines 1 through 3, as being an unauthorized appropriation and violating rule XXI, clause 2.

The portion of the bill reads as follows:

RAILROAD RESEARCH

For necessary expenses for conducting railroad research activities, $7,000,000, to remain available until expended.

THE CHAIRMAN:[2] Does the gentleman from California desire to be heard on the point of order?

MR. [JOHN J.] MCFALL [of California]: Mr. Chairman, I should like to be heard on the point of order.

The point of order which the gentleman from Missouri makes is with reference to the language that indicates the amount of $7 million for conducting railroad research activities will remain available until expended. The phrase "to remain available until expended" is legislation on an appropriation bill. Just as soon as I can get an amendment ready I will offer an amendment which will preserve the $7 million and leave out the "to remain available until expended."

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

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

THE CHAIRMAN: The point of order is sustained.

Characterization of an Appropriation as "Final"

§ 32.3 In an appropriation bill, where an appropriation is

1. 117 CONG. REC. 24913, 92d Cong. 1st Sess.

2. Edmond Edmondson (Okla.).

authorized by a law which would remain effective in the future, words designating an appropriation as "a final appropriation" for "completing" acquisition of certain land under authority of such law were conceded to constitute legislation.

On Mar. 30, 1954,[3] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 8583), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Land acquisition, National Capital park, parkway, and playground system: As a final appropriation under authority of the act of May 29, 1930 (46 Stat. 482), as amended, for necessary expenses for the National Capital Planning Commission for completing acquisition of land for the park, parkway, and playground system of the National Capital, to remain available until expended, $545,000, of which (a) $135,000 shall be available for the purposes of section 1(a) of said act of May 29, 1930, (b) $126,000 shall be available for the purposes of section 1(b) thereof, and (c) $284,000 shall be available for the purposes of section 4 thereof: *Provided*, That not exceeding $26,450 of the funds available for land acquisition purposes shall be used during the current fiscal year for necessary expenses of the Commission (other than payments for land) in connection with land acquisition.

> MR. [HOWARD W.] SMITH of Virginia: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[4] The gentleman will state it.
>
> MR. SMITH of Virginia: Mr. Chairman, I desire to interpose a point of order to the language contained in line 17 on page 35: "as a final appropriation"; and on line 20 against the word "completing.". . .
>
> MR. [JOHN] PHILLIPS [of California]: I will concede the point of order.
>
> THE CHAIRMAN: The Chair sustains the point of order.

Funds "To Be Immediately Available"

§ 32.4 Under the modern practice the provision that an appropriation shall be immediately available is not subject to a point of order: language in the independent offices appropriation bill making the appropriations for administrative expenses for public works advance planning immediately available was held in order.

On Feb. 8, 1945,[5] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 1984), a point of order was raised against the following amendment:

> MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, I offer an amendment.

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3. 100 CONG. REC. 4128, 83d Cong. 2d Sess.

4. Louis E. Graham (Pa.).

5. 91 CONG. REC. 942, 79th Cong. 1st Sess.

The Clerk read as follows:

Amendment offered by Mr. Woodrum of Virginia: On page 18, line 12, insert:

"Public works advance planning: Toward accomplishing the provisions of title V of the War Mobilization and Reconversion Act of 1944, $5,000,000, of which not to exceed 4 percent shall be available for administrative expenses necessary therefor, to be immediately available and to remain available until June 30, 1946, including salary for not to exceed one position at $10,000 per annum; personal services and rent in the District of Columbia; printing and binding; purchase and exchange of lawbooks and books of reference; purchase (not exceeding 5) and repair, maintenance, and operation of passenger automobiles; and travel expenses (not to exceed $10,000)."

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I make a point of order against certain language in the amendment just offered reading, "to be immediately available," and call the attention of the Chair to the fact that the bill is an appropriation bill for the fiscal year ending June 30, 1946. I direct this point of order merely against the language, "to be immediately available."

THE CHAIRMAN:[6] Does the gentleman from Virginia desire to be heard on the point of order?

MR. WOODRUM of Virginia: Mr. Chairman, the amendment offered conforms to the point of order which the gentleman made to the paragraph originally. The language in line 17, "to be immediately available," had not been complained of by the gentleman from South Dakota.

THE CHAIRMAN: The gentleman from South Dakota [Mr. Case] makes a point of order against the language indicated by the gentleman from Virginia, "to be immediately available." Does the gentleman from Virginia desire to be heard further?

MR. WOODRUM of Virginia: I do not, Mr. Chairman. . . .

THE CHAIRMAN: The Chair is ready to rule. In volume 7, Cannon's Precedents, section 1120, the Chair finds the following language:

> Under the modern practice the provision that an appropriation shall be immediately available is not subject to a point of order.

The Chair overrules the point of order.

Permanent Appropriations

§ 32.5 Language in a general appropriation bill making appropriations available beyond the current fiscal year is legislation and not in order: appropriations for fulfilling treaties with certain Indians on a permanent basis and appropriations from proceeds from power projects on a similar basis have been conceded as legislation and not in order.

On May 3, 1950,[7] during consideration in the Committee of the Whole of the Agriculture Depart-

6. William M. Whittington (Miss.).

7. 96 CONG. REC. 6304, 81st Cong. 2d Sess.

ment appropriation bill (H.R. 7786), the following point of order was raised:

MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, I make a point of order against the language appearing on page 227, lines 13 to 18, inclusive, and on page 227, lines 19 to 25, inclusive, and page 228, lines 1 and 2 on the ground that it is permanent legislation on an appropriation bill.

The language to which the point of order is made is as follows:

CLAIMS AND TREATY OBLIGATIONS

For fulfilling treaties with Senecas and Six Nations of New York, Choctaws and Pawnees of Oklahoma, and payment to Indians of Sioux reservations, to be expended as provided by law, such amounts as may be necessary after June 30, 1950.

PROCEEDS FROM POWER

After June 30, 1950, not to exceed the amount of power revenues covered into the Treasury to the credit of each of the power projects, including revenues credited prior to August 7, 1946, shall be available for the purposes authorized by section 3 of the act of August 7, 1946 (Public Law 647), as amended, including printing and binding, in connection with the respective projects from which such revenues are derived.

THE CHAIRMAN:[8] Does the gentleman from Washington desire to be heard on the point of order?

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I concede both points of order.

THE CHAIRMAN: The Chair sustains the points of order.

8. Jere Cooper (Tenn.).

Available to End of Next Fiscal Year

§ 32.6 Language in a supplemental appropriation bill providing funds [to collect and publish certain statistics on voting] to be available until the end of the next fiscal year, was conceded to be legislation and ruled out on a point of order.

On Apr. 6, 1965,[9] During consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7091), a point of order was raised against the following provision:

The Clerk read as follows:

DEPARTMENT OF COMMERCE

Bureau of the Census

Registration and Voting Statistics

For expenses necessary for the collection, compilation, and publication of statistics on registration and voting, in such geographic areas as may be recommended by the Commission on Civil Rights, as authorized by section 801 of the Civil Rights Act of 1964 (78 Stat. 266), $7,500,000, to remain available until December 31, 1966.

MR. [ROBERT L. F.] SIKES [of Florida]: Mr. Chairman, I make a point of order against the language on page 21, lines 2 through 9, and ask to be heard on the point of order.

9. 111 CONG. REC. 7131, 7132, 89th Cong. 1st Sess.

THE CHAIRMAN:[10] The Chair recognizes the gentleman from Florida [Mr. Sikes].

MR. SIKES: Mr. Chairman, the language in this section goes beyond the period of time set forth in the bill H.R. 7091. The preamble of this bill states that it is a bill making supplemental appropriations for the fiscal year ending June 30, 1965. The language on lines 2 through 9, page 21, proposes to have the funds, $7.5 million, remain available until December 31, 1966. There is no such authority in the basic law.

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

MR. [JOHN J.] ROONEY of New York: Mr. Chairman, the proposed appropriation of $7.5 million contained in the bill for the Bureau of the Census is for the purpose of a registration and voting statistics survey covering the States of Alabama, Louisiana, and Mississippi, to provide a count of all persons of voting age and a determination of the following information for each such person: "(1) citizenship, (2) residence, (3) years of school completed, (4) race and color, (5) whether registered to vote in Federal elections, (6) whether voted in the most recent statewide primary election and general election in which Members of the U.S. House of Representatives were nominated or elected."

As appears at page 161 of the printed hearings on this pending bill, the following questions were asked and the following answers given concerning this requested $7.5 million appropriation:

> MR. ROONEY: What is the legal authority for this proposed activity of the Department of Commerce?
>
> MR. ECKLER: Title VIII of the Civil Rights Act indicates that the Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights.
>
> I believe we have included a full text of title VIII, section 801, in the material which was put into the record.
>
> MR. ROONEY: Where do you get the authority for the unlimited availability?
>
> MR. IMHOFF: We have no specific authority for that, Mr. Chairman.

In view of this, the gentleman from New York is reluctantly constrained to concede that the gentleman's point of order is well taken.

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

The purpose of the bill is to make supplemental appropriations for the fiscal year ending June 30, 1965. The language on page 21, line 9, is "to remain available until December 31, 1966", which goes beyond the purpose of the bill.

The point of order is sustained.

Available for Next Fiscal Year

§ 32.7 To a supplemental appropriation bill, an amendment to increase a limitation on use of funds for administrative purposes contained in another act and to make such funds available beyond the current fiscal year was conceded to be legislation and therefore was ruled out as not in order.

10. Oren Harris (Ark.).

On May 7, 1957,[11] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7221) for fiscal year 1957, a point of order was raised against the following amendment:

> Amendment offered by Mr. [DeWitt S.] Hyde [of Maryland]: Page 5, after line 10, insert the following item:
>
> "ADMINISTRATION EXPENSES, EMPLOYEES' LIFE INSURANCE FUND
>
> "The limitation under this head in the Independent Offices Appropriation Act, 1957, on the amount made available from the 'Employees' life insurance fund,' for reimbursement to the Civil Service Commission for administrative expenses incurred in the administration of the Federal Employees' Group Life Insurance Act, is increased from '$117,500' to '$194,000.'
>
> "Not to exceed $23,000 of the funds in the 'Employees' life insurance fund' shall be available for reimbursement to the Civil Service Commission during the fiscal year 1958, for administrative expenses incurred by the Commission during that fiscal year in the administration of said act, and such amount shall be in addition to any amounts otherwise made available from the fund for such expenses for the fiscal year 1958.". . .

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, very reluctantly I must state that the committee insists on the point of order. . .

You will recall that the language, Mr. Chairman, does two things that makes the amendment subject to a point of order. It first attempts to increase the limitation, then in the next place it attempts to take part of the funds so limited and transfer them from that fund to the general administrative expense fund of the Civil Service Commission.

No. 2. This is a deficiency appropriation bill for the fiscal year 1957. The language attempts to carry the fund over and beyond and into the fiscal year 1958; therefore it is over and beyond the scope of the bill.

It is subject to a point of order on two counts.

THE CHAIRMAN:[12] Does the gentleman from Maryland wish to be heard on the point of order?

MR. HYDE: Only to the extent of asking the very genial chairman of the committee a question. I understand that the chairman is objecting to this amendment not on its merit but on a technical basis.

MR. THOMAS: Let us take one hurdle at a time. I am objecting now on two scores.

MR. HYDE: Mr. Chairman, I must bow to the wisdom of the chairman. I recognize that the point of order is well taken.

THE CHAIRMAN: The gentleman concedes the point of order?

MR. HYDE: Yes.

THE CHAIRMAN: The Chair sustains the point of order.

Available "Each Fiscal Year Thereafter"; Permanent Appropriation

§ 32.8 Language in an appropriation bill making appro-

11. 103 CONG. REC. 6431, 6432, 85th Cong. 1st Sess.

12. Frank N. Ikard (Tex.).

priations beyond the current fiscal year is legislation: language in the general appropriation bill making appropriations for the Migratory Bird Conservation Fund for the current year "and each fiscal year thereafter" from the sale of stamps was conceded to be legislation and not in order.

On May 4, 1950,[13] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 7786), the following point of order was raised:

MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, I make a point of order, on the ground it is permanent legislation on an appropriation bill and not in accordance with the rules of the House, to the language appearing in lines 18 to 24, page 246, and reading as follows:

MIGRATORY BIRD CONSERVATION FUND

For carrying into effect section 4 of the act of March 16, 1934, as amended (16 U.S.C. 718–718h), amounts equal to the sums received during the current year and each fiscal year thereafter from the proceeds from the sale of stamps, to be warranted monthly and to remain available until expended.

THE CHAIRMAN:[14] Does the gentleman from Washington [Mr. Jackson] desire to be heard on the point of order?

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I concede the point of order and at the proper time will offer an amendment in lieu of the language appearing at that point in the bill.

THE CHAIRMAN: The gentleman from Iowa [Mr. Jensen] makes a point of order against the language mentioned by him, the gentleman from Washington [Mr. Jackson] concedes the point of order, and the Chair sustains the point of order.

Fees and Royalties Hereafter Received; Permanent Appropriation

§ 32.9 Language in a general appropriation bill making fees and royalties collected pursuant to law available beyond the current fiscal year is legislation and not in order.

On May 3, 1950,[15] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 7786), the following points of order were raised:

MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, I make a point of order against the paragraph appearing on page 222, lines 18 through 25, and page 223, lines 1 through 3, which is as follows:

13. 96 CONG. REC. 6400, 81st Cong. 2d Sess.

14. Jere Cooper (Tenn.).

15 96 CONG. REC. 6296, 6297, 81st Cong. 2d Sess.

RANGE IMPROVEMENTS

The aggregate of all moneys received after June 30, 1950, as range-improvement fees under the provisions of section 3 of the Act of June 28, 1934 (43 U.S.C. 315) and 25 per centum of all moneys received after June 30, 1950, under the provisions of section 15 of said Act (in addition to all moneys received during the fiscal year 1950 from either of such sources but not yet appropriated) shall be available until expended for construction, purchase, and maintenance of range improvement pursuant to the provisions of sections 3 and 10 of said Act.

MR. JENSEN: . . . I make a point of order against the language on page 223, lines 13 through 24, which language is as follows:

PAYMENT TO OKLAHOMA

Thirty-seven and one-half percent of the royalties received after June 30, 1950 (in addition to 37½ percent of all royalties received during the fiscal year 1950 but not yet appropriated), from the south half of Red River in Oklahoma under the provisions of the joint resolution of June 12, 1926 (44 Stat. 740), shall be available for payment to the State of Oklahoma in lieu of all State and local taxes upon tribal funds accruing under said act, to be expended by the State in the same manner as if received under section 35 of the act approved February 25, 1920 (30 U.S.C. 191).

I make a point of order against the language on page 224, lines 1 through 8, which language is as follows:

LEASING OF GRAZING LANDS

The aggregate of all moneys received after June 30, 1950 (in addition to all moneys received during the fiscal year 1950 but not yet appropriated), from grazing fees for State, county, or privately owned lands leased in accordance with the provisions of the act of June 23, 1938 (43 U.S.C. 315m–4), shall be available until expended for leasing of such lands.

I make a point of order against the language on page 224, lines 9 through 16, which language is as follows:

PAYMENTS TO STATES (GRAZING FEES)

Thirty-three and one-third percent of all grazing fees received after June 30, 1950, from each grazing district on Indian lands ceded to the United States for disposition under the public-lands laws, shall be available for payment to the State in which said lands are situated, in accordance with the provisions of section 11 of the act of June 28, 1934, as amended (43 U.S.C. 315j).

Mr. Chairman, I make the point of order that the language I have indicated, in each instance, has the effect of making appropriations on a permanent basis, which goes beyond the scope of the bill and also constitutes legislation on an appropriation bill, and, therefore, is not in order under the rules of the House.

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I concede the points of order.

THE CHAIRMAN:[16] The Chair sustains the points of order made by the gentleman from Iowa [Mr. Jensen].

Appropriation Available Until Expended

§ 32.10 A provision that an appropriation is "to remain

16. Jere Cooper (Tenn.).

available until expended" constitutes legislation on an appropriation bill and is not in order where such availability is not authorized by law.

On Apr. 30, 1952,[17] 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. [Arthur L.] Miller of Nebraska: Page 9, after line 13 insert the following:

"Research Laboratory: For establishment of a research laboratory, including acquisition of necessary land and the preparation of plans and specifications for, and construction of laboratory buildings and related facilities for research and study of foot-and-mouth disease and other animal diseases, in accordance with the act of April 24, 1948 (Public Law 496, 80th Cong.), $24,500,000, to remain available until expended."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make the point of order that the amendment contains legislation in that the last clause directs that the money "remain available until expended."

THE CHAIRMAN:[18] Does the gentleman from Nebraska desire to be heard on the point of order?

MR. MILLER of Nebraska: I do, Mr. Chairman. The Chairman: The Chair will hear the gentleman briefly. Mr. Miller of Nebraska: Mr. Chairman, I maintain that the amendment is in order because the Eightieth Congress passed Public Law 496 providing for the laboratory. It is not new legislation; it merely implements legislation Congress has already passed. I am merely trying to implement that legislation by an appropriation which was authorized at that time.

THE CHAIRMAN: The Chair has not been able to find in Public Law 496 any authority that the funds shall remain available until expended.

MR. MILLER of Nebraska: If the Chair please, Public Law 496 of the Eightieth Congress is the law that this Congress passed authorizing the construction of this laboratory. I am merely providing funds to implement a law that has already been passed by Congress.

THE CHAIRMAN: The gentleman is within his rights in offering such an amendment with the exception of the fact that the gentleman's amendment contains a clause stating that the funds shall remain available until expended. That is new legislation.

MR. MILLER of Nebraska: I concede the point of order, Mr. Chairman, and submit the amendment minus the last clause.

THE CHAIRMAN: The gentleman concedes the point of order. The point of order is sustained.[19]

§ 32.11 Language in a paragraph of a general appro-

17. 98 CONG. REC. 4620, 82d Cong. 2d Sess.

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

19. See also 96 CONG. REC. 6296, 6297, 81st Cong. 2d Sess., May 3, 1950; and 89 CONG. REC. 3080, 78th Cong. 1st Sess., Apr. 7, 1943.

priation bill providing that funds provided in that paragraph shall remain available until expended is generally conceded to be legislation in violation of Rule XXI clause 2 unless the authorizing legislation permits such availability, since such language extends funds beyond the period permitted by law.

On Aug. 1, 1973,[20] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9590), the following proceedings took place:

NATIONAL ARCHIVES AND RECORDS SERVICE

OPERATING EXPENSES

For necessary expenses in connection with Federal records management and related activities, as provided by law, including reimbursement for security guard services, contractual services incident to movement or disposal of records, and acceptance and utilization of voluntary and uncompensated services, $33,000,000, of which $500,000 for allocations and grants for historical publications as authorized by 44 U.S.C. 2504, as amended, shall remain available until expended.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, a point of order.

THE CHAIRMAN:[(1)] The gentleman will state it.

MR. DINGELL: Mr. Chairman, the point of order is to the language on page 20, line 25, referring specifically to the words in the bill, "shall remain available until expended."

That again, Mr. Chairman, is violative of rule XXI, clause 2, as legislation on an appropriation bill.

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, we concede the point of order.

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

§ 32.12 To a provision in an appropriation bill providing funds for construction and rehabilitation of authorized reclamation projects, an amendment providing funds to "be programed and remain available until spent for the Fort Randall-Grand Island 230-kilovolt transmission line," was held to be legislation and not in order.

On May 22, 1956,[(2)] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 11319), the following transpired:

The Clerk read as follows:

CONSTRUCTION AND REHABILITATION

For construction and rehabilitation of authorized reclamation projects or parts thereof (including power transmission facilities) and for other related activities, as authorized by law,

20. 119 CONG. REC. 27288, 93d Cong. 1st Sess.

1. Richard Bolling (Mo.).

2. 102 CONG. REC. 8728–30, 84th Cong. 2d Sess.

to remain available until expended, $125,900,000, of which $63,083,000 shall be derived from the reclamation fund. . . .

MR. [ARTHUR L.] MILLER of Nebraska: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Miller of Nebraska: On page 7, line 22, after "Congress.", insert "*Provided further*, That $5,500,000 shall be programed and remain available until spent for the Fort Randall-Grand Island 230-kilovolt transmission line."

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I reserve a point of order. . . .

Mr. Chairman, we are constrained to insist upon our point of order.

THE CHAIRMAN:[3] Does the gentleman from Nebraska desire to be heard on the point of order?

MR. MILLER of Nebraska: Mr. Chairman, I concede that it is legislation on an appropriation bill and concede the point order.

THE CHAIRMAN: The gentleman from Missouri [Mr. Cannon] makes a point of order; the gentleman from Nebraska [Mr. Miller] concedes it and the Chair sustains the point of order.

§ 32.13 An amendment to an appropriation bill seeking to appropriate funds for a specific purpose making such appropriation "available until expended" was held to be legislation on an appropriation bill and therefore not in order.

3. Jere Cooper (Tenn.).

On June 16, 1948,[4] during consideration in the Committee of the Whole of a deficiency appropriation bill (H.R. 6935), a point of order was raised against the following amendment:

Amendment offered by Mr. [George H.] Mahon [of Texas]: On page 14, line 19, after the period, add a new section as follows:

"Rural Electrification Administration, salaries and expenses, for an additional amount, fiscal year 1949, for administrative expenses to be available immediately and to remain available until expended, $450,000."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the amendment, that it carries legislation in the words "which will be available until expended."

THE CHAIRMAN:[5] Does the gentleman from Texas desire to be heard on the point of order?

MR. MAHON: Mr. Chairman, the amendment provides additional funds for the administrative expenses for the Rural Electrification Administration. It carries the same wording as was carried in the original act providing the funds. It is in accordance with the budget estimate, and it seems to me it is not subject to a point of order. It is not legislation because it is authorized by law.

MR. TABER: Mr. Chairman, the words "to be available until expended" make it legislation, and therefore the amendment is subject to a point of order.

4. 94 CONG. REC. 8469, 80th Cong. 2d Sess.

5. Clifford R. Hope (Kans.).

THE CHAIRMAN: The Chair is ready to rule. The amendment in its present form with the language "to be available until expended" is clearly legislation. The Chair sustains the point of order.

§ 32.14 A provision in a paragraph of a general appropriation bill authorizing certain funds therein to remain available until expended whenever determined by the recipient to be necessary and without regard to provisions of law was conceded to be legislation in violation of Rule XXI clause 2 and was stricken from the bill.

On Aug. 1, 1973,[6] 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:

UNITED STATES TAX COURT

SALARIES AND EXPENSES

For necessary expenses, including contract stenographic reporting, and other services as authorized by 5 U.S.C. 3109, $5,760,000: *Provided,* That travel expenses of the judges shall be paid upon the written certificate of the judge: *Provided further,* That $1,280,000 of this appropriation shall remain available until expended for equipment, furniture, furnishings and accessories, required for the new Tax Court building and, whenever determined by the Court to be necessary, without compliance with section 3709 of the Revised Statutes, as amended (41 U.S.C. 5).

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I assert a point of order against the line beginning with "*Provided further*" at page 26, line 21, down through the end of the paragraph at the top of page 27, line 2.

Mr. Chairman, the burden of the point of order is that the language in the bill referred to is violative of rule XXI, clause 2, constituting legislation in an appropriation bill. I refer specifically to the language at line 22 wherein the words are as follows:

> That $1,280,000 of this appropriation shall remain available until expended for equipment, furniture, furnishings, and accessories . . .

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, I concede the point of order.

THE CHAIRMAN:[7] The point of order is conceded, and the point of order is sustained.

Available Until Expended; Bureau of Reclamation Construction Funds

§ 32.15 Language in a supplemental appropriation bill for the Department of the Interior providing that funds for Bureau of Reclamation construction "shall remain available until expended," was

6. 119 CONG. REC. 27289, 93d Cong. 1st Sess.

7 Richard Bolling (Mo.).

held to be legislation where authorizing language was not cited.

On July 24, 1956,[8] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 12350), a point of order was raised against a provision which contained language as described above, and which also prescribed the conditions under which certain contracts could be entered into.

> [For an additional amount for "Construction and rehabilitation", $2,500,000 to remain available until expended: *Provided,* That any contract under the Act of July 4, 1955 (69 Stat. 244), as amended, which calls for the making of loans beyond the fiscal year in which the contract is entered into shall be made only on the same conditions as those prescribed in section 12 of the Act of August 4, 1939 (53 Stat. 1187, 1197).]

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I desire to make a further point of order against the language appearing on page 7, beginning with line 5 "Bureau of Reclamation" down to the bottom of the page and including the remainder of the bill.

THE CHAIRMAN:[9] Does the gentleman from Missouri desire to be heard on his point of order?

MR. CANNON: Mr. Chairman, it is legislation on an appropriation bill.

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, I should like to be heard on the point of order. . . .

Mr. Chairman, in my opinion, this is not subject to a point of order, as it covers a project which has been approved by legislation. It appears in this bill, as a matter of information for the Chairman, only because at the time the regular bill came through the matter of contracts had not been settled between the people involved in the district and the Government. That matter has been settled. That is why this is here. Therefore this is not subject to a point of order, as it has already been authorized.

MR. CANNON: It provides for the negotiation of contracts to be entered into in a particular and specified way.

MR. PHILLIPS: Then I desire to be heard further, Mr. Chairman, before the Chairman rules in reply to the gentleman from Missouri, that his point of order lies against the proviso only and not against lines 7 and 8.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Missouri has made a point of order against the language appearing in the bill on page 7, beginning in line 5, on the ground that it contains legislation on an appropriation bill.

The Chair has examined the language covered in the point of order and invites attention to the fact that there appears in line 8 the words "to remain available until expended," which constitutes legislation on an appropriation bill.

The Chair therefore sustains the point of order.

Available Until Expended for Payment of Prior Obligations

§ 32.16 Language in an appropriation bill providing for

8. 102 CONG. REC. 14289, 84th Cong. 2d Sess.

9. Oren Harris (Ark.).

funds for the Tennessee Valley Authority "to remain available until expended, and to be available for the payment of obligations chargeable against prior appropriations," was conceded to be legislation and not in order.

On May 22, 1956,[10] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 11319), the following point of order was raised:

> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I make a point of order against certain language in the Tennessee Valley Authority paragraph as follows: . . .
>
> . . . In lines 11 through 13 ", to remain available until expended, and to be available for the payment of obligations chargeable against prior appropriations.". . .
>
> MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, the language read by the gentleman is unquestionably legislation on an appropriation bill and I therefore concede the point of order.
>
> THE CHAIRMAN:[11] . . . The gentleman from Missouri, chairman of the Committee on Appropriations, concedes the point of order.
>
> It is clearly legislation on an appropriation bill and the point of order is sustained.

Parliamentarian's Note: 31 USC § 1502 provides:

> Except as otherwise provided by law, all balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year.

Thus, provisions in general appropriation bills which make funds available for the payment of obligations chargeable against prior appropriations are legislative in character.

Office of Telecommunications Policy; Earmarking Certain Funds to Remain Available Until Expended

§ 32.17 To a paragraph in a general appropriation bill containing funds for salaries and expenses of the Office of Telecommunications Policy, an amendment increasing the amount and providing that the additional amount shall be available until expended for telecommunications studies and research was held to constitute legislation in violation of Rule XXI clause 2.

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10. 102 CONG. REC. 8725, 84th Cong. 2d Sess.

11. Jere Cooper (Tenn.).

On Aug. 1, 1973,[12] 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 amendment:

MR. [CLARENCE J.] BROWN of Ohio: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Brown of Ohio: Page 10, line 24, after the first comma, strike out the figure $2,070,000 and insert the figure $2,745,000, and add at the end thereof the following: "*Provided,* That not to exceed $675,000 of the foregoing amount shall remain available for telecommunications studies and research until expended."

MR. [TOM] BEVILL [of Alabama]: Mr. Chairman, I should like to make a point of order against the amendment.

THE CHAIRMAN:[13] The gentleman will state his point of order.

MR. BEVILL: The second provision is: *Provided,* That not to exceed $675,000 of the foregoing amount shall remain available for telecommunications studies and research until expended.

There is no authorization for studies and research, and I make a point of order against that portion of the amendment.

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

MR. BROWN of Ohio: Mr. Chairman, the amendment proposes to restore funds which were stricken by the committee in its consideration of the proposals for this particular office as the bill was under consideration in the committee.

The amendment seeks to restore a portion of the funds which were a part of that total budget asked of the committee. The reason for the proviso language is to further clarify for what the additional funds would be used, to go back to the testimony of the office when it appeared before the committee and to restore the specific portion of those funds.

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The Chair will hear the gentleman.

MR. STEED: The language of the original bill was submitted to the experts, and it was held it would be subject to a point of order, because the funds would be available until expended. That is why it was deleted from the bill in the committee. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The Chair will rule narrowly on the point made by the gentleman from Oklahoma. The words "until expended" constitute legislation on an appropriation bill. Therefore, the point of order is sustained on that ground.

Laws Not Permitting Availability Until Expended—Mutual Security Act

§ 32.18 An amendment to the Mutual Security Act appropriation bill to provide for the equivalent of $1.5 million in local currencies for hos-

12. 119 CONG. REC. 27285, 93d Cong. 1st Sess.

13. Richard Bolling (Mo.).

pital construction, to remain available until expended, was ruled out as legislation.

On June 17, 1960,[14] during consideration in the Committee of the Whole of the mutual security appropriation bill (H.R. 12619), a point of order was raised against the following amendment:

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Zablocki: On page 3, line 7, after "$206,000,000," strike out beginning "of which not" and through the colon on line 12 and insert on page 3, after line 19, the following:

"Special assistance, special authorization: For assistance authorized by section 400(c) for hospital construction the equivalent of $1,500,000 in local currencies to remain available until expended."

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a point of order.

THE CHAIRMAN:[15] The gentleman will state it.

MR. GROSS: Mr. Chairman, I make a point of order against the amendment and against the words "until expended" as not being authorized. I would call the Chair's attention to title 31, United States Code, 718, which provides as follows:

No specific or indefinite appropriation made subsequent to August 24, 1912, in any regular annual appropriation act shall be construed to be permanent or available continuously without reference to a fiscal year unless it belongs to one of the following four classes: "Rivers and harbors," "lighthouses," "public buildings," and "pay of the Navy and Marine Corps,". . . or unless it is made in terms expressly providing that it shall continue available beyond the fiscal year for which the appropriation act in which it is contained makes provision.

Mr. Chairman, I point out that this is an annual appropriation bill and, therefore, this is language on an appropriation bill that is not authorized by law.

MR. ZABLOCKI: I will not argue the point, Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The Chair sustains the point of order.[16]

— *National Academy of Sciences*

§ 32.19 A paragraph in a general appropriation bill containing funds to enable the National Academy of Sciences to conduct an analysis of the Environmental Protection Agency under contract, which funds were to remain available until expended, was conceded to contain an appropriation unauthorized by law and legislation where the only law cited authorized the National Academy to investigate any

14. 106 CONG. REC. 13133, 86th Cong. 2d Sess.

15. Wilbur D. Mills (Ark.).

16. See the present 31 USC § 1301.

subject of science or art when requested by an agency.

On June 15, 1973,[17] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 8619), a point of order was raised against the following provision:

> For an amount to provide for a complete and thorough review, analysis, and evaluation of the Environmental Protection Agency, its programs, its accomplishments and its failures, and to recommend such changes, cancellations, or additions as necessary, to be conducted under contract with the National Academy of Sciences, $5,000,000, to remain available until expended.
>
> MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, at this point I make a point of order against the language appearing at lines 20 through 24 on page 32, and on through the first two lines of page 33.
>
> The reason for my point of order, Mr. Chairman, is twofold. First, this is legislation in an appropriation bill; and it constitutes an appropriation of funds not previously authorized by law.
>
> So that the language referred to is again violative of rule XXI, clause 2, and I would point out again, Mr. Chairman, that the rule should be so interpreted as to require strict compliance.
>
> Mr. Chairman, I am quoting from page 466 of the Manual of the Rules of the House of Representatives, as follows:
>
> > In the administration of the rule, it is the practice that those upholding an item of appropriation should have the burden of showing the law authorizing it.
>
> Mr. Chairman, I would point out that neither the statute setting up the EPA nor the statute setting up the National Academy of Sciences affords the National Academy of Sciences the duty, responsibility, or power to investigate or to study EPA. For that reason, Mr. Chairman, I make this point of order.
>
> MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make the additional point of order that the language in the paragraph appearing at the top of page 33, containing the words, "to remain available until expended," is also subject to a point of order.
>
> THE CHAIRMAN:[18] Does the gentleman from Mississippi (Mr. Whitten) desire to be heard on the point of order?
>
> MR. [JAMIE L.] WHITTEN: Mr. Chairman, I seem to have a little difficulty finding it at the moment, but the language setting up the National Academy of Sciences, after establishing the Academy, provides for making this kind of study when asked by any department or agency of the Government.
>
> While we seem to have difficulty finding it—I do not know whether the Chair has it in his hands or not—it does so provide. Based on that, we have directed this agency to make such a request. That is the situation as we submit it at this time.

17. 119 CONG. REC. 19852, 93d Cong. 1st Sess.

18. James C. Wright, Jr. (Tex.).

MR. DINGELL: Mr. Chairman, I would point out that the committee in its kindness, in the report at page 99 and page 100, under the words "limitations and legislative provisions" has set forth precisely the language which I have alluded to.

I would point out since it is clearly not a limitation and since it does not limit the level of expenditures, then it becomes, in the words of the distinguished committee, then legislation, since to exclude one is necessarily to require the expression of the other alternative. Therefore, it is conceded at page 100 of the report in the second to last paragraph to which I referred the Chair that this does in fact constitute legislation in an appropriation bill.

MR. WHITTEN: Mr. Chairman, I shall not press the matter further. The language on which we rely is to be found—and we have finally found it here—March 3, 1963, and it provides in section 3 of such act:

> Be it further enacted that the National Academy of Sciences shall hold an annual meeting at such place in the United States to be designated and the Academy shall when called upon by any department of the Government investigate, examine, and report any subject of science or art the actual expenses for which are to be paid for in an appropriation which may be made for the purpose. The Academy shall receive no compensation whatever for its services to the Government of the United States.

If I may have a second to write a similar amendment to that which we substituted a while ago in a similar point of order, we will provide the money for such an expense if I might have the cooperation of my friends. I have to acknowledge the point of order at this point.

MR. DINGELL: I thank the gentleman.

MR. WHITTEN: If the Chair will oblige me for a second while I write the amendment, we will provide $5 million for such study by the National Academy of Sciences, and we shall be happy to so amend the legislation.

THE CHAIRMAN: Does the Chair understand that the gentleman from Mississippi concedes the point of order?

MR. WHITTEN: I do. And I beg the indulgence of the Chair that we may write an amendment to replace the section.

MR. DINGELL: Out of deference to my good friend from Mississippi and in order to have the business on the committee go forward, I will ask unanimous consent that he be permitted to return at a time later—

MR. WHITTEN: I think we have it ready.

MR. DINGELL: Very well.

THE CHAIRMAN: The point of order is sustained, and the language is stricken.

— *Lump-sum Appropriation for Joint Economic Committee*

§ 32.20 Since the law establishing the Joint Economic Committee [15 USC § 1024(e)] authorizes the appropriation of "such sums as may be necessary during each fiscal year," it is not in order in a general appropriation bill to

make funds for that joint committee available beyond the fiscal year covered by the bill.

On May 11, 1971,[19] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 8190), a point of order was raised against the following provision:

The Clerk read as follows:

CONTINGENT EXPENSES OF THE SENATE

JOINT ECONOMIC COMMITTEE

For an amount (to be disbursed by the Secretary of the Senate on vouchers signed by the chairman or vice chairman and the chairman of the subcommittee) necessary to enable the Subcommittee on Fiscal Policy, under authority of the Employment Act of 1946 (60 Stat. 23, sec. 5), to undertake a study to develop reliable, comprehensive, and factual information concerning welfare programs and needs in the United States, $500,000, to remain available until June 30, 1973.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, I make a point of order against this bill, on page 11, the section beginning with line 15 through page 12, line 3.

My point of order is directed, Mr. Chairman, particularly to the last clause which says, "to remain available until June 30, 1973."

The point of order should lie in the fact that this is an appropriation on unauthorized legislation [sic].

THE CHAIRMAN:[20] Does the gentleman from Alabama desire to be heard on the point of order?

MR. [GEORGE W.] ANDREWS [of Alabama]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Federal Building Fund; Limiting Obligational Authority to Current Fiscal Year

§ 32.21 Notwithstanding legislation providing that funds when appropriated shall be available "until expended" or "without regard to fiscal year limitation", the Committee on Appropriations may nevertheless limit the availability of funds to the fiscal year covered by the bill absent a clear showing that the amounts in the general appropriation bill are required by law to remain available without such limitation.

The Chair ruled on June 25, 1974,[1] that, where existing law provided that moneys deposited into the federal buildings fund shall be available for expenditure by GSA "for real property management . . . in such amounts as

19. 117 CONG. REC. 14472, 92d Cong. 1st Sess.

20. Wayne N. Aspinall (Colo.).

1. 120 CONG. REC. 21040, 21041, 93d Cong. 2d Sess.

are specified in annual appropriations acts without regard to fiscal year limitations", a paragraph in a general appropriation bill specifying the amount to be made available from that fund "during the current fiscal year" did not constitute a change in that law. The language of the law was interpreted merely to permit, and not to require, the annual appropriation bill to make those funds available until expended. The proceedings are shown below:

The Clerk read as follows:

The revenues and collections deposited into a fund pursuant to Section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(f)), shall be available during the current fiscal year for necessary expenses of real property management and related activities not otherwise provided for, including operation, maintenance, and protection of federally owned and leased buildings; . . . construction of new buildings (including equipment for such buildings); and payment of principal, interest, taxes, and any other obligations for public buildings acquired by purchase contract; in the aggregate amount of $871,875,000 of which (1) not to exceed $25,000,000 shall be available for construction of buildings as authorized by law including construction projects at locations and at maximum construction improvement costs (including funds for sites and expenses) as follows:

New Construction:

Arizona: Lukeville Border Station, $2,081,000

Texas: Laredo Border Station, $15,462,000. . . .

Provided, That the immediately foregoing limits of costs may be exceeded to the extent that savings are effected in other such projects, but by not to exceed 10 per centum; (2) not to exceed $26,244,000 for purchase contract payments; . . . (6) not to exceed $54,037,000 for program direction and centralized services; and (7) not to exceed $25,000,000 shall be available for obligation in fiscal year 1976. . . .

MR. [WILLIAM H.] HARSHA [of Ohio]: Mr. Chairman, I make a point of order against the language in the bill appearing at page 15, lines 10 and 11, that this is legislation in an appropriation act, and it is, I believe, in violation of rule XXI, clause 2.

Mr. Chairman, two provisions under the appropriation heading, "Federal Buildings Fund—Limitations on Availability of Revenue," are subject to a point of order because they change existing law.

The first such provision is the clause, "during the current fiscal year," at page 15, lines 10–11 of the bill. This language would limit the use of funds made available to GSA from the Federal Building Fund to fiscal year 1975. This is in direct conflict with section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended, which specifically provides that "the fund shall be available for expenditure—without regard to fiscal year limitations." The language in the bill is clearly designed to change the authorizing law and is contrary to rule 21, clause 2 that prohibits legislation in an appropriation bill.

The objectionable language in the bill cannot be supported on any theory of retrenchment of expenditures. The limitation requiring that moneys made

available for real property activities be spent in the fiscal year does not reduce expenditures, but would tend to increase costs and spending by encouraging expenditures over a shorter period of time than good management and planning would otherwise require.

If the language is allowed to remain in the bill, the Congress will, in effect, be substantially modifying the concept of a Federal Building Fund. The Public Works Committee, when it considered the Public Buildings Amendments of 1972, which established the fund, concluded that the Federal Building Fund would have to be available without regard to fiscal year limitations, but with reasonable congressional control, if the purpose of reforming real property management financing was ever going to be achieved. . . .

The fiscal year limitation applies to all construction work performed by GSA including the construction of new buildings and conversion and extensions to older buildings. The restriction is thus directly in conflict with section 682 of title 31 of the United States Code which provides that appropriations for construction of public buildings remain available until completion of the work; that is, without regard to fiscal year limitations. I know of no single instance where the Congress has placed a fiscal year limitation on the construction of new buildings.

Elimination of the objectionable language in the appropriation bill will not in any way interfere with normal congressional controls of appropriations to GSA for its real property activities. The Appropriations Committee in considering the 1976 budget requests can take into account any unobligated balances in the fund in determining the amount to be made available to GSA from the fund in fiscal 1976.

For the above-stated reasons, the phrase "during the current fiscal year" is subject to a point of order and should be deleted. . . .

MR. [TOM] STEED [of Oklahoma] . . . Mr. Chairman, this is a simple, negative limitation, it merely restricts the use of the funds to the fiscal year. The fact that there is no authority to make them available for a longer period of time does not constitute a point of order against the language here. . . .

THE CHAIRMAN:[2] The Chair is prepared to rule.

The gentleman from Ohio makes the point of order against the clause on page 15, lines 10 and 11 of H.R. 15544 which limits the availability "during the current fiscal year" of the aggregate amount of $871,875,000 for expenditure by GSA from the Federal Buildings fund. The gentleman from Ohio contends that this language in H.R. 15544 violates clause 2, Rule XXI by constituting a change in existing law [section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (Public Law 92–313)] which provides:

> (2) Moneys deposited into the fund shall be available for expenditure for real property management and related activities in such amounts as are specified in annual appropriations Acts without regard to fiscal year limitations.

The gentleman from Ohio contends that this law requires that amounts in Federal Building Fund must be made available by the Appropriations Committee without a fiscal year restriction,

2. B. F. Sisk (Calif.).

and that the Committee on Appropriations has no authority under clause 2, rule XXI to limit the availability of amounts from that fund for the current fiscal year. The Committee on Appropriations, on the other hand, contends that such a provision of law merely permits, and does not require, the Committee on Appropriations to appropriate funds from the Federal Building Fund without a fiscal year limitation, or to be available until expended, and therefore that the limitation contained in the paragraph for the current fiscal year is within the prerogative of the Committee on Appropriations under Public Law 92–313.

The Chair would point out that while authorizing legislation customarily provides that funds authorized therein shall "remain available until expended", the Committee on Appropriations has never been required, when appropriating for those purposes, to specify that such funds must remain available until expended. The Appropriations Committee often confines the availability of funds to the current fiscal year, regardless of the limit of availability contained in the authorization. Conversely, however, where the authorizing statute does not permit funds to remain available until expended or without regard to fiscal year limitation inclusion of such availability in a general appropriation bill has been held to constitute legislation in violation of clause 2, rule XXI.

The Chair thus is of the opinion that Public Law 92–313 should be construed as has been suggested by the Committee on Appropriations, absent a clear showing that the language in question was intended to require appropriations from the Federal building fund to be made available until expended. In this regard, the Chair has examined the legislative history of Public Law 92–313 in an effort to understand congressional intent on this question. The Chair notes that on June 5, 1972, during debate on the conference report on S. 1736 which became Public Law 92–313, the gentleman from Illinois (Mr. Gray) in response to a question by Mr. Bow of Ohio, stated that:

> Any residue left over from existing appropriations now will go automatically, when this legislation is signed into law into the revolving fund. That residue from previous appropriations plus the amount of rents collected from all Federal agencies will make up the total revolving fund, and the House Committee on Appropriations will have complete control on an annual basis over the revolving fund.

The gentleman from Ohio (Mr. Harsha) then stated during that debate:

> I think there is quite an adequate safeguard in what the Committee on Appropriations can do in controlling the implementation of this measure. All of the money that goes into the revolving fund must be appropriated before it is expended. Therefore, the Committee on Appropriations will have control from that standpoint.

The Chair holds that the Committee on Appropriations has not changed existing law by limiting the availability of a portion of the funds taken from the Federal building fund to the current fiscal year. The Chair therefore overrules the point of order.

§ 33. Increasing Limits of Authorization Set in Law

Indefinite Appropriation Where Authorization Requires Definite Amount

§ 33.1 A provision in a general appropriation bill making available indefinite sums from the Southwest Power Administration revolving fund to insure continued electric service and use of transmission facilities was ruled out as legislation in violation of Rule XXI clause 2 where existing law provided that a definite amount must be specified for that purpose in annual appropriation bills.

On June 26, 1972,[3] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 15586), the following point of order was raised:

> MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Chairman, I make a point of order against the language appearing on page 20, beginning with line 8, as follows:
>
> *Provided*, That, in addition, such sums as may be necessary shall be available from the Continuing Fund, Southwestern Power Administration (16 U.S.C. 825 S–1) to defray emergency expenses to insure continuity of electric service and continuous operation of Government facilities in the area.

Mr. Chairman, if I might be heard on the point of order, in the Interior Department appropriation bill in 1943, Public Law 216, there was established a $100,000 continuing fund to insure continuity of power operations for use in emergency.

Then in the Interior Department Appropriation Act of 1950, Public Law 350, this so-called continuing fund was increased to $300,000 and extended its use to include the purchase of power and rental of transmission lines. Between 1950 and 1952 the Department of the Interior and the Southwest Power Administration interpreted the continuing fund as a revolving fund which replenished itself automatically from the Southwest Power Administration power revenues. Therefore, there was no upper limit on the amount that could be withdrawn from the continuing fund each year except from the Southwest Power Administration gross power receipts in that year.

Congress recognized that the Southwest Power Administration's use of the continuing fund for the purchase of power and the payment of transmission charges gave the Southwest Power Administration unlimited funds through the back door of the Treasury without going through the congressional appropriation procedure. Therefore in 1951 the Congress added to the continuing fund statute the following provision:

> *Provided*, That expenditures from this fund to cover such costs in con-

3. 118 CONG. REC. 22428, 22429, 92d Cong. 2d Sess.

nection with the purchase of electric power and energy, and rentals for the use of facilities are to be made only in such amounts as may be approved annually in appropriation Acts.

Congress itself thus closed the back door to the Treasury to the Southwest Power Administration and recaptured its control of Federal expenditures.

Since 1952 the Southwest Power Administration budgeted the received appropriations for its estimated power purchases and transmission costs which appropriations together with supplemental appropriations as have been required from time to time have permitted SPA to fulfill contract commitments in emergencies.

If I might simply cite that statute back in July 1952, Public Law 470, the proviso here said:

> Continuing fund, Southwest Power Administration not to exceed $1,000,000 shall be available during the current fiscal year from the continuing fund for all costs in connection with the purchase of electric power and energy and rentals for the use of transmission facilities.

Ever since that time we have been using varying appropriation language setting a particular figure.

If I might read from the code, page 4013, title 18, under "Conservation," paragraph 825S–1, the one to which we make reference here and the language to which I object, we read:

> All receipts from the transmission and sale of electric power and energy under the provisions of Sec. 825S of this title, generated or purchased in the Southwest Power Area shall be covered into the Treasury of the United States as miscellaneous receipts, except that the Treasury shall set up and maintain from such receipts a continuing fund of $300,000, including the sum of $100,000 in the continuing fund established under the Administrator of the Southwest Power Administration. . . .

And so on and so forth.

Then it goes on and concludes with a proviso:

> *Provided,* That expenditures from this fund to cover such costs in connection with the purchase of electric power and energy and rentals for the use of facilities are to be made only in such amounts as may be approved annually in appropriation Acts.

The language on page 20 and beginning on line 8 adds the further proviso to the continuing fund as follows:

> *Provided,* That, in addition, such sums as may be necessary shall be available from the continuing fund, Southwest Power Administration, (U.S. Code 825S–1,) to defray emergency expenses to insure continuity of electric service and continuous operation of Government facilities in the area.

In addition to being a double negative or having that effect of double negative, the adoption of this proposed wording would actually be a change in the basic law concerning the use of the continuing fund. It is not merely a change in appropriations, as suggested.

Mr. Chairman, this change is legislation in an appropriation bill, and I request that my point of order be sustained. . . .

THE CHAIRMAN:[4] The Chair is ready to rule. The Chair is of the opinion that the language does permit the transfer of an indefinite sum of money from the continuing or revolving fund

4. Wayne N. Aspinall (Colo.).

and, in fact, changes existing law and, therefore, is legislation on an appropriation bill.

The Chair sustains the point of order. Waiving Limitation in Permanent Law

§ 33.2 Where a limitation on the amount of an appropriation to be annually available for expenditure by an agency has become law, language in a subsequent appropriation bill seeking to change this limitation on such funds was conceded to change existing law and therefore to be legislation on an appropriation bill.

On Mar. 15, 1945,[5] 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:

Foreign Service Buildings Fund: For the purpose of carrying into effect the provisions of the act of May 25, 1938, entitled "An act to provide additional funds for buildings for the use of the diplomatic and consular establishments of the United States" (22 U.S.C. 295a), including the initial alterations, repair, and furnishing of buildings acquired under said act, $1,466,000, notwithstanding the amount limitation in the act of May 25, 1938 (22 U.S.C. 295a), to remain available until expended: *Provided*, That expenditures for furnishing made from appropriations granted pursuant to the act of May 7, 1926, and subsequent acts providing funds for buildings for the use of diplomatic and consular establishments of the United States shall not be subject to the provisions of section 3709 of the Revised Statutes.

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I make a point of order against the paragraph beginning in line 14, page 16, down to and including line 3, page 17, on the ground it is a violation of the basic law.

Appropriation is asked notwithstanding the amount limitation in the act of May 25, 1938 (22 U.S. Code, sec. 295a), as follows:

Sections 292 et seq. authorized the acquisition of properties abroad for the State Department, and section 295a authorized "to be appropriated, in addition to the amount authorized by such act, an amount not to exceed $5,000,000, of which not more than $1,000,000 shall be appropriated for any 1 year," and so forth.

No necessity or reason is shown for the lifting of that $1,000,000 yearly limitation on these appropriations, and the present proposal amounts to, and is, permanent and repealing legislation on an appropriation act.

THE CHAIRMAN:[6] Does the gentleman from Michigan [Mr. Rabaut] desire to be heard?

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

5. 91 CONG. REC. 2305, 79th Cong. 1st Sess.

6. Wilbur D. Mills (Ark.).

apply to the language appearing in lines 20 and 21. That is because of the excesses.

THE CHAIRMAN: Permit the Chair to understand the gentleman. The gentleman concedes that the language in lines 20 and 21 is bad and subject to a point of order?

MR. RABAUT: Yes.

THE CHAIRMAN: Does the gentleman from Kansas [Mr. Rees] insist on his point of order against the entire paragraph?

MR. REES of Kansas: I do.

MR. RABAUT: Mr. Chairman, will the gentleman withhold his point of order for a minute?

MR. REES of Kansas: Yes. I reserve the point of order.

MR. RABAUT: Mr. Chairman, the citation of the law for that appears in line 18 and the reason for the legislative language in this bill is for the purpose of taking advantage of the situation as it exists today in the money and real estate markets of the world.

In this bill we had $1,466,000 and a part of those funds are necessary for the purpose of taking advantage, for the benefit of the United States in reestablishing where there has been huge destruction of our own diplomatic posts in the form of buildings and necessities, or at least getting hold of the land in many places, so necessary at this time. If it is the gentleman's idea to frustrate this advantage, of course, the point of order should stand, but for the purpose of really being of assistance to the Treasury of the United States it would be very well if this language were left in the bill. It was placed in the bill to enable the agency to move speedily to any place in the world where it would be to our advantage to reestablish housing for our diplomatic corps.

Mr. Chairman, I concede the point of order, if the gentleman insists on it, beginning with the word "notwithstanding" in line 20.

MR. REES of Kansas: I insist on the point of order to the entire paragraph, Mr. Chairman.

THE CHAIRMAN: In view of the fact that certain language in the paragraph is conceded to be subject to a point of order, the entire paragraph is subject to a point of order.

The Chair sustains the point of order.

Increasing Limitation on Rural Telephone Borrowing Authority

§ 33.3 A provision in an appropriation bill increasing the loan authorization for the rural telephone program above the amount authorized for that purpose in a prior appropriation law was held to be legislation and not in order.

On Apr. 22, 1953,[7] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 4664), a point of order was raised against the following provision:

The Clerk read as follows:

7. 99 CONG. REC. 3613, 83d Cong. 1st Sess.

RURAL ELECTRIFICATION ADMINISTRATION

Loan authorizations

The basic amount authorized by the Department of Agriculture Appropriation Act, 1953, to be borrowed from the Secretary of the Treasury for the rural-telephone program is increased from "$25 million" to "$32,500,000."

MR. [FREDERIC R.] COUDERT [Jr., of New York]: Mr. Chairman, I make a point of order against the language on page 5, from line 7 through line 12. Mr. Chairman, on its face the language is out of order because it clearly amends existing law, and, therefore, is legislation upon an appropriation bill.

MR. H. CARL ANDERSEN [of Minnesota]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN:[8] The gentleman may proceed.

MR. H. CARL ANDERSEN: Mr. Chairman, I believe the point of order is clearly out of order. The language which the subcommittee has placed in the bill simply increases the amount of authorization for these particular loans, and in my opinion, it is perfectly in order as we have written it in the bill.

THE CHAIRMAN: Does the gentleman from New York [Mr. Taber] desire to be heard on this point of order?

MR. [JOHN] TABER: I do not, Mr. Chairman.

THE CHAIRMAN: The Chair is ready to rule. The gentleman from New York [Mr. Coudert] makes a point of order that the language of this paragraph is legislation on an appropriation bill. It is apparent from a reading of the language that a change is made in the basic act of the Department of Agriculture Appropriation Act of 1953. The Chair sustains the point of order.

8. John W. Byrnes (Wis.).

Rural Electrification; Distribution of Funds Above Authorized Limit

§ 33.4 To an appropriation bill an amendment providing that additional funds for the rural electrification program "may be distributed in any State or Territory in addition to any sum which such State may otherwise receive" was conceded and held to be legislation and not in order.

On May 20, 1953,[9] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 5227), the following proceedings occurred:

The Clerk read as follows:

Loan authorizations

For loans in accordance with said act, and for carrying out the provisions of section 7 thereof, to be borrowed from the Secretary of the Treasury in accordance with the provisions of section 3(a) of said act as follows: Rural electrification program, $135 million; and rural telephone program, $50 million; and additional amounts, not to exceed $30 million for the rural electrification

9. 99 CONG. REC. 5270, 5271, 83d Cong. 1st Sess.

program, may be borrowed under the same terms and conditions to the extent that such additional amounts are required during the fiscal year 1954, under the then existing conditions, for the expeditious and orderly development of the program.

MR. [WILLIAM R.] POAGE [of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Poage: On page 38, line 2, after the comma strike out the balance of the line and all of line 3 [deleting "for the . . . development of the program"] and insert "and may be distributed in any State or Territory in addition to any sum which such State may otherwise receive."

MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[10] The gentleman will state it.

MR. TABER: Mr. Chairman, this is legislation on an appropriation bill and contrary to existing law. . . .

MR. POAGE: Mr. Chairman, I will have to concede the point of order because I know it is legislation on an appropriation bill.

THE CHAIRMAN: The Chair sustains the point of order.

Census Work

§ 33.5 An appropriation for carrying on authorized census work, including personal services and rentals, in excess of the limit of cost fixed by law is not in order on an appropriation bill.

On Feb. 7, 1940,[11] the Committee of the Whole was considering H.R. 8319, the Departments of State, Justice, Commerce, and the Judiciary appropriation bill. At one point the Clerk read as follows:

For continuing the work of taking, compiling, and publishing the Sixteenth Census of the United States, as authorized by the act of June 18, 1929 (13 U.S.C. 201–218), and the national census of housing as authorized by the act of August 11, 1939 (53 Stat. 1406), and for carrying on other authorized census work, *within a limit of cost for the period of July 1, 1939, to December 31, 1942, of $53,250,000, including personal services and rentals in the District of Columbia and elsewhere;* the cost of transcribing State, municipal, and other records; contracts for the preparation or monographs on census subjects and other work of specialized character which cannot be accomplished through ordinary employment; per diem compensation of employees of the Department of Commerce and other departments and independent establishments of the Government who may be detailed for field work; expenses of attendance at meetings concerned with the collection of statistics, when incurred on the written authority of the Secretary of Commerce; purchase of books of reference, periodicals, maps, newspapers, manuscripts, first-aid outfits for use in the buildings occupied by employees of the census, maintenance, operation, and repair of

10. William M. McCulloch (Ohio).

11. 86 CONG. REC. 1195, 76th Cong. 3d Sess.

a passenger-carrying automobile to be used on official business; construction, purchase, exchange, or rental of punching, tabulating, sorting, and other labor-saving machines, including technical, mechanical, and other services in connection therewith; printing and binding, traveling expenses, streetcar fares, and all other contingent expenses in the District of Columbia and in the field, $17,850,000, of which $2,000,000 shall be available immediately, and the unexpended balance of the appropriation under this title in the Department of Commerce's Appropriation Act, 1940, is hereby continued available until June 30, 1941.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the language on page 37, beginning with the word "within", on line 17, running through the word "elsewhere", in line 20. It is legislation on an appropriation bill, increasing the limitation that now exists against the expenses of the Census Bureau, and it is unauthorized by law.

MR. [MILLARD F.] CALDWELL [of Florida]: Will the gentleman state the particular language to which he makes the point of order?

MR. TABER: I shall read it. It is as follows, beginning on line 17, page 37:

> Within a limit of cost for the period of July 1, 1939, to December 31, 1942, of $53,250,000, including personal services and rentals in the District of Columbia and elsewhere.

MR. CALDWELL: Mr. Chairman, I think the point of order is well taken. It is simply an economy measure that the committee wrote in.

MR. TABER: Mr. Chairman, it is not an economy measure. It raises the authorizations $150,000 beyond all authorizations now existing.

THE CHAIRMAN:[12] The Chair sustains the point of order.

Housing Assistance, Increase in Contract Authority

§ 33.6 To a paragraph in an appropriation bill containing funds for liquidation of contract obligations for homeownership and rental housing assistance, an amendment providing that total payments required by such contracts in any fiscal year shall be increased by a certain amount was ruled out as permanent legislation in violation of Rule XXI clause 2.

On May 11, 1971,[13] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 8190), the following transpired:

CHAPTER IV

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MORTGAGE CREDIT

HOMEOWNERSHIP AND RENTAL HOUSING ASSISTANCE

For an additional amount for "Homeownership and rental housing assistance", $32,900,000.

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12. Harry P. Beam (Ill.).

13. 117 CONG. REC. 14464, 14465, 92d Cong. 1st Sess.

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. Chairman, 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

14. Wayne N. Aspinall (Colo.).

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

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 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

16. Jere Cooper [Tenn.].

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 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.

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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.).

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 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

2. R. Ewing Thomason (Tex.).

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 reappropriating the balance of $60,000 previously appropriated for preparation of plans and specifications, making same available without regard to the Classification 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, 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]

6. See 34.2, supra, for provisions of § 3709 (41 USC § 5).
7. Claude V. Parsons (Ill.).
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 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

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

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 creation 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:

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

13. William J. Driver (Ark.).

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

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.

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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 Western 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 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.

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.

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 waiver 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.

2 Wilbur D. Mills (Ark.).

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.

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.

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-

5. 44 USC § 111 referred to government printing required to be done at the Government Printing Office.

6. Wilbur D. Mills (Ark.).

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, abbatoirs, 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 appropriation 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-

12. Philip R. Sharp (Ind.).

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

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

lee Dam and appurtenant works, $13,000,000, together with the unexpended balance of the appropriation for this dam contained in the Interior Department Appropriation Act, fiscal year 1937: *Provided*, That of this amount not to exceed $250,000 may be expended for economic, industrial, and mineral surveys.

MR. (FRANCIS D.) CULKIN (of New York): Mr. Chairman, I make the point of order not against the first portion of the paragraph, but to the proviso on the ground that that amount is not authorized by law, and in corroboration of that fact I say to the Chair that legislation passed this afternoon cannot possibly have become law as yet.

THE CHAIRMAN:[15] Does the gentleman from Nevada desire to be heard on the point of order?

MR. [JAMES G.] SCRUGHAM [of Nevada]: Mr. Chairman, the act authorizing the reclamation project provides for such surveys.

MR. [JOHN] TABER [of New York]: That would not make any difference here, as this would come directly out of the Treasury and not out of the reclamation fund.

THE CHAIRMAN: Can the gentleman from Nevada cite the Chair to any definite provision of law authorizing the appropriation of money out of the general funds in the Treasury for the making of economic or mineral surveys?

MR. SCRUGHAM: The act authorizing the reclamation project, United States Code, page 1862, paragraph 391, authorizes an appropriation to be known as the reclamation fund to be used in examination and survey for the construction and maintenance of irrigation works for storage, diversion, and development of waters and reclamation of semiarid lands in such States and Territories.

THE CHAIRMAN: The Chair calls the attention of the gentleman to the fact that apparently this appropriation does not come out of the reclamation fund but out of the general fund of the Treasury. Does the gentleman desire to make any further comments or cite any further authority?

MR. SCRUGHAM: Did the gentleman from New York make the point of order only to the proviso?

MR. CULKIN: That is all.

MR. SCRUGHAM: I concede the point of order.

THE CHAIRMAN: The gentleman from New York makes the point of order to the proviso appearing in line 9, page 82. Apparently this is an appropriation of money out of the general funds in the Treasury not authorized by existing law. The Chair, therefore, sustains the point of order as to the proviso.

§ 35.2 Language in a general appropriation bill appropriating funds out of the general funds of the Treasury (and not out of a reclamation fund) for general investigations of proposed federal reclamation projects, was held to be unauthorized by law.

On Mar. 2, 1938,[16] H.R. 9621, the Department of the Interior ap-

15. Jere Cooper (Tenn.).

16. 83 CONG. REC. 2710, 2711, 75th Cong. 3d Sess.

propriation for 1939, was under consideration in the Committee of the Whole. The following proceedings took place:

For general investigations, $200,000, to enable the Secretary of the Interior, through the Bureau of Reclamation, to carry on engineering and economic investigations of proposed Federal reclamation projects, surveys for reconstruction, rehabilitation, or extension of existing projects and studies of water conservation and development plans, such investigations, surveys, and studies to be carried on by said Bureau either independently, or, if deemed advisable by the Secretary of the Interior, in cooperation with State agencies, and other Federal agencies, including the Corps of Engineers, National Resources Committee, and the Federal Power Commission;

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph beginning on line 18, page 85, ending with line 4, page 86, upon the ground that it is legislation on an appropriation bill and is not authorized by law.

MR. [JAMES C.] SCRUGHAM [of Nevada]: Mr. Chairman, this is authorized in my opinion in the general terms of the Reclamation Act. It has been in effect for many years.

MR. TABER: Mr. Chairman, an appropriation in accordance with the authorization under the Reclamation Act is provided on page 77, line 8, down to and including line 3 on page 78. The appropriation is $25,000. That is the authorized appropriation. I do not believe there is any authority for this out of the general fund of the Treasury.

THE CHAIRMAN:[17] The Chair has examined sections 411 and 396, United States Code, title 43, and it seems to the Chair that under the terms of these two sections which are rather broad in their application, this appropriation may be authorized.

MR. TABER: Is not that limited to the reclamation fund?

THE CHAIRMAN: The Chair was looking particularly with reference to that. The Chair will read the entire section 411:

The Secretary of the Interior is authorized and directed to make examinations and surveys for, and to locate and construct, as provided in this chapter, irrigation works for the storage, diversion, and development of waters, including artesian wells, and to report to Congress at the beginning of each regular session as to the results of such examinations and surveys, giving estimates of cost of all contemplated works, and quantity and location of the lands which can be irrigated therefrom, and all facts relative to the practicability of each irrigation project; also the cost of works in process of construction as well as of those which have been completed.

MR. TABER: I call the attention of the Chair to the language:

The Secretary of the Interior is authorized under the provisions of this chapter—

That is where the authority of the Secretary of the Interior and the reclamation fund are defined. That would imply that it is to be done under the provisions of the reclamation fund. It would seem to me that that is the authority under which they operated in

17. Marvin Jones (Tex.).

providing the appropriation that is to be found on page 77.

THE CHAIRMAN: Does the gentleman from Nevada desire to comment on this, or the gentleman from Oklahoma? On consideration it seems to the Chair that this comes out of the general fund in the Treasury and not the reclamation fund, and this is limited in the way suggested by the gentleman from New York.

MR. SCRUGHAM: Section 411 seems to cover the matter.

THE CHAIRMAN: If this were out of the reclamation fund, there would be no question about it, but this appropriation is out of the general fund in the Treasury. The Chair is of opinion that the paragraph is subject to the point of order inasmuch as the appropriation is made out of the general fund and not the reclamation fund. The Chair sustains the point of order.

—General Fund; Timber Sale Receipts

§ 35.3 A provision in a general appropriation bill providing funds for an agricultural project, for which funding had been authorized from the receipts of timber sales and not from appropriated funds, was ruled out as legislation in violation of Rule XXI clause 2.

On May 26, 1969,[18] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 11612), a point of order was raised against the following provision:

The Clerk read as follows:

COOPERATIVE STATE RESEARCH SERVICE

PAYMENT AND EXPENSES

For payments to agricultural experiment stations, for grants for cooperative forestry and other research, for facilities, and for other expenses, including $53,854,000 to carry into effect the provisions of the Hatch Act, approved March 2, 1887, as amended by the Act approved August 11, 1955 (7 U.S.C. 361a–361i), including administration by the United States Department of Agriculture; $3,785,000 for grants for cooperative forestry research under the Act approved October 10, 1962 (16 U.S.C. 582a–582a–7), [of which amount, the sum of $201,642.80 shall be paid to those States for the benefit of the counties from which timber receipts earned as a result of agreements entered into under the authority of the Weeks Act (16 U.S.C. 500) have been withheld;] $2,000,000 in addition to funds otherwise available for contracts and grants for scientific research under the Act of August 4, 1965 (7 U.S.C. 450i) of which $1,000,000 shall be for the special cotton research program and $400,000 for soybean research; $1,000,000 for grants for facilities under the Act approved July 22, 1963 (7 U.S.C. 390–390k); $160,000 for penalty mail costs of agricultural experiment stations under section 6 of the Hatch Act of 1887, as amended; and $376,000 for necessary expenses of the Cooperative State Research Service, including administration of payments to State agricul-

18. 115 CONG. REC. 13754, 13755, 91st Cong. 1st Sess.

tural experiment stations, funds for employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), and not to exceed $50,000 for employment under 5 U.S.C. 3109; in all, $61,175,000.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make a point of order against the language contained on page 6, lines 22, 23, 24, and 25, and on page 7, lines 1 and 2, through the word "withheld".

My point of order is predicated on four grounds.

First, this is legislation in an appropriation bill. Under the so-called Weeks Act, lands may be transferred by States to the Federal Government under an agreement to pay 75 percent of the funds for timber cut for school purposes and for roads, but under the Civil Rights Act of 1964, such funds come within the purview of moneys to be paid by the Federal Government to the States. The Attorney General and other appropriate agencies have determined the so-called Weeks Act falls within the purview of that act. Therefore, in requiring funds to be paid under the Weeks Act in contravention to the decision of the Attorney General that no such funds should be paid, it changes the Civil Rights Act of 1964.

Second, Mr. Chairman, it establishes an affirmative direction to the Secretary of Agriculture or to one of his subordinates to make a payment. It requires him to take a specific action. It says the money shall be paid. Contrary to other provisions of this appropriation bill, which say that funds shall be available for certain purposes, this is a direction, a mandate, a requirement to an executive officer to take certain steps.

Third, Mr. Chairman, this is an appropriation without authority of law. If the Chair will note the citation for the funds, it is given as 16 U.S.C. 582a–582a–7. Mr. Chairman, I have read those sections very carefully, and I find no authority in those sections for making this particular payment. I have the code before me. The code is directed to a sustained yield forest management program. It does not provide for any payments to be made under the so-called Weeks Act.

Finally, Mr. Chairman, assuming that there is authority under the Weeks Act, this language is not directed to authority under the Weeks Act. Assuming whatever authority the Weeks Act provided for payment of certain funds, that authority no longer exists when appropriate agencies of the Federal Government take steps to suspend payments that were authorized under that law, taking the steps authorized under another act.

For example, whatever authority the Weeks Act gave to make such payments, that authority was suspended by the action taken under the Civil Rights Act of 1964 authorizing the Attorney General to suspend any payments to counties which did not require their schools to desegregate in accordance with the law.

For those reasons, Mr. Chairman, I respectfully suggest that the point of order should be sustained. . . .

THE CHAIRMAN:[19] he gentleman from Illinois reserves his point of order.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, our committee realizes its limitations, but I think it

19. James C. Wright, Jr. (Tex.).

well to point out in connection with the point of order that the authority under which the committee has attempted to act is that found in 582 of title 16, the language which is in line 22. . . .

Mr. Chairman, in view of the words "shall be paid" I would have to agree that the section is subject to a point of order.

THE CHAIRMAN: The gentleman from Mississippi concedes that the language is subject to a point of order.

Does the gentleman from Illinois insist upon his point of order.

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

THE CHAIRMAN: The Chair sustains the point of order of the gentleman from Illinois (Mr. Yates). The language of the bill beginning in line 23, page 6, to and through the word "withheld" on line 2, page 7, constitutes a diversion of funds from authorized appropriations for an unauthorized purpose; and the Chair sustains the point of order against that language.

Borrowing Authority in Lieu of Appropriation

§ 35.4 A provision in a general appropriation bill appropriating a specific sum of money and providing that such sum would be borrowed from the Reconstruction Finance Corporation and directing such corporation to lend such amount notwithstanding the provisions of law was conceded to be legislation and held not in order.

On Feb. 2, 1940,[20] the Committee of the Whole was considering H.R. 8202, an Agriculture Department appropriation. At one point the Clerk read as follows:

Loans: For loans in accordance with sections 3, 4, and 5, and the purchase of property in accordance with section 7 of the Rural Electrification Act of May 20, 1936, as amended (7 U.S.C. 901–914), $40,000,000, [which sum shall be borrowed from the Reconstruction Finance Corporation in accordance with the provisions of section 3(a) of said act, and shall be considered as made available thereunder; and the Reconstruction Finance Corporation is hereby authorized and directed to lend such sum in addition to the amounts heretofore authorized under said section 3(a) and without regard to the limitation in respect of time contained in section 3(e) of said act.]

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the language beginning on page 84, line 7, with the word "which", and ending with the word "act," in line 15, that it is legislation upon an appropriation bill.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I concede the point of order.

THE CHAIRMAN:[1] The gentleman from Missouri concedes the point of order. The point of order is sustained.

Direct Authorization and Appropriation in Lieu of Treasury Financing

§ 35.5 Where the authorizing legislation provided (1) that

20. 86 CONG. REC. 1033, 76th Cong. 3d Sess.

1. William P. Cole, Jr. (Md.).

a program should be financed through sale of notes issued by the Secretary of Commerce, and (2) further authorized the Secretary of the Treasury to purchase such notes, using, as a public-debt transaction, the proceeds from the sale of securities issued under the Second Liberty Bond Act, a provision in an appropriation bill providing a direct appropriation, in lieu of the treasury financing, was held to be legislation amending existing law to provide a direct authorization for that appropriation.

On Sept. 15, 1961,[2] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9169), a point of order was raised against the following provision:

The Clerk read as follows:

AREA REDEVELOPMENT ADMINISTRATION

Area redevelopment assistance

For necessary expenses of the Area Redevelopment Administration in carrying out the Area Redevelopment Act (Public Law 87–27), $168,000,000, [of which not to exceed $122,500,000 shall remain available until expended for loans and participations as authorized by section 6 and public facility loans as authorized by section 7 of such Act], not to exceed $40,000,000 shall remain available until expended for public facility grants as authorized by section 8, not to exceed $2,250,000 shall be available for technical assistance as authorized by section 11, and not to exceed $3,250,000 shall be available for necessary expenses, not otherwise provided for, including rent in the District of Columbia and hire of passenger motor vehicles, [and any funds heretofore borrowed from the Secretary of the Treasury under section 9 of such Act shall be repaid from this appropriation and such section 9 is hereby amended to read as follows: "There are hereby authorized to be appropriated for the purpose of extending financial assistance under sections 6 and 7 such amounts as may be necessary to furnish financial assistance in the maximum amounts authorized under such sections]."

MR. [ALBERT] RAINS [of Alabama]: Mr. Chairman, I make a point of order against the following language, on the ground it proposes to change existing law and is legislation on an appropriation bill:

Page 4, beginning with the figure "$168,000,000", line 19, and running through line 22; and on page 5, beginning with "and any funds", line 4, running through line 12, except the period. . . .

MR. [ALBERT] THOMAS [of Texas]: . . . But if the gentleman feels that he cannot withdraw his point of order, I will join the gentleman in his point of order and ask that the entire paragraph be stricken.

THE CHAIRMAN:[3] Does the gentleman from Texas [Mr. Thomas] make

2. 107 CONG. REC. 19726, 19727, 87th Cong. 1st Sess.

3. Oren Harris (Ark.).

a point of order against the entire paragraph?

MR. THOMAS: The entire paragraph.

THE CHAIRMAN: The point of order is sustained.

Replacing Treasury Borrowing With Direct Authorization for Appropriations; Housing and Home Finance Administrator

§ 35.6 Language in a general appropriation bill terminating the authority of the Housing and Home Finance Administrator to finance mass transportation projects through the issuance of notes and obligations for purchase by the Secretary of the Treasury, and substituting a direct authorization for appropriation for financing based on a public-debt transaction, was conceded to be legislation and was ruled out on a point of order.

On Sept. 15, 1961,[4] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9169), a point of order was raised against the following provision:

MASS TRANSPORTATION LOANS AND GRANTS

For loans including purchase of securities and obligations in connection with mass transportation facilities, as authorized by clause (2) of section 202(a) of the Housing Amendments of 1955, as amended (42 U.S.C. 1492; 75 Stat. 173), and grants in connection with mass transportation demonstration projects, as authorized by section 103(b) of the Housing Act of 1949, as amended (42 U.S.C. 1453; 75 Stat. 166), $42,500,000, of which not to exceed $130,000 shall be available for administrative expenses in connection therewith, and on and after the date of enactment of this Act, the authority to issue notes and other obligations for the purposes of clause (2) of section 202(a) of the Housing Amendments of 1955, as amended, shall cease, and in lieu of such authority $50,000,000 is hereby authorized to be appropriated for such purpose, and the proviso to the first sentence of section 103(b) of the Housing Act of 1949, as amended, is hereby amended by inserting after the word "may" the phrase "within the limits of appropriations made available therefor and".

MR. [ALBERT] RAINS [of Alabama]: Mr. Chairman, a point of order.

THE CHAIRMAN:[5] The gentleman will state it.

MR. RAINS: . . . Mr. Chairman, reluctantly I make this point of order. This is not an opportunity to save money; this is an opportunity completely to change the law.

This language would terminate the authority of the Housing and Home Fi-

4. 107 CONG. REC. 19729, 19730, 87th Cong. 1st Sess.

5. Oren Harris (Ark.).

nance Administrator under section 202 of the Housing Amendments of 1955 to borrow from the Treasury. So it hits the big problem to provide funds for loans to public bodies to purchase mass transportation facilities.

It would also amend section 103(b) of the Housing Act of 1949 by limiting the Administrator's contract authority for grants for mass transportation demonstration projects to amounts within the limits of the appropriation made available by the contracts; and for that reason, because it is evidently legislation on an appropriation bill, I must regretfully make the point of order.

THE CHAIRMAN: Does the gentleman from Texas wish to be heard on the point of order?

MR. [ALBERT] THOMAS [of Texas]: May I repeat, the committee is trying to make these paragraphs on mass transportation work, not cripple them, but make them work for loans and grants. There is no limitation on who can get the money; the only limitation is in the grant money. These are demonstration grants to be used to buy equipment if you look at it carefully. Private utilities can do it and public utilities. But, anyway, the committee went along with it. It is back-door spending pure and unadulterated, and all we did was to try to put back in the Congress control over the money.

If my friend insists on his point of order I will have to join him and make a point of order against the entire paragraph.

THE CHAIRMAN: The gentleman from Texas makes a point of order against the entire paragraph on the ground that it is legislation on an appropriation bill.

The Chair is ready to rule. The Chair sustains the point of order.

Discharge of Commodity Credit Corporation Indebtedness

§ 35.7 Language in an appropriation bill authorizing the Secretary of the Treasury to discharge indebtedness of the Commodity Credit Corporation to the Secretary of the Treasury by canceling notes issued by the corporation to the Secretary of the Treasury in a specific amount under the International Wheat Agreement Act was conceded to be legislation on an appropriation bill and held not in order.

On May 17, 1951,[6] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 3973), a point of order was raised against the following provision:

INTERNATIONAL WHEAT AGREEMENT

The Secretary of the Treasury is hereby authorized and directed to discharge indebtedness of the Commodity Credit Corporation to the Secretary of the Treasury by canceling notes issued by the Corporation to the Secretary of the Treasury in the amount of $76,808,000 for the net costs during the fiscal year 1950 under the Inter-

6. 97 CONG. REC. 5469, 82d Cong. 1st Sess.

national Wheat Agreement Act of 1949 (7 U.S.C. 1641–1642).

MR. [ED] GOSSETT [of Texas]: Mr. Chairman, a point of order.

THE CHAIRMAN:[7] The gentleman will state it.

MR. GOSSETT: Mr. Chairman, I make a point of order against the paragraph on page 50, lines 5 to 12, inclusive, International Wheat Agreement, on the ground that that is a new authorization and a direction to the Secretary of the Treasury to handle this item contrary to the manner in which it has been handled, and therefore constitutes legislation on an appropriation bill.

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

THE CHAIRMAN: The point of order is sustained.

Forgiving Interest on Debt; Commodity Credit Corporation

§ 35.8 Language in an appropriation bill providing that funds borrowed from the Treasury by the Commodity Credit Corporation shall not bear interest to the extent that the CCC incurs unreimbursed losses, was conceded to be legislation and ruled out on a point of order.

On May 20, 1964,[8] during consideration in the Committee of the Whole of the Department of Agriculture appropriation bill (H.R. 11202), a point of order was raised against the following provision:

The Clerk read as follows:

Page 30, line 1:

"COMMODITY CREDIT CORPORATION

"Reimbursement for net Realized Losses

"To partially reimburse the Commodity Credit Corporation for net realized losses sustained during the fiscal year ending June 30, 1963, pursuant to the Act of August 17, 1961 (15 U.S.C. 713a–11, 713a–12), $1,724,000,000: *Provided,* That after June 30, 1963, the portion of borrowings from Treasury equal to the unreimbursed realized losses recorded on the books of the Corporation after June 30 of the fiscal year in which such losses are realized, shall not bear interest and interest shall not be accrued or paid thereon."

MR. [THOMAS M.] PELLY [of Washington]: Mr. Chairman, a point of order.

THE CHAIRMAN:[9] The gentleman will state it.

MR. PELLY: Mr. Chairman, I make a point of order against the language on page 30, line 7 through 11, on the ground that it is legislation on an appropriation bill. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: . . . The gentleman's point of order is well taken and we acknowledge it, but I should like to say for the record that what this amounts to is that this cost will continue to pyramid

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

8. 110 CONG. REC. 11426, 88th Cong. 2d Sess.

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

bookkeeping-wise and interest will be added to it, so that Agriculture will be charged with more and more interest every year. We think that should be corrected and we tried to do it in this way. But we confess the validity of the point of order. . . .

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

THE CHAIRMAN: . . . The gentleman from Mississippi has conceded the validity of the point of order.

§ 35.9 A provision in a general appropriation bill authorizing and directing the Secretary of the Treasury to discharge indebtedness of a government corporation in the amount of its capital impairment on a certain date by canceling notes issued by such corporation to the Treasury was conceded to be legislation on an appropriation bill and held not in order.

On May 1, 1952,[10] during consideration in the Committee of the Whole of the Department of Agriculture appropriation bill (H.R. 7314), the following point of order was raised:

MR. [ABRAHAM J.] MULTER [of New York]: Mr. Chairman, I offer a further point of order addressed to the same title and to the provision beginning in line 9 and running down to, and including line 17.

There also we have legislation in an appropriation bill in that it authorizes and directs the Secretary of the Treasury to discharge an indebtedness of the Commodity Credit Corporation to the extent of $120,000,000. That obviously can be done only by legislation which properly should come before the Banking and Currency Committee. If the Commodity Credit Corporation can make out a case it will probably get the authorizing and proper legislation. This is not the way to do it. This, in effect, changes the authorization by increasing it to the extent of $120,000,000. It is now $4,750,000,000, as fixed by law. This would, in effect, increase that authorization by another $120,000,000.

The reference to the statute in the last two lines of the section merely fixes the method of determining any impairment of the capital of the Commodity Credit Corporation and does not authorize a discharge of any indebtedness.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I will have to admit the point of order.

THE CHAIRMAN:[11] The gentleman concedes the point of order and it is, therefore, sustained.

Tennessee Valley Authority; Repayment of Interest

§ 35.10 In an appropriation bill a provision that hereafter the Tennessee Valley Authority shall pay into the Treasury interest on the amounts invested by the Authority in

10. 98 CONG. REC. 4741, 4742, 82d Cong. 2d Sess.

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

power facilities and that no limit shall be placed by the Tennessee Valley Authority on resale rates of power fixed by local distributors was conceded and held to be legislation.

On Mar. 30, 1954,[12] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 8583), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> TENNESSEE VALLEY AUTHORITY
>
> For the purpose of carrying out the provisions of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. ch. 12A), including purchase (not to exceed 1) and hire, maintenance, and operation of aircraft, and purchase (not to exceed 100 for replacement only) and hire of passenger motor vehicles $103,582,000, to remain available until expended, and to be available for the payment of obligations chargeable against prior appropriations: . . . *Provided further*, That hereafter the board of directors of the Tennessee Valley Authority shall pay each year to miscellaneous receipts of the Treasury from power revenues interest on the amounts invested by the Authority in power-facility properties, including construction in progress, from appropriations heretofore and hereafter made to the Authority and on amounts equal to the book value at the time of the transfer of power-facility properties obtained from other Federal agencies without reimbursement by the Authority, less amounts of capital returned to the Treasury from such revenues. The rate of interest shall be equal to the average rate of interest paid by the Treasury of the United States, during the prior fiscal year, on the public debt: *Provided further*, That no limitation shall be placed by the Tennessee Valley Authority on resale rates of power fixed by local distributors.
>
> MR. [GEORGE W.] ANDREWS [of Alabama]: Mr. Chairman, I make the point of order against the language appearing on page 43, line 25, after the colon, and all the language in the paragraph on page 44 on the ground that it proposes legislation in a general appropriation bill.
>
> MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, we concede the point of order. . . .
>
> THE CHAIRMAN:[13] The Chair sustains the point of order.

Establishing Public Debt Transaction Financing Mechanism

§ 35.11 Language in an appropriation bill authorizing the Secretary of the Treasury to use as a public-debt transaction the proceeds from the sales of any securities issued under the Second Liberty Bond Act was held to be legislation and not in order.

On Apr. 27, 1950,[14] during consideration in the Committee of the

12. 100 CONG. REC. 4131, 83d Cong. 2d Sess.

13. Louis E. Graham (Pa.).

14. 96 CONG. REC. 5914, 81st Cong. 2d Sess.

Whole of the Department of Agriculture appropriation bill (H.R. 7786), the following point of order was raised:

MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, a further point of order. On page 200, line 16, beginning with the words—

> *Provided further,* That for the purpose of making loans pursuant to the foregoing authority, the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that act are extended to include such loans to the Secretary: *Provided further,* That repayments to the Secretary of the Treasury on such loans shall be treated as a public-debt transaction.

I make the point of order that that language involves legislation on an appropriation bill. However, I do this in order to protect the record at this point and would be very glad to reserve the point of order and ask for an explanation of what is attempted to be accomplished by this proviso. My point is that it may be something highly desirable to which I would not want to make a point of order. Off hand it looks to me clearly like legislation on an appropriation bill, but perhaps it may be desirable legislation.

THE CHAIRMAN:[15] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [JAMIE L.] WHITTEN [of Mississippi]: This language was included to facilitate the handling of the program which is set out above in the bill. It is merely technical, as is apparent, and is just in order to facilitate the handling of the matter by the Treasury Department and, as I understand, was originally included at the insistence of the Treasury Department to so facilitate it. I am not prepared to say whether it is or is not legislation on an appropriation bill. I do say that it is economy to keep it in rather than strike it out. . . .

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

The Chair would invite attention to the fact that the language appearing in this proviso, "the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act," and so forth, would appear to be clearly legislation on an appropriation bill, in violation of the rules of the House.

The Chair sustains the point of order.

Authorizing Secretary of Treasury to Adjust Levels of Appropriations

§ 35.12 In a general appropriation bill a provision authorizing the Secretary of the Treasury, with the approval of the Bureau of the Budget, to make specified adjustments in appropriations made by the paragraph to reflect the amount of certain tax receipts was held to constitute legislation and such paragraph was ruled out.

15. Jere Cooper (Tenn.).

On Apr. 18, 1951,[16] during consideration in the Committee of the Whole of the Department of Labor and Federal Security Agency appropriation bill (H.R. 3709), a point of order was raised against the following provision:

The Clerk read as follows:

TITLE V—RAILROAD RETIREMENT BOARD

Payment to railroad retirement account: For an annual premium to provide for the payment of all annuities, pensions, and death benefits in accordance with the provisions of the Railroad Retirement Acts of 1935 and 1937, as amended (45 U.S.C. 228–228s), and for expenses necessary for the Railroad Retirement Board in the administration of said acts as may be specifically authorized annually in appropriation acts, there is hereby appropriated for crediting monthly to the railroad retirement account for the fiscal year 1952, and for each fiscal year thereafter, an amount equal to the amount covered into the Treasury (minus refunds) during each such fiscal year under the Railroad Retirement Tax Act (26 U.S.C. 1500–1538): [*Provided*, That the appropriation made herein for the fiscal year 1952 shall be adjusted by the Secretary of the Treasury, with the approval of the Bureau of the Budget, in such manner as may be necessary to insure that the railroad retirement account shall be credited for an amount equal to the amounts covered into the Treasury (minus refunds) prior to July 1, 1951, under said Railroad Retirement Tax Act, and under the Carriers Taxing Act of 1937, as amended, less (1) amounts credited as premiums to the railroad retirement account (excluding $334,429,100 heretofore appropriated for military service credits) and (2) amounts properly chargeable as administrative expenses of the Railroad Retirement Board, prior to July 1, 1951.]

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I make a point of order against the language on page 36, the proviso beginning after the colon on line 4 and going down to the period on line 16. This is legislation on an appropriation bill. Obviously, this goes beyond the scope of the bill and beyond the appropriation provisions of the bill. It is similar in nature to the language to which I made objection last year at the same time.

THE CHAIRMAN:[17] Will the gentleman from Pennsylvania define the specific language in the bill to which he raises the point of order?

MR. FLOOD: The point of order is to the legislative intent and the legislative provision of the entire proviso.

As I read this, I construe (it) in effect as amounting to a repealer of existing legislation. . . .

MR. [OREN] HARRIS [of Arkansas]: Do I understand that the gentleman makes a point of order only to the language on page 36 beginning at line 4, that is under the proviso?

MR. FLOOD: That is correct.

THE CHAIRMAN: And ending on line 16?

MR. FLOOD: That is correct.

MR. [CHRISTOPHER C.] MCGRATH [of New York]: Mr. Chairman, I concede the point of order.

MR. HARRIS: Mr. Chairman, a further parliamentary inquiry.

16. 97 CONG. REC. 4093, 82d Cong. 1st Sess.

17. Charles M. Price (Ill.).

THE CHAIRMAN: The gentleman will state it.

MR. HARRIS: Would not the point of order raised by the gentleman go to the entire paragraph?

THE CHAIRMAN: If the gentleman from Pennsylvania so made the point of order. . . .

MR. HARRIS: Mr. Chairman, I asked the gentleman from Pennsylvania a moment ago if his point of order was to the proviso only and I understand the gentleman to say that it was.

MR. FLOOD: That was true. That was the point of order I made, but I have no objection to making a subsequent point of order this time to make a point of order against the entire paragraph.

MR. [CHARLES A.] WOLVERTON [of New Jersey]: Mr. Chairman, so that there may be no misunderstanding about the situation, I make a point of order against the entire paragraph.

THE CHAIRMAN: Does the gentleman from New York concede the point of order to the entire paragraph?

MR. FLOOD: Mr. Chairman, I make a point of order against the entire paragraph, in view of the discussion which has just taken place.

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

THE CHAIRMAN: The point of order now takes in the entire paragraph beginning on page 35 and ending at line 16, page 36. . . .

And the gentleman from New York [Mr. McGrath] concedes the point of order. The point of order is sustained.

§ 36. Changing Prescribed Methods of Allocation or Distribution of Funds; Mandating Expenditures

Generally, if a provision in an appropriation bill would require an allocation or distribution of appropriated funds that is contrary to an express legislative formula for apportionment of the funds, it is not permitted. Thus, it is held that an amendment to a general appropriation bill which mandates a distribution of funds therein in contravention of an allocation formula in existing law and which interferes with an executive official's discretionary authority under that law is in violation of Rule XXI clause 2. (See § 36.16, infra.) On the other hand, amendments or provisions in bills have been permitted which have been drafted simply as negative restrictions or limitations on the use of funds. Such limitations may affect the allocation of funds as contemplated in existing law, but do not explicitly change a statutory formula for distribution.[18] Exam-

18. In one instance, where existing law authorized an appropriation of $600,000,000 for the fiscal year and provided that of the amount actually appropriated, allotments to the various states should be computed by a formula, the factors of which were to

ples may be found in those sections of this chapter relating to "permissible limitations on the use of funds."

Theoretically, if an authorizing statute provided that a particular percentage of total funds would be allocated to each of several specified areas, a purported limitation which eliminated funds for one of those areas would constitute legislation in that it changed a prescribed formula. This result, however, does not clearly emerge from the precedents.

be state population, per capita income therein, the amount appropriated and the amount authorized, a provision in the appropriation bill H.R. 13111 (for the Departments of Labor and Health, Education, and Welfare) specifying that none of the funds used therein should be available for making allotments on a basis in excess of $500,000,000, thus changing one of the legislatively established figures in the authorized formula, was nevertheless held in order as a limitation, the argument not having been explicit on this crucial point. 115 CONG. REC. 21471, 91st Cong. 1st Sess., July 30, 1969. (For an example of a similar limitation based on a prior year's appropriation, see 118 CONG. REC. 21104, 92d Cong. 2d Sess., June 15, 1972 [H.R. 15417].) But the ruling today would arguably be different, on the basis that the provisions did in fact change one part of a legislatively established formula. See also § 77.2, infra, in which an amendment to a paragraph of an appropriation bill providing that no part of the funds therein contained shall be distributed to states on a per capita income basis was held to be a proper limitation restricting the use of funds and in order.

General Rule

§ 36.1 It is not in order in a general appropriation bill to direct that certain funds therein shall be distributed without regard to the provisions of the authorizing legislation.

On June 15, 1972,[19] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 15417), a point of order was raised against the following amendment:

> MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Yates: On page 22, line 4, change the period to a semicolon and add the following: "Provided that the funds herein appropriated for bilingual education under the Bilingual Education Act shall be distributed in accordance with the authority contained in Section 703(b) of said Act requiring that the Commissioner shall give highest priority to states and areas within states having the greatest need for programs under the Act, and that

19. 118 CONG. REC. 21131, 92d Cong. 2d Sess.

such priority shall take into consideration the number of children of limited English-speaking ability between the ages of three (3) and eighteen (18) in each state; and provided further that such distribution of funds shall be made [without regard to the provisions of Section 704(a) of the Bilingual Education Act that distribution be 'from families (A) with incomes below $3,000 per year, or (B) receiving payments under a program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act', and of Section 704(c) of the Bilingual Education Act that distribution be 'from families (A) with incomes below $3,000 per year, or (B) receiving payments under a program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act.' "]

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[20] Does the gentleman desire to be heard on the point of order?

MR. FLOOD: Yes, Mr. Chairman, and very briefly.

Mr. Chairman, it is very clear and I read now from Cannon's Procedures in the House of Representatives, page 46, which reads as follows:

> Any deviation however slight from the text of existing law.

It says that no deviation however slight. This is certainly that, if you heard it as I did. I had a copy of the amendment and I read it carefully in some detail.

Mr. Chairman, I could not make it any plainer if I wrote it myself.

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

MR. YATES: Yes, Mr. Chairman.

Mr. Chairman, I conceive of this amendment as being a limitation on an appropriation bill in determining the manner in which funds be spent. I, therefore, think it is in order.

THE CHAIRMAN: The Chair is ready to rule. The amendment does not restate existing law but changes existing law. Therefore, it becomes legislation on an appropriation bill, and the Chair sustains the point of order.

Mandating Spending Levels

§ 36.2 Language in an appropriation bill mandating a certain allotment of funds appropriated therein was ruled out as legislation on an appropriation bill.

On Mar. 29, 1960,[1] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 11390), a point of order was raised against the following provision:

> DEFENSE EDUCATIONAL ACTIVITIES
>
> For grants, loans, and payments under the National Defense Education Act of 1958 (72 Stat. 1580–1605), $171,000,000, of which $44,000,000 shall be for capital contributions to student loan funds and loans for non-Federal capital contributions to stu-

20. Chet Holifield (Calif.).

1. 106 CONG. REC. 6862, 6863, 86th Cong. 2d Sess.

dent loan funds, of which not to exceed $1,000,000 shall be for such loans for non-Federal capital contributions; $57,750,000 shall be for grants to States and loans to nonprofit private schools for science, mathematics, or modern foreign language equipment and minor remodeling of facilities and for grants to States for supervisory and other services, [but allotments pursuant to section 302 or 305 of such Act for the current fiscal year shall be made on the basis of the maximum amounts authorized to be appropriated under section 301 of such Act;] $9,000,000 shall be for grants to States for area vocational education programs; and $15,000,000 shall be for grants to States for testing, guidance, and counselling: *Provided further,* That no part of this appropriation shall be available for the purchase of science, mathematics, and modern language teaching equipment, or equipment suitable for use for teaching in such fields of education, which can be identified as originating in or having been exported from a Communist country, unless such equipment is unavailable from any other source. . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a point of order.

THE CHAIRMAN:[2] The gentleman will state it.

MR. GROSS: Mr. Chairman, I make a point of order against the language on page 17, line 19, which reads as follows:

> But allotments pursuant to section 302 or 305 of such act for the current fiscal year shall be made on the basis of the maximum amounts authorized to be appropriated under section 301 of such act.

I make the point of order that this language constitutes legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Rhode Island care to be heard on the point of order?

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I am in no other position than to concede that it is legislation on an appropriation bill; but it will change the basic effect of the act, throw it out of control. However, if the gentleman insists on his point of order, there is nothing else I can do.

MR. GROSS: I insist on the point of order, Mr. Chairman.

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

The point of order is sustained.

Requiring a Certain Apportionment of Funds

§ 36.3 To a general appropriation bill including funds for educational programs authorized by law, an amendment denying the use of such funds until the Commissioner of Education makes an apportionment thereof contrary to the formula prescribed by existing law was held to impose additional duties on the Commissioner and to change existing law and was thus ruled out as legislation.

On June 26, 1968,[3] during consideration in the Committee of the

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

3. 114 CONG. REC. 18894, 18895, 90th Cong. 2d Sess.

Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 18037), a point of order was raised against the following provision:

MR. [ALBERT H.] QUIE [of Minnesota]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Quie: On page 13, line 24, strike the word "*Provided*" and all the language that follows through the word "grants" on page 14, line 3, and insert in lieu thereof the following: ["*Provided,* That no part of this appropriation shall be made available to any local educational agency in any State from funds appropriated to carry out such title II for the fiscal year 1969 until there has been made available from this appropriation to each local educational agency in the State in whose schools the number of children counted under section 103(a)2 of such title II exceeds 25 per centum of the total enrollment in such schools an amount at least equal to the amount made available to it for the fiscal year 1968 from funds appropriated to carry out such title:] *Provided further,* That the Commissioner shall make no part of this appropriation available to any local educational agency which fails to give priority in carrying out programs under such title II to schools serving school attendance areas of greatest need:".

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I reserve a point of order against the amendment. I propose to make a point of order that this is legislation on an appropriation bill.

THE CHAIRMAN:[4] The gentleman reserves a point of order. . . .

MR. FLOOD: Mr. Chairman, I must insist upon my point of order. This amendment obviously and clearly changes the entire system of allocations. It attempts to create a formula. If ever I have seen legislation on an appropriation bill, this is it.

Mr. Chairman, I insist upon my point of order.

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

MR. QUIE: Yes, Mr. Chairman.

My amendment is a limitation on the payment of $1,064,000,000. It is a similar limitation to that placed on the expenditure in other parts of the bill; for instance, pages 13 and 14, as the provisos. Also, as to the impact aid, we see some of the same kinds of limitations, where there could be no reduction for category A students but the reduction all would have to be for category B students.

My amendment is written in the same way, as a limitation on payments under this bill.

THE CHAIRMAN: The Chair is ready to rule.

The Chair has had an opportunity to read the amendment and has listened to the arguments for the point of order and against the point of order.

The amendment offered by the gentleman from Minnesota [Mr. Quie] provides that:

No funds may be made available from this appropriation until there has been made available from this appropriation (to certain local edu-

4. Chet Holifield (Calif.).

cational agencies) an amount at least equal to the amount made available to it in fiscal 1968.

The Chair has examined the amendment, the bill, and the provisions of title II of the act of September 30, 1950, as amended. The effect of the amendment is to prohibit the Commissioner of Education from making any payments to any State from this appropriation until there is an amount made available to local educational agencies in certain States at least equal to that provided last year.

The Chair feels that to make an appropriation contingent upon certain actions to be taken by the Commissioner which impose additional duties that are contrary to the apportionment formula in existing law constitutes legislation on an appropriation bill, in violation of rule XXI, clause 2.

The Chair therefore sustains the point of order.

Permitting Reapportionment of Unused Funds

§ 36.4 In an appropriation bill providing funds for the Office of Education, language "[t]hat the amount of allotment which States and Territories are not prepared to use may be reapportioned among other States and Territories applying therefor for use in the programs for which the funds were originally apportioned", was conceded and held to be legislation and not in order.

On Mar. 29, 1957,[5] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 6287), a point of order was raised against the following provision:

The Clerk read as follows:

OFFICE OF EDUCATION

Promotion and further development of vocational education: For carrying out the provisions of section 3 of the Vocational Education Act of 1946, as amended (20 U.S.C., ch. 2), and section 202 of said act (70 Stat. 925), section 4 of the act of March 10, 1924 (20 U.S.C. 29), section 1 of the act of March 3, 1931 (20 U.S.C. 30), the act of March 18, 1950 (20 U.S.C. 31), including $4 million for extension and improvement of practical nurse training, $33,442,081: *Provided*, That the apportionment to the States under section 3 (a), (1), (2), (3), and (4) of the Vocational Education Act of 1946 shall be computed on the basis of not to exceed $29,267,081 for the current fiscal year: [*Provided further*, That the amount of allotment which States and Territories are not prepared to use may be reapportioned among other States and Territories applying therefor for use in the programs for which the funds were originally apportioned.]

MR. [EDGAR W.] HIESTAND [of California]: Mr. Chairman, a point of order.

THE CHAIRMAN:[6] The gentleman will state it.

MR. HIESTAND: I wish to raise the point of order against the proviso on

5. 103 CONG. REC. 4805, 85th Cong. 1st Sess.

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

line 14, page 17, on the ground that it is legislation on an appropriation bill. Coming as it does, it would make a change, you might say, in the formula that has been adopted in the basic act; the formula for the distribution of funds.

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

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I have no other recourse but to agree that it is subject to a point of order. But, when you do strike this out, you are going to penalize those States who have the best programs for vocational training.

THE CHAIRMAN: The gentleman concedes the point of order, and the Chair sustains the point of order.

Exemption From Mandatory Funding Levels

§ 36.5 A provision in a general appropriation bill requiring that the mandatory funding levels prescribed by existing law shall not be effective during the current fiscal year was conceded to change existing law and was ruled out as in violation of Rule XXI clause 2.

On July 23, 1970,[7] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 18515), the following point of order was raised:

OFFICE OF ECONOMIC OPPORTUNITY

ECONOMIC OPPORTUNITY PROGRAM

For expenses necessary to carry out the provisions of the Economic Opportunity Act of 1964 (Public Law 88–452, approved August 20, 1964), as amended, $2,046,200,000 . . . . *Provided further,* [That those provisions of the Economic Opportunity Amendments of 1967 and 1969 that set mandatory funding levels shall not be effective during the fiscal year ending June 30, 1971.]

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Chairman, I make a point of order against the language beginning on page 38, line 25, and on page 39 through line 3. The language reads:

> *Provided further,* That those provisions of the Economic Opportunity Amendments of 1967 and 1969 that set mandatory funding levels shall not be effective during the fiscal year ending June 30, 1971.

Mr. Chairman, this is legislation in an appropriation bill and sets aside all the earmarking that we provided for in the Economic Opportunity Authorization Act.

THE CHAIRMAN:[8] Does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is conceded and the Chair therefore sustains the point of order.

7. 116 CONG. REC. 25634, 91st Cong. 2d Sess.

8. Chet Holifield (Calif.).

Requiring Priorities in Allocating Funds

§ 36.6 To a paragraph in a general appropriation bill making an appropriation for grants to states for hospital construction, an amendment providing that funds for new obligations must be allotted on a basis of priority to projects most advanced as determined by the several states was ruled out as constituting legislation.

On Apr. 18, 1951,[9] during consideration in the Committee of the Whole of the Department of Labor and Federal Security Agency appropriation bill (H.R. 3709), the following transpired:

The Clerk read as follows:

Grants for hospital construction: For payments for hospital construction under part C, title VI, of the act, as amended, to remain available until expended, $175,000,000, of which $100,000,000 is for payment of obligations incurred under authority heretofore granted under this head: *Provided,* That allotments under such part C to the several States for the current fiscal year shall be made on the basis of an amount equal to that part of the appropriation granted herein which is available for new obligations.

MR. [FOSTER] FURCOLO [of Massachusetts]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Furcolo: Page 21, line 13, strike out "$175,000,000" and insert in its place the figure "$250,000,000."

MR. FURCOLO: Mr. Chairman, the amendment I offer is on page 21, line 13, where there will be a substitution of the figure $175,000,000 to make it read $250,000,000. . . .

MR. H. CARL ANDERSEN [of Minnesota]: Mr. Chairman, I offer a substitute.

The Clerk read as follows:

Amendment offered by Mr. H. Carl Andersen as a substitute for the amendment offered by Mr. Furcolo: Page 21, line 19, after "obligations" strike out the period and insert "*Provided,* That the funds provided for new obligations shall be allotted on a basis of priority to those projects most advanced in the planning and financing as determined by the several States."

MR. [CHRISTOPHER C.] MCGRATH [of New York]: Mr. Chairman, I make the point of order against the substitute that it is legislation on an appropriation bill. . . .

MR. H. CARL ANDERSEN: The Chair will notice in line 16 the provision "That allotments under such part C to the several States" and so forth and so on. If that provision is germane and in order, as it appears to be why should not a further provision as to how the State shall allot the money, based upon the degree of advancement, be germane? The gentleman from Arkansas should either make a point of order against that provision also or withdraw his opposition to mine.

THE CHAIRMAN:[10] The Chair is ready to rule.

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9. 97 CONG. REC. 4078, 4081, 4082, 82d Cong. 1st Sess.

10. Charles M. Price (Ill.).

After studying the substitute amendment offered by the gentleman from Minnesota, the Chair feels that this is a change in existing law, and therefore sustains the point of order that it is legislation on an appropriation bill.

In regard to the second point raised by the gentleman, the Chair holds that because other legislative language may be permitted to remain in the bill, that does not make in order language adding legislation in violation of the rules.

The Chair, therefore, sustains the point of order submitted by the gentleman from New York.

Changing Allotment in Authorization by Line-item Appropriations

§ 36.7 To a supplemental appropriation bill containing funds for hospitals under the Hill-Burton Act, an amendment making funds available for 35 specific hospitals, itemized individually and by states, was held to change the apportionment formula for hospital construction funds in the basic act and to constitute legislation on an appropriation bill in violation of Rule XXI clause 2.

On May 7, 1970,[11] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 17399), a point of order was raised against the following amendment:

MR. [HENRY C.] SCHADEBERG [of Wisconsin]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Schadeberg: On page 11, between lines 2 and 3, insert the following:

"HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION HOSPITAL CONSTRUCTION

"For an additional amount for 'Hospital Construction', $8,703,078, for thirty-five hospitals in Kansas, Nebraska, Oklahoma, Arkansas, New Hampshire, Maryland, North Carolina, Wisconsin, and Indiana under title III of the Public Health Service Act as follows:

"The State of Kansas, $1,130,245:

"(1) the Saint Francis Hospital in Topeka, $288,496.

"(2) the Saint John's Hospital in Salina, $68,328.

"(3) the Mount Carmel Hospital in Pittsburg, $273,312. . . .

"The State of Indiana, $250,443:

"(1) the Saint Mary Mercy Hospital in Gary and the Union Hospital in Terre Haute."

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I make a point of order against the amendment on the ground that there is no authorization in law for the appropriations earmarked for these specific hospitals.

THE CHAIRMAN:[12] Does the gentleman from Wisconsin wish to be heard on the point of order?

MR. SCHADEBERG: Only, Mr. Chairman, to suggest that the hospitals that are mentioned have had priority under

11. 116 CONG. REC. 14566, 91st Cong. 2d Sess.

12. James G. O'Hara (Mich.).

the Hill-Burton Act and are under construction.

THE CHAIRMAN: The gentleman from Wisconsin, as the Chair understands it, takes the position that these funds are authorized by the Hill-Burton Act. Is that correct?

MR. SCHADEBERG: They have had construction started under the Hill-Burton Act, yes.

THE CHAIRMAN: Does the gentleman from Pennsylvania desire to respond to that?

MR. FLOOD: Yes, of course, Mr. Chairman. The Hill-Burton Hospital Construction Act authorizes appropriations only to States and to territories under a very, very specific mathematical formula. There is nothing in that law at any place which authorizes appropriations for individual hospitals. As a matter of fact, the law provides that eligibility for individual hospitals shall be determined only by the States. There is no authorization either for appropriations to specific hospitals or for the U.S. Public Health Service to designate by hospital where appropriated funds are to be used.

THE CHAIRMAN: The Chair is prepared to rule on the point of order. The Chair holds that the provisions of title VI of the Public Health Service Act are as described by the gentleman from Pennsylvania. The authorizing legislation provides for appropriations on an allotment formula to the States and does not authorize appropriations in any way for the construction of individual hospitals or permit the selection of individual hospitals for appropriation. The Chair, therefore, is constrained to sustain the point of order on the ground that the proposed amendment constitutes legislation on an appropriation bill.

State Educational Aid—"Hold Harmless" Provision

§ 36.8 Language in a general appropriation bill providing that the amounts to be paid to state educational agencies for certain elementary and secondary school aid during fiscal 1971 shall not be more than amounts made available for those purposes during the preceding fiscal year, and providing that amounts for other categories of such aid in fiscal 1971 shall not be less than amounts available for that purpose in the preceding fiscal year, was held to change the ratable reduction formula in existing law and to impose new duties on an executive official, and was ruled out on a point of order.

On Apr. 7, 1971,[13] during consideration in the Committee of the Whole of the Department of Education appropriation bill (H.R. 7016), a point of order was raised against the following provision:

The Clerk read as follows:

13. 117 CONG. REC. 10061, 92d Cong. 1st Sess.

TITLE I—OFFICE OF EDUCATION

ELEMENTARY AND SECONDARY EDUCATION

For carrying out, to the extent not otherwise provided, title I ($1,500,000,000), title II ($85,000,000), title III ($143,393,000), title V–A ($33,000,000), title VII, and section 807 of the Elementary and Secondary Education Act, section 402 of the General Education Provisions Act, and title III–A of the National Defense Education Act of 1958 ($20,000,000), $1,822,218,000: *Provided*, That (1) the amounts made available to State agencies for the purposes of section 103(a) (5), (6), and (7) of title I–A of the Elementary and Secondary Education Act and to the States for the purposes of title I–B shall not be more than the amounts made available in fiscal year 1971 for these purposes and (2) the aggregate amounts made available to each State under title I–A for grants to local educational agencies within that State shall not be less than such amounts as were made available for that purpose in fiscal year 1971.

MR. [JAMES G.] O'HARA [of Michigan]: Mr. Chairman, I make a point of order to the language of the provisos in the paragraph just read, beginning at line 9 on page 2, and running through line 18 on page 2.

THE CHAIRMAN:[14] The gentleman will state his point of order.

MR. O'HARA: Mr. Chairman, my point of order is that the language in the provisos constitutes legislation on an appropriation bill. It provides for adjustments different than those provided in the authorizing legislation, to wit: Section 144 of the Elementary and Secondary Education Act, and that, in addition, the provisos require the exercise of judgmental and discretionary functions on the part of the administrator; imposing those conditions upon him.

For those reasons, Mr. Chairman, I make a point of order against the language of the provisos.

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

MR. [DANIEL J.] FLOOD [of Pennsylvania]: I do, Mr. Chairman.

Mr. Chairman, this is the classical problem that arises in this bill since we first brought it here a few years ago. It is purely and simply a limitation, and no more and no less. We have heard the point of order before.

I suggest that the point of order not be sustained.

THE CHAIRMAN: The Chair is ready to rule.

The Chair has listened with care to the presentations of the gentleman from Michigan and the chairman of the subcommittee. The Chair has also examined the provisions of title I of the Elementary and Secondary Education Act.

It seems to the Chair that the argument is essentially this: certain appropriations are authorized for programs under title I of the act. The Committee on Appropriations has reduced this amount and has appropriated $1.5 billion. There are within title I of the act certain legislative directions to the Commissioner of Education about how entitlements for the various State educational agencies are to be computed. These are rather complicated and the Chair does not think it necessary to ex-

14. Chet Holifield (Calif.).

plain them in detail. But the Chair does wish to refer to the explicit language of section 144 of the act, and will paraphrase a portion of that section:

> If the sums appropriated for any fiscal year for making the payments provided in this title are not sufficient to pay in full the total amounts which all local and State education agencies are eligible to receive—

And that is the case now before this Committee.

> the amount available for each grant to a state agency under paragraphs (5), (6) or (7) of section 103(a) shall be equal to the maximum grant as computed under such paragraph . . .

The section then provides for certain ratable reductions for other programs under that title.

The Chair has also examined certain precedents relating to the doctrine of limitations on appropriation bills. It is clear from those precedents that while it is proper in an appropriation bill to deny an appropriation or refuse to appropriate for a specific object or program which may be authorized by law, it is not in order, under the guise of a limitation, to impose new duties on an executive officer, to curtail the discretion given that officer under law or to change the law.

The Chair feels that the provision in the bill to which the point of order is directed conflicts with these well-established doctrines. The Chair therefore sustains the point of order.

§ 36.9 Language in a general appropriation bill providing that grants to be paid to states for certain elementary and secondary school aid during fiscal 1973 shall not be less than amounts available for that purpose in the preceding fiscal year was conceded to change the ratable reduction formula in existing law and to impose new duties on executive officials (to determine new minimum amounts) and was ruled out on a point of order.

On June 15, 1972,[15] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 15417), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> OFFICE OF EDUCATION
>
> ELEMENTARY AND SECONDARY EDUCATION
>
> For carrying out, to the extent not otherwise provided, title I ($1,597,–500,000), title III ($146,393,000), and title V, Parts A and C ($43,000,000), of the Elementary and Secondary Education Act, $1,786,893,000: *Provided*, That grants to States on behalf of local education agencies under said title I–A shall not be less than grants made to such agencies in the fiscal year 1972.
>
> THE CHAIRMAN:[16] For what purpose does the gentleman from Michigan (Mr. O'Hara) rise?

15. 118 CONG. REC. 21104, 92d Cong. 2d Sess.

16. Chet Holifield (Calif.).

MR. [JAMES G.] O'HARA: Mr. Chairman, I make a point of order to the proviso beginning on line 10, page 19, and extending through line 13, page 19.

THE CHAIRMAN: That is as to the language beginning on line 10, with the word "Provided,"?

MR. O'HARA: That is right, Mr. Chairman, and continuing on through line 13 on page 19.

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

THE CHAIRMAN: The gentleman is recognized.

MR. O'HARA: Mr. Chairman, I make the point of order that the proviso constitutes legislation on an appropriation bill and, therefore, ought to be stricken.

I call the attention of the Chair to the ruling made by the Chair on a very similar point which is found in the Congressional Record, vol. 116, part 3, page 4019.

THE CHAIRMAN: Does the gentleman from Pennsylvania (Mr. Flood) desire to be heard on the point of order?

MR. [DANIEL J.] FLOOD: Mr. Chairman, the same point of order was raised last year, and we concede the point of order.

THE CHAIRMAN: The gentleman from Pennsylvania concedes the point of order.

The point of order is sustained.

Local Education Aid; Changing Allotment Formula

§ 36.10 A provision in a general appropriation bill which changes the legislative formula governing allotment of certain funds to local educational agencies in federally affected areas was conceded and held to be legislation on an appropriation bill in violation of Rule XXI clause 2.

On Feb. 19, 1970,[17] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 15431), a point of order was raised against the following provision:

The Clerk read as follows:

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

For carrying out title I of the Act of September 30, 1950, as amended (20 U.S.C., ch. 13), and the Act of September 23, 1950, as amended (20 U.S.C., ch. 19), $440,167,000 of which $425,000,000 shall be for the maintenance and operation of schools as authorized by said title I of the Act of September 30, 1950, as amended, and $15,167,000 which shall remain available until expended, shall be for providing school facilities as authorized by said Act of September 23, 1950: *Provided,* That this appropriation shall not be available to pay local educational agencies pursuant to the provisions of any other section of said title I until payment has been made of 90 per centum of the amounts to which such agencies are entitled pursuant to section 3(a) of said title and 100 per centum of the amounts payable

17. 116 CONG. REC. 4015, 91st Cong. 2d Sess. Compare § 73.1, infra.

under section 6 of said title: *Provided further,* That the amount to be paid to an agency pursuant to said title (except section 7) for the current fiscal year shall not be less, by more than 5 per centum of the current expenditures for free public education made by such agency for the fiscal year 1969, than the amount of its entitlement under said title (except section 7) for the fiscal year 1969.

MR. [JAMES G.] O'HARA [of Michigan]: Mr. Chairman, I rise for the purpose of making a point of order against the second proviso of the paragraph in question, beginning on line 18 and down through line 24, on the ground that it is not a valid limitation, a definitive direction. It is legislation on an appropriation bill and, therefore, forbidden.

THE CHAIRMAN:[18] Does the gentleman from Pennsylvania care to be heard on the point of order?

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, this is legislation on an appropriation bill, and I most reluctantly concede.

THE CHAIRMAN: The Chair is prepared to rule. The point of order is sustained.

Changing Computation Formula in Law

§ 36.11 To separate paragraphs in a general appropriation bill, both making appropriations for payments to local educational agencies, similar amendments providing bases for computation of the recipients' contributions and for computation of the federal payments different from the criteria specified by the law authorizing such payments were conceded and held to constitute legislation in violation of the rules.

On Apr. 18,[19] during consideration in the Committee of the Whole of the Department of Labor and Federal Security Agency appropriation bill (H.R. 3709), a point of order was raised against the following amendments:

The Clerk read as follows:

Payments to school district: For payments to local educational agencies for the maintenance and operation of schools as authorized by the act of September 30, 1950 (Public Law 874), $28,000,000.

MR. [WILLIAM F.] NORRELL [of Arkansas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Norrell: On page 15, line 9, strike out the period, insert a colon in lieu thereof and the following: "Provided, That, for the purposes of this appropriation, (1) the local contribution rate computed for any local educational agency under section 3 of such act of September 30, 1950, shall be not less than 80 percent and not more than 120 percent of the national average local contribution rate during the fiscal year ending June 30, 1950, and (2) the current expenditures per child determined for any such agency under section 4 of such

18. Chet Holifield (Calif.).

19. 97 CONG. REC. 4074, 82d Cong. 1st Sess.

act of September 30, 1950, shall be not less than 80 percent and not more that 120 percent of the national average current expenditures per child for the purpose of providing free public education during the fiscal year ending June 30, 1950."

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill. . . .

MR. NORRELL: Mr. Chairman, I ask unanimous consent that my other amendment on page 16, line 3, may be considered at this time, for I am sure the gentleman from Rhode Island will make a point of order against it also on the same grounds. I make this request in order that my remarks may be directed to both amendments at the same time.

THE CHAIRMAN: [20] Is there objection to the request of the gentleman from Arkansas?

There was no objection.

THE CHAIRMAM: The Clerk will report the second amendment offered by the gentleman from Arkansas.

The Clerk read as follows:

Amendment offered by Mr. Norrell: On page 16, line 3, strike out the period, insert in lieu thereof a colon and the following: "*And provided further,* That in the case of any application by a local educational agency approved after July 1, 1951, for payment under section 202 of such act, the amount made available by the Commissioner of Education out of this appropriation shall not exceed $500 times the number of children with respect to whom such agency is entitled to receive payment under such section 202."

MR. FOGARTY: Mr. Chairman, I make a point of order against this amendment also, on the ground that it is legislation on an appropriation bill; and I reserve both points of order, Mr. Chairman. . . .

MR. NORRELL: Mr. Chairman, I am not going to consume the entire 5 minutes.

Mr. Chairman, I have consulted with the House Parliamentarian with regard to both these amendments. They deal with the law that we enacted last year regarding the school-aid program in defense areas both as to construction and maintenance.

I admit that my amendments, if adopted, would change the basic law of the land regarding these matters and, therefore, they are subject to points of order; this is legislation on an appropriation bill. But the facts are that since the enactment of this law last year certain weaknesses have arisen which should have the attention of this Congress. . . .

THE CHAIRMAN: The Chair sustains the point of order against both amendments.

Impacted Aid; No Funds Until Apportionment Made in Certain Manner

§ Sec. 36.12 A provision in an amendment to a general appropriation bill denying the use of any funds for impacted school aid until the official allocating the funds makes an apportionment thereof contrary to the formula prescribed by existing

20. Charles M. Price (Ill.).

law was held to impose additional duties upon that official, thus changing existing law and constituting legislation on an appropriation bill.

On Apr. 14, 1970,[1] during consideration in the Committee of the Whole of the Education Department appropriation bill (H.R. 16916), a point of order was raised against the following amendment:

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Michel: Strike all after the enacting clause and insert:

TITLE I—OFFICE OF EDUCATION

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

For carrying out title I of the Act of September 30, 1950, as amended (20 U.S.C., ch. 13), and the Act of September 23, 1950, as amended (20 U.S.C., ch. 19), $440,000,000 of which $425,000,000 shall be for the maintenance and operation of schools as authorized by said title I of the Act of September 30, 1950, as amended, and $15,000,000 which shall remain available until expended, shall be for providing school facilities as authorized by said Act of September 23, 1950: *Provided,* That this appropriation shall not be available to pay local educational agencies pursuant to the provisions of any other section of said title I until payment has been made of 90 per centum of the amounts to which such agencies are entitled pursuant to section 3(a) of said title and 100 per centum of the amounts payable under section 6 of said title. . . .

MR. [JAMES G.] O'HARA [of Michigan]: Then I make a point of order against the amendment offered by the gentleman from Illinois.

THE CHAIRMAN:[2] The Chair will hear the gentleman on the point of order.

MR. O'HARA: Mr. Chairman, the point of order against the amendment offered by the gentleman from Illinois is that it contains legislation in an appropriation bill, to wit, the language on page 2, lines 6 to 12 is clearly legislation on an appropriation bill providing for different dispositions of funds under those sections than are provided by law. Therefore I make a point of order against the amendment offered by the gentleman from Illinois. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, it is as plain as the nose on my face, and I have got a nose, that this is clearly a limitation upon the expenditure of funds. That is clearly it. I suggest the point must be overruled.

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

MR. O'HARA: Mr. Chairman, I would like to be heard. I would like to say first, Mr. Chairman, if the proviso to which I have referred authorizes the use on a different formula than that provided in the basic authorizing legislation, and I do not believe that the proviso is a limitation or retrenchment

1. 16 CONG. REC. 11676, 11677, 91st Cong. 2d Sess.

2. Chet Holifield (Calif.).

of appropriations which would be an expansion, the proviso is neither a limitation nor retrenchment of appropriations, because it permits payment to be made in excess of the payments authorized by the above quoted section of Public Law 81–874.

It may be helpful to the Chairman and to my colleagues in understanding the point that the reference contained in section 5(c) just quoted, that various other sections of entitlements to payments are to the so-called familiar references to categories A and B children under impacted aid.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Michigan (Mr. O'Hara), has raised a point of order against the proviso appearing in the amendment in the nature of a substitute and referred to in the original bill as the proviso on page 2 of the bill on the ground that it constitutes legislation on an appropriation bill in violation of clause 2, rule XXI. That proviso would make appropriations in the bill unavailable for payment to local educational agencies pursuant to the provisions of any other section of title I of the act of September 30, 1950—which authorizes school assistance in federally affected areas—until payment has been made of 90 percent of entitled allotments pursuant to section 3(a) of said title I and of 100 percent of amounts payable under section 6 of that title. The gentleman from Michigan contends that such a requirement for payments of funds propriated in this bill has the effect of changing the allotment formula in the authorizing legislation of funds for "category A students," and is therefore legislation on an appropriation bill prohibited by clause 2, rule XXI.

On June 26, 1968, during consideration of the Department of Labor and Health, Education, and Welfare appropriation bill for fiscal year 1969, the Chair—the gentleman now occupying it—sustained a point of order against an amendment prohibiting the use of funds in the bill for educationally deprived children until there was made available therefrom for certain local educational agencies an amount at least equal to that allotted in the preceding year, since that amendment would have required the Commissioner of Education to make an apportionment of appropriated funds contrary to the formula prescribed by existing law, thus imposing additional duties on that official and changing existing law.

The Chair feels that that decision is controlling in this instance. To make the appropriations authorized under certain sections of the "impacted school aid" legislation contingent upon allotment of certain percentages of entitled funds under other sections of that authorizing legislation is to impose additional duties on the official making the allotment and to change the enforcement formula in the authorizing legislation is in violation of clause 2, rule XXI.

The Chair therefore sustains the point of order.

Rural Electrification Grants; Changing Loan Program to Grant

§ 36.13 To a general appropriation bill making appropriations for rural electrification loans, an amendment earmarking a portion of the

funds for nonrepayable grants to REA borrowers in Alaska was conceded to be authorized by law and was ruled out as legislation.

On May 20, 1964,[3] during consideration in the Committee of the Whole of the Department of Agriculture appropriation bill (H.R. 11202), a point of order was raised against the following amendment:

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

The Clerk read as follows:

Amendment offered by Mr. Michel: Page 26, line 22, after the word "program", insert the following: "Provided, That not more than $5,300,000 of the foregoing amounts shall be made available to the borrowers of the Rural Electrification Administration in Alaska for the repair, rehabilitation or reconstruction of all their facilities and properties damaged, destroyed, or dislocated as a result of the earthquakes of March 1964, and provided further that any amounts so made available and used shall not be repayable by the borrowers."

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

THE CHAIRMAN:[4] The gentleman will state his point of order.

MR. WHITTEN: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill. There is no authority in law for making this direct grant from the REA program. May I point out under the basic law the committee is limited to fixing a ceiling upon what the REA may do under the basic act setting up their authorities, obligations, and duties. This would in effect be a direct grant from the REA which borrows from the Treasury, and quite clearly, in my mind, it would be legislation. . . .

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

MR. MICHEL: Mr. Chairman, I realize as a member of the committee that we cannot legislate on an appropriation bill and that it is subject to a point of order. If the chairman persists in it, naturally, I would have to give way.

THE CHAIRMAN: In view of the statement of the gentleman from Illinois, the point of order is sustained.

Higher Education Funds: Funding For Program Not Authorized Unless Others Funded First

§ 36.14 Where existing law authorizing programs of higher education assistance provided that no payments for any fiscal year shall be made for a certain category (4) unless funds have been appropriated for three other student programs for that fiscal year, language in a general appropriation bill containing funds for category (4) which

3. 110 CONG. REC. 11424–26, 88th Cong. 2d Sess.

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

would remain available during a subsequent fiscal year for which no funds for categories (1)–(3) were provided was conceded to change the priority formula in the authorizing legislation and was ruled out in violation of Rule XXI clause 2.

On June 27, 1974,[5] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 15580), a point of order was raised and sustained as indicated above:

> For carrying out, to the extent not otherwise provided, titles I, III, IV, section 745 of title VII, and parts A, B, C, and D of title IX, and section 1203 of the Higher Education Act . . . section 421 of the General Education Provisions Act, and Public Law 92-506 of October 19, 1972, $2,145,271,000 . . . of which $638,500,000 shall remain available through June 30, 1977, $315,000,000 for subsidies on guaranteed student loans shall remain available until expended: . . .
>
> MRS. [EDITH] GREEN of Oregon: Mr. Chairman, I make a point of order on the language found on page 18, line 4, beginning with the words "of which" through line 5 through "1977,".
>
> So the language I would make a point of order against, Mr. Chairman, would read: "of which $638,500,000 shall remain available through June 30, 1977,". My point of order, Mr. Chairman, is that this appropriates funds for the basic opportunity grants through June 30, 1977. The law requires, and I cite, Mr. Chairman, in the Education Amendments Acts of 1972 this language.
>
> No payments may be made on the basis of entitlements—
>
> Which is the basic opportunity grants—
>
> established under this subpart during any fiscal year unless—
>
> And then the language continues—
>
> funds have been appropriated for economic opportunity grants, work study, and National Defense Education Act.
>
> This language was very carefully drawn to protect those three student aid programs. The language which we find in the bill in effect provides payments for the entitlements for a year, the year ending June 30, 1977, the school year 1976–77, a year in which no funds are appropriated for the three other student financial aid programs which are required under the law.
>
> MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, we will concede that point of order.
>
> THE CHAIRMAN:[6] The point of order is sustained.

Economic Development; Mandating Obligation of Funds for Unauthorized Program

§ 36.15 An amendment to a general appropriation bill

5. 120 CONG. REC. 21670, 21671, 93d Cong. 2d Sess.

6. James C. Wright, Jr. (Tex.).

providing that not less than a specific sum shall be used for a particular purpose was held to violate Rule XXI clause 2, where its proponent could not show that existing law mandated such an expenditure.

On June 18, 1976,[7] H.R. 14239 (Departments of State, Justice, Commerce, and the Judiciary appropriation bill for fiscal 1977), was under consideration, which provided in part:

> For economic development assistance as authorized by titles I, II, III, IV, and IX of the Public Works and Economic Development Act of 1965, as amended, and title II of the Trade Act of 1974, $300,000,000.

An amendment was offered, as follows:

> MR. [PHILIP E.] RUPPE [of Michigan]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Ruppe: In Title III, page 27, line 2, strike out "$300,000,000," and insert in lieu thereof: "$329,500,000, of which not less than $77,000,000 shall be used for economic adjustment as authorized by title IX of the Public Works and Economic Development Act of 1965, as amended.". . .
>
> MR. [JOHN M.] SLACK [of West Virginia]: Mr. Chairman, the amendment would violate clause 2 of rule XXI which provides:
>
> No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law. . . .

The rule adopted earlier, waiving all points of order against certain provisions in the bill for failure to comply with the provisions of clause 2, rule XXI, applies only to those provisions in the bill. The waiver does not apply to amendments which would add additional provisions.

This amendment, Mr. Chairman, would add a provision to the bill earmarking $77 million for economic adjustment under title IX of the Public Works and Economic Development Act of 1965, as amended. Extension of that legislation which is required for fiscal year 1977 has not been enacted. . . .

MR. RUPPE: . . . Mr. Chairman, my amendment would increase the funding level of title IX of this section from $47.5 to $77 million. It is my understanding that that section does fund economic development assistance for titles I, II, III, IV, and IX of the Public Works and Economic Development Act of 1965.

THE CHAIRMAN:[8] The Chair is ready to rule.

If the amendment of the gentleman merely changed the unauthorized figure permitted to remain in the appropriation bill, it would be in order; but the amendment does mandate the expenditure of not less than a certain amount of money for a purpose which has not been authorized and as such constitutes legislation in an appropriation bill.

The Chair sustains the point of order.

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7. 122 CONG. REC. 19297, 94th Cong. 2d Sess.

8. Otis G. Pike (N.Y.).

Changing Allocation Formula; Distribution Set in Authorizing Law Changed

§ 36.16 Where existing law required allocation of 90 percent of appropriations for public service jobs in accordance with a distribution formula and permitted allotment of the remaining 10 percent at the discretion of an executive official, an amendment to a general appropriation bill requiring that a certain amount therein shall be available only to provide railroad maintenance jobs by contract with private employers was ruled out (1) as not specifically authorized as a public service program, and (2) as directly changing the allocation formula and interfering with executive discretion contained in that law.

On Mar. 12, 1975,[9] during consideration in the Committee of the Whole of H.R. 4481 [the Emergency Employment Appropriation Act of 1975], a point of order was sustained against an amendment to the following bill text:

The Clerk read as follows:

TEMPORARY EMPLOYMENT ASSISTANCE

For an additional amount for "Temporary employment assistance", $1,625,000,000, to remain available until December 31, 1975.

MR. [SAMUEL L.] DEVINE [of Ohio]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Devine: Page 7, line 6, strike out the period and insert in lieu thereof the following: "; of which amount $250,000,000 shall be available only for use by State and local prime sponsors to provide emergency jobs for unemployed workers to perform needed railroad maintenance of way services pursuant to contracts with railroads located within the geographical jurisdiction of such sponsors."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment on the ground that there is no authorization for this action and it violates clause 2 of rule XXI. . . .

MR. DEVINE: . . . I recognized when this amendment would be offered it might be construed as legislation on an appropriation measure, but I have gone back to the act and I have looked at the act. The purpose of the act we passed in 1946, the Employment Act, was consistent with those needs and obligations and other essential considerations of national policy for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions under which there will be afforded useful employment opportunities—and I repeat, useful employment opportunities. That is the purpose of the act.

9. 121 CONG. REC. 6338, 6339, 94th Cong. 1st Sess.

What we are doing in this amendment is providing useful employment opportunities—not leaf raking and not make work jobs, but useful employment opportunities.

The whole purpose of the bill is to provide funds for public service jobs. That is exactly the purpose of the amendment, except it earmarks that. In my opinion, Mr. Chairman, this does not violate the rules and I think the point of order should be overruled. . . .

THE CHAIRMAN:[10] The Chair is prepared rule.

The amendment specifies that this quarter billion dollars shall be available for use only by State and local prime sponsors to provide emergency jobs for unemployed workers to perform railroad maintenance. The Chair has examined Public Law 93–567, and there is no specific authorization for such purpose. The Chair finds that the proposed amendment further changes the allocation formula contained in Public Law 93–567, which is described on pages 34 and 35 of the report, and further interferes with the discretion given the Secretary under section 603(b) of the public law as to the utilization of the final 10 percent of the authorized amounts. In chapter 26, section 6 of "Deschler's Procedure," it provides very clearly that there is ample precedent that such reallocations in appropriation bills are legislation, and the point of order is sustained.

Veterans' Preference in Job Training Based on Duration of Unemployment

§ 36.17 A proviso in a general appropriation bill specifying that an appropriation for veterans' job training be obligated on the basis of those veterans unemployed the longest time, was conceded to be legislation where existing law did not require that allocation of funds, and was ruled out as in violation of Rule XXI clause 2(c).

On Oct. 5, 1983,[11] during consideration of H.R. 3959 (supplemental appropriations, fiscal 1984), a point of order was raised against the following provision:

The Clerk read as follows:

For payment of expenses as authorized by the Emergency Veterans' Job Training Act of 1983 (Public Law 98–77), $150,000,000, to remain available until September 30, 1986: *Provided,* That $25,000,000 of the amount appropriated shall not become available for obligation until July 1, 1984: Provided further, That such $25,000,000 shall be obligated on the basis of those veterans unemployed the longest period of time. . . .

MR. [MARVIN] LEATH of Texas: Mr. Chairman, I make a point of order that the first and second provisos in the paragraph under the heading "Veterans Job Training," page 2 lines 21 through 25, constitute legislation on an appropriation bill and are not in order under rule XXI, clause 2. . . .

MR. [Edward P.] BOLAND [of Massachusetts]: Mr. Chairman, I concede the point of order.

10. Jack Brooks (Tex.).

11. 129 CONG. REC. ——, 98th Cong. 1st Sess.

THE CHAIRMAN:[12] The point of order is conceded.

Contravening Distribution Formula in Authorization

§ 36.18 Where existing law (42 USC § 3056d) required an allocation of funds appropriated for community service employment programs for older Americans between national contractors and state agencies at a designated percentage by setting a ceiling on allocations to national contractors, language in a paragraph of a general appropriation bill directing the availability of funds to national contractors above the percentage ceiling was held to be legislation changing the distribution formula in existing law.

On July 29, 1982,[13] during consideration in the Committee of the Whole of H.R. 6863 (supplemental appropriations, fiscal 1982), a point of order was sustained against a provision therein, as follows:

THE CHAIRMAN:[14] Are there any points of order with regard to this chapter?

MR. [MARIO] BIAGGI [of New York]: Mr. Chairman, I raise a point of order against the language in the paragraph entitled "Community Service Employment for Older Americans." . . .

The portion of the bill to which the point of order relates is as follows:

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

For an additional amount for "Community service employment for older Americans", $210,572,000, of which $168,457,600 shall be for national grants or contracts with public agencies and public or private nonprofit organizations under paragraph (1)(A) of section 506(a) of the Older Americans Act of 1965, as amended, and $42,114,400 shall be for grants to States under paragraph (3) of section 506(a) of said Act. . . .

Mr. Chairman, this is a clear example of legislating on an appropriations bill which is expressly prohibited under clause 2, rule XXI of the House. Very simply, Mr. Chairman, this language clearly changes the application of existing law for the title V program through the appropriations process. The committee bill ignores the language in the authorizing statute, section 506 of the Older Americans Act as amended, by changing the current formula for distribution of funds to national contractors, increasing it to 80 percent with the remaining 20 percent to be provided to the States. Under current law, as reaffirmed by last year's reauthorization of the Older Americans Act, the distribution of funds between national contractors and States is 76 percent and 24 percent, respectively. . . .

MR. [NEAL] SMITH of Iowa: . . . Mr. Chairman, I point out that under the

12. Martin Frost (Tex.).
13. 128 CONG. REC. 18637, 18638, 97th Cong. 2d Sess.
14. George E. Brown, Jr. (Calif.).

legislation that the gentleman refers to there is an attempt made apparently to say that if more than a certain amount is appropriated, then the Secretary shall reserve part of that for another purpose. It does not prohibit the Congress from making the appropriation. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from New York (Mr. Biaggi) makes a point of order that the language on page 34, line 6, sets aside for national grants or contracts a figure which is in excess of that specified in the law as being permissible for national grants or contracts.

Under the precedents it is not in order in a general appropriation bill to direct that certain funds therein shall be distributed without regard to the provisions of the authorizing legislation.

The Chair is of the opinion that the law cited by the gentleman from New York (42 U.S.C. 3056d) is inconsistent with this appropriation allocation. This language has the effect of contravening the distribution formula on that law. The Chair upholds the point of order.

Commodity Credit Corporation; Directing Minimum Spending

§ 36.19 A paragraph in a general appropriation bill directing that not less than a specified sum be available for a certain purpose was ruled out as legislation in violation of Rule XXI clause 2, constituting a direction to spend a minimum amount, rather than a negative limitation.

On July 29, 1982,[15] during consideration in the Committee of the Whole of the bill H.R. 6863 (supplemental appropriations, fiscal 1982), a point of order was sustained against the following provision:

The Clerk read as follows:

As authorized by section 301 of Public Law 95–279, $5,000,000,000 shall be available to the Commodity Credit Corporation for necessary expenses in carrying out its authorized programs, to remain available without regard to fiscal year limitations: *Provided*, That not less than $500,000,000 of this amount shall be available for export credit loans as authorized by the Charter of the Commodity Credit Corporation and the export authorities conferred upon the Corporation by the Corporation's charter shall be controlling without restriction. . . .

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I raise a point of order on that section. . . .

On line 10, not less than $500 million of this amount shall be available for export credit loans, and so forth, is forcing the agency to spend a minimal amount. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, this is simply an earmarking of a given amount that is appropriated in the bill, and it is within the rule.

Mr. Chairman, this goes back to the charter of the Corporation, the Com-

15. 128 CONG. REC. 18623, 97th Cong. 2d Sess.

modity Credit Corporation. That being true under that charter, it has authority to do this, and we are just directing that it use the authority that already exists. So, it is a directive for the proper use of funds in line with the authorization which is granted in the charter of the Commodity Credit Corporation.

MR. CONTE: The gentleman should have worded his language as "not to exceed $500 million." Furthermore, in line 13, ". . . and the export authorities conferred upon the Corporation by the Corporation's charter shall be controlling without restriction." That requires a positive act by the agency, and therefore a point of order lies against it.

MR. WHITTEN: I present the statement of the section that makes the authorization to which this applies. It appears in title 15, on page 1203, and is section 1692 where it first appears.

> In the fulfillment of its purposes and in carrying out its annual budget programs submitted to and approved by the Congress pursuant to the Government Corporation Control Act [31 U.S.C. 841 et seq.], the Corporation is authorized to use its general powers only to—
>
> (a) Support the prices of agricultural commodities through loans, purchases, payments and other operations.
>
> (b) Make available materials and facilities required in connection with the production and marketing of agricultural commodities.
>
> (c) Procure agricultural commodities for sale to other Government agencies, foreign governments and domestic, foreign, or international relief or rehabilitation agencies, and to meet domestic requirements.
>
> (d) Remove and dispose of or aid in the removal or disposition of surplus agricultural commodities.
>
> (e) Increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.
>
> (f) Export or cause to be exported, or aid in the development of foreign markets for agricultural commodities.

That being the authority they have, it is simply a matter of advising what to do within the authority already granted.

THE CHAIRMAN:[16] The Chair is ready to rule.

The Chair has heard the point of order and listened to the arguments on both sides. It is the Chair's intention to sustain the point of order on the grounds that this is not a negative limitation on an expenditure, but is a legislative direction to the agency involved.

Transferring Defense Funds for Local Use

§ 36.20 A paragraph in a general appropriation bill transferring available funds from a department to another department and directing the use to which those funds must be put was conceded and held to be legislation in violation of Rule XXI clause 2 as well as a reappropriation violating Rule XXI clause 6.

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

On Dec. 8, 1982,[17] during consideration in the Committee of the Whole of the Department of Defense appropriation bill, a point of order was sustained to a portion of that bill, as follows:

MR. [WILLIAM] NICHOLS [of Alabama]: Mr. Chairman, I have a point of order.

The portion of the bill to which the point of order relates is as follows:

Sec. 793. Of the funds available to the Department of Defense, $200,000 shall be transferred to the Department of Education which shall grant such sum to the Board of Education of the Highland Falls-Fort Montgomery, New York, central school district. The funds transferred by this section shall be in addition to any assistance to which the Board may be entitled under subchapter 1, chapter 13 of Title 20 United States Code. . . .

. . . I make a point of order against section 793, which provides appropriations without authorization, and constitutes legislation on an appropriation bill, which I believe to be in violation of clause 2 of rule XXI. . . .

MR. [JOSEPH P.] ADDABBO [of New York]: . . . Mr. Chairman, the section is subject to a point of order, but this is a special case. These are children of men and women at West Point who are attending the public schools. If these funds are not allocated, the school will close and there will be no school for these young people to attend. . . .

THE CHAIRMAN PRO TEMPORE:[18] The gentleman insists on his point of order, and the Chair is ready to rule.

The Chair will have to rule that, for the reasons conceded, the point of order to section 793 as stated by the gentleman from Alabama (Mr. Nichols) is sustained.

Indian Education; Mandating Expenditures Where Law Grants Discretion

§ 36.21 To a paragraph of a general appropriation bill containing funds for the operation of Indian programs, an amendment providing that Indian tribes shall receive at least 90 percent of the amount under an educational service contract for the ensuing fiscal year as was received under the existing contract (thereby mandating expenditures) was ruled out as legislation in violation of Rule XXI clause 2, where it was shown that existing law permitted the cancellation of such contracts upon a finding of unsatisfactory performance.

On June 25, 1976,[19] it was held that, where existing law confers discretionary authority upon a federal official to cancel contracts, an amendment to a general appropriation bill requiring the expenditure of a certain amount

17. 128 CONG. REC. 29449, 29450, 97th Cong. 2d Sess.

18. Don Bailey (Pa.).

19. 122 CONG. REC. 20557, 94th Cong. 2d Sess.

under those contracts (a "hold-harmless" provision) is legislation and subject to a point of order. On that day, during consideration in the Committee of the Whole of the Department of the Interior appropriation bill (H.R. 14231), a point of order was sustained against the following amendment:

MR. [WILLIAM A.] STEIGER of Wisconsin: Mr. Chairman, I offer an amendment.

(The portion of the bill to which the amendment relates is as follows:)

For expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States and other organizations, including payment (in advance or from date of admission), of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools . . . and for the general administration of the Bureau of Indian Affairs, including such expenses in field offices, $602,610,000, of which not to exceed $32,952,000 for assistance to public schools shall remain available for obligation until September 30, 1978; and includes expenses necessary to carry out the provisions of sections 8 and 19(a) of Public Law 93–531, $2,040,000 to remain available until expended, of which not more than $250,000 shall be available for payments pursuant to section 8(e) of said Act: *Provided*, That the Secretary of the Interior is directed, upon the request of any tribe, to enter into a contract or contracts with any tribal organization of any such tribe for the provision of law enforcement, if such contract proposal meets the criteria established by Public Law 93–638.

The Clerk read as follows:

Amendment offered by Mr. Steiger of Wisconsin: Page 18, line 1, after "1978" insert: "(*Provided, however,* That no Indian tribe, tribal organization, or State education agency having a contract for educational services with the Secretary of the Interior under title I of the Indian Self-Determination and Education Assistance Act shall receive an amount under such contract during the fiscal year ending September 30, 1977, which is less than 90 per centum of the amount received under such contract during the fiscal year ending June 30, 1976, and the transitional quarter ending September 30, 1976)."

MR. [SIDNEY R.] YATES [of Illinois]: . . . Mr. Chairman, I raise a point of order against the amendment offered by the gentleman of Wisconsin. Mr. Chairman, Mr. Steiger's amendment requires the Secretary of the Interior to enter into contracts in fiscal year 1977 for educational services which are not less than 90 percent of the amount received under contract in fiscal year 1976. This amendment changes existing law and is legislation on an appropriation bill.

Section 109 of title I of Public Law 93–638, the Indian Self Determination and Education Assistance Act allows the Secretary of Interior to cancel contracts when he determines that the Tribal organization's performance is not satisfactory. This amendment precludes the Secretary from cancelling any fiscal year 1976 contract and states they must be funded in fiscal year 1977 at not less than 90 percent of the fiscal year 1976 level. . . .

MR. STEIGER of Wisconsin: . . . Mr. Chairman, the amendment is nothing more than a proviso which would restrict what would happen under the

Johnson-O'Malley Act. It is similar in concept and in language to a provision that was in last year's appropriation bill, where a hold-harmless provision was, in fact, provided for very similar to this provision.

It does seem to me that when we attempt, as this does, simply to restrict within the framework of the Johnson-O'Malley Act and the framework of the funds under this bill, that it is not, in fact, legislation. It does not create any additional responsibility for the Bureau of Indian Affairs and is simply a clarification of what could happen when we go down this road. . . .

THE CHAIRMAN:[20] The Chair is prepared to rule.

The point of order made by the gentleman from Illinois (Mr. Yates) that the amendment constitutes legislation on an appropriation bill appears to be well taken. The Chair has examined section 109 of Public Law 93–638.

The amendment definitely does not amount to a limitation of funds in the pending bill. It is legislation on an appropriation bill. The fact that it appeared in a prior appropriation act would not protect the amendment at this time . . . and the Chair must sustain the point of order.

Elementary Education; "Hold Harmless" Provision Mandating Expenditure Level

§ 36.22 A "hold harmless" proviso in the education division appropriation bill, the effect of which was to prevent states from receiving less in the next fiscal year than they had received in the current fiscal year, there being no similar provision in the authorizing legislation, was conceded to be legislation and ruled out.

On Apr. 16, 1975,[1] language in a general appropriation bill providing that grants to be paid to states for certain elementary and secondary school aid during fiscal 1976 shall not be less than amounts available for that purpose in the preceding fiscal year was conceded to change the ratable reduction formula in existing law and was ruled out as legislation in violation of Rule XXI clause 2.[2] The provision in question and point of order were as follows:

The Clerk read as follows:

Provided further, That the amount made available to each State from the sum heretofore appropriated for the fiscal year 1976 or from the sum appropriated herein for the fiscal year 1977 for title IV, part C of the Elementary and Secondary Education Act shall not be less than the amount made available for comparable purposes for fiscal year 1975.

MR. [JOSEPH P.] ADDABBO [of New York]: Mr. Chairman, I raise a point of

20. Walter Flowers (Ala.).

1. 121 CONG. REC. 10357, 94th Cong. 1st Sess.

2. Such language, in effect, mandates expenditures and is thus subject to a point of order. See also *Deschler's Procedure,* Ch. 26, §§ 16.4, 16.5.

order that the language as it appears on page 3, line 1, through line 6, is legislation on an appropriation bill. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: . . . This is what is sometimes referred to as the "hold harmless" provision, and the effect, of course, of this language is simply to prevent the reductions in State grants from last year. I will make that very clear. I will say the formula for making these distributions will certainly change under that new consolidated program enacted last year, and there are about 20 States now that will receive less under the so-called new consolidated program than they received under the previous program.

The language in the bill was an attempt to remedy that very situation. This is the effect of the language.

Of course, unfortunately, under title IV, part C, of the Elementary and Secondary Education Act it does not specifically authorize a "hold harmless" provision. We will have to concede the point of order, but this is just so the Members will know.

THE CHAIRMAN:[3] The gentleman from Pennsylvania concedes the point of order, and the Chair sustains the point of order. Therefore, the language appearing on page 3, lines 1 through 6, is stricken from the bill.

§ 37. Grant or Restriction of Contract Authority

The precedents in this section, for the most part, pre-date the Congressional Budget Act of 1974. Section 401(a) of that act (Pub. L. No. 93–344) prohibits the inclusion of new contract, spending or borrowing authority in legislative bills unless such authority is limited to the extent or in amounts provided in appropriation acts. Therefore, since the enactment of that law, the inclusion of proper limiting language in a general appropriation bill, if specifically permitted by law, would not render that language subject to a point of order under Rule XXI clause 2, since it would no longer "change existing law."

Grant of Contract Authority

§ 37.1 Language in a general appropriation bill authorizing a governmental agency to enter into contracts was held to be legislation and not in order.

On Jan. 18, 1940,[4] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7922), a point of order was raised against the following provision:

The Clerk read as follows:

In addition to the contract authorizations of $115,000,000 contained in the Third Deficiency Appropriation Act, fiscal year 1937, and

3. James C. Wright, Jr. (Tex.).

4. 86 CONG. REC. 508, 509, 76th Cong. 3d Sess.

$230,000,000 in the Independent Offices Appropriation Act, 1940, the Commission is authorized to enter into contract for further carrying out the provisions of the Merchant Marine Act, 1936, as amended, in an amount not to exceed $150,000,000.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph on the ground that it is legislation on an appropriation bill. I refer to the paragraph beginning in line 22, page 71, and ending in line 3, page 72.

MR. [SCHUYLER OTIS] BLAND [of Virginia]: Mr. Chairman, I desire to be heard upon the point of order. . . .

MR. TABER: Mr. Chairman, there is something to say on the point of order. Almost every one of the sections that has been read specifically says "out of available funds." The general situation is that these contracts cannot be entered into without specific authority, and those things are not provided for in the general legislation.

THE CHAIRMAN:[5] The Chair is ready to rule.

The gentleman from New York [Mr. Taber] makes the point of order that the paragraph now under consideration is legislation on an appropriation bill. Of course, it is well known that the United States Maritime Commission has authority under the law to enter into contracts. Assuming that to be true, what would be the purpose in that Commission having authority under an appropriation bill to enter into contracts, unless it was for some new purpose?

An almost similar proposition of this kind came up on the second deficiency bill on April 28, 1937, at which time the Committee of the Whole was presided over by Mr. Vinson, of Kentucky, when an amendment was offered dealing with the Tennessee Valley Authority. The Chair, at that time, construed it to be legislation on an appropriation bill. The present occupant of the chair so construes it, and sustains the point of order.

5 Lindsay C. Warren (N.C.).

§ 37.2 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 reappropriating balance of $60,000 previously appropriated for preparation of plans and specifications, to be available without regard to the Classification 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,[6] 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 following provision:

The Clerk read as follows:

Not to exceed $350,000 of the unexpended balance of the appropria-

6. 84 CONG. REC. 3923, 76th Cong. 1st Sess.

tion 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 in 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 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.]

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.

Grant of Contract and Obligational Authority, Tennessee Valley Authority

§ 37.3 Although under existing law it may be in order to appropriate money for a certain object, it is not in order to grant authority to incur obligations and enter into contracts for the acquisition of such objects on an appropriation bill.

On Apr. 28, 1937,[8] during consideration in the Committee of the Whole of the second deficiency appropriation bill, a point of order was raised against the following provision:

The Clerk read as follows:

TENNESSEE VALLEY AUTHORITY

For the purpose of carrying out the provisions of the act entitled "The Tennessee Valley Authority Act of 1933", approved May 18, 1933 (U.S.C., title 16, ch. 12a), as amended by the act approved August 31, 1935 (49 Stat. 1075–1081), including

7. Claude V. Parsons (Ill.).

8. 81 CONG. REC. 3909–11, 75th Cong. 1st Sess.

the continued construction of Pickwick Landing Dam, Guntersville Dam, Chickamauga Dam, and Hiwassee Dam, and the continuation of preliminary investigations as to the appropriate location and type of a dam on the lower Tennessee River, and the acquisition of necessary land, the clearing of such land, relocation of highways, and the construction or purchase of transmission lines and other facilities, and all other necessary works authorized by such acts, and for printing and binding, law books, books of reference, newspapers, periodicals, purchase, maintenance, and operation of passenger-carrying vehicles, rents in the District of Columbia and elsewhere, and all necessary salaries and expenses connected with the organization, operation, and investigations of the Tennessee Valley Authority, and for examination of estimates of appropriations and activities in the field, fiscal year 1938, $40,166,270: *Provided,* That this appropriation and any unexpended balance on June 30, 1937, in the "Tennessee Valley Authority fund, 1937", and the receipts of the Tennessee Valley Authority from all sources during the fiscal year 1938 (except as limited by sec. 26 of the Tennessee Valley Authority Act of 1933, as amended), shall be covered into and accounted for as one fund to be known as the "Tennessee Valley Authority fund, 1938", to remain available until June 30, 1938, and to be available for the payment of obligations chargeable against the "Tennessee Valley Authority fund, 1937": [*Provided further,* That in addition to the amount herein appropriated, the Tennessee Valley Authority is hereby authorized to incur obligations and enter into contracts for the procurement of equipment to be installed in dams and power-houses in an amount not in excess of $4,000,000, and this action shall be deemed a contractual obligation of the Tennessee Valley Authority and the United States for payment of the cost thereof.]

MR. [BERTRAND H.] SNELL [of New York]: Mr. Chairman, I make a point of order against the proviso on page 9, beginning with line 7, down to the end of line 14, on the ground it is legislation on an appropriation bill.

THE CHAIRMAN:[9] Does the gentleman from Virginia desire to be heard?

MR. [Clifton A.] WOODRUM [of Virginia]: Mr. Chairman, there may be merit in the gentleman's point of order, but I call his attention to the fact if the point of order is sustained and that fund is cut out, the gross amount of the bill, $40,000,000, will have to be increased by $4,000,000 if the Tennessee Valley Authority is to buy equipment and machinery for these dams under construction. Of course, I am frank to admit I am speaking to the merits of the proposition and not to the point of order. This $4,000,000 is not an appropriation. It is an authorization for them to enter into contracts for equipment in connection with these dams that will be constructed in the future. They are long-time contracts for machinery that has to be built ahead of time. If we cut out this item, they cannot buy the equipment for the dams which we have spent millions of dollars to construct, or else we have to appropriate the money and make it available to them. . . .

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

The Tennessee Valley Authority Act provides authority for the appropria-

9. Fred M. Vinson (Ky.).

tion contained in this paragraph. However, the language in the proviso authorizes the Tennessee Valley Authority to enter into certain contracts and to incur certain obligations. The Chair rules that the proviso is legislation upon an appropriation bill, and therefore sustains the point of order made by the gentleman from New York.

§ 37.4 Although under existing law it may be in order to appropriate money for a certain object it is not in order to grant authority to incur obligations and enter into contracts for the acquisition of such object on an appropriation bill: language in a general appropriation bill authorizing the Tennessee Valley Authority to incur obligations and enter into contracts was held to constitute legislation and therefore not in order.

On Feb. 8, 1939,[10] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 3743), a point of order was raised against the following provision:

The Clerk read as follows:

TENNESSEE VALLEY AUTHORITY

For the purposes of carrying out the provisions of the act entitled "The Tennessee Valley Authority Act of 1933," approved May 18, 1933, as amended by the act approved August 31, 1935 (16 U.S.C., ch. 12a) . . . and the acquisition of necessary land . . . and all other necessary works authorized by such acts . . . and for examination of estimates of appropriations and activities in the field, fiscal year 1940, $39,000,000: *Provided*, That this appropriation and any unexpended balance on June 30, 1939, in the "Tennessee Valley Authority fund, 1939," and the receipts of the Tennessee Valley Authority from all sources during the fiscal year 1940 (except as limited by sec. 26 of the Tennessee Valley Authority Act of 1933, as amended), shall be covered into and accounted for as one fund to be known as the "Tennessee Valley Authority fund, 1940", to remain available until June 30, 1940, and to be available for the payment of obligations chargeable against the "Tennessee Valley Authority fund, 1939," and for contractual obligations for the procurement of equipment as authorized in the Independent Offices Appropriation Act, fiscal year 1939: *Provided further*, That in addition to the amount herein appropriated, the Tennessee Valley Authority is hereby authorized to incur obligations and enter into contracts for the procurement of equipment to be installed in dams and powerhouses in an amount not in excess of $4,000,000, and this action shall be deemed a contractual obligation of the Tennessee Valley Authority and the United States for payment of the cost thereof. . . .

MR. [J. WILLIAM] DITTER [of Pennsylvania]: Mr. Chairman, I make the point of order that, starting with line 17, page 48, legislation is provided for granting authority to the Tennessee Valley Authority in excess of that which it presently has by statutory law. There is no existing law providing for the authority that would be exer-

10. 84 CONG. REC. 1239, 76th Cong. 1st Sess.

cised by the T.V.A. under this provision, and since it is legislation attached to an appropriation bill I make a point of order against the entire paragraph.

MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, this language was carried in the appropriation act last year, but the gentleman is correct. It is subject to a point of order, and I concede the point of order. I offer the paragraph with that portion eliminated.

THE CHAIRMAN:[11] The Chair is ready to rule.

A similar point of order as indicated by the gentleman from Virginia [Mr. Woodrum] was passed upon by Chairman Vinson, of Kentucky, on the 28th of April 1937, to the effect that language in a general appropriation bill authorizing the T.V.A. to incur obligations and enter into contracts was held to be legislation and not in order.

In accordance with that ruling, the Chair sustains the point of order made by the gentleman from Pennsylvania [Mr. Ditter].

Contract Authority Preceding Appropriation

§ 37.5 Language in a general appropriation bill authorizing an executive officer to enter into contracts where the money for such contracts has not been appropriated was held to be legislation and not in order.

On May 14, 1937,[12] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 6958), a point of order was raised against the following provision:

The Clerk read as follows:

For the acquisition of lands, interest in lands, water rights and surface rights to lands, and for expenses incident to such acquisition, in accordance with the provisions of the act of June 18, 1934 (48 Stat., p. 985), including personal services, purchase of equipment and supplies, and other necessary expenses, $900,000, together with the unexpended balance of the appropriation for this purpose for the fiscal year 1937, of which not to exceed $20,000 shall be available for personal services in the District of Columbia: *Provided*, That within the States of Arizona, New Mexico, and Wyoming no part of said sum shall be used for the acquisition of lands outside of the boundaries of existing Indian reservations: *Provided further*, That in addition to the amount herein appropriated the Secretary of the Interior may also incur obligations, and enter into contracts for the acquisition of additional land, not exceeding a total of $500,000, and his action in so doing shall be deemed a contractual obligation of the Federal Government for the payment of the cost thereof, and appropriations hereafter made for the acquisition of land pursuant to the authorization contained in the act of June 18, 1934, shall be available for the purpose of discharging the obligation or obligations so created.

Mr. [J. William] Ditter [of Pennsylvania] and Mr. [Cassius C.] Dowell [of Iowa] rose.

MR. DITTER: Mr. Chairman, a point of order.

11. Fritz G. Lanham (Tex.).

12. 81 CONG. REC. 4595, 75th Cong. 1st Sess.

THE CHAIRMAN:[13] The gentleman will state it.

MR. DITTER: Mr. Chairman, I make the point of order against the entire paragraph that it is legislation on an appropriation bill. The particular portion starting with the words "*Provided further*" is distinctly legislative in character, and, being legislation, it kills the paragraph. . . .

THE CHAIRMAN: The gentleman from Pennsylvania makes a point of order against the paragraph appearing on page 21, beginning in line 9.

Under existing law executive officers of the Government have the authority to enter into contracts where money has already been appropriated. Obviously, this is for the purpose of allowing executive officers to enter into contracts where the money has not been appropriated.

Therefore this is legislation on an appropriation bill, not authorized under the rules of the House, and the Chair sustains the point of order against the entire paragraph.

Authority to Make Binding Grants and Contracts as Obligations on Future Appropriations

§ 37.6 An appropriation to permit the Surgeon General, upon the recommendation of the National Advisory Council, to approve applications for research and training grants, including grants for drawing plans, erection of buildings, and acquisition of land therefor, not to exceed a total of $3 million was held to be authorized by section 405 of the Public Health Service Act, but the inclusion of a provision for contract authorization beyond the current fiscal year was held to constitute legislation.

On Apr. 26, 1950,[14] the Committee of the Whole was considering H.R. 7786, the Labor Department and Federal Security Agency chapter of the general appropriation bill for 1951. At one point the Clerk read as follows:

Amendment offered by Mr. [Frank B.] Keefe [of Wisconsin]: On page 139, line 18, strike out the period at the end of the paragraph and insert in lieu thereof the following: "; and in addition to the amount appropriated herein, the Surgeon General is authorized, upon the recommendation of the National Advisory Cancer Council, to approve applications for research and training grants, including grants for drawing plans, erection of buildings, and acquisition of land therefor, not to exceed a total of $3,000,000 for periods beyond the current fiscal year, and such grants shall, if approved during the current fiscal year, constitute a contractual obligation of the Federal Government."

MR. [CHRISTOPHER C.] MCGRATH [of New York]: Mr. Chairman, I make a

13. Jere Cooper (Tenn.).

14. 96 CONG. REC. 5799, 81st Cong. 2d Sess.

point of order. I raise the point of order that this is legislation on an appropriation bill; and, further, that the basic legislation does not authorize contract authorizations. . . .

MR. KEEFE: Mr. Chairman, the purpose of the amendment is to give contractual authority for cancer research construction grants. The basic authorization for construction grants is found in section 405 of the Public Health Service Act, as amended, which reads as follows:

> Appropriations to carry out the purposes of this title, cancer, shall be available for acquisition of land, or the erection of buildings only if so specified.

Under that language, Mr. Chairman, the Congress has, in identical language as in the amendment submitted by the gentleman from Wisconsin, accepted appropriations, and appropriations have been made with the identical language in fiscal years 1948 and 1949 appropriation bills. I think the language is certainly broad enough to authorize this amendment.

THE CHAIRMAN:[15] Does the gentleman from Rhode Island desire to be heard on the point of order?

MR. [JOHN E.] FOGARTY [of Rhode Island]: Yes, I do, Mr. Chairman.

The appropriation bill passed a year ago, on page 175, included practically the same language, it seems to me, when we said at that time:

> And in addition to the amount herein, the Surgeon General is authorized, upon the recommendation of the National Advisory Cancer Council, to approve applications for research and training grants, including grants for drawing plans, erection of buildings, and acquisition of land therefor, not to exceed a total of $6,000,000, for periods beyond the current fiscal year, and such grants shall, if approved during the current fiscal year, constitute a contractual obligation on the Federal Government.

It seems to me that this language and similar language having been in the bill in past years, it would be in order at this time.

I go along with the views expressed by the gentleman from Wisconsin [Mr. Keefe] that this is in order at this time.

MR. KEEFE: May I say further, Mr. Chairman, it seems to me the basic act, under which this national cancer program was set up in the bill to which I have referred, constitutes basic authority for this proposal.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Wisconsin [Mr. Keefe] has offered an amendment which has been reported. The gentleman from New York [Mr. McGrath] has made a point of order against the amendment on the ground that it contains legislation on an appropriation bill, in violation of the rules of the House.

The Chair has examined the amendment and section 405 of the Public Health Service Act referred to by the gentleman from Wisconsin.

The Chair might comment on the statement made by the gentleman from Rhode Island to the extent of saying that although a provision of this nature may have been included in previous acts there may not have been any point of order made against it; so

15. Jere Cooper (Tenn.).

that could not be decisive in considering the question now presented.

The Chair is of the opinion that section 405 cited by the gentleman from Wisconsin does constitute legislative authority for the appropriation. The Chair invites attention to the fact that the pending amendment includes a provision for contract authorization beyond the present fiscal year, which, in the opinion of the Chair, would constitute legislation on an appropriation bill and would be in violation of the rules of the House. For that reason the Chair is compelled to sustain the point of order.

Restriction on Contract Authority Contained in Bill

§ 37.7 To a section of an Agriculture Department appropriation bill containing legislation authorizing the Secretary of Agriculture to make such additional commitments as may be necessary in order to provide full parity payments, an amendment providing that the payments shall not exceed an amount necessary to equal parity "when added to the market price and the payment made . . . for conservation . . . of agricultural land resources," was held a proper limitation restricting the availability of funds which did not add further legislation to that already contained in the bill.

On Mar. 9, 1942,[16] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill, the Clerk read the following provisions:

PARITY PAYMENTS

To enable the Secretary of Agriculture to make parity payments to producers of wheat, cotton, corn (in the commercial corn-producing area), rice, and tobacco pursuant to the provisions of section 303 of the Agricultural Adjustment Act of 1938, there are hereby reappropriated the unobligated balances of the appropriations made under this head by the Department of Agriculture Appropriation Acts for the fiscal years 1941 and 1942, to remain available until June 30, 1945, and the Secretary is authorized and directed to make such additional commitments or incur such additional obligations as may be necessary in order to provide for full parity payments: . . . *Provided further,* That such payments with respect to any such commodity shall be made with respect to a farm in full amount only in the event that the acreage planted to the commodity for harvest on the farm in 1943 is not in excess of the farm acreage allotment established for the commodity under the agricultural conservation program, and, if such allotment has been exceeded, the parity payment with respect to the commodity shall be reduced by not more than 10 percent for each 1 percent, or fraction thereof, by which the acreage planted to the commodity is in excess of such allotment. The Secretary

16. 88 CONG. REC. 2124, 2125, 77th Cong. 2d Sess.

may also provide by regulations for similar deductions for planting in excess of the acreage allotment for the commodity on other farms or for planting in excess of the acreage allotment or limit for any other commodity for which allotments or limits are established under the agricultural conservation program on the same or any other farm.

An amendment was offered, as follows:

Amendment offered by Mr. Taber [as subsequently modified by unanimous consent]: On page 77, line 5, after the word "farm," strike out the period, insert a colon and a proviso as follows: "*Provided further,* That parity payments, under the authority of this paragraph, shall not exceed such amount as is necessary to equal parity when added to the market price and the payment made or to be made for conservation and use of agricultural land resources under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act approved February 29, 1936, as amended; and the provisions of the Agricultural Adjustment Act of 1938 as amended; *Provided further,* That the total expenditures made and the contracts entered into in pursuance of this paragraph shall not exceed in all $212,000,000.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I submit a point of order against the amendment proposed by the gentleman from New York [Mr. Taber]. . . .

MR. [JOHN] TABER: . . . The bill, on page 75, provides that the Secretary is authorized and directed to make such additional commitments or incur such additional obligations as may be necessary in order to provide for full parity payments.

That is legislation. It is brought in order under the rule. The language that I have submitted is clearly germane to that provision because it provides a method. It is purely a limitation to the payments that shall be made for parity under the authority of this paragraph. For this reason it is clearly germane and it is clearly in order.

It would be in order if there was no legislation in the paragraph because it is a pure limitation.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, may I be heard?

THE CHAIRMAN:[17] The Chair will hear the gentleman from South Dakota.

MR. CASE of South Dakota: Mr. Chairman, may I make the observation that if the proposal is clearly a limitation, even though it embraces some legislation, it is in order under the Holman rule.

THE CHAIRMAN: The Chair would like to ask the gentleman from New York [Mr. Taber] if there are any funds other than those appropriated in this bill to be used for parity payments?

MR. TABER: None.

THE CHAIRMAN: Just the funds in this bill?

MR. TABER: That is correct.

THE CHAIRMAN: The amendment the gentleman is offering is to limit the funds offered in this bill?

MR. TABER: That is my intention. I think perhaps I ought to insert after the word "payments" in the third line

17. Robert Ramspeck (Ga.).

the words "under the authority of this paragraph." With that in, it would clearly be in order.

THE CHAIRMAN: Does the gentleman from New York [Mr. Taber] ask to modify his amendment?

MR. TABER: I do, Mr. Chairman.

THE CHAIRMAN: The gentleman from New York asks unanimous consent to modify his amendment by inserting after the word "payments" "under the authority of this paragraph." Is there objection to the request of the gentleman from New York [Mr. Taber]?

There was no objection.

THE CHAIRMAN: The gentleman from New York [Mr. Taber] has offered an amendment, on page 77, line 5, undertaking to provide further limitations on the payment and the administration of parity payments, to which the gentleman from Georgia has made a point of order.

It seems to the Chair that the language of the amendment offered by the gentleman from New York constitutes a limitation upon the funds appropriated by this paragraph or proposed to be appropriated by this paragraph and does not constitute legislation.

The Chair therefore overrules the point of order.

Secretary of the Interior—Contracts to Acquire Land Before Appropriation Therefor

§ 37.8 Language in a general appropriation bill authorizing the Secretary of the Interior to enter into contracts for the acquisition of additional land and making future appropriations available to liquidate those obligations was held legislation on an appropriation bill and not in order.

On Mar. 1, 1938,[18] during consideration in the Committee of the Whole of the Interior Department appropriation bill, a point of order was raised against the following provision:

The Clerk read as follows:

For the acquisition of lands, interest in lands, water rights and surface rights to lands, and for expenses incident to such acquisition, in accordance with the provisions of the act of June 18, 1934 (48 Stat. 985), including personal services, purchase of equipment and supplies, and other necessary expenses, $500,000, together with the unexpended balance of the appropriation for this purpose for the fiscal year 1938, of which not to exceed $20,000 shall be available for personal services in the District of Columbia: *Provided,* That within the States of Arizona, Colorado, New Mexico, and Wyoming no part of said sum shall be used for the acquisition of land outside of the boundaries of existing Indian reservations: *Provided further,* That in addition to the amount herein appropriated the Secretary of the Interior may also incur obligations and enter into contracts for the acquisition of additional land, not exceeding a total of $500,000, and his action in so doing shall be deemed a contractual obligation of the Federal Government for the payment of the cost thereof, and appropriations hereafter made for the acquisition of land pursuant to the au-

18. 83 CONG. REC. 2636, 75th Cong. 3d Sess.

thorization contained in the act of June 18, 1934, shall be available for the purpose of discharging the obligation or obligations so created.

MR. [John] TABER [of New York]: Mr. Chairman, I make the point of order against the language contained in the proviso on page 24, line 23, on the ground that it is legislation on an appropriation bill and is not authorized by law. . . .

THE CHAIRMAN:[19] The Chair is ready to rule.

This proviso, beginning in line 23, on page 24, and extending through line 8, on page 25, authorizes the Secretary of the Interior to incur obligations and to enter into contracts for the acquisition of additional land not exceeding a total of $500,000.

Practically the same language was ruled upon last year when the Interior Department bill was before the Committee of the Whole and the bill contained a similar proviso. This proviso at that time was held to be subject to the point of order that it was legislation on an appropriation bill.

The Chair, therefore, sustains the point of order to this proviso.

—*Authority to Incur Obligations and Complete Construction*

§ 37.9 To an appropriation bill an amendment authorizing the Secretary of the Interior to incur obligations and enter into contracts for certain construction work was held to be legislation.

On Apr. 6, 1954,[20] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 8680), a point of order was raised against the following amendment:

MR. [ANTONIO M.] FERNANDEZ [of New Mexico]: Mr. Chairman, I offer an amendment which is at the desk.

The Clerk read as follows:

Amendment offered by Mr. Fernandez: On page 24, line 21, strike out "$8,056,099" and insert "$8,556,099 and, in addition, the Secretary is hereby authorized to incur obligations and enter into contracts, not exceeding $950,000, to complete the construction of a public-use building and appurtenant facilities in Carlsbad Cavern National Park, N. Mex."

MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, I make a point of order against the amendment: That it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[1] The Chair is ready to rule.

The Chair calls the attention of the gentleman from New Mexico to the following language in his proposed amendment: "and, in addition, the Secretary is hereby authorized to incur obligations and enter into contracts, not exceeding $950,000 to complete the construction of a public use building and appurtenant facilities in Carlsbad Caverns National Park, N. Mex.," which is clearly legislation upon an appropriation bill.

The Chair sustains the point of order.

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19. Marvin Jones (Tex.).

20. 100 CONG. REC. 4721, 4722, 83d Cong. 2d Sess.

1. Charles B. Hoeven (Iowa).

—*Limitation on Funds to Pay Contract Approved Pursuant to Law*

§ 37.10 An appropriation in the Interior Department appropriation bill for the payment of an Indian agent employed under a contract approved by the Secretary was held to be authorized by the Snyder Act and to be merely descriptive of contract authority contained in existing law and therefore not legislative in character.

On May 14, 1937,[2] the Committee of the Whole was considering H.R. 6958. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> Utah: Uintah and Ouray, $7,100, of which amount not to exceed $3,000 shall be available for the payment of an agent employed under a contract, approved by the Secretary of the Interior.
>
> MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I make the point of order on the paragraph beginning in line 11 and ending in line 14 of page 57 that there is no authorization in law for the appropriation recommended. . . .
>
> THE CHAIRMAN:[3] The Chair is prepared to rule.

The gentleman from Massachusetts [Mr. Wigglesworth] makes a point of order against the language appearing on page 57, lines 11 to 14, inclusive, on the ground it is legislation on an appropriation bill and not authorized by existing law.

The Chair has examined the statement in the hearings to which the gentleman from Massachusetts has invited attention, and especially is impressed by the following statement contained in the hearings:

> The contract was approved on March 2, 1937, by the Commissioner of Indian Affairs and the Secretary of the Interior in accordance with sections 2103 and 2106 of the Revised Statutes of the United States.

This would clearly indicate to the Chair that the law to which reference is here made would be authority for the contract. It appears that the contract was made and the discharge of the duty entered upon under the provisions of the contract.

Attention is also invited again to the so-called Snyder Act which, among other things, provides for the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees. The language of the bill to which the point of order is directed provides for the sum of $7,100, of which amount not to exceed $3,000 shall be available for the payment of an agent employed under a contract approved by the Secretary of the Interior.

The Chair is of the opinion that this provision is clearly within the scope of existing law to which attention has been invited, and therefore is not legislation on an appropriation bill in viola-

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2. 81 CONG. REC. 4605, 75th Cong. 1st Sess.

3. Jere Cooper (Tenn.).

tion of the rules of the House. The Chair overrules the point of order.

—Granting Authority to Compromise Claims and Negotiate Health Contracts for Employees

§ 37.11 Language in a general appropriation bill providing in part an appropriation for payment of damages caused to the owners of lands by reason of the operations of the United States in the construction of irrigation works which may be "compromised by agreement between the claimants and the Secretary of the Interior, or such officers as he may designate," was held to constitute legislation.

On Mar. 1, 1938,[4] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. At one point, points of order were directed to portions of the following paragraph:

> Administrative provisions and limitations: For all expenditures authorized by the act of June 17, 1902, and acts amendatory thereof or supplementary thereto, known as the reclamation law, and all other acts under which expenditures from said fund are authorized, including . . . payment of damages caused to the owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of irrigation works, and which may be compromised by agreement between claimant and the Secretary of the Interior, or such officers as he may designate . . . *Provided,* That the Secretary of the Interior in his administration of the Bureau of Reclamation is authorized to contract for medical attention and service for employees and to make necessary pay-roll deductions agreed to by the employees therefor. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph that it is legislation on an appropriation bill and contains items not authorized by law.

I call the attention of the Chair to the language on page 72, line 22, "examination of estimates for appropriations in the field," and at the bottom of the page, "for lithographing, engraving, printing, and binding," and in line 20 of the same page, "for photographing and making photographic prints," and then at the top of page 73, "purchase of rubber boots for official use by employees," and in the middle of the page, at line 12, "and which may be compromised by agreement between the claimant and the Secretary of the Interior or such officers as he may designate," giving him authority to do things that the law does not authorize. . . .

THE CHAIRMAN:[5] The Chair is of opinion that the paragraph is subject

4. 83 CONG. REC. 2655, 75th Cong. 3d Sess.

5. Marvin Jones (Tex.).

to the point of order for two reasons. First, page 73, line 12, after the word "works", the language—

> and which may be compromised by agreement between the claimant and the Secretary of the Interior, or such officers as he may designate.

Then, going down to the last line on page 73, after the colon, the language:

> *Provided*, That the Secretary of the Interior in his administration of the Bureau of Reclamation is authorized to contract for medical attention and services for employees and to make necessary pay-roll deductions agreed to by the employees therefor.

For these reasons the Chair sustains the point of order.

Institute for Inter-American Affairs; Contract Authority

§ 37.12 Language in a general appropriation bill authorizing the Institute of Inter-American Affairs, prior to June 30, 1953, to enter into contracts for the purposes of the Institute for Inter-American Affairs Act in an amount not to exceed $7 million was conceded to be legislation on an appropriation bill and was ruled out absent citation to the existing law authorizing inclusion of such limitation on contract authority in appropriation acts.

On Apr. 20, 1950,[6] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 7786), a point of order was raised against the following provision:

The Clerk read as follows:

THE INSTITUTE OF INTER-AMERICAN AFFAIRS

> For necessary expenses in carrying out the provisions of the Institute of Inter-American Affairs Act of August 5, 1947 [61 Stat. 780] as amended by the act of September 3, 1949 (Public Law 283), including purchase (not to exceed 18 for replacement only) and hire of passenger motor vehicles, $5,500,000, to remain available until expended; and in addition, the Institute is authorized, prior to June 30, 1953, to enter into contracts for the purposes of such act, as amended, in an amount not to exceed $7,000,000.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the language beginning on line 1, page 46, "and in addition, the Institute is authorized, prior to June 30, 1953, to enter into contracts for the purposes of such act, as amended, in an amount not to exceed $7,000,000," on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN:[7] Does the gentleman from New York [Mr. Rooney] desire to be heard on the point of order?

MR. [JOHN J.] ROONEY: Mr. Chairman, I regret that the gentleman from New York [Mr. Taber] made the point

6. 96 CONG. REC. 5480, 81st Cong. 2d Sess.
7. Jere Cooper (Tenn.).

of order against the language beginning in line 1, page 46. However, there is nothing that the Committee can do about it, because I feel that the Chair must sustain his point of order. However, there will be nothing gained insofar as economy is concerned, because this amount will be added to the bill either in cash or in contract authority when it gets to the Senate.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from New York [Mr. Taber] makes the point of order against the language quoted by him, and the gentleman from New York [Mr. Rooney] concedes the point of order; therefore, the Chair sustains the point of order.[8]

Authority to Contract Without Advertising

§ 37.13 While 41 USC § 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 appropriation bill authorizing the Congressional Budget Office to contract without regard to that provision was held to constitute 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.

On Nov. 13, 1975,[9] during consideration in the Committee of the Whole of H.R. 10647 (a supplemental appropriation bill), a point of order was sustained against the following provision:

The Clerk read as follows:

For salaries and expenses necessary to carry out the provisions of the Congressional Budget Act of 1974 (Public Law 93–344), $4,736,340: *Provided,* That none of these funds shall be available for the purchase or hire of a passenger motor vehicle: *Provided further,* That the Congressional Budget Office shall have the authority to contract without regard to the provisions of 41 U.S.C. 5. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I make a point of order against the language appearing on page 10, lines 20 through 22 which read:

Provided further, That the Congressional Budget Office shall have

8. Note: Pub. L. No. 81–283 gave the Institute authority within the limits of funds approved or specific contract authorizations thereinafter granted, to make contracts for periods not to exceed five years. The inclusion of contract authority in an appropriation bill would probably be allowed today, given such a provision in an authorization bill.

9. 121 CONG. REC. 36271, 94th Cong. 1st Sess.

the authority to contract without regard to the provisions of 41 U.S.C. 5.

Mr. Chairman, 41 United States Code 5 is a statutory requirement that requires all governmental agencies, in excess of $10,000 to publish and seek bids on the contract or purchase of goods and services. I submit that this is a statutory waiver written into an appropriation bill and is therefore legislation on an appropriation. . . .

MR. [BOB] CASEY [of Texas]: . . . Mr. Chairman, with reference to the point of order raised by the gentleman from Maryland (Mr. Bauman) let me state that unless this language is in this bill this agency cannot contract for computer services. I think it is entirely in order for the purposes of carrying out the duties of the office. It is not requiring any additional effort on anybody else's part. In other words, it is not legislation as I consider it at all. It is existing law, and it requires this language in order for them to contract for services that they must have in the operation of their office.

THE CHAIRMAN:[10] The Chair is prepared to rule.

The Chair perceives that the gentleman from Maryland (Mr. Bauman) has made a point of order as to the language appearing in lines 20 through 22 on page 10 beginning with the words "Provided further." The same issue was before the committee and decided in 1940, on February 7—Record pages H1192–H1193—where Chairman Beam held that—

The language in a general appropriation bill which says "without regard to the Classification Act of 1923, as amended, and without regard to Section 3709, revised statutes, 41 U.S.C. 5," is legislation and is not in order on appropriation bill.

Accordingly, the point of order is sustained and the proviso will be stricken.

Environmental Protection Agency; Contract Authority for Review by National Academy of Sciences

§ 37.14 A paragraph in a general appropriation bill containing funds to enable the Environmental Protection Agency to contract with the National Academy of Sciences to evaluate the performance of the EPA was conceded to contain new contract authority not in existing law and to violate Rule XXI clause 2.

On June 15, 1973,[11] during consideration in the Committee of the Whole of H.R. 8619 (the agriculture-environmental and consumer protection appropriation bill) a point of order was raised against the following provision:

The Clerk read as follows:

For an amount to provide for a complete and thorough review, analysis, and evaluation of the Environmental Protection Agency, its programs, its accomplishments and its

10. William L. Hungate (Mo.).

11. 119 CONG. REC. 19852, 93d Cong. 1st Sess.

failures, and to recommend such changes, cancellations, or additions as necessary, to be conducted under contract with the National Academy of Sciences, $5,000,000, to remain available until expended.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, at this point I make a point of order against the language appearing at lines 20 through 24 on page 32, and on through the first two lines of page 33.

The reason for my point of order, Mr. Chairman, is twofold. First, this is legislation in an appropriation bill; and it constitutes an appropriation of funds not previously authorized by law.

So that the language referred to is again violative of rule XXI, clause 2, and I would point out again, Mr. Chairman, that the rule should be so interpreted as to require strict compliance.

Mr. Chairman, I am quoting from page 466 of the Manual of the Rules of the House of Representatives, as follows:

> In the administration of the rule, it is the practice that those upholding an item of appropriation should have the burden of showing the law authorizing it.

Mr. Chairman, I would point out that neither the statute setting up the National Academy of Sciences affords the National Academy of Sciences the duty, responsibility, or power to investigate or to study EPA. For that reason, Mr. Chairman, I make this point of order.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make the additional point of order that the language in the paragraph appearing at the top of page 33, containing the words, "to remain available until expended," is also subject to a point of order. . . .

THE CHAIRMAN:[12] Does the Chair understand that the gentleman from Mississippi concedes the point of order?

MR. [JAMIE L.] WHITTEN [of Mississippi]: I do. And I beg the indulgence of the Chair that we may write an amendment to replace the section. . . .

THE CHAIRMAN: The point of order is sustained, and the language is stricken.

§ 38. Reimbursements

As used in this section, the term "reimbursements" refers to the use of generated proceeds to repay funds.[13] This section also addresses the consequences of provisions requiring repayments, refunds and other mechanisms generating funds from other than direct appropriations.

Refunds Credited to Current Appropriation

§ 38.1 Language in an appropriation bill for emergencies arising in the Diplomatic and

12. James C. Wright, Jr. (Tex.).

13. See also § 30 (Transfer of Funds Not Limited to Same Bill), supra. And see Ch. 25 § 3, supra, for discussion of reappropriations.

Consular Service providing that "all refunds, repayments, or other credits on account of funds disbursed under this head shall be credited to the appropriation for this purpose current at the time obligations are incurred or such amounts are received" was conceded and held to be legislation on an appropriation bill and not in order.

On Mar. 15, 1945,[14] 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:

> Emergencies arising in the Diplomatic and Consular Service: To enable the President to meet unforeseen emergencies arising in the Diplomatic and Consular Service, to be expended pursuant to the requirement of section 291 of the Revised Statutes (31 U.S.C. 107), $16,000,000, of which not to exceed $25,000 shall, in the discretion of the President, be available for personal services in the District of Columbia: *Provided*, That all refunds, repayments, or other credits on account of funds disbursed under this head shall be credited to the appropriation for this purpose current at the time obligations are incurred or such amounts are received.
>
> MR. [JOSEPH P.] O'HARA [of Minnesota]: Mr. Chairman, I make the point of order against the language contained in the paragraph, beginning in line 11—
>
> > That all refunds, repayments, or other credits on account of funds disbursed under this head shall be credited to the appropriation for this purpose current at the time obligations are incurred or such amounts are received—
>
> That it is legislation on an appropriation bill.
>
> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I concede the point of order.
>
> THE CHAIRMAN:[15] The point of order is sustained.

Crediting Proceeds From Sales

§ 38.2 A provision in a general appropriation bill that appropriations contained in the Act may be reimbursed, from the proceeds of sales of certain material and supplies, for expenditures incident to such sales, was conceded and held to be legislation on an appropriation bill and not in order.

On Mar. 29, 1938,[16] during consideration in the Committee of the Whole of the military appropriation bill (H.R. 9995), a point of order was raised against the following provision:

> The Clerk read as follows:

14. 91 CONG. REC. 2305, 79th Cong. 1st Sess.

15. Wilbur D. Mills (Ark.).

16. 83 CONG. REC. 4315, 4316, 75th Cong. 3d Sess.

Sec. 4. Appropriations contained in this act may be reimbursed from the proceeds of sales of old material, condemned stores, supplies, or other property of any kind on account of expenditures from such appropriations incident to the handling, preparation for sale, sale, and disposition of such property.

MR. [J. WILLIAM] DITTER [of Pennsylvania]: Mr. Chairman, I make the point of order against the section that it is legislation on an appropriation bill. If the chairman of the subcommittee requests me to withhold the point of order so that he may explain to the House the justification which he or his committee has for including this section in the bill I shall withhold the point of order for the time being. . . .

MR. [J. BUELL] SNYDER of Pennsylvania: Mr. Chairman, I concede the point of order is well taken.

THE CHAIRMAN:[17] The gentleman from Pennsylvania concedes the point of order to be well taken that this is legislation on an appropriation bill. The point of order is sustained.

§ 38.3 Language in an appropriation bill for maintenance and operation of air-navigation facilities, for the purchase of food and other subsistence supplies for resale to employees "the proceeds from such resales to be credited to the appropriation from which the expenditure for such supplies was made" was conceded and held to be legislation on an appropriation bill and not in order.

On Mar. 16, 1945,[18] 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:

The appropriations "Maintenance and operation of air-navigation facilities," Office of Administrator of Civil Aeronautics; "Salaries and expenses," Civil Aeronautics Board; and "Salaries and expenses," Weather Bureau, shall be available, under regulations to be prescribed by the Secretary, for furnishing to employees of the Civil Aeronautics Administration, the Civil Aeronautics Board, and the Weather Bureau in Alaska free emergency medical services by contract or otherwise and medical supplies, and for the purchase, transportation, and storage of food and other subsistence supplies for resale to such employees, [the proceeds from such resales to be credited to the appropriation from which the expenditure for such supplies was made;] and appropriations of the Civil Aeronautics Administration and the Weather Bureau, available for travel, shall be available for the travel expenses of appointees of said agencies from the point of engagement in the United States to their posts of duty at any point outside the continental limits of the United States or in Alaska.

MR. [ROBERT F.] JONES [of Ohio]: Mr. Chairman, a point of order. On page 75, line 3, the last word "the", all of line 4 and all of line 5. It is legislation on an appropriation bill and in violation of law.

17. Luther A. Johnson (Tex.).

18. 91 CONG. REC. 2376, 79th Cong. 1st Sess.

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

THE CHAIRMAN:[19] The point of order is sustained.

Commissary Revenue

§ 38.4 Language in a general appropriation bill providing that any part of the appropriation for salaries and expenses, penal and correctional institutions, shall be reimbursed from commissary earnings was conceded and held to be legislation on an appropriation bill and not in order.

On Mar. 16, 1945,[20] 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:

Salaries and expenses, penal and correctional institutions: . . . $13,300,000: *Provided*, That any part of the appropriations under this heading used for payment of salaries of personnel employed in the operation of prison commissaries shall be reimbursed from commissary earnings, and such reimbursement shall be in addition to the amounts appropriated herein. . . .

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make the point of order against the language on page 51, beginning with "Provided", in line 15. . . .

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

THE CHAIRMAN:[1] The point of order is sustained.

§ 38.5 Language in an appropriation bill for contingent expenses, foreign service, providing that "reimbursements incident to the maintenance of commissary service authorized . . . shall be credited to the appropriation for this purpose current at the time obligations are incurred or such amounts are received," was conceded and held to be legislation on an appropriation bill and not in order.

On Mar. 15, 1945,[2] 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:

Contingent expenses, Foreign Service: For stationery; blanks, record and other books; seals, presses, flags; signs; military equipment and supplies; repairs, alterations, preservation, and maintenance of

19. Wilbur D. Mills (Ark.).
20. 91 CONG. REC. 2366, 79th Cong. 1st Sess.

1. Wilbur D. Mills (Ark.).
2. 91 CONG. REC. 2304, 79th Cong. 1st Sess.

Government-owned and leased diplomatic and consular properties in foreign countries. . . . *Provided further,* That reimbursements incident to the maintenance of commissary service authorized under this head shall be credited to the appropriation for this purpose current at the time obligations are incurred or such amounts are received.

MR. [JOSEPH P.] O'HARA [of Minnesota]: Mr. Chairman, I make a point of order against the language in the proviso beginning on line 25, page 15, including all of lines 1, 2, 3, and 4 on page 16, on the ground that it is legislation on an appropriation bill.

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

THE CHAIRMAN:[3] The point of order is sustained.

Available for Administrative Expenses

§ 38.6 A provision in an appropriation bill making appropriations for the United States Housing Authority and providing "not to exceed $1,500,000 shall be available for such expenses incurred at the site and in connection with the construction of the United States Housing Authority non-Federal projects and shall be reimbursed in the discretion of the Administrator by the public housing agencies constructing such projects and such reimbursements shall be available for administrative expenses of the Authority," was conceded and held to be legislation and not in order on an appropriation bill.

On Mar. 15, 1939,[4] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 4852), the following proceedings took place:

UNITED STATES HOUSING AUTHORITY

Salaries and expenses . . . *Provided,* That of the $4,500,000 hereby made available for administrative expenses of the Authority, not to exceed $1,500,000 shall be available for such expenses incurred at the site and in connection with the construction of the United States Housing Authority non-Federal projects and shall be reimbursed in the discretion of the Administrator by the public housing agencies constructing such projects and such reimbursements shall be available for administrative expenses of the Authority: . . .

MR. [DUDLEY A.] WHITE of Ohio: Mr. Chairman, a point of order.

THE CHAIRMAN:[5] The gentleman will state it.

MR. WHITE of Ohio: . . . Then the language beginning in line 13, on page 14, the entire clause, which reads:

Provided, That of the $4,500,000 hereby made available for adminis-

3. Wilbur D. Mills (Ark.).

4. 84 CONG. REC. 2780, 76th Cong. 1st Sess.

5. Frank H. Buck (Calif.).

trative expenses of the Authority, not to exceed $1,500,000 shall be available for such expenses incurred at the site, and in connection with the construction, of the United States Housing Authority non-Federal projects, and shall be reimbursed, in the discretion of the Administrator, by the public housing agencies constructing such projects, and such reimbursements shall be available for administrative expenses of the Authority.

That is a delegation of authority. It enlarges the scope of the existing authority under the original law, and therefore the entire paragraph should be stricken out on these points of order. This is legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Oklahoma [MR. JOHNSON] desire to be heard?

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, we concede the points of order.

THE CHAIRMAN: The points of order are sustained.

Waiver of Reimbursement Requirements in Law

§ 38.7 Provisions in a paragraph of a general appropriation bill (1) authorizing the General Services Administration to acquire leasehold interests in property; (2) removing limitations imposed by law on the value of surplus strategic materials which may be transferred without reimbursement to the national stockpile; and (3) authorizing materials in certain stockpiles and inventories to be available without reimbursement for transfer to contractors as payment for expenses, were conceded to be legislation and were stricken from the bill.

On Aug. 1, 1973,[6] 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:

PROPERTY MANAGEMENT AND DISPOSAL SERVICE

OPERATING EXPENSES

For expenses, not otherwise provided for, necessary for carrying out the functions of the Administrator with respect to the utilization of excess property; the disposal of surplus property; the rehabilitation of personal property; the appraisal of real and personal property; the national stockpile established by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98–98h); the supplemental stockpile established by section 104(b) of the Agricultural Trade Development and Assistance Act of 1954 (68 Stat. 456, as amended by 73 Stat. 607); including services as authorized by 5 U.S.C. 3109 and reimbursement for security guard services, $33,000,000, to be derived from proceeds from transfers of excess property, disposal of surplus property, and sales of stockpile mate-

6. 119 CONG. REC. 27288, 27289, 93d Cong. 1st Sess.

rials: [*Provided,* That during the current fiscal year the General Services Administration is authorized to acquire leasehold interests in property, for periods not in excess of twenty years, for the storage, security, and maintenance of strategic, critical, and other materials in the national and supplemental stockpiles provided said leasehold interests are at nominal cost to the Government: *Provided further,* That during the current fiscal year there shall be no limitation on the value of surplus strategic and critical materials which, in accordance with section 6 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98e), may be transferred without reimbursement to the national stockpile:] *Provided further,* That during the current fiscal year materials in the inventory maintained under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061–2166), and excess materials in the national stockpile and the supplemental stockpile, the disposition of which is authorized by law, shall be available, without reimbursement, for transfer at fair market value to contractors as payment for expenses (including transportation and other accessorial expenses) of acquisition of materials, or of refining, processing, or otherwise beneficiating materials, or of rotating materials, pursuant to section 3 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98b), and of processing and refining materials pursuant to section 303(d) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093(d)): *Provided further,* That none of the funds available under this heading shall be available for transfer to any other account nor for the funding of any activities other than those specifically authorized under this heading.[7]

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, a point of order.

THE CHAIRMAN:[8] The gentleman will state it.

MR. DINGELL: Mr. Chairman, I rise again out of diligence to protect myself as to points of order.

At page 22, the first point of order is as to the words following the word "*Provided*" on page 22, line 6, down through the semicolon following the word "Government" at page 22, line 12.

I make the point of order, Mr. Chairman, together with another point of order on the same rule beginning with the words, "*Provided further*" down through the word "stockpile," at page 22, line 18, in that both of these provisos are violative of rule XXI, clause 2, and constitute legislation in an appropriation bill.

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

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, on the second point of order, I believe the gentleman does not intend to stop on line 22, does he? I believe he would have to go on to the end of the proviso.

MR. DINGELL: I intend to get the next proviso as soon as we dispose of these points of order.

MR. STEED: The gentleman stopped in the middle of a proviso.

MR. DINGELL: I am going to get the "*Provided further,*" next.

MR. STEED: There is no "*Provided further,*" next. This stops with the "supplemental stockpile" in line 22.

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7. This last proviso was deemed a proper limitation.

8. Richard Bolling (Mo.).

MR. DINGELL: In order, Mr. Chairman, to assist my good friend from Oklahoma, I will make another point of order against the language beginning on page 22, line 18, with "*Provided further,*" down through the conclusion of that "*Provided further,*" on page 23, line 7; and then I will make a further point of order against the "*Provided further,*" language on page 23, line 7, down through the end of line 10 on page 23; in that all of these provisos and "Provided furthers" do constitute violations of rule XXI, clause 2, and constitute legislation in an appropriation bill violation of the rules.

I again cite the requirement of the rules as set forth in the House rules, that the burden of establishing the soundness of an appropriation is upon the committee which offers it to the House, and I point out that that burden cannot be borne, and that these are violative of the rules, constituting legislation in an appropriation bill.

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

MR. STEED: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is conceded, and the point of order is sustained, and the language beginning with the word "*Provided*" on line 6, page 22, down through line 10, on page 23, ending with "this heading" is stricken.

MR. STEED: Mr. Chairman, the proviso was one starting on page 22 and going down to the word "stockpile" on line 18. That was the point of order made, against that language.

MR. DINGELL: Mr. Chairman, I beg to differ.

THE CHAIRMAN: The Chair believes the gentleman from Michigan made a point of order against the language in that proviso, the language in the second proviso of "*Provided further,*" and in the third proviso, beginning on line 18, "*Provided further,*" and then another "*Provided further,*" beginning on line 7, page 23.

In other words, the Chair was under the impression that the gentleman made points of order against all the provisions beginning with "*Provided,*" on page 22, line 6, through page 23, line 10.

MR. DINGELL: The Chair is correct.

THE CHAIRMAN: Which would have the effect of striking all the language the Chair just described?

MR. STEED: Mr. Chairman, the points of order made against the language are conceded down to line 7, page 23, but the language of that "*Provided further,*" is a simple limitation on an appropriation bill and is not subject to a point of order.

THE CHAIRMAN: The Chair agrees with the gentleman from Oklahoma.

The various points of order that are conceded are sustained, and that language is stricken. The language:

> *Provided further,* That none of the funds available under this heading shall be available for transfer to any other account nor for the funding of any activities other than those specifically authorized under this heading.

Which is a proper limitation and appears beginning in line 7, page 23, through line 10, remains in the bill, since the point of order has not been made against the entire paragraph.

Waived for Lands Not Producing Revenue

§ 38.8 A proposition in a general appropriation bill providing that reimbursement shall not be required for expenditures in connection with Indian lands for which no production or compensatory royalty accrues, or for expenditures in excess of 10 percent of such royalties accruing from mineral-lease operations within any reservation or agency jurisdiction was conceded and held to be legislation and not in order.

On Mar. 7, 1940,[9] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 8745), the following point of order was raised:

> MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order. On page 29, beginning with the last word on the page, "to," I make a point of order against the following language:
>
> > to be reimbursed under the provisions of the Act of February 14, 1920, as amended (25 U.S.C. 413), except that reimbursement shall not be required for expenditures in connection with Indian lands for which no production or compensatory royalty accrues, or for expenditures in excess of 10 percent of such royalties accruing from mineral-lease operations within any reservation or agency jurisdiction.
>
> My point of order is that it is legislation on an appropriation bill.
>
> THE CHAIRMAN:[10] Does the gentleman from Oklahoma (Mr. Johnson) desire to be heard on the point of order?
>
> MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, we concede the point of order.
>
> THE CHAIRMAN: The point of order is sustained.

For Presidential Use Without Reimbursement to Appropriation Accounts

§ 38.9 An amendment to an appropriation bill providing that in addition to the sum appropriated, supplies or funds shall be available for disposition by the President under the Act of Mar. 11, 1941, to carry out the provisions of the Act of Mar. 28, 1944, "without reimbursement of the appropriations from which such supplies or services were procured or such funds were provided," was conceded and held to be legislation where that law did not permit disposition without reimbursement.

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9. 86 CONG. REC. 2532, 76th Cong. 3d Sess.

10. Jere Cooper (Tenn.).

On June 3, 1944,[11] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 4937), a point of order was raised against the following amendment:

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Cannon of Missouri: Page 6, after line 17, insert:

"Sec. 202. In addition to the sum appropriated by section 201 of this title, any supplies, services, or funds available for disposition or expenditure by the President under the act of March 11, 1941, as amended (22 U.S.C. 411–419), and acts supplementary thereto, may be disposed of or expended by the President to carry out the provisions of the act of March 28, 1944, without reimbursement of the appropriations from which such supplies or services were procured or such funds were provided."

MR. CANNON OF MISSOURI: Mr. Chairman, I ask for a vote on the amendment.

MR. [JOSEPH P.] O'HARA [of Minnesota]: I desire to make a point of order against the amendment offered by the gentleman from Missouri [Mr. Cannon], because it is legislation on an appropriation bill and not in order at this time. . . .

THE CHAIRMAN:[12] The gentleman from Minnesota makes a point of order against the amendment and particularly emphasizes that the amendment provides that the appropriation is "without reimbursement" and that "without reimbursement" is not contained in the statute.

The Chair will hear the gentleman from Missouri [Mr. Cannon].

MR. CANNON of Missouri: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Receipts From Operations to Repay Federal Investment—District of Columbia Airport

§ 38.10 Language in an appropriation bill providing for repayment of federal appropriations for an additional airport for the District of Columbia from income derived from operations was conceded and held to be legislation and not in order.

On Aug. 6, 1957,[13] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9131), a point of order was raised against the following provision:

The Clerk read as follows:

11. 90 CONG. REC. 5252, 78th Cong. 2d Sess.

12. William M. Whittington (Miss.).

13. 103 CONG. REC. 13780, 85th Cong. 1st Sess.

CHAPTER I

Department of Commerce

Civil Aeronautics Administration

Construction and Development, Additional Washington Airport

For necessary expenses for the construction and development of a public airport in the vicinity of the District of Columbia, as authorized by the act of September 7, 1950 (64 Stat. 770), including acquisition of land, $12,500,000, to remain available until expended: Provided, That not to exceed a total of $250,000 may be advanced to the applicable appropriations of the Civil Aeronautics Administration for necessary administrative expenses: *Provided further,* That beginning on June 30, 1965, and not later than June 30 of each year thereafter, the Administrator of the Civil Aeronautics Administration shall pay from income derived from operation of the airport an amount which will repay to the Treasury of the United States the full capital investment from Federal appropriations in a period of 35 years.

MR. [SAMUEL N.] FRIEDEL [of Maryland]: Mr. Chairman, a point of order.

THE CHAIRMAN:[14] The gentleman will state his point of order.

MR. FRIEDEL: Mr. Chairman, I make a point of order against the entire paragraph on page 2, lines 1 to 20 inclusive, on the ground that the last proviso thereof contains legislation on an appropriation bill. This proviso requires repayment of Federal appropriations made for the airport, and in that respect amends the basic law which authorized the airport.

THE CHAIRMAN: Does the gentleman from Texas wish to be heard on the point of order?

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, it is, perhaps, a close point, whether this comes under the Holman rule; but we concede the point of order and offer an amendment.

THE CHAIRMAN: The gentleman from Texas [Mr. Thomas] concedes the point of order made by the gentleman from Maryland [Mr. Friedel]. The Chair sustains the point of order.

—*Receipts Generated From Irrigation Projects*

§ 38.11 Language in a general appropriation bill providing that money received by the United States in connection with any irrigation project constructed by the federal government shall be covered into the general fund until such fund has been reimbursed, was conceded and held to be legislation on an appropriation bill and not a Holman rule retrenchment of funds covered by the bill.

On Nov. 29, 1945,[15] during consideration in the Committee of the Whole of the first deficiency appropriation bill (H.R. 4805), a point of order was raised against the following provision:

The Clerk read as follows:

Total, general fund, construction, $42,765,000: *Provided,* That all mon-

14. Paul J. Kilday (Tex.).

15. 91 CONG. REC. 11192, 11193, 79th Cong. 1st Sess.

eys hereafter received by the United States in connection with any irrigation project, including the incidental power features thereof, constructed by the Secretary of the Interior through the Bureau of Reclamation, and financed in whole or in part with moneys heretofore or hereafter appropriated or allocated therefor by the Federal Government from the general fund, shall be covered into the general fund until the general fund has been reimbursed in full for allocations and appropriations made to such project from the general fund, except in cases where provision has been made by law or contract for the use of such revenues for the benefit of users of water from such project: *Provided further,* That the portion of appropriations or allocations invested in the power features of such projects shall be fully amortized and repaid within 50 years with interest at the rate of 3 percent per annum.

MR. (J. W.) ROBINSON of Utah: Mr. Chairman, I make the point of order against the proviso commencing on page 30, line 15, and continuing on page 31 down to the end of line 6 that it is legislation on an appropriation bill.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, the committee concedes the point of order. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I desire to be heard on the point of order. It is manifest that this item requires that funds received shall be covered into the general fund of the Treasury until the general fund has been fully reimbursed for the amount that it has expended. In my opinion that is in order under the Holman rule. It saves money to the Treasury on the face of the document.

THE CHAIRMAN:[16] The Chair thinks it is clearly legislation on an appropriation bill, and so holds. The point of order is sustained.

Parliamentarian's Note: To justify legislative language in an appropriation bill under the Holman rule, the provision must show a retrenchment as a necessary result; and if an amendment, must be germane to the bill.

—*Tennessee Valley Authority*

§ 38.12 Language in an appropriation bill providing funds for resource development activities of the Tennessee Valley Authority, stating that part of the funds therefor should be derived from the appropriated funds and part from proceeds of operation, was held to be legislation and not in order.

On May 28, 1956,[17] during consideration in the Committee of the Whole of the Department of the Interior appropriation bill (H.R. 11319), the following point of order was raised:

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I make a point of order against certain language in the Tennessee Valley Authority paragraph as follows: . . .

. . . On page 3, lines 1 to 3 ", of which $400,000 shall be derived from this appropriation and $750,000 shall

16. R. Ewing Thomason (Tex.).

17. 102 CONG. REC. 8725, 84th Cong. 2d Sess.

be derived from proceeds of operations of the Tennessee Valley Authority."

Mr. Chairman, I make the point of order that all of the language to which I have referred is legislation on an appropriation bill. . . .

THE CHAIRMAN:[18] . . . It is clearly legislation on an appropriation bill and the point of order is sustained.

—*Travel Expenses Paid by States*

§ 38.13 In an appropriation bill providing funds for salaries and expenses, Office of Education, a provision that "all receipts from non-Federal agencies representing reimbursement for expenses of travel of employees of the Office of Education performing advisory functions to the said agencies shall be deposited in the Treasury of the United States to the credit of this appropriation," was conceded and held to be legislation and not in order.

On Apr. 2, 1957,[19] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 6287), a point of order was raised against the following provision:

Salaries and expenses: For expenses necessary for the Office of Education, including surveys, studies, investigations, and reports regarding libraries; fostering coordination of public and school library service; coordination of library service on the national level with other forms of adult education; developing library participation in Federal projects; fostering nationwide coordination of research materials among libraries, interstate library coordination and the development of library service throughout the country; purchase, distribution, and exchange of educational documents, motion-picture films, and lantern slides; collection, exchange, and cataloging of educational apparatus and appliances, articles of school furniture and models of school buildings illustrative of foreign and domestic systems and methods of education, and repairing the same; and cooperative research, surveys, and demonstrations in education as authorized by the act of July 26, 1954 (20 U.S.C. 331–332); $7 million, of which not less than $550,000 shall be available for the Division of Vocational Education as authorized: *Provided,* That all receipts from non-Federal agencies representing reimbursement for expenses of travel of employees of the Office of Education performing advisory functions to the said agencies shall be deposited in the Treasury of the United States to the credit of this appropriation.

MR. [EDGAR W.] HIESTAND [of California]: Mr. Chairman, I make a point of order against the language beginning in line 17, page 19, down through line 22.

THE CHAIRMAN:[20] Beginning where?

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18. Jere Cooper (Tenn.).

19. 103 CONG. REC. 4972, 85th Cong. 1st Sess.

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

MR. HIESTAND: This language:

> *Provided,* That all receipts from non-Federal agencies representing reimbursement for expenses of travel of employees of the Office of Education performing advisory functions to the said agencies shall be deposited in the Treasury of the United States to the credit of this appropriation.

We would redistribute the money, and I suggest, Mr. Chairman, that that is definitely legislation on an appropriation bill.

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

MR. [JOHN E.] FOGARTY [of Rhode Island]: This was only an attempt to have the States reimburse the Federal Government for the technical assistance that the States call on the Department of Education to give. Now, if you want it all to come out of the Federal Treasury and not have the States make this reimbursement, this is the way to do it. It is clearly subject to a point of order, and I concede the point of order.

THE CHAIRMAN: The Chair has examined the language in the bill and sustains the point of order.

Reimbursements for Indian Educational Expenses

§ 38.14 Language in an appropriation bill appropriating money to be advanced for certain purposes coupled with a direction that such advances shall be reimbursable during a fixed period under rules and regulations prescribed by an executive officer was held to be legislation and not in order.

On May 14, 1937,[1] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation bill. A point of order was raised against the following paragraph:

> For the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops, $165,000, which sum may be used for the purchase of seeds, animals, machinery, tools, implements, and other equipment necessary . . . *Provided further,* That not to exceed $15,000 may be advanced to worthy Indian youths to enable them to take educational courses, including courses in nursing home economics, forestry, and other industrial subjects in colleges, universities, or other institutions, and advances so made shall be reimbursed in not to exceed 8 years, under such rules and regulations as the Secretary of the Interior may prescribe.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph beginning on page 26, line 4. The point of order is that this is legislation on an appropriation bill and it imposes discretionary duties upon the Secretary of the Interior. The language at the bottom of the bill, beginning with "*Provided further*", line 22, and the last proviso are entirely the same. They provide that the Secretary of the Interior shall make

1. 81 CONG. REC. 4598, 4599, 75th Cong. 1st Sess.

rules and regulations and there is no question but what it imposes additional duties upon the Secretary of the Interior all the way through.

In lines 17 and 18 the terms of repayment are made subject to the discretion of the Secretary of the Interior and in lines 9 and 10 it is subject to that same discretion. This is all on page 26. The whole paragraph is subject to discretion and imposes duties upon the Secretary. . . .

THE CHAIRMAN:[2] The Chair would like to inquire further of the gentleman with reference to the language appearing in lines 7 and 8, page 27, reading as follows:

> And advances so made shall be reimbursed in not to exceed 8 years under such rules and regulations as the Secretary of the Interior may prescribe.

Will the gentleman advise the Chair as to any provision of existing law upon which this language is based?

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, this is the exact language that has been used for several years and the gentleman from Oklahoma knows of no specific basis of law for it.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York makes a point of order against the entire paragraph beginning in line 4, page 26, extending down to and including line 9, page 27. The gentleman from New York [Mr. Taber] in making his point of order invited attention to certain language appearing in lines 10 and 11, page 26, with reference to the discretion of the Secretary of the Interior.

The Chair has examined the act commonly referred to and known as the Snyder Act and invites attention to section 13 of that act, in which the following appears:

> Expenditures of appropriations by Bureau of Indian Affairs: The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate for the benefit, care, and assistance of the Indians throughout the United States for the following purposes: General support and civilization, including education; for industrial assistance and advancement and general administration of Indian problems. Further, for general and incidental expenses in connection with the administration of Indian affairs.

It is the opinion of the Chair that the act to which attention has been invited confers upon the Secretary of the Interior rather broad discretionary authority. The Chair is of opinion that the language to which the gentleman invited attention is not subject to a point of order, but that the language to which the Chair invited the attention of the gentleman from Oklahoma with reference to the provisos does constitute legislation on an appropriation bill not authorized by the rules of the House. It naturally follows that as the point of order has to be sustained as to these two provisos, it has to be sustained as to the entire paragraph. The Chair therefore sustains the point of order made by the gentleman from New York.

2. Jere Cooper (Tenn.).

§ 39. Subject Matter: Agriculture

Sharecropper Participation in Conservation

§ 39.1 Language in an appropriation bill providing that notwithstanding any other provision of law, persons who in 1943 carry out farming operations as tenants or sharecroppers on cropland owned by the United States and who comply with the agriculture conservation program shall be entitled to receive payment for their participation in said program as other producers, was held to be legislation on an appropriation bill.

On Apr. 16, 1943,[3] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 2481), the following proceedings took place:

THE CHAIRMAN:[4] The gentleman has other points of order against the paragraph?

MR. [Hampton P.] FULMER [of South Carolina]: Yes.

THE CHAIRMAN: Will the gentleman indicate those?

MR. FULMER: On page 67, line 16, down to and including line 3, on page 68, which language is as follows: "*Provided further,* That notwithstanding any other provision of law, persons who in 1943 carry out farming operations as tenants or sharecroppers on cropland owned by the United States Government and who comply with the terms and conditions of the 1943 agricultural conservation program, formulated pursuant to sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, as amended, shall be entitled to apply for and receive payments, or to retain payments heretofore made, for their participation in said program to the same extent as other producers" . . . on the ground that it is legislation on an appropriation bill without any authorization in law. . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from South Carolina makes the point of order against the language beginning in line 16 and running down to and including the word "producers" in line 25 that it is legislation on an appropriation bill. With the information available to the Chair, the Chair is of the opinion that it is legislation on an appropriation bill, and sustains the point of order.

Soil Conservation Payments

§ 39.2 Where existing law provides a flat $10,000 limitation on the amount any person may receive as soil conservation payments, an amendment limiting such payments to $10,000 unless the pay-

3. 89 CONG. REC. 3492, 3494, 78th Cong. 1st Sess.
4. William M. Whittington (Miss.).

ment is in respect to more than one farm and adding a reporting requirement was held legislation and not in order.

On Mar. 28, 1939,[5] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 5269), a point of order was raised against the following amendment:

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 no payment from these funds for any one year shall be made to any person or corporation in excess of $10,000 unless the payment is with respect to more than one farm and then only if the excess be in the total of payments to a landlord who shall furnish to the Secretary of Agriculture a certificate from the county committee in which his farms are located stating that his division of the proceeds of that farm's benefit payments with the renter or sharecropper are fair and customary in the community.

MR. [MARVIN] JONES of Texas: Mr. Chairman, I reserve a point of order against the amendment. . . .

Mr. Chairman, I would like to be heard for a moment.

On page 5, section 102, of the present act there is a flat $10,000 limitation on the amount that any person may receive. Insofar as this amendment is effective at all, it changes this provision, but it stipulates that if there is more than one farm the $10,000 shall apply only to each farm. That is a clear change in the law because he stipulates if there is more than one farm then the $10,000 flat limitation in the present law shall be of no force and effect. Certainly that is a change in the law. . . .

THE CHAIRMAN:[6] It is the opinion of the Chair that the amendment, although in the guise of a limitation, is legislative in nature and not in order on an appropriation bill. The Chair, therefore, sustains the point of order.

Level of Federal Taxable Income as Eligibility for Payments

§ 39.3 To an appropriation bill an amendment providing that a participant in the soil conservation program could not qualify "if his net individual income for Federal income-tax purposes is in excess of $10,000 in 1952" was held to be legislation and not in order.

On May 20, 1953,[7] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 5227), a point of order was raised against an amendment offered to the following portion of the bill:

The Clerk read as follows:

5. 84 CONG. REC. 3428, 3429, 76th Cong. 1st Sess.

6. Wright Patman (Tex.).

7. 99 CONG. REC. 5244, 5263, 5264, 83d Cong. 1st Sess.

. . . *Provided further*, That none of the funds herein appropriated or made available for the functions assigned to the Agricultural Adjustment Agency pursuant to the Executive Order Numbered 9069, of February 23, 1942, shall be used to pay the salaries or expenses of any regional information employees or any State information employees . . . *Provided further*, That such amount shall be available for salaries and other administrative expenses in connection with the formulation and administration of the 1954 program of soil-building practices and soil- and water-conserving practices, under the act of February 29, 1936, as amended (amounting to $195 million, including administration, and formulated on the basis of a distribution of the funds available for payments and grants among the several States in accordance with their conservation needs as determined by the Secretary, except that the proportion allocated to any State shall not be reduced more than 15 percent from the distribution for the next preceding program year, and no participant shall receive more than $2,500); but the payments or grants under such programs shall be conditioned upon the utilization of land with respect to which such payments or grants are to be made in conformity with farming practices which will encourage and provide for soil-building and soil- and water-conserving practices in the most practical and effective manner and adapted to conditions in the several States, as determined and approved by the State committees appointed pursuant to section 8 (b) of the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590h (b)), for the respective States. . . .

MR. [JAMES G.] FULTON [of Pennsylvania]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Fulton: Page 31, line 22, strike out the figure "$2,500" and insert "$1,000 nor qualify as a participant for payments of grants of assistance under such program if his net individual income for Federal income-tax purposes is in excess of $10,000 in 1952."

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

MR. H. CARL ANDERSEN [of Minnesota]: Mr. Chairman, a point of order.

THE CHAIRMAN:[8] The gentleman from Mississippi will state his point of order.

MR. WHITTEN: This amendment would require affirmative action by the Secretary of Agriculture or someone acting for him. It would require the disclosure of income of individual citizens, which information is prohibited by law from being made public. It would require affirmative and special action by someone in the Government, which would make it legislation upon an appropriation bill. . . .

THE CHAIRMAN: The Chair is prepared to rule. As has been indicated by the gentleman from Pennsylvania [Mr. Fulton], the amendment imposes a qualification upon participants in this program. Therefore, the Chair is of the opinion that the offered amendment proposes legislation on an appropriation bill and is, therefore, subject to a point of order. The Chair sustains the point of order.

Price Minimum on Agricultural Purchases

§ 39.4 A provision in a general appropriation bill that "agri-

8. William M. McCulloch (Ohio).

cultural products . . . purchased or obtained under this program shall be at not less than" a designated price was conceded and held to be legislation and not in order.

On June 28, 1952,[9] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 8370), the following point of order was raised:

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Chairman, I make the point of order against the language on lines 16 to 22 on page 36 that it is legislation on an appropriation bill. That language is as follows:

Provided further, That agricultural products or products produced from agricultural products purchased or obtained under this program shall be at not less than the average market price prevailing for such commodity or commodities within the United States or the support price for such commodity or commodities, whichever is the greater.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I was the author of that language in the bill. I confess that it is subject to a point of order.

THE CHAIRMAN:[10] Does the gentleman concede the point of order?

MR. WHITTEN: I do, Mr. Chairman.

THE CHAIRMAN: The point of order is sustained.

9. 98 CONG. REC. 8501, 82d Cong. 2d Sess.

10. Francis E. Walter (Pa.).

Restriction on Uses of Loans, Rural Electrification

§ 39.5 An amendment to the Agriculture Department appropriation bill providing that certain loans under the Rural Electrification Administration shall be exclusively for purchasing and financing the construction and operation of generating plants and facilities for furnishing electric energy to persons in rural areas who are not receiving central station service, was held to be legislation on an appropriation bill.

On Apr. 19, 1943,[11] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 2481), the following ruling was made by Chairman William M. Whittington, of Mississippi:

The gentleman from Oklahoma offers an amendment to the amendment offered by the gentleman from Mississippi [Mr. Rankin] in the following words:

Provided, That these loans shall be exclusively for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems for the furnishing of electric energy to persons in rural areas who are not receiving central station service.

11. 89 CONG. REC. 3588, 78th Cong. 1st Sess.

The Chair is unable to see where there is any limitation in the language used and concludes it is legislation, therefore sustains the point of order.

Reconstruction Finance Corporation Loan Authority Extended

§ 39.6 A provision in a general appropriation bill appropriating money for the purchase of property by the Rural Electrification Administration and providing that such sum be borrowed from the Reconstruction Finance Corporation, and directing the corporation to lend such amount notwithstanding certain provisions of law, was conceded and held to be legislation and not in order.

On Feb. 2, 1940,[12] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 8202), a point of order was raised against the following provision:

The Clerk read as follows:

Loans: For loans in accordance with sections 3, 4, and 5, and the purchase of property in accordance with section 7 of the Rural Electrification Act of May 20, 1936, as amended (7 U.S.C. 901–914), $40,000,000, which sum shall be borrowed from the Reconstruction Finance Corporation in accordance with the provisions of section 3(a) of said act, and shall be considered as made available thereunder; and the Reconstruction Finance Corporation is hereby authorized and directed to lend such sum in addition to the amounts heretofore authorized under said section 3(a) and without regard to the limitation in respect of time contained in section 3(e) of said act.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the language beginning on page 84, line 7, with the word "which", and ending with the word "act", in line 15, that it is legislation upon an appropriation bill.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I concede the point of order.

THE CHAIRMAN:[13] The gentleman from Missouri concedes the point of order. The point of order is sustained.

Consolidation and Continuation of Authorities

§ 39.7 Language in the Agriculture Department appropriation bill to enable the Secretary of Agriculture, through the Farm Credit Administration and through existing agencies under its administration to administer all activities, projects, and functions heretofore carried on under the caption "Loans, grants, and rural rehabilitation" was conceded and held to be legislation on an appropriation bill.

12. 86 CONG. REC. 1033, 76th Cong. 3d Sess.

13. William P. Cole, Jr. (Md.).

On Apr. 19, 1943,[14] 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:

LOANS AND RURAL REHABILITATION

Making and servicing loans: To enable the Secretary, through the Farm Credit Administration and through existing agencies under its supervision, including the Crop and Feed Loan Division and production credit associations, to administer all activities, projects, facilities, and functions heretofore carried on under the caption, "Loans, grants, and rural rehabilitation," the continuance of which is authorized under the terms of this appropriation, and to provide assistance to needy farmers in the United States, its Territories and possessions, unable to obtain credit elsewhere, through making and servicing of loans under this and prior law, $12,000,000. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph just read on the ground it is legislation on an appropriation bill and is not authorized by law.

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

THE CHAIRMAN:[15] The point of order is sustained.

Use of Money From Timber Sales

§ 39.8 An amendment to the Agriculture Department appropriation bill proposing that 10 percent of all moneys received from timber sales by each national forest during each fiscal year shall be available to be expended by the Secretary of Agriculture for recreational purposes within such national forest was held to be legislation and not in order.

On Apr. 5, 1949,[16] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 3997), a point of order was raised against the following amendment:

MR. [BOYD] TACKETT [of Arkansas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Tackett: On page 39, line 13, insert the following paragraph:

"Forest recreational purposes: Ten percent of all moneys received from timber sales by each national forest during each fiscal year shall be available at the end thereof to be expended by the Secretary of Agriculture for recreational purposes within such national forest."

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

14. 89 CONG. REC. 3592, 78th Cong. 1st Sess.

15. William M. Whittington (Miss.).

16. 95 CONG. REC. 3948, 81st Cong. 1st Sess.

have to make a point of order against the amendment, but I must do so. I make the point of order that the amendment is legislation on an appropriation bill.

I think the approach the gentleman is making is sound, but I believe it should be considered by the appropriate legislative committee. . . .

THE CHAIRMAN:[17] The Chair is ready to rule.

The Chair considers the amendment to be strictly legislation on an appropriation bill by virtue of the fact that it does not call for money to be appropriated out of the Treasury but directs that certain things be done with the receipts from the sale of timber.

For that reason the Chair sustains the point of order.

Bank Audits

§ 39.9 A proviso in the Agriculture Department appropriation bill that the federal land banks and joint stock land banks shall be examined once a year instead of at least twice as provided by law, and changing the law with reference to salaries of employees engaged in such examinations, was conceded and held to be legislation on an appropriation bill.

On Apr. 19, 1943,[18] 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:

FARM CREDIT ADMINISTRATION

SALARIES AND EXPENSES

For salaries and expenses of the Farm Credit Administration in the District of Columbia and the field . . . *Provided*, That the requirement (12 U.S.C. 952) that Federal land banks and joint stock land banks shall be examined at least twice each year is hereby modified so that such examinations need be made only once each year: *Provided further*, That the expenses and salaries of employees engaged in such examinations shall be assessed against the said corporations, banks, or institutions in accordance with the provisions of existing laws except that the amounts collected from the Federal land banks, joint stock land banks, and Federal intermediate credit banks pursuant to the act of July 17, 1916, as amended (12 U.S.C. 657) shall be covered into the Treasury and credited to a special fund. . . .

MR. [CLIFFORD R.] HOPE [of Kansas]: Mr. Chairman, I make the point of order that the language beginning with the word "proviso", line 15, page 84, continuing on down to and including the word "thereto" in line 4, page 86, is legislation not authorized by law on an appropriation bill.

MR. [MALCOLM C.] TARVER [of Georgia]: The point of order is conceded.

THE CHAIRMAN:[19] The point of order is sustained.

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

18. 89 CONG. REC. 3590, 78th Cong. 1st Sess.

19. William M. Whittington (Miss.).

Definition of Terms

§ 39.10 To an agricultural appropriation bill, an amendment curtailing the use of funds therein for price support payments to any person in excess of $30,000 per year and providing that "for the purpose of this (amendment) the term 'person' shall mean an individual, partnership, firm, joint stock company," or the like, was ruled out as legislation.

On May 26, 1965,[20] 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 H.] MICHEL [of Illinois]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Michel: On page 33, line 24, after the word "hereof", strike the period, insert a colon and the following: "*Provided further:* (a) That none of the funds herein appropriated may be used to formulate or carry out price support programs during the period ending June 30, 1966, under which a total amount of price support payments in excess of $30,000 would be made to any person . . . (b) That for the purposes of this proviso 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." . . .
>
> MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I should like to read, if I may, the first part of the amendment, as I make the point of order against it:
>
> *Provided,* That none of the funds herein appropriated may be used to formulate or carry out price support programs during the period ending June 30, 1966, under which a total amount of price support payments in excess of $30,000 would be made to any person.
>
> I respectfully submit that this not only would require some new duties but also would require the opening up of individual accounts. This makes it quite clearly subject to a point of order.
>
> I might point out that subsection (b), where the definitions are given, would require a determination and also would call for special duties.
>
> THE CHAIRMAN:[1] Does the Chair correctly understand that the gentleman from Mississippi has stated his point of order against the pending amendment?
>
> MR. WHITTEN: Yes.
>
> MR. MICHEL: Mr. Chairman, I should like to be heard on the point of order. I submit, Mr. Chairman, it falls strictly within the Holman rule on retrenching, as a limitation. The Department of Agriculture has all kinds of statisticians. We appropriate money for them. They have the wherewithal to make any kind of determination we see fit to legislate. In this sense, it is a retrenchment, in my opinion.
>
> THE CHAIRMAN: . . . The Chair has read the amendment offered by the

20. 111 CONG. REC. 11655, 11656, 89th Cong. 1st Sess.

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

gentleman from Illinois. The Chair is of the opinion that even though any limitation imposed upon an executive agency may add to the burdens of that executive agency, a limitation of an appropriation is in good order. The Chair, therefore, would say to the gentleman from Illinois that in the opinion of this occupant of the Chair, he has offered an amendment which is in form a limitation. But in addition thereto, he has added language which defines a person, and in the opinion of the Chair that language is legislation on an appropriation bill and is therefore out of order.

The Chair sustains the point of order.

Agricultural Conservation Committees; Capping Allotments for Soil Conservation Services

§ 39.11 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 agriculture 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,[2] during consideration of H.R. 7786 [the Department of Agriculture chapter, general appropriation bill, 1951], a point of order was raised against language as described above:

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. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, in answer to the statement by the gentleman from Minnesota, I point out that this provision was written in the bill last year after conference with and with the approval of the members of the legislative Committee on Agriculture. It is an

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

effort on the part of our committee to more properly utilize the various specialists of the two agricultural programs.

Under the present law, these two agricultural agencies are authorized to utilize the services of other agencies. In effect, by fixing it at 5 percent, I think we are on sound ground in insisting on the limitation. It is a limitation in the amount which can be used for a particular purpose, whereas, in the absence of the 5-percent figure, each agency could use the services of the other, and under the general law would have a right to compensate the other for services rendered. I think under the general provisions of the law that is true. The 5-percent provision is a limitation rather than legislation or an authorization. . . .

MR. [Francis H.] CASE of South Dakota: Is it the contention of the gentleman from Mississippi that, under existing law, without this limitation an allotment might be made in excess of 5 percent?

MR. WHITTEN: I do not know as to the use of the word "allotment," but under the Economy Act of 1932, section 601, any agency is entitled to use and is authorized to use the services of another agency and to pay for such services.

MR. CASE of South Dakota: Under the basic act, the Soil Conservation and Domestic Allotment Act, is it not true that these technical and other services could be provided?

MR. WHITTEN: They could be. The point that we are trying to get at here is that the Production and Marketing Administration is entitled to this type of service, and in many cases has to go out and hire and train additional specialists while the Federal Government is paying such specialists, who are doing the same kind of work.

MR. CASE of South Dakota: That is right.

MR. WHITTEN: They would be authorized to use the services of the Soil Conservation Service beyond this 5 percent. May I point out that the citation of the act is 31 United States Code, section 686. The 5-percent provision here is not compulsory. By its insertion we hope to be able to get these two agencies to use the services of the other, instead of going out in two directions. I think we are on sound ground in our objective and in our approach to reach that objective. They already have authority to use these services, but by putting this provision in we stress our intention that they make use of the services. I think it will result in economy, if they do make use of the services. I may say that the Department has just begun to make use of them, and, from the reports that I am now getting, it is doing a great deal of good.

MR. CASE of South Dakota: If I understand the gentleman correctly, this service could be carried on by the Production and Marketing Administration itself?

MR. WHITTEN: And in most cases it is, with absolute disregard of the fact that technical people are already drawing pay from the Federal Government who could do the work.

MR. CASE of South Dakota: The gentleman has cited the act and also pointed out that existing law authorizes the agency to utilize the services of another agency to carry out its authorized functions.

MR. WHITTEN: That is correct. . . .

THE CHAIRMAN:[3] 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 legislation 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.

§ 40. Commerce

Delegation of Authority of Secretary of Commerce

§ 40.1 Language in an appropriation bill authorizing the Secretary of Commerce to designate an officer of the Department to sign minor routine official papers and documents during the temporary absence of the Secretary, the Under Secretary, and the Assistant Secretary, was conceded and held to be legislation on an appropriation bill.

On Mar. 16, 1945,[4] 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:

TITLE III—DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

Salaries and expenses: For all necessary expenses of the office of the Secretary of Commerce (hereafter in

3. Jere Cooper (Tenn.).

4. 91 CONG. REC. 2367, 2368, 79th Cong. 1st Sess.

this title referred to as the Secretary) including personal services in the District of Columbia [and] teletype news service . . . *Provided,* That hereafter the Secretary may designate an officer of the Department to sign minor routine official papers and documents during the temporary absence of the Secretary, the Under Secretary, and the Assistant Secretary of the Department.

MR. [ROBERT F.] JONES [of Ohio]: Mr. Chairman, I make a point of order against the language on page 54, line 15, as follows: "teletype news service (not to exceed $1,000)" as not authorized by law, and to the language beginning in line 21, same page, starting with the word "*Provided*" and continuing to the bottom of that page and including the first two lines on page 55. It is legislation on an appropriation bill not authorized by law.

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

THE CHAIRMAN:[5] The points of order are sustained.

§ 40.2 Language in an appropriation bill providing that the Secretary of Commerce may delegate his authority to approve payment of travel and other expenses of employees on change of official station was conceded and held to be legislation on an appropriation bill.

On Mar. 16, 1945,[6] 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:

During the fiscal year 1946 the Secretary of Commerce may delegate his authority to subordinate officials of the Coast and Geodetic Survey, and Weather Bureau, and the Civil Aeronautics Administration, to authorize payment of expenses of travel and transportation of household goods of officers and employees on change of official station: *Provided,* That in no case shall such authority be delegated to any official below the level of the heads of regional or field offices.

MR. [ROBERT F.] JONES [of Ohio]: Mr. Chairman, a point of order. On page 75, beginning with line 12, the entire paragraph down to and including line 20, on the ground it is legislation on an appropriation bill, not authorized by law.

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

THE CHAIRMAN:[7] The point of order is sustained.

Entertainment Expenses

§ 40.3 An appropriation under the heading of Office of Administrator of Civil Aeronautics, Department of Commerce, "for entertainment of officials in the field of aviation of other countries when specifically authorized and

5. Wilbur D. Mills (Ark.).
6. 91 CONG. REC. 2376, 79th Cong. 1st Sess.
7. Wilbur D. Mills (Ark.).

approved by the Administrator," was conceded and held to be legislation on an appropriation bill.

On Mar. 16, 1945,[8] 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:

OFFICE OF ADMINISTRATOR OF CIVIL AERONAUTICS

General administration, Office of the Administrator: For necessary expenses of the Office of Administrator of Civil Aeronautics in carrying out the provisions of the Civil Aeronautics Act of 1938, as amended (49 U.S.C. 401), including personal services in the District of Columbia and elsewhere; contract stenographic reporting services; not to exceed $14,000 for expenses of attendance at meetings of organizations concerned with aeronautics, when specifically authorized by the Administrator; newspapers (not exceeding $200); not to exceed $5,000 in fiscal year 1946 for entertainment of officials in the field of aviation of other countries when specifically authorized and approved by the Administrator; fees and mileage of expert and other witnesses; expenses of examination of estimates of appropriations in the field; hire, maintenance, repair, and operation of passenger-carrying automobiles; $2,680,000.

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make a point of order against the language on page 57, line 22: "not to exceed $5,000 in fiscal year 1946 for entertainment of officials in the field of aviation of other countries when specifically authorized and approved by the Administrator," on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN:[9] Does the gentleman from Michigan desire to be heard on the point of order?

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

THE CHAIRMAN: The point of order is sustained.

Foreign Trade Statistics, Site of Compilation; Permanent Provision of Law

§ 40.4 Language in an appropriation bill appropriating for current census statistics providing that "after October 1, 1947, all functions necessary to the compilation of foreign trade statistics shall be performed in New York, N.Y." instead of Washington, D.C., was conceded and held to be legislation on an appropriation bill and not in order.

On May 14, 1947,[10] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 3311), a point of order

8. 91 CONG. REC. 2369, 2370, 79th Cong. 1st Sess.

9. Wilbur D. Mills (Ark.).

10. 93 CONG. REC. 5303, 80th Cong. 1st Sess.

was raised against the following provision:

The Clerk read as follows:

Current census statistics: For expenses necessary for collecting, compiling, and publishing current census statistics provided for by law . . . *Provided*, That on and after October 1, 1947, all functions necessary to the compilation of foreign trade statistics shall be performed in New York, N.Y., and of the foregoing amount $1,200,000 shall be available exclusively for this purpose.

MR. [J. GLENN] BEALL [of Maryland]: I make a point of order against the language on page 43, line 18, beginning with the word "provided" and going through line 22 on the same page, that it is legislation on an appropriation bill.

MR. [KARL] STEFAN [of Nebraska]: Mr. Chairman, I concede the point of order and I offer an amendment.

THE CHAIRMAN:[11] The point of order is conceded. The Chair sustains the point of order.

Business Statistics; Waiver of Classification Act

§ 40.5 A paragraph carrying an appropriation for all expenses of the Bureau of the Census necessary to collect, compile, analyze, and publish a sample census of business was conceded to include legislation and was ruled out in violation of Rule XXI clause 2.

On Dec. 8, 1944,[12] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 5587), a point of order was raised against the following provision:

The Clerk read as follows:

Sample census of business: For all expenses of the Bureau of the Census necessary to collect, compile, analyze, and publish a sample census of business, including the employment by the Director, at rates to be fixed by him, of personnel at the seat of government and elsewhere without regard to the Classification Act . . . $1,200,000, to remain available until June 30, 1946.

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Chairman, I make a point of order against the paragraph just read on the ground it contains legislation unauthorized by law in an appropriation bill. The paragraph is cited in the report of the committee as one of those paragraphs containing legislation.

THE CHAIRMAN:[13] Does the gentleman from Missouri [Mr. Cannon] desire to be heard?

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The gentleman from Missouri concedes the point of order.

Census of Manufactures; Waiver of Classification Act

§ 40.6 An appropriation for all expenses of the Bureau of

11. Carl T. Curtis (Nebr.).

12. 90 CONG. REC. 9066, 9067, 78th Cong. 2d Sess.

13. Herbert C. Bonner (N.C.).

the Census necessary to collect, compile, and analyze a census of manufactures for 1944, was conceded and held to contain a provision unauthorized by law and to be legislation.

On Dec. 7, 1944,[14] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 5587), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Census of manufactures for 1944: For all expenses of the Bureau of the Census necessary to collect, compile, analyze, and publish a census of manufactures for 1944, including the employment by the Director, at rates to be fixed by him, of personnel at the seat of government and elsewhere without regard to the Classification Act . . . $2,400,000, to remain available until June 30, 1946.
>
> MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Chairman, I rise to make a point of order against the paragraph just read on the ground it contains legislation and is not authorized in an appropriation bill. The paragraph is one of those cited in the report as embodying legislation.
>
> THE CHAIRMAN:[15] Does the gentleman from Pennsylvania [Mr. Snyder] desire to be heard?
>
> MR. [J. BUELL] SNYDER: Mr. Chairman, I concede the point of order.
>
> THE CHAIRMAN: The gentleman concedes the point of order and the Chair sustains the point of order.

Immediately following this ruling, an appropriation for compiling census reports, "including the objects specified under this head in the Department of Commerce Appropriation Act, and including expenses . . . for sample surveys . . . for the purpose of estimating the size, characteristics and distribution of the nation's population," was held to be legislation and unauthorized by law.[16] The point of order was as follows:

> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order that this is not authorized by law, it is legislation on an appropriation bill, and I make the same statement made before, namely, it is cited in the report.
>
> THE CHAIRMAN: Does the gentleman from Pennsylvania [Mr. Snyder] desire to be heard?
>
> MR. SNYDER: Mr. Chairman, I concede the point of order.
>
> THE CHAIRMAN: The gentleman concedes the point of order, and the Chair sustains the point of order.

Consumer Income

§ 40.7 An appropriation for all expenses of the Bureau of the Census to collect, compile, and analyze statistics with respect to consumer income was conceded and held

14. 90 CONG. REC. 8995, 78th Cong. 2d Sess.

15. Herbert C. Bonner (N.C.).

16. 90 CONG. REC. 8995, 78th Cong. 2d Sess.

to contain legislation not authorized.

On Dec. 7, 1944,[17] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 5587), a point of order was raised against the following provision:

> Consumer income study: For all expenses of the Bureau of the Census necessary to collect, compile, and analyze statistics with respect to the consumer income, and to publish the results thereof, including the employment by the Director, at rates to be fixed by him, of personnel at the seat of government . . . $3,500,000, to remain available until June 30, 1946.
>
> MR. H. CARL ANDERSEN [of Minnesota]: Mr. Chairman, I make the point of order against the paragraph that it is legislation on an appropriation bill and not authorized by law.
>
> THE CHAIRMAN:[18] Does the gentleman from Pennsylvania wish to be heard on the point of order?
>
> MR. [J. BUELL] SNYDER [of Pennsylvania]: I concede the point of order, Mr. Chairman.
>
> THE CHAIRMAN: The Chair sustains the point of order.

§ 41. Defense and Foreign Relations

Military Activities in Cambodia and Laos

§ 41.1 To an amendment prohibiting the use of funds in a general appropriation bill as well as funds already appropriated by other acts to support United States combat activities in Cambodia or Laos, an amendment making it illegal to participate in or order any such military activities was held to constitute additional legislation and was ruled out on a point of order.

On June 29, 1973,[19] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9055), a point of order was raised against the following amendment:

> MR. [JOHN J.] FLYNT [Jr., of Georgia]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Flynt: Page 57, line 21, strike out all of section 307 and insert a new section 307, as follows:
>
> Sec. 307. None of the funds herein appropriated under this Act or heretofore appropriated under any other act may be expended to support directly or indirectly combat activities in, over or from off the shores of Cambodia or in or over Laos by the U.S. forces. . . .
>
> MR. [CHARLES E.] BENNETT [of Florida]: Mr. Chairman, I offer an amendment to the amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Bennett to the amendment offered by

17. 90 CONG. REC. 8995, 78th Cong. 2d Sess.
18. Herbert C. Bonner (N.C.).
19. 119 CONG. REC. 22352, 22362, 93d Cong. 1st Sess.

Mr. Flynt: At the end of the Flynt Amendment strike the period and insert a semicolon and the words "and from the date of the enactment of this law it shall be illegal for anyone to participate in, or order, any such activities." . . .

MR. [ELFORD A.] CEDERBERG [of Michigan]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[20] The gentleman will state his point of order.

MR. CEDERBERG: Legislation on an appropriation bill is subject to a point of order. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair feels that the amendment offered by the gentleman from Georgia (Mr. Flynt) was protected by the rule. An amendment to that amendment which would add language making an act illegal would be in effect legislation on an appropriation bill, in violation of clause 2, rule XXI, and the point of order is sustained.

Defense Department General Counsel

§ 41.2 To an appropriation bill, an amendment proposing that no part of the appropriation therein be paid to any commissioned officer or any civilian employee in the office of the Judge Advocate, unless such officer or employee is subject to the authority of a general counsel appointed by the President, who shall be the chief legal officer, was conceded and held to be legislation and therefore not in order.

On May 12, 1955,[1] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 6042), a point of order was raised against the following amendment:

Amendment offered by Mr. [Frank] Thompson [Jr.] of New Jersey: Page 30, immediately after line 20, insert:

"Sec. 602. No part of any appropriation contained in this act shall be used to pay the pay and allowances of any commissioned officer, or the wages of any civilian employee, who is assigned to or employed in—

"(1) the office of the Judge Advocate General of the Navy, unless such officer or employee is subject to the authority of a general counsel of the Navy. . . ."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, it is obvious that this is legislation on an appropriation bill and subject to a point of order and I make the point of order against the amendment.

THE CHAIRMAN:[2] Does the gentleman from New Jersey desire to be heard on the point of order?

MR. THOMPSON of New Jersey: Mr. Chairman, I concede the point of order. . . .

THE CHAIRMAN: The point of order is sustained.

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20. Jack B. Brooks (Tex.).

1. 101 CONG. REC. 6245, 6246, 84th Cong. 1st Sess.

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

Size of Army; "Not Less Than"

§ 41.3 An amendment to a general appropriation bill establishing a minimum size for a branch of the armed services was ruled out as legislation.

On June 3, 1959,[3] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 7454), a point of order was raised against the following amendment:

> The Clerk read as follows:
>
> Amendment offered by Mr. [Robert L. F.] Sikes [of Florida]: Page 4, line 9, after the figure, strike out the period, add a semicolon, and the words "*Provided*, That the average strength of the Reserve personnel, Army, shall be maintained at not less than 300,000 during the fiscal year 1960."
>
> Page 5, line 16, strike out the period, add a semicolon and the words, "*Provided further*, That the Army National Guard shall be maintained at not less than 400,000 during the fiscal year 1960.". . .
>
> Mr. [GERALD R.] FORD [Jr., of Michigan]: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill. I believe there are ample precedents to sustain such a point of order.
>
> May I say, however, that I join the gentleman from Florida and others on the subcommittee in increasing the appropriation for the Army National Guard and the Army Reserve, to raise the number on active duty in the guard from 360,000 to 400,000 and for the Army Reserve from 270,000 to 300,000.
>
> I am in full accord with the desire for larger strength, but I do feel that it is unwise to put this kind of language in an appropriation bill. Therefore, Mr. Chairman, I insist on my point of order.
>
> THE CHAIRMAN:[4] Does the gentleman from Florida desire to be heard further?
>
> MR. SIKES: No, Mr. Chairman. I concede the point of order.
>
> THE CHAIRMAN: The Chair sustains the point of order.
>
> The Clerk will read.

Sense of Congress on Foreign Policy Issue

§ 41.4 A paragraph in a general appropriation bill expressing the sense of the Congress concerning the representation of the Chinese government in the United Nations was ruled out as legislation.

On June 24, 1971,[5] during consideration in the Committee of the Whole of a general appropriation bill, a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Sec. 105. It is the sense of the Congress that the Communist Chi-

3. 105 CONG. REC. 9715, 9716, 86th Cong. 1st Sess.

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

5. 117 CONG. REC. 21892, 92d Cong. 1st Sess.

See also 105 CONG. REC. 14529, 86th Cong. 1st Sess., July 28, 1959.

nese Government should not be admitted to membership in the United Nations as the representative of China.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make the point of order against section 105, lines 20 through 22, as being legislation on an appropriation bill.

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

MR. [JOHN J.] ROONEY of New York: Yes, Mr. Chairman.

Mr. Chairman, this provision has been in this bill for many many years. It goes back to the time that the late Senator from Nevada, Pat McCarran, was chairman of Senate appropriations for this bill.

However, I am constrained to have to concede that the point of order has merit.

THE CHAIRMAN: The gentleman from New York concedes the point of order.

The point of order is sustained.

International Organizations; Limiting U.S. Contribution to Percent of Total Cost

§ 41.5 To a provision in a general appropriation bill, an amendment providing that in no case shall the United States contribution to any international organization exceed one-third of the estimated total annual cost was held to change existing law and, therefore, to be legislation on an appropriation bill.

On July 25, 1951,[7] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 4740), a point of order was raised against the following amendment:

MR. [JOHN BELL] WILLIAMS of Mississippi: Mr. Chairman, I offer an amendment which is at the desk.

The Clerk read as follows:

Amendment offered by Mr. Williams of Mississippi: Page 6, line 6, after the period add a new proviso to read: *Provided further,* That in no case shall the United States contribution to any international organization exceed one-third of the estimated total annual cost."

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I am constrained to insist upon the point of order that this is legislation on an appropriation bill. We already have basic legislation setting a ceiling on these contributions to international organizations.

THE CHAIRMAN:[8] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. WILLIAMS of Mississippi: Mr. Chairman, I have nothing to say except that I insist it is a limitation of appropriations. The amendment speaks for itself.

THE CHAIRMAN: The amendment certainly goes far beyond being a limitation.

The gentleman from Mississippi has offered an amendment; the gentleman

6. Thomas G. Abernethy (Miss.).

7. 97 CONG. REC. 8881, 8885, 82d Cong. 1st Sess.

8. Jere Cooper (Tenn.).

from New York has made a point of order against the amendment on the ground that it is legislation on an appropriation bill. The Chair invites attention to the fact that the amendment provides for changes in existing law with respect to international organizations and, of course, is legislation and not in order on an appropriation bill.

The Chair sustains the point of order.[9]

Trade With Cuba

§ 41.6 Language in a general appropriation bill prohibiting aid under the Foreign Assistance Act of 1961 to any country which furnishes or permits ships under its registry to carry certain strategic materials to Cuba was ruled out as legislation, since the provision was a permanent restriction on the authorization rather than upon the funds carried in the pending bill.

On June 4, 1970,[10] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 107. (a) No assistance shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry to Cuba, so long as it is governed by the Castro regime, in addition to those items contained on the list maintained by the Administrator pursuant to title I of the Mutual Defense Assistance Control Act of 1951, as amended, any arms, ammunition, implements of war, atomic energy materials, or any other articles, materials or supplies of primary strategic significance used in the production of arms, ammunition, and implements of war or of strategic significance to the conduct of war, including petroleum products.

MR. [PETER H. B.] FRELINGHUYSEN [of New Jersey]: Mr. Chairman, I make a point of order against section 107(a) on the ground that it is legislation in an appropriations bill. . . . Mr. Chairman, section 620 of the Foreign Assistance Act contains similar restrictions, but they are much more detailed, specific, and restricted than those contained in the provision which I am seeking to strike from the appropriation bill.

THE CHAIRMAN:[11] Does the gentleman from Louisiana care to be heard?

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, your committee felt that the language contained a very definite limitation. The language itself states—

No assistance shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry to Cuba—

9. The ruling would also be justified on grounds that the language at issue was not limited to funds in the bill.

10. 116 CONG. REC. 18403, 91st Cong. 2d Sess.

11. Hale Boggs (La.).

That provision has stood up over the years as being a limitation. We feel that it is, and we ask the Chair for a ruling.

THE CHAIRMAN: The Chair is ready to rule. As the gentleman from New Jersey has pointed out, the language is similar but it is not identical with the provisions of section 620 of the Foreign Assistance Act as amended. In addition, it relates to provisions other than those contained in this bill, and the Chair sustains the point of order.

Penalty on Subversives' Accepting Employment

§ 41.7 To a bill making supplemental appropriations for national defense, an amendment in the form of a limitation prohibiting payment of salary and wages of any person who advocates overthrow of the government, and fixing a penalty for accepting such work or wages, was conceded and held to be legislation on an appropriation bill and not in order.

On Oct. 10, 1941,[12] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 5788), a point of order was raised against the following provision:

The Clerk read as follows:

TITLE III—GENERAL PROVISIONS

Sec. 301. No part of any appropriation contained in this act shall be used to pay the salary or wages of any person who advocates or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence . . . *Provided further,* That any person who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence and accepts employment the salary or wages for which are paid from any appropriation in this act shall be guilty of a felony and upon conviction, shall be fined not more than $1,000 or imprisoned for not more than 1 year. . . .

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Chairman, I make the point of order against the paragraph that it is legislation which would interfere with our relations with our friend and ally, Joseph Stalin, and the Soviet Government.

THE CHAIRMAN:[13] Does the gentleman from Missouri desire to be heard on the point of order?

MR. [CLARENCE] CANNON of Missouri: I concede the point of order, Mr. Chairman.

THE CHAIRMAN: The point of order is sustained.

Mandating Domestic Use of Foreign Aid Funds

§ 41.8 To an amendment proposing to increase the amount appropriated for economic assistance (defense

12. 87 CONG. REC. 7833, 77th Cong. 1st Sess.

13. Schuyler Otis Bland (Va.).

support) under the Mutual Security Act program, an amendment imposing a minimum availability of that amount for aid to distressed areas in the United States was conceded to be legislation as well as nongermane and was ruled out on a point of order.

On June 17, 1960,[14] during consideration in the Committee of the Whole of the mutual security appropriation bill (H.R. 12619), a point of order was raised, as follows:

ECONOMIC ASSISTANCE

Defense support: For assistance authorized by section 131(b), $600,000,000.

MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Ford: On page 2, line 18, strike out "$600,000,000" and insert in lieu thereof "$650,000,000.". . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I offer an amendment to the amendment offered by the gentleman from Michigan [Mr. Ford].

The Clerk read as follows:

Amendment offered by Mr. Gross to the amendment offered by Mr. Ford: On page 2, line 18, after the figure "$600,000,000", strike out the period and insert a colon and add the following: *Provided*, That no less than $200,000,000 of the amount appropriated in this paragraph shall be made available to the distressed areas of the less developed States of the United States including but not limited to the States of West Virginia and Pennsylvania."

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I make a point of order against the amendment.

Such action as proposed is not authorized, and I do not think the language of the bill would permit this type of amendment. I was not really expecting an amendment of such type, and it caught me just a little bit off guard. However, I do not think the gentleman from Iowa really wants to press the point.

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

THE CHAIRMAN:[15] The Chair will hear the gentleman from Michigan on the point of order.

MR. FORD: Mr. Chairman, I join with the chairman of the subcommittee. I want to indicate that, in my opinion, this amendment is subject to a point of order. It is not germane to the bill and it is not authorized. In my opinion, therefore, it is subject to a point of order. . . .

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

THE CHAIRMAN: The gentleman concedes the point of order.

The point of order is sustained.

Foreign Aid; Earmarking of "Reasonable Amount" for Domestic Use

§ 41.9 To an appropriation bill providing funds for technical

14. 106 CONG. REC. 13117–19, 86th Cong. 2d Sess.

15. Wilbur D. Mills (Ark.).

cooperation programs of the Organization of American States, an amendment to provide that "a reasonable amount of the funds provided herein may be" available for distribution in underdeveloped areas in the United States was conceded to be legislation and held not in order.

On Aug. 15, 1957,[16] during consideration in the Committee of the Whole of the mutual security appropriation bill (H.R. 9302), a point of order was raised against the following amendment:

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Gross: Page 3, line 15, after the word "program" strike out the semicolon, insert a colon, and add the following:

"*Provided further*, That a reasonable amount of the funds provided herein may be used for the underdeveloped areas of the United States of America where women's wearing apparel is made from feedbags, such funds to be made available to and distributed by the University of Pennsylvania."

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I am constrained to make a point of order against the amendment on the ground that it is legislation on an appropriation bill.

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

THE CHAIRMAN:[17] The Chair sustains the point of order.

Sense of Congress Regarding Panama Canal

§ 41.10 To a provision in a general appropriation bill (permitted to remain by failure to raise a point of order) stating the sense of Congress that any new Panama Canal treaty must protect the vital interests of the United States in the Canal Zone and in the operation, maintenance, and defense of the Canal, an amendment striking that provision and inserting a statement that it was the sense of Congress that any such treaty must not abrogate or vitiate the "traditional interpretation" of past Panama Canal treaties, with special reference to territorial sovereignty, was ruled out as constituting a different statement of legislative policy, not merely perfecting in nature, which was further legislation.

On June 10, 1977,[18] during consideration in the Committee of

16. 103 CONG. REC. 14952, 85th Cong. 1st Sess.

17. Wilbur D. Mills (Ark.).

18. 123 CONG. REC. 18402, 18403, 95th Cong. 1st Sess.

the Whole of the Departments of State, Justice, Commerce, and the Judiciary appropriation bill, a point of order was sustained against the following amendment:

MR. [ELDON J.] RUDD [of Arizona]: Mr. Chairman, I offer an amendment.

(The portion of the bill to which the amendment relates is as follows:)

Sec. 104. It is the sense of the Congress that any new Panama Canal treaty or agreement must protect the vital interests of the United States in the Canal Zone and in the operation, maintenance, property and defense of the Panama Canal.

The Clerk read as follows:

Amendment offered by Mr. Rudd: Page 14, delete lines 1 through 5 and insert in lieu thereof:

Sec. 104. It is the sense of the Congress that any new Panama Canal treaty or agreement must not abrogate or vitiate the traditional interpretation of the treaties of 1903, 1936, and 1955, with special reference to matters concerning territorial sovereignty. . . .

MR. [JOHN M.] SLACK [of West Virginia]: Mr. Chairman, I make a point of order reluctantly, because the amendment deals with matters not addressed in the bill and is clearly legislation on an appropriation bill. . . .

MR. RUDD: . . . This is simply a clarification to section 104. We have heard many statements here this afternoon and this morning regarding the desire by many of our distinguished colleagues here, and I think that they are in favor of retaining the Panama Canal. All this does is to clarify this language, put it in proper perspective, so that there will be no question about the retention of the Panama Canal.

THE CHAIRMAN:[19] The Chair is prepared to rule.

The gentleman from Arizona (Mr. Rudd) offered an amendment to section 104, which is a sense of the Congress section.

The amendment offered by the gentleman from Arizona (Mr. Rudd) would change the sense of the Congress legislation permitted to remain in the bill and would clearly alter it. The gentleman's amendment would be further legislation on an appropriation bill and subject to a point of order. The Chair must sustain the point of order made by the gentleman from West Virginia (Mr. Slack).

42. District of Columbia

Office of Corporation Counsel; Salary Rates Fixed by Commissioner

§ 42.1 A paragraph in a general appropriation bill for the District of Columbia permitting the use of funds in the bill by the Office of the Corporation Counsel to retain professional experts at rates fixed by the commissioner was conceded to be legislation and was ruled out in violation of Rule XXI clause 2.

On June 18, 1973,[20] during consideration in the Committee of

19. Walter Flowers (Ala.).

20. 119 CONG. REC. 20068, 93d Cong. 1st Sess.

the Whole of the District of Columbia appropriation bill (H.R. 8685), the following point of order was raised:

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language to be found on page 11, lines 5 through 10, as not being a limitation upon an appropriation bill, and not authorized.

The portion of the bill to which the point of order relates is as follows:

> Sec. 5. Appropriations in this Act shall be available for services as authorized by 5 U.S.C. 3109 and shall be available to the Office of the Corporation Counsel to retain the services of consultants including physicians, diagnosticians, therapists, engineers, and meteorologists at rates to be fixed by the Commissioner.

THE CHAIRMAN:[1] Does the gentleman from Kentucky desire to be heard on the point of order raised by the gentleman from Iowa (Mr. Gross)?

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Chairman, I should like to say to the members of the Committee that this is a new provision that is carried in the bill at this time. This was sent up from downtown. We at this time, Mr. Chairman, concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Mandating Equal Expenditure for all Races

§ 42.2 A proposed amendment to the District of Columbia appropriation bill providing that "whenever . . . it is proposed to expend any sum for any thing or service from the benefit of which members of any race are excluded an equal sum shall be expended . . . for the benefit . . . of the race so excluded" was held to be legislation on an appropriation bill and therefore not in order.

On Apr. 5, 1946,[2] the Committee of the Whole was considering H.R. 5990, a District of Columbia appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Clare E.] Hoffman [of Michigan]: On page 55, after line 5, insert a new section as follows:

"3. Whenever under this bill it is proposed to expend any sum for any thing or service from the benefit of which members of any race are excluded, an equal sum shall be expended for things and services for the benefit of the members of the race so excluded and in proportion to the percent of the population the members of the excluded race bear to the whole population of the municipality where the proposed expenditure is to be made."

MR. [JOHN M.] COFFEE [of Washington]: Mr. Chairman, I renew the point of order. I make the point of

1. Dante B. Fascell (Fla.).

2. 92 CONG. REC. 3222, 3232, 79th Cong. 2d Sess.

order the amendment is legislation on an appropriation bill requiring affirmative action by District officials.

THE CHAIRMAN:[3] The Chair is ready to rule. . . .

The bill now being considered contains no provision for equal appropriations and there is no authorization to make equal appropriations.

The Chair therefore feels that it is very clearly legislation, and sustains the point of order.

Conferring Discretionary Method of Expenditure

§ 42.3 Language in a general appropriation bill making funds available for the District of Columbia Civil War Centennial Commission for expenses "by contract or otherwise, as determined by the Commissioners" was held to be legislation and not in order.

On June 23, 1960,[4] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 12740), a point of order was raised against the following provision:

DISTRICT OF COLUMBIA FUNDS

Operating Expenses

Executive Office

For an additional amount for "Executive Office", including expenses of the District of Columbia Civil War Centennial Commission and the National Capital Downtown Committee, Incorporated, by contract or otherwise, as may be determined by the Commissioners, $47,700.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I rise to make a point of order.

THE CHAIRMAN:[5] The gentleman will state it.

MR. GROSS: Mr. Chairman, I make a point of order against the language appearing on page 3, beginning with line 14 through line 21, as being legislation on an appropriation bill, with particular reference to the language in line 20 which reads as follows: "by contract or otherwise, as may be determined by the Commissioners."

THE CHAIRMAN: Does the gentleman from Texas (Mr. Thomas) care to be heard on the point of order?

MR. [ALBERT] THOMAS: Mr. Chairman, this is in the normal course of their duties, and I doubt if the point of order is good.

THE CHAIRMAN: The Chair is prepared to rule.

After examining the language referred to by the gentleman from Iowa, it appears to the Chair that it is legislation on an appropriation bill, subject to a point of order; therefore, the Chair sustains the point of order.

Setting Maximum Hospital Rates for Treatment of Indigent Patients

§ 42.4 Language in a general appropriation bill author-

3. Francis E. Walter (Pa.).
4. 106 CONG. REC. 14086, 86th Cong. 2d Sess.
5. Aime J. Forand (R.I.).

izing the treatment of indigent patients in hospitals in the District of Columbia, and setting maximum rates to be charged for such treatment, was conceded to be legislation and ruled out on a point of order.

On June 26, 1962,[6] during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 12276), the following point of order was raised:

MR. [H. R.] Gross [of Iowa]: Mr. Chairman, I make a point of order against the following language beginning in line 24 on page 6, and ending in line 2 on page 7: "and for care and treatment of indigent patients in institutions, including those under sectarian control, under contracts to be made by the Director of Public health;".

And the following language beginning in line 2 of page 7 and ending in line 9 of page 7:

Provided, That the outpatient rate under such contracts and for services rendered by Freedmen's Hospital shall not exceed $5 per visit and the inpatient rate shall not exceed rates established by the Commissioners based on audited costs, and such contract rates and rates for services rendered by Freedmen's Hospital shall not exceed comparable costs at the District of Columbia General Hospital.

Leaving in on line 2 of page 7 the dollar sign and figures: "$66,528,000:".

Mr. Chairman, I make the point of order that the language I seek to have stricken is legislation on an appropriation bill. . .

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Chairman, I have discussed this matter with my distinguished colleague, the ranking minority member [Mr. Rhodes]. As pointed out to the Committee a few moments ago, this is a feature that has been carried in the District of Columbia appropriation bill for a great number of years; a provision that the members of the subcommittee do not favor. I believe, also, that this matter can be worked out after the bill goes to the other body, and in the conference report we can work out a provision that will not only meet with the approval of the committee but also, I think, with that of the distinguished gentleman from Iowa.

We concede the point of order.

THE CHAIRMAN:[7] The point of order is conceded.

Granting Commissioners Authority to Supervise, Control, and Operate Building in District of Columbia

§ 42.5 Language in the District of Columbia appropriation bill placing under the commissioners the supervision, control, and operation of the Police Court Building was held to be legislation on an appropriation bill.

6. 108 CONG. REC. 11731, 11732, 87th Cong. 2d Sess.

7. Charles M. Price (Ill.).

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:

For completing construction of a building in Judiciary Square to house the Police Court of the District of Columbia, including furniture and equipment, and inspection, $450,000, and the supervision, control, and operation of said building shall be under the Commissioners of the District of Columbia, who are authorized to assign surplus space in said building to other activities of the municipal government.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order against that portion of the last paragraph on page 49 beginning after the word "control", in line 20, which reads, "and operation of said building shall be under the Commissioners of the District of Columbia, who are authorized to assign surplus space in said building to other activities of the municipal government" for the reason it is legislation and changes the provisions of existing law.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Chairman, will the gentleman yield?

MR. NICHOLS: I yield to the gentleman from Massachusetts.

MR. MCCORMACK: Why does not the gentleman include in his point of order the words "and the supervision, control, and operation", beginning on line 20? In other words, all after the figure "$450,000."

MR. NICHOLS: Mr. Chairman, I thank the gentleman for the observation. I modify my point of order to include the language beginning in line 20 referred to by the gentleman from Massachusetts.

THE CHAIRMAN:[9] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [ROSS A.] COLLINS [of Mississippi]: No, Mr. Chairman. I do not know what we are going to do with the available space there, but it is, perhaps, all right.

MR. NICHOLS: May I state to the gentleman the custodians of the particular buildings will assign the space in the orderly manner as they have always done.

THE CHAIRMAN: Patently, the language referred to is legislation on an appropriation bill. Therefore, the Chair sustains the point of order.

Explicit Change in Lawful Policy; Restrictions on Newspaper Advertisements

§ 42.6 Language in the District of Columbia appropriation bill providing that an appropriation shall not be available for costs of advertisements in newspapers published outside the District of Columbia "notwithstanding the requirement for such advertising provided by existing law" was held not in order on a general appropriation bill.

8. 81 CONG. REC. 3109, 75th Cong. 1st Sess.

9. Jere Cooper (Tenn.).

On Apr. 2, 1937,[10] 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:

The Clerk read as follows:

For general advertising, authorized and required by law, and for tax and school notices and notices of changes in regulations, $7,000: Provided, That this appropriation shall not be available for the payment of advertising in newspapers published outside of the District of Columbia, notwithstanding the requirement for such advertising provided by existing law.

MR. [VINCENT L.] PALMISANO [of Maryland]: Mr. Chairman, I make the point of order to the proviso beginning on line 11, page 13:

Provided, That this appropriation shall not be available for the payment of advertising in newspapers published outside of the District of Columbia, notwithstanding the requirement for such advertising provided by existing law.

I make the point of order that is legislation on an appropriation bill.

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, the law provides that all purchases over $1,000 shall be advertised in newspapers outside the District of Columbia. The purpose of this amendment is to save the District a little money, and if the gentleman from Maryland does not want to do that, it suits me.

MR. PALMISANO: Mr. Chairman, it is not that the gentleman from Maryland does not want to save the District any money. This is a question of whether or not we are going to permit the Committee on Appropriations to come in here and change laws that are now on the statute books. If we are going to permit that in the case of the District of Columbia, we might as well wipe out all legislative committees in this House. That is the question involved.

THE CHAIRMAN:[11] The Chair inquires of the gentleman from Maryland whether his point of order is made to the proviso, beginning on line 11 and extending through line 14?

MR. PALMISANO: It is.

THE CHAIRMAN: The Chair is prepared to rule. The Chair is of opinion that especially the last part of the proviso, beginning with the word "notwithstanding" clearly waives the provisions of existing law, and therefore changes existing law and would be legislation on a general appropriation bill, which is prohibited by the rules of the House. The Chair, therefore, sustains the point of order.

§ 43. Federal Employment

Conditions of Employment—Restricting Employment to Citizens

§ 43.1 Provisions in a section of a general appropriation bill denying the use of funds to pay federal employees in a certain category, declaring in part that an affidavit

10. 81 CONG. REC. 3105, 3106, 75th Cong. 1st Sess.

11. Jere Cooper (Tenn.).

signed under that section shall be considered prima facie evidence of fulfilling requirements of the provision, and further imposing penalties for making a false affidavit were ruled out as legislation in violation of Rule XXI clause 2.

On Aug. 1, 1973,[12] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9590), points of order were raised seriatim against the four provisos in the following paragraph:

The Clerk read as follows:

Sec. 602. Unless otherwise specified and during the current fiscal year, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in continental United States unless such person (1) is a citizen of the United States, (2) is a person in the service of the United States on the date of enactment of this Act, who, being eligible for citizenship, has filed a declaration of intention to become a citizen of the United States prior to such date, (3) is a person who owes allegiance to the United States, or (4) is an alien from Poland or the Baltic countries lawfully admitted to the United States for permanent residence: *Provided*, That for the purpose of this section, an affidavit signed by any such person shall be considered prima facie evidence that the requirements of this section with respect to his status have been complied with: *Provided further*, That any person making a false affidavit shall be guilty of a felony, and, upon conviction, shall be fined not more than $4,000 or imprisoned for not more than one year, or both: *Provided further*, That the above penal clause shall be in addition to, and not in substitution for, any other provisions of existing law: *Provided further*, That any payment made to any officer or employee contrary to the provisions of this section shall be recoverable in action by the Federal Government. This section shall not apply to citizens of the Republic of the Philippines or to nationals of those countries allied with the United States in the current defense effort, or to temporary employment of translators, or to temporary employment in the field service (not to exceed sixty days) as a result of emergencies.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I make a point of order as follows: Line 20, beginning with the word "*Provided*," at page 31 . . . The language continues to the word "*Provided*" at page 31, line 24, the word "with" and the colon.

The point of order is that this is violative of clause 2, rule XXI, as constituting legislative action in an appropriation bill.

THE CHAIRMAN:[13] Does the gentleman from Oklahoma desire to be heard?

MR. [TOM] STEED [of Oklahoma]: I do, Mr. Chairman.

Mr. Chairman, this proviso has been in the bill for many years. This may

12. 119 CONG. REC. 27290, 27291, 93d Cong. 1st Sess.

13. Richard Bolling (Mo.).

impose a duty upon the person seeking, but it does not impose any additional duties on the Government side of it, and it is a strict limitation, it is a limitation in the sense that it requires only a type of qualification which is standard.

THE CHAIRMAN: The Chair is prepared to rule.

The language,

> an affidavit signed by such person shall be considered prima facie evidence . . .

Seems to the Chair clearly to be legislation, and the Chair sustains the point of order.

MR. DINGELL: Mr. Chairman, I rise to a further point of order.

THE CHAIRMAN: The gentleman from Michigan will state his point of order.

MR. DINGELL: Mr. Chairman, I rise to a point of order to page 31, line 24, beginning with "*Provided further*," down through the word "both" and the colon on page 32, line 2.

The point of order, Mr. Chairman, is that this is again legislation in an appropriation bill. I would point out to the Chair that we are creating a new crime by this legislation, which says:

> That any person making a false affidavit shall be guilty of a felony, and, upon conviction, shall be fined not more than $4,000 or imprisoned for not more than one year, or both:

Obviously this is a legislative effort by the Committee on Appropriations.

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

MR. STEED: Mr. Chairman, in view of the ruling of the Chair on the previous point of order, we concede this point of order.

THE CHAIRMAN: The point of order is conceded, and the point of order is sustained.

MR. DINGELL: Mr. Chairman, I raise the same point of order again as to rule XXI, clause 2, to the words, beginning on page 32, line 2:

> *Provided further*, That the above penal clause shall be in addition to, and not in substitution for, any other provisions of existing law:

I cite again the earlier ruling of the Chair, and the point of order previously stated.

THE CHAIRMAN: Does the gentleman from Oklahoma (Mr. Steed) desire to be heard on the point of order?

MR. STEED: I do, Mr. Chairman. This is an entirely different proposition. This is a very obvious limitation.

THE CHAIRMAN: The Chair is ready to rule.

It would appear to the Chair that this proviso relates to the language that has already been stricken, and that the same ruling that applied to the stricken language would apply to it: therefore the Chair sustains the point of order.

MR. DINGELL: Mr. Chairman, I have a further point of order.

THE CHAIRMAN: The gentleman from Michigan will state his point of order.

MR. DINGELL: Mr. Chairman, skipping over to the next "*Provided further*," going down to the words, beginning on page 32, line 7:

> This section shall not apply to citizens of the Republic of the Philippines or to natives of those countries allied with the United States in the current defense effort, or to temporary employment of translators or to temporary employment in the

field service (not to exceed sixty days) as a result of emergencies.

Mr. Chairman, I make note of the fact that this again constitutes legislation in an appropriation bill. I point out that it imposes upon the Government agencies involved the duty to make findings as to the citizenship of persons involved. Obviously this is an additional burden which this legislative act would apply. It again refers, Mr. Chairman, to earlier language which has been stricken by points of order, and constitutes a hold on those provisions which have previously been stricken by points of order.

So, Mr. Chairman, I renew my point of order with regard to the language appearing on page 32, commencing on line 7, with the words, "This section" through the end of the paragraph in line 12.

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

MR. STEED: Mr. Chairman, we concede the point of order.

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

— *Exclusion of Persons Advocating Right to Strike*

§ 43.2 A provision in a general appropriation bill making it a felony for a person "who is a member of an organization of Government employees that asserts the right to strike against the Government" to accept employment the salary or wages for which are paid from funds contained in such bill was held to be legislation and not in order.

On May 2, 1951,[14] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3790), a point of order was raised against the following provision:

Sec. 301. No part of any appropriation contained in this act, or of the funds available for expenditure by any corporation included in this act, shall be used to pay the salary or wages of any person who engages in a strike against the Government of the United States or who is a member of an organization of Government employees that asserts the right to strike against the Government of the United States [and any such person who accepts] employment the salary or wages for which are paid from any appropriation or fund contained in this act shall be guilty of a felony. . . .

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I make a point of order against the entire section on the ground it is legislation on an appropriation bill.

THE CHAIRMAN:[15] The gentleman from Washington makes a point of order against the entire section on the ground it is legislation on an appropriation bill.

The Chair sustains the point of order.

14. 97 CONG. REC. 4741, 82d Cong. 1st Sess.

15. Wilbur D. Mills (Ark.).

— *Prohibition on Salary Until Security Clearance Certified*

§ 43.3 An amendment to an appropriation bill providing that no part of the appropriation shall be used to pay any person employed in the State Department subsequent to a certain date, until essential clearance as to loyalty has been certified by the Federal Bureau of Investigation and the appropriate security committee of the State Department, was held to be legislation on an appropriation bill.

On Mar. 27, 1946,[16] during consideration in the Committee of the Whole of the second Defense Department appropriation bill (H.R. 5890), a point of order was raised against the following amendment:

> MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Wigglesworth: On page 23, line 16, after the figures "$133,456" strike out the period, insert a comma, and the following: "*Provided,*" That no part of any appropriation in this act shall be used to pay the salary or wage of any person appointed or transferred to the Department of State after September 1, 1945, until essential clearance as to loyalty has been certified by the Federal Bureau of Investigation and the appropriate security committee of the Department of State.". . .
>
> MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, while the proposed amendment is in the form of a limitation, it is coupled with an affirmative direction which amounts to a change of law. For this reason, although presented in the guise of an exception to the rule, it is, in effect, legislation on an appropriation bill, and therefore subject to the point of order.
>
> THE CHAIRMAN:[17] The Chair is ready to rule.
>
> The amendment as drawn is in the form of a limitation but it does have in it positive language which gives it the effect of legislation on an appropriation bill. The Chair, therefore, sustains the point of order made by the gentleman from Missouri.

Granting Authority to Terminate Employment

§ 43.4 Language in a general appropriation bill providing that the Secretary of State may, in his discretion, terminate the employment of any employee of the Department of State or of the Foreign Service whenever he shall deem such termination necessary or advisable in the interests of the United States, was held to be legislation on

16. 92 CONG. REC. 2695, 79th Cong. 2d Sess.

17. Edward J. Hart (N.J.).

an appropriation bill and not to be within the provisions of the Holman rule.

On Apr. 20, 1950,[18] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 7786), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 104. Notwithstanding the provisions of section 6 of the act of August 24, 1912 (37 Stat. 555), or the provisions of any other law, the Secretary of State may, in his absolute discretion, during the current fiscal year, terminate the employment of any officer or employee of the Department of State or of the Foreign Service of the United States whenever he shall deem such termination necessary or advisable in the interests of the United States. . . .

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, a point of order. The language of section 104 gives to the Secretary of State—and I quote from the section—"in his absolute discretion" power to terminate the employment of any employee. I do not believe we have ever had legislation in the entire history of this Nation which contained this language "absolute discretion.". . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, in my opinion this will result in a saving. It is in accordance with the provisions of the Holman rule. When the power authorized in this language is exercised and the Secretary terminates the employment of any officer or employee in his absolute discretion that will result in a saving. That will save money and is in order.

THE CHAIRMAN:[19] . . . The gentleman from New York (Mr. Marcantonio) has made a point of order against the language appearing in section 104 on page 46 of the bill on the ground that it is legislation on an appropriation bill. The Chair has examined the language. The Chair invites attention to the fact that the language does confer definite authority and requires certain acts on the part of the Secretary of State. In response to the argument offered by the gentleman from New York (Mr. Taber) as to the application of the Holman rule it is clearly shown by the precedents and decisions of the House that the saving must be apparent and definite on its face in the language of the bill in order for the Holman rule to apply. Certainly an examination of the language in question clearly shows that any saving would be speculative. In view of the long line of precedents and decisions dealing with the question of legislation on an appropriation bill, which is clearly prohibited under the rules of the House, the Chair has no alternative other than to sustain the point of order.

"Right to Work" Amendment

§ 43.5 To a bill making appropriations to enable the Works Progress Administration to continue to provide employment, an amendment providing "that no person

18. 96 CONG. REC. 5480, 5481, 81st Cong. 2d Sess.

19. Jere Cooper (Tenn.).

shall be deprived of work . . . because he does not belong . . . to any organization" was held to be legislation and not in order.

On Feb. 12, 1941,[20] during consideration in the Committee of the Whole of a deficiency appropriation bill (H.R. 3204), a point of order was raised against the following amendment:

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Hoffman: On page 3, line 5, after the figures, insert "*Provided*, That no person shall be deprived of work where work is provided because he does not belong, refuses to join, or pay dues to any organization.". . .

MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill.

THE CHAIRMAN:[1] Does the gentleman from Michigan (Mr. Hoffman) desire to be heard?

MR. HOFFMAN: Yes.

Mr. Chairman, this is a limitation, in fact, on the right of a certain group to prevent this money reaching those for whom it is appropriated, therefore it is proper.

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

Rule XXI of the House, referring to general appropriation bills, provides:

Nor shall any provision in any such bill or amendment thereto changing existing law be in order.

This being a supplementary appropriation bill, the amendment is not in order, and the Chair sustains the point of order.

Employment by Judiciary

§ 43.6 To a general appropriation bill including funds for the federal judiciary and placing a limitation on the total salaries which may be paid by any judge for clerk and secretarial hire, a provision specifying that without regard to such dollar limitations, "each circuit judge may appoint an additional law clerk at not to exceed grade (GS) 9" was ruled out as legislation, no authority being cited to the Chair.

On May 28, 1968,[2] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 17522), the following point of order was raised:

MR. [H.R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 42, beginning on line 3, which reads as follows:

Provided further, That without regard to the aforementioned dollar

20. 87 CONG. REC. 920–24, 77th Cong. 1st Sess.

1. James M. Barnes (Ill.).

2. 114 CONG. REC. 15357, 15358, 90th Cong. 2d Sess.

limitations, each circuit judge may appoint an additional law clerk at not to exceed grade (GS) 9.

Mr. Chairman, I make a point of order against this language on the ground that it is legislation on an appropriation bill.

MR. [JOHN J.] ROONEY of New York: Mr. Chairman, I maintain that this is authorized by law. The additional law clerk is most certainly authorized. The committee inserted this language in the bill so that they would not hire law clerks at higher grades that GS–9. It is in the bill to save money or to keep down the amount of money that would be required to pay these law clerks.

THE CHAIRMAN:[3] Before the Chair rules on the point of order, can the gentleman from New York cite to the Chair the authority the gentleman says is already existing? . . .

The Chair will state that if the additional clerk is authorized somewhere in law, this would be a limitation upon the grade at which the clerk could be appointed. What is sought to be found out is whether there is existing legislation.

MR. GROSS: I point out, Mr. Chairman, "without regard to the aforementioned dollar limitations," and so on and so forth. It is not a limitation.

MR. ROONEY of New York: Mr. Chairman, I am sure this is authorized. However, we will concede the point of order in the interest of saving time and bring it back to the House after the conference. This does not affect the amount of money for these law clerks.

THE CHAIRMAN: In view of that statement, the Chair sustains the point of order.

3. Wayne L. Hays (Ohio).

Establishing Salary Levels

§ 43.7 An amendment to an appropriation bill seeking to set levels for salaries of all officials and employees of the federal judiciary, not otherwise specifically provided for, was conceded and held to be legislation on an appropriation bill and not in order.

On May 15, 1947,[4] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 3311), a point of order was raised against the following amendment:

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Rooney: On page 66, after line 17, insert a new paragraph to read as follows:

"Miscellaneous salaries: For salaries of all officials and employees of the Federal judiciary, not otherwise specifically provided for, $1,833,500: *Provided*, That the compensation of secretaries and law clerks of circuit and district judges (exclusive of any additional compensation under the Federal Employees Pay Act of 1945 and any other acts of similar purport subsequently enacted) shall be fixed by the Director of the Administrative Office without regard to the Classification Act of 1923, as amended, except that the salary of a secretary shall conform with that of the main

4. 93 CONG. REC. 5385, 80th Cong. 1st Sess.

(CAF–4), senior (CAF–5) or principal (CAF–6) clerical grade, or assistant (CAF–7) or associate (CAF–8) administrative grade, as the appointing judge shall determine, and the salary of a law clerk shall conform with that of the junior (P–1), assistant (P–2), associate (P–3), full (P–4), or senior (P–5) professional grade, as the appointing judge shall determine, subject to review by the judicial council of the circuit if requested by the Director, such determination by the judge otherwise to be final: *Provided further,* That (exclusive of any additional compensation under the Federal Employees Pay Act of 1945 and any other acts of similar purport subsequently enacted) the aggregate salaries paid to secretaries and law clerks appointed by one judge shall not exceed $6,500 per annum, except in the case of the senior circuit judge of each circuit and senior district judge of each district having five or more district judges, in which case the aggregate salaries shall not exceed $7,500."

MR. [KARL] STEFAN [of Nebraska]: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from New York [Mr. Rooney] on the ground that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[5] Does the gentleman from New York [Mr. Rooney] desire to be heard on the point of order?

MR. ROONEY: No, Mr. Chairman; I must concede the point of order. There is no authorization in law for this expenditure, although it has been in this bill year after year for many years.

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

§ 43.8 Language in a general appropriation bill providing additional compensation for secretaries and law clerks to district and circuit judges was conceded and held to be legislation on an appropriation bill and not in order.

On Mar. 16, 1945,[6] 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:

Miscellaneous salaries: For salaries of all officials and employees of the Federal judiciary, not otherwise specifically provided for, $1,400,000: *Provided,* That the compensation of secretaries and law clerks of circuit and district judges (exclusive of any temporary additional compensation) shall be fixed by the Director of the Administrative Office without regard to the Classification Act of 1923, as amended, except that the salary of a secretary shall conform with that of the main (CAF–4), senior (CAF–5), or principal (CAF–6) clerical grade, or assistant (CAF–7), or associate (CAF–8) administrative grade, as the appointing judge shall determine, and the salary of a law clerk shall conform with that of the junior (P–1), assistant (P–2), associate (P–3), full (P–4), or senior (P–5) professional grade, as the appointing judge shall determine, subject to review by the judicial council of the circuit if requested by the Director, such determination by the judge otherwise to be final: . . .

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I make the point of

5. Carl T. Curtis (Nebr.).

6. 91 CONG. REC. 2376, 2377, 79th Cong. 1st Sess.

order against the language on page 83, line 11, beginning with the word "provided" down through the remainder of page 84, to and including the word "final", page 84, line 1, on the ground that it is legislation on an appropriation bill and not authorized by law.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, to amplify the point of order raised by the gentleman from Kansas, I make the point of order against the entire paragraph that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[7] . . . The Chair is particularly interested in whether or not the paragraph is authorized by law.

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

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

MR. TARVER: Certainly, Mr. Chairman.

THE CHAIRMAN: The Chair is constrained to rule first upon the point of order made by the gentleman from Georgia, in view of the fact that it goes to the language of the entire paragraph. The Chair must hold that the language is subject to a point of order and, therefore, sustains the point of order made by the gentleman from Georgia.

Providing New Position

§ 43.9 In a bill appropriating funds for United States participation in the New York World's Fair, a provision for a "United States Commissioner" for the fair, to be appointed by the President at a rate not to exceed $19,500 per annum, was conceded to be legislation and was ruled out on a point of order.

On Apr. 2, 1962,[8] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 11038), a point of order was raised against the following provision:

The Clerk read as follows:

GENERAL ADMINISTRATION

Participation in New York World's Fair

For expenses necessary to provide for United States participation in the New York World's Fair, as authorized by the provisions of the Act of September 21, 1961 (75 Stat. 527), including compensation of a United States Commissioner, who shall be appointed by the President, at a rate not to exceed $19,500 per annum, and services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), but at rates for individuals not to exceed $75 per diem, $17,000,000, to remain available until expended. . . .

MR. [H. R.] GROSS [of Iowa]: A point of order, Mr. Chairman.

THE CHAIRMAN:[9] The gentleman will state it.

MR. GROSS: I make a point of order against the following language beginning in line 16 and ending in line 18:

7. Wilbur D. Mills (Ark.).

8. 108 CONG. REC. 5932, 5933, 87th Cong. 2d Sess.

9. Oren Harris (Ark.).

Including compensation of a United States Commissioner, who shall be appointed by the President, at a rate not to exceed $19,500 per annum,

I make the point of order that this is legislation on an appropriation bill, and is so stated on page 9 of the report of the committee accompanying the bill.

THE CHAIRMAN: Does the gentleman from Texas wish to be heard on the point of order?

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, the point of order is good.

The agency states that this position would be considered in addition to the 10 persons authorized to be employed without regard to the provisions of the Classification Act.

The act itself sets up 10 positions. What makes it subject to a point of order is that the agency admits that it is not 1 of the 10 but is the 11th job and so it, as the 11th job, is subjected to a point of order.

THE CHAIRMAN: The gentleman concedes the point of order. The point of order is sustained.

Authorizing Employment of Specialists at Salary Levels To Be Authorized by the Department Head

§ 43.10 Language in an appropriation bill providing for employment in the Customs Division, Department of Justice, "of special attorneys and experts at such rates of compensation as may be authorized or approved by the Attorney General or his assistant," was conceded and held to be legislation conferring new authority on an executive official.

On Mar. 16, 1945,[10] 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:

Salaries and expenses, Customs Division: For necessary expenses, including travel expenses, purchase and exchange of lawbooks and books of reference, and employment of special attorneys and experts at such rates of compensation as may be authorized or approved by the Attorney General or his Administrative Assistant, $146,000.

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

THE CHAIRMAN:[11] The gentleman will state it.

MR. CASE of South Dakota: Mr. Chairman, I make a point of order against the language beginning in line 10 on page 38 and continuing down into line 13, which reads as follows: "and employment of special attorneys and experts at such rates of compensation as may be authorized or approved by the Attorney General or his Administrative Assistant," on the ground that that is legislation in an appropriation bill.

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

10. 91 CONG. REC. 2353, 79th Cong. 1st Sess.

11. Wilbur D. Mills (Ark.).

THE CHAIRMAN: The point of order is sustained.

§ 43.11 Language in an appropriation bill providing for employment in the Lands Division, Department of Justice, of experts "at such rates of compensation as may be authorized or approved by the Attorney General" was conceded and held to be legislation.

On Mar. 16, 1945,[12] 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:

> Salaries and expenses, Lands Division: For personal services in the District of Columbia and for other necessary expenses, including travel expenses, employment of experts at such rates of compensation as may be authorized or approved by the Attorney General, stenographic reporting services by contract, and notarial fees or like services, $3,400,000.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the language beginning in line 17, including all of the language in that line and through the words "Attorney General" in line 18.
>
> THE CHAIRMAN:[13] Beginning with the word "at" in line 17, and ending with the word "General" in line 18?
>
> MR. TABER: That is correct; on the ground it is legislation on an appropriation bill.
>
> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, we concede the point of order.
>
> THE CHAIRMAN: The point of order is sustained.

Pay of Witnesses

§ 43.12 Language in an appropriation bill providing funds to be available as compensation and expenses of witnesses or informants as may be authorized or approved by the Attorney General "or his administrative assistant" was conceded and held to be legislation as a new delegation of authority.

On Mar. 16, 1945,[14] 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:

> Fees of witnesses: For expenses, mileage, and per diems of witnesses and for per diems in lieu of subsistence, such payments to be made on the certification of the attorney for the United States and to be conclusive as provided by section 846, Revised Statutes (28 U.S.C. 577), $700,000: *Provided,* That not to exceed $25,000 of this amount shall be available for such

12. 91 CONG. REC. 2354, 79th Cong. 1st Sess. *Id.* at p. 2362.

13. Wilbur D. Mills (Ark.).

14. 91 CONG. REC. 2363, 79th Cong. 1st Sess.

compensation and expenses of witnesses or informants as may be authorized or approved by the Attorney General or his administrative assistant, which approval shall be conclusive: *Provided further,* That no part of the sum herein appropriated shall be used to pay any witness more than one attendance fee for any one calendar day, which fee shall not exceed $1.50 except in the District of Alaska: *Provided further,* That whenever an employee of the United States performs travel in order to appear as a witness on behalf of the United States in any case involving the activity in connection with which such person is employed, his travel expenses in connection therewith shall be payable from the appropriation otherwise available for the travel expenses of such employee.

MR. [ROBERT F.] JONES [of Ohio]: Mr. Chairman, I make the point of order against the language appearing on page 43, line 5, reading "or his administrative assistant" on the ground that it is legislation on an appropriation bill.

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, we concede the point of order. May I say that the appropriation for this item in 1936 was $2,100,000. The amount suggested in this bill for 1946 is $750,000. This will bring to the attention of the Committee the savings that have been attempted to be made by the Committee on Appropriations.

THE CHAIRMAN:[15] The point of order is sustained.

Authorizing Employment and Specifying Grade Level

§ 43.13 Language in a general appropriation bill providing for positions of employment in certain grades, in addition to the number authorized in existing law, was conceded and held to be legislation and not in order.

On May 11, 1959,[16] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7040), a point of order was raised against the following provision:

For necessary expenses of the Civil Aeronautics Board, including contract stenographic reporting services; employment of temporary guards on a contract or fee basis; hire, operation, maintenance, and repair of aircraft; hire of passenger motor vehicles; and services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), at rates for individuals not to exceed $50 per diem; $6,925,000: *Provided,* That the Chairman is authorized without regard to any other provision of law, to place five General Schedule positions in the following grades: one in grade GS–18, one in grade GS–17, and three in grade GS–16, and such positions shall be in addition to positions previously allocated to this agency. . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order against the language contained in the bill beginning on line 11 through line 16, page 4, as being legislation on an

15. Wilbur D. Mills (Ark.).

16. 105 CONG. REC. 7904, 7905, 86th Cong. 1st Sess. See also 104 CONG. REC. 9065, 85th Cong. 2d Sess., May 20, 1958.

appropriation bill. Mr. Chairman, it may well be that the Civil Aeronautics Board needs more super grades, but this is not the way to get it.

THE CHAIRMAN:[17] Does the gentleman from Texas desire to be heard on the point of order?

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I oppose the point of order. Let me make this explanation to my distinguished friend. You will recall that this language was put in the bill and thoroughly argued and debated last year. It was covered by a rule, you remember that, only it was for 10 of these jobs, and the Civil Service Commission, through some misunderstanding, only granted 5 of them. Now, the same language was in for FAA, and they were granted those 10. . . .

MR. GROSS: I must insist on my point of order in protection of the committee and in protection of the Civil Service Commission.

MR. THOMAS: I oppose the point of order because the paragraph was read.

THE CHAIRMAN: The Chair thinks the gentleman from Iowa was within his rights to make the point of order. He observed the gentleman standing when unanimous consent was granted to go back to the previous section.

MR. THOMAS: Well, the point of order is good, then. We admit it, then.

THE CHAIRMAN: The Chair sustains the point of order.

Providing Civil Service Rating for Officer

§ 43.14 A provision in the District of Columbia appropriation bill providing a GS–16 rating for the budget officer was conceded to be legislation and held not in order.

On Mar. 28, 1952,[18] during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 7216), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 9. Appropriations in this act shall be available for personal services including under the executive office the budget officer in GS–16 and, when authorized by the Commissioners or by the purchasing officer and the auditor, acting for the Commissioners, printing and binding may be performed by the District of Columbia Division of Printing and Publications without reference to fiscal-year limitations.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the language in lines 18 and 19 on page 45, as follows: "including under the executive office the budget officer in GS–16 and," that it is legislation upon an appropriation bill and provides for paying a higher salary than the law under which the District of Columbia operates allows.

THE CHAIRMAN:[19] Does the gentleman from Kentucky (Mr. Bates) wish to be heard on the point of order?

MR. [JOE B.] BATES of Kentucky: We concede the point of order, Mr. Chairman.

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17. Frank N. Ikard (Tex.).

18. 98 CONG. REC. 3137, 82d Cong. 2d Sess.

19. Mike Mansfield (Mont.).

THE CHAIRMAN: The gentleman concedes the point of order. The point of order is sustained.

Exempting Certain Persons From Employment Statutes

§ 43.15 Language in an appropriation bill exempting persons appointed to part time employment as members of a civil service loyalty board from application of certain statutes was held to be legislation and not in order.

On Mar. 20, 1957,[20] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 6070), the following point of order was raised:

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order against the language beginning at line 23, page 3, and running through line 4 on page 4 reading as follows:

Provided further, That nothing in sections 281 or 283 of title 18, United States Code, or in section 190 of the Revised Statutes (5 U.S.C. 99) shall be deemed to apply to any person because of appointment for part-time or intermittent service as a member of the International Organizations Employees Loyalty Board in the Civil Service Commission as established by Executive Order 10422, dated January 9, 1953, as amended.

I make the point of order on the ground that this language constitutes legislation on an appropriation bill.

THE CHAIRMAN:[1] The Chair sustains the point of order.

Reduction of Personnel

§ 43.16 To a general appropriation bill, an amendment providing that in reducing personnel the determination as to which employees shall be retained shall be made by the head of the agency concerned was held to be legislation and not in order.

On June 28, 1952,[2] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 8370), a point of order was raised against the following amendment:

MR. [ABRAHAM A.] RIBICOFF [of Connecticut]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Ribicoff to the amendment offered by Mr. Jensen: After (b), No. 3, add a new paragraph as follows:

"4. That 90 days after the enactment of this act, the number of civilian employees who are United States citizens, receiving compensation or allowances from the administrative expense appropriations provided by this act, employed in the United States and overseas by or assigned

20. 103 CONG. REC. 4046, 85th Cong. 1st Sess.

1. Frank N. Ikard (Tex.).

2. 98 CONG. REC. 8503, 82d Cong. 2d Sess. No arguments were here raised as to possible application of the Holman rule, which is discussed in §§ 4 and 5, supra.

to the Mutual Security Agency . . . shall be in the aggregate at least 15 percent less than the number so employed or assigned on June 1, 1952 . . . *Provided further,* That after the Director has determined the reduction to be effected in each agency, the determination as to which individual employees shall be retained shall be made by the head of the agency concerned." . . .

THE CHAIRMAN:[3] Does the gentleman from Virginia make his point of order?

MR. [J. VAUGHAN] GARY [of Virginia]: Yes. Mr. Chairman, as I understand the amendment, it leaves the discharge of employees entirely to the Administrator, which contravenes existing laws with reference to veterans' preference and also the civil-service laws. It is legislation; it contravenes existing legislation. . . .

THE CHAIRMAN: The Chair is ready to rule. Part of the language of the amendment offered by the gentleman from Connecticut, after the proviso, reads:

> That after the Director has determined the reduction to be effected in each agency, the determination as to which individual employees shall be retained shall be made by the head of the agency concerned.

This portion of the amendment does, in the opinion of the Chair, alter the civil-service laws and laws relating to veterans' preferences, and therefore constitutes legislation on an appropriation bill. The point of order is sustained.

Establishing Level of Salary

§ 43.17 A provision in a general appropriation bill that an appropriation shall be available for compensation of the Director of Defense Mobilization at the rate of $22,500 per annum was conceded and held to be legislation and stricken by the point of order.

On June 28, 1952,[4] During consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 8370), a point of order was raised against the following provision:

The Clerk read as follows:

CHAPTER X

EMERGENCY AGENCIES

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF DEFENSE MOBILIZATION

For expenses necessary for the Office of Defense Mobilization, including compensation of the Director of Defense Mobilization, at the rate of $22,500 per annum; printing and binding without regard to section 89 of the act of January 12, 1895, as amended (44 U.S.C. 213); hire of passenger-motor vehicles; reimbursement of the General Services Administration for security guard service; not to exceed $5,000 for emergency and extraordinary expenses, to be expended under the direction of the Director for such purposes as he deems proper, and his determination thereon shall be final and conclusive; and expenses of attendance at meetings concerned with the purposes of

3. Francis E. Walter (Pa.).

4. 98 CONG. REC. 8504, 82d Cong. 2d Sess.

this appropriation; $1,000,000: Provided, That contracts under this appropriation for temporary or intermittent services as authorized by section 15 of the act of August 2, 1946 (5 U.S.C. 55a), may be renewed annually.

MR. [GERALD R.] FORD [Jr., of Michigan]: Mr. Chairman, I make a point of order against the language on page 37, line 9, which reads, 'at the rate of $22,500 per annum.' It is legislation on an appropriation bill.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN:[5] The point of order is sustained.

Setting Salary of Commissioner of Public Buildings

§ 43.18 Language in the independent offices appropriation bill fixing the salary of the Commissioner of Public Buildings at $10,000 per annum was ruled out as legislation on an appropriation bill and not in order.

On Feb. 17, 1943,[6] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 1762), a point of order was raised against the following provision:

The Clerk read as follows:

General administrative expenses: For architectural, engineering, mechanical, administrative, clerical, and other personal services, including the salary of the Commissioner of Public Buildings at $10,000 per annum. . . .

MR. H. CARL ANDERSEN [of Minnesota]: Mr. Chairman, a point of order.

THE CHAIRMAN:[7] The gentleman will state it.

MR. H. CARL ANDERSEN: I make a point of order, Mr. Chairman, against the language on page 17, line 15, beginning with the word "including" and ending with the word "annum" in line 16, the language reading "including the salary of the Commissioner of Public Buildings at $10,000 per annum," upon the ground that that particular wording is legislation upon an appropriation bill and is not authorized by law.

THE CHAIRMAN: The gentleman objects to the language beginning in line 15, after the word "services"?

MR. H. CARL ANDERSEN: After the word "services" and including the word "annum" in line 16.

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Chairman, the item had the unanimous support of the subcommittee, but it is subject to a point of order.

THE CHAIRMAN: The point of order is sustained.

Limitation on Average Salary

§ 43.19 To an appropriation bill, an amendment in the form of a limitation on the average salary in cases

5. Francis E. Walter (Pa.).
6. 89 CONG. REC. 1055, 78th Cong. 1st Sess.
7. William M. Whittington (Miss.).

"where separate agencies have been set up under the Defense Production Act or the Civilian Defense Act," was held to be legislation on an appropriation bill and not in order.

On Aug. 20, 1951,[8] During consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 5215), a point of order was raised against the following amendment:

MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, I offer an amendment which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. Jenson: Page 44, line 10, insert a new section as follows:

"None of the funds provided by this act shall be used to pay employees at an average rate in excess of that paid from the regular appropriations provided to the departments concerned in the regular 1952 appropriation bills. *Provided further,* That where separate agencies have been set up under the Defense Production Act or the Civilian Defense Act, such average salary shall not exceed $4,500 per annum.

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I make the point of order that the amendment is legislation on an appropriation bill. It proposes to fix salaries and that is manifestly legislation and not in order.

MR. JENSEN: Mr. Chairman, I would like to be heard on the point of order.

This amendment, Mr. Chairman, is purely and simply a limitation on the amount of money that may be paid to Federal employees. In the regular agencies of Government employees receive an average of about $3,700 per annum. This simply limits other employees to a minimum. I believe the amendment is germane because it does not increase the authority of any agency which has appropriations in this act.

THE CHAIRMAN:[9] The Chair is ready to rule.

In the opinion of the Chair that section of the amendment beginning after the word "further" and especially that part which seeks to set a maximum upon the salaries which may be paid is clearly not a limitation but is legislation, and, therefore, subject to a point of order.

Limit on Number of Employees

§ 43.20 An amendment to the Interior Department appropriation bill limiting the appropriation for administrative personal services of the Bureau of Reclamation and providing further that the total number of employees in the bureau holding certain appointments shall not exceed 3,500 at any one time during the current fiscal year, was held to be legislation on an appropriation bill and not in order.

8. 97 CONG. REC. 10409, 82d Cong. 1st Sess.

9. Edward J. Hart (N.J.).

On Mar. 30, 1949,[10] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3838), a point of order was raised against the following amendment:

MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Jensen: On page 36, line 13, after "work" and before the period insert the following: "*Provided further,* That not to exceed $50,000,000 of appropriations available for expenditure by the Bureau of Reclamation during the current fiscal year shall be used for administrative personal services and other personal services; *Provided further,* That the total number of employees in the Bureau of Reclamation holding permanent, temporary, or other appointments in grades CAF–9 and P–3, or both, shall not exceed 3,500 at any one time during the current fiscal year."

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[11] The Chair is prepared to rule.

The gentleman from Iowa offers an amendment, which the Clerk has reported, against which the gentleman from Washington makes a point of order on the ground that it contains legislation on an appropriation bill, in violation of the rules of the House.

The Chair has examined the amendment with some degree of care. The gentleman from Iowa points out that the amendment is only a limitation on an appropriation bill. The first proviso contained in the amendment probably meets the description given by the gentleman from Iowa. If the amendment contained only the first proviso, the Chair would be inclined to agree that it is a limitation on an appropriation bill. However, the Chair invites attention to the second proviso contained in the amendment, which does not make any reference to a limitation of funds but seeks to control the number of employees that may be used in a department, and also has reference to the Classification Act and other matters which the Chair thinks very clearly constitute legislation. Therefore, the Chair sustains the point of order.

Repealing Limit on Salaries and Expenses

§ 43.21 A provision in an appropriation bill repealing a legislative provision in a prior appropriation law that certain expenditures during the fiscal year 1939 by the National Bituminous Coal Commission "shall not exceed an amount equal to the aggregate receipts covered into the Treasury under the provisions of" a specified statute was conceded to be legislation on an appropriation bill and consequently was held not in order.

10. 95 CONG. REC. 3528, 3529, 81st Cong. 1st Sess.

11. Jere Cooper (Tenn.).

On Mar. 22, 1939,[12] During consideration in the Committee of the Whole of a deficiency appropriation bill (H.R. 5219), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> The paragraph in the Second Deficiency Appropriation Act, fiscal year 1938, under the caption "National Bituminous Coal Commission," is hereby amended by striking out the following proviso: "*Provided*, That expenditures during the fiscal year 1939 under this head and under the head 'Salaries and expenses, office of the Consumers' Counsel, National Bituminous Coal Commission,' shall not exceed an amount equal to the aggregate receipts covered into the Treasury under the provisions of section 3 of the Bituminous Coal Act of 1937."
>
> MR. [J. WILLIAM] DITTER [of Pennsylvania]: Mr. Chairman, I make the point of order against the paragraph that it is legislation on an appropriation bill.
>
> MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, I concede the point of order.
>
> THE CHAIRMAN:[13] The point of order of the gentleman from Pennsylvania is conceded by the gentleman from Virginia, and is therefore sustained.

Denial of Status to Aliens Not Holman Retrenchment

§ 43.22 Language in an appropriation bill providing "that no alien employed on the Canal Zone may secure United States civil-service status," was held to be legislation on an appropriation bill and not within the exception of the Holman rule.

On July 2, 1947,[14] During consideration in the Committee of the Whole of the War Department civil functions appropriation, a point of order was raised against a provision, as follows:

> MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, I make a point of order against the language on page 17, line 18, subdivision (7), "that no alien employed on the Canal Zone may secure United States civil-service status," is legislation on an appropriation bill in that it clearly changes existing law.
>
> The existing law, Mr. Chairman, is found in the treaty which was signed between the Republic of Panama and the Government of the United States. The treaty was ratified by the Senate of the United States in 1939. . . .
>
> In February of this year an Executive order was issued by the President modifying the civil-service rules. One portion of that Executive order distinctly permits Panamanians to take civil service examinations and be enrolled in the United States Civil Service. Consequently, this language against which I have raised a point of order forbids Panamanian citizens from securing civil-service status.

12. 84 CONG. REC. 3123, 76th Cong. 1st Sess.

13. William P. Cole, Jr. (Md.).

14. 93 CONG. REC. 8171, 8172, 80th Cong. 1st Sess.

Thus, it changes the law as set forth in the treaty and changes the law as set out in the Executive order. It is clearly legislation on an appropriation bill.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, if I may be heard on the point of order, the first part of that section reads as follows:

> No part of any appropriation contained in this act shall be used directly or indirectly, except for temporary employment in case of emergency, for the payment of any civilian for services rendered by him on the Canal Zone while occupying a skilled, technical, clerical, administrative, executive, or supervisory position unless such person is a citizen of the United States of America or of the Republic of Panama: *Provided, however—*

Then going to subdivision (7)—

> that no alien employed on the Canal Zone may secure United States civil-service status.

Under the Holman rule, even legislation on an appropriation bill is permitted if it succeeds in the reduction of an expenditure. If aliens are to be given United States civil-service status, it will increase the liability of the United States for the payment of civil-service retirement and other provisions of that sort. Consequently, it seems to me that in that sense the inclusion of this language is a protection of the Treasury of the United States and may be permissible under the Holman rule. Clause 7, of course, is directly related to the "provided, however," and the language of limitation in the first part of the section.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, I would like to call the Chairman's attention to the fact that an act of Congress takes precedence over a treaty or even an Executive order in the form of a treaty. So this language is clearly in order. Congress has the right to enact this legislation.

THE CHAIRMAN:[15] The Chair is ready to rule. So far as the remark just made by the gentleman from Mississippi is concerned, as the Chair remembers, it is in the last analysis an act of Congress, whether it be a treaty or whether it be a law. Therefore, that remark is not germane to the question now before the Committee.

As far as the statement of the gentleman from South Dakota [Mr. Case] is concerned, regarding the Holman rule, at most, this suggests that there might be a saving; there is the possibility of a saving. The Holman rule is very clear that legislation must in its language show an absolute saving. Therefore, that point would not be of any value in sustaining the position which the gentleman takes.

Section 7 provides that no alien employed on the Canal Zone may secure United States civil-service status. So far as the Chair has been advised, there is no law anywhere providing for that very thing, excepting this legislation found in an appropriation bill.

The Chair therefore sustains the point of order.

Defining Personal Liability of Federal Employees

§ 43.23 Language in the Agriculture Department appropriation bill providing that

15. Earl C. Michener (Mich.).

employees of the United States on whose certificate or approval loans are made shall not be liable for loss by fraud, if the Governor of the Farm Credit Administration determines that such employee has exercised reasonable care in the circumstances, was conceded to be legislation on an appropriation bill and held not in order.

On Apr. 19, 1943,[16] 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:

Farmers' crop production and harvesting loans: For loans to farmers under the act of January 29, 1937 . . . *Provided*, That no employee of the United States on whose certificate or approval loans under said act of January 29, 1937, as amended, or other acts of the same general character, are or have been made, shall be held personally liable for any loss or deficiency occasioned by the fraud or misrepresentation of applicants or borrowers, if the Governor of the Farm Credit Administration shall determine that such employee has exercised reasonable care in the circumstances, and has complied with the regulations of the Farm Credit Administration in executing such certificate or giving such certificate or giving such approval. . . .

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

THE CHAIRMAN:[17] The gentleman will state it.

MR. FULMER: I make the point of order against the language on page 87, beginning with line 1, down to and including line 16, 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: The point of order is sustained.

§ 44.—Congressional Salaries and Allowances

Congressional Salaries

§ 44.1 For a limiting amendment to a general appropriation bill, a substitute amendment increasing the salary of Members of Congress was conceded and held to be subject to a point of order.

On Apr. 22, 1953,[18] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 4663), a point of order was raised against a substitute for the following amendment:

Amendment offered by Mr. [John Bell] Williams of Mississippi: Page 49,

16. 89 CONG. REC. 3591, 78th Cong. 1st Sess.

17. William M. Whittington (Miss.).

18. 99 CONG. REC. 3608, 83d Cong. 1st Sess.

after section 303, add a new section as follows:

"Sec. 304. No part of the funds appropriated in this act shall be used to pay the salary of any employee provided for in this appropriation at a rate in excess of the salary now paid to Members of the Senate and House of Representatives: *Provided, however,* That such limitations shall not apply to the office of the President of the United States.". . .

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Chairman, I offer a substitute amendment.

The Clerk read as follows:

Amendment offered by Mr. McCormack as a substitute for the amendment offered by Mr. Williams of Mississippi:

"The salaries of Members of the Congress after the enactment of this bill shall be $22,500 per year."

MR. WILLIAMS of Mississippi: Mr. Chairman, I make a point of order against the amendment.

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

THE CHAIRMAN:[19] The Chair sustains the point of order.

§ 44.2 An appropriation for "additional salaries" at a specified annual rate of Senators, Representatives in Congress, Delegates, and Commissioners was held to be legislation on an appropriation bill and not in order.

19. Jackson E. Betts (Ohio).

On Dec. 6, 1944,[20] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 5587), the following proceedings took place:

For payment to the widow of Hampton P. Fulmer, late a Representative from the State of South Carolina, $10,000 to be disbursed by the Sergeant at Arms of the House.

MR. [EMANUEL] CELLER [of New York]: Mr. Chairman, I offer an amendment which I send to the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. Celler, of New York: On page 2, after line 6, insert a new paragraph as follows:

"For additional salaries at the additional rate of $2,500 per annum, from January 1, 1945, to June 30, 1945, of Senators, Representatives in Congress, Delegates from Territories, the Resident Commissioner of Puerto Rico, and the Resident Commissioner from the Philippine Islands, $668,750."

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I regret to have to make a point of order against the amendment, that there is no legislation authorizing such an appropriation. . . .

THE CHAIRMAN:[1] . . . The Chair sustains the point of order made by the gentleman from Missouri [Mr. Cannon].

Increase in Members' Clerk-hire

§ 44.3 To a legislative appropriation bill, an amendment

20. 90 CONG. REC. 8936, 8937), 78th Cong. 2d Sess.

1. Herbert C. Bonner (N.C.).

providing that the clerk-hire roll of each Member be increased by one employee was ruled out as legislation.

On June 27, 1968,[2] During consideration in the Committee of the Whole of the legislative appropriation bill (H.R. 18038), a point of order was raised against the following amendment:

MR. [WILLIAM F.] RYAN [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Ryan: On page 6, line 20, strike out the period, insert a colon, and add the following: "*Provided*, That each Member's clerk-hire roll may be increased by one employee for the purposes and to the extent authorized in House Resolution 416, 89th Congress."

MR. [GEORGE W.] ANDREWS of Alabama: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[3] The gentleman from Alabama will state his point of order.

MR. ANDREWS of Alabama: Mr. Chairman, it is legislation on an appropriation bill. . . .

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

MR. RYAN: Yes, Mr. Chairman.

I would argue that the amendment is in order because the amendment relates to the purposes of House Resolution 416, which is referred to in the bill, and clearly, if lines 17 to 20 were in order and were included in the bill, then the proviso which my amendment adds to those lines is equally in order.

THE CHAIRMAN: The Chair is prepared to rule. The Chair has had the opportunity to study the amendment of the gentleman from New York and the Chair finds the question of one additional employee is, under the subject of clerk hire, within the jurisdiction of the Committee on House Administration. The amendment of the gentleman from New York would add legislation to an appropriation measure and therefore (be) in violation of clause 2, rule XXI, of the House of Representatives. The Chair therefore sustains the point of order.

Staff Salaries—Making House Resolutions Permanent Law

§ 44.4 A provision in a supplemental appropriation bill declaring that certain House resolutions such as those relating to Members' clerk-hire, should be the permanent law with respect to their subject matter, was ruled out as legislation.

On Sept. 22, 1964,[4] during consideration in the Committee of the Whole of a supplemental appro-

2. 114 CONG. REC. 19093, 90th Cong. 2d Sess. H. Res. 416, 89th Congress, authorized Members to employ a student intern on a temporary basis in the summer.

3. John M. Murphy (N.Y.).

4. 110 CONG. REC. 22431, 88th Cong. 2d Sess.

priation bill (H.R. 12633), a point of order was raised against the following provision:

The Clerk read as follows:

CONTINGENT EXPENSES

For an additional amount for "Miscellaneous items", $92,000, for payment to the Architect of the Capitol in accordance with section 208 of the Act approved October 9, 1940 (Public Law 812).

The provisions relating to allowances, positions, and salaries carried in House Resolutions 294, 831, and 832, Eighty-eighth Congress, shall be the permanent law with respect thereto.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Chairman, I make a point of order against the language appearing on page 12, lines 3 to 6, reading as follows:

The provisions relating to allowances, positions, and salaries carried in House Resolutions 294, 831, and 832, Eighty-eighth Congress, shall be the permanent law with respect thereto.

I make the point of order particularly with respect to lines 5 and 6, on the ground that this is legislation on an appropriation bill.

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, if I may be heard on the point of order, this is what has been in every legislative bill that has come before the House for a great many years. It is an established rule that the House has always followed. It seems to me that the committee is only following here what the House has always had as the procedure it has followed in this connection.

THE CHAIRMAN:[5] The Chair is prepared to rule.

What the gentleman from Oklahoma says is true, that this has been the practice of the House for a number of years, but on its face this is legislation on an appropriation bill. The Chair sustains the point of order.

— *Increasing Salaries*

§ 44.5 To the legislative appropriation bill an amendment proposing that each Member may pay to one employee $8,000 basic compensation in lieu of $6,000 basic, as provided by law, was held to be legislation and not in order.

On July 1, 1955,[6] during consideration in the Committee of the Whole of the legislative appropriation bill (H.R. 7117), the following occurred:

The Clerk read as follows:

MEMBERS' CLERK HIRE

For clerk hire, necessarily employed by each Member in the discharge of his official and representative duties, which shall be at the basic rate of $15,000 per annum: *Provided*, That no salary shall be fixed hereunder at a basic rate in excess of $6,000 per annum; $11,500,000.

MR. [EARL] WILSON of Indiana: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Wilson of Indiana: Page 4, line 15, after "of" strike out "$6,000" and insert "$8,000."

5. Richard Bolling (Mo.).

6. 101 CONG. REC. 9815, 9816, 84th Cong. 1st Sess.

MR. [WILLIAM F.] NORRELL (of Arkansas): Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill. There is no authorization for this proposal. . . .

THE CHAIRMAN:[7] The Chair is ready to rule. The amendment of the gentleman from Indiana [Mr. Wilson] would change existing law by increasing the amount provided in the paragraph.

The Chair thinks the point of order is well taken and sustains the point of order.

Position Titles Changed

§ 44.6 To a provision in an appropriation bill for clerk-hire for Members and Delegates, an amendment proposing to designate such clerks as "secretaries" was held to constitute a change in existing law.

On May 15, 1941,[8] during consideration in the Committee of the Whole of the legislative appropriation bill (H.R. 4576), a point of order was raised against the following provision:

The Clerk read as follows:

CLERK HIRE, MEMBERS AND DELEGATES

For clerk hire necessarily employed by each Member and Delegate, and the Resident Commissioner from Puerto Rico, in the discharge of his official and representative duties, in accordance with the act entitled "An act to fix the compensation of officers and employees of the legislative branch of the Government," approved June 20, 1929, as amended by the act of July 25, 1939, $2,847,000.

MR. [GEORGE A.] DONDERO [of Michigan]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Dondero: On page 21, line 12, strike out "clerk hire" and insert "secretaries to," and on page 21 in line 13, strike out "clerk hire" and insert "allowance for secretaries.". . .

MR. [EMMET] O'NEAL [of Kentucky]: Mr. Chairman, I insist on the point of order, and I may state that the ground of the point of order is that this is legislation on an appropriation bill.

THE CHAIRMAN:[9] The Chair is ready to rule.

In view of the fact that in the basic law the employees in the offices mentioned are referred to as clerks and in view of the fact that the amendment offered by the gentleman from Michigan [Mr. Dondero] would change existing law and would therefore be legislation on an appropriation bill, it is the opinion of the Chair that the amendment is clearly out of order, and the Chair therefore sustains the point of order.

Office Allowances

§ 44.7 Language in an appropriation bill increasing Mem-

7. William M. Colmer (Miss.).
8. 87 CONG. REC. 4137, 77th Cong. 1st Sess.
9. John J. Sparkman (Ala.).

bers' telegraph, stationery, and telephone allowances an additional $300 was conceded to be legislation on an appropriation bill and held not in order.

On May 22, 1950,[10] during consideration in the Committee of the Whole of a deficiency appropriation bill (H.R. 8567), the following points of order were raised:

MR. [ERRETT P.] SCRIVNER (of Kansas): Mr. Chairman, against the language on page 4, lines 23 to 36, inclusive, reading:

For an additional amount for telegraph and telephone service, including an additional amount of $300 for each Representative, Delegate, and the Resident Commissioner from Puerto Rico, $131,400.

I make the point of order that there is no legislative authority for it.

THE CHAIRMAN:[11] Does the gentleman from North Carolina desire to be heard on the point of order?

MR. [JOHN H.] KERR [of North Carolina]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is sustained.

The Clerk read as follows:

Stationery (revolving fund): For an additional amount for stationery, second session, Eighty-first Congress, including an additional stationery allowance of $300 for each Representative, Delegate, and the Resident Commissioner from Puerto Rico, $131,400, to remain available until expended.

MR. SCRIVNER: Mr. Chairman, against the language on page 5, lines 7 to 11, inclusive, reading:

Stationery (revolving fund): For an additional amount of stationery . . . $131,400 . . . .

I make the point of order that there is no legislation providing for the expenditure.

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

MR. KERR: The point of order is conceded.

THE CHAIRMAN: The point of order is sustained.

Tax Treatment of Travel Expenses

§ 44.8 To a provision in a general appropriation bill appropriating funds for expenses of Members, an amendment seeking to amend Internal Revenue Code provisions affecting Members was held to be legislation on an appropriation bill and not germane thereto.

On May 10, 1945,[12] during consideration in the Committee of the Whole of the legislative appropriation bill (H.R. 3109), a point of

10. 96 CONG. REC. 7416, 81st Cong. 2d Sess.

11. Charles M. Price (Ill.).

12. 91 CONG. REC. 4451–53, 79th Cong. 1st Sess.

order was raised against the following amendment:

MR. [WILLIAM M.] WHITTINGTON [of Mississippi]: Mr. Chairman, I offer a preferential amendment.

The Clerk read as follows:

Amendment offered by Mr. Whittington: Page 15, strike out all of line 25, and on page 16 all of lines 1, 2, 3, 4, and down to and including the word "installments" in line 5, and insert in lieu thereof the following:

"Section 23 (a) (1) (A) of the Internal Revenue Code (relating to deductibility of trade and business expenses) is amended by inserting at the end thereof a new sentence as follows: 'For the purposes of this chapter, in the case of an individual holding an office as a Member of the Congress of the United States of any State or Territory, his home shall be considered to be his place of residence within the State or Territory from which he is such a member, but the deduction allowable for this taxable year by reason of this sentence shall in no event exceed $2,500, and shall be applicable only with respect to the taxable years after December 31, 1944.' "

MR. [EMMET] O'NEAL [of Kentucky]: Mr. Chairman, I make a point of order against the amendment. I make the same argument on the point of order that I made on the last amendment offered by the gentleman, namely, that that part of his amendment which says his home shall be his place of residence within the State or Territory, might affect provisions of law far beyond anything contemplated in this bill and is plainly legislation on an appropriation bill, and not germane. . . .

THE CHAIRMAN:[13] The Chair is ready to rule.

The pending appropriation bill contains a provision that would allow Members of Congress a sum not exceeding $2,500 to pay expenses. The amendment offered by the gentleman from Mississippi would constitute legislation on an appropriation bill, legislation which comes within the province of the Committee on Ways and Means. The Chair is of the opinion that the amendment is not germane to the pending paragraph and, therefore, sustains the point of order.

Procedure for Employment of Committee Staff

§ 44.9 An amendment to a general appropriation bill, changing the procedure for the employment of committee staff personnel and in effect altering the method of staff selection specified in the Legislative Reorganization Act of 1946, was conceded and held to be legislation and was ruled out on a point of order.

On Apr. 11, 1962,[14] during consideration in the Committee of the Whole of the legislative appropriation bill (H.R. 11151), a point of order was raised against the following amendment:

MR. [FREDERICK D.] SCHWENGEL [of Iowa]: Mr. Chairman, I offer an amendment.

13. John J. Delaney (N.Y.).

14. 108 CONG. REC. 6353, 6354, 87th Cong. 2d Sess.

The Clerk read as follows:

Amendments offered by Mr. Schwengel: On page 3, strike lines 2 and 3 and insert "For committee employees, $2,450,000: *Provided*, That at least $747,000 or so much thereof as may be necessary to carry out the provisions of the House rules shall be available only for the payment of salaries of employees appointed at the request of a majority of the minority members of the committee."; and on page 4, line 16, delete "$600,000" and insert "and for committee employees' salaries, $1,050,000."; and on page 6, line 8, change the period to a colon and add: "*Provided*, That $880,500 thereof shall be available only for payment of salaries of employees appointed at the request of a majority of the minority members of the committees." . . .

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, I make the point of order against the amendment on the grounds that it is legislation on an appropriation bill. While it appears to be a limitation it actually, in effect, is legislation. The Legislative Reorganization Act of 1946 and the rules of the House set out how the committees and their staffs are to be organized and appointed. The effect of this amendment, it seems to me, would be to change that. It would have the effect of making a legislative change. I think it is obviously legislation on an appropriation bill and that the point of order should be sustained. . . .

MR. SCHWENGEL: With the assurance of a distinguished Member on the other side, I concede the point of order.

THE CHAIRMAN:[15] The Chair has studied the amendment and believes it would provide a new method of hiring personnel, and therefore would affect the Reorganization Act and the rules thereunder. It is legislation on an appropriation bill, and the Chair sustains the point of order.

15. Clark W. Thompson (Tex.).

Requiring New Committee Regulations Concerning Allowance

§ 44.10 It is not in order on a general appropriation bill to require a congressional committee to promulgate regulations to limit the use of an appropriation; an amendment to the legislative branch general appropriation bill requiring the Committee on House Administration to promulgate rules to limit the amount of official mail sent by Members with the funds appropriated in the bill was ruled out as legislation.

On June 13, 1979,[16] during consideration in the Committee of the Whole of the legislative branch appropriation bill (H.R. 4390), a point of order was sustained against the following amendment:

MR. [THOMAS J.] TAUKE [of Iowa]: Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates reads as follows:

16. 125 CONG. REC. 14670, 14671, 96th Cong. 1st Sess.

OFFICIAL MAIL COSTS

For expenses necessary for official mail costs, $70,707,000, to be disbursed by the Clerk of the House, to be available immediately on enactment of this Act.

The Clerk read as follows:

Amendment offered by Mr. Tauke: Page 12, line 3, strike out "$70,707,000" and insert in lieu thereof "$64,994,000".

Page 12, line 4, after the period, insert the following: "The Committee on House Administration shall set forth rules to uniformly limit the amount of official mail which may be sent by Members of the House with the use of funds appropriated under this paragraph.". . .

MR. [ADAM] BENJAMIN [Jr., of Indiana]: Mr. Chairman, I insist on my point of order.

Mr. Chairman, I would maintain that the gentleman's amendment is in violation of rule XXI, clause 2, since it is legislation on an appropriation bill. It establishes law where none exists. . .

MR. TAUKE: Mr. Chairman, the amendment speaks to the amount of dollars that would be appropriated for this particular item, and then it places restrictions on the use of those dollars. Under those circumstances, I believe the amendment is germane.

THE CHAIRMAN:[17] The amendment clearly requires action by the Committee on House Administration and, therefore, is legislating in an appropriation bill.

The Chair sustains the point of order.

17. John M. Murphy (N.Y.).

§ 45. Housing and Public Works

Restrictions on Use of Appropriation and Contract Authority

§ 45.1 In an appropriation bill a provision that the Public Housing Administration shall not authorize the commencement of construction during a certain year of more than 20,000 dwelling units was held to be legislation, and in the same appropriation bill a series of provisions (relating to the program of the Public Housing Administration) (1) prohibiting the use of an appropriation in the bill unless regulations are adopted restricting eligibility of certain persons to be tenants of low-rent housing units, (2) requiring that expenditures of such appropriation be subject to audit by the Comptroller General, (3) prohibiting the authorization of public housing unless the governing body of the locality agrees to the completion thereof and prohibiting the continuation of construction of public housing where a community by their representatives or by ref-

erendum have indicated they do not want it, (4) requiring that the records of expenditure on any public housing project shall be open to examination by responsible community authorities, and (5) prohibiting occupancy of certain housing by persons belonging to organizations designated as subversive and requiring such prohibition to be enforced by local housing authorities were also held to be legislation.

On Mar. 30, 1954,[18] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 8583), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Annual contributions: For the payment of annual contributions to public housing agencies . . . $63,950,000: *Provided,* That except for payments required on contracts entered into prior to April 18, 1940, no part of this appropriation shall be available for payment to any public housing agency for expenditure in connection with any low-rent housing project, unless the public housing agency shall have adopted regulations prohibiting [occupancy by] any person other than a citizen of the United States. . . . *Provided further,* That all expenditures of this appropriation shall be subject to audit and final settlement by the Comptroller General of the United States under the provisions of the Budget and Accounting Act of 1921, as amended: *Provided further,* That unless the governing body of the locality agrees to its completion, no housing shall be authorized by the Public Housing Administration, or, if under construction continue to be constructed, in any community where the people of that community, by their duly elected representatives, or by referendum, have indicated they do not want it, and such community shall negotiate with the Federal Government for the completion of such housing, or its abandonment . . . and shall agree to repay to the Government the moneys expended prior to the vote or other formal action whereby the community rejected such housing project for any such projects not to be completed . . . *Provided further,* That the record of expenditure of the Public Housing Administration and of the local housing authority on any public housing project shall be open to examination by the responsible authorities of any community in which such project is located, or by the local public housing authority, or by any firm of public accountants retained by either of the foregoing . . . *Provided further,* That notwithstanding the provisions of the United States Housing Act of 1937, as amended, the Public Housing Administration shall not, with respect to projects initiated after March 1, 1949, authorize during the fiscal year 1955 the commencement of construction of in excess of 20,000 dwelling units.

MR. [ABRAHAM J.] MULTER [of New York]: I tried to make a point of order before, and I do want to make a point of order now, but my inquiry is whether or not I should make my point of order against each of the provisos in this section at this time or whether I shall make the point of order against the paragraph as a whole?

18. 100 CONG. REC. 4123, 4124, 83d Cong. 2d Sess.

THE CHAIRMAN:[19] the gentleman may make his point of order after the paragraph has been read. . . .

MR. [HOWARD W.] SMITH of Virginia: Mr. Chairman, I make the point of order against the language on page 31, beginning at line 12 and running through line 17. That is the provision with respect to 20,000 housing units.

Mr. Chairman, I am prepared to discuss the point of order if it is going to be contested.

MR. MULTER: Mr. Chairman, I have a point of order to a paragraph prior to that one.

THE CHAIRMAN: The gentleman will state it. . . .

MR. [CHARLES A.] HALLECK [of Indiana]: Should not the point of order that has been made be ruled upon before we take up any other points of order?

THE CHAIRMAN: The Chair will consider all points of order against the paragraph now. They may be stated and we may consider them at this time.

MR. MULTER: I make the point of order against the provisos beginning on page 29, lines 12, and running to page 31, line 11 on the ground that each of those provisos is legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from California desire to be heard on these points of order?

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, may I take them up in the order in which they were made.

The effect of the point of order made against the proviso on page 31, line 12 is this, as the committee understands it. It is to remove the limitation and leave the opinion of the Comptroller General to stand that there could then be built no more than 33,000 or 34,000 houses—whatever the exact number is—that were contracted for prior to the adoption of the appropriation bill of 2 years ago for the fiscal year 1953. We concede the point of order. . . .

MR. [SIDNEY R.] YATES [of Illinois]: I understand that the chairman of our subcommittee was addressing himself to the point of order made by the gentleman from Virginia [Mr. Smith], to the language appearing on page 31 between lines 12 and 17. As I understand that language, it is a limitation upon the appropriation that is contained in this bill as to the amount of money that may be used for the purpose of constructing housing units, and to that extent it is perfectly proper. . . .

MR. SMITH of Virginia: Mr. Chairman, I think it is necessary under the circumstances to go back to the previous bill, of last year, on this subject and the limitation contained therein. My point of order goes to the question that the provision in this bill is legislation more than it is a limitation. The point of order is directed at the point that this is legislation on an appropriation bill.

What happened about it is that the Housing Act was passed as an amendment to the old Housing Act of 1949, which authorized the construction of a certain number of units of public housing per annum. That was a matter of great controversy through the years. Ultimately the thing came to a head in the independent offices appropriation bill for the fiscal year ending June 30, 1954. In that independent offices appropriation bill was contained this pro-

19. Louis E. Graham (Pa.).

vision of law, which is the law upon the subject of public housing today. That provision in last year's independent offices appropriation bill I would like to read for the Record. It states:

> The Public Housing Administration shall not, after the date of approval of this act, enter into any new agreements, contracts, or other arrangements, preliminary or otherwise, which will ultimately bind the Public Housing Administration during fiscal year 1954 or for any future years with respect to loans or annual contributions for any additional dwelling units or projects unless hereafter authorized by the Congress to do so.

That is all of the quotation that is pertinent to the question which I raise.

In other words, the law is that not a single unit of public housing can be contracted for until it is authorized by the Congress. An authorization does not mean authorization in an appropriation bill. So, this being an appropriation bill, and the provision to which I have raised the point of order being legislation which changes existing law under last year's act, it is subject to the point of order.

MR. YATES: Mr. Chairman, if I may be heard in reply to the gentleman in opposition to the point of order, the gentleman from Virginia is correct with respect to the provisions of the appropriation bill last year. However, I respectfully direct the attention of the Chair to that provision, and I reread it, which states, "after the date of approval of this act, enter into any new agreements, contracts, or other arrangements, preliminary or otherwise."

Mr. Chairman, the units that are provided for in this act are not the subject of any new agreements that were entered into subsequent to this provision. They are units which were authorized under previous provisions of the law and are, therefore, a proper subject for this appropriation bill.

MR. SMITH of Virginia: You concede that this changes the law, do you not?

MR. YATES: I concede it changes the law from the date of enactment of the independent offices appropriation bill of 1954.

MR. SMITH of Virginia: That is the law today so you are changing the law without legislative authorization.

MR. YATES: I conceded it was the law with respect to new contracts. I did not concede it was the law with respect to other contracts.

MR. SMITH of Virginia: But does it change the law?

MR. YATES: Not with respect to units not the subject of the appropriations bill. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair has in mind Public Law 176 of the 83d Congress which has been referred to, and the sections which have been quoted here. The Chair also has in mind the provisos and will pass upon the point of order raised by the gentleman from Virginia [Mr. Smith] and the points of order raised by the gentleman from New York [Mr. Multer] beginning on page 29, line 12 and extending to the end of the paragraph. In the opinion of the Chair, the language is purely legislation on an appropriation bill and the Chair sustains the points of order. . . .

[Parliamentary inquiries were then made:]

MR. [JERE] COOPER [of Tennessee]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. COOPER: Did the Chair sustain all points of order that had been made or just the point of order made by the gentleman from Virginia?

THE CHAIRMAN: The Chair sustained the point of order made by the gentleman from Virginia and those made by the gentleman from New York [Mr. Multer]. . . .

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Chairman, in reference to the point of order raised by the gentleman from Virginia, is the ruling of the Chair predicated upon the fact that the Chair is of the opinion that there is no authorization in the law at the present time for the appropriation or for money for the construction of housing units?

THE CHAIRMAN: No; the Chair did not so rule. The Chair held that the language of the bill itself is legislation.

MR. MCCORMACK: In other words, Mr. Chairman, the gentleman from Massachusetts is seeking for the purposes of the record and also in view of other considerations, for example, the bill which is coming up tomorrow, to try to ascertain the basic thought in the mind of the Chairman. The gentleman from Virginia made a point of order based upon certain provisions in the appropriation bill of last year, a rider so-called. The gentleman from Massachusetts in his parliamentary inquiry is seeking to find out from the Chairman if the reason for sustaining the point of order made by the gentleman from Virginia [Mr. Smith] is that the rider of last year repealed any authorization for appropriations for the construction of housing projects.

THE CHAIRMAN: The Chair has held that the proviso, the very language itself, which is as follows:

> That notwithstanding the provisions of the United States Housing Act of 1937, as amended, the Public Housing Administration shall not, with respect to projects initiated after March 1, 1949, (1) authorize during the fiscal year 1954 the commencement of construction of in excess of 20,000 dwelling units—

is on its face legislation.

MR. MCCORMACK: Does the Chairman hold that that is a repeal of any previous authorization of law?

THE CHAIRMAN: No; the Chair is not ruling on that. The Chair is ruling that this language on its face is legislation on an appropriation bill.

Total Number of Housing Units in Current and Future Fiscal Years

§ 45.2 To an appropriation bill an amendment providing that notwithstanding certain provisions of law the Public Housing Administration shall not authorize the commencement of construction of more than 35,000 dwelling units in a certain year, nor more than 35,000 units for each of the three succeeding years unless a greater number is hereafter authorized by Congress was held to be legislation.

On Mar. 30, 1954,[20] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 8583), a point of order was raised against the following amendment:

Amendment offered by Mr. [Sidney R.] Yates (of Illinois): Page 29, after line 12, insert "Provided further, That notwithstanding the provisions of the United States Housing Act of 1937, as amended, the Public Housing Administration shall not, with respect to projects initiated after March 1, 1949, authorize during fiscal year 1955 the commencement of construction of in excess of 35,000 dwelling units and (2) after the date of approval of this act, enter into any agreement, contract, or other arrangement which will bind the Public Housing Administration with respect to loans, annual contributions, or authorizations for commencement of construction for dwelling units aggregating in excess of 35,000 units each year during fiscal years 1956, 1957, and 1958, unless a greater number of units is hereafter authorized by the Congress."

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, I make the point of order that the amendment offered by the gentleman from Illinois (Mr. Yates) is out of order. The Chair has already ruled that the first part of the amendment just read is legislation, and the balance of the amendment is obviously legislation, going beyond the limits of the provision upon which the Chair has already ruled. It changes existing law. . . .

THE CHAIRMAN:[1] The Chair is prepared to rule. The Chair understands that part of the language is the same as that upon which the Chair has already ruled and has been stricken out, and the rest of the language on its face is legislation. The Chair sustains the point of order.

Restriction of Contract Authority

§ 45.3 A provision in a general appropriation bill changing existing law by restricting the contract authority of the Housing and Home Finance Administrator under the Housing Act of 1961, to an amount "within the limits of appropriations made available therefor," was conceded to be legislation and was ruled out on a point of order.

On Sept. 15, 1961,[2] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9169), a point of order was raised against the following provision:

LOW-RENT HOUSING DEMONSTRATION PROGRAMS

For low-rent housing demonstration programs as authorized by section 207 of the Housing Act of 1961 (75 Stat. 165), $2,000,000, of which not to exceed $20,000 shall be available for administrative expenses, and such sec-

20. 100 CONG. REC. 4124, 4125, 83d Cong. 2d Sess.

1. Louis E. Graham (Pa.).

2. 107 CONG. REC. 19730, 87th Cong. 1st Sess.

tion 207 is hereby amended by inserting after the word "authorized" the phrase "within the limits of appropriations made available therefor".

MR. [ALBERT] RAINS [of Alabama]: Mr. Chairman, I rise to make a point of order.

THE CHAIRMAN:[3] the gentleman from Alabama will state his point of order.

MR. RAINS: Mr. Chairman, I make a point of order against the language, the two words "low-rent" in line 20 on page 14, and on line 22, "$2,000,000, of which", and line 1 on page 15, beginning with the words "and such section 207" down to and including the rest of the paragraph.

Mr. Chairman, I make only the remark that this constitutes legislation on an appropriation bill. . . .

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, the gentleman is right. But the committee did not want to be accused of tearing up the program as unnecessary; I will use that word. That is a polite word. . . .

Mr. Chairman, I think the point of order is good, and I join my friend, the gentleman from Alabama [Mr. Rains] and make a point of order against the entire paragraph.

THE CHAIRMAN: The point of order is sustained.

Authorizing and Directing Agency Action

§ 45.4 In a general appropriation bill a provision requiring a government agency which is selling mortgages to afford the mortgagor an opportunity to buy the mortgage at the same discount offered to a financial institution was conceded and held to be legislation.

On Mar. 31, 1954,[4] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 8583), the following point of order was raised:

MR. [JESSE P.] WOLCOTT [of Michigan]: Mr. Chairman, I make the point of order with respect to the language on page 59, from the proviso in line 9 down to and including line 17, as being legislation on an appropriation bill. . . .

THE CHAIRMAN:[5] Without objection the Clerk will read the language referred to.

The Clerk read as follows:

> *Provided further,* That the Federal National Mortgage Association is authorized and directed prior to the conclusion of any sale of a mortgage at a discount to a financial institution to offer the mortgage to the mortgagor at the same discount, and that an offer shall be considered properly made when addressed by registered letter to the mortgagor, who may tender the purchase price, less discount, to the Federal National Mortgage Association within 2 weeks from date of receipt of such offer.

THE CHAIRMAN: Does the gentleman from California [Mr. Phillips] desire to be heard on this point of order?

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3. Oren Harris (Ark.).

4. 100 CONG. REC. 4258, 83d Cong. 2d Sess.

5. Louis E. Graham (Pa.).

MR. [JOHN] PHILLIPS: No, Mr. Chairman. We concede the point of order.

THE CHAIRMAN: In the opinion of the Chair, this is legislation upon an appropriation bill, and the point of order is sustained.

Delegation of Authority of Federal Works Administrator

§ 45.5 A provision in a general appropriation bill permitting the Federal Works Administrator to delegate to the principal administrative officer of that activity the authority to make appointments of certain personnel was conceded and held to be legislation on an appropriation bill and not in order.

On Feb. 8, 1945,[6] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 1984), a point of order was raised against the following provision:

The Clerk read as follows:

Public works advance planning: Toward accomplishing the provisions of title V of the War Mobilization and Reconversion Act of 1944, $5,000,000, to be immediately available and to remain available until expended, of which not to exceed 4 percent shall be available for administrative expenses necessary therefor, to be immediately available and to remain available until June 30, 1946 . . . *Provided*, That the Federal Works Administrator may delegate to the principal administrative officer of this activity the authority to make appointments of personnel hereunder.

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

The Chairman:[7] The gentleman will state his point of order.

MR. CASE of South Dakota: Mr. Chairman, I make a point of order against the paragraph on the ground it contains legislation in an appropriation bill. I invite the attention of the Chairman particularly to the language in lines 14 and 15, page 18, which says:

to be immediately available and to remain available until expended.

And also to the language beginning in line 24 saying:

Provided, That the Federal Works Administrator may delegate to the principal administrative officer of this activity the authority to make appointments of personnel hereunder.

I direct the point of order to the entire paragraph.

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

MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Use of Water Conditioned Upon Compliance With State Compact

§ 45.6 Language in a general appropriation bill providing

6. 91 CONG. REC. 941, 942, 79th Cong. 1st Sess.

7. William M. Whittington (Miss.).

that the use of water from a project for which an appropriation is being made shall be contingent upon compliance with a certain state compact was held to be legislation and not in order.

On May 14, 1937,[8] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 6958), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Gila project, Arizona, $1,250,000: *Provided*, That any right to the use of water from the Colorado River acquired for this project and the use of the lands and structures for the diversion and storage of the same shall be subject to and controlled by the Colorado River Compact, as provided in section 8 of the Boulder Canyon Project Act, approved December 21, 1928 (45 Stat. 1062), and section 2 of the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1040);
>
> MR. [LAWRENCE] LEWIS of Colorado: Mr. Chairman, I make a point of order against the paragraph beginning on page 76, line 20, down to the bottom of the page and continuing on down through and including line 3, on page 77, on the ground that this item of appropriation has not been authorized by law, and, further, that it is contrary to law. No authorization has been enacted for this item. . . .
>
> THE CHAIRMAN:[9] he Chair is prepared to rule. . . .
>
> The Chair also invites attention to the fact that the language that was called to the attention of the gentleman from Nevada [Mr. Scrugham] undoubtedly has some bearing upon the question as to whether or not this is legislation on an appropriation bill, especially the language carried in the proviso, which was recently discussed with the gentleman from Nevada. The gentleman from Nevada quite frankly replied to the inquiry of the Chair, that the purpose of including this language was to force compliance with a certain State compact.
>
> Therefore, the Chair feels there could be no doubt that the effect of the inclusion of this language would be that of legislation on an appropriation bill.

Storage Buildings as Adjunct to Forest Road Construction

§ 45.7 An appropriation for the construction of buildings for storage of equipment used for forest roads and trail construction and including a stated limit of cost for construction of any such building was held unauthorized by law.

On Mar. 28, 1939,[10] the Committee of the Whole was considering H.R. 5269, an Agriculture Department appropriation. At one point the Clerk read as follows,

8. 81 CONG. REC. 4607, 4612, 75th Cong. 1st Sess.

9. Jere Cooper (Tenn.).

10. 84 CONG. REC. 3458, 76th Cong. 1st Sess.

and proceedings ensued as indicated below:

FOREST ROADS AND TRAILS

For carrying out the provisions of section 23 of the Federal Highway Act approved November 9, 1921 (23 U.S.C. 23), including not to exceed $59,500 for departmental personal services in the District of Columbia, $10,000,000, which sum consists of the balance of the amount authorized to be appropriated for the fiscal year 1939 by the act approved June 16, 1936 (Stat. 1520), and $3,000,000 of the amount authorized to be appropriated for the fiscal year 1940 by the act approved June 8, 1938 (52 Stat. 635), to be immediately available and to remain available until expended: *Provided,* That this appropriation shall be available for the rental, purchase, or construction of buildings necessary for the storage of equipment and supplies used for road and trail construction and maintenance, but the total cost of any such building purchased or constructed under this authorization shall not exceed $7,500.[11]

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph that this is legislation on an appropriation bill providing for the construction of a building at a limit beyond that authorized by law.

THE CHAIRMAN:[12] Does the gentleman make the point of order against the proviso or against the entire paragraph?

MR. TABER: Against the paragraph.

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

MR. [CLARENCE] CANNON of Missouri: I may say, Mr. Chairman, that this provision in the bill is the only limiting authority. If the gentleman can cite us to some other authority establishing the limitation, I should be pleased to have the citation. There is no other limitation, Mr. Chairman, and the point of order is not well taken.

MR. TABER: There is no authorization for it at all.

THE CHAIRMAN: The point of order is sustained.

§ 46. Other Subjects

Budget Adjustments by Corporations and Agencies

§ 46.1 A section of the government corporations appropriation bill providing a procedure by which agencies, in order to meet emergencies arising after approval of the budget, could adjust their budgets to provide for programs "authorized by law and not specifically set forth in the Budget," was held to be legislation on an appropriation bill.

On June 13, 1946,[13] during consideration in the Committee of

11. The latter provision could be considered an interference with executive discretion, therefore legislation.

12. Wright Patman (Tex.).

13. 92 CONG. REC. 6876, 6877, 79th Cong. 2d Sess.

the Whole of the government corporations appropriation bill (H.R. 6777), the following point of order was raised:

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Chairman, I desire to make a point of order against section 302 of the bill on the ground that it is legislation on an appropriation bill and violates the Government Corporation Control Act.

The language clearly is legislation. It proposes to make it possible for the corporation or agency to change its budget program on getting Presidential approval and initiate programs, authorized by law to be sure but not programmed or set forth in the budget submitted to and approved by the Congress. If it were not for this language it clearly would be a violation of the Government Corporation Control Act for them to do so. The presence of the language in this bill is evidence of the fact that it seeks to make possible doing something which otherwise would not be possible to do under existing law. Therefore, it constitutes legislation on an appropriation bill.

THE CHAIRMAN:[14] Does the gentleman from Tennessee desire to be heard on the point of order?

MR. [ALBERT A.] GORE [of Tennessee]: I do, Mr. Chairman.

Mr. Chairman, under the present law, without the passage of this act, the various governmentally owned corporations included in this bill have the authority, with or without approval of the President, to expend funds available to them either through appropriations or through their borrowing authority, for purposes authorized to them by law.

This provision seeks to give the corporations an escape valve, so to speak, to deal with new emergencies or situations not anticipated in their budget, not from the law as it now is, but from the previous sections of the pending bill. Therefore, Mr. Chairman, section 302 gives to the corporations no authority which they do not now have. It does give to the corporations, Mr. Chairman, some limited authority which they are denied in previous sections of the bill. . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from South Dakota makes the point of order against section 302 of the pending bill that it is legislation without authority of law on an appropriation bill. That section is as follows:

> Sec. 302. In order to meet emergencies or contingencies arising subsequent to approval of the Budget and not provided for in the Budget program, a corporation or agency covered by the provisions of this act may, with the approval of the President, adjust its budget program to provide, within the limits of available funds and borrowing authority, for the immediate initiation of programs authorized by law and not specifically set forth in the Budget: *Provided,* That the new program shall be promptly transmitted to the Congress as an amendment to the Budget: *Provided further,* That nothing in this section shall be construed as authority for increasing the amount available for administrative expenses under any limitation on such expenses.

The appropriation under consideration is being made under Public, 248,

14. William M. Whittington (Miss.).

Seventy-ninth Congress, the Government Corporation Control Act.

Section 2 of the act declares it to be the policy of the Congress of the United States to scrutinize the operations of the Government corporations and to provide current financial control thereof.

Section 103 provides that the budget programs of the corporations as authorized in section 102 shall be transmitted to the Congress by the President as a part of the annual Budget for the consideration of the Congress. Section 103 further provides that amendments to the annual Budget programs may be submitted from time to time.

Section 104 provides in part, and I quote:

> The provisions of this section shall not be construed as preventing wholly owned Government corporations from carrying out and financing their activities as authorized by existing law, nor shall any provisions of this section be construed as affecting in any way the provisions of section 26 of the Tennessee Valley Authority Act, as amended.

The Chair is of the opinion that when the Budget of the President has been transmitted to the Congress and when that Budget has been considered and finally approved by Congress the only way a change can be made in the Budget is by an amendment to be subsequently passed by the Congress. That procedure certainly embraces the matter of administrative expenses. . . .

Section 302 of the pending bill provides for adjustments or approvals or amendments not by the Congress and, in fact, without any action by Congress. The said section provides for a procedure that is not contemplated under either the Budget and Accounting Act of 1921 or the Government Corporation Control Act, and is, therefore, legislation on an appropriation bill in violation of the rules of the House. The Chair is therefore constrained to sustain the point of order. The point of order is sustained.

Elaborating on Name of Dam; Descriptive Language

§ 46.2 An amendment proposing to insert the words "known as 'Rankin Dam'" following an appropriation for Pickwick Landing Dam was held to be legislation and not in order on an appropriation bill.

On May 8, 1936,[15] during consideration in the Committee of the Whole of a deficiency appropriation bill (H.R. 12624), a point of order was raised against the following amendment:

> MR. [AARON L.] FORD of Mississippi: Mr. Chairman, I offer another amendment.
>
> The Clerk read as follows:
>
> > Page 19, line 2, after the words "Pickwick Landing Dam", insert the following: "(known as 'Rankin Dam')."
>
> MR. [JOHN J.] MCSWAIN [of South Carolina]: Mr. Chairman, I make a point of order on the amendment that

15. 80 CONG. Rec. 6965–67, 74th Cong. 2d Sess.

it is legislation on an appropriation bill. It is evidently an attempt to change the name and call it "Rankin Dam." It is in the teeth of legislation that has been attempted time and time again. There are bills before the Committee on Military Affairs to change the name of this dam to "Rankin Dam."

MR. [HAROLD] KNUTSON [of Minnesota]: I should like to ask the gentleman if it is not customary to wait until the man is dead before they name a dam for him?

Mr. MCSWAIN: Yes; it is.

THE CHAIRMAN:[16] Does the gentleman from Mississippi wish to be heard on the point of order?

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, if the Chair will permit.

THE CHAIRMAN: The Chair recognizes the gentleman from Missouri.

MR. CANNON of Missouri: Mr. Chairman, this amendment is not legislation. It is language merely descriptive, and such amendments have been repeatedly held not to be legislation.

I recall two decisions on this point. They were made by one of the greatest parliamentarians who has served in the House, James R. Mann, of Illinois.

The first was made in 1905 when an amendment was offered, I think, to the Naval bill.

The language provided that ships or armament should be of "native manufacture." . . . Mr. James R. Mann, of Illinois, held that those words were merely descriptive and that it was not legislation.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Chairman, will the gentleman yield:

MR. CANNON of Missouri: I yield with pleasure to the distinguished leader on the other side of the House.

MR. SNELL: If the words are merely descriptive, why will they have the effect of changing the name of the dam?

MR. CANNON of Missouri: They do not change the name of the dam. It is not proposed to change the name of the dam.

MR. SNELL: But is not that the intention? I call it legislation. Is not that the intention of the amendment?

MR. CANNON of Missouri: The gentleman from New York, being one of the ablest parliamentarians in the House, knows that the Chairman of the Committee of the Whole may not speculate as to the intention of an amendment. He must predicate his decision on the amendment before him in the language in which it is written. He cannot go back of what is on the face of it to surmise what is the purpose of a Member in offering an amendment. This amendment merely further describes the Pickwick Landing Dam; it does not propose a change in the name; it merely adds the descriptive language "known as the Rankin Dam.". . .

THE CHAIRMAN: The Chair is prepared to rule. The Chair entirely agrees with the gentleman from Missouri [Mr. Cannon], with reference to the use of descriptive words. Therefore, the question in the mind of the present occupant of the chair is whether the amendment is descriptive or whether it constitutes legislation. Without regard to whether or not it brings about a change in the name of the dam from "Pickwick Landing Dam" to "Rankin Dam", it is the opinion of the Chair, with profound respect for the opinion

16. John W. McCormack (Mass.).

of the gentleman from Missouri, one of the outstanding parliamentarians of all time, that the amendment does not constitute descriptive language; that it constitutes legislation. It is an addition to the language used in this bill. The Chair would rule the same whether or not the legislation referred to by the gentleman from South Carolina (Mr. McSwain) contained the words "Pickwick Landing Dam" or not, because that name is included in the bill now before the House.

Profoundly respecting the views of the gentleman from Missouri, and with considerable hesitation in disagreeing with him, it is the opinion of the Chair that the point of order is well taken, and the Chair therefore sustains the point of order.

Contract Policy; "Hereafter"

§ 46.3 To an appropriation bill, an amendment requiring the Civil Aeronautics Authority to award contracts to the highest bidder after previously advertising for sealed bids, was held to be legislation and therefore not in order.

On July 12, 1956,[17] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 12138), a point of order was raised against the following amendment:

Amendment offered by Mr. [George W.] Andrews [of Alabama]: Page 2, after line 24 insert the following center head and new paragraph:

"Contracts for services

"Hereafter no contract for services at any airport under the direct jurisdiction of the Civil Aeronautics Administration shall be entered into without previously advertising invitations for sealed bids based on specifications sufficient to permit full and free competition in the letting of such contracts."

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill.

MR. ANDREWS: Will the gentleman reserve his point of order?

MR. BOW: I will reserve the point of order, Mr. Chairman.

MR. ANDREWS: Mr. Chairman, the purpose of this amendment is simply to require the Civil Aeronautics Authority officials to award contracts to the high bidders. I have in mind a recent contract that was let for a concession at the National Airport. The contract was let by sealed bids. The company that bid the highest rate to the Government was not awarded the contract. The purpose of this amendment is to require the Civil Aeronautics Authority in the future to award contracts to the bidders who will return the highest rate to the Government. . . .

MR. BOW: Mr. Chairman, I insist on my point of order that the amendment is legislation on an appropriation bill.

THE CHAIRMAN:[18] The Chair is prepared to rule.

The gentleman from Alabama offers an amendment which in substance

17. 102 CONG. REC. 12538, 84th Cong. 2d Sess.

18. Paul J. Kilday (Tex.).

would require that in connection with contracts under the jurisdiction of the Civil Aeronautics Administration sealed bids be required.

The amendment provides for new law; it is not a limitation on the purpose for which funds may be used, and consequently it is legislation on an appropriation bill. The point of order is sustained.

New Authority for Use of FBI Files and Information

§ 46.4 A paragraph in a general appropriation bill providing that certain FBI funds may be used to facilitate the exchange of identification records with bank officials and with state and local governments for employment and licensing purposes if approved by the Attorney General was conceded and held to be legislation in violation of Rule XXI clause 2.

On May 18, 1972,[19] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 14989), a point of order was raised against the following provision:

The Clerk read as follows:

> The funds provided for Salaries and expenses, Federal Bureau of Investigation, may be used, in addition to those uses authorized thereunder, for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by State Statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing, any such exchange to be made only for the official use of any such official and subject to the same restriction with respect to dissemination as that provided for under the aforementioned appropriation.

MR. [DON] EDWARDS of California: Mr. Chairman, I make a point of order against the paragraph on page 17, lines 1 through 12, since it constitutes legislation on an appropriation bill in violation of clause 2, of rule XXI.

THE CHAIRMAN:[20] Does the gentleman from New York desire to be heard.

MR. [JOHN J.] ROONEY of New York: Mr. Chairman, the gentleman from New York must state that this proviso allows the FBI to furnish identification records to officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions. And as it further states:

> If authorized by State Statute and approved by the Attorney General, to officials of State and local governments.

This has been done for years. Then one of the judges, and I use the term in its broadest sense, ruled that the FBI could not furnish this information. The other body inserted this proviso last year. We brought the amendment back to the House for a separate vote and it was approved.

19. 118 CONG. REC. 18030, 18031, 92d Cong. 2d Sess.

20. Thomas G. Abernethy (Miss.).

If the gentleman from California (Mr. Edwards) desires to superimpose his views over the majority of the House, and wants to prevent the banks from finding out if they are hiring criminals, he can press his point of order and we shall have to concede the point of order.

THE CHAIRMAN: The gentleman from New York concedes the point of order.

MR. EDWARDS of California: Mr. Chairman, I thank the gentleman for the concession.

THE CHAIRMAN: The point of order is conceded, and the Chair sustains the point of order.

Language of Limitation as Constituting New Authority

§ 46.5 Language in an appropriation bill providing that "not to exceed $2,500 of the funds available . . . for salaries and expenses . . . shall be available for . . . entertainment when authorized by the Secretary," was held to be legislation and not in order.

On Apr. 3, 1957,[1] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 6287), a point of order was raised against the following provision:

The Clerk read as follows:

§ 208. Not to exceed $2,500 of the funds available to the Department for salaries and expenses and not otherwise available for entertainment of officials of other countries or officials of international organizations shall be available for such entertainment when authorized by the Secretary.

MR. [EDGAR W.] HIESTAND [of California]: Mr. Chairman, I make a point of order against this paragraph, that it is legislation on an appropriation bill.

THE CHAIRMAN:[2] The gentleman makes his point of order against the entire section?

MR. HIESTAND: Section 208, lines 5 to 9, inclusive.

THE CHAIRMAN: Does the gentleman from Rhode Island care to comment on this point of order?

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I must concede the point of order. The purpose of this paragraph is to entertain some of these foreign doctors and scientists who come over here, to reciprocate the entertainment that our people receive when they go over there. If the gentleman wants to strike it out, that is his privilege.

THE CHAIRMAN: Does the gentleman insist on the point of order?

MR. HIESTAND: Mr. Chairman, I do.

THE CHAIRMAN: The Chair sustains the point of order.

Item Veto Authority to President

§ 46.6 To a general appropriation bill, an amendment allowing the President to dis-

1. 103 CONG. REC. 5040, 85th Cong. 1st Sess.

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

approve separate and distinct items of appropriations, was held to be legislation and not in order.

On Apr. 19, 1950,[3] during consideration in the Committee of the Whole of the legislative appropriation bill (H.R. 7786), a point of order was raised against the following amendment:

MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Keating: On page 29, after line 13, insert a new section reading as follows:

"The total sums appropriated under this chapter shall be reduced to the extent of any separate and distinct item appropriating money which is disapproved by the President."

MR. [CHRISTOPHER C.] MCGRATH [of New York]: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill.

THE CHAIRMAN:[4] Does the gentleman from New York (Mr. Keating) desire to be heard on the point of order?

MR. KEATING: I do, Mr. Chairman.

THE CHAIRMAN: The Chair will hear the gentleman.

MR. KEATING: Mr. Chairman, the wording of this amendment is designed to be, and I believe is, a limitation on the appropriation. As I stated in general debate on the subject, I have introduced a bill which would have the effect of giving the President the power to veto any single item in an appropriation bill which he does not now have. He is forced, therefore, to approve or disapprove the whole bill.

I appreciate that to endeavor to provide for that in this measure would be legislation on an appropriation bill. This, however, is not worded in that way. It provides that the sums appropriated here shall be reduced by the amount of any distinct item which the President feels should be disapproved; in other words, he will have the power under this amendment to join with us, if he is so disposed, in the battle for economy. I believe the amendment as worded, being a limitation, is in order.

MR. MCGRATH: Mr. Chairman, may I call the Chair's attention to the fact that this is a delegation of power from the legislative branch to the executive branch of the Government and is clearly legislative in character.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from New York (Mr. Keating) has offered an amendment which has been reported by the Clerk. The gentleman from New York (Mr. McGrath) has made a point of order against the amendment on the ground it is legislation on an appropriation bill.

The Chair has analyzed the amendment and it appears clearly that the purpose of it is to confer item veto power on the President, which would be legislation on an appropriation bill in that it confers authority and power

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3. 96 CONG. REC. 5393, 5394, 81st Cong. 2d Sess.

See also 99 CONG. REC. 4939, 4940, 83d Cong. 1st Sess., May 14, 1953.

4. Jere Cooper (Tenn.).

on the President which he does not have. Under the rules of the House, being legislation on an appropriation bill, it is subject to the point of order, and, therefore, the Chair sustains the point of order.

Authority to Pay Mineral Royalties

§ 46.7 Language in an appropriation bill providing that "the Director of the Bureau of Mines is hereby authorized . . . to make suitable arrangements with owners of private property . . . for payment by such owners of a reasonable percentage . . . of the total value of the minerals thereafter produced from such property," was conceded and held to be legislation on an appropriation bill.

On May 16, 1946,[5] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 6335), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Investigation and development of domestic mineral deposits, except fuels: For all expenses necessary to enable the Bureau of Mines to investigate, develop, and experimentally mine, on public lands and with the consent of the owner on private lands, deposits of minerals in the United States . . . $1,000,000: *Provided,* That the Director of the Bureau of Mines is hereby authorized and directed to make suitable arrangements with owners of private property upon which exploration or development work is performed for payment by such owners of a reasonable percentage, as determined by the Secretary of the Interior, of the total value of the minerals thereafter produced from such property. . . .
>
> MR. [ALBERT S. J.] CARNAHAN [of Missouri]: Mr. Chairman, I make a point of order against certain language in the bill, namely, page 59, starting with line 18 through the word "property" in line 24, on the ground this is legislation on an appropriation bill.
>
> MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, in order to save time the committee concedes the point of order.
>
> THE CHAIRMAN:[6] The gentleman from Missouri makes a point of order which is conceded by the gentleman from Oklahoma. The point of order is sustained.

Postal Rates Computation

§ 46.8 Language in an appropriation bill changing the formula for computation of postal rates was held to be legislation and not in order.

On Feb. 20, 1957,[7] during consideration in the Committee of the Whole of a general appropriation

5. 92 CONG. REC. 5120, 79th Cong. 2d Sess.

6. Jere Cooper (Tenn.).

7. 103 CONG. REC. 2334, 85th Cong. 1st Sess.

bill (H.R. 4897), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 204. Amounts contributed by the Post Office Department to the civil service retirement and disability fund, in compliance with section 4(a) of the Civil Service Retirement Act (70 Stat. 747), from appropriations made by this title, or from appropriations hereafter made to the Post Office Department, shall be considered as costs of providing postal service for the purpose of establishing postal rates.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I rise to a point of order.

THE CHAIRMAN:[8] The gentleman will state it.

MR. GROSS: Mr. Chairman, I make the point of order that the language contained in section 204, just read, is legislation upon an appropriation bill, that it deals with appropriations not contained in this bill, is not a limitation and therefore in violation of the rules of the House. . . .

THE CHAIRMAN: The Chair has examined the provision against which the point of order is raised. It appears that it is legislation on an appropriation bill. The point of order is sustained.

Authority to Clear Title to Real Estate

§ 46.9 Language in an appropriation bill making appropriations for roads and trails of the National Park Service, requiring "title and evidence of title to the lands . . . acquired to be satisfactory to the Secretary of the Interior" instead of the Attorney General, was held to be legislation and not in order.

On Mar. 16, 1939,[9] 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:

Roads and trails, National Park Service: For the construction, reconstruction, and improvement of roads and trails, inclusive of necessary bridges, in the national parks, monuments, and other areas administered by the National Park Service . . . and pursuant to the authorization of the act of March 3, 1931 (46 Stat. 1490), the title and evidence of title to the lands or interests acquired to be satisfactory to the Secretary of the Interior, $3,500,000, to be immediately available and to remain available until expended. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the language in lines 10, 11, and 12, page 118, as follows:

The title and evidence of title to the lands or interests acquired to be satisfactory to the Secretary of the Interior.

It is legislation on an appropriation bill and an attempt to take the duty of passing on the title out of the hands of the Attorney General. . . .

8. W. Homer Thornberry (Tex.).

9. 84 CONG. REC. 2893, 76th Cong. 1st Sess.

THE CHAIRMAN:[10] Will the gentleman from New York advise the Chair whether the point of order goes only to the language he quoted?

MR. TABER: That is all.

THE CHAIRMAN: The point of order is sustained.

Making Unpaid Fees a Lien Against Real Estate

§ 46.10 A provision in an Interior Department appropriation bill directing that unpaid charges outstanding against certain lands shall constitute a first lien thereon was held to be legislation and not in order.

On May 14, 1937,[11] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 6958), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> In all, $2,088,000 to be immediately available, which amount, together with the unexpended balances of funds made available under this head in the Interior Department Appropriation Act, fiscal year 1937, shall remain available until June 30, 1938: *Provided*, That the foregoing amounts may be used interchangeably in the discretion of the Secretary of the Interior, but not more than 10 percent of any specific amount shall be transferred to any other amount, and no appropriation shall be increased by more than 15 percent: *Provided further*, That the cost of the foregoing irrigation projects and of operating and maintaining such projects where reimbursement thereof is required by law, shall be apportioned on a per-acre basis against the lands under the respective projects and shall be collected by the Secretary of the Interior as required by such law, and any unpaid charges outstanding against such lands shall constitute a first lien thereon which shall be recited in any patent or instrument issued for such lands.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph. . . .

The last part, beginning in line 20 and running through line 23, provides that unpaid charges shall be a first lien against all of those lands.

I therefore make a point of order against the paragraph.

THE CHAIRMAN:[12] Does the gentleman from Oklahoma desire to be heard?

MR. [JED] JOHNSON of Oklahoma: I do not desire to be heard.

THE CHAIRMAN: The gentleman from New York [Mr. Taber] makes a point of order against the paragraph appearing on page 40, beginning in line 6 and extending down to and including line 23.

The Chair invites attention especially to the language appearing in lines 20, 21, 22 and 23, which reads as follows:

> Any unpaid charges outstanding against such land shall constitute a first lien thereon which shall be recited in any patent or instrument issued for such lands.

10. Frank F. Buck (Calif.).

11. 81 CONG. REC. 4603, 4604, 75th Cong. 1st Sess.

12. Jere Cooper (Tenn.).

The Chair is of opinion this is legislation on an appropriation bill not authorized under the rules of the House, and therefore sustains the point of order as to the paragraph as a whole.

Renegotiation Act Incorporated by Reference

§ 46.11 To the appropriation for the Tennessee Valley Authority, an amendment proposing to make contracts entered into by the Authority and by the Atomic Energy Commission subject to the Renegotiation Act was conceded to be legislation on an appropriation bill and held not in order.

On Dec. 15, 1950,[13] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9920), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Case of South Dakota: Page 11 after line 12, insert a new section, as follows:

"RENEGOTIATION OF CONTRACTS

"Sec. 602. (a) All negotiated contracts for procurement in excess of $1,000 entered into during the current fiscal year by or on behalf of the Atomic Energy Commission and the Tennessee Valley Authority, and all subcontracts thereunder in excess of $1,000, are hereby made subject to the Renegotiation Act of 1948 in the same manner and to the same extent as if such contracts and subcontracts were required by such act to contain the renegotiation article prescribed in subsection (a) of such act. Each contract and subcontract made subject to the Renegotiation Act of 1948 by this section shall contain an article stating that it is subject to the Renegotiation Act of 1948. . . ."

MR. [ALBERT A.] GORE [of Tennessee]: . . . Mr. Chairman, the amendment offered by the distinguished and able gentleman from South Dakota, is a lengthy, complicated, and far-reaching one . . . It operates as an amendment of the renegotiation law. . . .

THE CHAIRMAN:[14] The gentleman from South Dakota [Mr. Case] has offered an amendment which has been reported. The gentleman from Tennessee [Mr. Gore] has made a point of order against the amendment, on the ground that it contains legislation on an appropriation bill.

MR. CASE of South Dakota: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The gentleman concedes the point of order, and therefore the Chair sustains the point of order.

Tennessee Valley Authority Proceeds Applied to Appropriation

§ 46.12 Language in an appropriation bill providing funds

13. 96 CONG. REC. 16672–74, 81st Cong. 2d Sess.

14. Jere Cooper (Tenn.).

for resource development activities of the Tennessee Valley Authority, stating that part of the funds therefor should be derived from the appropriated funds and part from proceeds of operation, was held to be legislation and not in order.

On May 28, 1956,[15] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 11319), the following point of order was raised:

> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I make a point of order against certain language in the Tennessee Valley Authority paragraph as follows: . . .
>
> . . . On page 3, lines 1 to 3 ", of which $400,000 shall be derived from this appropriation and $750,000 shall be derived from proceeds of operations of the Tennessee Valley Authority."
>
> Mr. Chairman, I make the point of order that all of the language to which I have referred is legislation on an appropriation bill. . . .
>
> THE CHAIRMAN:[16] . . . It is clearly legislation on an appropriation bill and the point of order is sustained.

Authority for Secretary to Impose Liens

§ 46.13 Language in an appropriation bill imposing a charge and lien against Indian lands until certain obligations are paid was held legislation and not in order.

On May 14, 1937,[17] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> For the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops, $165,000 . . . *Provided further,* That the Secretary of the Interior is hereby authorized, in his discretion and under such rules and regulations as he may prescribe, to make advances from this appropriation to old, disabled, or indigent Indian allottees, for their support, to remain a charge and lien against their lands until paid: *Provided further,* That not to exceed $15,000 may be advanced to worthy Indian youths to enable them to take educational courses, including courses in nursing . . . forestry, and other industrial subjects in colleges, universities, or other institutions, and advances so made shall be reimbursed in not to exceed 8 years, under such rules and regulations as the Secretary of the Interior may prescribe.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph beginning on page 26, line 4. The point of order is

15. 102 CONG. REC. 8725, 84th Cong. 2d Sess.

16. Jere Cooper (Tenn.).

17. 81 CONG. REC. 4598, 4599, 75th Cong. 1st Sess.

that this is legislation on an appropriation bill and it imposes discretionary duties upon the Secretary of the Interior. The language at the bottom of the bill, beginning with *"Provided further"*, line 22, and the last proviso are entirely the same. They provide that the Secretary of the Interior shall make rules and regulations and there is no question but what it imposes additional duties upon the Secretary of the Interior all the way through.

In lines 17 and 18 the terms of repayment are made subject to the discretion of the Secretary of the Interior and in lines 9 and 10 it is subject to that same discretion. This is all on page 26. The whole paragraph is subject to discretion and imposes duties upon the Secretary. . . .

THE CHAIRMAN:[18] The Chair would like to inquire of the gentleman from Oklahoma as to the authority for the language appearing in lines 1 and 2, page 27, which the Chair will quote:

> To remain a charge and lien against their land until paid—

Is there provision in some existing law creating a lien upon these lands, to which this provision refers?

MR. [JED] JOHNSON of Oklahoma: I cannot say there is provision in existing law. The only existing law would be the fact this has been in the bill for several years and, of course, that is not controlling.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York makes a point of order against the entire paragraph beginning in line 4, page 26, extending down to and including line 9, page 27. The gentleman from New York [Mr. Taber] in making his point of order invited attention to certain language appearing in lines 10 and 11, page 26, with reference to the discretion of the Secretary of the Interior.

The Chair has examined the act commonly referred to and known as the Snyder Act and invites attention to section 13 of that act, in which the following appears:

> Expenditures of appropriations by Bureau of Indian Affairs: The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate for the benefit, care, and assistance of the Indians throughout the United States for the following purposes: General support and civilization, including education; for industrial assistance and advancement and general administration of Indian problems. Further, for general and incidental expenses in connection with the administration of Indian affairs.

It is the opinion of the Chair that the act to which attention has been invited confers upon the Secretary of the Interior rather broad discretionary authority. The Chair is of opinion that the language to which the gentleman invited attention is not subject to a point of order, but that the language to which the Chair invited the attention of the gentleman from Oklahoma with reference to the provisos does constitute legislation on an appropriation bill not authorized by the rules of the House. It naturally follows that as the point of order has to be sustained as to these two provisos, it has to be sustained as to the entire paragraph. The Chair therefore sustains the point of

18. Jere Cooper (Tenn.).

order made by the gentleman from New York.

Mandating Testimony of Congressmen

§ 46.14 To an amendment to a general appropriation bill, an amendment providing that notwithstanding the provisions of any other law, the Constitution or court decisions, no Member of Congress shall refuse to respond to demands for information by executive agencies or private persons or groups was held to be legislation.

On June 22, 1972,[19] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 15585), a point of order was raised against an amendment to an amendment:

> Amendment offered by Mr. [William S.] Moorhead [of Pennsylvania]: Page 38 insert between line 6 and line 7 new section:
>
> > No part of the appropriations made by this Act shall be expended for the Compensation of any person other than those designated by the President, not to exceed ten persons employed in the White House Office, who refused to appear before any committee of the Congress solely on the grounds of "executive privilege"; nor shall any part of the appropriations made by this Act be expended to compensate any employee of the Executive Office of the President who is employed in or designated as holding two positions in such Office. . . .
>
> The Clerk read as follows:
>
> > Amendment offered by Mr. [Garry E.] Brown of Michigan to the amendment offered by Mr. Moorhead: At end of that amendment, insert: "*Provided further*, Notwithstanding the provisions of any other law, the Constitution, or any precedent of the courts, no Member of the Congress shall refuse to answer and appropriately respond to any demand for his presence, his papers, or his records, made by any agency, commission, Department or person of the executive branch, or any proper citizen oriented organization or interested person, making such demand."
>
> MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I make a point of order against the amendment to the amendment, and I do not think I need to argue it.
>
> THE CHAIRMAN:[20] Does the gentleman from Michigan (Mr. Brown) desire to be heard on the point of order?
>
> MR. BROWN of Michigan: Mr. Chairman, I defer to my very eloquent and intelligent colleague, and I think he makes a good point.
>
> THE CHAIRMAN: The point of order is sustained.

Veterans Insurance Fund

§ 46.15 Language in a supplemental appropriation bill (1) changing existing law regarding certain veterans' insurance funds, (2) specifying

19. 118 CONG. REC. 22102, 22107, 92d Cong. 2d Sess.

20. John S. Monagan (Conn.).

accounting procedures to be followed in determining assets, (3) authorizing a future transfer of funds after a determination by the administrator, and (4) providing for the repayment to the Treasury of funds so transferred, was conceded to be legislation and ruled out on a point of order.

On Apr. 6, 1965,[1] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7091), a point of order was raised against the following provision:

VETERANS REOPENED INSURANCE FUND

All premiums and collections on insurance issued pursuant to section 725 of title 38, United States Code, shall be credited to the "Veterans reopened insurance fund", established pursuant to that section, and all payments on such insurance and on any total disability provision attached thereto shall be made from that fund, notwithstanding any provisions of that section: *Provided,* That for actuarial and accounting purposes, the assets and liabilities (including liability for repayment of advances hereinafter authorized, and adjustment of premiums) attributable to each insured group established under said section 725, shall be separately determined: *Provided further,* That such amounts of the "Veterans special term insurance fund" as may hereafter be determined by the Administrator of Veterans' Affairs to be in excess of the actuarial liabilities of that fund, including contingency reserves, shall be available for transfer to the "Veterans reopened insurance fund" as needed to provide initial capital: *Provided further,* That any amounts so transferred shall be repaid to the Treasury, and shall bear interest payable to the Treasury at rates established in accordance with section 725(d)(1) of title 38, United States Code.

MR. [JOHN P.] SAYLOR [of Pennsylvania]: Mr. Chairman, I make a point of order against the language on page 8, line 7 to line 22 inclusive and on page 9, line 1 to line 6 inclusive as being legislation on an appropriation bill and not within the scope of the original language authorizing the reopening of veterans' insurance. . . .

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN:[2] The Chair recognizes the gentleman from Texas.

MR. THOMAS: Mr. Chairman, I hope my distinguished friend will not insist upon the point of order. . . . His point of order is good if he insists on it. This is a transfer of funds. This is not an appropriation. . . .

MR. SAYLOR: Mr. Chairman, I must insist on the point of order.

THE CHAIRMAN: The gentleman from Pennsylvania [Mr. Saylor] makes a point of order against the language on page 8, beginning at line 7 down through and including the language on page 9, line 6.

The Chair understands the gentleman from Texas [Mr. Thomas] concedes the point of order.

1. 111 CONG. REC. 7131, 89th Cong. 1st Sess.

2. Oren Harris (Ark.).

The Chair sustains the point of order.

Veterans' Medical Benefits

§ 46.16 In an appropriation bill, a provision prohibiting an appropriation for the Veterans' Administration to be used for dental treatment, except where certain conditions are determined to have been met, was held to be legislation.

On Mar. 31, 1954,[3] the Committee of the Whole was considering H.R. 8583, an independent offices appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Provided, That no part of this appropriation shall be available for out-patient dental services and treatment, or related dental appliances with respect to a service-connected dental disability which is not compensable in degree unless such condition or disability is shown to have been in existence at time of discharge and application for treatment is made within one year after discharge or by July 27, 1954, whichever is later: *Provided*, That this limitation shall not apply to adjunct out-patient dental services or appliances for any dental condition associated with and held to be aggravating disability from some other service-incurred or service-aggravated injury or disease. . . .

MR. [JAMES P.] SUTTON [of Tennessee]: The point of order is that it is legislation on an appropriation bill. It changes existing law. . . .

THE CHAIRMAN:[4] The Chair is prepared to rule.

In the opinion of the Chair, this is legislation upon an appropriation bill and the point of order is sustained.

Veterans' Burial Expenses

§ 46.17 To an army civil functions appropriation bill, an amendment authorizing payments to next of kin, in lieu of headstones authorized to be placed on veterans' graves, provided proof is furnished that suitable headstones are subsequently placed upon such graves, was held to be legislation and not in order.

On May 26, 1953,[5] during consideration in the Committee of the Whole of the army civil functions appropriation bill (H.R. 5376), a point of order was raised against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [Henry Frazier] Reams [of Ohio]: On page 2, line 12, after the figures "$4,870,000", strike the colon, add

3. 100 CONG. REC. 4258, 83d Cong. 2d Sess.

4. Louis E. Graham (Pa.).

5. 99 CONG. REC. 5617, 83d Cong. 1st Sess.

comma, and insert the following: "$850,000 of which may be used to pay to next of kin not exceeding $25 in lieu of headstone or marker for the grave of any deceased person for which the Secretary of Defense is authorized to furnish a marker or headstone: *Provided,* That the Secretary of Defense receive from the administrator or executor of the estate, or next of kin, proper proof that there has been purchased and placed upon the grave of the veteran a suitable marker or headstone of a value not less than $25.". . .

MR. [GLENN R.] DAVIS [of Wisconsin]: Mr. Chairman, I renew the point of order on the ground this is legislation on an appropriation bill.

THE CHAIRMAN:[6] The gentleman from Wisconsin makes a point of order that this amendment is legislation on an appropriation bill. Does the gentleman from Ohio desire to be heard?

MR. REAMS: Mr. Chairman, I do not care to be heard on the point of order.

THE CHAIRMAN: The Chair is prepared to rule. The Chair thinks that the amendment offered by the gentleman from Ohio is clearly legislation on an appropriation bill and, therefore, sustains the point of order.

Imposing Penalty for Improper Accounting of Members' Expenses

§ 46.18 A motion to recommit the legislative branch appropriation bill with instructions to report it back forthwith with an amendment providing, inter alia, a criminal penalty for perjury for improper vouchering of expenditures of funds contained in the bill, was conceded to contain legislation in violation of Rule XXI clause 2 and was ruled out on a point of order.

On Sept. 1, 1976,[7] during consideration in the House of the legislative branch appropriation bill (H.R. 14238), a point of order was raised and sustained against a motion to recommit as indicated below:

The Clerk read as follows:

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania] moves to recommit the bill, H.R. 14238, to the Committee on Appropriations, with instructions to that Committee to report the bill back to the House forthwith, with the following amendments: On page 7, after line 24, insert the following new section: . . .

"Expenditure of any appropriation contained in this Act, disbursed on behalf of any Member or Committee of the House of Representatives, shall be limited to those funds paid against a voucher, signed and approved by a Member of the House of Representatives, stating under penalty of perjury, that the voucher is for official expenses as authorized by law: *Provided further,* That any Member of the House of Representatives who willfully makes and subscribes to any such voucher which contains a written declaration that it is made under the penalties of perjury and which he does not believe

6. Clifford R. Hope (Kans.).

7. 122 CONG. REC. 28883, 28884, 94th Cong. 2d Sess.

at the time to be true and correct in every material matter, shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $2,000 or imprisoned for not more than five years, or both.". . .

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, I make a point of order against the motion to recommit. . . .

Mr. Speaker, the motion to recommit falls in violation of the rules against legislation in an appropriation bill. Under the rules of the House, Mr. Speaker, a motion to recommit is subject to the same germaneness tests as any other amendment to a piece of legislation.

Mr. Speaker, I therefore make a point of order against the motion on the grounds that it constitutes an attempt to legislate in an appropriation bill. . . .

On page 3, there is a requirement that any Member who makes a willful statement subscribing any voucher shall be guilty of the penalties of perjury.

This adds essentially a new amendment to the Criminal Code, which most properly can be found in title 18 of the United States Code, and it imposes further, Mr. Speaker, a requirement that such act shall constitute a felony which will be punishable by not more than $2,000 or subject to imprisonment of not more than 5 years. . . .

MR. COUGHLIN: Mr. Speaker, I rise in opposition to the point of order that has been raised. . . .

Mr. Speaker, with respect to the point of order addressed to the execution of vouchers under penalties of perjury, that does not impose a significant additional duty in compliance with the facts that those vouchers must already be executed by the Members certifying that they are for official expenses. This motion says they would be executed under penalty of perjury.

The additional amendment would concede the point of order as it applies to the second paragraph on page 3 of the motion; but I think it would be beneficial to the Members to have that explanation there; and I would hope that the point of order would be withdrawn as to that point. . . .

THE SPEAKER:[8] The Chair is prepared to rule. The Chair is going to sustain the point of order. The gentleman from Pennsylvania has conceded one portion of the point of order, and with that the entire motion to recommit is subject to a point of order.

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8. Carl Albert (Okla.).

D. PROVISIONS AS CHANGING EXISTING LAW: APPROPRIATIONS SUBJECT TO CONDITIONS

§ 47. Conditions Contrary to or Not Required by Law

The precedents in this section generally support the view that provisions in an appropriation bill which make funds available only after a specified condition has occurred will be ruled out as legislation, if the condition specifies actions or circumstances which are contrary to, or not contemplated in, existing law. Thus, provisions making an appropriation contingent upon actions not already required by law may be ruled out of order, while a contingency may be permitted provided the contingency itself has previously been authorized in law. Of course, a seeming "condition" may be in the nature of a permissible limitation, as where funds may be made available for use by or on behalf of designated beneficiaries only if such beneficiaries fulfill certain conditions or become qualified to receive the benefit of the funds in the manner prescribed,[9] if that prescribed manner is not shown to contravene existing law.

The legislative character of a condition may consist in imposing additional duties, not already required in law, on federal officials.[10] Similarly, a condition may be seen as amounting to legislation if it affects funds in other acts rather than being limited to funds contained in the bill. And in some cases, even where the point of order has been based on the legislative character of a provision, the ruling itself may in fact turn on issues of germaneness, as where an amendment attempting to make the availability of funds depend on an unrelated contingency is seen as beyond the scope of the bill.[11]

It is important to distinguish between precedents in which the whole appropriation is made contingent upon an event or circumstance and those in which the disbursement to a particular participant is conditioned on the occurrence of an event. In either case, the weight of precedent would disqualify such conditions as legislative in effect. Some of the decisions in this section, section 7, supra, and section 48, infra, are similar in language but

9. See the "note on contrary rulings," following § 53.6, infra, especially the reference to the ruling of June 11, 1968.

10. The imposition of duties on state or local officials raises various issues which are discussed in § 53, infra.

11. See, for example, § 48.11, infra.

are carried in a particular part of the chapter to illustrate the different approaches taken by the Chair in reaching the conclusion that the amendment is not strictly negative and limiting.

Action by Federal Official Disbursing Funds; "No Funds Unless or Until"

§ 47.1 An amendment forbidding expenditure of an appropriation "unless" action contrary to existing law is taken is legislation and not in order as a limitation: an amendment providing that funds appropriated for International Information, Department of State, shall not be available for any broadcast of information about the United States until the radio script for such broadcast has been approved by the Daughters of the American Revolution was held to be legislation and not in order.

On July 26, 1951,[12] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 4740), a point of order was raised against the following amendment:

> Amendment offered by Mr. [John T.] Wood of Idaho: Page 15, line 25, before the period insert a colon and the following: "*Provided further,* That funds appropriated herein shall not be available for any broadcast of any information about the United States until the radio script for such broadcast has been submitted to and approved by a committee of members of the Daughters of the American Revolution, appointed by the president general of such organization."
>
> MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill.
>
> THE CHAIRMAN:[13] Does the gentleman from Idaho desire to be heard on the point of order?
>
> MR. WOOD of Idaho: Yes, Mr. Chairman.
>
> THE CHAIRMAN: The Chair will only hear the gentleman on the point of order.
>
> MR. WOOD of Idaho: Mr. Chairman, I submit that this is a limitation and not legislation.
>
> THE CHAIRMAN: Has the gentleman completed his statement on the point of order?
>
> MR. WOOD of Idaho: Yes.
>
> THE CHAIRMAN: The Chair is prepared to rule. . . .
>
> The Chair invites attention to the fact that the amendment definitely provides for certain things to be done and invites attention to a decision ren-

12. 97 CONG. REC. 8960, 82d Cong. 1st Sess.

13. Jere Cooper (Tenn.).

dered by the distinguished gentleman from Michigan [Mr. Michener] in which it is stated:

> An amendment withholding expenditures of appropriations unless and until certain books were supplied free to the National Library for the Blind is ruled out of order.

The amendment very clearly contains legislation which is sought to be offered to an appropriation bill in violation of the rules of the House.

The Chair sustains the point of order.

Condition on Disbursement to Recipient

§ 47.2 An amendment to a supplemental appropriation bill, making the payment of certain contractual obligations of the United States contingent upon the adoption of a compromise agreement or upon litigation resolving the dispute, was held to impose a condition on disbursement of funds not required by existing law and was ruled out on a point of order.

On May 11, 1971,[14] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 8190), a point of order was raised against the following amendment:

The Clerk read as follows:

BUREAU OF MINES

HELIUM FUND

> The Secretary is authorized to borrow from the Treasury for payment to the helium production fund pursuant to section 12(a) of the Helium Act, to carry out the provisions of the Act and contractual obligations thereunder, including helium purchases, to remain available without fiscal year limitation, $15,077,000, in addition to amounts heretofore authorized to be borrowed.

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Vanik: Page 6, line 9, after the word "borrowed" strike out the period, insert a comma "provided, however, that none of the funds appropriated by this act will be disbursed to any individual contractor until the claims of that contractor have been determined either by agreement or by litigation."

MRS. [JULIA BUTLER] HANSEN of Washington: Mr. Chairman, on this amendment I make a point of order.

THE CHAIRMAN:[15] The gentlewoman will state her point of order.

MRS. HANSEN of Washington: The wording is "until the claims of that contractor have been determined either by agreement or by litigation."

That is legislation on an appropriation bill and extends the act beyond the intention.

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

MR. VANIK: Mr. Chairman, I believe it has been well established in this

14. 117 CONG. REC. 14468, 92d Cong. 1st Sess.

15. Wayne N. Aspinall (Colo.).

Chamber that a limitation on expenditures is a perfectly valid amendment to an appropriation bill.

I might say, Mr. Chairman, the amendment should read, "full claims of the contractors have been determined."

I believe it has been well established that this type of amendment is in order on this kind of bill.

THE CHAIRMAN: The Chair is ready to rule.

The language of the amendment does constitute legislation on an appropriation bill, and in this particular situation provides for a condition subsequent.

Therefore, the Chair will have to sustain the point of order.

Contingent Upon Enactment of Authorization

§ 47.3 Language in an appropriation bill providing funds for projects not yet authorized by law is legislation and not in order.

On Sept. 5, 1961,[16] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9033), a point of order was raised against the following provision:

The Clerk read as follows:

TITLE V—PEACE CORPS

Funds Appropriated to the President

Peace Corps

For expenses necessary to enable the President to carry out the provisions of the Peace Corps Act, including purchase of not to exceed sixteen passenger motor vehicles for use outside the United States, $20,000,000: *Provided*, That this paragraph shall be effective only upon enactment into law of S. 2000 or H.R. 7500, Eighty-seventh Congress, or similar legislation to provide for a Peace Corps.

MR. [EDGAR W.] HIESTAND [of California]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN:[17] The gentleman will state it.

MR. HIESTAND: Title V, which has just been read, has not yet been authorized and therefore is subject to a point of order.

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

MR. [OTTO E.] PASSMAN [of Louisiana]: We concede the point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman from Louisiana concedes the point of order and the Chair sustains the point of order made by the gentleman from California (Mr. Hiestand).

Parliamentarian's Note: A conditional appropriation based on enactment of authorization is a concession on the face of the language that no prior authorization exists. See § 7, supra, for further discussion of the necessity of prior authorization for appropriations.

§ 47.4 In a supplemental appropriation bill, a paragraph making an appropriation

16. 107 CONG. REC. 18179, 87th Cong. 1st Sess.

17. Wilbur D. Mills (Ark.).

contingent upon the subsequent enactment of authorizing language is in violation of Rule XXI clause 2.

On May 3, 1967,[18] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9481), a point of order was raised against the following provision:

The Clerk read as follows:

CHAPTER VIII

MILITARY CONSTRUCTION

FAMILY HOUSING

HOMEOWNERS ASSISTANCE FUND, DEFENSE

For the Homeowners Assistance Fund, established pursuant to section 1013(d) of the Demonstration Cities and Metropolitan Development Act of 1966 (Public Law 89–754, approved November 3, 1966), $5,500,000, to remain available until expended: *Provided*, That this paragraph shall be effective only upon enactment into law of S. 1216, Ninetieth Congress, or similar legislation.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, a point of order.

THE CHAIRMAN:[19] The gentleman will state his point of order.

MR. HALL: Mr. Chairman, I wish to make a point of order asking the Chair to strike chapter 8 of the second supplemental appropriation bill, to be found on page 17, lines 6 through 16 thereof, for the reason there has been no authorization of this appropriation and that it is contrary to rule XXI (2) of this body. Consideration of S. 1216 is now before this body's Committee on Rules, it is controversial, it has mixed jurisdictional parentage, and it came out of the Committee on Armed Services with eight or more opposing votes. It can be defeated on the floor.

THE CHAIRMAN: Does the gentleman from Florida seek to be heard on this point of order?

MR. [ROBERT L. F.] SIKES [of Florida]: I do, Mr. Chairman.

Mr. Chairman, as the bill states and as the report states, there is a requirement for the enactment of authorizing legislation. The bill which is before the House clearly requires that appropriations for the acquisition of properties must be authorized by a military construction authorization act, and that no moneys in the fund may be used except as may be provided in an appropriation act, and it would clearly protect the Congress and fulfill the requirements of the law.

What we are seeking to do is to put into operation an immediate program. If we do not provide funds now for people who need money for losses in their property as a result of base closures, it is going to be some months before it can be done, probably, in the regular appropriation bill.

Of course, the language is subject to a point of order. We concede that. If the gentleman insists on his point of order, that is the story, but the homeowners will be the ones who suffer unnecessarily.

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18. 113 CONG. REC. 11589, 90th Cong. 1st Sess. See Parliamentarian's Note in § 47.3, supra, as to appropriations conditioned on subsequent authorization.

19. James G. O'Hara (Mich.).

THE CHAIRMAN: The Chair is prepared to rule. As the gentleman from Florida has conceded, the language objected to by the gentleman from Missouri is subject to a point of order in that no authorization has been enacted into law. The Chair, therefore, sustains the point of order.

§ 47.5 An item of appropriation providing for an expenditure not previously authorized by law is not in order; and delaying the availability of the appropriation pending enactment of an authorization does not protect the item of appropriation against a point of order under Rule XXI clause 2.

On Apr. 26, 1972,[20] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 14582), a point of order was raised against the following provision:

The Clerk read as follows:

FEDERAL RAILROAD ADMINISTRATION

GRANTS TO NATIONAL RAILROAD PASSENGER CORPORATION

To enable the Secretary of Transportation to make grants to the National Railroad Passenger Corporation, as authorized by section 601 of the Rail Passenger Service Act of 1970, as amended, $170,000,000, to remain available until expended: *Provided,* That this appropriation shall be available only upon the enactment into law of authorizing legislation by the Ninety-second Congress. . . .

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I make a point of order against the $170 million appropriation for Amtrak.

THE CHAIRMAN:[1] The gentleman will state his point of order.

MR. VANIK: Mr. Chairman, the authorization has not yet been made. The fact that the authorization passed the House of Representatives would not make the appropriation valid. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the House has passed the authorization bill. It has not been enacted into law. I think the point of order is well taken.

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

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

THE CHAIRMAN: The Chair understands that the chairman of the committee concedes the point of order. Therefore, the point of order is sustained.

Requiring Application of Standards not Demonstrably Required by Law

§ 47.6 It is not in order on a general appropriation bill to require, as a condition to the availability of funds, the imposition of standards of quality or performance not required by law, whether or

20. 118 CONG. REC. 14455, 92d Cong. 2d Sess.

1. Jack B. Brooks (Tex.).

not such standards are applicable by law to other programs or activities.

On Nov. 18, 1981,[2] an amendment to a general appropriation bill prohibiting the use of funds therein to procure foreign-made items unless their inspection for quality assurance "uses the same standards" which would be required for domestic products by the Department of Defense was ruled out as legislation imposing additional duties absent any showing that existing law already required such inspection of items produced in foreign countries. The proceedings during consideration of the defense appropriation bill,[3] were as follows:

MR. [JIM] DUNN [of Michigan]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Dunn: Page 68 after line 15, insert the following:

Sec. 792. None of the funds appropriated in this Act may be available for the procurement of any item manufactured in a foreign country unless, during manufacture, the inspection of such item for quality assurance uses the same standards of inspection during manufacture which would be required by the Department of Defense if such item were manufactured domestically.

MR. DUNN (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE CHAIRMAN:[4] Is there objection to the request of the gentleman from Michigan?

There was no objection

MR. [BILL] FRENZELL [of Minnesota]: Mr. Chairman, I rise to make a point of order against the amendment.

THE CHAIRMAN: The Chair recognizes the gentleman from Minnesota (Mr. Frenzel) on his point of order.

MR. FRENZEL: Mr. Chairman, in my judgment the amendment is contrary to rule XXI, clause 2, which provides that no amendment changing existing law can be made on an appropriation bill. The amendment clearly gives the Secretary additional duties, to determine what kind of quality assurance or inspection is required under the terms of the amendment and, therefore, the amendment constitutes legislation on an appropriation bill.

Mr. Chairman, I believe the point of order should be sustained.

THE CHAIRMAN: Does the gentleman from Michigan wish to be heard on the point of order?

MR. DUNN: Mr. Chairman, the gentleman, I believe, is incorrect. The Secretary already has that discretion. We are simply, in this amendment, trying to make certain that the powers that he uses for national companies are the same as for international companies. He already has that power. It does not change his power.

THE CHAIRMAN: As the Chair reads the amendment, there is clearly a mandatory authority imposing additional duties, absent any showing that

2. 127 CONG. REC. 28076, 28077, 97th Cong. 1st Sess.

3. H.R. 4995.

4. Daniel D. Rostenkowski (Ill.).

existing law already requires such inspection of items produced in foreign countries, the Chair sustains the point of order made by the gentleman from Minnesota (Mr. Frenzel).

Parliamentarian's Note: This decision effectively overrules the ruling of the Chair on July 28, 1959,[5] wherein an amendment denying use of funds to finance construction projects abroad that had not met the criteria used in determining the feasibility of flood control projects in the United States was held a proper limitation, despite any lack of showing that existing law required domestic standards to be applied to foreign construction projects. It should be noted that it is not just the imposition of new standards that constitutes legislation rendering language subject to a point of order, but the requirement of new procedures or duties involved in making the standards applicable in a setting not contemplated in the existing law.

Presidential Appointment to be Made

§ 47.7 To an appropriation bill, an amendment proposing that no part of the appropriation therein be paid to any commissioned officer or any civilian employee in the office of the Judge Advocate, unless such officer or employee is subject to the authority of a general counsel appointed by the President, who shall be the chief legal officer, was conceded to be legislation and therefore held not in order.

On May 12, 1955,[6] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 6042), a point of order was raised against an amendment as described above. The proceedings were as follows:

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, it is obvious that this is legislation on an appropriation bill and subject to a point of order and I make the point of order against the amendment.

THE CHAIRMAN:[7] Does the gentleman from New Jersey desire to be heard on the point of order?

MR. [FRANK] THOMPSON [Jr.] of New Jersey: Mr. Chairman, I concede the point of order. . . .

THE CHAIRMAN: The point of order is sustained.

Funds Made Subject to Audit

§ 47.8 An amendment to a legislative branch appropria-

5. 105 CONG. REC. 14522, 14524, 86th Cong. 1st Sess.

6. 101 CONG. REC. 6245, 6246, 84th Cong. 1st Sess. See § 41.2, supra, for the language of the amendment.

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

tion bill denying the obligation or expenditure of certain funds contained therein unless such funds were subject to audit by the Comptroller General was ruled out of order as legislation where it appeared that the amendment was intended by its proponents to extend and strengthen the authority of the Comptroller General under law to audit legislative accounts.

On June 14, 1978,[8] H.R. 12935, making appropriations for the legislative branch, was under consideration in Committee of the Whole. The following amendment was offered and discussed:

Amendment offered by Mr. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: On page 6, after line 23, insert the following new section:

Sec. 102. (a) None of the funds appropriated by any provision described in subsection (b) shall be expended or obligated for any purpose specified in such provision unless such funds so expended or obligated are subject to audit by the Comptroller General of the United States. . . .

MR. [GEORGE E.] SHIPLEY [of Illinois]: Mr. Chairman, I reserve a point of order on the amendment.

MR. COUGHLIN: Mr. Chairman, this is identical to an amendment offered last year by the gentlewoman from Massachusetts (Mrs. Heckler) and the gentlewoman from New York (Mrs. Chisholm) to provide for a GAO audit of Members and committee accounts. It is the identical amendment that was raised at that time. It was not objected to on a point of order. . . .

MRS. [MARGARET M.] HECKLER [of Massachusetts]: . . . Mr. Chairman, once again on my own behalf and for my distinguished colleague from New York (Mrs. Chisholm) I offer an amendment to the legislative branch appropriations to make all tax-funded accounts of Members subject to an audit by the General Accounting Office.

I offer this amendment with a twofold purpose in mind. First, the amendment will bring Congress in line with other Federal agencies and give us, as Members, protection from accounting mistakes that happen—sometimes too easily—when there are no guidelines or procedures as is currently the case. Second, the amendment will go a long way toward restoring public confidence in the Congress by creating an accounting system for public money expended by Congress for its own operation.

I do not believe any Member of Congress has the time to maintain these accounts. Indeed, this function is always delegated. In my own case, my office manager handles the accounts, and, in addition, I have hired an outside accountant to oversee the process. Nonetheless, questions remain. I believe it is time to get the professionals to give us the answers.

When errors are made—for whatever reason—the Member of Congress is

8. 124 CONG. REC. 17650, 17651, 95th Cong. 2d Sess.

held accountable. In my judgment, a uniform, organized system of audits would not be an adversary to the Congress, rather, it would be a protection against the innumerable uncertainties of interpretation and variables which can make even the most carefully managed accounts vulnerable to public criticism.

The GAO audit would make public accountability a reality for the Congress.

Congress has never hesitated to require audits of other agencies. I believe the time has come when Congress should submit to an audit itself. . . .

Mr. Chairman, the operations of the Comptroller General under this amendment would continue as under existing circumstances in that site at the Capitol where the office is presently located. The authority would provide an audit of Members' accounts and committee accounts. It would provide that authority to be utilized by the GAO.

MR. SHIPLEY: Mr. Chairman, if the gentleman will yield further, does it extend in any way the present audit system that we have now in the House?

MR. COUGHLIN: Mr. Chairman, I yield to the gentlewoman from Massachusetts.

MRS. HECKLER: Mr. Chairman, it extends the authority that now exists in law but is not necessarily a change in existing law. It affirms the authority of the GAO which presently exists in the House; however, I do not believe that the GAO is able to examine Members' accounts and this amendment clarifies that authority. However, it does not mandate audits across the board of every Member at any particular time.

MR. SHIPLEY: Mr. Chairman, would the gentlewoman answer another question for me again. I am not quite clear in my own mind what exactly would this amendment require the Comptroller General to do specifically?

MRS. HECKLER: I believe that this amendment would provide an expansion of the number of accounts which the GAO is presently auditing including the tax-funded accounts of Members of Congress and our legislative committees, as covered by the general legislative appropriation bill. We are in this bill dealing with an appropriation of $992 million. I believe that these public funds should be subject to audit. This amendment merely affirms the legal authority to the GAO to conduct such audits. . . .

MR. SHIPLEY: . . . Mr. Chairman, I object to the amendment and make a point of order against it on the grounds that it imposes additional duties on the Comptroller General and, as such, is in violation of clause 2, rule XXI of the House. The additional duties implied by the amendment might involve the Comptroller General insisting that time and attendance reporting systems be set up in Members and committee offices and may require setting up annual and sick leave systems and involve examination of Members' personal diaries, perhaps even their personal financial records. These are duties and procedures clearly beyond the offices of the Comptroller General's present audit authority. Under paragraph 842 of clause 2, rule XXI:

> An amendment may not impose additional duties, not required by law, or make the appropriation contingent upon the performance of such duties . . . then it assumes the

character of legislation and is subject to a point of order. . . .

MR. COUGHLIN: Mr. Chairman, let me say that the amendment imposes no additional duties on the General Accounting Office. It proposes that these accounts be subject to audit by the GAO.

Title 31, section 67, of the United States Code annotated says as follows:

> . . . the financial transactions of each executive, legislative, and judicial agency, including but not limited to the accounts of accountable officers, shall be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States.

In a memorandum to the Comptroller General from the general counsel of the General Accounting Office, the following language appeared:

> Our authority under the Budget and Accounting Act, 1921, to investigate all matters relating to the receipt, disbursement, and application of public funds also extends to the Congress.

I continue to quote from the memorandum, as follows:

> Similarly, our authority in the Accounting and Auditing Act of 1950 to audit all financial transactions, not limited to accountable officer transactions, extends to legislative agencies . . .

Mr. Chairman, it is very clear that the General Accounting Office already has the authority and the duty to audit the accounts of the legislative branch, and this amendment in no way expands or extends that authority. The General Accounting Office has taken a position that it is interested in having an expression of the will of the legislative branch as to whether it wishes the General Accounting Office to carry out that function. This amendment would be an expression of that will.

Mr. Chairman, the amendment would in no way expand the authority of the General Accounting Office or impose additional duties on the General Accounting Office; it would only make these accounts subject to audit. . . .

THE CHAIRMAN PRO TEMPORE:[9] The Chair is ready to rule.

The Chair certainly agrees that the language in the amendment is ambiguous. The Chair takes into account, however, the debate, and the debate as observed by the Chair indicates the amendment certainly does extend the authority of the Comptroller General and is subject to a point of order.

The Chair does recognize that there are conflicting interpretations of the amendment under discussion. However, the Chair has a duty under the precedents to construe the rule against legislation strictly where there is an ambiguity. The Chair feels he must sustain the point of order based on the interpretations given the amendment during the debate.

Parliamentarian's Note: The amendment in this instance was ruled out of order because it appeared that it was intended by its proponents to work a change in the law and to require audits, rather than simply state a condition precedent for obligation and expenditure of the funds. (A sub-

9. Daniel D. Rostenkowski (Ill.).

sequent amendment which denied the use of funds not subject to audit "as provided by law" was offered and adopted.)

It should be noted that the June 14, 1978, ruling above effectively overrules an earlier ruling (see 116 CONG. REC. 18412, 91st Cong. 2d Sess., June 4, 1970), in which it had been held that language in a general appropriation bill, providing that no funds in the bill for "International Financial Institutions" shall be available for activities which are not subject to audit by the Comptroller General, was in order as a limitation on the use of funds in the bill.

Barring Funds for Enforcement of Current Law or Regulations

§ 47.9 It is not in order in a general appropriation bill to deny the use of funds for an executive agency to formulate or carry out regulations except for regulations in effect on a prior date, which are no longer permitted to be formulated or enforced under the current state of the law.

On Aug. 19, 1980,[10] the following amendment was offered to H.R. 7583 (Treasury Department and Postal Service appropriations for fiscal 1981):

> Amendment offered by Mr. [John M.] Ashbrook [of Ohio]: On page 8, after line 22, insert the following new section:
>
> "Sec. 103. None of the funds made available pursuant to the provisions of this Act shall be used to formulate or carry out any rule, policy, procedure, guideline, regulation, standard, or measure which would cause the loss of tax-exempt status to private, religious, or church-operated schools under section 501(c)(3) of the Internal Revenue Code of 1954 unless in effect prior to August 22, 1978."

A point of order against the amendment was sustained. See the proceedings discussed in full in § 22.28, supra.

§ 47.10 An amendment to a general appropriation bill denying use of the funds therein for the Treasury Department to apply certain provisions of the Internal Revenue Code other than under audit practices, interpretations, regulations, and court decisions in effect on a prior date was ruled out of order as legislation since admittedly requiring the executive branch to follow laws no longer in effect in order to make the appropriation available.

10. 126 CONG. REC. 21978–80, 96th Cong. 2d Sess.

On June 7, 1978,[11] during consideration in the Committee of the Whole of the Department of the Treasury and Postal Service appropriation bill (H.R. 12930), a point of order raised against an amendment was sustained as follows:

The Clerk read as follows:

Amendment offered by Mr. [Leon E.] Panetta [of California]: Page 30, after line 24, insert the following new section:

Sec. 510. None of the funds available under this Act shall be used by the Treasury Department to make or apply any determination as to whether any individual is an employee for purposes of chapter 21 (relating to Federal Insurance Contributions Act), 23 (relating to Federal Unemployment Tax Act), or 24 (relating to collection of income tax at source on wages) of the Internal Revenue Code of 1954 other than under the audit practices, interpretations, regulations, and federal court decisions in effect on December 31, 1975. . . .

MR. [TOM] STEED [of Oklahoma]: . . . Mr. Chairman, I make a point of order against the proposed amendment, because it is legislation on an appropriations bill, in violation of clause 2 of rule XXI. This amendment would impose new duties on an executive officer.

The Commissioner and employees of IRS would be required to make a determination as to whether or not a "certain audit, interpretation, regulation, or Federal appellate court decision" is "inconsistent with audit practices, interpretations, regulations, and Federal court decisions in effect on December 31, 1975."

The executive officer would be required by this amendment to interpret Federal appellate court decisions in 1975, interpret court decisions now, and make a decision as to whether or not they are inconsistent. This clearly imposes new duties on an executive officer and is clearly in violation of clause 2 of rule XXI. This can be found in section 843, page 572 of the current rules of the House of Representatives.

As further precedent, Mr. Chairman, I would like to cite the following from Cannon's Procedures in the House of Representatives, section 843 on page 64:

In construing an amendment offered as a limitation the practice of the House relating thereto should be construed strictly in order to avoid incorporation of legislation in appropriation bills under guise of limitations.

That is in volume VII, Cannon's Precedents, section 1720.

Further quoting:

The purpose rather than the form of a proposed limitation is the proper criterion by which its admissibility should be judged, and if its purpose appears to be a restriction of Executive discretion to a degree that may be fairly termed a change in policy rather than a matter of administrative detail it is not in order.

That is in volume VII, Cannon's Precedents, section 1691.

Further quoting:

Legislation may not be proposed under the form of a limitation.

That is section 1607.

11. 124 CONG. REC. 16655, 16656, 95th Cong. 2d Sess.

Further quoting, this time from volume VII, Cannon's Precedents, section 1628:

> And a provision which under the guise of limitation repeals or modifies existing law is legislation and is not in order on an appropriation bill.

For these reasons, Mr. Chairman, it is obvious that this amendment would impose additional duties on an executive officer and, therefore, clearly is subject to a point of order. . . .

MR. PANETTA: Mr. Chairman, in response to the point of order, I just make two points.

One, the fact that this is a limitation on an expenditure of funds, this is permitted under the House rules, that is, it is permitted where it involves small administrative detail, and that is essentially what we are dealing with here. We are not dealing with reinterpretation. We are not requiring new interpretation by the Internal Revenue Service, but what we are doing is telling them to abide by those procedures that were in effect in 1975.

Mr. Chairman, for those reasons, I think the amendment is in order.

THE CHAIRMAN:[12] If the gentleman from California (Mr. Panetta) would permit the Chair to direct a question to the gentleman for clarification, as the Chair understood the statement of the gentleman's colleague from California in the concluding remarks, the amendment does, in fact, does it not, require going back to the law as it was prior to December 31, 1975, rather than the law as it exists today?

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

THE CHAIRMAN: The Chair appreciates the candor of the gentleman from California (Mr. Panetta) in answer to the question. The Chair will state that he certainly did not mean to put the gentleman in this position purposely, but in view of the Chair's understanding of the language contained herein, he felt constrained to ask the question.

The statement of the gentleman from California (Mr. Panetta) would indicate that in fact the amendment would require a return to the law as it existed prior to December 31, 1975, and, therefore, the amendment does change existing law and constitutes legislation on an appropriation bill.

Therefore, the Chair sustains the point of order.

§ 48. Conditions Precedent to Spending

Requiring New Contractual Arrangements

§ 48.1 To an appropriation bill, an amendment making the money available on certain contingencies which would change the lawful mode of payment is legislation and not in order.

On Mar. 27, 1952,[13] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R.

12. B. F. Sisk (Calif.).

13. 98 CONG. REC. 3064, 82d Cong. 2d Sess.

7176), a point of order was raised against the following provision:

MR. [TOBY] MORRIS [of Oklahoma]: Mr. Chairman, I make a point of order against the language beginning on line 24, page 13, and ending on line 12, page 14 inclusive as follows:

Provided further, That until such time as a repayment contract, covering the proper share of the cost of the facilities hereinafter stated, shall have been entered into between the United States and the prospective water users, no part of this appropriation shall be available for the initiation of construction of any dam or reservoir where the dominant purpose thereof is storage of water for irrigation or water supply, or any tunnel, canal or conduit for water, or water distribution system related to such dam or reservoir: *Provided further,* That funds appropriated in this act and heretofore for all such structures now under construction, shall not be available after January 1, 1954, unless such repayment contracts shall have been entered into by the prospective water users.

Mr. Chairman, I make the point of order against the language on the ground that it is legislation on an appropriation bill, and that it seeks to change existing law.

THE CHAIRMAN:[14] The gentleman refers to the proviso appearing in line 25, page 13, and the proviso starting at line 8 on page 14?

MR. MORRIS: I do, Mr. Chairman.

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

MR. [MICHAEL J.] KIRWAN [of Ohio]: No, Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The gentleman from Oklahoma has made a point of order, as referred to by him, and the gentleman from Ohio concedes the point of order. Therefore, the Chair sustains the point of order.

Audit by Comptroller General

§ 48.2 To a legislative appropriation bill, an amendment requiring the imposition of an auditing and reporting procedure before funds can be expended was ruled out as legislation.

On Apr. 10, 1964,[15] during consideration in the Committee of the Whole of the legislative appropriation bill (H.R. 10723), a point of order was raised against the following amendment:

MR. OLIVER P. BOLTON [of Ohio]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Oliver P. Bolton: Page 26, after line 22 insert the following:

"Sec. 104. No funds appropriated in this Act for the House of Representatives or the Architect of the Capitol shall be used unless the expenditure of such funds is audited by the Comptroller General at such times as he may deem appropriate. For the purpose of conducting such audits, the provisions of section 313 of the Budget and Accounting Act (42 Stat. 26; 31 U.S.C. 54) shall be applicable to the legislative agencies under audit. The Comptroller Gen-

14. Jere Cooper (Tenn.).

15. 110 CONG. REC. 7642, 88th Cong. 2d Sess.

eral shall report to the Speaker of the House of Representatives the results of each such audit relating to the financial transactions of the House of Representatives, and shall report also to the Architect of the Capitol the results of the audit of his office. All such reports, including the reports required by the Act of July 26, 1949 (63 Stat. 482), shall be printed as House Documents."

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, it is with some reluctance that I must make a point of order against this amendment. . . .

MR. OLIVER P. BOLTON: Mr. Chairman, I wish to express my appreciation to the chairman of the subcommittee for reserving the point of order. I knew that a point of order would be made.

Mr. Chairman, the purpose and intent of my amendment is clear. Simply stated, the funds appropriated by H.R. 10723 would be subject to the limitations of the Accounting and Auditing Act of 1950, as amended, with a view toward making the operations of the House and the Office of the Architect of the Capitol subject to the same objective auditing standards as are other Government departments. . . .

Mr. Chairman, it is high time we opened our books to the public. Just like any executive agency, we are spending taxpayers' money for our daily operating expenses. There is no logical reason why we should not be subjected to a public audit. Who knows, maybe a little fat can be trimmed right in our own backyard.

THE CHAIRMAN:[16] It is obvious on its face that this amendment is legislation on an appropriation bill. The Chair sustains the point of order.

Parliamentarian's Note: On another occasion, an amendment to a legislative branch appropriation bill denying the obligation or expenditure of certain funds contained therein unless such funds were subject to audit by the Comptroller General was ruled out of order as legislation where it appeared that the amendment was intended by its proponents to extend and strengthen the authority of the Comptroller General under law to audit legislative accounts. The amendment in that instance was ruled out of order when it appeared that it was intended by its proponents to work a change in the law and to require audits, rather than simply state a condition precedent for obligation and expenditure of the funds. A subsequent amendment which denied the use of funds not subject to audit "as provided by law" was offered and adopted. See 124 CONG. REC. 17651, 95th Cong. 2d Sess., June 14, 1978 [H.R. 12935].

Prior Approval by Bureau of Budget and Submission to Congress

§ 48.3 Language in an appropriation bill providing funds for the Tennessee Valley Authority, stating that no part of the funds shall be used "unless and until" approved by the Director of the Bureau of the Budget and sub-

16. Clark W. Thompson (Tex.).

mitted to the Senate and House Committees on Appropriations, was conceded to be legislation and held not in order.

On May 22, 1956,[17] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 11319), the following point of order was raised:

> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I make a point of order against certain language in the Tennessee Valley Authority paragraph as follows: . . .
>
> Third. Lines 13 to 22, the proviso reading: "That no part of funds available for expenditure by this agency shall be used, directly or indirectly, to acquire a building for use as an administrative office of the Tennessee Valley Authority unless and until the Director of the Bureau of the Budget, following a study of the advisability of the proposed acquisition, shall advise the Committees on Appropriations of the Senate and the House of Representatives and the Tennessee Valley Authority that the acquisition has his approval: Provided further.". . .
>
> MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, the language read by the gentleman is unquestionably legislation on an appropriation bill and I therefore concede the point of order.
>
> THE CHAIRMAN:[18] . . . The gentleman from Missouri, chairman of the Committee on Appropriations, concedes the point of order.
>
> It is clearly legislation on an appropriation bill and the point of order is sustained.

Prior Approval by Public Housing Commissioner

§ 48.4 Language in a supplemental appropriation bill providing funds for the Housing and Home Finance Agency and containing a proviso that no funds appropriated therein or funds available for expenditure pursuant to section 10 of the Housing Act shall be available for certain expenditures unless made in accordance with a budget approved by the Public Housing Commissioner was conceded to be legislation and held not in order.

On June 23, 1960,[19] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 12740), a point of order was raised against the following provision:

> HOUSING AND HOME FINANCE AGENCY
>
> *Public Housing Administration*
>
> Annual Contributions
>
> For an additional amount, fiscal year 1960, for "Annual contributions", $9

17. 102 CONG. REC. 8725, 84th Cong. 2d Sess.

18. Jere Cooper (Tenn.).

19. 106 CONG. REC. 14086, 86th Cong. 2d Sess.

million, and in addition $3 million to be derived from funds collected as fixed fees from local public housing authorities as required by law: *Provided*, That no funds appropriated herein, or funds available for expenditure pursuant to section 10 of the United States Housing Act of 1937, as amended, shall be available for the payment of contributions with respect to any local public agency expenditures for any project year ending after June 30, 1960, which are not made in accordance with a budget approved by the Public Housing Commissioner as reasonable, necessary, and consistent with economical operating policies.

Mr. [THOMAS L.] ASHLEY [of Ohio]: Mr. Chairman, a point of order.

THE CHAIRMAN:[20] The gentleman will state it.

MR. ASHLEY: Mr. Chairman, I make the point of order that the language contained on page 8, lines 7 through 15, is legislation on an appropriation bill.

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

MR. [ALBERT] THOMAS [of Texas]: We concede the point of order, Mr. CHAIRMAN.

THE CHAIRMAN: The Chair sustains the point of order.

Requiring State and Local Cost Sharing for Investigations

§ 48.5 Language in the Interior Department appropriation bill under the heading "General Investigations" providing that "the expenditure of any sums from this appropriation for investigations of any nature requested by States, municipalities, or other interests shall be upon the basis of the State, municipality, or other interest advancing at least 50 percent of the estimated cost of such investigations" was conceded to be legislation on an appropriation bill and held not in order.

On Apr. 25, 1947,[1] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3123), a point of order was raised against the following provision:

The Clerk read as follows:

GENERAL INVESTIGATIONS

General investigations: For engineering and economic investigations of proposed Federal reclamation projects and surveys, investigations, and other activities relating to reconstruction, rehabilitation, extensions, or financial adjustments of existing projects, and studies of water conservation and development plans, such investigations, surveys, and studies to be carried on by said Bureau either independently, or in cooperation with State agencies and other Federal agencies, including the Corps of Engineers, and the Federal Power Commission, $125,000, which may be used to execute detailed surveys, and to prepare construction plans and specifications: *Provided*,

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

1. 93 CONG. REC. 4079, 80th Cong. 1st Sess.

That the expenditure of any sums from this appropriation for investigations of any nature requested by States, municipalities, or other interests shall be upon the basis of the State, municipality, or other interest advancing at least 50 percent of the estimated cost of such investigations. . . .

MR. [J. EDGAR] CHENOWETH [of Colorado]: Mr. Chairman, a point of order.

THE CHAIRMAN:[2] The gentleman will state it.

MR. CHENOWETH: Mr. Chairman, I make a point of order against the language contained in line 13 beginning with the word *"Provided"* down through line 18 to the colon, page 34, for the reason it is legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Ohio [Mr. Jones] desire to be heard on the point of order? The point of order is that this is legislation on an appropriation bill, not authorized by law.

MR. [ROBERT F.] JONES of Ohio: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is conceded. The Chair therefore sustains the point of order.

Requiring Cost Sharing for Cooperative Range Improvements

§ 48.6 Language in an appropriation bill providing that no part of the appropriation for "Cooperative Range Improvements" shall be expended in any national forest until contributions at least equal to such expenditures are made available by States or other local public or private sources, was held to be legislation on an appropriation bill and not in order.

On May 10, 1951,[3] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 3973), the following point of order was raised:

MR. [WALTER K.] GRANGER [of Utah]: Mr. Chairman, I make a point of order against the following language beginning in line 18 on page 26 and including the proviso in lines 18 to 25 inclusive as being legislation on an appropriation bill.

Provided, That hereafter no part of the appropriation for "Cooperative Range Improvements" shall be expended in any national forest until funds or other contributions at least equal to such expenditures are made available by States or other local public or private sources, except that claims recognized by the act of December 19, 1950, shall be accepted as contributions for the purposes of this section.

MR. [JAMIE L.] WHITTEN [of Mississippi]: A point of order, Mr. Chairman.

THE CHAIRMAN:[4] The gentleman will state it.

MR. WHITTEN: In view of the fact that a point of order has been made to

2. Earl C. Michener (Mich.).

3. 97 CONG. REC. 5224, 82d Cong. 1st Sess.

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

the last half of the paragraph I make a point of order against the entire paragraph. I do not think it can be argued that it is not subject to a point of order. A point of order having been made to half of the paragraph, I make a point of order against the entire paragraph.

THE CHAIRMAN: Does any Member desire to be heard on the point of order?

The Chair sustains the point of order to the entire paragraph.

Providing Cost Sharing for Road Construction

§ 48.7 Language in an appropriation bill providing that funds for the construction of an additional Washington airport in Virginia shall be available for an access road (a federal project) provided the State of Virginia makes available the balance of funds necessary for the construction of the road was conceded to be legislation and held not in order.

On June 29, 1959,[5] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7978), a point of order was raised against the following provision:

The Clerk read as follows:

FEDERAL AVIATION AGENCY

Construction and development, additional Washington airport

For an additional amount for "Construction and development, additional Washington airport", $22,470,000, to remain available until expended, of which not to exceed $400,000 shall be available for an access road to the north from the airport provided the State of Virginia makes available the balance of funds necessary for the construction of said road.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language of the bill on page 3, line 6, beginning with the words "of which" and running through line 10, on the ground that this language is legislation on an appropriation bill.

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

MR. [ALBERT] THOMAS: Mr. Chairman, I am compelled to concede the point of order.

THE CHAIRMAN: The gentleman from Texas concedes the point of order. The Chair sustains the point of order.

Delaying Obligation Until Other Funds Have Been Spent

§ 48.8 To a general appropriation bill providing funds for the rent-supplement program, an amendment to withhold obligation of those funds until funds previously

5. 105 CONG. REC. 12121, 86th Cong. 1st Sess.

6. Paul J. Kilday (Tex.).

appropriated (in another bill) for military housing construction are obligated, which placed an unrelated contingency on the use of funds in the bill, was ruled out as legislation.

On Mar. 29, 1966,[7] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 14012), a point of order was raised against the following provision:

Amendment offered by Mr. [Elford A.] Cederberg [of Michigan]: On page 4, line 22, after "program" and before the period add, "*Provided further,* That no part of these funds shall be obligated until funds made available for the construction of family housing for the Army, Navy, Marine Corps, Air Force, and Defense agencies in Public Law 89–202, have been obligated."

MR. [JOSEPH L.] EVINS of Tennessee: Mr. Chairman, I make a point of order.

MR. [MELVIN R.] LAIRD [of Wisconsin]: Mr. Chairman, the point of order comes too late. The Chair was about to state the question.

THE CHAIRMAN [James G. O'Hara, of Michigan]: The question had not yet been put. The Chair was about to state the question, but the question had not yet been put. The gentleman will state his point of order.

MR. EVINS of Tennessee: Mr. Chairman, I make a point of order against the amendment on the ground that it relates to funds previously appropriated and which are not carried in this bill and interferes with executive discretion given to the President under existing law to do what he wishes with the funds.

THE CHAIRMAN: The Chair is prepared to rule.

MR. CEDERBERG: Mr. Chairman, I would like to be heard on this point.

THE CHAIRMAN: The Chair will hear the gentleman from Michigan briefly on the point of order.

MR. CEDERBERG: Mr. Chairman, this is an attempt to try to be sure that our military families are given an equal opportunity to have family housing that has been deferred. This matter has adequately been discussed in the debate previous to this time. I had hoped possibly out of the generousness of the hearts of the gentlemen on the Democratic side that they would not raise a point of order and therefore obviously deny our military service families the right to have these houses that they so desperately need.

THE CHAIRMAN: The Chair is prepared to rule on the point of order.

The amendment offered by the gentleman from Michigan places an unrelated contingency upon the use of funds provided in this paragraph, and as such is legislation in an appropriation bill, and not germane to the paragraph.

The point of order is sustained.

Parliamentarian's Note: Provisions that seek to control the timing of expenditure of funds may sometimes be ruled out as legislation, inasmuch as such provisions may interfere with executive discretion as to such expenditure.

7. 112 CONG. REC. 7118, 89th Cong. 2d Sess.

See the proceedings at 126 CONG. REC. 16815–17, 96th Cong. 2d Sess., June 25, 1980; for discussion of provisions affecting executive discretion generally, see § 51, infra. More precisely, it may be stated that, if a proposed limitation on the use of funds goes beyond the traditionally permissible objects of a limitation, as, for example, by restricting discretion in the timing of expenditure of funds rather than restricting their use for a specific object or purpose, such provision may be ruled out as legislation in the absence of a convincing argument by the proponent showing that the provision does not change existing law.

In some instances, a provision of the type described above may be allowed, even though legislative in effect, if it can be viewed as falling within the Holman rule exception. See § 4, supra, for general discussion of the Holman rule. As long as an amendment calls for an obvious reduction at some point in time during the fiscal year, the amendment is in order under the "Holman Rule" even if the reduction takes place in the future in an amount actually determined when the reduction takes place (for example, by formula). See, for example, 126 CONG. REC. 20499–503, 96th Cong. 2d Sess., July 30, 1980.

It should be noted here that on one occasion, in 1965, language in a supplemental appropriation bill providing funds for the rent supplement program and specifying that "no part of the . . . appropriation or contract authority shall be used" in any project not part of a "workable program for community improvement" (as defined in the Housing Act of 1949) or which is without local official approval was held to be a proper limitation and in order. The 1965 ruling would probably not be followed in current practice; that ruling is discussed further, with related precedents, in the "note on contrary rulings" following § 53.6, infra.

Funds Available to Extent Aggregate Expenditures Do Not Exceed Specified Amount

§ 48.9 On a general appropriation bill a limitation applying to funds other than those provided in the pending bill is not in order. But rulings differ in the application of this principle to provisions making funds available "only to the extent that expenditure thereof shall not raise total aggregate expenditures of" agencies provided for in the bill.

On Mar. 3, 1952,[8] during consideration in the Committee of the Whole of the Treasury and Post Office Departments appropriation bill (H.R. 6854), the Chair ruled out of order an amendment as described above, on the basis that the proposed limitation would affect appropriations not carried in the bill. A point of order was raised against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [Frederic R.] Coudert [Jr., of New York]: Page 15, line 11 insert a new section 403:

"Sec. 403. Money appropriated in this act shall be available for expenditure in the fiscal year ending June 30, 1953, only to the extent that expenditure thereof shall not raise total aggregate expenditures of all agencies provided for herein beyond the total sum of $7,060,000,000: *Provided further,* That this limitation shall not apply to expenditures from the postal revenues; to refunds of internal revenue collections, to refunds and drawbacks in the Customs Service, and to refunds of moneys erroneously received and covered."

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Chairman, I reserve a point of order against the amendment. . . .

Mr. Chairman, I insist on my point of order on the ground that this amendment goes beyond the scope of this bill and deals with expenditures which are not included in this bill.

MR. [JOHN] TABER [of New York]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN:[9] The gentleman from New York is recognized.

MR. TABER: Mr. Chairman, the amendment does not go beyond the scope of the bill in its limitation on expenditures. The limitation is that the total expended including the amounts in this bill shall not exceed the $7,060,000,000 over and above the total expenditures for the postal revenues, the refunds on internal revenue collection, and the refunds and drawbacks in the customs service, and the refunds of money erroneously received. . . .

THE CHAIRMAN: The Chair is ready to rule. In the brief time the Chair has had to study the amendment, the Chair is of the opinion that the limitation which the gentleman from New York desires to place in the bill would operate to limit expenditures of appropriations which are not carried in the bill, and therefore sustains the point of order.

A seemingly different result was reached on Mar. 21, 1952,[10] on which day the Committee of the Whole was considering H.R. 7072, an independent offices appropria-

8. 98 CONG. REC. 1781, 1782, 82d Cong. 2d Sess. See also § 27, supra, discussing provisions that affect funds in other acts, generally.

9. Charles M. Price (Ill.).

10. 98 CONG. REC. 2694, 82d Cong. 2d Sess. See also the ruling at 99 CONG. REC. 9559, 83d Cong. 1st Sess., July 22, 1953, on a similarly worded amendment to H.R. 6391, the Mutual Security Administration appropriation bill, discussed at § 80.2, infra. And see §§ 80.3 et seq., infra.

tion. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. Coudert: On page 64, after line 21, add a new section 405 as follows:

"Sec. 405. Money appropriated in this act shall be available for expenditure in the fiscal year ending June 30, 1953, only to the extent that expenditure thereof shall not result in total aggregate expenditures of all agencies provided for herein beyond the total sum of $6,900,000,000."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make the point of order against the amendment on the ground that it is legislation on an appropriation bill. . . .

. . . It changes figures heretofore voted upon in the House in the last 3 days. Therefore, that is legislation. It puts duties on the various agencies not otherwise called for in the bill. . . .

MR. COUDERT: This clearly does not touch the funds of prior years; therefore, it does not appropriate with respect to them. It only places a limitation upon the use to which the funds requested in this bill, the new obligational authority, may be put. It limits the freedom of expenditure and nothing else.

THE CHAIRMAN:[11] The Chair is ready to rule. . . .

The Chair appreciates the fact that the author of the amendment afforded the Chair an opportunity earlier in the day to read the amendment and gave the Chair some time to study the language of the amendment.

The Chair is of the opinion that the amendment is a limitation upon the funds which are contained in the bill H.R. 7072, presently before the Committee; that it is nothing more than a limitation on those funds. The Chair is, therefore, constrained to overrule the point of order and holds the amendment in order.

Parliamentarian's Note: The Mar. 3, 1952, ruling cited above seems to support the better principle, that, where an attempted limitation has the effect of delaying the expenditure of funds until determinations are made as to aggregate expenditures at the end of a fiscal year, it is not in order. However, if the reduction is certain, such an amendment can be supported under the Holman rule. See the note in § 48.8, supra. And see §§ 4 and 5, supra, for general discussion of the Holman rule.

Ceiling by Reference to President's Budget

§ 48.10 An amendment to a general appropriation bill restricting the availability for expenditure of all funds therein to the aggregate level provided in the President's budget for that fiscal year for the agencies covered in the bill was held to constitute a valid limitation on the total amount covered by the bill.

11. Wilbur D. Mills (Ark.).

On June 15, 1972,[12] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill for fiscal 1973 (H.R. 15417), a point of order was raised against the following amendment:

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

The Clerk read as follows:

Amendment offered by Mr. Findley: On page 40, after line 4, insert the following new section:

"Sec. 409. Money appropriated in this Act shall be available for expenditure in the fiscal year ending June 30, 1973, only to the extent that expenditure thereof shall not result in total aggregate net expenditures of all agencies provided for herein beyond 100 per centum of the total aggregate net expenditures estimated therefor in the budget for 1973 (H. Doc. 215)."

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I make a point of order against the amendment.

Mr. Chairman, this is legislation upon an appropriation bill—period.

THE CHAIRMAN:[13] Does the gentleman from Illinois desire to be heard on the point of order?

MR. FINDLEY: Yes, Mr. Chairman.

Mr. Chairman, I would like to explain to the Chair that the language of this amendment with the exception of the percentage figure and the House document reference is identical to the so-called Bow amendment which was offered on many occasions in past years and which has been challenged on previous occasions and which has been sustained being in order of an appropriation bill.

THE CHAIRMAN: The Chair has examined the amendment and will rule that it is in order. It is, in effect, the "Bow" amendment with a very slight variation. It is a restriction on the appropriations in this bill.

The point of order is overruled.

Parliamentarian's Note: This precedent and the Mar. 21, 1952, ruling cited in § 48.9, supra, are subject to the same criticism. Arguably, implementation of this amendment would require withholding of all obligations until the end of the year, since an agency's budget situation might not be subject to a final tabulation until all other funds—those in the pipeline as well as those funded in other appropriation acts—are taken into account. There is no disclosure on the face of the amendment that there is a certain reduction to qualify under the Holman rule exception.

Pending Balanced Budget

§ 48.11 To a bill making appropriations for foreign aid, an amendment specifying that no funds made available therein may be expended until total governmental tax receipts exceed total expend-

12. 118 CONG. REC. 21136, 21137, 92d Cong. 2d Sess.

13. Chet Holifield (Calif.).

itures was ruled out as legislation.

On July 1, 1964,[14] during consideration in the Committee of the Whole of the foreign aid appropriation bill (H.R. 11812), a point of order was raised against the following amendment:

MR. [EDGAR F.] FOREMAN [of New Mexico]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Foreman: On page 18, immediately after line 24, insert the following:

"Sec. 404. Limitation on Appropriations for Economic Assistance.—Notwithstanding any provision of this or any other Act, no provision of this Act appropriating funds to carry out any program of assistance under this Act (other than a provision for military assistance as described in this Act and in the amount of $1,055,000,000) shall become effective until the tax receipts of the United States Government for the preceding fiscal year are equal to or greater than the expenditures of the Government for such fiscal year."

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Chairman, I make a point of order against the bill on the ground that it is legislation on an appropriation bill. . . .

MR. FOREMAN: Mr. Chairman, I feel like any time we are appropriating the taxpayers' dollars, we certainly should take into consideration the question as to whether or not we are putting the people further in debt. This is a very important question. It is a legal question, a legislative question, and even more importantly, a moral question.

Mr. Chairman, my amendment goes to the question of spending or not spending of these funds, the limiting of making funds available.

It does not legislate as to how they are going to be spent, or not be spent, the bill itself does not even do that.

But as suggested earlier in our debate, perhaps this amendment is indeed too sensible and entirely too practical to be applied to our foreign aid giveaway program. Yes, Mr. Chairman, perhaps fiscal responsibility, at this point and in this day in time, may be out of order.

THE CHAIRMAN:[15] The Chair is ready to rule.

On the face of it, this amendment appears to go far beyond the scope of the bill.

The subject of the amendment is not covered or referred to in the proposed legislation and, therefore, the Chair sustains the point of order.

§ 49. Spending Conditioned on Congressional Approval

Subsequent Congressional Finding of Impact on Public Debt

§ 49.1 To a bill appropriating funds for the Mutual Secu-

14. 110 CONG. REC. 15582, 88th Cong. 2d Sess. See also § 49.1, infra, in which the Chair ruled out of order an amendment making the availability of funds conditional on a congressional finding that expenditures would not increase the public debt.

15. Charles M. Price (Ill.).

rity Act program, an amendment providing that none of the funds therein should be available for expenditure until Congress, in a concurrent resolution, makes a finding that the expenditure will not increase the public debt, was held to be legislation.

On July 28, 1959,[16] during consideration in the Committee of the Whole of the mutual security appropriation bill (H.R. 8385), a point of order was raised against the following amendment:

MR. [JOHN JAMES] FLYNT [Jr., of Georgia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Flynt: On page 5, after line 21, insert the following:

"Sec. 101. None of the funds appropriated by this title shall be available for expenditure until the Congress has adopted a concurrent resolution (1) which states in substance that the Congress finds that the aggregate of the estimated net budget receipts of the Government of the United States for the fiscal year 1960 will exceed the aggregate of the estimated expenditures for that fiscal year which will be made by the Government of the United States for purposes other than those contained in the Mutual Security Act of 1954, as amended, and (2) which specifies the amount of such excess. Upon the adoption of such a concurrent resolution, then each item of appropriation contained in this title is automatically reduced to an amount which bears the same ratio to such item as the excess specified in such concurrent resolution bears to $3,186,500,000."

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I reserve a point of order against the amendment on the ground that it is legislation on an appropriation bill. . . .

[After remarks by Mr. Flynt, the point of order was made by Mr. Passman.]

THE CHAIRMAN:[17] The Chair is prepared to rule.

The gentleman from Georgia [Mr. Flynt] has offered an amendment to which the gentleman from Louisiana makes a point of order.

The Chair has had an opportunity to examine the amendment offered by the gentleman from Georgia and is of the opinion that the amendment itself is beyond the usual limitation on an appropriation bill, in that the amendment would place additional responsibility and duties on the Congress and require additional action by the Congress, which constitutes legislation.[18]

16. 105 CONG. REC. 14520, 14521, 86th Cong. 1st Sess.

17. Wilbur D. Mills (Ark.).

18. The ruling above, insofar as it requires future express congressional action, is in conformity with the more recent trend in the Chair's treatment of provisions such as that at issue here. There have been rulings that have permitted appropriations related to public debt levels without explicitly requiring congressional action. See the ruling at 101 CONG. REC. 10246, 84th Cong. 1st Sess., July 11, 1955, wherein an

By Concurrent Resolution

§ 49.2 An amendment offered in the form of a limitation on an appropriation bill providing that no part of the funds shall be used for the enforcement of any order restricting sale of any article or commodity, unless such order shall have been approved by a concurrent resolution of the Congress, was held to be legislation and not in order on an appropriation bill.

On June 30, 1942,[19] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7319), a point of order was raised against the following amendment:

> MR. [W. STERLING] COLE of New York: Mr. Chairman, I offer the following amendment, which I send to the desk.
>
> The Clerk read as follows:
>
> > Amendment offered by Mr. Cole of New York: Page 23, line 2, after "appropriation", strike out the period and insert semicolon, and add the following: ": *Provided further*, That on and after 60 days after enactment of this act, no part of the funds herein appropriated shall be used for the administration or enforcement of any order prohibiting, restricting, rationing, or limiting by way of amount or number, the sale in retail trade of any article or commodity unless such order shall have been approved by a concurrent resolution of the Congress."
>
> MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, I make the point of order that that is legislation on an appropriation bill. This changes the basic principles of the Price Control Act. Under that act we set up a certain policy, and gave discretion to an agency, and this seeks definitely to change the basic act.
>
> THE CHAIRMAN:[20] Does the gentleman from New York desire to be heard on the point of order?
>
> MR. COLE of New York: Mr. Chairman, I submit that this is definitely a limitation on the use of funds contained in this appropriation bill.
>
> THE CHAIRMAN: The Chair is prepared to rule. The gentleman from New York offers an amendment which has been reported by the Clerk. The

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amendment denying funds if the effect of spending is to increase public debt was held in order as a limitation. And see 105 CONG. REC. 14521, 14522, 86th Cong. 1st Sess., July 28, 1959, where the Chair ruled that, to a bill appropriating funds for the mutual security program, an amendment providing that no part of any appropriation in the bill shall be used in the event the expenditure will increase the public debt was held to be a limitation and in order. See, generally, §§ 48.9 et seq., supra, for discussion of provisions that seek to make expenditures conditional upon a determination that aggregate spending levels are not in excess of a certain amount.

19. 88 CONG. REC. 5826, 77th Cong. 2d Sess.

20. Jere Cooper (Tenn.).

gentleman from Virginia [Mr. Woodrum] makes the point of order against the amendment on the ground that it is legislation on an appropriation bill and goes further than a limitation. The Chair has endeavored to analyze the amendment, and is of opinion that the gentleman from Virginia has correctly stated the situation. The amendment appears to go much further than a mere limitation and provides that the existing law be in effect amended, and imposes certain requirements as to further legislation. The Chair, therefore, sustains the point of order.

Parliamentarian's Note: It has been held in order, by way of a limitation on an appropriation bill, to make an appropriation contingent upon a future event, such as congressional action, so long as the contingency is germane to the appropriation and the restriction does not change existing law. But such a provision does change existing law if its effect is to require a subsequent authorization which, when enacted, will automatically make funds available for expenditure without further appropriations. Such a result is contrary to the process contemplated in Rule XXI whereby appropriations are dependent on prior authorization. While two recent rulings have upheld the admissibility of amendments making the availability of funds in a general appropriation bill contingent upon subsequent congressional action, where the contingency is germane and is not shown to change existing law (114 CONG. REC. 16692, 90th Cong. 2d Sess., June 11, 1968 [H.R. 17734]; 125 CONG. REC. 23360, 23361, 96th Cong. 1st Sess., Sept. 6, 1979 [H.R. 4473]), the Chair in the latter ruling indicated he was following the earlier precedent only because there had been no argument advanced that the contingency changed existing law. In the ruling on June 11, 1968, it was held that, to a bill making supplemental appropriations for various government departments, including the Department of Defense, an amendment providing that no part of the appropriations therein shall be available, without the express authorization of Congress, for maintenance of more than 525,000 troops in Vietnam or for an invasion of North Vietnam was in order as a limitation. More recent rulings indicate that such an amendment would probably be ruled out in the current practice. On Nov. 18, 1981,[1] a provision making the availability of certain funds contingent upon subsequent congressional action on legislative proposals resolving the policy issue was held to constitute legis-

1. 127 CONG. REC. 28064, 97th Cong. 1st Sess.

lation. More recently,[2] an amendment to a general appropriation bill making the availability of funds therein contingent upon subsequent congressional enactment of legislation containing specified findings was ruled out as legislation requiring new legislative and executive branch policy determinations not required by law. And, in an earlier precedent not cited on Sept. 6, 1979, the Chair did rule (88 CONG. REC. 5826, 77th Cong. 2d Sess., June 30, 1942 [H.R. 7319]) that an amendment prohibiting the availability of funds to enforce certain executive orders, unless those orders were approved by a concurrent resolution of the Congress, could be viewed as legislation, imposing new requirements as to further legislative action. In any case, when a point of order is raised, the burden is on the proponent of the amendment to show that the contingency on which the availability of funds depends is one authorized by existing law.

Some statutes expressly provide that there may be appropriated to carry out the functions of certain agencies only such sums as Congress may thereafter authorize by law, thus requiring specific subsequently enacted authorizations for the operations of such agencies and not permitting appropriations to be authorized by the "organic statute" creating the agency. (See, for example, 15 USC § 57c). In the situation where a paragraph of a general appropriation bill is under consideration which contains an unauthorized appropriation, a perfecting amendment delaying availability of the unauthorized appropriation and making it contingent upon enactment of authorizing legislation may be germane (since existing law already links the authorization and appropriations processes and the contingency is therefore not unrelated), and may not add legislation, since it merely recites conditions already imposed by existing law and does not explicitly make the availability of appropriations contingent upon enactment of new policies.

Subsequent Approval of Congress

§ 49.3 To a section of an appropriation bill providing an appropriation for the federal aid airport program, an amendment providing that the appropriation "does not grant authority to the Administrator of Civil Aeronautics to undertake [during a specified period] any specific projects for the develop-

2. 129 Cong. Rec. ——, 98th Cong. 1st Sess., Nov. 2, 1983.

ment of . . . airports, unless express approval of Congress is hereafter granted," was held to be legislation not in the form of a limitation on the use of funds and not in order.

On May 15, 1947,[3] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 3311), a point of order was raised against the following amendment:

> Amendment offered by Mr. [Kenneth B.] Keating [of New York]: On page 49, line 2, after "appropriation", insert the following: "*Provided further,* That the appropriation made herein does not grant the authority to the Administrator of Civil Aeronautics to undertake during the fiscal year beginning July 1, 1947, any specific projects for the development of class 4 and larger airports, unless express approval of Congress is hereafter granted."
>
> MR. [OREN] HARRIS [of Arkansas]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill.
>
> THE CHAIRMAN:[4] Does the gentleman from New York desire to be heard on the point of order?
>
> MR. KEATING: I do, Mr. Chairman.
>
> Mr. Chairman, it strikes me that this is a limitation upon the appropriation, which is in order. The law as it is today provides that the making of an appropriation shall be an approval of certain specific projects, unless a contrary intent of Congress is manifested. The purpose of this amendment is to manifest the contrary intent of Congress.
>
> MR. HARRIS: Mr. Chairman, under the Federal Airport Act passed by the Seventy-ninth Congress and approved on May 13, 1946, the authority under which this appropriation is being considered today, it is specifically provided in section 5(d) for the annual appropriation of projects in the States.
>
> In section 6 it is specifically provided how the fund shall be apportioned to the various States and it is also provided how the Administrator shall proceed in making an annual report to the Congress 60 days prior to the fiscal year under which the appropriation would be made for class 4 and larger airports.
>
> In section 9(d) it is provided how the approval of these airport projects may be made.
>
> I should like to read wherein that authorization provides: "that all such projects"—meaning class 4 and larger airports—"shall be subject to the approval of the Administrator, which approval shall be given only if at the time of the approval funds are available for payment of the United States share of the allowable cost and only if he is satisfied that the project will contribute to the accomplishment of the purposes of the act," and so forth.
>
> Under the authorization of this act the Administrator is given certain authority, and if I understand the amendment offered by the gentleman it will change the specific authorization as provided in those sections just referred to.

3. 93 CONG. REC. 5378, 80th Cong. 1st Sess.

4. Carl T. Curtis (Nebr.).

THE CHAIRMAN: What is the basis of the point of order made by the gentleman from Arkansas?

MR. HARRIS: It is legislation on an appropriation bill. It changes the authorization of the Airport Act of May 13, 1946.

THE CHAIRMAN: Does the gentleman from New York wish to be heard further on the point of order?

MR. KEATING: I do, Mr. Chairman.

Mr. Chairman, the gentleman has failed to read section 8 of the act which provides for the filing with the Congress 2 months in advance of the beginning of the fiscal year of the list of projects. Then, in the last sentence thereof, it says:

> In granting any funds that thereafter may be appropriated to pay the United States' share of allowable project cost during the next fiscal year, the Administrator may consider such appropriation as granting the authority requested by law unless a contrary intent shall have been manifested by the Congress by law.

This is the only time that the Congress can manifest its intent, and if it passes this appropriation bill simply appropriating the money and does not manifest the intent that is there stated then they have approved of the action of the Administrator.

THE CHAIRMAN: For what purpose does the gentleman from South Dakota rise?

MR. [FRANCIS H.] CASE of South Dakota: To make a brief observation, if the Chairman will indulge me.

Mr. Chairman, I have briefly examined the text of the amendment offered by the gentleman from New York (Mr. Keating). While the language submitted is not in the form of the customary limitation on funds, it occurs to me that it is the equivalent of saying that no part of the funds appropriated in this act shall be used for the construction of class 4 airports. If it were stated in that way it would clearly be a limitation.

THE CHAIRMAN: The Chair is ready to rule.

The Chair is of the opinion that this is not merely a limitation but that it is legislation on an appropriation bill. The point of order is sustained.

§ 49.4 To a section of an appropriation bill providing an appropriation for the federal-aid airport program, an amendment providing that "no part of the appropriation . . . shall be used for the development of class 4 and larger airports unless approval of Congress is hereafter granted" was held to be a limitation on an appropriation bill restricting the availability of funds and in order where the Chair apparently took the view that existing law permitted inclusion of language making the appropriation contingent upon subsequent congressional approval.

On May 15, 1947,[5] the Committee of the Whole was consid-

5. 93 CONG. REC. 5379, 80th Cong. 1st Sess.

ering H.R. 3311, a Departments of State, Justice, Commerce, and the Judiciary appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [Kenneth B.] Keating (of New York): On page 49, line 2, after the word "appropriation", insert the following: *Provided further*, That no part of the appropriation made herein shall be used for the development of class 4 and larger airports unless approval of Congress is hereafter granted." . . .

MR. [J. PERCY] PRIEST [of Tennessee]: Mr. Chairman, I make a point of order against this amendment as being legislation on an appropriation bill. . . .

. . . It seems to me that the argument with reference to the other point of order would apply here. The Administrator, on February 19, 1947, has complied with the requirement of law and has made the required report to Congress.

In reading section 8 of the act, the distinguished gentleman from New York [Mr. Keating], in commenting on the point of order made against the other amendment, it seems to me did not properly interpret the last part of section 8 of the act, and that the amendment actually would change the law by action on an appropriation bill, when the act specifically says:

> In granting any funds that thereafter may be appropriated to pay the United States' share of allowable project costs during the next fiscal year, the Administrator may consider such appropriation as granting the authority requested, unless a contrary intent shall have been manifested by the Congress by a law or by concurrent resolution.

This, it would seem to me, would be by amendment to an appropriation bill rather than by a law or by a concurrent resolution, and it would appear that the amendment is legislation on an appropriation bill.

MR. KEATING: Mr. Chairman, as indicated by the gentleman from South Dakota [Mr. Case], this is clearly simply a limitation upon the amount of an appropriation, and it seems to me to be clearly in order.

THE CHAIRMAN:[6] The Chair is of the opinion that the amendment is a limitation, and the point of order is overruled.

Parliamentarian's Note: The Chair apparently took the view that existing law [60 Stat. 174, § 8 of which was referred to by Mr. Priest, above] permitted inclusion of the language making the appropriation contingent upon subsequent congressional approval. But the implication of the two precedents above, considered together, is that where a law can be read to permit contingent restriction or approval of the use of funds, the appropriation language still must be phrased as a traditional limitation. A more fundamental question for future application of these precedents, particularly § 49.4, is whether the authorizing law in fact permitted the type of restriction stated in the amendment, or whether the language in the amendment departed from the

6. Carl T. Curtis (Nebr.)

course authorized by the statute. The law (cited above) stated:

> In granting any funds that thereafter may be appropriated to pay the United States share of allowable project costs during the next fiscal year, the Administrator may consider such appropriation as granting the authority requested (to develop class 4 airports) unless a contrary intent shall have been manifested by the Congress by law or by concurrent resolution, and no such grants shall be made unless so authorized.

A proper limitation pursuant to such law would bar the use of funds in accordance with whatever "law" or "concurrent resolution" "shall have" manifested the intent of Congress. The language in the amendment does something quite different: it bars the use of funds for the purposes described unless Congress *subsequently* gives its approval.

Such law as that cited should not be read as generally permitting appropriations to be made contingent upon future authorization or congressional approval. The precedent in § 49.4 can be justified only in the context of the provisions of 60 Stat. 174, and even then only if the statute can be read as giving flexibility to the process of congressional approval or disapproval so as to permit Congress to withhold availability of funds pending future release of the funds upon adoption of a concurrent resolution.

Prior Approval by Congressional Committees

§ 49.5 Language in an appropriation bill providing that "he contracts about to be entered into shall have been authorized by the appropriate legislative committees and in amount by the Committees on Appropriations of the Senate and House of Representatives," was held to be legislation and not in order.

On Mar. 20, 1957,[7] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 6070), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Payments, public buildings purchase contracts: For payments of principal, interest, taxes, and any other obligations under contracts entered into pursuant to the Public Buildings Purchase Contract Act of 1954 (40 U.S.C. 356), $1,331,100: *Provided*, That the Administrator of General Services may enter into contracts during the fiscal year 1958 for which the aggregate of annual payments for amortization of principal and interest thereon shall not exceed $9,000,000, in addition to the unused portion of the $12,000,000 limitation applicable prior to July 1, 1957,

7. 103 CONG. REC. 4048, 85th Cong. 1st Sess.

under the Independent Offices Appropriation Act, 1957 (70 Stat. 343): *Provided further,* That the contracts about to be entered into shall have been authorized by the appropriate legislative committees and in amount by the Committees on Appropriations of the Senate and House of Representatives.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language in the bill beginning on page 10, line 21, which reads as follows:

Provided further, That the contracts about to be entered into shall have been authorized by the appropriate legislative committees and in amount by the Committees on Appropriations of the Senate and House of Representatives.

Mr. Chairman, I make the point of order that this is legislation on an appropriation bill, therefore in violation of the rules of the House.

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make the point of order against the entire paragraph.

THE CHAIRMAN:[8] The point of order is well taken. The Chair sustains the point of order of the gentleman from Texas.

§ 49.6 To an appropriation bill, an amendment providing that no funds in the bill shall be used to meet any obligation under any contract for certain material, if the contract exceeds $1 million, unless the contract is approved by the Committees on Armed Services of the two Houses, was conceded to be legislation and held not in order.

On Apr. 9, 1952,[9] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 7391), a point of order was raised against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. (Dwight L.) Rogers of Florida: Page 33, after line 23, insert the following new section:

"Sec. 601. No funds appropriated by this act shall be used to meet any obligation incurred under any contract for procurement, maintenance, or production of supplies or equipment for any of the military departments, if the contract exceeds $1,000,000 in total amount and is entered into after the date of enactment of this act, unless, before the contract is entered into, the Secretary of the military department concerned or his designee comes into agreement with the Committees on Armed Services of the Senate and of the House of Representatives with respect to the terms of the contract.". . .

MR. [CARL] VINSON [of Georgia]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[10] Does the gentleman from Florida (Mr. Rogers) care to be heard on the point of order?

MR. ROGERS of Florida: Mr. Chairman, perhaps there is phraseology in

8. Frank N. Ikard (Tex.).

9. 98 CONG. REC. 3888, 3889, 82d Cong. 2d Sess.

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

there that would possibly be legislation.

THE CHAIRMAN: The gentleman concedes the point of order?

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

THE CHAIRMAN: The point of order is sustained.

§ 49.7 In a paragraph in a general appropriation bill containing funds for the Commission on Government Procurement, a proviso withholding a portion of those funds until submission of a program and financial plan by the commission and approval thereof by the Committees on Appropriations of the House and Senate was conceded to be legislation and was ruled out on a point of order.

On May 12, 1970,[11] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 17548), a point of order was raised against the following provision:

COMMISSION ON GOVERNMENT PROCUREMENT

SALARIES AND EXPENSES

For necessary expenses of the Commission on Government Procurement, $1,500,000, to remain available until June 30, 1972: *Provided,* That $1,250,000 of the foregoing amount shall not become available without submission of a program and financial plan by the Commission and approval thereof by the Committees on Appropriations of the Senate and House of Representatives. . . .

MR. [JAMES G.] O'HARA [of Michigan]: Mr. Chairman, I make a point of order against the proviso beginning on line 19, page 5 and extending through line 23 on page 5 on the ground that it is legislation in a general appropriation bill.

THE CHAIRMAN:[12] Does the gentleman from Tennessee (Mr. Evins) desire to be heard?

MR. [JOSEPH L.] EVINS of Tennessee: Mr. Chairman, we recognize the point that the gentleman has raised.

We only wanted the Commission to advise us as to how they were to use the funds for this program. We have been assured by the distinguished chairman, the gentleman from California (Mr. Holifield) and other members of the Commission, members in whom we have great confidence, that they will keep the committee and the Congress informed as they proceed with this new commission.

So, Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is conceded.

The Chair sustains the point of order.

§ 49.8 Language in an appropriation bill, making the availability of a portion of

11. 116 CONG. REC. 15174, 91st Cong. 2d Sess.

12. Frank Annunzio (Ill.).

the funds appropriated therein contingent upon submission of plans by a commission and approval thereof by the Committees on Appropriations of both Houses, was ruled out as legislation imposing additional duties on an executive officer notwithstanding the fact that the law establishing the commission required it to submit periodic reports to the President and Congress.

On May 7, 1970,[13] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 17399), a point of order was raised against the following provision:

COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

SALARIES AND EXPENSES

For expenses necessary for the Commission on Population Growth and the American Future, including services as authorized by 5 U.S. 3109, and hire of passenger motor vehicles, $965,000, to remain available until expended: *Provided,* That $700,000 of the foregoing amount shall not become available without submission of a program and financial plan by the Commission and approval thereof by the Committees on Appropriations of the Senate and House of Representatives. . . .

MR. [GEORGE H.W.] BUSH [of Texas]: Mr. Chairman, I make a point of order against the language contained in lines 8 through 12 on page 5 of the pending legislation on the ground that it fails to comply with the provisions of clause 2 rule XXI of the Rules of the House of Representatives, wherein paragraph 2 states:

> Nor shall any provision in any such bill or amendment thereto changing existing law be in order. . . .

I realize, Mr. Chairman, that substantive legislation can in practice be added to an appropriation bill if it fits within the applicable framework of the Holman Rule but does not impose any additional or affirmative duties. The language—submission of a program and financial plan by the Commission—does in fact impose additional duties on the Commission.

THE CHAIRMAN:[14] Does the gentleman from Texas wish to be heard on the point of order?

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the gentleman from Tennessee (Mr. Evins) will speak to the point of order. . . .

MR. [JOSEPH L.] EVINS of Tennessee: This is a limitation on expenditures and we think it is acceptable.

THE CHAIRMAN: The Chair is ready to rule.

The Chair finds that the language cited on page 5, lines 8 through 12, in the opinion of the Chair constitutes legislation in an appropriation bill and the point of order is therefore sustained and the proviso is stricken from the bill.

Parliamentarian's Note: Public Law No. 91–213, Mar. 16, 1970, 84 Stat. 67, relating to the Com-

13. 116 CONG. REC. 14561, 91st Cong. 2d Sess.

mission on Population Growth and the American Future, provided (in section 8):

> In order that the President and the Congress may be kept advised of the progress of its work, the Commission shall, from time to time, report to the President and the Congress such significant findings and recommendations as it deems advisable. The Commission shall submit an interim report to the President and the Congress one year after it is established and shall submit its final report two years after the enactment of this Act (Mar. 16, 1970). The Commission shall cease to exist sixty days after the date of the submission of its final report.

If the language had said, in effect, that no funds would be expended unless and until the interim report required by law during this fiscal year is submitted, an argument might have been advanced that the provision was in order, under the theory that a mere reiteration of existing law, without change, is not precluded. However, the requirement of submission of a "program and financial plan" was regarded as an impermissible departure from the existing law, and the requirement of subsequent committee approval made the provision in the bill subject to a point of order.

§ 49.9 To a general appropriation bill making appropriations for public works, and including funds for the Panama Canal Corporation, an amendment prohibiting the corporation from disposing of real property unless approved by the appropriate legislative committees of the House and Senate was ruled out as legislation.

On June 16, 1964,[15] during consideration in the Committee of the Whole of the public works appropriation bill (H.R. 11579), a point of order was raised against the following amendment:

> MRS. [LEONOR KRETZER] SULLIVAN [of Missouri]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> > Amendment offered by Mrs. Sullivan: Page 9, line 5. After the word "use", change the period to a colon and add:
> >
> > "*Provided*, That no real property or rights to the use of real property, or activity shall be disposed of or transferred by license, lease, or otherwise except to another agency of the United States Government unless specifically approved by the appropriate legislative committees of the House and Senate."
>
> MR. [MICHAEL J.] KIRWAN [of Ohio]: Mr. Chairman, I make a point of order against the amendment that it is legislation on an appropriation bill. . . .
>
> THE CHAIRMAN:[16] The Chair is prepared to rule. From the reading of the amendment, the Chair feels that the

15. 110 CONG. REC. 13973, 88th Cong. 2d Sess.
16. Hale Boggs (La.).

language is purely legislation. It has no bearing upon the appropriation and falls within the prohibition of legislating on an appropriation bill.

The point of order is sustained.

Adoption of Joint Resolution in Prescribed Form

§ 49.10 An amendment to the Defense Department appropriation (general) bill denying the use of funds therein for continued deployment of land-based U.S. Armed Forces participating in the multinational force in Lebanon after Mar. 1, 1984, unless the Congress adopts a joint resolution containing certain findings (requiring the President to define the mission of U.S. forces in Lebanon and to establish a set of achievable policy goals there as well as upgrading security arrangements in the area) was ruled out as legislation in violation of Rule XXI clause 2, requiring new duties to be imposed on both the Congress (to pass the joint resolution) and on the President (to make certain findings and to sign the joint resolution) not presently required by law.

On Nov. 2, 1983,[17] During consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 4185), a point of order was sustained against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [Clarence D.] Long of Maryland:

Page 80, after line 2, insert the following:

TITLE IX

UNITED STATES ARMED FORCES IN LEBANON

Sec. 901. None of the funds appropriated by this Act may be obligated or expended for the continued deployment of land-based United States Armed Forces participating in the Multinational Force in Lebanon after March 1, 1984, unless the Congress of the United States adopts a joint resolution which contains the following findings:

(a) That the President of the United States has defined a clear and realistic mission for U.S. forces in Lebanon.

(b) That the President has established a set of policy goals in Lebanon that are achievable and has a clear agenda for achieving those goals.

(c) That security arrangements for American forces in the area have been upgraded to the maximum extent possible. . . .

MR. [JACK] EDWARDS of Alabama: Mr. Chairman, I make a point of order against the gentleman's amendment because it constitutes legislation in an

17. 129 CONG. REC. ——, 98th Cong. 1st Sess.

appropriation bill, which is in violation of clause 2, rule XXI.

The gentleman's amendment prohibits the use of funds to support U.S. Armed Forces in Lebanon after March 1, 1984, unless Congress adopts a concurrent resolution which contains certain Presidential findings. Not only is this a contingent event which in itself is legislation, but substantial additional duties will be required to have the President submit findings to the Congress regarding definition of mission establishment of policy goals, and upgrading of security arrangements in Lebanon. Currently, the President is not required to submit such findings to the Congress, and this amendment will institute a new requirement on the President to submit such findings prior to March 1, 1984, or face a cutoff of funds. . . .

MR. [DAVID R.] Obey [of Wisconsin]: Mr. Chairman, I would like, if I could, to contest the point of order on at least the one ground raised by the gentleman because the gentleman indicated that this amendment requires the President to establish a number of additional findings.

That is not what the amendment does. The amendment says, and I would repeat, the amendment says that:

> None of the funds . . . may be obligated or expended for the continued deployment of land-based Armed Forces participating in Lebanon after March 1 unless the Congress of the United States adopts a joint resolution containing the following:

So we are not asking an administrative agency of the Government to establish findings. Those duties would fall on the Congress itself. . . .

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: . . . I do want to associate myself with the point of order that was made by the gentleman from Alabama.

Also, I would add that section 842 of the House Rules and Manual states that:

> An amendment making an appropriation contingent upon a recommendation or action not specifically required by law is legislation. . . .

THE CHAIRMAN PRO TEMPORE:[18] The Chair is ready to rule.

The amendment clearly requires that additional duties will be imposed upon the Congress and upon the President since a joint resolution would have to be signed by the President and there must be some findings made by the President.

For all of these reasons, the point of order is sustained.

Consideration of Legislative Proposal Regarding Schools for Military Dependents

§ 49.11 A provision in an appropriation bill making the availability of certain funds contingent upon subsequent congressional action on legislative proposals was conceded to constitute legislation and was ruled out on a point of order.

On Nov. 18, 1981,[19] during consideration in the Committee of

18. Daniel D. Rostenkowski (Ill.).

19. 127 CONG. REC. 28064, 97th Cong. 1st Sess.

the Whole of the Department of Defense appropriation bill (H.R. 4995), a point of order was sustained against the following provision:

> THE CHAIRMAN:[20] The Chair will inquire, are there any points of order against any portion of the bill?
>
> MR. [DAVID E.] BENIOR of Michigan: Mr. Chairman, I make a point of order against section 784 . . . which legislate[s] under an appropriation bill. . . .
>
> The portion of the bill to which the [point] of order relate[s] is as follows:
>
> > Sec. 784. None of the funds provided in this Act may be obligated or expended to transfer the Defense Departments' Schools to the Department of Education, or to fund the activities of the Advisory Council on Dependents' Education until legislative proposals to repeal such transfer of the dependents' schools are considered and acted upon by Congress.

MR. JOSEPH P. Addabbo, of New York, conceded and the Chair sustained the point of order.

§ 50. Conditions Imposing Additional Duties

Where a provision in an appropriation bill or amendment thereto seeks to impose on a federal official substantial duties that are different from or in addition to those already contemplated in law, the provision is frequently ruled out as legislative in nature. This difficult area is discussed more fully in Sec. 51 through 63, infra. The present section focuses largely on those instances where such new duties result from the imposition of certain types of conditions. Such conditions, it will be seen, are generally those which must be determined by some official to have been met, before the appropriation in question can become effective.

Generally, an amendment forbidding expenditure of an appropriation unless action contrary to existing law is taken is legislation and is not in order as a limitation.[1]

Thus, while it is in order on a general appropriation bill to prohibit the availability of funds therein for a certain activity, that prohibition may not be made contingent upon the performance of a new affirmative duty on the part of a federal official.

Attached to Otherwise Valid Limitation

§ 50.1 A provision in a paragraph of the legislative ap-

20. Daniel D. Rostenkowski (Ill.).

1. See, for example, Sec. 50.4, infra.

The same would be true of an amendment conditioning expenditure on actions for which no authority in law exists.

propriation bill prohibiting the availability of funds therein for the House Library unless and until arrangements have been made to phase out its operations by the end of fiscal 1974 was held to impose additional duties on the Clerk and was ruled out as legislation in violation of Rule XXI clause 2.

On Apr. 17, 1973,[2] during consideration in the Committee of the Whole of the legislative branch appropriation bill (H.R. 6691), a point of order was raised against the following provision:

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Chairman, I make a point of order against (certain) language on page 3, "Office of the Clerk," . . . [on] the ground that it is legislation on the appropriation bill.

The portion of the bill to which the point of order relates is as follows:

OFFICE OF THE CLERK

For the Office of the Clerk, including not to exceed $265,572 for the House Recording Studio, $3,264,730: *Provided*, That no part of this amount shall be available for the House Library—Document Room (in the Cannon House Office Building) unless and until appropriate arrangements have been made to phase out and terminate its operations not later than the close of the fiscal year 1974.

THE CHAIRMAN:[3] Does the gentleman from Texas wish to be heard on the point of order?

MR. [ROBERT R.] CASEY of Texas: Yes; Mr. Chairman.

THE CHAIRMAN: The Chair will hear the gentleman.

MR. CASEY of Texas: Mr. Chairman, in my opinion it is not legislation on an appropriation bill, but rather in the form of a limitation. I think it is wholly within the jurisdiction of the committee to include this provision in the bill.

THE CHAIRMAN: The Chair observes that the language "that no part of this amount shall be available for the House Library—Document Room (in the Cannon House Office Building)" is in the form of a limitation. However, the language which follows—"unless and until appropriate arrangements have been made to phase out and terminate its operations not later than the close of the fiscal year 1974" poses additional duties and therefore is legislation on an appropriation bill, and because of that language the point of order is sustained.

Determination of State Compliance With Conditions

§ 50.2 An amendment to a general appropriation bill in the form of a limitation providing that no part of the money therein appropriated shall be paid to any state unless and until the Secretary of Agriculture was satisfied

2. 119 CONG. REC. 12780, 12781, 93d Cong. 1st Sess.

3. John M. Murphy (N.Y.).

that the state had complied with certain conditions was held to be legislation and not in order.

On Apr. 23, 1937,[4] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 6523), a point of order was raised against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [Jesse P.] Wolcott [of Michigan]: Page 72, line 13, after the word "probation", insert "*Provided further,* That no part of the money herein appropriated shall be paid to any State unless and until, to the satisfaction of the Secretary of Agriculture, such State shall have provided by law or regulation modern means and devices to safeguard against accidents and the loss of life on highway projects within such State."

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make the point of order against the amendment. It is legislation under the guise of a limitation. The amendment provides affirmative direction which is clearly legislation on an appropriation bill.

MR. WOLCOTT: Mr. Chairman, I would like to be heard on the point of order.

THE CHAIRMAN:[5] The Chair will be pleased to hear the gentleman from Michigan.

MR. WOLCOTT: Mr. Chairman, I call the attention of the Chair to the fact we have previously authorized appropriations to be made under the Federal Highway Act which was passed and approved by the President on July 11, 1916. Yearly there is authorized under that act an appropriation of $125,000,000 which is disbursed according to regulations set up not only by the Congress in the organic act but also by regulations of the Bureau of Public Roads. If the Bureau of Public Roads under the terms of the act can withhold any funds which have been authorized by the Congress from any of the States by reason of a regulation which it might set up, likewise the Bureau can limit the expenditure within any State by providing certain traffic safeguards to those using the highways as a condition precedent to the spending of Federal funds in the construction and maintenance of Federal-aid roads. For this reason my amendment is purely a limitation upon the distribution among and the use of the highway funds by the States.

THE CHAIRMAN: The Chair is ready to rule.

The Chair sustains the point of order on the ground that although the amendment is drawn in the guise of a limitation, it constitutes new legislation in that it imposes additional duties upon the Secretary.

Parliamentarian's Note: It should be noted that the Chair based its decision on the fact that additional duties were imposed on the Secretary, rather than on whatever actions might be required on the part of states to qualify as recipients of the funds. The latter consideration as a pos-

4. 81 CONG. REC. 3783, 3784, 75th Cong. 1st Sess.

5. Franklin W. Hancock (N.C.).

sible basis for a point of order is discussed in §§ 53 and 54, infra.

Determination by Secretary as to Authorization

§ 50.3 Language in a general appropriation bill in the form of a limitation providing that no part of a certain appropriation shall be available until it is determined by the Secretary of the Interior that authorization therefor has been approved by the Congress was held to constitute legislation on an appropriation bill and not in order.

On May 17, 1937,[6] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation bill. The Clerk read as follows:

> Central Valley project, California, $12,500,000, together with the unexpended balance of the appropriation for this project contained in the First Deficiency Act, fiscal year 1936: *Provided*, That no part of this appropriation shall be available for construction of such project until it is determined by the Secretary of the Interior, upon approval, as to legality by the Attorney General, that authorization therefor has been approved by act of Congress.
>
> MR. [FRANK H.] BUCK [of California]: Mr. Chairman, I make a point of order against the language beginning in line 24 with the word "*Provided*".
>
> MR. [JOHN] TABER [of New York]: Mr. CHAIRMAN, I MAKE A POINT OF ORDER AGAINST THE ENTIRE PARAGRAPH.
>
> THE CHAIRMAN:[7] Does the gentleman from New York make a point of order against the entire paragraph?
>
> MR. TABER: I do.
>
> THE CHAIRMAN: The gentleman from California made a point of order against the proviso?
>
> MR. BUCK: Against the proviso.
>
> THE CHAIRMAN: The gentleman from California makes a point of order against the proviso appearing in line 24, page 81. The gentleman from New York [Mr. Taber] makes a point of order against the entire paragraph. Of course, that presents to the Chair the necessity of ruling upon the point of order as it relates to the entire paragraph, because if any part of a paragraph is subject to a point of order it naturally follows that the entire paragraph is subject to a point of order. . . .
>
> It appears to the Chair there can be no doubt that the language appearing in the proviso is legislation on an appropriation bill. The language imposes additional duties upon two executive officers of the Government, the Secretary of the Interior and the Attorney General. Therefore, the language in the proviso constituting legislation on an appropriation bill, in violation of the rules of the House, and a point of order being good as to part of a paragraph, it naturally applies to the entire paragraph. The Chair, therefore, sus-

6. 81 CONG. REC. 4687–89, 75th Cong. 1st Sess.

7. Jere Cooper (Tenn.).

tains the point of order made by the gentleman from New York as to the entire paragraph.

Directives to the President

§ 50.4 An amendment providing that none of the money appropriated in a section of a bill shall be paid to persons in a certain category unless hereafter appointed or reappointed by the President and confirmed by the Senate was held to be legislation on an appropriation bill and not in order.

On July 26, 1951,[8] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 4740), a point of order was raised against the following amendment:

> Amendment offered by Mr. [John] Phillips [of California]: On page 58, following line 14, add a new section to be numbered 109:
>
> > None of the money appropriated in title I of this act shall be paid to the head of any executive department who, within a period of 5 years preceding this appointment, was a partner in, or a member of a professional firm which derived any part of its income from representing, or acting for a foreign government, or who, acting as an individual, derived income from such representation, unless hereafter appointed or reappointed by the President and confirmed by the Senate.

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I am constrained to make the point of order against this proposed amendment that it is legislation on an appropriation bill, in violation of the rules of the House.

I direct the Chair's attention to Cannon's Precedents of the House of Representatives, volume 7, section 1632, which reads as follows:

> An amendment forbidding expenditure of an appropriation unless action contrary to existing law is taken is legislation and is not in order as a limitation.
>
> An amendment may not, under guise of limitation, provide affirmative legislation on an appropriation bill. . . .

Mr. Chairman, I also call attention to section 1634 of the same volume of Cannon's Precedents, which holds that—

> Professed limitations not to become effective "unless" or "until" affirmative action was taken were held to be out of order in an appropriation bill. . . .

MR. [JOHN M.] VORYS [of Ohio]: Mr. Chairman, of course the author of the amendment, I presume, has the right to concede the point of order, insofar as he is concerned, but it strikes me that there is a substantial difference between the present amendment and the one which was cited from the precedents. In that case a new law would be required—an 8–hour law. The present amendment in the part following the word "unless" merely recites what is existing law and in our Constitution, and that is that if someone is appointed or reappointed and confirmed by the other body, he then has the office. . . .

8. 97 CONG. REC. 8962, 8963, 82d Cong. 1st Sess.

The provision following the word "unless" merely recites what is existing law under the Constitution, to wit, the appointment by the President of an officer and his confirmation by the Senate. No additional duties are required. There is a great deal of difference between that and the requirement of the amendment cited from the precedents that an 8-hour law be enacted before the amendment could become effective. . . .

THE CHAIRMAN:[9] The Chair is prepared to rule on the point of order. . . .

The Chair has listened to the argument presented and has followed the precedents cited by the gentleman from New York [Mr. Rooney], and is of the opinion that the gentleman has correctly stated the precedents appearing in section 1632 of Cannon's Precedents. . . .

The gentleman also cites section 1634 of Cannon's Precedents, to which the Chair referred a moment ago in passing upon a point of order made on a previous amendment offered.

In response to the observation made by the gentleman from Ohio [Mr. Vorys], the Chair thinks he should state that the Chair does not know any provision of law requiring the President of the United States to submit the name of one of his Cabinet officers to the Senate for confirmation after that Cabinet officer has been appointed and confirmed by the Senate and is now acting and serving.

The Chair invites attention to the last part of the amendment presented: "Unless hereafter appointed or reappointed by the President and confirmed by the Senate." That would clearly impose a duty upon the President of the United States to reappoint a Cabinet officer and submit the name of that appointee to the Senate for confirmation. Therefore, that would clearly provide legislation on an appropriation bill, in violation of the rules of the House, and the Chair sustains the point of order.

9. Jere Cooper (Tenn.).

§ 50.5 A paragraph in a foreign aid appropriation bill prohibiting the use of funds to pay for services performed abroad under contract "unless the President shall have promulgated" security regulations requiring certain investigations to be made, was ruled out as legislation in violation of Rule XXI clause 2.

On June 4, 1970,[10] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 111. None of the funds appropriated or made available by this or any predecessor Act for the years subsequent to fiscal year 1962 for carrying out the Foreign Assistance Act of 1961, as amended, may be used to make payments with respect to any contract for the performance of services outside the United States

10. 116 CONG. REC. 18405, 18406, 91st Cong. 2d Sess.

by United States citizens unless the President shall have promulgated regulations that provide for the investigation of such citizens for loyalty and security to the extent necessary to protect the security and other interests of the United States: *Provided,* That such regulations shall require that any such United States citizen who will have access, in connection with the performance of such services, to information or material classified for security reasons shall be subject to such investigation as may otherwise be provided by law and executive order.

THE CHAIRMAN:[11] or what purpose does the gentleman from Wisconsin rise?

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I rise to make a point of order against section 111.

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

MR. ZABLOCKI: Mr. Chairman, section 111 constitutes legislation in an appropriation bill. This provision has been carried in legislation since 1963.

I am in sympathy with this provision, and will do my best to include even stronger language in the next authorization bill. The time has come when we should clearly define the responsibilities of our committees and prevent further encroachment, and although I favor this language personally I must insist on my point of order because of the principle involved, that it is legislation in an appropriation bill.

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

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, the committee felt that this year, as in the previous years, that this was a limitation provision which was added by the committee to the fiscal year 1963 bill in order to require investigation of the U.S. citizens outside the United States who are performing service on U.S.-funded contracts, and for security to protect the U.S. interests. We felt it was a limitation, and that we had carried it for 7 years.

Mr. Chairman, I ask for a ruling.

THE CHAIRMAN: The Chair is prepared to rule.

The significant language is found on line 17, where it defines the duties of the President of the United States in saying that "unless the President"—on line 18—"shall have promulgated regulations that provide for the investigation of such citizens," and so on. That again is clearly legislation on an appropriation bill, and falls within the prohibition, and the Chair sustains the point of order.

Directive to Administrator of Federal Aviation Agency

§ 50.6 To a general appropriation bill providing funds for an additional airport for the District of Columbia, an amendment providing that no part of the appropriation shall be used for land acquisition for access roads until the Administrator of the Federal Aviation Agency shall have held public hearings to allow local residents to express their views on the loca-

11. Hale Boggs (La.).

tion of such roads, was held to be legislation and not in order.

On June 29, 1959,[12] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7978), a point of order was raised against the following amendment:

MR. [JOEL T.] BROYHILL [of Virginia]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Broyhill: On page 3, line 10, add the following: "*Provided*, That no part of any appropriation made in this Act shall be used for land acquisition for any access road to the public airport in the vicinity of the District of Columbia authorized by the Act of September 7, 1950, until after the Administrator of the Federal Aviation Agency shall have consulted with the Board of Supervisors of Fairfax County, Virginia, on the location of such road and shall have had public hearings at a convenient location, or have afforded the opportunity for such hearings, for the purpose of enabling persons through or contiguous to whose property such road will pass, to express any objections they may have to the proposed location of such road."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill.

The Chairman:[13] Does the gentleman from Virginia desire to be heard on the point of order?

Mr. BROYHILL: Yes, if the Chair please.

THE CHAIRMAN: The Chair will hear the gentleman.

MR. BROYHILL: Mr. Chairman, this amendment is similar to the limitation we had in the appropriation bill for this same project last year. It merely requires that the community be consulted as provided in the authorization act. It likewise requires public hearings as the authorization act requires. We feel that to require public hearings in the area which has been designated as the access road site is consistent with the authorizing legislation.

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

The amendment seeks to enjoin upon the Administrator of the Federal Aviation Agency duties and obligations not now required by law. It is therefore legislation on an appropriation bill.

The Chair sustains the point of order.

Expenditures To Be Pursuant to Recommendations by Officials

§ 50.7 An amendment rendering an appropriation contingent upon recommendations by federal officials not required by law is legislation violating Rule XXI clause 2; to an amendment to a general appropriation bill providing additional funds for the Community Services Administration, an amendment prohibiting the expenditure

12. 105 CONG. REC. 12124, 12125, 86th Cong. 1st Sess.

13. Paul J. Kilday (Tex.).

of funds in the pending paragraph for energy conservation services unless expended pursuant to recommendations by the Community Services Administration, state economic opportunity offices, and the General Accounting Office, was ruled out as legislation since providing a condition precedent not required by existing law.

On June 27, 1979,[14] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 4389), a point of order was sustained against the following amendment:

The Clerk read as follows:

> Amendment offered by Mr. [David F.] Emery [of Maine] to the amendment offered by Mr. Dodd: At the end of the amendment offered by Mr. Dodd insert the following:
>
> Page 46, after line 14, insert the following: None of the sums appropriated in this paragraph shall be used to provide Emergency Energy Conservation Services under section 222(a)(5) of part B of title II of the Economic Opportunity Act of 1964, unless such sum is expended pursuant to recommendations which have been made by the Community Services Administration, State economic opportunity offices, and the General Accounting Office. . . .

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Chairman, this amendment imposes additional duties and further it imposes new determinations. In addition to that, Mr. Chairman, the amendment changes existing law. Further it requires new procedures and determinations not under the existing and present law. . . .

MR. EMERY: . . . This is clearly a limitation on the use of funds appropriated by the Dodd amendment. The intent of the legislation is very clear, and that is to comply with findings that have been made in the GAO study at the request of a congressional committee. I believe that the GAO study was asked for by the gentlewoman from Illinois (Mrs. Collins) from the Subcommittee on Manpower and Housing as an attempt to find ways to improve the distribution of these funds.

The study reports findings pursuant to a congressional committee request for information. I believe that is well within the scope of the limitation and is appropriate on this bill.

THE CHAIRMAN:[15] The Chair is prepared to rule on the point of order.

The amendment offered by the gentleman from Maine is a limitation on the sums appropriated in the first part of the amendment.

However, in the last part of the amendment it does set forth new duties upon the Community Services Administration, State economic opportunity offices as well as the General Accounting Office. Since these new determinations are imposed as exclusive conditions precedent to the expenditure of funds beyond what present law requires, it is legislation on an appropriation bill and the Chair is constrained to rule the amendment out of

14. 125 CONG. REC. 17054, 17055, 96th Cong. 1st Sess.

15. Don Fuqua (Fla.).

order and sustain the point of order of the gentleman from Kentucky.

Health and Safety Information Required

§ 50.8 Where existing law confers discretionary authority upon an executive agency to require submission of health and safety information by applicants for licenses, an amendment to a general appropriation bill restricting that discretion by requiring the submission of certain information as a condition of receiving funds constitutes legislation.

On June 18, 1979,[16] an amendment was offered as follows to H.R. 4399, the energy and water appropriation bill for fiscal 1980:

> The Clerk read as follows:
>
> Amendment offered by Mr. [James] Weaver [of Oregon]: On page 27 after line 23, add:
>
> "No monies appropriated in this paragraph may be expended by the Nuclear Regulatory Commission for the issuance of an operating license for a nuclear powerplant located in a state which does not have an emergency evacuation plan which has been tested, and submitted to the Commission pursuant to law.".

The amendment was ruled out on a point of order. The proceedings are carried in full in § 51.11, infra.

16. 125 CONG. REC. 15286, 15287, 96th Cong. 1st Sess.

E. PROVISIONS AS CHANGING EXISTING LAW: PROVISIONS AFFECTING EXECUTIVE AUTHORITY; IMPOSITION OF NEW DUTIES ON OFFICIALS

§ 51. Restrictions on or Enlargement of Discretion

Propositions in a general appropriation bill that affirmatively take away an authority or discretion conferred by law are subject to a point of order under the rule prohibiting legislation on appropriation bills.

Where the authorizing law has established the degree of discretion officials have in the exercise of their duties, problems may arise when an appropriation measure seems to restrict that discretion. As in other areas, the appropriation measure cannot "change existing law," but can impose limitations by appropriating for only part of an authorized purpose.[17] The question will be, then, does the appropriation measure merely withhold funds that, if appropriated, would be administered by the official, or does it so further and actually change the scope of the official's discretion from that set forth in the authorizing law?

A helpful approach in many cases is to determine whether the

17. See Sec. 64, infra.

appropriation measure mandates criteria that are within the range of choices given to the official by the authorizing law. If the authorizing law permits the official to pursue courses A, B, C, and D, and the appropriation measure provides funds permitting the official to pursue A, B, and C, the measure is a proper limitation because it appropriates for "part of the authorized purpose." But if the appropriation has the effect of permitting or requiring the official to pursue courses A, B, and E, then the measure has changed existing law by mandating criteria that were not within the range of choices given by the authorizing law which established the degree of the official's discretion.

A limitation may in fact amount to a change in policy, but if the limitation is merely a negative restriction on use of funds, it will normally be allowed. For example, in one instance[18] during consideration of the army appropriation bill in 1931, an amendment was allowed which provided that "none of the funds appropriated in this act shall be used for . . . any compulsory military course or military training in any civil school or college or for the pay of any . . . employee at any civil school or college where a military course or military training is compulsory." The Chair noted that the amendment "simply refuses to appropriate for purposes which are authorized by law and for which Congress may or may not appropriate as it sees fit," and said that, while the amendment did change a policy of the War Department, "a change of policy can be made by the failure of Congress to appropriate for an authorized object."

It should be noted that in an earlier ruling (1925)[19] the Chair had said that where the purpose of an amendment appeared to be a restriction of executive discretion to a degree amounting to a change in policy rather than a matter of administrative detail, the amendment would not be allowed. A proposed amendment to the War Department appropriation bill had in that instance provided, "No part of the moneys appropriated in this act shall be used to pay any officer to recruit the Army beyond the limit of 100,000 three-year enlisted strength." The Chair ruled that the purpose rather than the form of a proposed limitation is the criterion by which its admissibility should be judged, and held that the purpose in this instance was legislative, "in that the intent is

18. 7 Cannon's Precedents § 1694.

19. 7 Cannon's Precedents § 1691.

to restrict executive discretion to a degree that may be fairly termed a change in policy." Today this ruling would be followed only where a proposed limitation is accompanied by language explicitly stating a legislative motive or purpose in carrying out the limitation.[20] If such intent were merely one that might be inferred, as in the 1925 ruling, the proposed limitation would not be barred.

In a few cases,[1] the issue has arisen as to the effect of a proposal seemingly having the purpose of enlarging, rather than restricting, an official's discretion. Such proposals, depending on circumstances, may also be viewed as changing existing law.

General Rule

§ 51.1 Language in an appropriation bill making mandatory on the part of an executive officer an action within his discretion under existing law, is legislation and not in order: language in an appropriation bill providing that during fiscal 1958, operation of the Army-Navy Hospital at Hot Springs, Ark., and Murphy General Hospital at Boston, Mass., shall be continued, was held to be legislation and not in order.

On May 28, 1957,[2] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 7665), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> OPERATION AND MAINTENANCE
>
> For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, including administration; medical and dental care of personnel entitled thereto by law or regulation (including charges of private facilities for care of military personnel on duty or leave, except elective private treatment), and other measures . . . conclusive upon the accounting officers of the Government; $3,145,200,000: *Provided*, That during the fiscal year 1958 the maintenance, operation, and availability of the Army-Navy Hospital at Hot Springs National Park, Arkansas, and the Murphy General Hospital in Boston, Mass., to meet requirements of the military and naval forces shall be continued.

MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, I make a point of order against the language on page 8, beginning on line 2 and running through line 6.

THE CHAIRMAN:[3] Will the gentleman state his point of order?

MR. FORD: The point of order, Mr. Chairman, is predicated on the fact

20. See Sec. 66.4, infra.

1. See, for example, Sec. 22.19, supra.

2. 103 CONG. REC. 7901, 7902, 85th Cong. 1st Sess.

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

that this is legislation on an appropriation bill and contrary to existing law. It is my understanding under the rules of the House that the inclusion of any language in an appropriation bill that imposes an additional burden or duty or authority on the executive branch of the Government, not required by law, makes such language subject to a point of order as legislation on an appropriation bill. . . .

THE CHAIRMAN: Does any other gentleman desire to be heard on the point of order? If so, the Chair will be pleased to hear him.

MR. FORD: Mr. Chairman, I think the crux of the matter is that without this language in the appropriation bill the executive branch of the Government, in this case the Department of the Army, would have full authority to close these installations. In my opinion, the inclusion of the language which is currently in the Defense Department appropriation bill for the fiscal year 1957, and the language to which I object is an extention of that language in the fiscal year 1958 Department of Defense appropriation bill. But let me just refer as a practical matter to the language in the current appropriation bill and I will carry on from there to show that if this language is included in the fiscal 1958 bill again, there is no question but what it imposes an additional burden, an additional obligation, on the Department of Defense. Let me read testimony from the Department of the Army, and this is Secretary Brucker testifying on page 479 of the Department of Defense hearings for the fiscal year 1958:

SECRETARY BRUCKER: Mr. Ford, the situation is precisely this: Twice we have recommended to the committees of Congress that both of those hospitals be abandoned and that no money be put in for them. The reason is because we do not have need for them, and while the hospitals, of course, have adequate personnel, both nurses and doctors, there is not sufficient patient load in the area for either one of those two hospitals—

Here is the important language, still quoting Secretary Brucker . . .

> so twice we have recommended against inclusion of those two hospitals, but twice they were placed back into the bill, and we were compelled to retain them.

There is language, Mr. Chairman, which indicates clearly that the Department of the Army by the inclusion of this language in fiscal 1957 and by the possibility of inclusion of the same language in fiscal 1958 is required to do something it does not want to do and it does not have to do unless this language is included. . . .

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

The language of the proviso in effect imposes upon a department of Government an affirmative and mandatory requirement that the two named installations shall be continued. In the opinion of the Chair, the interposition of that affirmative requirement is legislation on an appropriation bill and the Chair, therefore, sustains the point of order.

Mandating One of Several Choices

§ 51.2 To be admissible on an appropriation bill a limitation may not impose addi-

tional duties on executives or limit their discretion: to an appropriation bill an amendment prohibiting use of an appropriation for regulation of rates "upon any basis other than actual legitimate cost, less accrued depreciation" was held to impose additional duties upon officials and to limit their discretion provided in existing law to determine rates.

On Mar. 30, 1954,[4] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 8583), a point of order was raised against the following amendment, offered to the portion of the bill providing funds for salaries and expenses for the Federal Power Commission:

MR. (SIDNEY R.) YATES (of Illinois): Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Yates: On page 18, line 25, strike the period after the word "individuals" and insert "*Provided*, That in order to assure efficient, economic, and expeditious regulation, no part of this appropriation shall be used for the regulation of rates or charges of any company subject to the jurisdiction of the Commission, upon any basis other than actual legitimate cost, less accrued depreciation."

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, a point of order.

THE CHAIRMAN:[5] The gentleman will state it.

MR. PHILLIPS: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation upon an appropriation bill, which I understand we are trying to keep away from.

MR. YATES: Mr. Chairman, it is certainly not legislation on an appropriation bill. It is in fact a limitation of the type that has been recognized as valid many times in the past. I submit that it is perfectly proper, that it is a limitation on the appropriations for a specific purpose and is entirely in order. . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Illinois [Mr. Yates] has offered an amendment as follows:

On page 18, line 25, "provided that in order to assure efficient, economic, and expeditious regulation, no part of this appropriation shall be used for the regulation of rates or charges of any company subject to the jurisdiction of the Commission—

And the Chair notes these words particularly—

upon any basis other than actual legitimate cost less accrued depreciation.

Although presented in the form of a limitation on an appropriation, since it would impose additional duties upon officials and limit the exercise of their discretion, the amendment contains legislation, and the Chair sustains the point of order.

§ 51.3 Although a law may give an executive officer author-

4. 100 CONG. REC. 4101, 4102, 83d Cong. 2d Sess.

5. Louis E. Graham (Pa.).

ity to do a certain thing, a proposition directing him so to do is legislative in nature and not in order on an appropriation bill: language in the District of Columbia appropriation bill providing that the tax in effect in a certain fiscal year on real estate and certain tangible personal property shall not be increased for a subsequent fiscal year was held to be legislation where existing law gave officials authority to fix the tax rate on an annual basis.

On Apr. 2, 1937,[6] 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:

Be it enacted, etc., That in order to defray the expenses of the District of Columbia for the fiscal year ending June 30, 1938, any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and, in addition, $5,000,000 is appropriated, out of any money in the Treasury not otherwise appropriated, to be advanced July 1, 1937, and all of the remainder out of the combined revenues of the District of Columbia, and the tax rate in effect in the fiscal year 1937 on real estate and tangible personal property subject to taxation in the District of Columbia shall not be increased for the fiscal year 1938, namely: . . .

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I rise to a point of order.

THE CHAIRMAN:[7] The gentleman will state it.

MR. NICHOLS: I make a point of order against that portion of the bill on page 2, beginning after the comma, in line 11, which reads as follows:

> And the tax rate in effect in the fiscal year 1937 on real estate and tangible personal property subject to taxation in the District of Columbia shall not be increased for the fiscal year 1938.

In support of my point of order I call the Chair's attention to the fact that this provision is contrary to existing law and is legislation. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair feels it is appropriate to state that in the broad and general application it is well recognized that the Committee on Appropriations has the authority to exercise the function of appropriating for the activities of the Federal Government under existing law. In other words, there must be authority in existing law to support the appropriation provided in a general appropriation bill.

It is also well settled that the Appropriations Committee does not have au-

6. 81 CONG. REC. 3096–98, 75th Cong. 1st Sess.

7. Jere Cooper [Tenn.].

thority to include legislation in a general appropriation bill.

It will be recalled that considerable debate occurred at the time of the creation of the Appropriations Committee. Apprehension was voiced at that time that the Committee on Appropriations might encroach upon the functions of the standing legislative committees of the House. For this reason the rules of the House make it certain and definite that the Appropriations Committee has authority only to appropriate or to provide funds pursuant to the authority of existing law.

The gentleman from Oklahoma [Mr. Nichols] makes a point of order to the following language which appears in the pending bill, found on page 2, line 11:

> And the tax rate in effect in the fiscal year 1937 on real estate and tangible personal property subject to taxation in the District of Columbia shall not be increased for the fiscal year 1938, namely.

The provision of existing law is as follows:

> That for the purpose of defraying such expenses of the District of Columbia as the Congress may from time to time appropriate for, there hereby is levied for each and every fiscal year succeeding that ending June 30, 1937, a tax at such rate on the aforesaid property subject to taxation in the District of Columbia, and the Commissioners of the District of Columbia hereby are empowered and directed to ascertain, determine, and fix annually such rate of taxation, as will when applied as aforesaid produce the money needed to defray the share of the expenses of the District during the year for which the rate is fixed.

A question very similar to the pending question was raised when the District of Columbia appropriation bill was under consideration on February 15, 1933.

The Chair observes that in the course of the argument presented by the gentleman from Mississippi in opposition to the point of order he quoted the identical provision that was involved in the point of order raised at that time. It was on the basis of the language quoted by the gentleman from Mississippi that the ruling of the Chair turned.

On February 15, 1933, as shown in volume 76, part 4, of the Congressional Record, the following occurred:

> The point of order is directed at the language in the bill on line 10, page 2, which reads as follows: "And the tax rate in effect for the fiscal year 1933 on real estate and tangible personal property subject to taxation in the District of Columbia shall not be decreased for the fiscal year 1934."

The point of order was discussed at some length, after which the Chair ruled as follows:

> The gentleman from Virginia makes the point of order against the language appearing on page 2, line 10, which reads as follows—

And again quotes the language that has just been quoted.

> The point of order is that this language is legislation on an appropriation bill. The Chair is of the opinion that it is legislation on an appropriation bill, and therefore sustains the point of order.

The Chair also calls attention to section 3543 of Hinds' Precedents of the House, volume 4, the syllabus of which is as follows:

> Although a law may give an executive officer authority to do a certain

thing, a provision directing him so to do is legislative in nature and not in order on a general appropriation bill.

It is apparent, of course, that if it was not in order in a general appropriation bill to authorize and direct the Commissioners of the District of Columbia to not decrease the tax rate for a certain year, obviously the same logic would require the application of the rule to a proposed increase in the tax rate. In other words, the question here presented is whether or not an executive officer can be directed specifically and definitely not to do a thing he is clearly given discretionary authority to do.

The Chair feels that the language to which the point of order is made is legislation on an appropriation bill, and therefore sustains the point of order.

Imposing Conditions on Exercise of Discretion

§ 51.4 Where existing law authorized the expenditure of funds for the benefit and existence of Indians, under broad supervisory powers given to the Secretary of the Interior, provisions in an appropriation bill which imposed further conditions affecting both the exercise of those powers and the use of funds were ruled out as legislation.

On May 14, 1937,[8] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 6958), a point of order was raised against the following provision:

The Clerk read as follows:

For the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops, $165,000, which sum may be used for the purchase of seeds, animals, machinery, tools, implements, and other equipment necessary, and for advances to Indians having irrigable allotments to assist them in the development and cultivation thereof, in the discretion of the Secretary of the Interior, to enable Indians to become self-supporting: *Provided,* That the expenditures for the purposes above set forth shall be under conditions to be prescribed by the Secretary of the Interior for repayment to the United States on or before June 30, 1943, except in the case of loans on irrigable lands for permanent improvement of said lands, in which the period for repayment may run for not exceeding 20 years, in the discretion of the Secretary of the Interior: *Provided further,* That not to exceed $25,000 of the amount herein appropriated shall be expended on any one reservation or for the benefit of any one tribe of Indians: *Provided further,* That the Secretary of the Interior is hereby authorized, in his discretion and under such rules and regulations as he may prescribe, to make advances from this appropriation to old, disabled, or indigent Indian allottees, for their support, to remain a charge and lien against their lands until paid: *Provided further,* That not to exceed $15,000 may be advanced to worthy Indian youths to enable them to take educational courses, including courses in nursing, home economics, forestry, and other industrial subjects in colleges,

8. 81 CONG. REC. 4598, 4599, 75th Cong. 1st Sess.

> universities, or other institutions, and advances so made shall be reimbursed in not to exceed 8 years, under such rules and regulations as the Secretary of the Interior may prescribe.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph beginning on page 26, line 4. The point of order is that this is legislation on an appropriation bill and it imposes discretionary duties upon the Secretary of the Interior. The language at the bottom of the bill, beginning with "*Provided further*", line 22, and the last proviso are entirely the same. They provide that the Secretary of the Interior shall make rules and regulations and there is no question but what it imposes additional duties upon the Secretary of the Interior all the way through.

In lines 17 and 18 the terms of repayment are made subject to the discretion of the Secretary of the Interior and in lines 9 and 10 it is subject to that same discretion. This is all on page 26. The whole paragraph is subject to discretion and imposes duties upon the Secretary.

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, The Committee Feels That This Provision is in Order. It provides only a method by which the appropriation might be expended. I have no further comment to make.

THE CHAIRMAN:[9] The Chair would like to inquire of the gentleman from Oklahoma as to the authority for the language appearing in lines 1 and 2, page 27, which the Chair will quote:

> To remain a charge and lien against their land until paid—

Is there provision in some existing law creating a lien upon these lands, to which this provision refers?

MR. JOHNSON of Oklahoma: I cannot say there is provision in existing law. The only existing law would be the fact this has been in the bill for several years and, of course, that is not controlling.

THE CHAIRMAN: The Chair would like to inquire further of the gentleman with reference to the language appearing in lines 7 and 8, page 27, reading as follows:

> And advances so made shall be reimbursed in not to exceed 8 years under such rules and regulations as the Secretary of the Interior may prescribe.

Will the gentleman advise the Chair as to any provision of existing law upon which this language is based?

MR. JOHNSON of Oklahoma: Mr. Chairman, this is the exact language that has been used for several years and the gentleman from Oklahoma knows of no specific basis of law for it.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York makes a point of order against the entire paragraph beginning in line 4, page 26, extending down to and including line 9, page 27. The gentleman from New York [Mr. Taber] in making his point of order invited attention to certain language appearing in lines 10 and 11, page 26, with reference to the discretion of the Secretary of the Interior.

The Chair has examined the act commonly referred to and known as the Snyder Act and invites attention to section 13 of that act, in which the following appears:

9. Jere Cooper (Tenn.).

Expenditures of appropriations by Bureau of Indian Affairs: The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate for the benefit, care, and assistance of the Indians throughout the United States for the following purposes: General support and civilization, including education; for industrial assistance and advancement and general administration of Indian problems. Further for general and incidental expenses in connection with the administration of Indian affairs.

It is the opinion of the Chair that the act to which attention has been invited confers upon the Secretary of the Interior rather broad discretionary authority. The Chair is of opinion that the language to which the gentleman invited attention is not subject to a point of order, but that the language to which the Chair invited the attention of the gentleman from Oklahoma with reference to the provisos does constitute legislation on an appropriation bill not authorized by the rules of the House. It naturally follows that as the point of order has to be sustained as to these two provisos, it has to be sustained as to the entire paragraph. The Chair therefore sustains the point of order made by the gentleman from New York.

Specific Appropriation Where General Purpose Authorized

§ 51.5 While the appropriation of a lump sum for a general purpose authorized by law is in order, a specific appropriation for a particular item included in such general purpose is a limitation on the discretion of the executive charged with allotment of the lump sum and is not in order on an appropriation bill; thus a provision of law giving general authorization for wildlife conservation activities was held not to authorize earmarking part of an appropriation to be expressly "for the leasing and management of the lands for the protection of the Florida Key deer."

On Apr. 28, 1953,[10] the Committee of the Whole was considering H.R. 4828, an Interior Department appropriation. A point of order was raised against the following amendment:

Amendment offered by Mr. Lantaff: On page 20, line 6, immediately following the semicolon and preceding the word "and", insert the following: "not to exceed $10,000 for the leasing and management of the lands for the protection of the Florida Key deer, 16 U.S.C. 661."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I hate to do it, but I must make a point of order against this amendment. It is not authorized by law.

THE CHAIRMAN:[11] Does the gentleman from Florida desire to be heard on the point of order?

10. 99 CONG. REC. 4148, 83d Cong. 1st Sess.

11. J. Harry McGregor (Ohio).

MR. [WILLIAM C.] LANTAFF [of Florida]: Yes, Mr. Chairman. The reference to the United States Code authorizes the leasing of lands by the Department of Interior and is so cited for that purpose. This specific authorization is to authorize the leasing of land in this particular area for this particular project and classifies it much the same as the authorization contained in the bill for the Wichita Mountains Wildlife Refuge and for the Crab Orchard National Wildlife Refuge. In the bill you will find the statutory authority cited the same as the statutory authority cited in the amendment which I have offered. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair has inspected section 661 of title 16 of the United States Code, the provision which the gentleman from Florida cites as authorizing the proposal contained in his amendment. That code section gives fairly broad authorization to the Fish and Wildlife Service for wildlife conservation, but it does not authorize leasing of lands or the protection of key deer. The gentleman's amendment would earmark funds for a narrow, specific purpose, a purpose not mentioned in the code section which is general. Reference is made to volume VII, section 1452, of Cannon's Precedents, under which the Chair sustains the point of order.

Limitation on Hiring Discretion

§ 51.6 To an appropriation bill, an amendment providing that the Civil Service Commission shall not impose a maximum age limitation with respect to the appointment of persons to positions in the competitive service who are otherwise qualified, was conceded to be legislation and held not in order.

On Mar. 30, 1955,[12] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 5240), a point of order was raised against the following provision:

The Clerk read as follows:

The Civil Service Commission shall not impose a requirement or limitation of maximum age with respect to the appointment of persons to positions in the competitive service who are otherwise qualified: *Provided*, That no person who has reached his 70th birthday shall be appointed in the competitive civil service on other than a temporary basis.

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I make a point of order to the language on page 4, line 6 to line 12 inclusive, that it is legislation on an appropriation bill. . . .

. . . Mr. Chairman, I have offered this point of order against certain provisions in title 1 relating to the Civil Service Commission because it contains legislation in an appropriation act. Under this legislative directive contained in the appropriation act you would prohibit the Civil Service Commission from imposing any requirement or limitation of maximum age

12. 101 CONG. REC. 4065, 4066, 84th Cong. 1st Sess.

whatsoever with respect to the appointment of persons in competitive Civil Service. . . .

THE CHAIRMAN:[13] Does the gentleman from Texas [Mr. Thomas] desire to be heard on the point of order?

MR. [ALBERT] THOMAS: Mr. Chairman, may I say that our distinguished colleague from Kansas (Mr. Rees) is usually right. This is legislation.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, will the gentleman defer his point of order?

MR. REES of Kansas: No, I shall not.

THE CHAIRMAN: The Chair is ready to rule. In the opinion of the Chair, the language is legislation on an appropriation bill and the point of order is sustained.

Mandating an Investigation Which Agency Has Discretion to Make

§ 51.7 Language in an appropriation bill directing the Public Utilities Commission to make an investigation where existing law authorized it in its discretion to make such investigation was held to be legislation and not in order on an appropriation bill.

On Apr. 2, 1937,[14] during consideration in the Committee of the Whole of the District of Columbia appropriation bill, both Mr. Thomas J. O'Brien, of Illinois, and Mr. Jack Nichols, of Oklahoma, raised a point of order against the following provision as being legislation:

> The Public Utilities Commission is directed to cause an investigation to be made of the Chesapeake & Potomac Telephone Co. with a view to ascertaining the reasonableness of existing rates, tolls, charges, and services. . . .

The manager of the bill (Mr. Ross A. Collins, of Mississippi) declined to argue the point of order and the Chair[15] ruled as follows:

> The gentleman from Illinois and the gentleman from Oklahoma both make a point of order against the language [above].
>
> Existing law provides that—
>
> > Upon its own initiative or upon reasonable complaint made against any public utility that any of the rates, tolls, charges, or schedules or services or time and conditions of payment, or any joint rate or rates, schedules or services are in any respect unreasonable or unjustly discriminatory, or that any time schedule, regulation, or act whatsoever affecting or relating to the conduct of any street railway, etc., . . . the Commission may in its discretion proceed, with or without notice, to make such investigation as it may deem necessary or convenient.
>
> Therefore, it is clearly to be seen that under existing law the Public Utilities Commission has discretionary authority to make the types of investigation that are embraced in the lan-

13. Albert Rains (Ala.).

14. 81 CONG. REC. 3101, 75th Cong. 1st Sess.

15. Jere Cooper (Tenn.).

guage here upon which a point of order is made.

This language in the pending bill seeks to direct the Public Utilities Commissioners to do what they have clearly discretionary authority to do. The effect of this language would be to direct the Commissioners to do what they have authority to do within their discretion. Therefore it is legislation on a general appropriation bill and has the effect of changing existing law.

The Chair would also like to invite attention to the same provision of Hinds' Precedents, section 3853 of volume IV, to which attention was invited in the course of a previous ruling made by the Chair. This provision is as follows:

> Although a law may give an executive officer authority to do a certain thing, a provision directing him so to do is legislative in nature and not in order on a general appropriation bill.

Therefore the Chair sustains the point of order.

Parliamentarian's Note: An apparently contrary ruling was made on May 10, 1946,[16] but would probably not be followed in current practice. On that date, the Chair held in order, as a limitation on an appropriation bill, language providing that no part of an appropriation for Indian reservation roads be available except on the basis of an apportionment among the states made in a specified manner. The Chair rejected the argument of Mr. Francis H. Case, of South Dakota, that, to make mandatory on the part of an executive officer an action within his discretion under existing law, was, in fact, to change existing law by interfering with the officer's discretion.

Mandating Uniformity in Mortgage Commitments

§ 51.8 To an appropriation bill an amendment providing that no funds in the bill be used for expenses of issuing mortgage commitments under the National Housing Act other than on a basis of issuing such commitments to all segments of the population was held to be legislation.

On Mar. 31, 1954,[17] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 8583), a point of order was raised against the following amendment:

> Amendment offered by Mr. [Sidney R.] Yates [of Illinois]: Page 65, line 11, after the colon and the words "(12 U.S.C. 1701)", insert the following: "*Provided*, That no part of any appropriation or fund in this act shall be used for administrative expenses in connection with the issuance of mort-

16. 92 CONG. REC. 4854, 4855, 79th Cong. 2d Sess.

17. 100 CONG. REC. 4267, 83d Cong. 2d Sess.

gage commitments under all titles of the National Housing Act, as amended, other than on the basis of the issuance of such mortgage commitments to all segments of the population, including those segments which are unable to obtain adequate housing under established home-financing programs, as nearly as possible on the basis of effective housing demand as determined by market analyses prepared by the Federal Housing Administration."

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, I make the point of order that the amendment is legislation on an appropriation bill and requires additional duties of an agency.

MR. YATES: Mr. Chairman, I ask for a ruling.

THE CHAIRMAN:[18] It appears on its face it is an interference with executive discretion; therefore the Chair sustains the point of order.

Limiting Funds, Not Discretion

§ 51.9 It is in order on a general appropriation bill to provide that no part, or not more than a specified amount, of an appropriation shall be used in a certain way, even though executive discretion be thereby negatively restricted.

On Sept. 14, 1972,[19] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 16593), a point of order was raised against the following amendment:

MR. [GLENN R.] DAVIS of Wisconsin: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Davis of Wisconsin: Page 51, line 21, insert a new section 743 as follows:

"Of the funds made available by this Act for the alteration, overhaul, and repair of naval vessels, not more than $646,704,000 shall be available for the performance of such works in Navy shipyards."

MR. [LOUIS C.] WYMAN [of New Hampshire]: Mr. Chairman, I reserve the point of order on the language of the proposed amendment offered by the gentleman from Wisconsin.

THE CHAIRMAN:[20] Does the gentleman reserve his point of order?

MR. WYMAN: Mr. Chairman, I am simply trying to protect my rights on grounds the gentleman from Wisconsin——

MR. DAVIS of Wisconsin: Mr. Chairman, if the gentleman wishes to argue, I wish he would argue it and not take up my time.

THE CHAIRMAN: Does the gentleman wish to state his point of order?

MR. WYMAN: I make the point of order that the amendment proposed by the gentleman from Wisconsin in the form in which it is presently worded does not constitute a limitation, but is rather legislation upon an appropriations bill contrary to the rules of the House.

THE CHAIRMAN: Does the gentleman from Wisconsin care to be heard on the point of order?

18. Louis E. Graham (Pa.).

19. 118 CONG. REC. 30749, 30750, 92d Cong. 2d Sess.

20. Daniel D. Rostenkowski (Ill.).

MR. DAVIS of Wisconsin: I do, Mr. Chairman. I submit to the Chair that this is definitely a limitation on the amount of money which may be spent for a specific purpose. I would suggest to the Chair that it is clearly within the rules of the House as a limitation on an appropriations bill.

THE CHAIRMAN: The Chair has examined the amendment and feels that it is a valid limitation on the funds made available in the bill and overrules the point of order.

Parliamentarians Note: The persuasive precedent standing for this proposition is found in 7 Cannon's Precedents § 1694.

§ 51.10 Where, under existing law, federal officials have some discretionary authority to withhold federal funds where the recipients are not in compliance with a federally expressed policy, it is nevertheless in order, by way of a limitation on an appropriation bill, to deny the use of funds for a particular purpose, even though such executive discretion is thereby restricted by implication.

On July 31, 1969,[1] the Committee of the Whole was considering H.R. 13111, a Departments of Labor, and Health, Education, and Welfare appropriation bill. Proceedings were as follows:

Sec. 409. No part of the funds contained in this Act shall be used to force busing of students, the abolishment of any school or the attendance of students at a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district, or school.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I raise the point of order on section 409 on page 56 of the bill that this is legislation on an appropriation bill. It violates section 834 of the House rules. It does not comply with the Holman rule. It is not a retrenchment. In fact, it adds additional burdens and additional duties, just as the Chair ruled against my amendment to section 408 because it would require additional personnel to determine whether busing has been used, one, for the abolishing of any school and, two, to require the attendance of any student at any particular school. . . .

THE CHAIRMAN:[2] The Chair is ready to rule. . . .

Now, the gentleman from Massachusetts (Mr. Conte) has raised a point of order against section 409 on the ground that it constitutes legislation on an appropriation bill. The gentleman from Mississippi (Mr. Whitten) insists that the language is in order as a limitation.

The Chair has reviewed the section in question. It prohibits the use of funds in this bill to force first, the busing of students; second, the abolishment of any school; or third the attendance of students at a particular school.

The clear intent of this section is to impose a negative restriction on the use of the moneys contained in this bill.

1. 115 CONG. REC. 21677, 21678, 91st Cong. 1st Sess.

2. Chet Holifield (Calif.).

The Chair has examined a decision in a situation similar to that presented by the current amendment in the 86th Congress during consideration of the Defense Department appropriation bill, an amendment was offered by Mr. O'Hara, of Michigan, which provided . . . (that) no funds appropriated in that bill should be used to pay on a contract which was awarded to the higher of two bidders because of certain Defense Department policies. The Chairman of the Committee of the Whole, Mr. Keogh, of New York, held the amendment in order as a limitation, even though it touched on the policy of an executive department—86th Congress, May 5, 1960; Congressional Record, volume 106, part 7, page 9641. Chairman Keogh quoted, in his decision, the precedent carried in section 3968 of volume IV, Hinds' Precedents, and the Chair thinks the headnote of that earlier precedent is applicable here:

> The House may provide that no part of an appropriation shall be used in a certain way, even though executive discretion be thereby negatively restricted.

The Chair overrules the point of order.

Requiring Discretionary Action To Be Eligible For Funds

§ 51.11 An amendment to a general appropriation bill, prohibiting the use of funds in the bill for the Nuclear Regulatory Commission to issue nuclear powerplant operating licenses in any state which does not have an emergency evacuation plan which has been tested and submitted to the Commission pursuant to law, was ruled out as legislation since requiring the Commission to make the determination, not required by law, whether the plan had been tested by the state.

On June 18, 1979,[3] during consideration in the Committee of the Whole of the energy and water appropriation bill (H.R. 4399), a point of order against an amendment was sustained as follows:

> The Clerk read as follows:
>
> Amendment offered by Mr. [James] Weaver [of Oregon]: On page 27 after line 23, add:
>
> "No monies appropriated in this paragraph may be expended by the Nuclear Regulatory Commission for the issuance of an operating license for a nuclear powerplant located in a state which does not have an emergency evacuation plan which has been tested, and submitted to the Commission pursuant to law.". . .
>
> MR. [JOHN T.] MYERS of Indiana: Mr. Chairman, the proposed amendment offered by the gentleman from Oregon (Mr. Weaver) is a violation of rule XXI, clause 2. The requirement that a State must adopt and issue an evacuation plan I think is suspect, but the words "which has been tested" clearly make it a violation of rule XXI, clause 2, in that it is clearly legislation on an appropriation bill. It requires a duty not now required by law.

3. 125 CONG. REC. 15286, 15287, 96th Cong. 1st Sess.

I cite the precedents from Deschler's Procedure, chapter 26, 11.3, which reads:

> It is not in order, in an appropriation bill, to impose additional duties on an executive officer or to make the appropriation contingent on the performance of such duties. May 28, 1968 . . . where, to a bill making appropriations for the Department of State, including an item for the U.S. contribution to various international organizations, an amendment providing that none of the funds might be expended until all other members of such organizations have met their financial obligations, was ruled out as legislation which imposed a duty on a Federal official to determine the extent of such obligations.

In the same chapter, paragraph 11.24:

> To a bill making supplemental appropriations to various agencies, including an additional amount for assistance to refugees in the United States, an amendment specifying that no part of this particular appropriation shall be used until adequate screening procedures are established to prohibit the infiltration of communists posing as Cuban refugees, imposed additional duties and was ruled out as legislation.

I think that chapter 18.1 is probably more in point of issue. This was a foreign aid program.

> To a general appropriation bill making appropriations for foreign assistance, an amendment prohibiting the use of any funds carried in the bill for certain capital projects costing in excess of $1 million 'until the head of the agency involved has received and considered a report, prepared by officials within the agency, on the justification and feasibility of such project' was held to impose additional duties and was ruled out as legislation.

Mr. Chairman, it is very clear in the rules where an amendment to language in a general appropriations bill implicitly places new duties on officers of the Government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not required of them by law, such as a judge, was conceded to be legislation and subject to a point of order.

Mr. Chairman, this clearly places some responsibility of testing on someone, rather vague, but not now required by law, who is to conduct the test, how it is to be conducted, and what criterion. There is no evidence of any so-called laws or rules today. It is clearly a violation of rule XXI, clause 2. . . .

MR. WEAVER: . . . The amendment reads very factually, and it reads pursuant to law. It makes no new law, Mr. Chairman.

As a matter of fact, the law is already there in the Atomic Energy Act, chapter 10, atomic energy licenses, and under section 103 (a) and (b), it gives the Nuclear Regulatory Commission complete authority for the public health and safety to do the kind of licensing that is now being done.

What the amendment does is not like the examples shown by the gentleman from Indiana (Mr. Myers), such as screening or imposing new duties on any Government, any Federal Government official at all. It simply says that if a plant has an emergency evacuation plan that has been tested and submitted to the NRC, pursuant to law; it imposes no new duties on the Federal official. It does not require them to go out implicitly or explicitly and make

any investigation of any kind, and just simply go on doing the duties they have been doing under the law that they now act upon. So it is the normal course of duty.

It just simply says that no new operating license will be granted a plant if this factual situation has not been met. . . .

THE CHAIRMAN:[4] . . . The Chair has examined the law with respect to the authority of the NRC to request submission of State emergency evacuation plans, in determining whether to issue an operating license. Under 42 U.S.C. 2133 and 2137, the NRC has virtually total discretionary authority to request or require the submission of any information by a prospective licensee which relates to the public health and safety aspects of the operation of nuclear power plants in any State.

The language of the amendment, however, imposes additional duties on the NRC to determine if a State plan has been tested by the State.

Consequently, the amendment constitutes legislation on an appropriation bill, and the point of order made by the gentleman from Indiana (Mr. Myers) is sustained.

Affirmative Interference With Discretion

§ 51.12 It is not in order in a general appropriation bill under the guise of a limitation to affirmatively interfere with executive discretion by coupling a restriction on the payment of funds for salaries with a positive direction to perform certain duties in a particular manner.

On Oct. 9, 1974,[5] paragraph of a general appropriation bill prohibiting the payment of funds therein for salaries of Federal Trade Commission personnel who use, publish, or permit access to certain information by designated methods—and also requiring the FTC to obtain that information "under existing practices and procedure or as changed by law" was conceded to change existing law by restricting the information-gathering practices of the agency and was ruled out in violation of Rule XXI clause 2. The proceedings were as follows:

THE CHAIRMAN:[6] The Clerk will read.

The Clerk read as follows:

FEDERAL TRADE COMMISSION

No part of these funds may be used to pay the salary of any employee, including Commissioners, of the Federal Trade Commission who—

(1) Uses the information provided in the line-of-business program for any purpose other than statistical purposes. Such information for carrying out specific law enforcement responsibilities of the Federal Trade Commission shall be obtained under

4. Philip R. Sharp (Ind.).

5. 120 CONG. REC. 34712, 34713, 93d Cong. 2d Sess.

6. Sam Gibbons (Fla.).

existing practices and procedures or as changed by law. . . .

MR. [BOB] ECKHARDT [of Texas]: Mr. Chairman, I make a point of order on the paragraph last read, commencing on page 46, line 17, through page 47, line 6. . . .

The specific language that violates [Rule XXI clause 2] is the language contained in the last sentence on page 46, reading as follows:

> Such information for carrying out specific law enforcement responsibilities of the Federal Trade Commission shall be obtained under existing practices and procedures or as changed by law.

Mr. Chairman, rule XXI, under all of the precedents, clearly outlaws a change in substantive law, that is, it clearly outlaws a provision by which an administrator of an agency may after the passage of that clause not do an act which he could have done before.

This clause says that persons in the Federal Trade Commission shall not alter the existing practices with respect to such gathering of information for law enforcement practices.

Today that agency might do anything it wants to do within the balance of law and it is not bound to continue its existing practices. It can obtain information in other ways. If this provision were passed, it would restrict it in that respect.

In this connection, I cite in support of the position I take the provisions of Cannon's Precedents, volume 7, section 1685:

> A limitation to be admissible must be a limitation upon the appropriation and not an affirmative limitation upon official discretion.

Following that, in section 1686, it says:

> A limitation upon an appropriation must not be accompanied by provisions requiring affirmative action by an Executive in order to render the appropriation available.

Therefore, under these provisions, the administrator would be bound and confined to his existing practices, whereas presently he might exercise any rational means of gaining such information that is permitted by law. . . .

MR. [JOHN D.] DINGELL [of Michigan]: Rule XXI, clause 2, is well known, I am sure, to the Chair.

Rule XXI, clause 2, forbids legislation in appropriation bills.

The gentleman from Texas has just cited the specific paragraphs and citations in Cannon's Precedents.

The question is, Is the language referred to by the gentleman from Texas, referring most specifically to page 46, lines 22 and following, reading as follows:

> Such information for carrying out specific law enforcement responsibilities of the Federal Trade Commission shall be obtained under existing practices and procedures or as changed by law—

A limitation? . . .

A clear reading of the language before the committee at this particular time that "Such information for carrying out specific law enforcement responsibilities shall be obtained under existing practices" is not a limitation, but, rather, is an express direction to the Federal Trade Commission as to how that agency shall conduct its affairs. It does not limit discretion, but,

rather, it imposes certain specific duties upon the Federal Trade Commission.

The language further offends against the law, Mr. Chairman, in that it does require certain other affirmative duties and actions by the Federal Trade Commission. Most specifically, Mr. Chairman, it requires that the Federal Trade Commission engage in an ascertainment of what is the existing law and that they then proceed to act in accordance therewith.

This does not constitute a limitation, but, rather, constitutes an affirmative mandate. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I concede the point of order, and I will offer an amendment.

THE CHAIRMAN: The point of order is conceded, and sustained, and the language beginning on line 17, page 46, and continuing through line 6, page 47, is stricken by the point of order.

Limitation of Funds Resulting in Curtailed Discretion

§ 51.13 While it is not in order on a general appropriation bill to directly limit executive discretionary authority or to change entitlement benefits or contractual provisions established pursuant to law, it is permissible by a negative restriction on the use of funds to deny availability of funds although resulting circumstances might suggest a change in applicability of law.

On Aug. 20, 1980,[7] the Chair ruled that an amendment to a general appropriation bill denying the use of funds therein to pay for an abortion, or administrative expenses in connection with any federal employees health benefits plan which provides any benefits or coverage for abortions after the last day of contracts currently in force, did not constitute legislation, since the amendment did not directly interfere with executive discretion in contracting to establish such plans. (It is permissible by limitation to negatively deny the availability of funds although discretionary authority may be indirectly curtailed and contracts may be left unsatisfied.) The proceedings are discussed in Sec. 74.5, infra. For general discussion of permissible limitations, see Sec. 64, infra.

§ 51.14 To language in an appropriation bill containing funds for the Federal Trade Commission for the purpose of collecting line-of-business data, an amendment providing that none of those funds shall be used for collecting such data from more than 250 firms was held to constitute a valid limitation

7. 126 CONG. REC. 22171, 22172, 96th Cong. 2d Sess.

on the availability of funds in the bill, rather than an express restriction on the scope of the FTC investigation.

On June 21, 1974,[8] during consideration in the Committee of the Whole of H.R. 15472 (agriculture, environment, and consumer appropriation bill), an amendment was held in order as follows:

The Clerk read as follows:

Amendment offered by Mr. [Jamie L.] Whitten [of Mississippi]: Page 47, line 6, after the word "data" add the following: "*Provided*, That none of these funds shall be used for collecting line-of-business data from not [sic] more than 250 firms, including data presently made available to the Bureau of the Census, the Securities and Exchange Commission and other government agencies where authorized by law." . . .

MR. [BOB] ECKHARDT [of Texas]: Mr. Chairman, the point of order is under House Rule XXI, Clause 2, second sentence. . . .

Now, under existing law and without the limitations reported to be added in this bill the Federal Trade Commission could and had intended—and, of course, what it actually intended is not material here, because the question is what it could have done—it could have used the funds as appropriated here for either 250 firms or 500 firms or any other number of firms. So what is done by this amendment is to restrict the Federal Trade Commission with respect to powers and duties and authorities which it would have but for this limitation.

The authorities on this point appear in volume VII of Cannon's Precedents, section 1675, which reads:

A proper limitation does not interfere with executive discretion or require affirmative action on the part of the Government officials. . . .

It would also require liaison with the Bureau of Census, the Securities and Exchange Commission, and other Government agencies which are not here designated but which would cover the whole gamut of such agencies.

So it both provides a limitation on executive discretion and affirmative acts on the part of Government officials. . . .

MR. [JOHN] MELCHER [of Montana]: . . . Public Law 93–153 authorizes line-of-business data to be collected by independent regulatory agencies subject to certain procedures. It did not limit or restrict the collection of this data to any specific number of firms, as the gentleman's amendment would; he would change this policy by arbitrarily limiting the collection of the data specifically to 250 firms.

In addition, Mr. Chairman, Public Law 93–153 does not authorize the collection of line-of-business data from the Bureau of the Census of the Security and Exchange Commission. This authority was placed in an "independent regulatory agency.". . .

THE CHAIRMAN:[9] The Chair is ready to rule.

First, let the Chair state that this subject contains a very vexing point,

8. 120 CONG. REC. 20601, 20602, 93d Cong. 2d Sess.

9. Sam Gibbons (Fla.).

and it is one that has required a lot of attention of the Chair, even prior to the arguments here.

The words in contest on this point of order are the following words added by the amendment:

> . . . provided that none of the funds shall be used for collecting line-of-business data from not more than 250 firms, including data presently made available by the Bureau of the Census, the Securities and Exchange Commission, and other government agencies where authorized by law.

It is clear to the Chair that the words "provided that none of these funds shall be used for collecting line of business data of not more than 250 firms" may clearly be added as an amendment to a general appropriation bill, and it is in order. The Committee on Appropriations could have refused to bring in any appropriation at all for this agency, and the committee seeks by this amendment to put a limitation upon the use of funds available to the FTC. The limitation is drafted as a restriction on the use of funds, and not as an affirmative restriction on the scope of the FTC investigation, as was the case in the language stricken from the bill on the preceding point of order.

The remainder of the amendment raises some question, but in the opinion of the Chair, these words are clearly limited by "where authorized by law,' and do not permit the Census Bureau of the SEC to initiate line of business investigations, so the Chair is going to rule that the amendment is in order and that the points of order are overruled.

Limitation on Funds May Change Announced Policy

§ 51.15 While a limitation on a general appropriation bill may not involve changes of existing law or affirmatively restrict executive discretion, it may by a simple denial of the use of funds change administrative policy and be in order; thus, a point of order against a provision prohibiting the use of funds for any reduction in Customs Service regions or for any consolidation of Customs Service offices was overruled.

On June 27, 1984,[10] during consideration in the Committee of the Whole of the Treasury Department and Postal Service appropriation bill (H.R. 5798), a point of order against a provision in the bill was overruled, as follows:

> The Clerk read as follows:
>
> Sec. 617. None of the funds made available in this Act may be used to plan, implement, or administer (1) any reduction in the number of regions, districts or entry processing locations of the United States Customs Service; or (2) any consolidation or centralization of duty assessment or appraisement functions of any offices of the United States Customs Service.
>
> MR. [BILL] FRENZEL [of Minnesota]: Mr. Chairman, I make a point of order

10. 130 CONG. REC. —— , 98th Cong. 2d Sess.

against section 617. . . . Section 617 prohibits the use of funds in this appropriation for a reduction in the number of Customs entry processing points and any consolidation of duty assessment or appraisement functions in any of the offices of the Customs Service.

This negates Public Law 91–271 which gives the President the authority to rearrange or make consolidations at points of entry at the District Offices or at headquarters.

In addition, in my judgment the language is so broad as to interfere with existing administrative authority to carry out its appraisement functions as required by law. Section 617 goes beyond the limitation of funds which are the subject of this appropriation and constitutes an effort to change existing law under the guise of a limitation. There seems to be in section 617 almost a complete prohibition of executive discretion to make any changes to help the Customs Service carry out its duties. . . .

MR. [EDWARD R.] ROYBAL [of California]: Mr. Chairman, section 617 is a simple limitation again on an appropriation bill. It does not change the application of existing law. It merely prohibits the use of funds to pay for any Government employee who tries to prevent the law from being enforced. . . .

THE CHAIRMAN:[11] The Chair is prepared to rule.

It is the opinion of the Chair that the section does not mandate spending but rather limits the use of funds to consolidate Customs regions and is as such a negative limitation on the use of funds. And the Chair would cite Mr. Cannons volume 7 of Precedents, section 1694:

> While a limitation may not involve change of existing law or affirmatively restrict executive discretion, it may properly effect a change of administrative policy and still be in order.[12]

Therefore it is the ruling of the Chair that the gentleman's point of order is overruled.

Parliamentarian's Note: This precedent must be distinguished from cases where an amendment, by double negative or otherwise, can be interpreted to require the spending of more money—for example, an amendment prohibiting the use of funds to keep less than a certain number of people employed. (A "floor" on employment levels would be tantamount to an affirmative direction to hire no fewer than a specified number of employees.)

Limiting Funds to Promulgate Regulations

§ 51.16 While an agency may have authority to promulgate new regulations which would change existing regulations, it is in order in a general appropriation bill to deny the use of funds therein for agency proceedings relating to changes in regulations.

11. Anthony C. Beilenson (Calif.).

12. 7 Cannon's Precedents § 1694 is discussed in the introduction to this section (§ 51), supra.

The ruling of the Chair on June 27, 1984,[13] was that language in a general appropriation bill prohibiting the use of funds therein to eliminate an existing legal requirement for sureties on customs bonds was in order as a valid limitation merely denying funds to change existing law and regulations. The point of order was as follows:

> MR. [BILL] FRENZEL [of Minnesota]: Mr. Chairman, I make a point of order against section 513 on page 38.
>
> The portion of the bill to which the point of order relates is as follows:
>
> > Sec. 513. None of the funds made available by this Act for the Department of Treasury may be used for the purpose of eliminating any existing requirement for sureties on customs bonds. . . .
>
> [This provision] violates rule XXI, clause 2. The section prohibits the use of funds for the continuation of customs rulemaking with respect to existing requirements for sureties on customs bonds.
>
> The Customs Service has broad administrative authority to establish guidelines for posting bonds for the payment of customs duties.
>
> The rulemaking process is now underway to determine whether existing requirements for sureties on customs bonds should be modified or replaced altogether.
>
> Section 513 goes beyond the limitations of funds which are the subject of this appropriation and constitutes an effort to change existing law under the guise of a limitation. . . .
>
> THE CHAIRMAN:[14] The Chair is ready to rule. . . .
>
> The Chair would rule that in fact this section does constitute a proper limitation consistent with the existing law and overrules the gentleman's point of order.

Limiting Funds to Administer Program

§ 51.17 A section in a general appropriation bill prohibiting the use of any funds therein by the Environmental Protection Agency "to administer any program to tax, limit, or otherwise regulate parking facilities" was held in order as a negative limitation on the use of funds in the bill.

The ruling on Oct. 9, 1974,[15] supports the principle that, although language in a general appropriation bill may not by its terms directly curtail a discretionary authority conferred by law, the Committee on Appropriations may, by refusing to recommend funds for all or part of an authorized executive function, thereby effect a change in policy to the extent of its denial of avail-

13. 130 CONG. REC.—— , 98th Cong. 2d Sess.

14. Anthony C. Beilenson (Calif.).

15. 120 CONG. REC. 34716, 34717, 93d Cong. 2d Sess.

ability of funds.[16] The proceedings were as follows:

The Clerk read as follows:

> Sec. 511. No part of any funds appropriated under this Act may be used by the Environmental Protection Agency to administer any program to tax, limit, or otherwise regulate parking facilities. . . .

MR. [FORTNEY H.] STARK [of California]: I make a point of order in opposition to the section the Clerk has just read, section 511, line 17.

The point of order is that under rule XXI, clause 2, it is legislation under an appropriation bill. It changes existing law and is not merely a limitation under the appropriation.

I cite Cannon's Precedents, volume 7, section 1691:[17]

> The purpose rather than the form of a proposed limitation is the proper criterion by which its admissibility should be judged, and if its purpose appears to be a restriction of executive discretion to a degree that may be fairly termed a change in policy rather than a matter of administrative detail it is not in order. . . .

The committee report on H.R. 16901 indicates that the intent of section 511 is to make new law, not to "retrench expenditures.". . .

What is intended is a direct limitation on the exercise of administrative authority, not a limitation on appropriations. The report does not state any intent to save money. It does not state how much money, if any, would be saved. Nor does it explain how this provision would in any way save money. The report's reference to a substantive investigation of the effects of EPA regulations confirms the view that section 511 is purely substantive lawmaking. There is no pretense in the report that this provision is intended to, or actually will have the effect of reducing appropriations or saving any money. Its intent and effect is simply to repeal a portion of the Clean Air Act. . . .

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman . . . the language referred to does constitute legislation in an appropriation bill, and it is not a limitation upon appropriation but an affirmative limitation upon official discretion, as referred to in section 1685 and also in sections 1684 and 1683 of Cannon's Precedents, referred to by me earlier in the discussion as to previous points of order raised by the gentleman from Texas (Mr. Eckhardt) to earlier portions of the bill. . . .

THE CHAIRMAN:[18] The Chair has examined the language on page 51 of the bill, lines 17 through 20. The Chair also has examined the arguments put forth by the gentleman from California (Mr. Stark) who raised the point of order. The Chair has examined the precedents. The Chair finds that this is merely a limitation on an appropriation, and suggests that the Committee on Appropriations could have refused to bring in any appropriation at all for the Environmental Protection Agency. Therefore, negatively denying their making funds available to EPA for

16. See 7 Cannon's Precedents § 1694, discussed in the introduction to this section (§ 51), supra.

17. 7 Cannon's Precedents § 1691 is discussed in the introduction to this section (§ 51), supra.

18. Sam Gibbons (Fla.).

some purposes while availability for other purposes is certainly no more than a limitation on the appropriation bill. This is an old, established precedent of the House of Representatives.

The Chair calls the attention of the Members to the language appearing in Cannon's Precedents on page 686 of volume 7, section 1694, in which Mr. Tilson of Connecticut was in the Chair, and made a very similar ruling "that a change in policy can be made by the failure of Congress to appropriate for an authorized project." Therefore the point of order is overruled.

Restriction Not on Funds But on Discretion

§ 51.18 While it is in order on a general appropriation bill to limit the availability of funds therein for part of an authorized purpose while appropriating for the remainder of it, language which restricts not the funds but the discretionary authority of a federal official administering those funds may be ruled out as legislation (see 7 Cannon's Precedents § 1673).

On June 21, 1974,[19] during consideration of H.R. 15472 (Agriculture Department, environment, and consumer appropriation bill), a point of order was sustained against the following paragraph in the bill:

The Clerk read as follows:

$305,000, the amount of the budget request, is hereby appropriated for the purpose of collecting line-of-business data, as approved by General Accounting Office Opinion B–180229, issued May 13, 1974, from not to exceed 250 firms, including data presently made available to the Bureau of the Census, the Securities and Exchange Commission and other government agencies where authorized by law. . . .

MR. [JOHN] MELCHER [of Montana]: Mr. Chairman, rule 21, clause 2, clearly provides that no appropriation bill shall contain any provision changing existing law. The language on page 47, beginning at the word "data," on lines 8 through 12, clearly violates this rule in that it significantly alters the effective provisions of section 409(a) of Public Law 93–153—an act dealing with the trans-Alaska oil pipeline.

The purpose of section 409(a) of Public Law 93–153 is to preserve the independence of the regulatory agencies to carry out the quasi-judicial functions which have been entrusted to them by the Congress. We did not intend a broad proliferation of detailed questionnaires to industry and businesses which would result in unnecessary and unreasonable expense, but the provisions of H.R. 15472, which are the subject of my point of order, make substantive changes and place arbitrary limitations on the procedures prescribed by Public Law 93–153.

Mr. Chairman, as you know, in construing the provisions of an appropriation bill, if the intent is to restrict executive discretion to a degree that may be fairly termed a change in policy rather than a matter of administrative detail, then the point of order should be sustained. This provision of H.R.

19. 120 CONG. REC. 20600, 93d Cong. 2d Sess.

15472 not only restricts executive discretion by its specific terms, but it has the effect of changing existing law in violation of rule 21, clause 2.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, may I now concede the point of order and offer my amendment?

THE CHAIRMAN:[20] The gentleman concedes the point of order.

The point of order is sustained.

Double Negative Curtailing Discretion Requiring Affirmative Action

§ 51.19 Where existing law directed a federal official to provide for the sale of certain government property to private organizations in "necessary" amounts, but did not require that all such property shall be distributed by sale, an amendment to a general appropriation bill providing that no such property shall be withheld from distribution from qualifying purchasers was ruled out as legislation requiring disposal of all property and restricting discretionary authority to determine "necessary" amounts and not constituting (as required by the Holman rule) a certain retrenchment of funds in the bill.

On Aug. 7, 1978,[1] during consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 13635), a point of order was sustained against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. John T. Myers [of Indiana]: On page 8, after line 10, add the following new section:

None of the funds appropriated or otherwise made available in this Act shall be obligated or expended for salaries or expenses during the current fiscal year in connection with the demilitarization of any arms as advertised by the Department of Defense, Defense Logistics Agency sale number 31–8118 issued January 24, 1978, and listed as "no longer needed by the Federal Government" and that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308. . . .

MR. [ABNER J.] MIKVA [of Illinois]: Mr. Chairman, I make a point of order on the amendment on the ground that I believe that it is legislation within a general appropriation bill and, therefore, violates the rules of the House. . . .

MR. JOHN T. MYERS: Mr. Chairman, this is a simple limitation amendment. It merely limits the Secretary of the Treasury to continue to carry out existing law. It does not provide any new law. It simply says that the Secretary of the Treasury shall carry out the prevailing, existing law. . . .

20. Sam Gibbons (Fla.).

1. 124 CONG. REC. 24707, 24708, 95th Cong. 2d Sess.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Chairman, rule 21, clause 2, of the Rules of the House (House Rules and Manual pages 426–427) specifies that an amendment to an appropriation bill is in order if it meets certain tests, such as:

First. It must be germane;

Second. It must be negative in nature;

Third. It must show retrenchment on its face;

Fourth. It must impose no additional or affirmative duties or amend existing law.

First. [The amendment] is germane. As the amendment applies to the distribution of arms by the Defense Logistics Agency, it is not exclusively an Army of civilian marksmanship amendment, so should not be placed elsewhere in the bill. . . .

Second. It is negative in nature. It limits expenditure of funds by the Defense Department by prohibiting the destruction and scrapping of arms which qualify for sale through the civilian marksmanship program, which is a division of the executive created by statute.

Third. It shows retrenchment on its face. Retrenchment is demonstrated in that the Department of Defense if prohibited from expending funds to destroy surplus military arms, and that the arms previously earmarked for destruction will be made available in accordance with existing statute. . . . The House, in adding this amendment, will secure additional funds for the Treasury which the General Accounting Office has determined is adequate to pay costs of handling the arms. For example, the M–1 rifles are to be sold at a cost of $110 each. These are the arms most utilized by the civilian marksmanship program. The Defense Department will not be required to spend additional funds to process the sale of additional arms. . . .

[The amendment] does not impose additional or affirmative duties or amend existing law. . . .

Regulations issued AR 725–1 and AR 920–20 provide for the issuance of arms by application and qualification through the Director of Civilian Marksmanship. The DCM shall then submit sale orders for the Armament Readiness Military Command (ARCOM) to fill the requests of these qualified civilians. Thus, the amendment simply requires the performance of duties already imposed by the Army's own regulation. . . .

MR. MIKVA: Mr. Chairman, I particularly call attention of the Chair to the second half of the amendment, which imposes an affirmative duty on the Secretary, saying that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308.

Under the general existing law, there are all kinds of discretions that are allowed to the Secretary to decide whether or not such arms shall be distributed. Under this amendment, the existing law is to be changed and those arms may not be withheld. The practical purpose is to turn lose 400,000 to 500,000 rifles into the body politic.

But the parliamentary effect is clearly to change the existing law under which the Secretary can exercise all kinds of discretion in deciding whether or not those arms will be distributed.

Under this amendment it not only limits the fact that the funds may be obligated but it specifically goes on to affirmatively direct the Secretary to distribute such arms under title X, which is an affirmative obligation, which is exactly the kind of obligation the rules prohibit, and I renew my point of order. . . .

THE CHAIRMAN:[2] The Chair is ready to rule.

The Chair has read the section to which the gentleman refers, title 10, United States Code, section 4308, and is of the opinion that it does not require that all firearms be distributed to qualified purchasers. The Chair further feels that while the first part of the amendment is a limitation, the last part of the amendment is a curtailment of Executive discretion, and the Chair sustains the point of order.

Agency Required to Furnish Information to Subcommittees

§ 51.20 Where existing law (7 USC § 12(e)) requires the Commodities Exchange Commission to furnish to committees of Congress upon request certain information relating to commodities traders, an amendment to a general appropriation bill prohibiting the use of funds therein for denial by that commission of requests by congressional committees and subcommittees of any information (including but not limited to that specifically required to be furnished by law) was held to be legislation, being an interference with the discretion of executive officials with respect to responses to broader categories of requests.

On July 29, 1980,[3] an amendment to a general appropriation bill prohibiting the use of funds for the Commodity Futures Trading Commission to deny to congressional committees and subcommittees, acting within their jurisdiction, any information and data, including that described in section 8 of the Commodity Exchange Act, requested by such committees or subcommittees, was held to be legislation, since section 8 of that act only required certain specified information to be submitted to full committees, and not to subcommittees. The proceedings were as follows:

The Clerk read as follows:

Amendment offered by Mr. [Benjamin S.] Rosenthal [of New York]: On page 49, line 9, after the "period" add the following:

"No part of the funds appropriated herein shall be used by the Commission to deny to committees and subcommittees of the House of Representatives or of the Senate, acting within the scope of their jurisdiction,

2. Daniel D. Rostenkowski (Ill.).

3. 126 CONG. REC. 20098–100, 96th Cong. 2d Sess.

> any information and data in the Commission's possession (including that described in section 8 of the Commodity Exchange Act) requested by such committee or subcommittee."

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

THE CHAIRMAN:[4] Does the gentleman from Mississippi (Mr. Whitten) insist on his point of order?

MR. WHITTEN: I do insist on my point of order. . . .

Here is what the law says, if I may read it:

> Upon the request of any committee of either House of Congress, acting within the scope of its jurisdiction. . . .

So the law clearly says "any committee."

I turn to Webster's dictionary where it says that a subcommittee is, by definition, "an under committee," "a part or a division of a committee."

So while the subcommittee may have a great desire, a great need, to have the information, the law makes it available to the committee, and a subcommittee frequently is—and even usually is—greatly outnumbered by the full committee.

I respectfully submit that this provision would be subject to a point of order because it gives authority that does not exist in law or prohibits the use of that which is preempted by law. . . .

MR. ROSENTHAL: . . . I think, in practical terms, the position espoused by the distinguished chairman of the committee would make it totally unworkable for any investigative committee albeit any subcommittee here in the Congress, to do its work.

What happens in the beginning in the Committee on Government Operations, the committee meets and assigns general areas and investigative jurisdiction to each of the subcommittees, covering four, five, six or seven various agencies, and in those rules of the Committee on Government Operations it invests the subcommittee with the full authority that the House has given to the full committee. . . .

Now, the statute clearly says, section 11:

> The CFTC shall give to the committee all the information they have.

So the only question, the narrowly defined question, is whether the subcommittee is the repository of any statutory authority that the full committee has.

Let me read to this body, and I really reluctantly burden my colleagues with this, but I think it is relevant and important to read what the court held in *Barenblatt* v. *United States* (240 F.2d 75, 1957): The U.S. Court of Appeals for the District of Columbia decided that a witness' refusal to answer questions before a subcommittee and pertinent to a subcommittee's investigation, violated the title 2, United States Code, section 192, which provides for criminal sanction against persons who, having been summoned, "refuse to answer questions before . . . any committee of either House of Congress."

We have the exact language—"before . . . any committee of either House of Congress."

4. James C. Corman (Calif.).

A unanimous court held as follows:

> It is also contended that the indictment is fatally defective in that it alleges a refusal to answer questions before a subcommittee of a committee, and that Congress did not intend to make it a crime to refuse to answer questions of a subcommittee. . . . We disagree. Nothing has been shown which reflects that Congress has indicated such belief. We only construe the statute in light of the obvious purpose for its enactment. That purpose was to discourage the impairment of the vital investigative function of Congress. The function Congress sought to protect is as often committed to subcommittees as it is to full committees of Congress, as indeed it must be. Construing the statute in a manner consistent with its obvious purpose . . . we hold that Congress intended the word "committee" in its generic sense, which would include subcommittees.

There are dozens of decisions along the very same lines. . . .

THE CHAIRMAN: The Chair believes [that the point of order is correct as to] the use of funds to deny submission of information to the subcommittee, but more importantly that the information to be submitted in the amendment is much broader than the information defined in the statute 7 U.S.C. section 12(e). The point of order is sustained.

§ 51.21 Where existing law (7 USC § 12(e)) requires an agency to furnish certain information to congressional committees upon request, it is not in order on a general appropriation bill to make funds for that agency contingent upon its furnishing information upon request to subcommittees.

On July 30, 1980,[5] an amendment to a general appropriation bill prohibiting the use of funds for the Commodity Futures Trading Commission to deny congressional subcommittees, acting at the direction and as an agent of the full committee, certain information required by the Commodity Exchange Act to be submitted to a congressional committee upon request, was held to be legislation, in the absence of a conclusive showing by the proponent of the amendment that changing the specific language of the Commodity Exchange Act requirement to cover requests by subcommittees as well as committees, did not change existing law. The proceedings were as follows:

> Amendment offered by Mr. [Benjamin S.] Rosenthal [of New York]: On page 49, line 9, after the "period" add the following:
>
> "No part of the funds appropriated herein shall be used by the Commission to deny to subcommittees of the House of Representatives or of the Senate, acting at the direction of and as an agent of a full committee, any information in the possession of the Commission relating to the amount of

5. 126 CONG. REC. 20475, 20476, 96th Cong. 2d Sess.

commodities purchased or sold by such trader as provided by Sec. 8(e) of the Commodity Exchange Act to be made available to any committee of either House of Congress acting within the scope of its jurisdiction.". . .

MR. [THOMAS S.] FOLEY [of Washington]: . . . I make a point of order against the amendment in that it constitutes legislation on an appropriations bill. The amendment of the gentleman from New York does not track the statute which sets out specific conditions under which information may be required of the Commodity Futures Trade Commission.

Mr. Chairman, the Commission is authorized to release information to any judicial body or congressional committee and is required to do so only at the request of a committee of the House of Representatives or the Senate. What the gentleman from New York seeks to do is to substitute an additional requirement that, when acting at the direction and as an agent of the committee, a subcommittee may request such information.

Mr. Chairman, all subcommittees act at the direction of and as agents of full committees or they do not act properly because they are creatures of full committees. This in fact does not change the situation that a subcommittee is a subcommittee and not a full committee. It requires an additional limitation on an appropriation other than a limitation of funds and constitutes a violation of the rule against legislation on appropriation bill. . . .

MR. ROSENTHAL: . . .

Mr. Chairman, I respectfully would like to bring to the attention of the Chair page 342 of Deschler's Procedures, section 10.9:

> While it is not in order in an appropriation bill, under the guise of a limitation, to impose additional burdens and duties on an executive of the federal government, amendments requiring the recipients of funds carried in the bill to be in compliance [with] existing law have been permitted, on the theory that the concerned federal officials are already under an obligation to oversee the enforcement of existing law and are thus burdened by no additional duties by the amendment. . . .

Additionally section 10.13 reads as follows:

> An amendment prohibiting the payment of expenses from funds in an appropriation bill, and containing language descriptive of the persons to whom the restriction applied, was held in order as a limitation on the use of funds in that bill which did not directly impose affirmative duties upon executive officials. 120 Cong. Rec. 21046, 93d Cong., 2d Sess., June 25, 1974 (H.R. 15544, Treasury, Postal Service, and executive office appropriations, fiscal 1975), where an amendment providing that "no funds shall be expended for persons during periods of their refusal to comply with valid congressional subpenas was held in order as a valid limitation which did not directly require executive officials to make determinations as to the validity of those subpenas. . . .

THE CHAIRMAN:[6] The Chair is ready to rule.

The Chair is confronted with the language of a specific statute, and the fact that the amendment deviates from the statute must have some effect, it would be assumed to expand the terms of the law absent a conclusive showing to the contrary and therefore it would be leg-

6. James C. Corman (Calif.).

islation on an appropriation bill, and the point of order is sustained.

Postal Rate Commission's Authority to Establish Rates; Interference With Discretion

§ 51.22 To a general appropriation bill containing funds for the postal service, an amendment to prohibit funds therein from being used to handle parcel post at less than attributable cost was ruled out as in violation of Rule XXI clause 2, when the proponent of the amendment failed to refute the point of order that its effect would directly interfere with the Postal Rate Commission's quasi-discretionary authority (contained in 39 USC § 3622, et seq.) to establish postal rates under guidelines in law.

On July 17, 1975,[7] during consideration in the Committee of the Whole of H.R. 8597 (Treasury Department, Postal Service, and general government appropriation bill), a point of order was sustained against the following amendment:

MRS. [MILLICENT] FENWICK [of New Jersey]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. Fenwick: Add a new section 613 on page 45, line 21: "None of the funds appropriated under this Act shall be available to permit Parcel Post to be handled at less than its attributable cost.". . .

MR. [TOM] STEED [of Oklahoma]: I insist on my point of order, Mr. Chairman. This amendment would have the effect of changing existing law. The Congress enacted the Postal Service Corporation bill and created the Rate Commission and delegated to the Rate Commission the sole and final authority on all postal rates. The impact of this amendment would be to limit and change that postal ratemaking power that is inherent in the law creating the Postal Corporation.

If the amendment here is permitted to prevail then all sorts of amendments affecting the operation of the Postal Service would be applicable and the whole purpose of the Postal Service Corporation law would be destroyed. So I think it is very imperative since this does change the law and the powers invested in the Rate Commission that we hold it is obviously legislation on an appropriation bill. . . .

THE CHAIRMAN:[8] Permit the Chair to direct a question to the gentleman from Oklahoma.

Is the gentleman's position such that in his opinion this amounts to a change in law? Would the gentleman speak to that point?

MR. STEED: Yes. The sole authority to determine what will be charged for parcel post, whether it is more or less than cost, is vested in the Postal Rate

7. 121 CONG. REC. 23239, 94th Cong. 1st Sess.

8. B. F. Sisk (Calif.).

Commission and to accept this amendment here would limit that authority which would change the law which vests that total power in that Commission. So it would require an action on the part not only of the ratemaking Commission but the Postmaster General in that he does not now have to abide by this sort of demand.

The whole purpose of the corporation was to take the power to do that sort of thing out of Congress and leave it in the Postal Corporation for the postal rate commitment.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Oklahoma makes a point of order against the amendment offered by the gentlewoman from New Jersey dealing with the availability of funds in connection with the matter of parcel post where the Postal Service permits parcel post to be handled at less than attributable costs.

The Chair feels that the point of order made by the gentleman from Oklahoma to the effect that, in essence, this changes basic law, must be sustained in light of the fact that the Chair does not feel that the gentlewoman from New Jersey has made a sufficient case that it would be otherwise.

Therefore, the Chair is constrained to sustain the point of order.

Timing of Expenditures

§ 51.23 An amendment to a general appropriation bill, providing that "no amount in excess of 20 percent of any appropriation contained in this Act for any agency for any fiscal year may be obligated by such agency during the last two months of such fiscal year" was ruled out as legislation restricting a discretionary authority conferred by law, since 31 USC § 665(c)(3) specifically confers discretionary authority on the Office of Management and Budget to determine the time frame for distribution of funds within the total period for which appropriated.

On June 25, 1980,[9] the Chair[10] applied the principle that it is not in order on a general appropriation bill, even by language in the form of a limitation, to restrict the discretionary authority conferred by law to adminster expenditures (rather than the use or amount of appropriated funds) including discretion as to the percentage of the funds which may be apportioned for expenditure within a certain period of time. The amendment, against which a point of order was raised, stated:

> Amendment offered by Mr. [Herbert E.] Harris [II, of Virginia]: Page 30, after line 12, insert the following:
>
> Sec. 503. No amount in excess of 20 percent of any appropriation contained in this Act for any agency for any fiscal year may be obligated by such agency during the last two months of such fiscal year. . . .

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9. 126 CONG. REC. 16815–17, 96th Cong. 2d Sess. Under consideration was H.R. 7590, energy and water development appropriations for 1981.

10. Philip R. Sharp (Ind.).

Mr. [JOHN T.] MYERS of Indiana: . . . Mr. Chairman, I make a point of order against the amendment on the grounds that it would be legislation on a general appropriations bill, and therefore violates rule XXI, clause 2.

Although the amendment uses the words "No amount," it is not a limitation in the accepted sense, that is, a refusal by Congress to appropriate for a specified purpose.

The effect of the amendment is a positive direction to the Executive, which is not in order under the precedents.

In addition, Mr. Chairman, the gentleman's amendment is not in order because the amendment proposes to change the application of existing law and is therefore legislation in an appropriation bill and is in violation of clause 2, rule XXI.

The gentleman's amendment provides that not more than 20 percent of the total appropriation made available for any agency for any fiscal year under the act may be obligated during the last 2 months of such fiscal year. Section 665(c)(3) of title 31 of the United States Code states the following:

> (3) Any appropriation subject to apportionment shall be distributed by months, calendar quarters, operating seasons, or other time periods, or by activities, functions, projects, or objects, or by a combination thereof, as may be deemed appropriate by the officers designated in subsection (d) of this section to make apportionments and reapportionments. Except as otherwise specified by the officer making the apportionment, amounts so apportioned shall remain available for obligation, in accordance with the terms of the appropriation, on a cumulative basis unless reapportioned.

The key phrase in this quote is:

> Any appropriation subject to apportionment shall be distributed . . . as may be deemed appropriate by the officers designated in subsection (d) of this section to make apportionments and reapportionments.

This phrase allows the agency budget officers discretionary authority to apportion the appropriations received each year in a manner that he deems appropriate considering the unique financial requirements of his particular agency. The gentleman's amendment deletes this discretionary authority by prohibiting him from obligating more than 20 percent of his appropriations during the last 2 months of the fiscal year. This obviously changes the application of existing law and is in violation of the House rules. Mr. Chairman, in chapter 26, section 1.8 of Deschler's Procedures, the following is stated:

> The provision of the rule forbidding in any general appropriation bill a "provision changing existing law" is construed to mean the enactment of law where none exists, or a proposition for repeal of existing law. Existing law may be repeated verbatim in an appropriation bill, but the slightest change of the text causes it to be ruled out. . . .

MR. HARRIS: . . . It is a fact that this amendment is a limitation amendment. It is clear and it is not confusing. It is like many other amendments that we have looked at before in this House.

> No amount in excess of 20 percent of any appropriation contained in this Act for any agency for any fiscal year may be obligated for such agen-

cy during the last two months of such fiscal year.

Mr. Chairman, what we have to look to on a limitation bill is the rules, and I would refer to chapter 25, section 10.6 of Deschler, which states, with regard to H.R. 11612, in the 91st Congress, 1st session:

> An amendment to a general appropriation bill which is strictly limited to funds appropriated in the bill, and which is negative and restrictive in character and prohibits certain uses of the funds, is in order as a limitation even though its imposition will change the present distribution of funds and require incidental duties on the part of those administering the funds.

Clearly, that is precisely what this language does, and I rely very strongly upon Deschler's, chapter 25, section 10.6. . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Indiana (Mr. Myers) makes the point of order that the amendment offered by the gentleman from Virginia (Mr. Harris) constitutes legislation on an appropriation bill in violation of clause 2, rule XXI, by prohibiting the incurring of obligations of any funds appropriated in the bill in excess of 20 percent of the total amount appropriated in the last 2 months of availability of those funds.

The Chair has examined existing law (31 U.S.C. 665(c)(3)) with respect to distribution of appropriations. The Chair interprets this law to confer discretionary authority upon the Office of Management and Budget, and thereby upon the agency incurring the actual obligation, to determine the most appropriate time frame for the distribution of funds within the period of availability for which appropriated.

Under the precedents of the House cited on page 532 of the House Rules and Manual, it is not in order on a general appropriation bill to affirmatively take away a discretionary authority conferred by law. Because the pending amendment could conceivably restrict the specific authority conferred by existing law upon contracting officers to incur obligations at the time deemed most appropriate by them the Chair must sustain the point of order.

Parliamentarian's Note: On July 28, 1980,[11] the Chair made a comparable ruling on a similar amendment, but based the ruling on a burden of proof test, upon a determination that the June 25, 1980, ruling, in its characterization of the extent of discretionary authority conferred upon recipient agencies by the statute, was unnecessarily broad.

§ 52. Provisions as Imposing New Duties

This section discusses those issues raised when a purported limitation either directly or indirectly requires a federal official to perform duties which are arguably not required of him under the existing laws pertaining to his office.[12]

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11. See § 22.26, supra.

12. As to the effect of provisions imposing additional duties on persons who are not federal officials, see Sec. 53, infra.

Of course, the application of any limitation on an appropriation bill places some minimal extra duties on federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation. But when an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order.

In making a ruling on such issues, the Chair may be called upon to interpret the responsibilities imposed upon federal officials by an existing law to determine whether a purported limitation constitutes a change in the law's requirements. The proponent of an amendment, or the manager of the bill if a point of order is raised against the bill, should be required to assume the burden of proving that duties being imposed by the provision in question are merely ministerial or are already required by law. In the absence of such a showing, the Chair would not be required to determine for himself whether the proposed duties were already required by existing law.[13]

General Rule

§ 52.1 Language in an appropriation bill imposing duties upon an executive not contemplated by law is legislation and not in order.

On May 17, 1937,[14] a provision in a general appropriation bill that "no part of this appropriation shall be available for construction of such project until it is determined by the Secretary of the Interior, upon approval, as to legality by the Attorney General, that authorization therefor has been approved by act of Congress," was ruled out as legislation. Points of order were made as follows against such language which was contained in an Interior Department appropriation bill (H.R. 6958):

> MR. [FRANK H.] BUCK [of California]: Mr. Chairman, I make a point of order against the language beginning in line 24 with the word *"Provided."*
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the entire paragraph.
>
> THE CHAIRMAN:[15] Does the gentleman from New York make a point of order against the entire paragraph?

13. See the discussion of the ruling of June 23, 1971, in the "Note on Contrary Rulings," which follows § 53.6, infra.
14. 81 CONG. REC. 4687, 4688, 75th Cong. 1st Sess.
15. Jere Cooper (Tenn.).

MR. TABER: I do.

THE CHAIRMAN: The gentleman from California made a point of order against the proviso?

MR. BUCK: Against the proviso.

THE CHAIRMAN: The gentleman from California makes a point of order against the proviso appearing in line 24, page 81. The gentleman from New York (Mr. Taber) makes a point of order against the entire paragraph. Of course, that presents to the Chair the necessity of ruling upon the point of order as it relates to the entire paragraph, because if any part of a paragraph is subject to a point of order it naturally follows that the entire paragraph is subject to a point of order. . . .

It appears to the Chair there can be no doubt that the language appearing in the proviso is legislation on an appropriation bill. The language imposes additional duties upon two executive officers of the Government, the Secretary of the Interior and the Attorney General. Therefore, the language in the proviso constituting legislation on an appropriation bill, in violation of the rules of the House, and a point of order being good as to part of a paragraph, it naturally applies to the entire paragraph. The Chair, therefore, sustains the point of order made by the gentleman from New York as to the entire paragraph.

General Principles; Requiring Certification of Satisfaction as Condition Precedent to Disbursement

§ 52.2 An amendment in the form of a limitation on an appropriation bill providing an appropriation shall not be available until the agency charged with the administration of such appropriation shall be satisfied and shall so certify that no person employed upon the work provided has been required as a condition precedent to employment to join or not to join or to pay any sum to any organization was held to be legislation and not in order in that it imposed additional affirmative duties on the executive branch (overruling 4 Hinds' Precedents § 3942).

On May 14, 1941,[16] the Committee of the Whole was considering H.R. 4590, an Interior Department appropriation bill. The Clerk read as follows:

> Amendment offered by Mr. [Clare E.] Hoffman [of Michigan]: On page 87, after line 24, insert "*Provided,* That no part of the appropriation herein made shall be available until the agency charged with the administration of the fund shall be satisfied, and shall so certify to the Secretary of the Treasury, that no person employed upon the work provided has been required as a condition precedent to employment to join or not to join or to pay any sum to any organization."
>
> MR. [FRANK E.] HOOK [of Michigan]: Mr. Chairman, I make a point of order against the amendment. It is legislation on an appropriation bill.

16. 87 CONG. REC. 4053–55, 77th Cong. 1st Sess.

THE CHAIRMAN:[17] Does the gentleman from Michigan desire to be heard on the point of order?

MR. HOFFMAN: No; the precedents sustain the amendment.

THE CHAIRMAN: The Chair would be pleased to have the gentleman from Michigan cite the precedents.

MR. HOFFMAN: Fourth Hinds', section [3942]. I copied it from that precedent. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, if I may be permitted, from what I have heard of the amendment, this seems to be a pure limitation that no funds shall be permitted to be paid to any person who is required as a condition precedent to employment to do certain things. There is no additional duty in any way imposed upon anyone and there is no legislation contained in the limitation. . . .

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

The author of the amendment has cited as a precedent supporting his contention that the amendment is in order, a decision appearing in section 3942 of the fourth volume of Hinds' Precedents. The Chair has examined that decision and is inclined to agree with the gentleman from Michigan that there is some analogy between the question under consideration here and the question under consideration under that decision, but the Chair invites attention to the fact that this decision was made in 1901. The Chair also invites attention to a subsequent decision, on January 6, 1923, which appears in section 1706 of volume 7 of Cannon's Precedents. This is a rather lengthy decision, but it appears to the Chair to be directly in point on the question here presented.

After citing numerous precedents, the Chairman of the Committee of the Whole, Mr. Hicks, had the following to say:

> As a general proposition the Chair feels that whenever a limitation is accompanied by the words "unless," "except," "until," "if," "however," there is ground to view the so-called limitation with suspicion, and in case of doubt as to its ultimate effect the doubt should be resolved on the conservative side. By doing so appropriation bills will be relieved of much of the legislation which is being constantly grafted upon them and a check given a practice which seems to the Chair both unwise and in violation of the spirit, as well as the substance, of our rules. Without endeavoring to lay down any hard and fast rule, the Chair feels that the following tests may be helpful in deciding a question of order directed against a limitation, first having determined the powers granted or the duties imposed by existing law:
>
> Does the limitation apply solely to the appropriation under consideration?
>
> Does it operate beyond the fiscal year for which the appropriation is made?
>
> Is the limitation accompanied or coupled with a phrase applying to official functions, and if so, does the phrase give affirmative directions in fact or in effect, although not in form?
>
> Is it accompanied by a phrase which might be construed to impose additional duties or permit an official to assume an intent to change existing law?
>
> Does the limitation curtail or extend, modify, or alter existing powers or duties, or terminate old or confer new ones? If it does, then it must be

17. Jere Cooper (Tenn.).

conceded that legislation is involved, for without legislation these results could not be accomplished.

If the limitation will not fairly stand these tests then in my opinion the point of order should be sustained. Applying in the present instance the standards set forth, the judgment of the Chair is that the point of order is well taken and the Chair sustains it.

The Chair invites attention to the fact that the pending amendment provides—

That no part of the appropriation herein made shall be available until the agency charged with the administration of the fund shall be satisfied, and shall so certify to the Secretary of the Treasury, that no person employed upon the work provided has been required as a condition precedent to employment to join or not to join or to pay any sum to any organization.

The Chair is of opinion that this amendment would impose additional duties upon the officials who would have to make the certificate contemplated by the amendment. The Chair is likewise of opinion the effect of this amendment would be to impose additional duties upon the Secretary of the Treasury, at least to the extent of requiring him to receive the certificate contemplated under the amendment. Therefore, under the precedents cited by the Chair, appearing in section 1706 of volume VII, Cannon's Precedents, the Chair is of opinion that the amendment does embrace legislation on an appropriation bill. The Chair, therefore, sustains the point of order.

Parliamentarian's Note: The Chair in effect overruled the decision in 4 Hinds' Precedents § 3942 on the basis of the rationale contained in the ruling in 7 Cannon's Precedents § 1706 as reiterated in the headnote. The Chair's ruling in 4 Hinds' Precedents § 3942 is clearly not supportable under the modern practice. See also § 51.6, supra. The well-reasoned statement of the doctrine of limitations by Chairman Hicks, contained in 7 Cannon's Precedents § 1706, serves as an essential basis for determining the propriety of amendments in the form of limitations.

Requiring a Hearing Before Making Determination

§ 52.3 During consideration of an appropriation for the Office of Information of the Department of Agriculture, language providing that transfers from other appropriations to this appropriation, where authorized, should be adjusted as determined by the Bureau of the Budget, whenever such other appropriations are found to vary from the original budget estimates therefor, was ruled out as legislation.

On Apr. 27, 1950,[18] during consideration in the Committee of the Whole of a general appropriation

18. 96 CONG. REC. 5914, 81st Cong. 2d Sess.

bill (H.R. 7786), a provision as described above was under consideration. The following proceedings took place:

MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make a point of order to the language appearing on page 207[19] . . .

. . . I make the point of order that these provisions require additional duties upon the part of both the Secretary of Agriculture and the Bureau of the Budget and constitute legislation on an appropriation bill and are, therefore, subject to a point of order.

THE CHAIRMAN:[20] Does the gentleman from Mississippi desire to be heard? . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: . . . I am of the opinion that the point of order should be sustained.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from New York [Mr. Keating] makes the point of order against the language appearing on page 207 of the bill, which has been pointed out by him, on the ground that it includes legislation on an appropriation bill in violation of the rules of the House. The gentleman from Mississippi concedes the point of order. The Chair sustains the point of order.

19. The language objected to stated: that if the total amounts of the appropriations from which transfers to this appropriation are herein authorized exceed or fall below the amounts estimated therefor in the budget, the amounts transferred therefrom to this appropriation shall be increased or decreased in such amounts as the Bureau of the Budget, after a hearing thereon with representatives of the Department, shall determine are appropriate to the requirements.

20. Jere Cooper (Tenn.).

Duty of Determining Rationale or Motive

§ 52.4 The application of any limitation on an appropriation bill places some minimal extra duties on federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation; but when an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or inevitably requires them to make investigations, compile evidence, discern the motives or intent of individuals, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order.

On July 31, 1969,[1] the Committee of the Whole was consid-

1. 115 CONG. REC. 21653, 21675, 91st Cong. 1st Sess.

Note: The principles stated in this precedent are difficult to apply, of

ering H.R. 13111, a Departments of Labor, and Health, Education, and Welfare appropriation bill. The Clerk read as follows:

Sec. 408. No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parents or parent. . . .

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I offer amendments and I ask unanimous consent that the amendments be considered en bloc.

THE CHAIRMAN:[(2)] Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. Conte: On page 56, line 11, strike lines 11 through 15 and insert the following:

"Sec. 408. No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parent or parents, in order to overcome racial imbalance."

And on page 56, line 16. Strike lines 16 through 20 and insert the following:

"Sec. 409. No part of the funds contained in this act may be used to force busing of students, the abolishment of any school or the attendance of students at a particular school in order to overcome racial imbalance as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school."

MR. [ROBERT L. F.] SIKES [of Florida]: Mr. Chairman, I wish to make a point of order against the amendment.

THE CHAIRMAN: The Chair will hear the gentleman.

MR. SIKES: Mr. Chairman, it appears to me that the rulings of the Chair heretofore on this bill this afternoon show clearly that this is legislation on an appropriation bill and not a simple limitation in that the language of the amendment will require someone in the executive department to determine whether busing is to overcome racial imbalance. Therefore, it imposes additional duties and as such I consider it to be legislation on an appropriation bill. The Chair has so ruled on a number of occasions on this bill to date. . . .

MR. CONTE: . . . Mr. Chairman, I do not see where these amendments I

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course, and some rulings may seem to have departed from the strictest application thereof. Thus, as an example, in one line of rulings, amendments were held in order which sought to withhold payments under military or defense contracts in situations in which work stoppages or strikes had impeded performance of the contracts. (See 87 CONG. REC. 4837, 4838, 4890, 4891, and 4901, 77th Cong. 1st Sess., rulings of June 6 and June 9, 1941; and 106 CONG. REC. 12269, 12270, 86th Cong. 2d Sess., June 9, 1960.) Such rulings would probably not be regarded as within the guidelines noted above for determining whether proposed limitations are allowable under Rule XXI clause 2.

2. Chet Holifield (Calif.).

have, which only change several words in order to overcome racial imbalance, and these are the words that I add, and that is the crucial term—I do not see where it gives the Department of Health, Education, and Welfare or its head or anyone under the Secretary any additional burdens that the present Jamie Whitten sections 408 or 409 do not. I think it is certainly a limitation on the expenditure of funds, and, therefore, the point of order should be overruled.

Further, I may say, Mr. Chairman, if a point of order would lie on this, it will certainly lie on sections 408 and 409, and I will offer such. . . .

THE CHAIRMAN: The Chair is prepared to rule. The Chair recognizes that this is a very difficult matter. The proposed amendment for section 408 is different from section 408 of the bill in that it has added the words "in order to overcome racial imbalance."

The Chair believes that this would impose duties upon officials which they do not have at the present time, and therefore, it is legislation on an appropriation bill.

MR. CONTE: Mr. Chairman, may I be heard for a minute?

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Chairman, regular order.

THE CHAIRMAN: The gentleman will please desist until the Chair has finished his ruling on the second amendment because they are being considered en bloc.

The additional words in the amendment to section 409 are "in order to overcome racial imbalance" and this clearly requires additional duties on the part of the officials. Therefore, it is not negative in nature and is legislation on an appropriation bill.

The Chair, therefore, sustains the point of order.

Parliamentarian's Note: While the Chair was not asked to rule on the sections of the bill being amended, requiring the determination of whether a student was being bused "against the choice of his parents or parent", that language might also have been construed as legislation.

Receiving Information

§ 52.5 While it is not in order in an appropriation bill to insert by way of amendment a proposition which places additional duties on an executive officer, the mere requirement that the executive officer be the recipient of information is not considered as imposing upon him any additional burdens and is in order.

The ruling of June 11, 1968,[3] is discussed in the "Note on Contrary Rulings," which follows § 53.6, infra. One of the issues also addressed in the proceedings of that day was the effect of a seeming imposition of duties on private individuals or others not

3. 114 CONG. REC. 16712, 90th Cong. 2d Sess.

in the employ of the federal government.

New Determinations

§ 52.6 An amendment to an appropriation bill proposing reduction of expenditures through an apportionment procedure authorized by law, but requiring such reduction to be made "without impairing national defense," was held to require the executive branch to make new determinations and therefore to be out of order as legislation.

On May 29, 1957,[4] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 7665), amendments were offered as indicated below:

> The Clerk read as follows:
>
> Amendment offered by [Gerald R.] Ford [of Michigan]: On page 10, line 5, strike out "$392 million" and insert "$400 million". . .
>
> The Clerk read as follows:
>
> Amendment offered by Mr. [August E.] Johansen [of Michigan] as a substitute for the amendment offered by Mr. Ford: On page 10, line 5, strike out "$392 million" and insert in lieu thereof "400 million" and on page 10, line 6, immediately before the period insert the following: "*Provided,* That appropriations made by this title shall, without impairing national defense, be reduced in the amount of not less than $8 million through the apportionment procedure provided for in section 3679 of the Revised Statutes of the United States (31 U.S.C. 665)." . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I renew my point of order that the gentleman's amendment is legislation on an appropriation bill, also that it imposes additional duties.

THE CHAIRMAN:[5] Does the gentleman from Michigan [Mr. Johansen] desire to be heard?

MR. JOHANSEN: Mr. Chairman, may I say that in the appropriation bill in the 81st Congress, second session, a provision, section 1214, to the effect that appropriations, reappropriations, contract authorizations, and reauthorizations made by this act for departments and agencies in the executive branch of the Government shall without impairing national defense be reduced in an amount of not less than $550 million.

It is on the basis of that sort of limitation that I offered the amendment.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Michigan [Mr. Johansen] offers an amendment in the nature of a substitute to the pending amendment, on page 10, line 6, by adding language contained in the proviso of the substitute. That language indicates that the appropriations made by this title shall without impairing the national defense be reduced in the amount of not less than $8 million through the apportionment procedures provided for in another section of exist-

4. 103 CONG. REC. 8069, 8070, 85th Cong. 1st Sess.

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

ing law, which section vests authority in the executive branch to make certain apportionments.

It is the opinion of the Chair that the language of this proviso imposing, as it does, an obligation and requirement on the executive branch to make reductions without impairing the national defense and without establishing any standards therefor is legislation on an appropriation bill, is subject to the point of order, and the Chair sustains the point of order.

Duties Indirectly Resulting From Operation of Other Laws

§ 52.7 Language in an appropriation bill providing that none of the funds therein shall be used to pay any employee of the Department of Agriculture who serves as a member of the Board of Directors or as an officer of the Commodity Credit Corporation was held to be a negative limitation and in order although indirectly effecting a change in policy.

On May 11, 1960,[6] the Committee of the Whole was considering H.R. 12117, an Agriculture Department appropriation bill. The Clerk read as follows:

Sec. 408. No part of the funds appropriated by this Act shall be used to pay the compensation of any employee or officer of the Department, except the Secretary of Agriculture, who, in addition to other regularly assigned responsibilities, serves as a member of the Board of Directors or as an officer of the Commodity Credit Corporation after February 1, 1961.

MR. [PAUL] BROWN of Georgia: Mr. Chairman, a point of order.

THE CHAIRMAN:[7] The gentleman will state it.

MR. BROWN of Georgia: . . . This reverses a decision made by the Banking and Currency Committee and the Congress in 1949, when the CCC Charter Act was amended to strike out a similar restriction which had been enacted in 1948. It is, therefore, legislation, and the mere fact it is put in the form of a limitation on the use of funds appropriated by the bill does not save it. As paragraph 1691, volume 7, of Cannon's Precedents of the House of Representatives puts it:

> The purpose rather than the form of a proposed limitation is the proper criterion by which its admissibility should be judged, and if its purpose appears to be a restriction of executive discretion to a degree that may be fairly termed a change of policy rather than a matter of administrative detail it is not in order.

Again in paragraph 1606 of the same volume, the following is found:

> Whenever a purported limitation makes unlawful that which before was lawful or makes lawful that which before was unlawful it changes existing law and is not in order on an appropriation bill.
>
> A proper limitation is negative and in the nature of a veto, and when it

6. 106 CONG. REC. 10053, 10054, 86th Cong. 2d Sess.

7. Paul J. Kilday (Tex.).

assumes affirmative form by direction to an executive in the discharge of his duties under existing law it ceases to be a limitation and becomes legislation.

Section 408 in effect requires the Secretary to take affirmative action. To carry out the farm programs financed by CCC, the Secretary would have to appoint new Board members, recruited from private life, to replace the six Department officers other than himself who now serve on the Board. He would also have to recruit and appoint new personnel to serve as officers of the Corporation. This not only means the section constitutes legislation, but also means it is not entitled to the protection of the Holman rule, because it would not save the Government money. On the contrary, it would require hiring new employees at additional expense to the Government. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, the section clearly provides a limitation on the use of funds that are appropriated in this bill. It does not change the Commodity Credit Corporation charter. It does not change any basic law. It just simply limits what the money in this bill can be used for. It has been my experience and observation during the years here that the Chair has many times said that it is a negative limitation on the use of money and that it is clearly in order, and on that I rest the committee's position.

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

The Chair has had an opportunity to examine the precedents in this connection, including the precedents to which the gentleman from Georgia has referred and from which he has read. The Chair would also refer to paragraph 1694 of Cannon's Precedents, volume 7, the language being:

> While a limitation may not involve change of existing law or affirmatively restrict executive direction, it may properly effect a change of administrative policy and still be in order.

The Chair has examined additional precedents bearing on this question. The Chair is constrained to hold that section 408 is a restriction on a manner in which the funds can be used, and constitutes a negative limitation, and, therefore, overrules the point of order.

Parliamentarian's Note: A discussion comparing the precedents cited above, 7 Cannon's Precedents §§ 1691 and 1694 can be found in the introduction to § 51, supra. An issue suggested by the debate on May 11, 1960, is whether language in an appropriation bill should be ruled out if it may lead prospectively or indirectly to the imposition of duties on officials, by the operation of other laws. The ruling suggests that only where the duties are imposed directly by the language of the provision in question is it subject to a point of order.

Discretionary Transfer of Funds

§ 52.8 Language in an appropriation bill making an appropriation for specific ob-

jects "together with such amounts [transferred] from other appropriations . . . as may be determined by the Secretary," was conceded to be legislation on an appropriation bill and held not in order.

On May 17, 1951,[8] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 3973), a point of order was raised against the following provision:

The Clerk read as follows:

OFFICE OF INFORMATION

For necessary expenses in connection with the publication . . . and distribution of bulletins, documents, and reports, the preparation, distribution, and display of agricultural motion and sound pictures . . . and the coordination of informational work and programs authorized by Congress in the Department, $1,271,000, together with such amounts from other appropriations or authorizations as are provided in the schedules in the budget for the current fiscal year for such expenses, which several amounts or portions thereof, as may be determined by the Secretary, not exceeding a total of $16,200, shall be transferred to and made a part of this appropriation, of which total appropriation amounts not exceeding those specified may be used for the purposes enumerated as follows: For preparation and display of exhibits, $104,725. . . .

MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make a point of order against the language in lines 4 to 9, inclusive, page 46, on the ground that it involves additional duties on the part of the Secretary of Agriculture.

THE CHAIRMAN:[9] Does the gentleman from Mississippi care to be heard on the point of order?

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Requiring Annual Report

§ 52.9 Language in a general appropriation bill requiring that all interchanges of appropriations made under the authority granted the Commissioner of Indian Affairs "shall be reported to Congress in the annual Budget" was held legislation on an appropriation bill and not in order.

On Mar. 1, 1938,[10] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. At one point the Clerk read as follows:

For administrative expenses, including personal services in the District of Columbia and elsewhere; not to exceed $2,500 for printing and binding; purchase of periodicals, directories, and books of reference; purchase and oper-

8. 97 CONG. REC. 5468, 5469, 82d Cong. 1st Sess.

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

10. 83 CONG. REC. 2651, 2652, 75th Cong. 3d Sess.

ation of motor-propelled passenger-carrying vehicles; traveling expenses of employees; rent of office and storage space; telegraph and telephone tools; and all other necessary expenses not specifically authorized herein, $204,000; in all, $1,745,000, to be immediately available and to remain available until June 30, 1940: *Provided further,* That not to exceed 5 percent of the amount of any specific authorization may be transferred, in the discretion of the Commissioner of Indian Affairs, to the amount of any other specific authorization, but no limitation shall be increased more than 10 percent by any such transfer. All interchanges under this authorization shall be reported to Congress in the annual Budget.

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make the point of order to the language beginning on page 68, line 23, down to the end of the paragraph. It is legislation on an appropriation bill. . . .

THE CHAIRMAN:[11] The Chair is ready to rule.

The gentleman from Pennsylvania makes the point of order that the proviso beginning in line 23 on page 68 provides an expenditure not authorized by existing law. The particular language of this proviso was the subject of a point of order last year as shown by the Record of May 14, 1937, page 4603. The language is very clear and specific and is exactly the same as the language carried in last year's bill with the exception of the last sentence, which reads:

> All interchanges under this authorization shall be reported to Congress in the annual Budget.

It seems to the Chair that the last sentence is clearly subject to a point of order.

The Chair, therefore, sustains the point of order against the proviso beginning in line 23 of page 68.

§ 52.10 Language in a general appropriation bill providing that a statement of any transfer of appropriations made thereunder shall be included in the annual budget was held to be legislation and not in order on an appropriation bill.

On Apr. 23, 1937,[12] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 6523), a point of order was raised against the following provision:

The Clerk read as follows:

INTERCHANGE OF APPROPRIATIONS

> Not to exceed 10 percent of the foregoing amounts for the miscellaneous expenses of the work of any bureau, division, or office herein provided for shall be available interchangeably for expenditures on the objects included within the general expenses of such bureau, division, or office; but no more than 10 percent shall be added to any one item of appropriation except in cases of extraordinary emergency, and then only upon the written order of the Secretary of Agriculture: *Provided,* That a statement of any transfers of appropriations made hereunder shall be included in the annual Budget.

11. Marvin Jones (Tex.).

12. 81 CONG. REC. 3801, 3802, 75th Cong. 1st Sess.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Chairman, I make a point of order against the entire section on the ground it is legislation. It gives additional authority to the Secretary of Agriculture and places new duties upon him.

THE CHAIRMAN:[13] The Chair is ready to rule. The proviso at the bottom of the paragraph is clearly legislation, and therefore the point of order of the gentleman from New York [Mr. Snell] is sustained.

Requiring Administration and Disbursement in Certain Manner

§ 52.11 A provision in the District of Columbia appropriation bill providing that the appropriation for public assistance shall be so administered as to constitute the total amount that will be utilized during such fiscal year for such purposes was held to place additional duties upon the Commissioners and therefore legislation on an appropriation bill and not a retrenchment within the Holman rule exception.

On Feb. 1, 1938,[14] the Committee of the Whole was considering H.R. 9181, a District of Columbia appropriation bill. The following proceedings took place:

PUBLIC ASSISTANCE

For the purpose of affording relief to residents of the District of Columbia who are unemployed or otherwise in distress because of the existing emergency, to be expended by the Board of Public Welfare of the District of Columbia by employment and direct relief, in the discretion of the Board of Commissioners and under rules and regulations to be prescribed by the board and without regard to the provisions of any other law, payable from the revenues of the District of Columbia, $900,000, and not to exceed 7½ percent of this appropriation and of Federal grants reimbursed under this appropriation shall be expended for personal services: *Provided*, That all auditing, disbursing, and accounting for funds administered through the Public Assistance Division of the Board of Public Welfare, including all employees engaged in such work and records relating thereto, shall be under the supervision and control of the Auditor of the District of Columbia: *Provided further*, That this appropriation shall be so apportioned and distributed by the Commissioners over the fiscal year ending June 30, 1939, and shall be so administered, during such fiscal year, as to constitute the total amount that will be utilized during such fiscal year for such purposes: *Provided further*, That not more than $75 per month shall be paid therefrom to any one family.

MR. [GERALD R.] BOILEAU [of Wisconsin]: Mr. Chairman, I make a point of order against the proviso appearing

13. Franklin W. Hancock, Jr. (N.C.).

14. 83 CONG. REC. 1364, 75th Cong. 3d Sess.

on page 58, line 2, after the word "Columbia" and ending on line 7 with the word "purposes."

I make the point of order that this proviso is legislation on an appropriation bill. . . .

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, the language about which the gentleman complains reads as follows:

> *Provided further*, That this appropriation shall be so apportioned and distributed by the Commissioners over the fiscal year ending June 30, 1939, and shall be so administered during such fiscal year as to constitute the total amount that will be utilized during such fiscal year for such purposes.

Unquestionably that is a limitation upon an appropriation and therefore comes within the rules of the House. The object is to save money, and the provision shows on its face that it will save money. . . .

THE CHAIRMAN:[15] . . . The Chair has examined the language employed very carefully, and if I am correct in my construction of that language, it seeks to impose an additional burden upon the Commissioners who are charged with the duty of administering the fund sought to be appropriated. In addition to that, there is nothing apparent in the language of the section that will result in a saving. The inference that we have from the statement of the chairman of the Subcommittee on Appropriations is not sufficient to bring it within the rule that a saving will be effected.

The Chair is therefore of the opinion that the point of order is well taken and so rules.

15. William J. Driver (Ark.).

Additional Determination to That in Pending Language

§ 52.12 Legislation permitted to remain in an appropriation bill may be perfected by germane amendments which do not provide additional legislation, but to a legislative provision in an appropriation bill authorizing transfers between appropriations with the approval of the Director of the Budget an amendment requiring the Director to first determine that such transfers would not result in a deficiency requiring restoration of funds was held to add requirements for additional determinations.

On Feb. 19, 1953,[16] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 3053), a point of order was raised against an amendment, as indicated:

> The Clerk read as follows:
>
> "Military personnel requirements," Department of the Air Force, $115 million; the foregoing amounts under this heading to be derived by transfer from such appropriations available to the Department of Defense for obligation during the fiscal year 1953 as may be designated by the Secretary of Defense with the approval of the Director of the Bureau of the Budget.

16. 99 CONG. REC. 1280, 83d Cong. 1st Sess.

MR. [SAMUEL W.] YORTY [of California]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Yorty: On page 12, line 17, after the word "Budget", insert a new sentence as follows: "Before approving any such transfer, the Director of the Bureau of the Budget shall first determine that such transfer will not result in a deficiency requiring restoration of any of the amount transferred to the appropriation from which the transfer is approved.". . .

MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I make a point of order against the amendment, that it is legislation on an appropriation bill and imposes new duties on the Director of the Bureau of the Budget.

THE CHAIRMAN:[17] Does the gentleman from California desire to be heard on the point of order?

MR. YORTY: Yes, Mr. Chairman. I am simply spelling out one of the conditions under which the transfer of funds is to be approved by the Director of the Bureau of the Budget. This appropriation bill already legislates, in that it requires the approval of the Director of the Bureau of the Budget. I am simply saying that he find a condition precedent before he approves that transfer. I do not think the point of order is well taken.

THE CHAIRMAN: The Chair is ready to rule.

In the opinion of the Chair the amendment contains legislation, contrary to the rules of the House.

The Chair sustains the point of order.

17. Leo E. Allen (Ill.).

Requirement for Promulgation of Regulations

§ 52.13 A paragraph in a general appropriation bill providing that appropriations in the bill available for travel expenses shall be available for expenses of attendance of officers and employees at meetings or conventions "under regulations prescribed by the Secretary," was conceded to be legislation and held not in order.

On May 2, 1951,[18] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3790), a point of order was raised against the following provision:

The Clerk read as follows:

> Sec. 104. Appropriations in this act available for travel expenses shall be available, under regulations prescribed by the Secretary, for expenses of attendance of officers and employees at meetings or conventions of members of societies or associations concerned with the work of the bureau or office for which the appropriation concerned is made.

MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make the point of order against section 104 that it is legislation on an appropriation bill and involves additional duties.

THE CHAIRMAN:[19] Does the Chair understand that the gentleman from New York raises objection to the para-

18. 97 CONG. REC. 4738, 82d Cong. 1st Sess.

19. Wilbur D. Mills (Ark.).

graph because of the use of the language "under regulations prescribed by the Secretary" in lines 18 and 19?

MR. KEATING: I do object to those words, and feel that that makes the section out of order as it now stands, but I would still press the point of order even with those words eliminated.

MR. [HENRY M.] JACKSON of Washington: I wonder if the gentleman would accept the section if it remains as is except for the elimination of the words "under regulations prescribed by the Secretary."

MR. KEATING: I feel that even with the elimination of those words it would still involve legislation on an appropriation bill, for exactly the same reasons for which the Chair has held section 102 subject to a point of order.

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

THE CHAIRMAN: The point of order is sustained.

To the Extent the Secretary Finds Necessary

§ 52.14 In an appropriation bill, providing funds for grants to states for unemployment compensation, language stating "only to the extent that the Secretary finds necessary," was held to impose additional duties and to be legislation on an appropriation bill and not in order.

On Mar. 27, 1957,[20] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 6287), a point of order was raised against the following provision:

The Clerk read as follows:

> Grants to States for unemployment compensation and employment service administration: For grants in accordance with the provisions of the act of June 6, 1933, as amended (29 U.S.C. 49–49n), for carrying into effect section 602 of the Servicemen's Readjustment Act of 1944, for grants to the States as authorized in title III of the Social Security Act, as amended (42 U.S.C. 501–503), including, upon the request of any State, the purchase of equipment, and the payment of rental for space made available to such State in lieu of grants for such purpose, for necessary expenses including purchasing and installing of air-conditioning equipment in connection with the operation of employment office facilities and services in the District of Columbia, and for expenses not otherwise provided for, necessary for carrying out title IV of the Veterans' Readjustment Assistance Act of 1952 (66 Stat. 684) and title XV of the Social Security Act, as amended (68 Stat. 1130), $262 million, [of which $12 million shall be available only to the extent that the Secretary finds necessary to meet increased costs of administration resulting from changes in a State law or increases in the numbers of claims filed and claims paid for increased salary costs resulting from changes in State salary compensation plans embracing employees of the State generally over those upon which the State's basic grant (or the allocation for the District of Columbia) was based, which increased costs of administration cannot be provided for by normal budgetary adjustments:] . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.

20. 103 CONG. REC. 4559, 4560, 85th Cong. 1st Sess.

THE CHAIRMAN:[1] The gentleman will state it.

MR. TABER: Mr. Chairman, I make the point of order against the language beginning after the first figure in line 5, with the words "of which" down to the word "adjustments", in line 15, as legislation upon an appropriation bill and not authorized by law.

THE CHAIRMAN: Does the gentleman from Rhode Island wish to be heard on the point of order?

MR. [JOHN E.] FOGARTY [of Rhode Island]: I do, Mr. Chairman. This language has been carried in the bill for about 10 years, I think. It was first put in, I believe, under the leadership of Mr. Keefe when he was chairman of this subcommittee because we thought it was in the form of a limitation on an appropriation bill and would discourage supplementals and deficiencies that had previously occurred. This $12 million was set aside for the specific reason of taking care of unseen workloads that developed during the year and increased States salaries which by law we are bound to provide when the States increase salaries. So, in order to provide a fund like this that would prevent them from coming back with supplementals each year we agreed on this language. It was the intention of the committee to be a limitation upon an appropriation.

MR. TABER: Mr. Chairman, I should like to add to my point of order that it requires additional duties of the Secretary.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York makes the point of order that the words referred to, beginning in line 5 and ending in line 15, are legislation on an appropriation bill.

The Chair has studied the legislation and finds in agreement with the statement of the gentleman from New York that additional duties are imposed upon the Secretary, as shown in line 6, which reads, "that the Secretary finds necessary," and so forth. Therefore, the Chair must uphold the point of order.

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

Mandating Contracting Practices

§ 52.15 To the Departments of State, Justice, Commerce, and the Judiciary appropriation bill an amendment providing that "all repair and overhaul on Civil Aeronautics Administration airplanes costing more than $100 shall be done on contract after submission of bids" was held to be legislation on an appropriation bill and not in order.

On May 3, 1946,[2] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 6056), a point of order was raised against the following amendment:

MR. [JENNINGS] RANDOLPH [of West Virginia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

2. 92 CONG. REC. 4424, 4425, 79th Cong. 2d Sess.

Amendment offered by Mr. Randolph:

On page 56, line 25, strike out "$1,500,000" and insert "$1,200,000."

On page 57, line 9, strike out the period, insert a colon and the following: "*Provided*, That no funds in this paragraph shall be expended for the pay of any employees of the Civil Aeronautics Administration for the maintenance of more than one parts warehouse, nor for the repair or overhaul of aircraft costing more than $100 per airplane: *And provided further*, That all repair and overhaul on Civil Aeronautics Administration airplanes costing more than $100 shall be done on contract after submission of bids. . . ."

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I insist on my point of order. The amendment is a directive under the guise of a limitation in the last proviso.

THE CHAIRMAN:[3] Does the gentleman from West Virginia desire to be heard on the point of order?

MR. RANDOLPH: Not at this point.

THE CHAIRMAN: The Chair is prepared to rule.

MR. RANDOLPH: I am ready to hear the Chair.

THE CHAIRMAN: The gentleman from West Virginia offers an amendment to page 56, line 25, and page 57, line 9, to the bill H.R. 6056. The amendment down to and including the word "airplanes" and the comma, is perhaps nothing more than a limitation and in order. The language following the comma after the word "airplane" seems to require of the Civil Aeronautics Administration other responsibilities and to impose additional duties upon that agency of Government. Therefore it would be legislation and subject to a point of order. The Chair sustains the point of order.

Requiring Subjective Determination of "Full Benefit"

§ 52.16 An amendment in the form of a limitation prohibiting use of an appropriation for promulgation of orders establishing wholesale prices on commodities to be sold at retail which do not give all retail distributors full benefit of the lowest wholesale prices established for any retail distributor was held to impose affirmative duties not already in the law and therefore not in order.

On June 18, 1943,[4] the Committee of the Whole was considering H.R. 2968, a war agencies appropriation bill. The Clerk read as follows:

Amendment offered by Mr. August H. Andresen [of Minnesota]: At the end of the paragraph on page 13 insert the following language: "*Provided further*, That no part of this appropriation shall be used for the promulgation of orders or directives establishing wholesale prices on commodities to be sold at retail, which do not give all retail distributors the full benefit of the lowest wholesale price established for any retail distributor."

3. Wilbur D. Mills (Ark.).

4. 89 CONG. REC. 6126, 6127, 78th Cong. 1st Sess.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make a point of order against the amendment on the ground that under the guise of limitation it proposes affirmative legislation. It is a proposition to restrict executive discretion. It constitutes legislation and is not in order on an appropriation bill. . . .

THE CHAIRMAN:[5] The Chair is ready to rule. . .

The Chair calls the attention of the committee to the fact that the language attempted to be inserted by the amendment of the gentleman from Minnesota really divides itself into two parts and in order that the Members may understand it the Chair will read the amendment for the information of the committee:

> *Provided further,* That no part of this appropriation shall be used for the promulgation of orders or directives establishing wholesale prices on commodities and articles sold at retail, which do not give all retail distributors the full benefit of the lowest wholesale price established for any retail distributor.

The Chair is of opinion that the first part of the amendment ending with the comma, were it offered alone, would be a limitation within the rules of the House and would not be subject to a point of order; but when the latter part is added, it goes beyond the point of a limitation and imposes upon the officials charged with the administration of this act certain affirmative duties and is subject to a point of order.

The point of order is therefore sustained.

5. John J. Sparkman (Ala.).

Requiring Determination That Recipient "Participates, Cooperates, or Supports"

§ 52.17 To a general appropriation bill providing funds, inter alia, for a national foundation on the arts, an amendment prohibiting payment of such funds to any person or organization which supports any action resulting in the destruction of a structure of historic or cultural significance [thus requiring the official administering the program to make certain new determinations], was held to impose additional duties and was ruled out as legislation.

On Apr. 5, 1966,[6] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 14215), a point of order was raised against the following amendment:

MR. [WILLIAM B.] WIDNALL [of New Jersey]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Widnall: Page 42, before the period in line 2, insert the following: "*Provided further,* That the amounts appropriated under this paragraph shall be available to any organization, or entity, only on condition that not more than 12½ percent of the

6. 112 CONG. REC. 7688, 7689, 89th Cong. 2d Sess.

amount so made available be expended in any one State: *And provided further,* That no part of any amount appropriated under this paragraph shall be used to make grants to any organization, or entity, or to pay the salary of (or to cover expenses incurred by) any person who, or organization which, in his, or its, official, or unofficial capacity, participates in, cooperates with, or supports any action which could result in the destruction of any structure, or place, of local or national historic or cultural significance, including the Metropolitan Opera House located at 39th Street and Broadway in New York City".

MR. [WINFIELD K.] DENTON [of Indiana]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN: [7] The gentleman will state the point of order.

MR. DENTON: Mr. Chairman, this changes existing legislation. It provides that there should be quotas among the States when the existing legislation does not contain such a provision. This is legislation that changes existing legislation.

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

MR. WIDNALL: Mr. Chairman, I believe this is a type of amendment that has been accepted before on similar legislation. It seeks to protect the interests of the States in these grants and in the distribution of funds under this program. I think it is a very equitable amendment and should be accepted by the Committee.

THE CHAIRMAN: The Chair is prepared to rule.

This amendment would impose new duties on the officials charged with the administration of this program in determining whether grants should be made to any person or organization which participates and cooperates with or supports any action which could result in the destruction of any structure or place of local or national historic or cultural significance.

For the reasons above stated, the amendment is obviously legislation on an appropriation bill.

The Chair sustains the point of order.

New Determinations Not Required by Law in Making Allocation of Funds

§ 52.18 Where existing law (20 USC § 238) provides, in its allotment formula for determining entitlements of local educational agencies to a certain category of assistance in federally affected areas, that the Commissioner shall determine the "number of children who . . . resided with a parent employed on federal property situated in the same State as such agency or situated within reasonable commuting distance from the school district of such agency", an amendment to an appropriation bill containing funds for "impacted school assistance" prohibiting the use of funds in that bill for assistance "for children whose parents are em-

7. Charles M. Price (Ill.).

ployed on Federal property outside the school district of such agency" was held to impose the additional duty on federal officials of determining whether the parent was employed within the school district and was ruled out as legislation in violation of Rule XXI clause 2.

On June 26, 1973,[8] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 8877), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

The Clerk read as follows:

Amendment offered by Mr. [William] Lehman [of Florida]: Page 19, line 19, after "Act" insert the following: ": *Provided further,* That none of the funds contained herein shall be available to make any payment to a local educational agency under the Act of September 30, 1950, which is attributable to children described in section 3(b) of title I whose parents are employed on Federal property outside the school district of such agency".

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, a point of order.

THE CHAIRMAN:[9] The gentleman will state it.

MR. FLOOD: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill.

First, Mr. Chairman, this amendment would change the existing law in that it would distinguish between children whose parents work in a key school district and children whose parents work outside the school district. The present law which we have makes absolutely no such distinction.

The second point, Mr. Chairman, is that this would obviously impose additional duties upon whatever Federal officials there are in the entire program and would require them to establish procedures with all sorts of red tape to determine where the place of work is, whether they work there or not, whether the parents were in the school district or not.

Such procedures do not exist in the law because they are not required under present law. . . .

MRS. [PATSY T.] MINK [of Hawaii]: Mr. Chairman, I rise in support of the point of order made by the chairman of the subcommittee of the Appropriations Committee against the amendment offered by the gentleman from Florida (Mr. Lehman). Mr. Chairman, the point of order I wish to concur in is that the language of the amendment is legislation in an appropriation bill. It requires a different method of allocating funds to eligible school districts than that provided in the authorizing legislation, Public Law 81–874.

Mr. Chairman, I realize that the gentleman from Florida has carefully phrased his amendment in an attempt to avoid this prohibition in clause 2 of rule XXI. But in this attempt, the gentleman has failed. The exception to the rule dealing with a retrenchment of

8. 119 CONG. REC. 21393, 21394, 93d Cong. 1st Sess.

9. Chet Holifield (Calif.).

appropriations is subject to the qualification that it must not impose additional administrative burdens and ministerial duties on the administration in carrying out the basic law for which the appropriation is made. In this regard, Mr. Chairman, I call attention to the annotations to rule XXI, clause 2, appearing on page 472 of the House Rules and Manual for the 93d Congress in which it is noted:

> But such limitations must not give affirmative directions (IV, 3854–3859, 3975; VII, 1637), and must not impose new duties upon an executive officer (VII, 1676; July 31, 1969, p. 21631–33; June 11, 1968, p. 16712), and must not be coupled with legislation not directly instrumental in affecting a reduction (VII, 1555, 1557).

I have checked to determine whether or not any additional ministerial duties will be required in carrying out the amendment offered by the gentleman from Florida and I am advised that this will require administrators of the program to make an additional extraction from survey data gathered from parents to determine whether or not the place of work of the parent is located within or without the school district.

Mr. Chairman, this is not a simple task. In many school systems, these survey forms run into many thousands and nationwide, this would multiply this ministerial task by each of the several thousand school districts participating in Public Law 91–874.

The ruling which I seek is consistent with the rulings of the Chair June 26, 1968, February 19, 1970, and April 14, 1970, found on pages H18894, H1088, and H3036 of the Congressional Record for those respective dates. I urge that the Chair sustain the point of order. . . .

MR. [SIDNEY R.] YATES [of Illinois]: I suggest, Mr. Chairman, this is an appropriate retrenchment under the Holman Rule and that the legislation is appropriate under that rule.

THE CHAIRMAN: . . . The Chair feels that while the amendment is in the form of a limitation it also would require additional determinations not now required by law. Since it would require additional duties, the amendment is legislation on the appropriation bill and not in order.

The Chair sustains the point of order.

Parliamentarian's Note: It should be emphasized that the provisions in question above did not comprise a negative prohibition on the availability of funds for an otherwise eligible class of recipients, but rather a redefinition of the entire class, contrary to that class of eligible recipients found in existing law. See also §§ 36.8–36.12, supra, for discussion of other examples of provisions affecting allocation of educational assistance.

New Direction in Fund Distribution Not Required by Law

§ 52.19 A provision in an amendment to a general appropriation bill denying the use of any funds for im-

pacted school aid until the official allocating the funds makes an apportionment thereof contrary to the formula prescribed by existing law was held to impose additional duties upon that official, thus changing existing law and constituting legislation on an appropriation bill.

On Apr. 14, 1970,[10] during consideration in the Committee of the Whole of the Education Department appropriation bill (H.R. 16916), a point of order was raised against the following amendment:

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Michel: Strike all after the enacting clause and insert:

TITLE I—OFFICE OF EDUCATION

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

For carrying out title I of the Act of September 30, 1950, as amended (20 U.S.C., ch. 13), and the Act of September 23, 1950, as amended (20 U.S.C., ch. 19), $440,000,000 of which $425,000,000 shall be for the maintenance and operation of schools as authorized by said title I of the Act of September 30, 1950, as amended, and $15,000,000 which shall remain available until expended, shall be for providing school facilities as authorized by said Act of September 23, 1950: *Provided,* That this appropriation shall not be available to pay local educational agencies pursuant to the provisions of any other section of said title I until payment has been made of 90 per centum of the amounts to which such agencies are entitled pursuant to section 3(a) of said title and 100 per centum of the amounts payable under section 6 of said title. . . .

MR. [JAMES G.] O'HARA [of Michigan]: Then I make a point of order against the amendment offered by the gentleman from Illinois.

THE CHAIRMAN:[11] The Chair will hear the gentleman on the point of order.

MR. O'HARA: Mr. Chairman, the point of order against the amendment offered by the gentleman from Illinois is that it contains legislation in an appropriation bill, to wit, the language on page 2, lines 6 to 12 is clearly legislation on an appropriation bill providing for different dispositions of funds under those sections than are provided by law. Therefore I make a point of order against the amendment offered by the gentleman from Illinois. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, it is as plain as the nose on my face, and I have got a nose, that this is clearly a limitation upon the expenditure of funds. That is clearly it. I suggest the point must be overruled.

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

MR. O'HARA: Mr. Chairman, I would like to be heard. I would like to say

10. 116 CONG. REC. 11676, 11677, 91st Cong. 2d Sess.

11. Chet Holifield (Calif.).

first, Mr. Chairman, if the proviso to which I have referred authorizes the use on a different formula than that provided in the basic authorizing legislation, and I do not believe that the proviso is a limitation or retrenchment of appropriations which would be an expansion, the proviso is neither a limitation nor retrenchment of appropriations, because it permits payment to be made in excess of the payments authorized by the above quoted section of Public Law 81–874.

It may be helpful to the Chairman and to my colleagues in understanding the point that the reference contained in section 5(c) just quoted, that various other sections of entitlements to payments are to the so-called familiar references to categories A and B children under impacted aid.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Michigan (Mr. O'Hara), has raised a point of order against the proviso appearing in the amendment in the nature of a substitute and referred to in the original bill as the proviso on page 2 of the bill on the ground that it constitutes legislation on an appropriation bill in violation of clause 2, rule XXI. That proviso would make appropriations in the bill unavailable for payment to local educational agencies pursuant to the provisions of any other section of title I of the act of September 30, 1950—which authorizes school assistance in federally affected areas—until payment has been made of 90 percent of entitled allotments pursuant to section 3(a) of said title I and of 100 percent of amounts payable under section 6 of that title. The gentleman from Michigan contends that such a requirement for payments of funds appropriated in this bill has the effect of changing the allotment formula in the authorizing legislation of funds for "category A students," and is therefore legislation on an appropriation bill prohibited by clause 2, rule XXI.

On June 26, 1968, during consideration of the Department of Labor and Health, Education, and Welfare appropriation bill for fiscal year 1969, the Chair—the gentleman now occupying it—sustained a point of order against an amendment prohibiting the use of funds in the bill for educationally deprived children until there was made available therefrom for certain local educational agencies an amount at least equal to that allotted in the preceding year, since that amendment would have required the Commissioner of Education to make an apportionment of appropriated funds contrary to the formula prescribed by existing law, thus imposing additional duties on that official and changing existing law.

The Chair feels that that decision is controlling in this instance. To make the appropriations authorized under certain sections of the "impacted school aid" legislation contingent upon allotment of certain percentages of entitled funds under other sections of that authorizing legislation is to impose additional duties on the official making the allotment and to change the enforcement formula in the authorizing legislation is in violation of clause 2, rule XXI.

The Chair therefore sustains the point of order.

Requiring Investigation

§ 52.20 To an appropriation bill an amendment imposing

new conditions and formulas for determining amounts to be charged as rent for public housing units was held to alter existing law and ruled out of order as legislation on an appropriation bill.

On Mar. 20, 1952,[12] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7072), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Amendment offered by Mr. [Hubert B.] Scudder [of California]: On page 24, after line 6, insert the following: "*Provided further,* That the Public Housing Administration shall investigate the income of the occupants of each housing unit, and the rental for each such unit shall be the rental established by law or 20 percent of the total income of the occupants thereof, whichever is the greater."
>
> MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make a point of order against the amendment, but I reserve it at this time. . . .
>
> THE CHAIRMAN:[13] The Chair is ready to rule.
>
> The gentleman from California has offered an amendment, to which the gentleman from Texas [Mr. Thomas] makes a point of order.
>
> The Chair has had an opportunity to examine the amendment offered by the gentleman from California, and is of the opinion that the amendment proposes to add new conditions regarding determination of rentals of public housing thus altering existing law. The amendment also would impose additional duties not required by existing law upon housing officials.
>
> It is the opinion of the Chair, therefore, that the amendment is legislation on an appropriation bill and the point of order is sustained.

Affirmative Directive to Recipient of Funds; Imposing Duty to Monitor Actions of Recipients

§ 52.21 An amendment to an appropriation bill in the form of a limitation not negative in effect (rather: providing that none of the funds appropriated would be used for support of military training courses in civil schools unless the authorities of such institutions make known to prospective students certain information) was held to be legislation and not in order.

On Feb. 14, 1936,[14] the Committee of the Whole was considering H.R. 11035, a War Department appropriation bill. At one point the Clerk read as follows:

> For the procurement, maintenance, and issue, under such regulations as

12. 98 CONG. REC. 2638, 2639, 82d Cong. 2d Sess.

13. Wilbur D. Mills (Ark.).

14. 80 CONG. REC. 2091–94, 74th Cong. 2d Sess.

may be prescribed by the Secretary of War, to institutions at which one or more units of the Reserve Officers' Training Corps are maintained, of such public animals, means of transportation, supplies, tentage, equipment, and uniforms as he may deem necessary . . . $4,067,996; of which $400,000 shall be available immediately: . . . *Provided further,* That none of the funds appropriated elsewhere in this act, except for printing and binding and pay and allowances of officers and enlisted men of the Regular Army, shall be used for expenses in connection with the Reserve Officers' Training Corps.

MR. [FRED] BIERMANN [of Iowa]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Biermann: On page 59, line 6, after the word "corps", insert "*Provided further,* That none of the funds appropriated in this act shall be used for or toward the support of military training courses in any civil school or college the authorities of which choose to maintain such courses on a compulsory basis, unless the authorities of such institutions provide, and make known to all prospective students by duly published regulations, arrangements for the unconditional exemption from such military courses, and without penalty, for any and all students who prefer not to participate in such military courses because of convictions conscientiously held, whether religious, ethical, social, or educational, though nothing herein shall be construed as applying to essentially military schools or colleges."

MR. [TILMAN B.] PARKS [of Arkansas]: Mr. Chairman, I make the point of order that the amendment is legislation on an appropriation bill and is in no sense a limitation. . . .

MR. BIERMANN: Mr. Chairman, the purpose of this amendment is to make an exception of the compulsory feature of this military training for those students who have a genuine conscientious scruple against taking military training. The amendment is of the same piece of cloth as the amendment of the gentleman from New York [Mr. Marcantonio], which has been ruled in order many times in this House.

THE CHAIRMAN:[15] The Chair is ready to rule. The first part of the amendment offered by the gentleman from Iowa is very much the same as the amendment offered by the gentleman from New York [Mr. Marcantonio], but there is further language in the amendment offered by the gentleman from Iowa which involves legislation which is as follows:

> That unless the authorities of such institutions provide and make known to all prospective students by duly published regulation—

And so forth. That is an affirmative command and direction to the officers of the institution. The Chair thinks the amendment is not in order because it provides legislation on an appropriation bill, and, therefore, sustains the point of order.

§ 52.22 To a paragraph of an appropriation bill making appropriations for soil conservation payments, an amendment providing that no payment in excess of $1,000 shall be paid to any one person or corporation

15. Claude V. Parsons (Ill.).

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,[16] 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 limitation 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:[17] 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.

16. 84 CONG. REC. 3427, 3428, 76th Cong. 1st Sess.

17. Wright Patman (Tex.).

Limitation is Negative, Not Affirmative Direction

§ 52.23 A limitation on a general appropriation bill must be in effect a negative prohibition which proposes an easily discernible standard for determining the application of the use of funds, and not an affirmative direction to an executive officer.

On May 5, 1960,[18] The Committee of the Whole was considering H.R. 11998, a Defense Department appropriation bill. The Clerk read as follows:

> Amendment offered by Mr. [James G.] O'Hara of Michigan: On page 45, after line 6, insert the following:
>
> "Sec. 535. No funds appropriated in this Act shall be used to pay any amount under a contract, made after the date of enactment of this Act, which exceeds the amount of a lower bid if such contract would have been awarded to the lower bidder but for the application of any policy which favors the award of such a contract to a person proposing to perform it in a facility not owned by the United States."
>
> MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, I am constrained to make a point of order against the amendment offered by the gentleman from Michigan [Mr. O'Hara]. It seems to me this language is clearly subject to a point of order in that it imposes additional duties on the Secretary of Defense. . . .
>
> MR. O'HARA of Michigan: Mr. Chairman, I would like to suggest in connection with the point of order that this is a limitation on an appropriation. It does not attempt to impose any additional duties on the executive branch nor does it attempt to legislate in an appropriation bill.
>
> THE CHAIRMAN:[19] The Chair is ready to rule. . . .
>
> The Chair calls the attention of the committee to previous rulings made on similar points of order and would like in addition to call to the attention of the Committee the ruling that appears in 4 Hinds' Precedents, page 660, in which it is clearly indicated that a limitation is permitted on a general appropriation bill that in effect provides a negative prohibition on the use of the money, and no affirmative direction on the executive branch.
>
> In the opinion of the Chair, the language here offered is a negative prohibition and the Chair, therefore, overrules the point of order.[20]

Requiring Special Screening of Each Loan Application

§ 52.24 Language in the Agriculture Department appro-

18. 106 CONG. REC. 9641, 86th Cong. 2d Sess.

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

20. 4 Hinds' Precedents Sec. 3975. See also id. at Sec. 3968, where discussion is had concerning the proposition that limitations must be a negative restriction on the use of money and not an affirmative direction to an executive officer. See also 7 Cannon's Precedents § 1694.

priation bill in the form of a limitation which provided in effect that no part of the appropriation shall be paid to any employee of the department or agencies thereof to engage in the execution of any loan which has not first been offered to and refused by private lending agencies customarily engaged in making such loans at comparable rates, was held to provide additional functions for employees not required under existing law to determine customary loan practices, and therefore legislation on an appropriation bill.

On Apr. 19, 1943,[1] 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:

> Sec. 8. None of the funds herein appropriated or authorized hereby to be expended shall be used to pay the compensation or expenses of any officer or employee of the Department of Agriculture, or of any bureau, office, agency, or service of the Department or any corporation, institution, or association supervised thereby, who engages in, or directs or authorizes any other officer or employee of the Department or of any such bureau, office, agency, service, corporation, institution, or association to engage in the negotiation, solicitation, or execution of any loan which has not first been offered to and refused by the private lending agencies customarily engaged in making loans of similar character and at comparable rates in the region where such loan is proposed to be made. . . .
>
> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, I make a point of order against section 8 on the ground that this section is legislation on an appropriation bill. . . .
>
> MR. [CLIFFORD R.] HOPE [of Kansas]: Mr. Chairman, I simply call the attention of the Chair to the fact that while many of the Government lending agencies or semi-Government lending agencies are not included in this bill, yet there are appropriations here for the Commodity Credit Corporation, the Rural Electrification Administration, and Federal Farm Mortgage Corporation, all of which make loans to farmers. If this provision stays in the bill it means that the officials of these organizations must in addition to the duties which are imposed upon them by law make an investigation in the case of every application, to determine whether or not the application has been offered to and refused by private lending agencies customarily engaged in making loans of a similar character in the region where the loan is to be made. It has been held time and time again that where a provision of this kind imposes duties upon a Federal official which are not required by law it is legislative in character and subject to a point of order. . . .
>
> THE CHAIRMAN:[2] The Chair is ready to rule. . . .

1. 89 CONG. REC. 3600, 3601, 78th Cong. 1st Sess.

2. William M. Whittington (Miss.).

The matter is not altogether free from doubt, but in view of the language of section 8, and in view of the additional duties imposed and the additional determinations that must be made, it seems to the Chair that such language is legislative in character. Therefore the Chair sustains the point of order.

Requirement of Satisfactory Performance as Condition Precedent

§ 52.25 An amendment to a general appropriation bill in the form of a limitation providing that no part of the money therein appropriated shall be paid to any state unless and until the Secretary of Agriculture was satisfied that state had complied with certain conditions was held to be legislation imposing new discretionary authority on a federal official.

On Apr. 23, 1937,[3] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 6523), a point of order was raised against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [Jesse P.] Wolcott [of Michigan]: Page 72, line 13, after the word "probation", insert "*Provided further,* That no part of the money herein appropriated shall be paid to any State unless and until, to the satisfaction of the Secretary of Agriculture, such State shall have provided by law or regulation modern means and devices to safeguard against accidents and the loss of life on highway projects within such State."

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make the point of order against the amendment. It is legislation under the guise of a limitation. The amendment provides affirmative direction which is clearly legislation on an appropriation bill.

MR. WOLCOTT: Mr. Chairman, I would like to be heard on the point of order.

THE CHAIRMAN:[4] The Chair will be pleased to hear the gentleman from Michigan.

MR. WOLCOTT: Mr. Chairman, I call the attention of the Chair to the fact we have previously authorized appropriations to be made under the Federal Highway Act which was passed and approved by the President on July 11, 1916. Yearly there is authorized under that act an appropriation of $125,000,000 which is disbursed according to regulations set up not only by the Congress in the organic act but also by regulations of the Bureau of Public Roads. If the Bureau of Public Roads under the terms of the act can withhold any funds which have been authorized by the Congress from any of the States by reason of a regulation which it might set up, likewise the Bureau can limit the expenditure within any State by providing certain traffic safeguards to those using the highways as a condition precedent to the spend-

3. 81 CONG. REC. 3783, 3784, 75th Cong. 1st Sess.

4. Franklin W. Hancock, Jr. (N.C.).

ing of Federal funds in the construction and maintenance of Federal-aid roads. For this reason my amendment is purely a limitation upon the distribution among and the use of the highway funds by the State.

THE CHAIRMAN: The Chair is ready to rule.

The Chair sustains the point of order on the ground that although the amendment is drawn in the guise of a limitation, it constitutes new legislation in that it imposes additional duties upon the Secretary.

Change of Official Authorized to Make Expenditure

§ 52.26 An amendment providing that certain funds for river and harbor projects shall be allocated and expended by the Secretary of War and the Chief of Engineers, rather than the Secretary upon the advice of the Chief of Engineers as required by existing law, was held to constitute a change in existing law and was therefore not in order on an appropriation bill.

On Feb. 14, 1936,[5] during consideration in the Committee of the Whole of the War Department appropriation bill (H.R. 11035), a point of order was raised against the following amendment:

MR. [JOSEPH J.] MANSFIELD [of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Mansfield: On page 68, after the colon, at the end of line 10, insert the following:

"*Provided further,* That expenditures under this appropriation for river and harbor improvements shall be limited to projects that have heretofore been specifically authorized by Congress and all projects so authorized shall be taken under consideration by the Secretary of War and the Chief of Engineers, and the funds shall be allocated and expended in such manner as in their judgment will best serve the interests of commerce and navigation."

MR. [TILLMAN B.] PARKS [of Arkansas]: Mr. Chairman, I desire to make a point of order against that because it is legislation on an appropriation bill.

I invite the attention of the Chair to section 627 of title XXXIII of the Code. The gist of that section is that when an appropriation has been made in lump sum and there should be a surplus for the projects the lump sum was intended to cover that, that surplus may be applied to other authorized projects as determined by the Secretary of War upon the advice of the Chief of Engineers. I also cite the chairman's attention to section 622.

MR. MANSFIELD: Mr. Chairman, the amendment does not change existing law. If the amendment is adopted, the money will be expended just exactly as it has been expended ever since the Budget was adopted. It is a limitation

5. 80 CONG. REC. 2103, 74th Cong. 2d Sess.

and not legislation. It simply provides that the money shall be expended in the manner in which the law now prescribes.

THE CHAIRMAN:[6] The Chair is ready to rule. The section quoted by the gentleman from Arkansas [Mr. Parks], 627 of United States Code, title XXXIII, states how funds for river and harbor improvements shall be expended. Among other things, it says that the allotments to the respective works consolidated shall be made by the Secretary of War upon recommendation by the Chief of Engineers.

The language of this amendment is in order down to and including the word "Congress," but then it seeks to make mandatory upon the Secretary of War and the Chief of Engineers the allocation of these funds. The organic law provides that these allocations shall be made by the Secretary of War and by him alone, although upon the recommendation of the Chief of Engineers.

The Chair thinks that it is legislation upon an appropriation bill and therefore sustains the point of order.

Approval of Expenditure Rates

§ 52.27 Language in an appropriation bill making money available for the hire of draft animals with or without drivers at local rates approved by the director was held legislative in nature and not in order.

On May 19, 1937,[7] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 6958), a point of order was raised against the following provision:

The Clerk read as follows:

Salaries and expenses, National Capital parks: For administration, protection, maintenance, and improvement of the Mount Vernon Memorial Highway, Arlington Memorial Bridge, George Washington Memorial Parkway, Federal parks in the District of Columbia, and other Federal lands authorized by the act of May 29, 1930 (46 Stat. 482), including the pay and allowances in accordance with the provisions of the act of May 27, 1924, as amended, of the police force for the Mount Vernon Memorial Highway and the George Washington Memorial Parkway, and the purchase of one passenger-carrying automobile and operation, maintenance, repair, exchange, and storage of three automobiles, revolvers, ammunition, uniforms, and equipment, per-diem employees at rates of pay approved by the Director not exceeding current rates for similar services in the District of Columbia, the hire of draft animals with or without drivers at local rates approved by the Director, traveling expenses and carfare, and leather and rubber articles for the protection of public property and employees, $176,000.

MR. [JOHN] TABER [of New York]: Mr. CHAIRMAN, I make a point of order on the last paragraph. It creates additional duties and imposes discretion in the Director of the Service. This language appears on page 114, line 23. It

6. Claude V. Parsons (Ill.).

7. 81 CONG. REC. 4814, 75th Cong. 1st Sess.

imposes additional duties on the Director. . . .

THE CHAIRMAN:[8] The Chair inquires of the gentleman as to whether or not this language is intended to increase or add new duties to the Director?

MR. [JED] JOHNSON of Oklahoma: I would say it does not, and restricts the rates. It states they are not to exceed the current rates.

THE CHAIRMAN: Are these draft animals hired now with or without drivers?

MR. JOHNSON of Oklahoma: I am not sure I can give the Chair that information.

MR. [JAMES G.] SCRUGHAM [of Nevada]: They are hired with or without.

THE CHAIRMAN: The Chair is trying to ascertain whether or not this changes existing law; that is, whether there is a change in the method in which these animals have to be hired.

MR. JOHNSON of Oklahoma: It is my information at the present time they are hired either way, with or without.

THE CHAIRMAN: What is the necessity for this language, then?

MR. JOHNSON of Oklahoma: I may say to the Chair it has been in the appropriation bill several years and there have been no changes.

THE CHAIRMAN: The fact it has been carried in previous bills does not necessarily mean it is in order. Unless the gentleman can cite some provision of law which would control the question, the Chair is of the opinion that the point of order is good.

In the absence of a citation, the Chair sustains the point of order.

8. Jere Cooper (Tenn.).

Travel Expenses and Attendance at Meetings at Discretion of Commission

§ 52.28 Appropriations for traveling expenses, including expenses of attendance at meetings considered necessary by the National Bituminous Coal Commission, in the exercise of its discretion, for the efficient discharge of its responsibilities were held authorized by a law permitting inclusion of such language in a general appropriation bill.

On Mar. 14, 1939,[9] the Committee of the Whole was considering H.R. 4852, an Interior Department appropriation. The Clerk read as follows, and proceedings ensued as indicated below:

> Salaries and expenses: For all necessary expenditures of the National Bituminous Coal Commission in performing the duties imposed upon said Commission by the Bituminous Coal Act of 1937, approved April 26, 1937 (50 Stat. 72), including personal services and rent in the District of Columbia and elsewhere; traveling expenses, including expenses of attendance at meetings which, in the discretion of the Commission, are necessary for the efficient discharge of its responsibilities . . . $2,900,000. . . .

9. 84 CONG. REC. 2739, 2740, 76th Cong. 1st Sess.

MR. [JOHN] TABER [of New York]: Mr. CHAIRMAN, A POINT OF ORDER.

THE CHAIRMAN:[10] The gentleman will state it.

MR. TABER: I make a point of order against the paragraph on the ground it delegates additional power and discretion to the Commission, and I call particular attention to lines 23, 24, and 25 of page 9, which also contain the words "in the discretion of the Commission."

It seems to me this makes an appropriation and leaves the amount of the appropriation which shall be spent to the discretion of the Commission or gives the Commission power to determine whether the appropriation should be made. It is the same thing as delegating authority to the Commission to make an appropriation, and is clearly legislation.

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, I desire to be heard in opposition to the point of order.

If the distinguished gentleman from New York will read title V, section 83, he will find full and ample authority for the language to which he objects. . . .

THE CHAIRMAN: The Chair is ready to rule. The Chair rules that the inclusion of the words "in the discretion of the Commission" is probably covered by the citation given by the gentleman from Oklahoma [Mr. Johnson]. Title V, section 83, of the United States Code provides:

> That no money appropriated by any act shall be expended for membership fees or dues of any officer or employee of the United States in any society or association, etc., or for the expenses or attendance of any person at any meeting or convention of members of any society or association unless such fees, dues, or expenses are authorized to be paid by specific appropriations for such purpose and are provided for in express terms in some general appropriation.

The language in the paragraph under consideration seems to comply with that provision, and the point of order is overruled.

Parliamentarian's Note: This statutory authority, now contained in 5 USC § 5946, and 5 USC § 4110, also specifically authorizes appropriations for attendance at any meetings necessary to improve an agency's efficiency. Thus, new discretionary authority is not conferred by this language, since the law provides for its inclusion in a general appropriation bill.

No Funds Except Where Secretary Determines National Security Dictates

§ 52.29 To a proviso in a general appropriation bill denying the use of funds to pay price differentials on contracts made for the purpose of relieving economic dislocations, an amendment exempting from that prohibition contracts determined by the Secretary of the Army pursuant to existing laws and regulations as not to be inappropriate therefor by

10. Frank H. Buck (Calif.).

reason of national security considerations was ruled out as legislation imposing new duties on the Secretary, absent any showing of existing provisions of law requiring such a determination to be made.

On Sept. 16, 1980,[11] during consideration in the Committee of the Whole of H.R. 8105, the Defense Department appropriation bill, a point of order was sustained against an amendment offered to a provision of the bill as indicated below:

> *Provided further,* That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations: *Provided further,* That none of the funds appropriated in this Act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

The Clerk read as follows:

> Amendment offered by Mr. [Joseph P.] Addabbo [of New York]: Page 41, line 23, strike out "*Provided further*" and all that follows through "economic dislocations:" on page 42, line 1, and insert in lieu thereof "*Provided further,* That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations other than contracts made by the Defense Logistics Agency and such other contracts of the Department of Defense as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations:". . .

MR. [JACK] EDWARDS of Alabama: Mr. Chairman, I make a point of order against the amendment as legislation in a general appropriation bill, and therefore in violation of clause 2 of rule XXI.

I respectfully direct the attention of the Chair to Deschler's Procedure, chapter 25, section 11.2 which states:

> It is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by an executive official which he is not otherwise required by law to make.

I also respectfully direct the attention of the Chair to section 843 of the House Manual, which states in part:

> The fact that a limitation on the use of funds may . . . impose certain incidental burdens on executive officials does not destroy the character of the limitation as long as it does not directly amend existing law and is descriptive of functions and findings already required to be undertaken under existing law.

The amendment prohibits the payment of price differentials on contracts except "as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations."

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense

11. 126 CONG. REC. 25606, 25607, 96th Cong. 2d Sess.

which is not now required under current law.

Although the determination is limited "pursuant to existing laws and regulations", there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law, and require this new determination. . . . Mr. Chairman, the amendment prohibits the payment of price differentials on contracts except—and I quote:

> As may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations.

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense which is not now required under the current law. Although the determination is limited "pursuant to existing laws and regulations," there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law and require this new determination.

I would urge that the Chair rule that this amendment is out of order. . . .

THE CHAIRMAN:[12] The Chair is ready to rule.

The amendment would appear to call for a determination by the Secretary of Defense as to appropriateness by reason of national security considerations. Unless the gentleman from New York (Mr. Addabbo) can cite to the Chair those provisions of existing law requiring such determinations with respect to defense contracts, the Chair must conclude that the amendment would impose new duties upon the Secretary and would constitute legislation.

MR. ADDABBO: I accept the point of order, Mr. Chairman.

THE CHAIRMAN: The Chair has sustained the point of order.

Making Lesser Determination Than That Contemplated by Law

§ 52.30 To a section of a general appropriation bill exempting cases where the life of the mother would be endangered if the fetus were carried to term from a denial of funds for abortions, an amendment exempting instead cases where the health of the mother would be endangered if the fetus were carried to term was held not to constitute further legislation, since determinations on the endangerment of life necessarily subsume determinations on the endangerment of health, and the amendment did not therefore require any different or more onerous determinations.

On June 27, 1984,[13] during consideration in the Committee of the Whole of the Treasury Department and Postal Service appro-

12. Daniel D. Rostenkowski (Ill.).

13. 130 CONG. REC. ——, 98th Cong. 2d Sess.

priation bill (H.R. 5798), an amendment was offered to the bill as follows:

The Clerk read as follows:

> Sec. 618. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefit program which provides any benefits or coverages for abortions, under such negotiated plans after the last day of the contracts currently in force. . . .
>
> Sec. 619. The provisions of section 618 shall not apply where the life of the mother would be endangered if the fetus were carried to term.

MRS. [PATRICIA] SCHROEDER [of Colorado]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mrs. Schroeder: On page 51, in line 6, delete "life" and insert in lieu thereof "health". . . .

MR. [CHRISTOPHER H.] SMITH [of New Jersey]: Mr. Chairman, this is legislating on an appropriations bill, in violation of rule XXI, clause 2, and I ask that it be ruled in such a way by the Chair. . . .

MRS. SCHROEDER: Mr. Chairman, clause 2(b) of rule XXI states, "No provision changing existing law shall be reported in any general appropriation bill. . . ." Out of this language comes the general restriction prohibiting the consideration of legislation as part of an appropriation bill. One way the Chair decides whether a limitation constitutes legislation is to determine whether the provision adds new affirmative directions for administrative officers.

Clearly, section 619 of H.R. 5798 would have been subject to a valid point of order, had any Member sought to raise one. The "life of the mother" exception to a limitation on funding for abortions on an appropriations measure has on numerous occasions been ruled out of order. This happened last year on this very legislation.

But, no Member raised that point of order on section 619. My amendment seeks to amend section 619 by enlarging the exception to apply to the "health of the mother," rather than to the "life of the mother." The appropriate test is not whether section 619, as amended, would be subject to a point of order but, rather, the test is whether my amendment adds new or different affirmative directions to an administrative officer. The question is whether my amendment would change the nature of the legislation already on this bill.

To answer that question, we must refer to section 618 of the bill, which prohibits the use of funds appropriated by the bill to pay for an abortion or for administrative expenses in connection with any health plan under the Federal Employees Health Benefit Program [FEHBP] which provides benefits or coverages for abortions. Clearly, the first part of this section is a nullity, because there is no authorization to use one penny appropriated by the bill to pay directly for an abortion. The operative language is the second part.

The administrative burden imposed by section 619 is that the Director of the Office of Personnel Management is required to review contracts with health care providers to ensure that they provide no reimbursement for abortions, unless the life of the mother

is at stake. Examining those same contracts to ensure that they provide no reimbursement for abortions unless the health of the mother is at stake is precisely the same administrative burden. Each involves reviewing 130 contracts to see whether certain language appears in them. There is no different administrative burden.

Arguably, section 619 creates another administrative burden which requires the Director of the Office of Personnel Management to monitor the implementation of health benefit plans to ensure compliance with the restriction. In this role, section 619 asks the Director of the Office of Personnel Management to second guess doctors and insurance carriers to decide whether the life of the mother would truly have been endangered if the fetus had been carried to term. Undoubtedly, this is an affirmative obligation which is nowhere authorized in law and which the Director of the Office of Personnel Management is uniquely unqualified to perform.

My amendment reduces this administrative obligation. If the Director of the Office of Personnel Management were obliged to ensure compliance with section 619, as amended, he would merely have to determine whether the health of the mother would have been endangered if the fetus were carried to term. This is a much smaller burden.

The life of the mother is a narrow subset of the health of the mother. Medical personnel can say with far greater assurance that the health of a patient might be impaired than that the life of the patient might be lost. To make a determination that the life of the mother would be endangered if the fetus were carried to term, one must make a prior determination that the health of the mother was also endangered. Hence, section 619, as amended by my amendment, would impose a part of the administrative burden imposed by section 619, as reported, but a substantially reduced part. . . .

THE CHAIRMAN:[14] The Chair is prepared to rule.

Under the precedents, a legislative provision permitted to remain in a general appropriations bill may be perfected by amendment so long as the amendment does not add further legislation. The Chair would refer to Mr. Deschler, chapter XXVI, section 2.3.

In the opinion of the Chair, the determinations required by section 619 of this bill, the present bill, as to whether the life of the mother is in danger necessarily subsume determinations as to whether the health of the mother is in danger and, for that reason, the amendment adds no different or more onerous requirements for medical determination to those already required and contained in section 619.

The Chair, therefore, would overrule the gentleman's point of order.

Requiring Determination of Interest Costs

§ 52.31 Language in a general appropriation bill prohibiting the use of funds therein as contributions to international organizations in excess of the U.S. share of the organization's assessment budget after deducting inter-

14. Anthony C. Beilenson (Calif.).

est costs for loans through external borrowing was ruled out as legislation, requiring federal officials to determine certain interest costs, a duty not discernably required by existing law.

On Dec. 9, 1982,[15] during consideration in the Committee of the Whole of the Departments of Commerce, Justice, State, and the Judiciary appropriation bill (H.R. 6957), a point of order against a provision was sustained as follows:

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I have a point of order to the proviso on page 30.

The portion of the bill to which the point of order relates is as follows:

INTERNATIONAL ORGANIZATIONS AND CONFERENCES

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

For expenses, not otherwise provided for, necessary to meet annual obligations of membership in international multilateral organizations, pursuant to treaties, conventions, or specific Acts of Congress, including funds for the payment of 1983 assessed contributions to the Inter-American Institute for Co-operation on Agriculture, $449,815,000: *Provided*, That none of the funds appropriated in this paragraph shall be available for a United States contribution to an international organization in excess of the United States share of the organization's assessment budget after deducting from that budget any interest costs for loans incurred on or after October 1, 1982 through external borrowing. . . .

A major test of whether a provision in an appropriations bill constitutes legislation under clause 2 of rule XXI is whether the provision imposes on the Executive a new duty not mandated in existing law.

With respect to the issue addressed in the proviso, it is not the normal practice of these international organizations to engage in external borrowing. Thus, U.S. assessed contributions are not normally used for this purpose.

In the event that such organizations were to engage in external borrowing and to pay off such loans from their assessed budgets, the executive branch would be required to perform a series of actions in order to comply with the proviso in question.

First, because in some cases the United States pays its contribution in installments, the executive branch would be required to ask each organization if it, in fact, intends to engage in any external borrowing, and if so, the amount they intend to borrow and at what interest rate.

Second, prior to final payment of the U.S. assessed contribution, the executive branch is required to again inquire of each of the 44 organizations whether it has, in fact, engaged in any borrowing and the precise amount of interest paid as a result.

Third, the executive branch would be required to verify the response from each organization.

Fourth, the executive branch would be required to calculate the U.S. pro

15. 128 CONG. REC. ——, 97th Cong. 2d Sess. For a ruling on a subsequent amendment to the bill having a similar purpose, see § 59.19 infra.

rata share of such interest payments for each organization engaged in such borrowing.

Fifth, the executive branch would be required to subtract the U.S. pro rata share determined in the preceding procedure from its final assessed payment to each affected organization.

None of these actions are required of the executive branch under existing law and none are currently performed by the executive branch as a matter of routine practice. . . .

More fundamentally, under existing law, the United States is obligated to pay the full amount of its assessed contribution to an international organization. This obligation can only be changed by a superseding provision of law. The proviso attempts to be such a law and as such is legislative in nature. . . .

THE CHAIRMAN:[16] Does the gentleman from Iowa desire to be heard on the point of order?

MR. [NEAL] SMITH of Iowa: Mr. Chairman, I do not think it is subject to a point of order, but at this time of the night we want to save time. So, I am going to concede the point of order.

THE CHAIRMAN: The point of order is conceded, and the Chair upholds the point of order.

Requiring Evaluation of "Propriety" and "Effectiveness"

§ 52.32 Language in the guise of a limitation requiring federal officials to make evaluations of propriety and effectiveness not required to be made by existing law is legislation; a proviso in a general appropriation bill prohibiting the use of funds therein for grants "not properly reviewed under procedures used in the prior fiscal year" or for grantees not having "an established and effective program in place" was held to require new determinations by federal officials not required by existing law for the fiscal year in question and to be legislation in violation of Rule XXI clause 2.

On Oct. 6, 1981,[17] during consideration in the Committee of the Whole of the Departments of Labor, and Health and Human Services appropriation bill (H.R. 4560), a point of order was sustained against a provision in the bill, as follows:

MR. [EUGENE] JOHNSTON [of North Carolina]: Mr. Chairman, I make a point of order against the language on page 13 of the bill, lines 15 through 24.

The portion of the bill to which the point of order relates is as follows:

Provided further, That none of the funds appropriated under this paragraph shall be used to fund any grant to any business, union, trade association, or other grantee which is not properly reviewed under the peer review procedures used in fiscal year 1980. Furthermore, none of the

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

17. 127 CONG. REC. 23361, 97th Cong. 1st Sess.

funds appropriated under this paragraph shall be used to provide grants to any business, union, trade association, or other grantee that does not have an established and effective program for educating employers or employees about occupational hazards and disease.

Mr. Chairman, the language prohibits grants to any grantee which does not have "an established and effective program" for education. In order to implement this requirement, the Department would have to establish a new procedure for determining what represents an "established and effective" program.

In addition, this would preclude as a recipient any group establishing such a program in the future.

Both of these requirements impose additional duties on the Department and those represent legislation on an appropriations bill.

In addition, it precludes the Secretary from monitoring the expenditures of these funds in the future—all of this in violation of clause 2, rule XXI, of the House. . . .

MR. [DAVID R.] OBEY [of Wisconsin]: . . . I would like to make the point that the Department has established procedures under which these grants are made available, and this simply is a limitation of the funds which can be expended under the procedures which the Department has now and has had in the past.

THE CHAIRMAN:[18] The Chair is prepared to rule.

The gentleman from North Carolina (Mr. Johnston) makes a point of order against the language contained on page 13 of the bill. The Chair has been persuaded by the argument, because he is not sure what is meant by "properly reviewed" or what is contained in "an established and effective program," as contained on line 23, and upholds the point of order of the gentleman from North Carolina (Mr. Johnston) on the basis that those terms impose new duties and determinations on executive officials.

18. Don Fuqua (Fla.).

Determining That Life of Mother Endangered if Fetus Carried to Term

§ 52.33 A provision in a general appropriation bill requiring new determinations by federal officials is legislation and subject to a point of order, regardless of whether or not private or state officials administering the federal funds in question routinely make such determinations.

On June 17, 1977,[19] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare and related agencies appropriation bill (H.R. 7555), a point of order was made and sustained against a provision in the bill as follows:

THE CHAIRMAN:[20] When the Committee of the Whole rose on Thursday,

19. 123 CONG. REC. 19698, 19699, 95th Cong. 1st Sess.

20. Richard Bolling (Mo.).

June 16, 1977, the Clerk had read from section 209, line 2, on page 40.

Are there any amendments? . . .

MR. [CLIFFORD R.] ALLEN [of Tennessee]: Mr. Chairman, I make a point of order against section 209 which states:

> None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

My point of order is simply that this is legislation in an appropriation act. Obviously and implicitly in this language is the duty on the part of some administrative agency, or on the part of whoever is going to disburse the funds, to ascertain from some physician that the life of the mother or the pregnant woman would be endangered if the fetus is carried to term. This is imposing an additional burden on whatever administrative agency has to carry out this task. On that basis I make a point of order that this is legislation in an appropriation act. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: . . . Mr. Chairman, I rise in opposition to the point of order.

The provision in question here is identical—I repeat for the purpose of emphasis, the provision in question is identical—to the provisions of Public Law 94–439, that is the Labor-HEW Appropriation Act for fiscal year 1977. It does not impose any additional burdens on any officer of the Federal Government. The determination as to whether the life of the mother is endangered would of course be made by a physician, but not a Federal official, and the physician would have to make that determination anyway whether or not this provision is in the bill, and any physician who is treating a woman seeking an abortion would have to make a judgment as to her state of health. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, in support of the argument presented by the gentleman from Pennsylvania, it should be noted by the Chair that medicaid funds which this section affects are administered by the States and not by the Federal Government.

In addition to that, the judgment required by section 209 would have to be made by private physicians who might be reimbursed, but it would be State officials who would be doing reimbursing with Federal funds, not Federal officials.

As the Chair knows, the imposition of additional duties on Federal officials, is a proper test of whether or not the language goes beyond a limitation. In this case it does not involve a judgment by a Federal official, only by a reimbursing State official on the certification in most cases by a private doctor. Therefore I do not believe it imposes any additional duties. It simply is a limitation on the manner in which the funds may be expended. . . .

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

The language in question, section 209 of the bill, prohibits the use of funds in the act to perform abortions except where the life of the mother would be endangered if the fetus were carried to term. It is well established that a limitation is not in order on an appropriation bill if it requires new duties and determinations on the executive branch and requires investiga-

tions. Section 209 by its terms requires the Federal Government to determine, in each and every case where an abortion may be performed with Federal funds, whether the life of the mother was endangered. Whether or not such determinations are routinely made by practicing physicians on a voluntary basis, the language in the bill addresses determinations by the Federal Government and is not limited by its terms to determinations by individual physicians or by the respective States.

For the reasons stated, the Chair sustains the point of order.

Duty of Determining Compliance With Federal Law

§ 52.34 It is in order on a general appropriation bill to deny funds for the payment of salary to a federal employee who is not in compliance with a federal law, for such limitation places no new duties on a federal official who is already charged with enforcing the law.

On Sept. 10, 1981,[1] an amendment to a general appropriation bill prohibiting the use of funds therein to rehire certain federal employees engaged in a strike in violation of federal law (5 USC § 7311; 18 USC § 1918) was held in order as a limitation not requiring new determinations on the part of federal officials administering those funds, since existing law (5 USC § 3333) requiring an affidavit undertaking not to strike to be signed by federal employees, and a court order enjoining the strike in question, already imposed an obligation on the administering officials to enforce the law. The proceedings are discussed in § 74.6, infra.

Parliamentarian's Note: The precedents cited by the Chair in 7 Cannon's Precedents §§ 1661 and 1662 were examples of limitations held in order to deny payments to federal employees who "willfully" refuse to perform their duties. The determination of "willfulness" arguably involves an investigation into intent or motive, and might have rendered those amendments suspect under more recent precedents.

Funds Conditioned Upon Duties Already Required by Existing Law

§ 52.35 Where existing law authorizing public works employment programs required a federal official to consider the severity and duration of unemployment in project areas and to make grants to local governments to be administered for the direct benefit and employment of

1. 127 CONG. REC. 20109, 20110, 97th Cong. 1st Sess.

unemployed residents of the affected community, language in a general appropriation bill prohibiting the use of funds therein where less than a certain percentage of the prospective employees had resided in the area and had been unemployed for a stated length of time was held in order as a limitation which did not impose upon federal officials any substantially new duties not already required by existing law.

The proceedings of Aug. 25, 1976,[2] are discussed in § 65.1, infra.

§ 52.36 An amendment to a general appropriation bill denying availability of funds therein to pay certain benefits to persons simultaneously entitled by law to other benefits, or in amounts in excess of those other entitlement levels, was held in order as a limitation, since existing law already required executive officials to determine whether and to what extent recipients of funds contained in the bill were also receiving those other entitlement benefits.

The determination of the Chair on June 18, 1980,[3] was that, where existing law (19 USC § 2292) established trade readjustment allowances to workers unemployed because of import competition and required the disbursing agency to take into consideration levels of unemployment insurance entitlements under other law in determining payments, an amendment to a general appropriation bill reducing the availability of funds therein for trade adjustment assistance by amounts of unemployment insurance did not impose new duties upon officials, who were already required to make those reductions. The amendment was as follows:

> Amendment offered by Mr. [Robert H.] Michel [of Illinois]: Page 39, line 4, strike out "$1,841,000,000" and insert "$1,486,000,000". . . .
>
> On line 7, after "1980" insert ": *Provided further,* That none of the funds appropriated in this paragraph and made available on October 1, 1980 shall be used to pay trade readjustment benefits under part I of subchapter B of chapter 2 of Title I of the Trade Act of 1974 for any week to any individual who is entitled to unemployment insurance benefits for such week:

2. 122 CONG. REC. 27737–39, 94th Cong. 2d Sess.

3. 126 CONG. REC. 15354–56, 96th Cong. 2d Sess.

Provided further, That none of the funds appropriated in this paragraph and made available on October 1, 1980 shall be used to pay trade readjustment benefits under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 to any individual in an amount for any week in excess of the weekly unemployment insurance benefits which he received or which he would have received if he applied for such insurance.". . .

MR. [ELWOOD H.] HILLIS [of Indiana]: Mr. Chairman, I make a point of order against the amendment.

Mr. Chairman, the amendment violates rule XXI of clause 2 of the rules of the House in that it constitutes legislation in an appropriation bill. The amendment is a change in law and not a mere limitation of the expenditure of the funds appropriated.

The amendment does not on its face retrench Federal expenditures covered by the bill. Under the precedents of the House in order for an amendment to be covered by the so-called Holman rule, it must on its face reduce Federal expenditures. . . .

Mr. Chairman, it appears to me that a similar situation is presented by the pending amendment which has two parts. Part one of the amendment would reduce the appropriations. The second part of the amendment, the legislative part, must stand by itself and on its face retrench expenditures, which it fails to do.

Chapter 26, section 10.4 of Deschler's procedure states:

> An amendment to a general appropriation bill, proposing legislation which will not patently reduce expenditures, though providing for a reduction in the figures of an appropriation, is not in order under clause 2 Rule XXI. . . .

MR. MICHEL: Mr. Chairman, this is a straight limitation on an appropriations bill which does nothing more than limit the use of the funds under this program. In order to be considered as a proper limitation on the use of funds, the amendment must prohibit the use of money for some purpose already authorized by law. It has been consistently upheld that the House has the right to refuse to appropriate for any purpose which it may deem improper, even though that purpose may be authorized by law. The principle of limitations on appropriation bills is derived from this concept. If the House has the right to refuse to appropriate anything for a particular purpose authorized by law, it can appropriate for only a part of that purpose and prohibit the use of money for the rest of the purpose authorized by law. My amendment clearly passes this test.

This language will not require any extra work on the part of the executive officer administering the funds. Both the trade adjustment assistance program and the regular unemployment insurance programs are administered by the same agencies, the State unemployment insurance agencies and the amount and length of an individual's regular unemployment insurance benefits must currently be determined in order to determine the size of the trade adjustment benefit.

The language of the current law is significant in this regard; part (c) of section 232 states the following:

> The amount of trade readjustment allowance payable to an adversely affected worker . . . for any week

shall be reduced by any amount of unemployment insurance which he receives, or which he would receive if he applied for such insurance, with respect to such week; but, if the appropriate State or Federal agency finally determines that the worker was not entitled to unemployment insurance with respect to such week, the reduction shall not apply with respect to such week.

The only determinations required under my amendment are: First, the point in time when an individual's regular unemployment benefits are exhausted; and second, the amount per week of such benefits.

Both such determinations are required under current law, in the section I just cited, as part of the process for calculating the trade adjustment benefit to which an individual may be entitled. Consequently, no additional duties are required of the executive officers administering these funds under the language of my amendment. Therefore, Mr. Chairman, I submit that my amendment is not legislation and the point of order should not lie.

THE CHAIRMAN PRO TEMPORE:[4] The Chair is ready to rule.

For the reasons stated by the gentleman from Illinois and because a reading of section 2292 of title 19, United States Code indicates that the determinations required by the amendment offered by the gentleman from Illinois are precisely those required by the existing law in 19 U.S.C. 2292, the amendment, therefore, is in order as a negative limitation on use of funds in this bill and the "Holman rule" is not applicable.

The point of order is overruled.

4. John B. Breaux (La.).

Parliamentarian's Note: Had the language of the amendment been considered legislation, the "Holman rule" exception would not have been applicable, since the reduction of the lump-sum figure was not the necessary result of the language contained in the amendment.

Requiring Determination of Motive or Intent

§ 52.37 An amendment to a general appropriation bill prohibiting the use of funds therein for abortions or abortion-related material and services, and defining "abortion" as the intentional destruction of unborn human life, which life begins at the moment of fertilization was conceded to impose affirmative duties on officials administering the funds (requiring determinations of intent of recipients during abortion process) and was ruled out as legislation in violation of Rule XXI clause 2.

The proceedings of June 27, 1974,[5] are discussed in § 25.14, supra.

5. 120 CONG. REC. 21687–94, 93d Cong. 2d Sess.

Requiring Substantive Determination Not Required by Law

§ 52.38 A restriction on the use of funds in a general appropriation bill which requires a federal official to make a substantive determination not required by any law applicable to his authority, thereby requiring new investigations not required by law, is legislation in violation of Rule XXI clause 2.

On Aug. 20, 1980,[6] an amendment to a general appropriation bill prohibiting the use of funds therein for the General Services Administration to dispose of United States owned agricultural land declared surplus was ruled out as legislation requiring the finding that surplus United States owned lands are "agricultural", where the law cited by the proponent of the amendment defining that term was not applicable to the GSA.

The proceedings are discussed in § 57.17, infra.

Requiring Evaluation and Interpretation

§ 52.39 To a general appropriation bill containing funds for operation of the Smithsonian Institution, an amendment prohibiting the use of those funds for programs that present the theory of evolution as the sole explanation of life's origins was held to require new determinations as to the theoretical basis of the funded programs and to be legislation in violation of Rule XXI clause 2.

On July 22, 1981,[7] the Chair held that an amendment to a general appropriation bill in the form of a limitation which required a federal official to evaluate the theoretical basis of a program in determining whether to apply the limitation was legislation, where that duty was not already required by law. Under consideration was H.R. 4035, Department of the Interior appropriation for fiscal 1982, providing in part:

> For necessary expenses of the Smithsonian Institution, including research in the fields of art, science, and history, development, preservation, and documentation of the National Collections; . . . $136,374,000: *Provided,* That funds appropriated herein are available for advance payments to independent contractors performing research services or participating in official Smithsonian presentations: *Provided further,* That none of these funds

6. 126 Cong. Rec. 22156, 22158, 96th Cong. 2d Sess.

7. 127 Cong. Rec. 16822, 97th Cong. 1st Sess.

shall be available to a Smithsonian Research Foundation.

The Clerk read as follows:

> Amendments offered by Mr. [William E.] Dannemeyer [of California]: On page 44, line 25, strike the period and insert in lieu thereof the following: "*Provided further,* That none of these funds shall be available for public exhibits and performances that present the theory of evolution as the sole explanation of life's origins.".
>
> Page 45, line 16, strike the period and insert in lieu thereof the following: "*Provided further,* That none of the funds shall be made available for museum programs that present the theory of evolution as the sole explanation of life's origins". . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make a point of order that the amendment offered by the gentleman is legislation on an appropriation bill contrary to clause 2 of rule XXI. The amendment provides that funds would not be available for exhibits and performances that present the theory of evolution as the sole explanation of life's origins. This would require Smithsonian officials to make a determination whether or not an exhibition or performance presents the theory of evolution as the sole explanation of life's origins. . . .

Because this amendment does require that a determination be made that is not now required by law, it legislates on an appropriation bill. These determinations are not ministerial in nature. They would require a determination regarding the sole explanation of life's origins. This is a matter which academicians for centuries have not agreed upon. It would require a significant level of activity on the part of Smithsonian officials to determine the sole explanation of life's origins. . . .

MR. DANNEMEYER: . . . There would be a preferred way to offer the thought expressed by this amendment, and that would be through an authorization bill. But it relates to an authorization, or the subject relates to the Smithsonian Institution, and I am advised that we do not have an authorization bill going through the House that governs or covers or relates to the Smithsonian Institution. It has just been there so long, the memory of man runneth not to the contrary, we do not have an authorization, so the only ability a Member has, in effect, in a matter of this type is the appropriation vehicle. . . .

The second argument is that the amendment would—I concede there is some merit to the gentleman from Illinois' argument—that it would, one interpretation would cause the operator of the museum to survey the field to determine what theories exist as to the origin of man and, therefore, it could be argued that it imposes new duties.

I submit in response to that contention that there is nothing in this amendment that would preclude the museum operator from exhibiting the theory of evolution, but they could not use it as a means, as an explanation of life's origin. To that extent I do not believe that it imposes any new duties.

THE CHAIRMAN:[8] . . . If there is no further argument, the Chair has considered the amendments, the arguments of the gentleman raising the point of order and the response thereto and is prepared to rule and does now rule.

The amendments would require more than incidental determinations

8. George E. Danielson (Calif.).

by some public official. The amendments would require that a Federal official substantially evaluate public exhibits and performances, and in the case of the second amendment, museum programs, to draw conclusions therefrom as to their theoretical basis.

The Chair finds that the amendments constitute legislation which would be in violation of clause 2 of rule XXI prohibiting legislation on an appropriation bill, and the point of order is sustained.

Relationship of Limitation to All Agencies Funded

§ 52.40 In determining whether a restriction on the use of funds in a general appropriation bill constitutes legislation in violation of Rule XXI clause 2, the Chair must assess the impact of that language on all of the agencies funded in the bill to which the limitation applies in order to discern whether new duties would be imposed on any federal official so affected.

On June 14, 1978,[9] The Chair found that, to a general appropriation bill from which all funds for the Federal Trade Commission had been stricken as unauthorized, an amendment prohibiting the use of all funds in the bill to limit advertising of (1) food products containing ingredients found safe by the Food and Drug Administration or considered "generally recognized as safe", or not containing ingredients found unsafe by the FDA, and (2) toys not declared hazardous or unsafe by the Consumer Product Safety Commission, imposed new duties upon the Federal Communications Commission (another agency funded by the bill) to evaluate findings of other federal agencies—duties not imposed upon the FCC by existing law and therefore violated Rule XXI clause 2. The proceedings are discussed in § 58.7, infra.

Limiting Funds to Administer or Enforce Law With Respect to Small Firms

§ 52.41 While an amendment to a general appropriation bill may not directly curtail executive discretion delegated by law, it is in order to limit the use of funds for an activity, or a portion thereof, authorized by law if the limitation does not require new duties or impose new determinations.

Where an amendment to a general appropriation bill prohibited the use of funds therein for the Occupational Safety and Health Administration to administer or enforce regulations with respect to employers of 10 or fewer employees included in a category having an "occupational injury lost work day case rate" less than the national average, except to perform certain enumerated functions and authorities, but exempted from the prohibition farming operations not maintain-

9. 124 CONG. REC. 17644–47, 95th Cong. 2d Sess.

ing a temporary labor camp, the amendment was held not to constitute additional legislation on an appropriation bill.

The proceedings of Aug. 27, 1980,[10] are discussed in § 73.11, infra.

Requiring "Buy American" Policy Where There is Domestic Production

§ 52.42 A section in a general appropriation bill prohibiting the use of funds therein for the purchase of foreign-made tools except to the extent that General Services Administration determines that domestically produced tools are not available for procurement, was held to impose additional duties on a federal official and was ruled out as legislation in violation of Rule XXI clause 2.

On Nov. 30, 1982,[11] during consideration in the Committee of the Whole of H.R. 7158 (Treasury Department and Postal Service appropriation bill), a point of order was sustained against the following provision in the bill:

The Clerk read as follows:

> Sec. 505. No part of any appropriation contained in this Act shall be available for the procurement of or for the payment of the salary of any person engaged in the procurement of any hand or measuring tool(s) not produced in the United States or its possessions except to the extent that the Administrator of General Services or his designee shall determine that a satisfactory quality and sufficient quantity of hand or measuring tools produced in the United States or its possessions cannot be procured as and when needed from sources in the United States and its possessions or except in accordance with procedures prescribed by section 6–104.4(b) of Armed Services Procurement Regulation dated January 1, 1969, as such regulation existed on June 15, 1970. This section shall be applicable to all solicitations for bids opened after its enactment. . . .

MR. [BILL] FRENZEL [of Minnesota]: The point of order is against section 505 of H.R. 7158 as constituting legislation on an appropriation bill. . . .

Section 505 prohibits appropriated funds from being used in the procurement of any hand or measuring tool not produced in the United States or its possessions unless the Administrator of General Services makes a determination that a satisfactory quality and sufficient quantity of hand or measuring tools produced in the United States cannot be procured as and when needed from domestic sources. . . .

Section 505 is not merely a limitation on appropriated funds but establishes a procurement requirement not contained in existing law, and requires a determination with respect to such procurement by the General Services Administrator that would not be required to be performed under existing law. . . .

THE CHAIRMAN:[12] The Chair is prepared to rule.

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10. 126 CONG. REC. 23519–21, 96th Cong. 2d Sess.

11. 128 CONG. REC. 28067, 97th Cong. 2d Sess.

12. Gerry E. Studds (Mass.).

The Chair would cite Deschler and Brown's Procedure, chapter 26, section 19.5:

> A section in a general appropriation bill prohibiting the use of funds in the bill for the purchase of foreign-made tools except to the extent that the administrator of the General Services Administration determines that domestically produced tools are unavailable for procurement, was held to impose additional duties on the Federal official and was ruled out as legislation in violation of clause 2, rule XXI.

So for the reasons as stated precisely by the gentleman from Minnesota (Mr. Frenzel) the Chair sustains the point of order and the section is stricken.

Prohibiting Funds to Interfere With Rulemaking Authority —Implicitly Requiring Agency to Reevaluate Directives and Regulations

§ 52.43 A provision in a general appropriation bill prohibiting the use of funds therein by the Office of Management and Budget to "interfere with" the rulemaking authority of any regulatory agency was ruled out as legislation which would implicitly require that agency to make determinations not required by law in evaluating and executing its responsibilities mandated by law.

On Nov. 30, 1982,[13] during consideration in the Committee of the Whole of H.R. 7158 (Treasury Department and Postal Service appropriation bill), a point of order was sustained against the following provision of the bill:

The Clerk read as follows:

> OFFICE OF MANAGEMENT AND BUDGET
>
> SALARIES AND EXPENSES
>
> For necessary expenses for the Office of Management and Budget, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, and not to exceed $2,500 for official representation expenses, $33,000,000: *Provided,* That none of the funds made available by this Act may be used by the Office of Management and Budget to interfere with the rulemaking authority of any regulatory agency.

MR. [FRANK] HORTON [of New York]: Mr. Chairman, I rise to make a point of order against the limitation on the use of funds by the Office of Management and Budget contained in lines 18 through 21 on page 14. . . .

. . . [T]his limitation provides "that none of the funds made available by this act may be used by OMB to interfere with the rulemaking authority of any regulatory agency."

This proviso is subject to a point of order because it is legislation in an appropriation bill, and therefore violates clause 2 of rule XXI of the House of Representatives. . . .

Mr. Chairman, I would suggest that the word "interfere" might be easily in-

13. 128 CONG. REC. 28062, 28063, 97th Cong. 2d Sess.

terpreted to change existing law. Under the Paperwork Reduction Act of 1980, no agency can require anyone to comply with a form requesting information from more than nine persons unless that form has been approved by OMB. Some forms are, of course, designed to fulfill some regulatory objective. To the extent that OMB rejects or modifies a form which was originated for a regulatory purpose, it might be thought to be "interfering" with rulemaking authority. More specifically, if a form is proposed as a part of a regulation, OMB might file public comments on the form, and if the OMB Director finds that the agency's response to his comments were unreasonable, he could disapprove the form. This might be, of course, interpreted as "interference."

Furthermore, under Executive Order 12,291, entitled "Federal Regulation," OMB is given authority to require agencies to comply with various administrative requirements before proposing certain regulations, and to consider advice on those proposed regulations before issuing them in final form. Although the executive order is carefully written to indicate that OMB's authority exists only "to the extent permitted by law," activities under the order might also be thought by some people to be "interference" in agencies' rulemaking authority. . . .

THE CHAIRMAN:[14] The Chair is prepared to rule.

The Chair would cite the following provision from Deschler's [Procedure], chapter 26, section 11.1, under the general heading "Imposing Duties on an Executive Official."

§ 11.1 *Parliamentarian's Note:* The application of any limitation on an appropriation bill places some minimal extra duties on federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation. But when an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order.

With that citation in mind, and with the arguments made by the gentleman from New York, the maker of the point of order, and because of the entire scope of the duties imposed by law upon the Office of Management and Budget in relationship to regulatory agencies, the Chair feels that the Committee on Appropriations has not sustained the burden of showing that the proposed language would not change and augment the responsibilities imposed by law on the Office of Management and Budget and, therefore, sustains the point of order.

Duties Already Being Performed Pursuant to Provisions in Annual Appropriation Acts

§ 52.44 A provision in a general appropriation bill prohibiting the use of funds therein to perform abortions except where the life of the mother would be endangered if the fetus were carried to

14. Gerry E. Studds (Mass.).

term, and providing that the several states shall remain free not to fund abortions to the extent they deem appropriate, is legislation requiring federal officials to make determinations and judgments not required by law, notwithstanding the inclusion in prior year appropriation bills of similar legislation applicable to funds in prior years.

On Sept. 22, 1983,[15] during consideration in the Committee of the Whole of the Departments of Labor, and Health and Human Services appropriation bill (H.R. 3913), a point of order was sustained as indicated below:

> Sec. 204. None of the funds provided by this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term: *Provided*, however, That the several States are and shall remain free not to fund abortions to the extent that they in their sole discretion deem appropriate. . . .
>
> Mr. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I rise in opposition to the point of order.
>
> The gentleman is correct that this language was ruled out of order in 1977.
>
> However, the fact is that while Chairman Bolling could in 1977 say with justification that this language then imposed a determination on Federal officials, the same situation does not exist today as we consider this bill today.
>
> Mr. Chairman, our requirement that Federal officials determine danger to the life of the mother has been in effect now for 8 consecutive years. What was in 1977 a new determination is not new today. We have had 8 years of experience.
>
> The administrative requirements and the procedures for making this determination have been in operation, as I said, under the existing law for the past 8 years. Therefore, Mr. Chairman, this language does not now require a new determination and I ask that the Chair overrule the point of order. . . .
>
> The CHAIRMAN PRO TEMPORE:[16] The Chair is prepared to rule.
>
> The precedent cited by the gentleman from Oregon (Mr. AuCoin) reads as follows:
>
> > A paragraph in a general appropriation bill prohibiting the use of funds in the bill to perform abortions except [where] the mother's life would be endangered if the fetus were carried to term was ruled out of order as legislation requiring Federal officials to make new determinations and judgments not required by law as to the danger to the mother in each individual case.
>
> The argument of the gentleman from Massachusetts that for the past several years this provision has been in the law does not necessarily stand muster. The fact that a legislative provision has been carried in general appropriation bills in the past does not protect that provision from a timely point of order under rule XXI, clause 2.

15. 129 CONG. REC. ——, 98th Cong. 1st Sess.

16. Abraham Kazan, Jr. (Tex.).

Therefore the Chair must sustain the point of order. Apparently the point of order was not raised in the past several years so the 1977 rule would still apply.

Eligibility for Food Stamps Where Principal Wage Earner is on Strike

§ 52.45 An amendment to a general appropriation bill prohibiting the use of funds therein for food stamps to a household whose principal wage earner is on strike on account of a labor dispute to which he or his organization is a party, except where the household was eligible for and participating in the food stamp program immediately prior to the dispute, and except where a member of the household is subject to an employer's lockout, was held to impose new duties and require new investigations by executive branch officials and was ruled out as legislation.

On June 21, 1977,[17] during consideration of H.R. 7558 (Department of Agriculture and related agencies appropriations, 1978), an amendment was offered, as follows:

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Ashbrook: On page 39, line 13, add the following new paragraphs: "*Provided further*, That no funds appropriated in this Act shall be used to make food stamps available for the duration of a strike to a household while its principal wage-earner is, on account of a labor dispute to which he is a party or to which a labor organization of which he is a member is a party, on strike: *Provided further*, That such ineligibility shall not apply to any household that was eligible for and participating in the food stamp program immediately prior to the start of such strike, dispute, or other similar action in which any member of such household engages: *Provided further*, That such ineligibility shall not apply to any household if any of its members is subject to an employer's lockout."

Mr. Jamie L. Whitten, of Mississippi, made a point of order.

MR. WHITTEN: . . . Mr. Chairman, I would like to point out that with regard to the pending amendment that the language provides not only the limitation, but it provides that food stamps shall not be available for the duration of a strike to a household while its principal wage earner is out of work on account of a labor dispute.

The question of "on account of a labor dispute" would require, first, an investigation and determination.

Next it says to which he is a party. That in turn would require an investigation and a determination of whether he is "a party."

17. 123 CONG. REC. 20150–52, 95th Cong. 1st Sess.

Then it goes further and says "a labor organization of which he is a member is a party". That, too, would require an investigation and a determination.

Going down further we come to the statement where it says "immediately prior to the start of such strike." I do not know how anybody—even though that would require special duties—I do not know how a fellow would perform those duties by knowing how to anticipate what is just in advance of a strike. Certainly it would require a very far-seeing man, knowing some of the things we read about.

Then it goes further and says, "or other similar action in which any member of such household engages."

All of these, Mr. Chairman, would require special duties.

As I read the last proviso it says:

> *Provided further,* That such ineligibility shall not apply to any household if any of its members is subject to an employer's lockout.

That, in turn, would require a special investigation and special determination. . . .

Mr. ASHBROOK: . . . I fully recognize the fact that the Congress has had this exact amendment before it on a number of occasions, and in no way would make it in order if it were not. I would suggest, however, that in the food stamp program, determinations must be made. By its very nature, the food stamp program does not go to all American families, but goes to families after complete investigations as to the income of the family, as to whether they are at work; if they are not at work, why they are not at work.

I would further point out that nine States limit all forms of welfare to strikers. The case in point yesterday in the Supreme Court justified that particular ruling by the States. Programs are administered by the States, and I suggest that it does not call upon the Department of Agriculture to ask any questions or have any duties that are not now in law. . . .

THE CHAIRMAN:[18] The Chair has had an opportunity to examine the amendment offered by the gentleman from Ohio (Mr. Ashbrook) and also to consult the precedents.

The amendment offered by the gentleman from Ohio (Mr. Ashbrook) does provide that no funds appropriated in this act shall be used to make food stamps available for the duration of a strike to a household while its principal wage earner is, on account of a labor dispute to which he is a party or to whom a labor organization of which he is a member is a party, on strike.

The amendment further provides that such ineligibility shall not apply to any household if any of its members is subject to an employer's lockout.

The amendment on this general subject which was offered in 1974, the Chair would point out, was not challenged by a point of order.

The amendment that was offered in the 92d Congress in 1972, which was ruled in order, was in fact different from the amendment presently being offered by the gentleman from Ohio (Mr. Ashbrook).

The Chair would state that the amendment offered by the gentleman from Ohio (Mr. Ashbrook) differs in a number of significant respects from the amendment held in order in the 92d

18. Samuel S. Stratton (N.Y.).

Congress, 2d session, insofar as it does specify that the ineligibility would apply to an individual who was the principal wage earner of a household, that it applies to one who is determined to be a member of a labor organization which is on strike, and it further requires, in order to be carried out, a determination whether that individual in the household, or any of its members, is subject to an employer's lockout.

In the opinion of the Chair, the amendment does, therefore, impose additional duties upon a Federal official who is not merely the recipient of information—going beyond language that was held in order in previous Congresses and, therefore, does amount to legislation on an appropriation bill. Therefore, the Chair sustains the point of order.

Parliamentarian's Note: In the 1972 ruling referred to above, an amendment to a general appropriation bill prohibiting the use of funds in the bill for making food stamps available during a strike to a household "which needs assistance solely because any member of such household is a participant in such strike" was held in order as a valid limitation.[19] Although the Chair tried to distinguish the 1972 ruling, the 1977 precedent above should be considered as effectively overruling the earlier decision. The amendment at issue in 1972 would be viewed in the current practice as requiring new determinations by executive officials, such as whether, for example, a household needed assistance "solely" because a member of the household was participating in a strike.

§ 53.—Duties Imposed on Nonfederal Officials or Parties

It has been seen that the inclusion in an appropriation bill of language that imposes new duties, not authorized in law, on federal officials is subject to the point of order that such language is impermissible legislation.[20] A more difficult question arises where language seems to impose new duties on nonfederal officials or on private individuals. Whether the mere imposition of certain duties on such parties, without more, constitutes an impermissible attempt to legislate, does not clearly emerge from the precedents. Many cases which seem to decide the question appear, on closer analysis, to turn on somewhat different issues, express or implied; perhaps such cases can be better understood if they are analyzed in terms of certain issues that were

19. 118 CONG. REC. 23364, 92d Cong. 2d Sess., June 29, 1972 [under consideration was H.R. 15690].

20. See § 52, supra.

implied or assumed in the debate, even if the final ruling was not expressly based thereon. The purpose of this section is to address these implied issues and to address the apparent inconsistencies in the precedents, and to suggest guidelines for future decisions.

It will be noted that, in several precedents that involve local officials and address the issue directly, the assumption is made in the debate and in the ruling that the test of whether the language in question is permissible is whether it seeks to impose duties on officials who are in fact "federal."[1] In some precedents of this kind, an attempt is made to endow a local official or private person with status as a "federal" official by virtue of his role in receiving, disbursing, or administering federal funds or otherwise participating in some manner in the federal program under discussion. If such entity can in fact be seen as having federal status, the resolution of the issues becomes easier because the rulings discussed above[2] are directly applicable.

Attempts to impose duties on local officials not having the status of direct or indirect beneficiaries would in some cases "change existing law" by violating fundamental division between state and federal authority. In most cases, the "local officials" arguably have the status of direct or indirect beneficiaries of federal funding programs. The question then arises of the applicability of the many precedents indicating that "limitations" are allowed which seek only to require such beneficiaries to undertake certain actions or fulfill certain requirements as a condition to receiving the benefits of the federal funds. Such provisions, if they do no more than to describe the qualifications of persons who are to benefit from federal funds, are frequently allowed in appropriation bills.

The fundamental issue to be addressed in many cases is not the status, federal or local, of the official on whom duties are imposed but whether the imposition of the duties violates some substantive legislative intent, already existing, with respect to the division between local or state and federal roles in the administering of federal funds. It should be noted here that in one instance,[3] the argu-

1. See §§ 53.4 and 53.5, infra; and see the ruling of June 23, 1971, discussed in the "Note on Contrary Rulings" which follows § 53.6, infra.

2. § 52, supra.

3. See the comments in the "Note on Contrary Rulings," following § 53.6, infra, with respect to the proceedings of Oct. 14, 1965.

ment was made in support of a point of order, that issues involved in the provisions of the appropriation bill in question had in fact been considered in committee as part of the process of devising the authorizing legislation, and the substance of the language in the appropriation bill had been rejected. In that instance, the Chair overruled the point of order, thereby rejecting the suggestion that the provisons of the appropriation bill were matters of substantive legislation. In the current status of rulings on the subject, however, the Chair would probably be more likely to consider evidence that the subject matter of proposed language either was in fact taken into consideration during the deliberations of a legislative committee, or is the type of substantive issue which should be addressed by such a committee.

In any event, it would appear useful in future rulings on the issues raised in this section, to focus attention less on the fact that officials on whom duties are sought to be imposed are "local" and inquire instead whether such imposition of duties violates the intent of existing law with respect to a substantive plan for a division of state and federal responsibility, taking the purposes of existing legislation into account. If not, the issue would then be whether the language in question constituted a permissible or impermissible attempt to attach conditions to be met by prospective direct or indirect beneficiaries of funds before they become entitled to the benefits of the funds.

Affirmative Directive to Nonfederal Recipient of Funds

§ 53.1 An amendment to an appropriation bill in the form of a limitation, allowing the use of funds only if certain actions are taken by nonfederal institutions, was held to be legislation and not in order.

On Feb. 14, 1936,[4] the Committee of the Whole was considering H.R. 11035, a War Department appropriation bill. At one point the Clerk read as follows:

> For the procurement, maintenance, and issue, under such regulations as may be prescribed by the Secretary of War, to institutions at which one or more units of the Reserve Officers' Training Corps are maintained [of supplies, etc.]. . . .
>
> MR. [FRED] BEIRMANN [of Iowa]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Biermann: On page 59, line 6, after

4. 80 CONG. REC. 2091–94, 74th Cong. 2d Sess.

the words "corps", insert "*Provided further,* That none of the funds appropriated in this act shall be used for or toward the support of military training courses in any civil school or college the authorities of which choose to maintain such courses on a compulsory basis, unless the authorities of such institutions provide, and make known to all prospective students by duly published regulations, arrangements for the unconditional exemption from such military courses, and without penalty, for any and all students who prefer not to participate in such military courses because of convictions conscientiously held, whether religious, ethical, social, or educational, though nothing herein shall be construed as applying to essentially military schools or colleges."

MR. [TILMAN B.] PARKS [of Arkansas]: Mr. Chairman, I make the point of order that the amendment is legislation on an appropriation bill and is in no sense a limitation. . . .

MR. BIERMANN: Mr. Chairman, the purpose of this amendment is to make an exception of the compulsory feature of this military training for those students who have a genuine conscientious scruple against taking military training. The amendment is of the same piece of cloth as the amendment of the gentleman from New York [Mr. Marcantonio], which has been ruled in order many times in this House.

THE CHAIRMAN:[5] The Chair is ready to rule. The first part of the amendment offered by the gentleman from Iowa is very much the same as the amendment offered by the gentleman from New York [Mr. Marcantonio], but there is further language in the amendment offered by the gentleman from Iowa which involves legislation which is as follows:

> That unless the authorities of such institutions provide and make known to all prospective students by duly published regulation—

And so forth. That is an affirmative command and direction to the officers of the institution. The Chair thinks the amendment is not in order because it provides legislation on an appropriation bill, and, therefore, sustains the point of order.

Parliamentarian's Note: The Chair in this instance attached importance to the fact that the amendment gave an "affirmative" directive to school authorities and not on the determinations which would be required on the federal officials allotting the funds to the institutions. This raises a question whether merely negative language, a denial of funds to schools which do not exempt students as described or publish the specified information, would have been permitted. It can be argued even in that case that such exemption of students and publication of information are matters that more properly belong to the substantive legislation. On the other hand, if it can be said that such exemptions from military service or courses are already mandated by law, so that the condition imposed on the schools is merely one of publishing information about students' legal rights, and carrying

5. Claude V. Parsons (Ill.).

out ministerial duties to fulfill the law's requirements, then the case would be similar to that in the ruling of June 24, 1969 (discussed in the "Note on Contrary Rulings," following § 53.6, infra), in which the conditional language permitted by the Chair merely required institutions to be in compliance with law.

Restricting Funds to Farmers Unless They Agree to Use Funds in Certain Way

§ 53.2 To a paragraph of an appropriation bill making appropriations for soil conservation payments, an amendment providing 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 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,[6] 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 limitation 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

6. 84 CONG. REC. 3427, 3428, 76th Cong. 1st Sess.

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:[7] 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.

Restricting Funds for Construction Within a State Unless Governor Approves

§ 53.3 An amendment to the Department of Interior appropriation bill providing that none of the funds therein may be used for the purchase of material for new construction of electrical generating equipment in any state unless approved by the Governor or board having jurisdiction over such matters, was held to be legislation on an appropriation bill and not in order.

On Mar. 30, 1949,[8] during consideration in the Committee of the Whole of the Department of the Interior appropriation bill (H.R. 3838), a point of order was raised against the following amendment:

The Clerk read as follows:

> Amendment offered by Mr. [Ben F.] Jensen [of Iowa]: On page 43, line 3, insert: "None of the funds herein appropriated may be used for the purchase of material for the beginning of any new construction of electrical generating equipment, transmission lines, or related facilities in any State unless approved by the governor, by the board, or commission of the respective States having jurisdiction over such matters."

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I make a point of order against the amendment on the ground that it is clearly legislation on an appropriation bill.

THE CHAIRMAN:[9] Does the gentleman from Iowa desire to be heard on the point of order?

MR. JENSEN: IF THE CHAIR PLEASES; YES.

THE CHAIRMAN: The Chair will hear the gentleman, briefly.

MR. JENSEN: Mr. Chairman, again I contend, and I am sure rightly so, that my amendment is purely a limitation of appropriation. In many States there are State authorities which pass on such matters as this. They find it is

7. Wright Patman (Tex.).

8. 95 CONG. REC. 3530, 3531, 81st Cong. 1st Sess.

9. Jere Cooper (Tenn.).

good for the States because of the fact they do not want the Government of the United States to encroach on State rights. So this is in harmony with the programs which are carried on in many of the States at the present time. It is very important and I think for the welfare of this Nation. It is proper and is not legislation on an appropriation bill.

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

The Chair has examined the amendment and especially invites attention to the following language appearing in the amendment: "unless approved by the governor, by the board, or commission of the respective States having jurisdiction over such matters."

There can be no doubt but what that language would impose additional duties on the governor and the commission and would require affirmative action, therefore it constitutes legislation, and the Chair sustains the point of order.

Parliamentarian's Note: The more compelling ground for ruling the amendment above out of order is that the amendment was an improper attempt to interfere with the discretion or authority of federal officials, those actually involved in the decision-making process (such as the Bureau of Reclamation) with regard to projects which are part of a federal program. More precisely, the effect of the amendment was to limit the authority of federal officials, not the use of funds contained in the bill. Moreover, the provisions here in question may be regarded as an attempt to alter fundamental relations, already established in existing law, between state and federal entities. Viewed in this light, the ruling leaves open the question of whether an attempt to impose duties on state officials by establishing conditions to be fulfilled by prospective beneficiaries of federal funds is impermissible in an appropriation bill.

Determination Whether Life of Mother is at Risk as Prelude to Abortion

§ 53.4 A paragraph in a general appropriation bill prohibiting the use of funds in the bill to perform abortions except where the mother's life would be endangered if the fetus were carried to term was ruled out of order as legislation, since requiring federal officials to make new determinations and judgments not required by law as to the danger to the mother in each individual case.

The ruling of the Chair on June 17, 1977,[10] was that a provision in a general appropriation bill requiring new determinations by federal officials is legislation and

10. 123 CONG. REC. 19698, 19699, 95th Cong. 1st Sess.

subject to a point of order, regardless of whether or not private or state officials administering the federal funds in question routinely make such determinations.

THE CHAIRMAN:[11] When the Committee of the Whole rose on Thursday, June 16, 1977, the Clerk had read from section 209, line 2, on page 40.

Are there any amendments?

MR. [CLIFFORD R.] ALLEN [of Tennessee]: Mr. Chairman, I have a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. ALLEN: Mr. Chairman, I make a point of order against section 209 which states:

> None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

My point of order is simply that this is legislation in an appropriation act. Obviously and implicitly in this language is the duty on the part of some administrative agency, or on the part of whoever is going to disburse the funds, to ascertain from some physician that the life of the mother or the pregnant woman would be endangered if the fetus is carried to term. This is imposing an additional burden on whatever administrative agency has to carry out this task. On that basis I make a point of order that this is legislation in an appropriation act. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: . . . Mr. Chairman, I rise in opposition to the point of order.

The provision in question here is identical—I repeat for the purpose of emphasis, the provision in question is identical—to the provisions of Public Law 94–439, that is the Labor-HEW Appropriation Act for fiscal year 1977. It does not impose any additional burdens on any officer of the Federal Government. The determination as to whether the life of the mother is endangered would of course be made by a physician, but not a Federal official, and the physician would have to make that determination anyway whether or not this provision is in the bill, and any physician who is treating a woman seeking an abortion would have to make a judgment as to her state of health. . . .

MR. [ROBERT E.] BAUMAN (of Maryland): Mr. Chairman, in support of the argument presented by the gentleman from Pennsylvania, it should be noted by the Chair that medicaid funds which this section affects are administered by the States and not by the Federal Government.

In addition to that, the judgment required by section 209 would have to be made by private physicians who might be reimbursed, but it would be State officials who would be doing reimbursing with Federal funds, not Federal officials.

As the Chair knows, the imposition of additional duties on Federal officials, is a proper test of whether or not the language goes beyond a limitation. In this case it does not involve a judgment by a Federal official, only by a reimbursing State official on the certification in most cases by a private doctor. Therefore I do not believe it imposes any additional duties. It simply is a limitation on the manner in which the funds may be expended. . . .

11. Richard Bolling (Mo.).

MR. ALLEN:. . . [W]hile it is true that medicaid is generally and in most cases administered by State agencies, there are certain exceptions where the Federal Government actually supports clinics across the Nation. But beyond that, it would certainly be incumbent upon the Treasury Department, the auditors, and maybe the General Accounting Office to see to it that indeed the life of the mother whose abortion is paid for out of Federal funds was endangered, which would require certainly a certification or written opinion or opinion of some kind from some competent physician.

It seems to me clear that it is legislation in an Appropriation Act.

Now, the fact that it was in last year's Appropriation Act does not make it the law of the land. It was stricken down as unconstitutional by a Federal court already, that very language, and we are undertaking to reimpose it into this act after it has been held unconstitutional and the Department of HEW has instructed all of its agencies across the country to abide by the Federal court decision and not to deny any woman an abortion merely on the grounds that she is a welfare patient and unable to pay for the cost.

THE CHAIRMAN: The Chair is prepared to rule.

In the first place the fact that the same language was in an appropriation act last year gives it no immunity to the point of order.

The Chair would like to read the section. It is brief:

> Sec. 209. None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

Now, there is no limitation in that language to state the use of funds, nor is there any limitation in the language to medicaid.

The Chair, therefore, feels that the statement, which the Chair will read, is applicable and sound.

The gentleman from Tennessee has made a point of order against the language in the bill that the Chair has just read on the grounds it is legislation on an appropriation bill.

The language in question, section 209 of the bill, prohibits the use of funds in the act to perform abortions except where the life of the mother would be endangered if the fetus were carried to term. It is well established that a limitation is not in order on an appropriation bill if it requires new duties and determinations on the executive branch and requires investigations. Section 209 by its terms requires the Federal Government to determine, in each and every case where an abortion may be performed with Federal funds, whether the life of the mother was endangered. Whether or not such determinations are routinely made by practicing physicians on a voluntary basis, the language in the bill addresses determinations by the Federal Government and is not limited by its terms to determinations by individual physicians or by the respective States.

For the reasons stated, the Chair sustains the point of order.

§ 53.5 An amendment to a general appropriation bill prohibiting the use of funds in the bill to perform abortions, except where a physician has certified the abortion is nec-

essary to save the life of the mother, was ruled out as legislation since some of the physicians required to make such certification would be federal officials not required under existing law to make such determinations and judgments.

On June 17, 1977,[12] during consideration in the Committee of the Whole of H.R. 7555 (Departments of Labor, and Health, Education, and Welfare, and related agencies appropriation bill), a point of order was sustained against the following amendment:

MR. [HENRY J.] HYDE [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Hyde: On page 39, after line 23, add the following new section:

"Sec. 209. None of the funds appropriated under this Act shall be used to pay for abortions or to promote or encourage abortions, except where a physician has certified the abortion is necessary to save the life of the mother.". . .

MS. [ELIZABETH] HOLTZMAN [of New York]: Mr. Chairman, I make a point of order that the amendment, like the prior one, violates the rules of the House, inasmuch as it contains legislation on an appropriation bill. The duties that are imposed by this amendment on the executive branch would also apply to the care of a physician operating in Federal hospitals directly in the employ of the Federal Government. New duties would be imposed on them to make certifications in order to perform abortions. It seems to me that such duties could not be properly imposed in an appropriations bill. . . .

MR. HYDE: . . . Mr. Chairman, I think the well-settled rule that the limitation, if it does not impose a burden on a Federal official or impose a burden on the executive branch, is in order. I think this version of the amendment clearly says we are talking about a physician certifying the abortion as necessary. There is certainly no implication or hint that a member of the executive branch would have to exercise any judgment. . . .

MR. [CLIFFORD R.] ALLEN [of Tennessee]: . . . Mr. Chairman, the language contained in this substitute amendment is the same, in essence, as the original amendment. It does not state what physician or by whom the physician would be paid, but it does require the disbursing officer or the agency that is going to disburse these funds to first obtain a written certification from a physician before disbursing those funds. Thus, it imposes two additional duties; first, on some physician, perhaps a physician paid out of Federal funds or medicaid funds or medicare funds, or whatever, to make this determination. It is the same determination that the other original language carried. Then, in addition, it would require the disbursing officer to ascertain whether or not such a certification was made by a physician before he would be authorized to disburse any funds under this act. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, the language

12. 123 CONG. REC. 19699, 19700, 95th Cong. 1st Sess.

substantially changes the section previously before us in that it specifically requires determination by a non-Federal official. The argument advanced that someone in the employ of the Federal Government may have to issue a check or not issue a check for a certain amount is not apposite to this case, because it has been ruled many times that the application of any limitation on an appropriation bill requiring some minimal extra duty such as the disbursement of checks does not fall within a definition of a limitation that goes beyond the rules. . . .

I would again call to the attention of the Chair that the programs that this would affect, financed in this bill, are programs in which the Federal payments are disbursed by State agencies and State employees, and so the chain of action involved would be a private physician making a determination as to the physical state of the mother, and then informing a State official as to his right to reimbursement. Only after all of that procedure is gone through would a Federal official issue some sort of funding. So, I would think the amendment would be particularly in order as a proper limitation. . . .

MRS. [YVONNE B.] BURKE [of California]: Mr. Chairman, I would just like to answer the point raised by the gentleman from Maryland, who talked about the financial payments. The point of order was that there were direct agents, employees of the Federal Government, who would have to make this determination.

We have within this bill employees of public health services; we have military hospital personnel; we have particular provisions for many who are health personnel, who are directly paid by the Federal Government, many of whom are in administrative positions who would be required to make a determination; we have St. Elizabeths Hospital within this bill, and there are many provisions for direct Federal action. . . .

THE CHAIRMAN:[13] The Chair is ready to rule.

The gentlewoman from New York makes a point of order against the amendment offered by the gentleman from Illinois on the ground that it constitutes legislation in an appropriations bill. The amendment would prohibit funds in the bill to perform abortions except where the physician involved has certified that the life of the mother was in danger.

For the reasons stated by the Chair in the just previous ruling, and because the Chair is convinced by the argument of the gentlewoman from New York and the gentlewoman from California that some of the physicians affected by the amendment are Federal officials and would be required by the amendment to perform new duties and determinations not required of them by law, therefore the Chair sustains the point of order.

Requiring State Official to Make Determinations Not Required by Law

§ 53.6 An amendment to an appropriation bill prohibiting the use of funds therein for certain stream channelization projects unless the appropriate Governor con-

13. Richard Bolling (Mo.).

siders its environmental effects and certifies to the Secretary of Agriculture that such project is in the public interest was held to impose additional duties on an executive official not already required by existing law and was therefore ruled out in violation of Rule XXI clause 2.

On June 23, 1971,[14] during consideration in the Committee of the Whole of H.R. 9270 (Department of Agriculture and environmental and consumer protection appropriation bill) a point of order against the following amendment was sustained:

The Clerk read as follows:

Amendment offered by Mr. [Henry S.] Reuss [of Wisconsin]: On page 37, immediately after line 25, insert the following:

"No part of the funds appropriated by this Act shall be used for engineering or construction of any stream channelization measure under any program administered by the Secretary of Agriculture unless (1) such channelization is in a project a part of which was in the project construction stage before July 1, 1971; or (2) the Governor of the State in which the channelization is to be located certifies to the Secretary of Agriculture, after consideration of the environmental effects of such channelization, that such channelization is in the public interest."

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

I respectfully suggest, Mr. Chairman, that this language is not a limitation on an appropriation bill, but carries with it the requirements of certain duties by the Governors of the States for certain actions and certain determinations as to whether or not they can be properly made, and therefore brings them within the point of order, which I insist upon. . . .

MR. REUSS: . . . Mr. Chairman, the amendment I have offered is clearly and squarely within the precedents. It constitutes an appropriation limitation on an appropriation. The statement of the Chair reported in volume 7 of Cannon's Precedents at page 704, is squarely in point.

In that matter on May 21, 1918, an amendment was offered to the agriculture appropriation bill saying:

No part of this appropriation shall be available for any purpose unless there shall have been previously issued the proclamation by the President.

It then refers to the kind of proclamation that the President may offer.

Mr. William H. Stafford, of Wisconsin, who, incidentally, was my predecessor in my congressional district, made the point of order that the amendment was legislation, and hence out of order on an appropriation bill.

The Chair held:

A different principle from that of germaneness is involved in the point of order to this amendment. If the Chair understands the amendment it is intended as a limitation on the payment of any money under this

14. 117 CONG. REC. 21647, 21648, 92d Cong. 1st Sess.

> paragraph until the President has issued a certain indicated proclamation which in his discretion he may or may not issue. This amendment does not compel him to issue it, but so long as it is unissued the House does not propose, if the amendment is adopted, to allow the Agricultural Department to have the benefit of the appropriation in this paragraph. . . .
>
> This amendment does not compel the President to issue the proclamation referred to. He may issue it or refuse to issue it in his discretion. But the amendment in substance says to the Department of Agriculture: We propose to withhold from you the benefit of this appropriation during the full period of time during which this proclamation is unissued.

Mr. Chairman, this puts it on all fours with the amendment that I have offered, which leaves it to the Governor of the State to determine whether the channelization project proposed is in the public interest. It does not impose any duty on the Governor. If he acts under this, then the Secretary of Agriculture is governed by it, and there are no additional duties imposed upon the Secretary.

Mr. Chairman, to the same effect there are numerous other precedents cited. February 24, 1916 there is reported at page 651 of 7 Cannon's Precedents a ruling in which the Chair ruled in an almost identical matter that a requirement of a certification by patrons of a rural mail route was not legislation on an appropriation bill, but a permissible limitation. . . .

The Chairman:[15] The Chair is prepared to rule.

The gentleman from Wisconsin has offered an amendment against which the gentleman from Mississippi makes the point of order that it constitutes legislation on an appropriation bill and, therefore, for that reason is in violation of clause 2, rule XXI.

The amendment provides that none of the funds appropriated in the act should be used for stream channelization by the Secretary of Agriculture unless the Governor of the State where the channel is to be located considers its environmental effect and certifies to the Secretary that such channelization is in the public interest.

The question involved is whether or not the amendment seeks to impose additional duties upon an executive or to require from that executive an additional certification not previously authorized in existing law; if it does so, it constitutes legislation under the precedents.

The Chair has examined the precedent cited by the gentleman from Wisconsin which arose on May 12, 1918. There is some similarity except that the amendment offered on that occasion by the gentleman from California (Mr. Randall) would have provided that no part of the appropriation shall be available until a previously issued proclamation had been made, and following the word "proclamation" in the amendment offered on that occasion appear these words: "authorized by Section 15 of the Act of August 10, 1970."

Therefore, it appears to the Chair that the precedent cited by the gentleman from Wisconsin is distinguishable from the present case in that the proclamation required in that amendment was one that was already authorized under existing law.

15. James C. Wright, Jr. (Tex.).

The Chair is not aware that the certification and finding required of a Governor by the amendment offered by the gentleman from Wisconsin is required or authorized by existing law.

The Chair would refer the Committee to the decision by Chairman Jere Cooper, of Tennessee, on March 30, 1949, which the Chair regards to be more in point with the present situation. On that occasion an amendment was offered to the Department of Interior appropriation bill providing that none of the funds might be used for the purchase of certain materials and the beginning of certain new construction unless approved by the Governor or by a board or by a commission of the respective State.

On that occasion, Chairman Cooper held that this was legislation on an appropriation bill in that it required a determination and imposed a burden upon the Governor which did not previously exist.

The Chair feels that that decision would be controlling in this instance and, since the present amendment would impose additional duties not existing in present law, in violation of clause 2, rule XXI sustains the point of order.

Parliamentarian's Note: In several instances, described elsewhere,[16] the Chair and others have assumed that the test for determining whether provisions imposing new duties are legislative in nature, is whether the duties are imposed on federal or nonfederal officials. The view that was at least implied in those instances was that only where federal officials are given new substantial duties to perform does the imposition render the provision improper. In the 1971 ruling above, however, the Chair took the view that the conferral of new authority on a state official makes the provision subject to a point of order. The Chair apparently rejected the view that the state official in the present instance could be considered in some sense as having the standing of a direct or indirect beneficiary, so that the duties to be performed by him were merely those conditions he was required to fulfill to receive the benefit of the funds in question, and accordingly rejected Mr. Reuss' argument that nothing in the provision compelled the official to do anything. It is probably useful to consider this precedent as an example of an improper attempt to grant new authority to state officials, or of an attempt to change a policy affecting fundamental relations, already established in existing law, between state and federal entities. Nothing in the ruling, of course, is inconsistent with the principle that where a contingency is itself au-

16. See §§ 53.4 and 53.5, supra, and the ruling of June 23, 1971, which is discussed in the "Note on Contrary Rulings" below.

thorized, the contingency may be included in an appropriation bill.

Note on Contrary Rulings

As indicated above,[17] the precedents just discussed represent the line of authority that is in consonance with modern precedents. What follows is a discussion of some rulings, particularly earlier rulings, that seem to conflict in some degree with the principles stated in the precedents discussed above.

On June 27, 1952,[18] an amendment to a bill relating to housing projects was introduced for purposes of ensuring that certain types of projects would be approved by local officials. In response to a point of order, the Chair ruled that, to a general appropriation bill, an amendment providing that no part of an appropriation for defense housing could be used for administrative expenses or salaries of the Public Housing Administration, so long as that agency proceeded with certain types of projects not approved by local officials, was a proper limitation and therefore in order. The amendment would now probably be deemed a change in existing law, since the authorizing law relating to defense housing was in the nature of an open-ended directive to the President to build permanent housing around defense installations; no local approval of projects was required. It should also be noted with regard to this ruling that, although the Chair held the amendment to be germane, such ruling would now at least be arguable.

On Oct. 14, 1965,[19] the ruling of the Chair was that language in a supplemental appropriation bill providing funds for the rent-supplement program and specifying that "no part of the . . . appropriation or contract authority shall be used" in any project not part of a "workable program for community improvement" (as defined in the Housing Act of 1949), or which is without local official approval, was held to be a proper limitation and in order. The argument was made by Mr. Thomas L. Ashley, of Ohio, that the issues raised by the language in question "were the subject of discussion and, indeed, proposed amendments at the time the housing bill was debated and considered ear-

17. See the introduction to this section (§ 53), supra.

18. 98 CONG. REC. 8353, 82d Cong. 2d Sess. Under consideration was H.R. 8370, a supplemental appropriation bill.

19. 111 CONG. REC. 26994, 89th Cong. 1st Sess. Under consideration was H.R. 11588.

lier this year. The amendments which sought to accomplish the same objective were rejected." Thus, it would seem that the language in question was an example of an attempt to change the underlying purposes or policy of legislation, such policy having been duly considered. The Chair, however, apparently rejected Mr. Ashley's arguments and, in overruling a point of order against the language, noted that no additional duties were imposed on the administration by the proviso.

On Mar. 29, 1966,[20] the Chair ruled that language in a general appropriation bill providing funds for the National Teacher Corps, specifying that "none of these funds may be spent . . . prior to approval . . . by the state educational agency" was a proper limitation restricting the availability of funds and was therefore in order. Arguments that the Chair found persuasive were to the effect that, because of the conditional nature of the language, no additional duties were affirmatively required. The weight of authority at present, however, seems to be that the conditional nature of such language would not prevent a finding by the Chair that existing law is sought to be changed thereby.[1]

On June 11, 1968,[2] the Chair seemed to indicate that, although it is not in order by way of a limitation to impose new duties on an executive officer, it is permissible to make the payment of funds contingent upon the performance of certain obligations by private citizens or other persons not in the government's employ. For example, to a general appropriation bill, including funds for the Treasury Department, an amendment providing that none of the funds therein shall be used for any expense in connection with customs clearance or import licenses for rifles which are not registered with the Commissioner of Customs, was held to be a proper limitation and in order. In its ruling, the Chair stated, "The Chair . . . would interpret the amendment as not imposing any additional duties of a ministerial sort upon the Commissioner of Customs, but rather upon the importer or holder of the license." The ruling might thus be understood as an

20. 112 CONG. REC. 7118, 7119, 89th Cong. 2d Sess. H.R. 14012, a supplemental appropriation bill, was under consideration.

1. See, for example, §§ 47–50, supra, discussing appropriations subject to conditions.

2. 114 CONG. REC. 16712, 90th Cong. 2d Sess. Under consideration was H.R. 11734, a supplemental appropriation bill. See also § 52.5, supra.

example of the fine distinctions sometimes required between (1) cases in which legitimately imposed qualifications of potential recipients of benefits requiring federal expenditures might include certain initial actions to be taken by the potential recipients as part of the qualifying process, and (2) those cases in which requirements sought to be imposed in appropriation bills amount to legislative changes.

The qualifications of a nonfederal recipient of federal funds were also an issue in the ruling of June 24, 1969.[3] The Chair on that date ruled that, while an amendment under the guise of a limitation may not require affirmative action or additional duties on the part of federal officials, it is in order on a general appropriation to deny funds to a nonfederal recipient of a federal grant program unless the recipient is in compliance with a provision of federal law already applicable to it; for such a requirement places no new duties on a federal official (who is already charged with responsibility for enforcing the law) but only on the nonfederal grantee. The amendment in question stated that "none of the funds appropriated by this act for payments authorized by section 1705 of the Housing and Urban Development Act of 1968, shall be used to formulate or carry out any grant or loan to any institution of higher education unless such institution shall be in full compliance with section 504 of Public Law 90–575."[4]

On June 23, 1971,[5] the Chair indicated the applicable principle to be that, where language on an appropriation bill restricting the availability of funds therein for certain purposes or to certain recipients requires an executive official to determine the applicability of that restriction in a specific case, it must be shown that such official is not being called upon to perform substantial duties in addition to those required by law.

3. 115 CONG. REC. 17085, 91st Cong. 1st Sess. Under consideration was H.R. 12307, a general appropriation bill.

4. Section 504 of Pub. L. No. 90–575, which was concerned with eligibility for student assistance, stated in part that 'if an institution of higher education determines . . . that [an] individual has been convicted (of certain crimes) then the institution . . . shall deny . . . further payment . . . for the direct benefit of [the individual under the programs specified]."

5. 117 CONG. REC. 21671, 21672, 92d Cong. 1st Sess. Under consideration was H.R. 9270, agriculture, environmental, and consumer protection appropriations for fiscal 1972.

The ruling of the Chair in this instance was that an amendment to an appropriation bill prohibiting the use of funds in the bill for making food stamps available during a strike to a household "which needs assistance solely because any member of such household is a participant in such strike" was in order as a valid limitation which did not impose substantial affirmative duties on executive officials. As in the June 17, 1977, precedents,[6] the implied assumption in the discussion of the point of order on June 23, 1971, was that the test for allowing the amendment was whether or not it imposed additional duties on *federal* officials. The ruling supports the view that, where the conditions stated in an appropriation bill can be seen merely as those which prospective recipients or beneficiaries must fulfill in order to qualify as proper beneficiaries, the conditions will be allowed. (The Holman rule, mentioned in debate, is not strictly applicable here, since the question in applying the Holman rule is not whether the provision in question is legislative in nature; the question is whether a provision which is admittedly legislative in nature is to be permitted because it fulfills the precise requirements of the Holman rule exception to the general rule against legislation on appropriation bills.) It should also be noted with regard to this ruling that, during argument on the point of order, Mr. James G. O'Hara, of Michigan, argued that the official administering the program under the proposed amendment would have the additional burden of determining whether a potential recipient needed food stamps solely because a family member was on strike, or whether there were other reasons or motives for such action. The Chair apparently accepted the view of Mr. Robert H. Michel, of Illinois, that such a determination would be made by officials administering the program at the local level, who would certify that finding to the federal administrators. As noted elsewhere, however,[7] terms requiring definition, or terms which relate to motive, intent, and the like, when used in general appropriation bills or amendments thereto, frequently raise the presumption that the language of a proviso is legislative in nature.

In another case of interest on this subject, the Chair ruled on Jan. 31, 1941,[8] that an amend-

6. See §§ 53.4 and 53.5, supra.

7. See, for example, §§ 25.14 and 50, supra.

8. 87 CONG. REC. 448, 449, 77th Cong. 1st Sess. Under consideration was

ment forbidding payments or allowances for an operating differential subsidy as provided in the Merchant Marine Act of 1936, as amended, on any vessel unless the owners or operators of such subsidized vessels shall have filed with the U.S. Maritime Commission a certificate setting forth certain information relative to employees on such vessels, was a proper limitation and in order. The amendment, it should be noted, required extensive certifications by nonfederal recipients, not required by existing law. No argument was advanced that the reporting requirements were tantamount to a change in existing law.

In conclusion, it should be remembered that, while some rulings may suggest that it is permissible to make the payment of funds contingent upon the performance of certain acts or obligations by private citizens or other persons not in the federal government's employ, recent rulings indicate that it is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by a state or local government official or agency which is not otherwise required by existing law.[9]

H.R. 2788, an independent offices appropriation bill.

9. See, for example, the ruling at 131 CONG. REC. ——, 99th Cong. 1st Sess., July 25, 1985, during proceedings relating to H.R. 3038 (HUD, independent agencies appropriations for fiscal 1986).

§ 54. Judging Qualifications of Recipients

Past Employment of Heads of Departments

§ 54.1 An amendment providing that no part of an appropriation shall be paid to the head of any executive department who, within a specified period was a partner in a firm which derived any income from representing a foreign government, was held to be a proper limitation on an appropriation bill and in order.

On July 26, 1951,[10] the Committee of the Whole was considering H.R. 4740, a Departments of State, Justice, Commerce, and the Judiciary appropriation bill. The Clerk read as follows:

> Amendment offered by Mr. (John) Phillips (of California): On page 58, following line 14, add a new section to be numbered section 602:
>
> "None of the money appropriated in this act shall be paid to the head of any executive department who, within a period of 5 years preceding his appointment, was a partner in, or a

10. 97 CONG. REC. 8963, 8965, 82d Cong. 1st Sess.

member of, a professional firm which derived any part of its income from representing, or acting for, a foreign government, or who, acting as an individual, derived income from such representation.". . .

The Chairman:[11]. . . The Chair is prepared to rule.

The gentleman from California has offered an amendment which has been reported by the Clerk. The gentleman from New York has made a point of order against the amendment on the ground that it is not a proper limitation on an appropriation bill.

The Chair has examined the amendment with some degree of care. . . .

It should be clear that almost any limitation must necessarily require some action on the part of somebody. One of the classic illustrations given on many occasions by the distinguished parliamentarian to whom the Chair made reference a few moments ago, Hon. James R. Mann, of Illinois, was that if a provision states that "no part of this appropriation shall be paid to a red-headed man," somebody will have to find that red-headed man and determine whether his hair is red; therefore, it would appear that in any instance where a limitation is sought to be imposed there must be some activity contemplated or some effort exerted by someone to carry out the provisions of the limitation.

The Chair would invite attention to section 1593 of Cannon's Precedents, and reads the syllabus:

> A provision that no part of an appropriation be used for payment of any employee not appointed through the civil service was held to be a limitation and in order on an appropriation bill. . . .[12]

The Chair is of the opinion that that decision is applicable to the pending question raised by the point of order made by the gentleman from New York. It would appear that the over-all and controlling element of the pending amendment is a limitation on an appropriation bill. It is entirely negative in character, and does not affirmatively impose any additional duties upon anybody.

Therefore the Chair overrules the point of order.

Qualification of Nonfederal Supplier of Goods or Services

§ 54.2 An amendment to a general appropriation bill providing that none of the funds therein shall be used to purchase goods or services from suppliers who compensate any of the officers or employees in excess of a certain rate was held a valid limitation on the use of funds in the bill which merely defined nonfederal employer recipients who could not receive funds and did not affirmatively impose salary levels.

11. Jere Cooper (Tenn.).

12. For more recent precedents involving limitations on funds for salaries of certain employees as described in provisions of an appropriation bill or amendment, see, for example, § 74, infra.

On June 15, 1972,[13] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 15417), a point of order was raised against the following amendment:

MR. [ANDREW] JACOBS [Jr., of Indiana]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Jacobs: On page 40, after line 4, insert:

"Sec. 409. No part of the funds appropriated by this Act shall be used to purchase goods or services from a supplier which compensates any officer or employee at a rate in excess of level II of the Executive Schedule under section 5313 of title 5, United States Code."

MR. [DANIEL J.] FLOOD [of Pennsylvania: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[14] The gentleman will state his point of order.

MR. FLOOD: Mr. Chairman, again I am referring to Cannon's Procedure of the House of Representatives, and I am referring to pages 69 and 70, under the heading, "Construed as legislation and not limitations and therefore not admitted".

I go on to read:

Provision that no part of an appropriation should be used except in a certain way, thereby restricting executive discretion to the extent of imposing new duties.

Now, this is clearly what is being attempted in this amendment.

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

MR. JACOBS: Mr. Chairman, only to say that I think this is clearly a limitation on an appropriation bill, and there have been many occasions where appropriations cannot be used to make purchases with corporations where certain activities are carried on by the corporation.

I have nothing further to say.

THE CHAIRMAN: The Chair is ready to rule.

The Chair is aware of the precedent cited by the gentleman from Pennsylvania, but under the language as it is written in the amendment offered by the gentleman from Indiana it is a negative restriction, and therefore the Chair rules that the amendment is in order.

§ 55. President's Authority

Grant of New Discretionary Authority

§ 55.1 Language in a general appropriation bill which authorizes the President to determine amounts of funds to be available in the administration of a program, although such funds are required to be distributed by application of an allotment formula in existing law, confers on the President a dis-

13. 118 CONG. REC. 21136, 92d Cong. 2d Sess.

14. Chet Holifield (Calif.).

cretionary authority to make determinations in contravention of that law, and is therefore legislation on an appropriation bill and subject to a point of order.

On Feb. 19, 1970,[15] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 15931), the following point of order was raised:

THE CHAIRMAN:[16] Are there any points of order?

MR. [JAMES G.] O'HARA [of Michigan]: Mr. Chairman, I rise to make a point of order against the language contained in section 411, beginning on line 12, through line 20 on page 61, which reads as follows:

> Sec. 411. In the administration of any program provided for in this Act, as to which the allocation, grant, apportionment, or other distribution of funds among recipients is required to be determined by application of a formula involving the amount appropriated or otherwise made available for distribution, the amount available for expenditure or obligation (as determined by the President) shall be substituted for the amount appropriated or otherwise made available in the application of the formula.

Mr. Chairman, I make the point of order on the ground that the section in question constitutes legislation on an appropriation bill and does not come within the exception.

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

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, the language is patently legislation on an appropriation bill. I concede the point of order.

THE CHAIRMAN: The gentleman from Pennsylvania concedes the point of order, and the Chair sustains the point of order.

Affirmative Directive

§ 55.2 A provision in a general appropriation bill directing the President to "assure that no contribution to the United Nations Development Program authorized by the Foreign Assistance Act of 1961 . . . shall be used for projects for economic or technical assistance to the Government of Cuba, so long as Cuba is governed by the Castro regime," was ruled out as legislation [constituting a directive to the President and not confined to the funds carried in the bill].

On June 4, 1970,[17] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a

15. 116 CONG. REC. 4019, 91st Cong. 2d Sess.

16. Chet Holifield (Calif.).

17. 116 CONG. REC. 18395, 18396, 91st Cong. 2d Sess.

point of order was raised against the following provision:

Technical assistance: For necessary expenses as authorized by law $310,000,000, distributed as follows:

(1) World-wide, $151,000,000 (section 212);

(2) Alliance for Progress, $75,000,000 (section 252(a)); and

(3) Multilateral organizations, $85,000,000 (section 302(a)), of which not less than $13,000,000 shall be available only for the United Nations Children's Fund: *Provided,* That no part of this appropriation shall be used to initiate any project or activity which has not been justified to the Congress, except projects or activities relating to the reduction of population growth; *Provided further,* That the President shall seek to assure that no contribution to the United Nations Development Program authorized by the Foreign Assistance Act of 1961, as amended, shall be used for projects for economic or technical assistance to the Government of Cuba, so long as Cuba is governed by the Castro regime. . . .

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, a point of order.

THE CHAIRMAN:[18] . . . The Chair will hear the gentleman from Wisconsin on his point of order.

MR. ZABLOCKI: Mr. Chairman, I make the point of order that the entire proviso beginning on line 20 and ending on line 25 of page 2 is legislation in an appropriation. I am for its objectives, but in effect it simply says that the President should try to enforce existing law. The provisions in existing law, section 620 of the Foreign Assistance Act are stronger and there is no sense in this useless repetition in an appropriation.

Mr. Chairman, I make the point of order that this is legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Louisiana wish to be heard on the point of order?

MR. [OTTO E.] PASSMAN [of Louisiana]: Yes, sir, Mr. Chairman. The proviso was added by the Committee on Appropriations in the foreign assistance appropriation bill for fiscal year 1965 in order to insure that no U.S. contribution to the UNDP would be used to give any type of economical or technical assistance to Cuba as long as Cuba is governed by the Castro regime.

I would like to interpret this as a limitation on an appropriation bill and ask for a ruling.

THE CHAIRMAN: The language in question is as follows: Line 20, page 2:

> *Provided further,* That the President shall seek to assure . . .

And so forth.

That is obviously a directive to the President of the United States, it is not limited in application to the funds appropriated in this bill or any section thereof, and the Chair sustains the point of order.

Limiting President's Legal Authority

§ 55.3 Where existing law gives the President discretionary authority to furnish and allocate foreign military assist-

18. Hale Boggs (La.).

ance, subject to the authorization levels contained therein, it is not in order in a general appropriation bill to include language which would limit the President's authority to allocate excess defense articles to 120 percent of amounts justified to Congress for any country.

On June 4, 1970,[19] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), the following paragraph was read:

> Military assistance: For expenses authorized by section 504(a) of the Foreign Assistance Act of 1961, as amended, including administrative expenses and purchase of passenger motor vehicles for replacement only for use outside of the United States, $350,000,000: *Provided*, That none of the funds contained in this paragraph shall be available for the purchase of new automotive vehicles outside of the United States . . . *Provided further*, That the military assistance program for any country shall not be increased beyond twenty per centum of the amount justified to the Congress, unless the President determines that an increase in such program is essential to the national interest of the United States and reports each such determination to the House of Representatives and the Senate within thirty days after each such determination: *Provided further*, That the Excess Defense Articles program for any country shall not be increased beyond twenty per centum of the amount presented to the Congress.

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I make a point of order against the proviso on lines 16 through 19. This is clearly legislation in an appropriation and is not a proper appropriation limitation. It attempts to provide that excess defense articles programs may be increased up to 20 percent for any country beyond the amounts presented to the Congress.

As I stated earlier, Mr. Chairman, it is not my intention to go into the substance of the proviso since this language is not in the authorization act. I do want to point out, however, that this proviso particularly is not in the interest of our national security nor is it in the interest of our economic well-being.

Therefore, Mr. Chairman, I want to renew my point of order that this is legislation in an appropriation bill. . . .

THE CHAIRMAN:[20] The Chair is prepared to rule.

The gentleman from Wisconsin has raised a point of order against the language appearing on page 6 of the bill, lines 16 through 19, relating to excess defense articles, on the ground that the proviso is in the nature of legislation on an appropriation bill in violation of rule XXI, clause 2.

The Chair has examined the Foreign Assistance Act of 1961, as amended. Section 503 of that act bestows authority for military assistance and gives the President wide discretion in the

19. 116 CONG. REC. 18400, 18401, 91st Cong. 2d Sess.

20. Hale Boggs (La.).

furnishing and allotment of such assistance, subject of course to the general authorization levels set in section 504. The Chair is of the opinion that the proviso to which the point of order is directed places a limitation upon that Executive discretion as contained in the basic act and is therefore legislation on an appropriation bill that is not in order under the rule.

The Chair therefore sustains the point of order.

Requiring Detailed Annual Report

§ 55.4 Language in a general appropriation bill requiring the President to report to Congress at least semiannually on certain expenditures of funds under the bill, and detailing the type of justification the President must make in that report, was held to impose new affirmative duties on the President and was ruled out on a point of order.

On June 4, 1970,[1] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provisions:

The Clerk read as follows:

Sec. 108. Any expenditure made from funds provided in this title for procurement outside the United States of any commodity in bulk and in excess of $100,000 shall be reported to the Senate and House of Representatives at least twice annually: *Provided*, That each such report shall state the reasons for which the President determined, pursuant to criteria set forth in section 604(a) of the Foreign Assistance Act of 1961, as amended, that foreign procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base which outweigh the economic or other advantages to the United States of less costly procurement outside the United States.

MR. [E. ROSS] ADAIR [of Indiana]: Mr. Chairman, I make a point of order against section 108.

THE CHAIRMAN:[2] The gentleman will state it.

MR. ADAIR: This is legislation in an appropriation bill. It requires a report to the Congress of all procurements of more than $100,000 made outside of the United States and prescribes the type of justification that the President must give. Thus, in my opinion, it is clearly legislation.

Furthermore, Mr. Chairman, to answer a point that has been made earlier by the gentleman from Ohio, this same general subject matter is in existing law in section 604 of the Foreign Assistance Act, where again, in my opinion, it is set forth more fully and effectively.

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

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, we ask for a ruling.

1. 116 CONG. REC. 18405, 91st Cong. 2d Sess.

2. Hale Boggs (La.).

THE CHAIRMAN: The Chair is prepared to rule. The language in question, the significant part of it, section 108:

> Any expenditure made from funds provided in this title for procurement outside the United States of any commodity in bulk and in excess of $100,000 shall be reported to the Senate and the House of Representatives at least twice annually:

That, obviously, is an imposition of new duties upon the Executive and it clearly falls within the prohibition of section XXI, clause 2.

Therefore, the Chair sustains the point of order.

Imposing Duties as Condition Precedent to Funding

§ 55.5 To a general appropriation bill containing funds for foreign assistance, an amendment restricting the availability of funds therein for certain countries until the President reports to Congress his determination that such country does not deny or impose more than nominal restrictions on the right of its citizens to emigrate was held to impose additional duties on the President and was ruled out as legislation in violation of Rule XXI clause 2.

On Dec. 11, 1973,[3] during consideration in the Committee of the Whole of the Foreign Assistance Appropriation Act (H.R. 11771), a point of order was raised against the following amendment:

MR. [RICHARD H.] ICHORD [of Missouri]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Ichord: Page 18, line 10, strike out the period and insert in lieu thereof the following: "; except that no funds shall be obligated or expended under this paragraph, directly or indirectly, for the use or benefit of any nonmarket economy country (other than any such country whose products are eligible for column 1 tariff treatment on the date of the enactment of this Act) until the President makes a report to the Congress on his determination that such country does not (1) deny its citizens the right or opportunity to emigrate; (2) impose more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or (3) impose more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice."

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I make a point of order against the amendment in that it requires a Presidential determination and is legislation on an appropriation bill.

THE CHAIRMAN:[4] Does the gentleman from Missouri wish to be heard on the point of order?

MR. ICHORD: I do, Mr. Chairman.

Mr. Chairman, I would hope that the gentleman from Louisiana would with-

3. 119 CONG. REC. 40871, 93d Cong. 1st Sess.

4. Charles M. Price (Ill.).

draw his point of order, because the amendment which I offer is exactly the Vanik amendment which has been adopted by the House by a vote of 4 to 1.

Mr. Chairman, I submit that the amendment is in order, and I refer the Chair to Hinds' Precedents, section 3942. An amendment which was submitted to an appropriation bill, to an agricultural appropriation bill, provided that no part of the appropriation shall be available for the agricultural college of Utah until the Secretary of Agriculture shall be satisfied and shall so certify to the Secretary of the Treasury that no trustee, officer, instructor, and so forth, is engaged in the practice of polygamy.

That required a certification by the Secretary of Agriculture, Mr. Chairman. This requires a certification by the President that certain nations do not deny the rights of immigration to their citizens. It is a certification and report on the basis of that precedent, and I submit, Mr. Chairman, that the amendment is in order. If not, I have another amendment at the desk which will be in order, on trade to Russia. . . .

THE CHAIRMAN: The Chair is ready to rule. The amendment requires the President to make a report to the Congress on his determination that a certain country does not deny its citizens the right or opportunity to emigrate, impose more than a nominal tax on emigration, and certain other factors.

This evidently places additional duties upon the President and requires new determinations. A similar amendment was ruled out as legislation when the foreign aid appropriation bill was considered in 1972. The Chair holds that the amendment is legislation on an appropriation bill and sustains the point of order.

Parliamentarian's Note: This ruling is another indication, similar to the ruling in § 52.2, supra, that the precedent cited in 4 Hinds' Precedents § 3942 has been overruled.

Imposing Presidential Determination of Military Procurement Policies

§ 55.6 A provision in a foreign aid appropriation bill requiring the President to consider a recipient country's military procurement policies before furnishing assistance under that act or under the Agricultural Trade Development and Assistance Act was held to require additional duties on the part of the President and was ruled out on a point of order.

On June 4, 1970,[5] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 120. (a) In order to restrain arms races and proliferation of so-

5. 116 CONG. REC. 18408, 18409, 91st Cong. 2d Sess.

phisticated weapons, and to insure that resources intended for economic development are not diverted to military purposes, the President shall take into account before furnishing development loans, Alliance loans, or supporting assistance to any country under this Act, and before making sales under the Agricultural Trade Development and Assistance Act of 1954, as amended:

(1) the percentage of the recipient or purchasing country's budget which is devoted to military purposes;

(2) the degree to which the recipient or purchasing country is using its foreign exchange resources to acquire military equipment; and

(3) the amount spent by the recipient or purchasing country for the purchase of sophisticated weapons systems, such as missile systems and jet aircraft for military purposes, from any country.

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I make a point of order against section 120. It clearly constitutes detailed legislative provisions in an appropriation. Furthermore, in essence and detail, its language is already in existing law—section 620(s) of the Foreign Assistance Act. . . .

THE CHAIRMAN:[6] . . . Does the gentleman from Louisiana care to be heard on the point of order?

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I ask for a ruling.

THE CHAIRMAN: The Chair is prepared to rule.

Again a careful reading will show that the President is directed to take into account various considerations, all of which constitute legislation on an appropriation bill.

Therefore, the Chair sustains the point of order.

Presidential Determination of Soviet Troop Reductions

§ 55.7 To an amendment to the Department of Defense appropriation bill, prohibiting the use of funds in that act in excess of a specified amount for support of U.S. Armed Forces in Europe, an amendment providing that the limitation shall cease to apply if the President determines that the Soviet Union has not made comparable withdrawals of forces from the Mideast following the reduction of U.S. troop strength in Europe was held to impose additional affirmative duties upon the President and was ruled out in violation of Rule XXI clause 2.

On Oct. 8, 1970,[7] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 19590), a point of order was raised against the following amendment:

MR. [EDWARD G.] BIESTER [Jr., of Pennsylvania]: Mr. Chairman, I offer an amendment.

6. Hale Boggs (La.).

7. 116 CONG. REC. 35822, 35826, 91st Cong. 2d Sess.

The Clerk read as follows:

Amendment offered by Mr. Biester: on page 45, line 5, insert the following new section and renumber succeeding sections:

"Sec. 844. After June 1, 1971, no part of the funds appropriated in this Act shall be expended for the support of United States Armed Forces assigned to the United States European Command in excess of 270,000 members.". . .

MR. [JONATHAN B.] BINGHAM [of New York]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Bingham to the amendment offered by Mr. Biester: Delete the period at the end of the sentence and insert: "except that this limitation shall not apply if the President shall determine, after the United States Armed Forces assigned to the United States European Command have been reduced to the level of 290,000, that the Soviet Union has made no comparable withdrawal of forces from the countries of Eastern Europe to the territory of the Soviet Union itself."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment on the ground that it requires a determination on the part of the President.

THE CHAIRMAN PRO TEMPORE:[8] The Chair has read the amendment and is of the opinion that it does require determinations and additional duties on the part of the President and, therefore, the Chair sustains the point of order.

8. Charles M. Price (Ill.).

Presidential Certification Following Investigation of British Aid to Arab League

§ 55.8 To the foreign aid appropriation bill, an amendment providing that no part of the funds shall be paid to Great Britain until the President, after investigation, certifies that Great Britain is not selling war material to the Arab League was held to be legislation on an appropriation bill and therefore not in order.

On June 4, 1948,[9] during consideration in the Committee of the Whole of the foreign aid appropriation bill (H.R. 6801), a point of order was raised against the following amendment:

MR. [WALTER A.] LYNCH [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Lynch: Strike out the period on line 16, page 3, after the figures 1948 and insert a colon and add the following words: "*And provided further*, That no part of the funds appropriated herein shall be paid over or transferred or placed to the credit of, or otherwise made available, directly or indirectly to Great Britain until the President of the United States, after investigation, certifies that he is of the opinion that Great Britain is not selling,

9. 94 CONG. REC. 7207, 7208, 80th Cong. 2d Sess.

leasing, lending, or making otherwise available war material to any member of the Arab League, and that he further certifies that Great Britain has given to the United States Government satisfactory assurance that it will not thereafter sell, lease, lend, or make otherwise available war material to any member of the Arab League, which will or may be used to render inoperative the recommendation of the United Nations General Assembly for the partition of Palestine made on November 29, 1947."

MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[10] The gentleman will state it.

MR. TABER: Mr. Chairman, this is legislation on an appropriation bill and requires additional duties of officials of the United States. . . .

THE CHAIRMAN: The amendment offered by the gentleman from New York contains a limitation upon an appropriation bill and also embodies legislation; therefore the Chair sustains the point of order.

Requiring Presidential Proclamation of Foreign Aggression

§ 55.9 To a bill making appropriations for foreign aid, an amendment providing that all sums granted or used under the Act shall be reduced by any and all sums granted where such country is engaged in acts of aggression as determined by proclamation of the President or by the United Nations, was held to be legislation on an appropriation bill and therefore not in order.

On June 4, 1948,[11] during consideration in the Committee of the Whole of the foreign aid appropriation bill (H.R. 6801), a point of order was raised against the following amendment:

MR. [ABRAHAM J.] MULTER [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Multer: On page 3, line 16, after "1948" insert *"And provided further,* That all sums granted, lent or used to or for any country under this act shall be reduced by any and all sums granted, lent or used directly or indirectly by or for such country to or for the account or benefit of any country, State, or people engaged directly or indirectly in acts of aggression as determined by proclamation of the President of the United States of America or by the United Nations."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill, and requires additional duties of officers of the United States. . . .

THE CHAIRMAN:[12] The Chair is ready to rule.

In the opinion of the Chair, the amendment offered by the gentleman from New York contains legislation

10. W. Sterling Cole (N.Y.).

11. 94 CONG. REC. 7209, 80th Cong. 2d Sess.

12. W. Sterling Cole (N.Y.).

and, therefore, is subject to a point of order. The Chair sustains the point of order.

No Funds for Nations Proclaimed to be Aggressors as Determined by President

§ 55.10 To a bill making appropriations for foreign aid, an amendment providing that no part be paid to any country which the President proclaims to be an aggressor or a participant in an aggression was conceded to be subject to a point of order as legislation.

On June 4, 1948,[13] the Committee of the Whole was considering H.R. 6801, a bill making appropriations for foreign aid. The Clerk read as follows:

Be it enacted, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for foreign aid for the period beginning April 3, 1948, and ending June 30, 1949, and for other purposes, namely: . . .

MR. [EMANUEL] CELLER [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Celler: Page 1, line 6, after the word "purposes", strike out the comma and the word "namely" and insert "on condition, however, that no moneys authorized for appropriation hereunder shall be paid or credited to any country which participates in or aids in acts of aggression, such acts of aggression to be determined by proclamation by the President of the United States, namely."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the amendment that it is legislation on an appropriation bill and that it is not in order at this point in the bill and not germane.

THE CHAIRMAN:[14] Does the gentleman from New York desire to be heard on the point of order?

MR. CELLER: I agree to the point of order, Mr. Chairman.

THE CHAIRMAN: The point of order is sustained.

New Discretionary Authority Bestowed on President

§ 55.11 To a supplemental appropriation bill for defense aid to foreign governments, an amendment prohibiting expenditure of such appropriation unless such government transfer collateral security deemed by the President to be satisfactory, was held to be legislation.

On Mar. 19, 1941,[15] the following proceedings took place:

Amendment offered by Mr. [John M.] Vorys of Ohio: On page 4, between

13. 94 CONG. REC. 7189, 7190, 80th Cong. 2d Sess.

14. W. Sterling Cole (N.Y.).

15. 87 CONG. REC. 2376, 77th Cong. 1st Sess.

lines 15 and 16, insert a new section, as follows:

"Sec. 4. No part of any appropriation made by this act shall be used to procure defense articles for any foreign government which has not made arrangements, prior to receiving such articles, in order to protect the economic and financial interest of the United States, to reimburse the United States for the cost of such defense articles, or to guarantee such reimbursement by transferring, or causing to be transferred, to the United States property deemed by the President to be satisfactory collateral security for such reimbursement, insofar as the President shall find that such government has property available for such purpose."

MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, I make the point of order against the amendment that it is not a limitation. It is phrased, generally speaking, as a limitation, but on careful analysis the Chair will see it is not a limitation in that it is not a complete negative, and to be a limitation it must be a complete negative. . . .

THE CHAIRMAN:[16] The gentleman from Ohio has offered an amendment as a new section to the bill. The amendment is in the form of a limitation, but in the opinion of the Chair, in essence, it clearly is legislative in its character. It is not sufficient for an amendment to be in the form of a limitation. In view of the fact that the amendment as offered by the gentleman from Ohio very clearly imposes an additional duty on the President of the United States, the Chair is of the opinion that the amendment is a limitation only in form and that it is legislation upon an appropriation bill and therefore sustains the point of order.

16. Fritz G. Lanham (Tex.).

Earmarking Funds for Use as President May Direct

§ 55.12 Language in an appropriation bill earmarking some of the appropriations for the Veterans' Administration for use as the President may direct for a special study of the compensation and pensions program was conceded to be legislation and held not in order.

On Mar. 30, 1955,[17] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 5240), a point of order was raised against the following provision:

The Clerk read as follows:

General operating expenses: For necessary operating expenses of the Veterans' Administration, not otherwise provided for, including expenses incidental to securing employment for war veterans . . . $155 million, of which (a) $15,150,000 shall be available for such expenses as are necessary for the loan guaranty program, and (b) $300,000 shall be available as the President may direct for a special study of the compensation and pensions program: *Provided*, That no part of this appropriation shall be used to pay in excess of 20 persons engaged in public relations work. . . .

17. 101 CONG. REC. 4070, 84th Cong. 1st Sess.

MR. [WRIGHT] PATMAN [of Texas]: Mr. Chairman, I make a point of order against the language starting at the end of line 10, page 28, reading "$300,000 shall be available as the President may direct for a special study of the compensation and pensions program."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I concede the point.

THE CHAIRMAN:[18] The Chair is ready to rule. This is obviously legislation on an appropriation bill, and the point of order is sustained.

§ 56. Determination of National Interest

Military Assistance; Presidential Determination and Report

§ 56.1 In a paragraph of a foreign aid appropriation bill providing funds for military assistance, language prohibiting use of those funds for the furnishing of sophisticated weapons systems to certain countries "unless the President determines that the furnishing of such weapons systems is important to the national security of the United States and reports within thirty days each such determination to the Congress" was ruled out as legislation on an appropriation bill in violation of Rule XXI clause 2.

On June 4, 1970,[19] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

MILITARY ASSISTANCE

Military assistance: For expenses authorized by section 504(a) of the Foreign Assistance Act of 1961, as amended, including administrative expenses and purchase of passenger motor vehicles for replacement only for use outside of the United States, $350,000,000: *Provided,* That none of the funds contained in this paragraph shall be available for the purchase of new automotive vehicles outside of the United States: *Provided further,* That none of the funds appropriated in that paragraph shall be used to furnish sophisticated weapons systems, such as missile systems and jet aircraft for military purposes, to any underdeveloped country other than Greece, Turkey, the Republic of China, the Philippines, and Korea, unless the President determines that the furnishing of such weapons systems is important to the national security of the United States and reports within thirty days each such determination to the Congress: *Provided further,* That the military assistance program for any country shall not be increased beyond twenty per centum of the amount justi-

18. Albert Rains (Ala.).

19. 116 CONG. REC. 18400, 18401, 91st Cong. 2d Sess.

fied to the Congress, unless the President determines that an increase in such program is essential to the national interest of the United States and reports each such determination to the House of Representatives and the Senate within thirty days after each such determination: *Provided further,* That the Excess Defense Articles program for any country shall not be increased beyond twenty per centum of the amount presented to the Congress.

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I make a point of order against the language of the proviso contained in lines 1 through 9 on page 6. This is patently legislation in an appropriation bill. It is not a limitation of funds. It does direct the Executive that funds cannot be appropriated for or furnished to support sophisticated weapons, with certain exceptions listed.

Mr. Chairman, similar provisions and restrictions are contained in sections 504 and 520(s) of the Foreign Assistance Act, and also section 35 of the Military Sales Act.

Therefore, Mr. Chairman, I say this is legislation on an appropriation bill and is unnecessary because of similar provisions in the Authorization Act.

THE CHAIRMAN:[20] Does the gentleman from Louisiana desire to be heard on the point of order?

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I desire to be heard.

The committee felt this to be a limitation, because the words "none of the funds appropriated . . . shall be used" appear in this paragraph.

This provision was added by the committee to the foreign assistance appropriation bill for fiscal year 1968 in order to stop underdeveloped countries from buying sophisticated weapons systems with U.S. grant-aid funds. The provision was subsequently modified to encourage countries away from arms races. We believe it is a limitation and we ask for a ruling.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I desire to be heard on the point of order.

This is an amendment that I had offered and it has been in the bill for 4 years now. I believe it comes within the Holman rule. It is a retrenchment of Federal expenditures. It is negative in nature. It is germane, and I do not see where it imposes any addition or affirmative duties on anyone. I think the point of order should be ruled against.

THE CHAIRMAN: The Chair is prepared to rule.

On September 20, 1966, a point of order was sustained against language which was contained in a foreign aid appropriation bill prohibiting aid to any nation that sells or permits ships on its registry to transport cargo to North Vietnam and containing the phrase "unless the President determines." The important language there is "unless the President determines." The language here appears to be identical, and the Chair sustains the point of order.

Economic Assistance; Presidential Determination and Report

§ 56.2 Language in a general appropriation bill directing

20. Hale Boggs (La.).

the President to withhold economic assistance to certain countries in an amount equivalent to that spent by those countries for sophisticated military equipment, unless the President determines and reports to Congress that such expenditures are important to the security of the United States, was ruled out as legislation in violation of Rule XXI clause 2.

On June 4, 1970,[1] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Sec. 119. The President is directed to withhold economic assistance in an amount equivalent to the amount spent by any underdeveloped country for the purchase of sophisticated weapons systems, such as missile systems and jet aircraft for military purposes from any country other than Greece, Turkey, the Republic of China, the Philippines, and Korea, unless the President determines that such purchase or acquisition of weapons systems is important to the national security of the United States and reports within thirty days each such determination to the Congress.
>
> MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I make a point of order against the language on page 14, lines 13 to 22, section 119, that this is clearly legislation on an appropriation bill.
>
> It is a good provision, again, but it has no legitimate place in an appropriation bill, especially when even stronger restrictions are already contained in section 520(s) of the existing Foreign Assistance Act. . . .
>
> MR. [CLARENCE D.] LONG of Maryland: . . . This amendment is in the nature of a limitation which would withhold an equivalent amount of aid in cases where underdeveloped countries otherwise recipients of U.S. aid undertake to make purchases of sophisticated weapons systems with their own funds. This limitation applies solely to the appropriation under consideration and does not operate beyond the fiscal year in which the appropriation is made. . . . Under the rules and precedents, limitations may be written into appropriations bills. As Chairman Dingley, of Maine, wrote in 1896:
>
> > The House in Committee of the Whole has the right to refuse to appropriate for any object, either in whole or in part, even though that object may be authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole.
>
> Asher C. Hinds, clerk to the Speaker from 1881 until 1891, and editor of the "Rules, Manual and Digest" of the House of Representatives in 1899, and of "Hinds' Precedents" in 1908:
>
> > Thus the power of limitation is solely a negative power, capable of setting up a barrier, and not a positive power, capable of creative func-

1. 116 CONG. REC. 18408, 91st Cong. 2d Sess.

tions. The appropriation may interfere with Executive discretion only in a negative way. It may decline to appropriate for ships to be built in a navy yard by saying that no part of the appropriation shall be used for that purpose. These negative prohibitions are within the power of the appropriation bill.

In the past, limitations have prohibited such measures as the payment of troops stationed in certain geographical locations, the appropriations for repair of vessels in private shipyards, and appropriations for the return of a Reserve Force to active duty—Cannon's Precedents.

THE CHAIRMAN:[2] The Chair finds the precedent cited is not germane. Section 119 as it is now drafted reads as follows:

> The President is directed to withhold economic assistance in an amount equivalent to the amount spent by any underdeveloped country—

And again on line 19 it says—

> unless the President determines that such purchase or acquisition of weapons systems is important to the national security of the United States and reports within 30 days each such determination to the Congress.

It is obviously legislation in an appropriation bill, and the Chair sustains the point of order.

§ 56.3 Language in a general appropriation bill prohibiting the furnishing of economic assistance under the Foreign Assistance Act of 1961 to Communist Nations, unless the President determines that withholding such aid would jeopardize the national security, reports that determination to Congress and publishes it in the Federal Register, was held similar but not identical to the prohibition contained in the authorizing legislation and was therefore ruled out as imposing additional duties on the President.

On June 4, 1970,[3] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> (b) No economic assistance shall be furnished to any nation, whose government is based upon that theory of government known as communism, under the Foreign Assistance Act of 1961, as amended (except section 214(b)), unless the President determines that the withholding of such assistance would be contrary to the national interest and reports such determination to the House of Representatives and the Senate. Reports made pursuant to this subsection shall be published in the Federal Register within seven days of submission to the Congress and shall contain a statement by the President of the reasons for such determination.

2. Hale Boggs (La.).

3. 116 CONG. REC. 18405, 91st Cong. 2d Sess.

MR. [DONALD M.] FRASER [of Minnesota]: Mr. Chairman, I rise to make a point of order.

THE CHAIRMAN:[4] The gentleman will state his point of order.

MR. FRASER: Mr. Chairman, I make a point of order against section 109, paragraph (b). The provision forbids any economic assistance to Communist countries. As with reference to the previous paragraph, this one is duplicative of section 620(f). In fact, it is far less precise than the provision contained in the authorizing legislation. Therefore, I make the point of order that the language in section 109, paragraph (b) constitutes legislation in an appropriation measure.

THE CHAIRMAN: Does the gentleman from Louisiana wish to be heard on the point of order?

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I ask for a ruling.

THE CHAIRMAN: The Chair is prepared to rule.

The language is similar but is not identical to the Foreign Assistance Act of 1961. It imposes new duties upon the President of the United States and as such clearly falls within the prohibition of rule XXI, clause 2.

The Chair sustains the point of order.

Parliamentarian's Note: The provisions of the authorizing legislation stated:

(f) No assistance shall be furnished under this chapter, as amended, (except section 2174(b) of this title) to any Communist country. This restriction may not be waived pursuant to any authority contained in this chapter unless the President finds and promptly reports to Congress that: (1) such assistance is vital to the security of the United States; (2) the recipient country is not controlled by the international Communist conspiracy; and (3) such assistance will further promote the independence of the recipient country from international communism. For the purposes of this subsection, the phrase "Communist country" shall include specifically, but not be limited to, the following countries: Peoples Republic of Albania, Peoples Republic of Bulgaria, Peoples Republic of China (and other named countries).

See Public Law No. 87–195 as amended by Public Law No. 87–565, § 301(d)(3).

No Aid to United Arab Republic Unless President Determines

§ 56.4 A provision in a foreign aid appropriation bill prohibiting assistance under that bill for the United Arab Republic "unless the President determines that such availability is essential to the national interest of the United States" was held to be legislation and was ruled out on a point of order.

On June 4, 1970,[5] during consideration in the Committee of the

4. Hale Boggs (La.).

5. 116 CONG. REC. 18406, 91st Cong. 2d Sess.

Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 117. None of the funds appropriated or made available in this Act for carrying out the Foreign Assistance Act of 1961, as amended, shall be available for assistance to the United Arab Republic, unless the President determines that such availability is essential to the national interest of the United States. . . .

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I rise to a point of order.

THE CHAIRMAN:[6] The gentleman will state the point of order.

MR. ZABLOCKI: Mr. Chairman, I make the point of order against section 117 on the ground that it constitutes legislation in an appropriation bill.

It is almost identical with the prohibitions contained in section 620(p) of the existing Foreign Assistance Act.

THE CHAIRMAN: The Chair is prepared to rule.

The language on page 13, line 19, "unless the President determines," is clearly legislation on an appropriation bill and clearly violates clause 2 of rule XXI.

The Chair sustains the point of order.

Nations Assisting Cuba; No Aid Unless President Determines

§ 56.5 Language in a general appropriation bill which specifies that no part of funds therein shall be available to nations providing assistance to the Castro regime in Cuba "unless the President determines that the withholding . . . would be contrary to the national interest" was held to impose additional burdens on the Chief Executive and was ruled out as legislation.

On Sept. 20, 1962,[7] during consideration in the Committee of the Whole of the foreign aid appropriation bill (H.R. 13175), the following point of order was raised:

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 6, line 17, as follows: "unless the President determines that the withholding of such assistance to such country would be contrary to the national interest."

THE CHAIRMAN:[8] The gentleman will state the point of order.

MR. GROSS: Mr. Chairman, I make a point of order against the language I have just read on the ground that it is legislation on an appropriation bill.

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

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I ask for a ruling on the point of order.

THE CHAIRMAN: The language referred to by the gentleman from Iowa

6. Hale Boggs (La.).

7. 108 CONG. REC. 20181, 87th Cong. 2d Sess.

8. Wilbur D. Mills (Ark.).

against which he makes his point of order does impose additional burdens upon the President and is therefore legislation on an appropriation bill.

The point of order is sustained.

Nations Dealing With Cuba or North Vietnam; No Aid Unless President Determines

§ 56.6 Language in a foreign aid appropriation bill prohibiting aid (not merely limiting funds in the bill) to any nation which permits ships under its registry to carry cargo to Cuba or North Vietnam unless the President determines that withholding of assistance would be contrary to the national interest and reports such determination to Congress, was conceded to be legislation and ruled out on a point of order.

On Sept. 20, 1966,[9] during consideration in the Committee of the Whole of the foreign aid appropriation bill (H.R. 17788), a point of order was raised against the following provision:

THE CHAIRMAN:[10] The Clerk will read.

The Clerk read as follows:

(b) No economic assistance shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry items of economic assistance to Cuba, so long as it is governed by the Castro regime, or to North Vietnam, unless the President determines that the withholding of such assistance would be contrary to the national interest and reports such determination to the Foreign Relations and Appropriations Committees of the Senate and the Foreign Affairs and Appropriations Committees of the House of Representatives. Reports made pursuant to this subsection shall be published in the Federal Register within seven days of submission to the committees and shall contain a statement by the President of the reasons for such determination.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 8, beginning with line 8, and running through line 22.

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

MR. GROSS: Mr. Chairman, I make a point of order against the language on page 8, beginning with line 8 and running through line 22, as being legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Louisiana [Mr. Passman] desire to be heard on the point of order?

MR. [OTTO E.] Passman: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The gentleman from Louisiana concedes the point of order.

The Chair sustains the point of order.

9. 112 CONG. REC. 23265, 23266, 89th Cong. 2d Sess.

10. Charles M. Price (Ill.).

Procurement From Foreign Firms; Waiver of Restriction by President

§ 56.7 To a bill making appropriations for the Department of Defense, an amendment denying the use of funds appropriated or made available by the bill for procurement from foreign firms which receive government subsidies thereby constituting unfair competition, but permitting the President to waive such restriction in the national interest with prior notice to Congress was held to be legislation (imposing additional duties) and was ruled out on a point of order.

On Sept. 12, 1968,[11] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 18707), a point of order was raised against the following amendment:

> MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Hall: On page 44, after line 14, add a new section 542, as follows:
>
> ". . . None of the funds which are appropriated or made available for expenditure by this Act for the procurement of aircraft or major components thereof, shall be expended outside the United States in any instance with a foreign firm which is the recipient of direct foreign government products development support, which would constitute unfair competition for any United States firm which has a similar product, capability, or proposal. This limitation is waived for continuing prior year's procurement actions; and further, this limitation may be waived on determination of necessity in the national interest by the President on prior notification of the House and Senate."
>
> And renumber the subsequent section accordingly. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I rise to make a point of order, regretfully, because I have the highest esteem for the gentleman from Missouri.

In the first place, the amendment states: "shall be expended outside the United States in any instance with a foreign firm which is the recipient of direct foreign government product development support." A determination as to whether or not a foreign firm is the recipient of a direct foreign government subsidy will be difficult. This would place a special burden on the executive.

Then proceeding further it says: "which would constitute unfair competition for any U.S. firm which has a similar product, capability, or proposal." Here determinations also would have to be made with respect to these matters.

Now proceeding with the next sentence it says: "This limitation is waived for continuing and prior year's procurement actions." This is clearly

11. 114 CONG. REC. 26563, 26564, 90th Cong. 2d Sess.

legislation on an appropriation bill, just as the previous portions which I have read.

Under all of the circumstances, I make the point of order that this is legislation on an appropriation bill and requires extra duties to be placed on those who administer it.

MR. HALL: Mr. Chairman, I wish to be heard on the point of order.

I submit that this point of order should not be sustained and should be overruled, because this is a simple limitation on expenditures under the general provisions of this bill which has many additional general provisions limiting expenditures. I think anyone in this Chamber knows that any Government procurement officer and particularly those Government procurement officers who work for the armed services know immediately—and, in fact, it is an open record—when there is a foreign subsidy. That is exactly what is meant by waiver clauses in the amendment which I reread once and which I will not bore the Members with again.

Insofar as direct subsidy appropriations by a foreign nation are concerned, it is in no way legislation on an appropriation bill, because it only involves techniques of ordinary procurement, contract assignment, and negotiation within or without those who respond to "requests for proposals," in the ordinary manner of contracting for arms. This is the very title of the bill.

I submit that the point of order should be overruled, although I will be glad to hear any further debate on the question of the substance of the amendment. . . .

THE CHAIRMAN:[12] The Chair is ready to rule.

The Chair agrees with the gentleman from Texas that the amendment contains legislation which goes beyond the form of proper limitation, and therefore sustains the point of order.

Sales to Communist Countries; Presidential Exception

§ 56.8 To a bill making appropriations for the Department of Agriculture and including funds for the Commodity Credit Corporation, an amendment prohibiting the use of funds for export subsidies on commodities being sold to Communist countries except when the President determines such transaction to be in the public interest and reports his finding to the Congress, imposed extra duties on the President and was ruled out as legislation.

On May 20, 1964,[13] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 11202), a point of order was raised against the following amendment:

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

The Clerk read as follows:

Amendment offered by Mr. Findley: Page 31, line 8, after the word

12. Daniel D. Rostenkowski (Ill.).

13. 110 CONG. REC. 11434, 11435, 88th Cong. 2d Sess.

"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.

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

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

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

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 legislation 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 requiring 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. 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. . . .

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

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

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 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.

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

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 Agriculture 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-

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

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 $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-

8. Paul J. Kilday (Tex.).

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 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

12. James W. Trimble (Ark.).

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 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

14. William M. Whittington (Miss.).

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.

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 nongovernmental 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.

16. William M. Whittington (Miss.).

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

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 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.

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

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 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

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

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 authority 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.).

On Mar. 5, 1948,[9] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 5607), a point of order was raised against the following provision:

The Clerk read as follows:

Amendment offered by Mr. [Walter C.] Ploeser [of Missouri]: On page 56, after line 5, insert the following paragraph:

"Technical and scientific services: For necessary expenses in the performance of activities and services relating to the collection, compilation, and dissemination of technological information as an aid to business in the development of foreign and domestic commerce, including personal services in the District of Columbia; not to exceed $25,000 for services as authorized by section 15 of the act of August 2, 1946 (5 U.S.C. 55a), and not to exceed $50,000 for printing and binding, $520,000, of which $20,000 shall be transferred to the appropriation 'Salaries and expenses' under the Office of the Secretary: *Provided,* That the Secretary is authorized, upon request of any public or private organization or individual, to reproduce by appropriate process, independently or through any other agency of the Government, any scientific or technical report, document, or descriptive material, foreign or domestic, which has been released for public dissemination, and to sell such reproductions at a price not less than the estimated total cost of reproducing and disseminating same as may be determined by the Secretary, the moneys received from such sale to be deposited in a special account in the Treasury, such account to be available for reimbursing any appropriation which may have borne the expense of such reproduction and dissemination and making refunds to organizations and individuals when entitled thereto."

MR. [KARL] STEFAN [of Nebraska]: Mr. Chairman, I reserve a point of order against the amendment. . . .

THE CHAIRMAN:[10] Does the gentleman from Nebraska insist on his point of order?

MR. STEFAN: Yes, Mr. Chairman.

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

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Chairman, I wish to be heard on the point of order. . . .

May I say that a point of order was raised against this item last year and it was eliminated on the point of order. At that time, however, the Department was engaged in some research which it was doing, in which it farmed out certain projects for research to the various colleges and institutions. It was not doing original research but was using other available research agencies to make the research for them. When, however, a point of order was raised in the House the research activities were eliminated.

The Office is now engaged only in furnishing technical and scientific information to business. The authority for the Department of Commerce to engage in such activities reads as follows:

It shall be the province and duty of the Bureau of Foreign and Domestic Commerce, under the direction of the Secretary of Commerce, to foster, promote, and develop the various

9. 94 CONG. REC. 2233, 2234, 80th Cong. 2d Sess.

10. Carl T. Curtis (Nebr.).

manufacturing industries of the United States, and markets for the same at home and abroad, domestic and foreign, by gathering, compiling, publishing, and supplying all available and useful information concerning such industries and such markets, and by such other methods and means as may be prescribed by the Secretary of Commerce or provided by law.

It is our contention that this is just exactly what the particular office is doing and that under the above language its activities are authorized.

THE CHAIRMAN: Does the gentleman from Nebraska desire to be heard?

MR. STEFAN: No, Mr. Chairman; I ask that a ruling be made.

THE CHAIRMAN: The Chair is ready to rule.

It is the opinion of the Chair that the amendment does contain legislation and, therefore, the Chair sustains the point of order. .

Authority to Terminate Employment

§ 58.2 Language in a general appropriation bill providing that the Secretary of Commerce may, in his discretion, terminate the employment of any officer or employee of the Department of Commerce whenever he shall deem such termination necessary or advisable in the interests of the United States, was conceded to be legislation on an appropriation bill and held not in order.

On Apr. 21, 1950,[11] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 7786), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 305. Notwithstanding the provisions of section 6 of the act of August 24, 1912 (37 Stat. 555), or the provisions of any other law, the Secretary of Commerce may, in his absolute discretion, during the current fiscal year, terminate the employment of any officer or employee of the Department of Commerce whenever he shall deem such termination necessary or advisable in the interests of the United States.

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[12] The gentleman will state it.

MR. MARCANTONIO: Mr. Chairman, I make a point of order against section 305 for the same reasons as I did yesterday. I do not want to be repetitious. It is legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from New York [Mr. Rooney] desire to be heard?

MR. [JOHN J.] ROONEY: Mr. Chairman, this is the exact language of the so-called McCarran rider which was stricken yesterday by the Chair on a point of order raised by the gentleman from New York [Mr. Marcantonio] to the provisions of the Department of State portion of the pending bill.

11. 96 CONG. REC. 5539, 5540, 81st Cong. 2d Sess.

12. Jere Cooper (Tenn.).

Under the circumstances and as much as I dislike to do so, I must concede that the language is exactly the same and further concede that the Chair is expected to rule today as it did yesterday. But I do hope that when we come back to the House with this bill after a conference with the other body that the provisions of this rider will be again contained therein because the Department of Commerce has been shown to need the provisions of the McCarran rider even more so than the Department of State so that the Secretary of Commerce can summarily dismiss any employee who is connected with subversive activities.

THE CHAIRMAN: The gentleman from New York [Mr. Marcantonio] makes the point of order against section 305, page 84, on the ground it contains legislation on an appropriation bill which is in violation of the rules of the House. The gentleman from New York [Mr. Rooney] concedes that this is the same language as contained in the provision of the pending bill relating to the State Department on which a similar point of order was made on yesterday.(13)

The Chair has examined the language. It appears clearly that there is legislation included in this section of the pending bill. The rules of the House clearly provide it is not in order for legislation to be included in an appropriation bill and, as stated on the same question presented yesterday, the Chair has no alternative other than to sustain the point of order.

The Chair sustains the point of order.

13. See § 59.14, infra, for the ruling referred to.

Regulations of the Secretary

§ 58.3 Language in an appropriation bill providing that appropriations for the Department of Commerce available for salaries and expenses shall be available "in accordance with regulations prescribed by the Secretary," for attendance at meetings of organizations concerned with the activities for which the appropriations are made, was held to be legislation and not in order.

On Apr. 21, 1950,(14) during consideration in the Committee of the Whole of a general appropriation bill (H.R. 7786), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 304. Appropriations of the Department of Commerce available for salaries and expenses shall be available, in accordance with regulations prescribed by the Secretary, for attendance at meetings of organizations concerned with the activities for which the appropriations are made.

MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make a point of order against section 304 on the ground that it is legislation on an appropriation bill and requires additional duties of the Secretary of Commerce.

14. 96 CONG. REC. 5537, 81st Cong. 2d Sess.

THE CHAIRMAN:[15] Does the gentleman from New York [Mr. Rooney] desire to be heard on the point of order?

MR. [JOHN J.] ROONEY: Yes, Mr. Chairman.

THE CHAIRMAN: The Chair will be pleased to hear the gentleman.

MR. ROONEY: Mr. Chairman, it is the contention of the committee that the language contained in section 304 of the proposed bill, page 84, is required by the provisions of five United States Code, section 83.

THE CHAIRMAN: Does the gentleman from New York [Mr. Keating] desire to be heard on the point of order?

MR. KEATING: Yes, Mr. Chairman.

THE CHAIRMAN: The Chair will be pleased to hear the gentleman.

MR. KEATING: Either this section 304 is necessary or it is not necessary. If it is not necessary and adds nothing, then there is no reason for it; if it does add something, in the way of duties conferred on the Secretary of Commerce, then it is necessarily legislation in an appropriation bill. All of line 14 of section 304 requires additional duties on the part of the Secretary of Commerce. The entire section is legislation in this bill.

My attention has been called to this section of the United States Code, referred to by the gentleman from New York [Mr. Rooney], which is general in its terms but does not cover the duties set forth in section 304, which are in addition to those provided in the code. They are discretionary duties.

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

The Chair has examined the section, and also has examined the provisions of the law found in section 83, title V of the United States Code, which appear to the Chair to be ample authority for the provision included in this section.

However, the Chair does invite attention to the language appearing in line 14 which reads: "in accordance with regulations prescribed by the Secretary." It would appear from that language that this would impose additional duties and confer additional authority on the Secretary. It would to that extent constitute legislation on an appropriation bill.

For the reason stated, the Chair sustains the point of order.

Parliamentarian's Note: Compare this ruling with § 52.28, supra. In the 1950 precedent, there was a requirement for the issuance of regulations, rather than discretionary authority given for the issuance thereof, and § 304, at issue here also was inadmissible as affecting other funds of the department. It should be noted that 5 USC § 4110 specifically authorizes appropriations for attendance at any meetings necessary to improve an agency's efficiency. See also 5 USC § 5946. Where the law contemplates inclusion of certain language in an appropriation bill, such language, of course, is not legislation. For general discussion of provisions in law that authorize inclusion of specified language in appropriation bills, see § 26, supra.

15. Jere Cooper (Tenn.).

Coast Guard; Earmarking Funds for Unauthorized Project

§ 58.4 To a paragraph in a general appropriation bill containing funds for operating expenses of the Coast Guard, an amendment directing the use of additional funds for the preparation of a report by the Coast Guard on search and rescue units was held to impose new duties on federal officials and was ruled out as legislation in violation of Rule XXI clause 2.

On June 20, 1973,[16] during consideration in the Committee of the Whole of the Department of Transportation appropriation bill (H.R. 8760), a point of order was raised against the following amendment:

> THE CHAIRMAN:[17] The gentleman from California reserves a point of order on the amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. [Guy A.] Vander Jagt [of Michigan]: Page 3, line 11, strike out "$543,800,000" and insert in lieu thereof "$544,400,000".
>
> And on page 3, line 12, insert immediately after "reduction" the following: ", and of which $600,000 shall be applied to the preparation of a report by the Coast Guard with respect to the closing of certain search and rescue units during 1973, and to the reopening and operation of any search and rescue unit determined by such report to be desirable for the maintenance of an effective search and rescue capability.". . .
>
> MR. [JOHN J.] MCFALL [of California]: . . . Mr. Chairman, I renew my point of order on the basis that the language of the second paragraph of the gentleman from Michigan's amendment is legislation on an appropriation bill.
>
> THE CHAIRMAN: Does the gentleman from Michigan wish to repond?
>
> MR. VANDER JAGT: Thank you, Mr. Chairman.
>
> [To enable the Coast Guard] to carry out the intent of the committee and respond, [it] is helpful to have that additional language in.
>
> However, since we are making legislative history as to what exactly we are talking about in terms of this $600,000 item, if the gentleman from California's point of order is sustained, I have a substitute amendment at the desk.
>
> THE CHAIRMAN: The Chair will rule on the point of order.
>
> The gentleman's amendment clearly imposes new duties on the Coast Guard which would, in effect, constitute legislation in an appropriation bill in violation of clause 2, rule XXI.
>
> The Chair sustains the point of order of the gentleman from California.

Export Embargoes; Requiring Determinations of Rationale for Imposition

§ 58.5 A substitute amendment to a general appropriation

16. 119 CONG. REC. 20530, 20531, 93d Cong. 1st Sess.
17. John M. Murphy (N.Y.).

bill precluding the use of funds therein to carry out embargoes on export of agricultural products determined by the Secretary of Agriculture to have been imposed as the result of a designated Presidential embargo on exports to one country was ruled out as legislation in violation of Rule XXI clause 2, imposing on that official new duties not required by existing law.

On July 22, 1980,[18] during consideration in the Committee of the Whole of the Departments of State, Justice, Commerce, and the Judiciary appropriation bill (H.R. 7584), a substitute amendment was ruled out of order as indicated below:

MR. [MARK] ANDREWS of North Dakota: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Andrews of North Dakota: On page 43, after line 5, insert the following new section:

"Sec. 605. None of the funds appropriated by this Act may be used to carry out or enforce any restriction on the export of any agricultural commodity."

MR. [TOM] HARKIN [of Iowa]: Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. Harkin as a substitute for the amendment offered by Mr. Andrews of North Dakota: Page 43, after line 5, insert the following new section:

Sec. 605. None of the funds appropriated by this Act may be used to carry out or enforce any licensing requirement for the export of any agricultural commodity or product which, as determined by the Secretary of Agriculture, was imposed because of the reduction in the sales of agricultural commodities and products to the Soviet Union announced by a presidential memorandum to the Secretary of Commerce, dated January 7, 1980. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: I make a point of order on two grounds. First of all, it is not germane to this bill because it makes the determination of the matter the province of the Secretary of Agriculture, which is not covered in this legislation. This is not for the Department of Agriculture.

Second, it goes beyond the usual amendment limitation on an appropriation bill, requiring determinations to be made and duties to be performed that may not be authorized at this time in law. For both reasons I think the amendment is out of order. . . .

MR. HARKIN: Mr. Chairman, I believe the gentleman from Maryland (Mr. Bauman) misreads the amendment. The determination was already made by the Secretary of Agriculture in the Federal Register, volume 45, No. 6, dated January 9, 1980. There is a Presidential memorandum to the Secretary of Commerce in which the President has directed the Secretary of Commerce, in consultation with the Secretary of Agriculture and other appropriate officials, to take immediate

18. 126 CONG. REC. 19087–89, 96th Cong. 2d Sess.

action under the Export Administration Act to terminate shipments of agricultural commodities and products, including wheat and corn, to the Soviet Union.

Therefore, the determination by the Secretary of Agriculture has already been made; it is not to be made in the future. . . .

MR. BAUMAN: Mr. Chairman, I will simply point out if that is the intention of the gentleman, his drafting is imperfect because it says that none of the funds appropriated under this act, which will take effect for fiscal year 1981, beginning October 1, may be used for any licensing requirement. That definitely encompasses future determinations and does not simply go to past determinations. That, I think, is well beyond any limitation that is appropriate to an appropriations bill. . . .

THE CHAIRMAN:[19] The Chair is prepared to rule.

The gentleman from Maryland makes a point of order against the substitute amendment for the amendment offered by the gentleman from North Dakota (Mr. Andrews) on the grounds, first, that it is not germane to the original amendment of the bill; second, that it imposes additional duties and hence it is not in accordance with the rules.

It is the opinion of the Chair the amendment does appear to impose upon the Secretary of Agriculture the responsibility not only of consulting with the Secretary of Commerce but evaluating whether licensing requirements for export of agricultural commodities were imposed for certain reasons. This is a duty not demonstrably imposed upon the Secretary of Agriculture by existing law and hence in the opinion of the Chair does constitute an additional duty.

The Chair does find, however, that the substitute is germane, but on the basis of the second objection, upholds the point of order and rules that the amendment is out of order.

Line-of-business Data; Restriction on Discretion to Collect

§ 58.6 Language in a paragraph of a general appropriation bill containing funds for the Federal Trade Commission "for the purpose of collecting line-of-business data . . . from not to exceed 250 firms" was conceded to directly interfere with the discretionary authority of the FTC—a restriction on the scope of the investigation rather than a limitation on availability of funds—and was ruled out in violation of Rule XXI clause 2.

On June 21, 1974,[20] the principle was applied that while it is in order on a general appropriation bill to limit the availability of funds therein for part of an authorized purpose while appropriating for the remainder of it, language which restricts not the

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

20. 120 CONG. REC. 20600, 93d Cong. 2d Sess.

funds but the discretionary authority of a federal official administering those funds may be ruled out as legislation. The proceedings are discussed in § 51.18, supra.

Federal Trade Commission; Prohibiting Funds for Regulation of Advertising

§ 58.7 To a general appropriation bill from which all funds for the Federal Trade Commission had been stricken as unauthorized, an amendment prohibiting the use of all funds in the bill to limit advertising of (1) food products containing ingredients found safe by the Food and Drug Administration or considered "generally recognized as safe", or not containing ingredients found unsafe by the FDA, and (2) toys not declared hazardous or unsafe by the Consumer Product Safety Commission, was held to impose new duties upon the Federal Communications Commission (another agency funded by the bill) to evaluate findings of other federal agencies—duties not imposed upon the FCC by existing law.

On June 14, 1978,[1] during consideration in the Committee of the Whole of H.R. 12934 (Departments of State, Justice, Commerce, and the Judiciary appropriation bill), a point of order was sustained against the following amendment:

> MR. [MARK] ANDREWS of North Dakota: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> > Amendment offered by Mr. Andrews of North Dakota: On page 51 after line 16, insert the following:
> >
> > Sec. 605. Except for funds appropriated to the Judiciary in title IV of this act, no part of any appropriation contained in this act may be used to pay the salary or expenses of any person to limit the advertising of: (1) any food product that contains ingredients that have been determined to be safe for human consumption by the Food and Drug Administration or are considered to be "Generally Recognized as Safe" (GRAS) and does not contain ingredients that have been determined to be unsafe for human consumption by the FDA; (2) any toy which has not been declared hazardous or unsafe by the Consumer Product Safety Commission. . . .
>
> MR. [BOB] ECKHARDT [of Texas]: The amendment is legislation on an appropriation bill, and as such is subject to a point of order under rule XXI, clause 2. . . .
>
> . . . [T]his amendment was directed at the Federal Trade Commission section of the bill which has come out. Therefore, I would also offer alter-

1. 124 CONG. REC. 17644–47, 95th Cong. 2d Sess.

natively or additionally, the point of order that this is not germane to the bill as it is now before us. . . .

. . . I should primarily like to speak on the point of order based on the proposition that I just read, that is that this constitutes legislation on an appropriations bill and gives to officers of the Government very, very large additional duties as the result of the passage of this amendment, should it be passed.

I point primarily to the case which I believe is directly in point. On June 21, 1974, there was a point of order made by the gentleman from California (Mr. Moss) to a provision in the appropriations bill at that time, section 511. The gentleman from California (Mr. Moss) asserted that the language would impose additional duties on every agency subject to the bill and was legislation on an appropriation. The language of the section was as follows:

> Except as provided in existing law, funds provided in this act shall be available only for the purposes for which they are appropriated.

Mr. Moss correctly pointed out that if that provision were sustained, it would be necessary in the use of any funds by an agency involved to go back and show that the Appropriations Committee had addressed the specific object of the use of those funds. . . .

The Chair ruled as follows:

> The Chair is prepared to rule on the point of order. If the language means what the gentleman from Mississippi now says it does, then the language is a nullity because it just repeats existing law. The Chair is of the opinion, though, that there is a possibility, as earlier indicated during general debate and as suggested by the gentleman from California, that the amendment imposes an additional burden, and the Chair, therefore, sustains the point of order. . . .

The Food and Drug Administration does not list food products as safe or unsafe. The Food and Drug Administration only determines whether or not ingredients in food products are safe or unsafe. Therefore, if this restriction were placed in law, it would be necessary for an agency like the Federal Communications Commission, when it is determining whether or not funds might be used in order to take some action respecting unsafe foods, to look to see what ingredients were included in the particular food involved. . . .

The Consumer Product Safety Commission determines what minimum design or what minimum standards, performance standards, are necessary in order for a toy to be permitted to go on the market. . . .

The point, though, is that the Commission does not establish that this particular toy is unsafe. If we pass this restriction, we would place the burden on the FTC to go in and look at every toy and then apply the standards of the Consumer Product Agency to those toys to find out whether they could be advertised.

So, Mr. Chairman, I think this is a classic example of placing on every agency to whom this restriction would apply very extensive duties beyond that which they are now called upon to exercise. . . .

MR. [NORMAN D.] DICKS [of Washington]: . . . Mr. Chairman, just to reiterate on this point, this amendment was aimed at limiting the Federal Trade Commission. Now that that sec-

tion has been stricken, the only way it can apply is to the FCC. The FCC does not have to regulate itself for advertising. That jurisdiction falls within the jurisdiction of the Federal Trade Commission.

Therefore, it creates new legal duties for the FCC, which are beyond the scope of an appropriation bill, which makes it legislation within an appropriation bill and, therefore, subject to rule XXI, clause 2.

Also the ruling made by the Consumer Product Safety Commission is accurate. The language does not go to unsafe toys, and they would have additional duties created by this amendment. . . .

THE CHAIRMAN:[2] The Chair is prepared to rule.

The gentleman from Texas (Mr. Eckhardt) makes the point of order that the amendment offered by the gentleman from North Dakota (Mr. Andrews) constitutes legislation on an appropriation bill. In addition, he makes the point that because it was drafted originally to be applicable to the Federal Trade Commission and that section of the bill has been stricken, it is no longer germane to the bill.

The Chair does not find it necessary to rule, however, on the point of germaneness.

The amendment would prohibit use of any funds in the bill to limit advertising of food products and toys in relation to which determinations have been made by the Food and Drug Administration and the Consumer Product Safety Commission. As indicated by the arguments made on the point of order, this bill now contains no funds for the Federal Trade Commission but does contain funds for the Federal Communications Commission. The Chair feels it is necessary to lay that basis in order to determine whether the amendment requires new duties or determinations of a particular agency which are not now required by law.

The Federal Communications Commission has the authority under the law to regulate interstate and foreign communications and transmissions in wire and radio, but existing law contains no mandate that the Commission consider whether food and toy products are safe or unsafe in regulating broadcasts within its jurisdiction. The amendment would disallow funds for the Commission to limit advertising of certain products, even if the purpose for such regulatory limitations was totally unrelated to the safety of the product in question. In considering any proposal to limit advertising of food or toy products, the Commission would be required to first determine the scope and extent of determinations of other agencies on the safety of those products, and it is far from clear whether such determinations are readily available or sufficiently certain to determine whether the limitation would apply in a particular case.

Furthermore, in relation to food products, the Commission would have to determine whether the finished food product contained ingredients which have been declared safe if the Food and Drug Administration had made no determination on the safety of such a finished product.

The Chair would also note that the amendment would prohibit advertising of food products containing ingredients

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

considered to be generally recognized as safe, without specifically indicating whether that determination is to be made by the FDA or by the Federal Communications Commission.

For the reasons stated, the Chair finds that the amendment would impose substantial new duties and requirements on the Federal Communications Commission beyond its authorities under existing law and, therefore, sustains the point of order.

Parliamentarian's Note: Even if FTC funds had remained in the bill, the amendment was overly broad since applying to all funds in the bill and not confined to FTC activities. The paragraph ruled out as unauthorized, supra, containing funds for the FTC, included similar language relating to the FTC.

§ 59. Defense and Foreign Relations

Buy-America; Equating Standards of Quality or Performance

§ 59.1 It is not in order on a general appropriation bill to require, as a condition to the availability of funds, the imposition of standards of quality or performance not required by law, whether or not such standards are applicable by law to other programs or activities.

On Nov. 18, 1981,[3] an amendment to a general appropriation bill prohibiting the use of funds therein to procure foreign-made items unless their inspection for quality assurance "uses the same standards" which would be required for domestic products by the Department of Defense was ruled out as legislation imposing additional duties absent any showing that existing law already required such inspection of items produced in foreign countries. The proceedings, during consideration of the defense appropriation bill,[4] were as follows:

Mr. [JIM] DUNN [of Michigan]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Dunn: Page 68 after line 15, insert the following:

Sec. 792. None of the funds appropriated in this Act may be available for the procurement of any item manufactured in a foreign country unless, during manufacture, the inspection of such item for quality assurance uses the same standards of inspection during manufacture which would be required by the Department of Defense if such item were manufactured domestically.

MR. DUNN [during the reading]: Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

3. 127 CONG. REC. 28076, 28077, 97th Cong. 1st Sess.

4. H.R. 4995.

THE CHAIRMAN:[5] Is there objection to the request of the gentleman from Michigan?

There was no objection.

MR. [BILL] FRENZEL [of Minnesota]: Mr. Chairman, I rise to make a point of order against the amendment.

THE CHAIRMAN: The Chair recognizes the gentleman from Minnesota (Mr. Frenzel) on his point of order.

Mr. Frenzel: Mr. Chairman, in my judgment the amendment is contrary to rule XXI, clause 2, which provides that no amendment changing existing law can be made on an appropriation bill. The amendment clearly gives the Secretary additional duties, to determine what kind of quality assurance or inspection is required under the terms of the amendment and, therefore, the amendment constitutes legislation on an appropriation bill.

Mr. Chairman, I believe the point of order should be sustained.

THE CHAIRMAN: Does the gentleman from Michigan wish to be heard on the point of order?

MR. DUNN: Mr. Chairman, the gentleman, I believe, is incorrect. The Secretary already has that discretion. We are simply, in this amendment, trying to make certain that the powers that he uses for national companies are the same as for international companies. He already has that power. It does not change his power.

THE CHAIRMAN: As the Chair reads the amendment, there is clearly a mandatory authority imposing additional duties; absent any showing that existing law already requires such inspection of items produced in foreign countries, the Chair sustains the point of order made by the gentleman from Minnesota (Mr. Frenzel).

Parliamentarian's Note: This decision effectively overrules the ruling of the Chair on July 28, 1959,[6] wherein an amendment denying use of funds to finance construction projects abroad that had not met the criteria used in determining the feasibility of flood control projects in the United States was held a proper limitation, despite any lack of showing that existing law required domestic standards to be applied to foreign construction projects.

It should be noted that it is not just the imposition of new standards that constitutes legislation rendering language subject to a point of order, but the requirement of new procedures or duties involved in making the standards applicable in a setting not contemplated in the existing law.

Defense Contractors Employing Retired Officers

§ 59.2 An amendment providing that none of the funds appropriated in the bill were to be used to enter into con-

5. Daniel D. Rostenkowski (Ill.).

6. 105 CONG. REC. 14522, 14524, 86th Cong. 1st Sess.

tracts with any concern having on its payroll a retired or inactive military officer was held to be a limitation and in order.

On June 3, 1959,[7] during consideration of H.R. 7454 (making appropriations for the Department of Defense), proceedings took place as follows:

The Clerk read as follows:

The appropriation to the Department of Defense for "Construction of ships, Military Sea Transportation Service," shall not be available for obligation after June 30, 1959.

MR. [ALFRED E.] SANTANGELO [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Santangelo: On page 25, after line 17, add new section, as follows:

"GENERAL PROVISIONS

"Sec. 301. None of the funds contained in this Title may be used to enter into a contract with any person, organization, company or concern which provides compensation to a retired or inactive military or naval general officer who has been an active member of the military forces of the United States within 5 years of the date of enactment of this act.". . .

MR. [GERALD R.] FORD [Jr., of Michigan]: Mr. Chairman, I renew my point of order. I agree that there are abuses indicated by the gentleman from New York [Mr. Santangelo]. I think those abuses should be corrected. But, I think at this point, this is the wrong way to do it, and for that reason I make the point of order. In my opinion, this amendment or this limitation places additional burdens on the executive branch of the Government which are not now required by law, and therefore it is legislation on an appropriation bill; therefore subject to a point of order. . . .

MR. SANTANGELO: . . . This is not legislation upon an appropriation bill. This is a limitation of expenditures and restrictions as to the way they shall spend these funds, and it is in no wise legislation. I submit it does not violate the parliamentary rules. . . .

THE CHAIRMAN:[8] The Chair is prepared to rule.

The gentleman from New York [Mr. Santangelo] offered an amendment in the nature of an addition to the pending bill by adding a new section, the language of which was reported with the amendment: None of the funds contained in this title may be used to enter into a contract with any person, organization, company, or concern which provides compensation to a retired or inactive military or naval general officer who has been an active member of the military forces of the United States within 5 years of the date of enactment of this act, to which amendment the gentleman from Michigan makes the point of order that it is legislation on an appropriation bill.

It is obvious that the intent of this amendment is to impose a limitation on the expenditure of the funds here appropriated, and while the point

7. 105 CONG. REC. 9741, 9742, 86th Cong. 1st Sess.

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

might be made that imposing limitations will impose additional burdens, it is nevertheless the opinion of the Chair clearly a limitation on expenditures, and therefore the Chair overrules the point of order.

Parliamentarian's Note: On May 5, 1960,[9] an amendment providing that none of the funds appropriated in the bill may be used to enter into contracts with any concern having on its payroll a retired military officer was held to be a limitation not imposing additional duties on the executive branch.

The amendment in question, offered during consideration of H.R. 11998, a bill making appropriations for the Department of Defense, stated:

> [Add] new section as follows:
>
> "Sec. 535. None of the funds contained in this Title may be used to pay or reimburse any Defense Contractor which employs a retired commissioned officer within two years after his release from active duty for the purpose of selling or aiding or assisting in the selling of anything of value to the Department of Defense or an Armed Force of the United States, or, which within two years from the release from active duty of a retired commissioned officer knowingly permits any such retired commissioned officer to sell or aid in the selling of anything of value to the Department of Defense or an Armed Force of the United States."

It should be noted that the language above, unlike the language of the 1959 amendment, would seemingly require some determinations to be made by federal officials with regard to whether a defense contractor "knowingly" permitted the proscribed acts, as well as the "purposes" for which a retired officer was employed. These complex determinations would now probably be considered such additional burdens placed on an official as would render the language subject to the point of order.

In another ruling, on June 15, 1972,[10] an amendment to a general appropriation bill providing that none of the funds therein be used to purchase goods or services from suppliers who compensate any of the officers or employees in excess of a certain rate was held a valid limitation on the use of funds in the bill. Although it could be argued that the amendment in question in the 1972 ruling did not affirmatively impose levels of salary, but merely stated the qualifications of nonfederal recipients of funds, that ruling would probably not be followed in current practice, since the burden imposed on federal officials (that of discerning employment practices

9. 106 CONG. REC. 9634–36, 86th Cong. 2d Sess.

10. 118 CONG. REC. 21136, 92d Cong. 2d Sess.

and ascertaining salary levels among nonfederal suppliers) would be considered a change in the duties prescribed by existing law for those officials.

Defense Contracts; Restricting Funds for Certain Forms of

§ 59.3 An amendment providing that none of the funds appropriated in the bill shall be used to pay any amount due under a contract which was awarded in accordance with a specified Defense Department policy was held to be a limitation merely descriptive of an existing policy not imposing any additional duties on the executive branch and therefore in order.

On May 5, 1960,[11] the Committee of the Whole was considering H.R. 11998, a bill making appropriations for the Department of Defense. The following proceedings took place:

> Amendment offered by Mr. [James G.] O'Hara of Michigan: On page 45, after line 6, insert the following:
>
> "Sec. 535. No funds appropriated in this Act shall be used to pay any amount under a contract, made after the date of enactment of this Act, which exceeds the amount of a lower bid if such contract would have been awarded to the lower bidder but for the application of any policy which favors the award of such a contract to a person proposing to perform it in a facility not owned by the United States."
>
> And renumber the following section.
>
> MR. [GERALD R.] FORD [Jr., of Michigan]: Mr. Chairman, I am constrained to make a point of order against the amendment offered by the gentleman from Michigan [Mr. O'Hara]. It seems to me this language is clearly subject to a point of order in that it imposes additional duties on the Secretary of Defense. . . .
>
> MR. O'HARA of Michigan: Mr. Chairman, I would like to suggest in connection with the point of order that this is a limitation on an appropriation. It does not attempt to impose any additional duties on the executive branch nor does it attempt to legislate in an appropriation bill.
>
> THE CHAIRMAN:[12] The Chair is ready to rule. . . .
>
> The Chair calls the attention of the committee to previous rulings made on similar points of order and would like in addition to call to the attention of the Committee the ruling that appears in 4 Hinds' Precedents, page 660, in which it is clearly indicated that a limitation is permitted on a general appropriation bill that in effect provides a negative prohibition on the use of the money, and no affirmative direction on the executive branch.
>
> In the opinion of the Chair, the language here offered is a negative prohibition and the Chair, therefore, overrules the point of order.

11. 106 CONG. REC. 9641, 86th Cong. 2d Sess.

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

Defense Contracts; Requiring Renegotiation Agreement

§ 59.4 To a bill making appropriations for national defense, an amendment providing that no part of such appropriation be used for payments under certain contracts until the contractor shall have filed with the appropriate agency a certificate of costs and an agreement for renegotiation satisfactory to the Secretary of War or Secretary of the Navy, was conceded to be legislation and held not in order, in that it granted new authority to an executive officer.

On Mar. 28, 1942,[13] the Committee of the Whole was considering H.R. 6868. The following proceedings took place:

> Amendment offered by Mr. [Francis H.] Case of South Dakota: Page 36, after line 11, insert a new section as follows:
>
> "Sec. 402–A. No part of any appropriation contained in this act shall be available to pay that portion of a contract for construction of any character and/or procurement of material and supplies for either the Military or Naval Establishments, designated as 'final payment' until the contractor shall have filed with the procuring agency a certificate of costs and an agreement for renegotiation and reimbursement satisfactory to the Secretary of War or the Secretary of the Navy as the case may be."
>
> MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make the point of order against the amendment that under the guise of a limitation the amendment would require executive action.
>
> MR. CASE of South Dakota: Mr. Chairman, I concede the point of order and offer another amendment.
>
> THE CHAIRMAN:[14] The point of order is sustained.

Qualification of Contractors; Secretary's Approval

§ 59.5 To a defense appropriation bill, an amendment providing that certain funds therein shall not be used under contracts awarded or negotiated after its date of enactment unless the Secretary of Defense finds that such contracts are covered by a vested retirement pension program approved by the Secretary was held to impose additional duties on that federal official and was ruled out as legislation in violation of Rule XXI clause 2.

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13. 88 CONG. REC. 3139, 77th Cong. 2d Sess.

14. Schuyler Otis Bland (Va.).

On Sept. 14, 1972,[15] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 16593), a point of order was raised against the following provision:

> Amendment offered by Mr. [Barry M.] Goldwater [Jr., of California]: On page 52, after line 8, insert the following:
>
> "Sec. 745. No part of the funds appropriated under title IV or V of the Act shall be made available in regard to contracts awarded or negotiated after the enactment of this act unless the Secretary of Defense shall first find that all persons employed under such contract or subcontract thereunder, are covered by a vested retirement pension program approved under such standards as the Secretary of Defense shall prescribe."
>
> MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make a point of order on the amendment offered by the gentleman from California (Mr. Goldwater) that it is legislation on an appropriation bill in that it requires additional duties on the part of the Secretary. . . .
>
> THE CHAIRMAN:[16] The Chair has examined the language of the amendment. The language does place additional duties on the Secretary and, therefore, holds that the amendment is legislation and sustains the point of order.

15. 118 CONG. REC. 30758, 92d Cong. 2d Sess.

16. Daniel D. Rostenkowski (Ill.).

Ship Construction; Directing Percentage in Private Shipyards

§ 59.6 A section in a general appropriation bill requiring that at least 35 percent of funds therein for naval vessel alteration, overhaul, or repair shall be made available for such work in private shipyards, except that the Secretary of Defense may determine that urgency requires such work to be done in the Navy yards or in private yards as he may direct, was conceded to be legislation in violation of Rule XXI clause 2 in that it established affirmative directions and was ruled out on a point of order.

On Sept. 14, 1972,[17] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 16593), a point of order was raised against the following provision:

> THE CHAIRMAN:[18] The Clerk will read.
>
> The Clerk read as follows:
>
> Sec. 743. Of the funds made available in this Act for the alteration,

17. 118 CONG. REC. 30749, 92d Cong. 2d Sess.

18. Daniel D. Rostenkowski (Ill.).

overhaul, and repair of naval vessels, at least 35 per centum thereof must be made available for such work in privately owned shipyards: *Provided*, That if determined by the Secretary of Defense to be inconsistent with the public interest based on urgency of requirement to have such vessels altered, overhauled, or repaired as required, such work may be done in Navy or private shipyards as he may direct.

MR. [LOUIS C.] WYMAN [of New Hampshire]: Mr. Chairman, I rise on a point of order.

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

MR. WYMAN: My point of order is that section 743 as presently worded is contrary to the rules of the House in that it is legislation upon an appropriation bill in violation of rule XXI, subsection 2. The section contains the positive amendment in line 25, page 51, that a certain amount of work must be made available, and on page 52, lines 3 and 4, there is a specific direction to the Secretary of Defense.

Paragraph 842 of the House Rules Manual, pursuant to rule XXI, subsection 2, provides: "Propositions to establish affirmative directions for executive officers, even in cases where they may have discretion under the law so to do,"—"are subject to the point of order," as are positive requirements in such legislation constituting legislation upon an appropriations bill.

Mr. Chairman, I urge that the section be ruled out of order.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the point of order is conceded.

THE CHAIRMAN: The point of order is conceded. The Chair sustains the point of order.

Granting Discretionary Authority

§ 59.7 Language providing an appropriation for purposes which in the discretion of the Secretary of the Army are desirable in expediting production for military purposes was held to be legislation and not in order.

On Aug. 9, 1951,[19] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 5054), a point of order was raised against the following provision:

The Clerk read as follows:

EXPEDITING PRODUCTION

To enable the Secretary of the Army, without reference to section 3734 of the Revised Statutes, as amended, and to section 1136 of the Revised Statutes, as amended (except provisions thereof relating to title approval), to expedite the production of equipment and supplies for the Army for emergency national defense purposes, including all of the objects and purposes specified under each of the appropriations available to the Department of the Army during the current fiscal year, for procurement or production of equipment or supplies, for erection of structures, or for acquisition of land; the furnishing of Government-owned facilities at privately owned plants: the procurement and training of civilian personnel in connection with the production of equipment and material

19. 97 CONG. REC. 9733, 82d Cong. 1st Sess.

and the use and operation thereof; and for any other purposes which in the discretion of the Secretary of the Army are desirable in expediting production for military purposes, $1,000,000,000.

MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I make a point of order, on the ground that it is legislation on an appropriation bill, against the language . . . reading as follows: "and for any other purposes which in the discretion of the Secretary of the Army are desirable in expediting production for military purposes."

THE CHAIRMAN:[20] Does the gentleman from Texas desire to be heard on the point of order?

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I am not prepared to say that the language is subject to a point of order. I doubt, however, that the language is necessary. I have no serious objection to the language being stricken from the bill, but I do not want to concede that the language is subject to a point of order.

THE CHAIRMAN: Can the gentleman refer the Chair to any specific law with reference to this language?

MR. MAHON: I do not have the language of the basic legislation before me, Mr. Chairman.

THE CHAIRMAN: The Chair is of the opinion that it is legislation on an appropriation bill and therefore is subject to the point of order. The point of order is sustained.

Requiring Sole Accounting and Reports on Confidential Military Operations

§ 59.8 A paragraph in a general appropriation bill providing for contingent expenditures by the Secretary of Defense to be accounted for solely on his certificate that the expenses were for confidential military purposes and providing for a quarterly report of such disbursements to Congress was held to impose additional duties on the Secretary and was ruled out as legislation.

On Nov. 30, 1973,[1] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 11575), a point of order was raised against the following provision:

The Clerk read as follows:

CONTINGENCIES, DEFENSE

For emergencies and extraordinary expenses arising in the Department of Defense, to be expended on the approval or authority of the Secretary of Defense and such expenses may be accounted for solely on his certificate that the expenditures were necessary for confidential military purposes; $5,000,000: *Provided*, That a report of disbursements under this item of appropriation shall be made quarterly to Congress.

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, I wish to reserve a point of order with respect to the whole section, and to make the point of order with respect to the provisions reading as follows:

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

1. 119 CONG. REC. 38825, 93d Cong. 1st Sess.

> And such expenses may be accounted for solely on his certificate that the expenditures were necessary for confidential military purposes.

The point of order which is stated and made is by the same proposition made with respect to the same language which occurs elsewhere in the bill. The point of order is reserved, which I do not wish to make at this time until I check whether or not the special contingencies defense is authorized by an authorization bill or by existing statutory law.

I point out to the Chair that the operation and maintenance defense agencies provision had a section there of $5,448,000 in it that was, of course, not disturbed by my previous point of order, and this appears to be made up so that the Defense Department would have some $10,448,000 if this is included.

THE CHAIRMAN:[2] The Chair would like to make the observation that the gentleman from Texas (Mr. Eckhardt) should make his point of order while the paragraph is pending.

MR. ECKHARDT: Mr. Chairman, in that event, I will make both points of order; one against the entire paragraph and the other against the phrase involved. However, I would not press the point of order—well, of course, if it is not justified, it can be shown it is not justified, so I do make the two points of order.

THE CHAIRMAN: Does the gentleman from Texas (Mr. Mahon) wish to be heard on the point of order?

MR. [GEORGE H.] MAHON: I do, Mr. Chairman.

Mr. Chairman, 7 Cannon's Precedents 1273, February 13, 1919, states:

> The organic law creating a department authorizes necessary contingent expenses incident to its maintenance.

This provision has been in the appropriation bill for decades, and I am not able to cite anything more than I have cited in defense of the language. This language has been carried in the Defense Appropriations Act for as long as I can remember.

THE CHAIRMAN: The Chair notes that the paragraph does have legislation, since it requires a report and imposes additional duties. Therefore, the Chair sustains the point of order.

MR. ECKHARDT: Mr. Chairman, that would be both points of order?

THE CHAIRMAN: The point of order is sustained against the paragraph.

Requiring Reports on Feasibility Projects

§ 59.9 To a general appropriation bill making appropriations for foreign assistance, an amendment prohibiting the use of any funds carried in the bill for certain capital projects costing in excess of $1 million until the head of the agency involved has received and considered a report, prepared by officials within the agency, on the justification and feasibility of such project was held to impose additional duties and was ruled out as legislation.

2. Daniel D. Rostenkowski (Ill.).

On Nov. 17, 1967,[3] during consideration in the Committee of the Whole of the foreign aid appropriation bill (H.R. 13893), a point of order was raised against the following amendment:

MR. [JEFFERY] COHELAN [of California]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Cohelan: On page 14, immediately after line 16, insert the following:

"Sec. 120. None of the funds appropriated or made available by this Act for carrying out titles I, II, and VI of chapter 2, and chapter 4, of part I of the Foreign Assistance Act of 1961, as amended, may be used for financing, in whole or in part, any capital assistance project as estimated to cost in excess of $1,000,000, until the head of the agency primarily responsible for administering part I of such Act has received and taken into consideration a report on the review of the proposed capital assistance project, conducted by the Controller of such agency with such assistance from other divisions of such agency as he may request, which report shall set forth the Controller's views, comments, and such recommendations as he may deem appropriate with respect to the adequacy of the justification, feasibility studies, and prospects for effective utilization of such project.". . .

MR. [JOHN J.] ROONEY of New York: Mr. Chairman, I must insist upon my point of order to the pending amendment.

THE CHAIRMAN:[4] Does the gentleman from New York wish to be heard on his point of order?

MR. ROONEY of New York: Yes. The point of order is based on the fact that this puts language in the bill, by this amendment, which would cause additional duties to be performed, and it is therefore legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from California desire to be heard on the point of order raised by the gentleman from New York?

MR. COHELAN: Mr. Chairman, I was not aware that this procedural point would be raised. It would seem to me that, on the basis of the arguments that have been going on almost the entire afternoon, and on the basis of the references made by my distinguished colleague from Maryland in reference to the functions of the Committee on Appropriations, that I will choose to regard my proposal as a limiting amendment, and therefore germane to the argument before us today.

THE CHAIRMAN: The Chair is ready to rule.

The amendment offered by the gentleman from California adds a new section to the bill which would impose additional duties, determinations, and obligations upon the head of an agency that are not now required under existing law. Therefore the Chair holds that the amendment proposes additional legislation on an appropriation bill.

The Chair, therefore, sustains the point of order.

Requiring Monthly Reports on Small Business

§ 59.10 To an appropriation bill, an amendment which

3. 113 CONG. REC. 32975, 90th Cong. 1st Sess.

4. Charles M. Price (Ill.).

would require the Department of Defense to make monthly reports showing the amount of funds spent with small business as defined by the Small Business Administration, and the funds spent with firms other than small business in the same fields of operation, was held to be legislation and therefore not in order.

On May 12, 1955,[5] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 6042), a point of order was raised against the following amendment:

MR. [WRIGHT] PATMAN [of Texas]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Patman: In section 611, on page 37, at the end of line 9, strike the period and substitute a colon and add the following language: "*Provided further,* That, for the purposes of aiding in carrying out the national policy to insure that a fair proportion of the total purchases and contracts for supplies and services for the Government be placed with small-business enterprises, and to maintain and strengthen the overall economy of the Nation, the Department of Defense shall make a monthly report to the President, the President of the Senate and the Speaker of the House of Representatives not less than 45 days after the close of the month, showing the amount of funds appropriated to the Department of Defense which have been expended, obligated, or contracted to be spent with small business as defined by the Small Business Administration, and the amount of such funds expended, obligated, or contracted to be spent with firms other than small business in the same fields of operation; and such monthly reports shall show separately the funds expended, obligated, or contracted to be spent for basic and applied scientific research and development."

MR. [HARRY R.] SHEPPARD [of California]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill. It imposes new duties on the Department which are not presently authorized by law. . . .

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

MR. PATMAN: Yes, Mr. Chairman. The amendment is a limitation on the language that is in the bill. It merely requires reporting to be done.

THE CHAIRMAN: The amendment offered by the gentleman from Texas imposes additional duties which are substantive in nature and, therefore, the proposed amendment is legislation on an appropriation bill. The Chair sustains the point of order.

Where Exception From a Limitation Requires New Duty

§ 59.11 An amendment to an appropriation bill providing that no part of the appropriations therein shall be used to pay compensation of

5. 101 CONG. REC. 6244, 6245, 84th Cong. 1st Sess.

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

any incumbent appointed to fill a vacancy, and providing that this inhibition shall not apply to employees of certain agencies when certified by the head of the agency to be employed on matters essential to the national defense effort, was conceded to be legislation and held not in order.

On May 4, 1951,[7] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 3880), a point of order was raised against the following amendment:

MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Jensen: Page 63, after line 12, insert a new section as follows:

"No part of any appropriation or authorization contained in this act shall be used to pay the compensation of any incumbent appointed to any civil office or position which may become vacant during the fiscal year beginning on July 1, 1951: *Provided*, That this inhibition shall not apply—

"(a) to not to exceed 25 percent of all vacancies;

"(b) to positions filled from within the agency;

"(c) to offices or positions required by law to be filled by appointment of the President by and with the advice and consent of the Senate;

"(d) to all employees in veterans' medical facilities;

"(e) to employees in the Atomic Energy Commission and the National Advisory Committee for Aeronautics who are certified by the head of the agency, in writing, as being directly employed on matters essential to the National Defense effort;

"(f) to employees of the General Accounting Office;

"(g) to employees in grades CPC 1 and 2;

"*Provided further*, That when any department or agency covered in this bill shall, as a result of the operation of this amendment reduce their employment to a figure not exceeding 80 percent of the total number on their rolls as of July 1, 1951, such amendment shall cease to apply and said 80 percent figure shall become a ceiling for employment during the fiscal year 1952 and if exceeded at any time during fiscal year 1952 this amendment shall again become operative."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make a point of order against the amendment that it places an additional duty upon several of the agencies involved and is, therefore, subject to a point of order. For instance, this language is used: "to employees in the Committee for Aeronautics who are certified by the head of the agency."

Now, that is placing an additional duty on the head of that agency, extra duties and extra authority on him, therefore it is subject to a point of order. Also it says: "in writing, as being directly employed on matters essential to the national defense."

He has got to make a decision there as to what is national defense. He has to make a decision as to what is an essentiality. Therefore, that is placing an additional duty beyond the scope that is proper at this point and, therefore, it

7. 97 CONG. REC. 4914, 82d Cong. 1st Sess.

is subject to a point of order. I suggest that the point of order go to the entire paragraph. It should be stricken in its entirety.

THE CHAIRMAN:[8] Does the gentleman from Iowa [Mr. Jensen] desire to be heard?

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

THE CHAIRMAN: The point of order is sustained.

Authorizing Transfer of Trust Funds for Salary Increases

§ 59.12 Language in a general appropriation bill authorizing a transfer of trust funds sufficient to pay increased salary costs and imposing additional duties on the Administrator of Veterans' Affairs was conceded to be legislation on an appropriation bill and was ruled out by the Chair.

On Apr. 10, 1963,[9] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 5517), the following point of order was raised:

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I call attention to the language in lines 15 through 20 on page 49, which reads as follows:

> Sec. 203. The Administrator of Veterans' Affairs shall have the authority to transfer not to exceed $1,795,000 from the "Loan guaranty revolving fund" to any other appropriations of the Veterans' Administration to pay for increased pay costs authorized by or pursuant to law for fiscal year 1963 if in his discretion he finds it necessary.

Mr. Chairman, I make the point of order against the language of section 203 on the ground that it is legislation on an appropriation bill. I read from the report of the committee:

> The committee has included a provision which will enable the Administrator in his discretion to use not to exceed $1,795,000 from the loan guaranty revolving fund to cover the cost of such pay increases if he finds it necessary.

I submit this goes beyond the scope of the Appropriations Committee and that it imposes additional duties upon the Director of the Veterans' Administration.

THE CHAIRMAN:[10] Does the gentleman from Texas desire to be heard on the point of order?

MR. [ALBERT] THOMAS [of Texas]: I do, Mr. Chairman.

Mr. Chairman, the point of order made by the gentleman from Iowa is valid. . . .

MR. GROSS: The gentleman will agree that the money will come from the loan guarantee revolving fund and not from funds appropriated to the Veterans' Administration specifically for increased pay costs.

MR. THOMAS: It is not from appropriated funds.

MR. GROSS: And the war veterans could be penalized through such use of revolving funds.

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8. James W. Trimble (Ark.).

9. 109 CONG. REC. 6160, 6161, 88th Cong. 1st Sess.

10. Richard Bolling (Mo.).

MR. THOMAS: No, the veterans will not be penalized. It will help them.

MR. GROSS: Mr. Chairman, I insist on the point of order.

THE CHAIRMAN: The gentleman concedes the point of order made by the gentleman from Iowa is well taken.

The Chair sustains the point of order.

Extension of Foreign Service Appointments

§ 59.13 A provision in a general appropriation bill giving the Secretary of State authority to extend foreign service reserve appointments through another year—thus changing the Secretary's authority under existing law—was conceded to be legislation and was ruled out on a point of order.

On May 28, 1968,[11] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 17522), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 106. Existing appointments and assignments to the Foreign Service Reserve in the Department of State which expire during the current fiscal year may be extended in the discretion of the Secretary of State for a period of one year in addition to the period of appointment or assignment otherwise authorized.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language beginning with line 25, on page 13, and extending through line 5 on page 14 as being legislation on an appropriation bill and as calling for added authority on the part of the Department of State without the authority of Congress.

THE CHAIRMAN:[12] Does the gentleman from New York desire to be heard on the point of order?

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I am constrained to admit that the point of order is valid.

THE CHAIRMAN: The point of order is sustained.

Authority to Terminate Employment by Secretary of State

§ 59.14 Language in a general appropriation bill providing that the Secretary of State may, in his discretion, terminate the employment of any employee of the Department of State or the Foreign Service whenever he shall deem such termination advisable in the interests of the United States, was held to be legislation on an appropriation bill and not to be a retrenchment within the provisions of the Holman rule.

11. 114 CONG. REC. 15353, 90th Cong. 2d Sess.

12. Wayne L. Hays (Ohio).

On Apr. 20, 1950,[13] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 7786), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 104. Notwithstanding the provisions of section 6 of the act of August 24, 1912 (37 Stat. 555), or the provisions of any other law, the Secretary of State may, in his absolute discretion, during the current fiscal year, terminate the employment of any officer or employee of the Department of State or of the Foreign Service of the United States whenever he shall deem such termination necessary or advisable in the interests of the United States. . . .

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, a point of order. The language of section 104 gives to the Secretary of State—and I quote from the section—"in his absolute discretion power to terminate the employment of any employee. I do not believe we have ever had legislation in the entire history of this Nation which contained this language "absolute discretion.". . . It is my opinion that this language "absolute discretion" is a piece of very undemocratic legislation on an appropriation bill and I make the point of order against it. It should be stricken from the bill.

THE CHAIRMAN:[14] Does the gentleman from New York [Mr. Rooney] desire to be heard on the point of order?

MR. [JOHN J.] ROONEY: Mr. Chairman, this provision is familiarly known as the McCarran rider and has been in the State Department appropriation bill since 1947. . . . I oppose the point of order, Mr. Chairman. I feel that having been in this bill since 1947 and because it is so necessary that our State Department be what the public of America wants it to be, the language should be continued in the bill.

THE CHAIRMAN: Does the gentleman from New York [Mr. Rooney] concede that it is legislation?

MR. ROONEY: Mr. Chairman, may I most respectfully state that on this subject I will not concede anything.

MR. [JOHN] TABER [of New York]: Mr. Chairman, in my opinion this will result in a saving. It is in accordance with the provisions of the Holman rule. When the power authorized in this language is exercised and the Secretary terminates the employment of any officer or employee in his absolute discretion that will result in a saving. That will save money and is in order.

THE CHAIRMAN: The Chair is prepared to rule.

. . . The Chair invites attention to the fact that the language does confer definite authority and requires certain acts on the part of the Secretary of State. In response to the argument offered by the gentleman from New York [Mr. Taber] as to the application of the Holman rule it is clearly shown by the precedents and decisions of the House that the saving must be apparent and definite on its face in the language of the bill in order for the Holman rule to apply. Certainly an examination of the language in question clearly shows that any saving would be speculative. In view of the long line of precedents and decisions dealing with the ques-

13. 96 CONG. REC. 5480, 5481, 81st Cong. 2d Sess.

14. Jere Cooper (Tenn.).

tion of legislation on an appropriation bill, which is clearly prohibited under the rules of the House, the Chair has no alternative other than to sustain the point of order.

Requiring Certification of Security Clearance

§ 59.15 An amendment to an appropriation bill in the form of a limitation providing that no part of any appropriation in the act shall be used to pay the salary of any person appointed to the Department of State until essential clearance as to loyalty has been certified by the Federal Bureau of Investigation was held to be legislation on an appropriation bill and not in order.

On May 2, 1946,[15] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 6056), a point of order was raised against the following amendment:

MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Wigglesworth: On page 32, line 23, after the period insert a new paragraph reading as follows:

"No part of any appropriation in this act shall be used to pay the salary or wage of any person appointed or transferred to the Department of State after September 1, 1945, until essential clearance as to loyalty has been certified by the Federal Bureau of Investigation and the appropriate security committee of the State Department.". . .

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I renew my point of order and insist on it for the reason it is a direction under the guise of a limitation which casts a serious reflection on the personnel of the State Department and it will cripple their activites. I know all Members of the House appreciate how serious my own thoughts have been along the very same lines. I have expressed myself time and time again on this and the hearings are replete and filled with statements made by the chairman and other members of the committee on that subject. We have brought this forcibly to their attention, but this is too drastic an amendment.

Mr. Chairman, I insist on the point of order. . . .

THE CHAIRMAN:[16] The Chair is ready to rule. . . .

The language through the figures "1945" is nothing other than a limitation, perhaps; but the remainder of the language does impose responsibilities and duties upon the Federal Bureau of Investigation which it may not now be called upon to perform under existing law.

The Chair is, therefore, constrained to sustain the point of order made by the gentleman from Michigan.

15. 92 CONG. REC. 4366, 4367, 79th Cong. 2d Sess.

See also 92 CONG. REC. 2695, 79th Cong. 2d, Sess., Mar. 27, 1946.

16. Wilbur D. Mills (Ark.).

Requiring International Organizations to Pay Assessments in Arrears

§ 59.16 To a bill making appropriations for the Department of State, including an item for contributions to various international organizations, an amendment providing that none of the funds might be expended until all other members of such organizations have met their financial obligations was ruled out as legislation requiring determinations of indebtedness.

On May 28, 1968,[17] the Committee of the Whole was considering H.R. 17522, a bill making appropriations for the Departments of State, Justice, and the Judiciary. The Clerk read as follows, and proceedings ensued as indicated below:

> For expenses, not otherwise provided for, necessary to meet annual obligations of membership in international multilateral organizations, pursuant to treaties, conventions, or specific Acts of Congress, $118,453,000.
>
> MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Gross: On page 5, line 13, replace the period with a colon, and add the following:
>
> "*Provided*, That none of these moneys shall be expended until such time as the financial obligations, past and present, of all other members of each multilateral organization to which this paragraph applies, shall have been fully met.". . .
>
> MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, the point of order is that the amendment would require someone to do additional duties, to make a determination of what is suggested in this amendment, and therefore it is subject to a point of order.
>
> The Chairman:[18]) Does the gentleman from Iowa wish to be heard on the point of order?
>
> MR. GROSS: Only, Mr. Chairman, that it is patently a limitation on the appropriation bill.
>
> THE CHAIRMAN: The Chair believes that this amendment does provide additional duties inasmuch as it says that none of these moneys shall be expended until such time as national obligations, past and present, and so on, shall be fully met, and therefore somebody would have to make a pretty thorough study to decide whether this has been met. Therefore, the Chair sustains the point of order.

Restriction of Foreign Aid to Nations Believed to be Communist Controlled

§ 59.17 To an appropriation bill, an amendment pro-

17. 114 CONG. REC. 15350, 90th Cong. 2d Sess.

18. Wayne L. Hays (Ohio).

19. 101 Cong. Rec. 10245, 84th Cong. 1st Sess.

viding that no part of any appropriation therein shall be used to make grants or loans to any country which the Secretary of State believes to be dominated by the foreign government controlling the world Communist movement was held to be legislation.

On July 11, 1955,[19] during consideration in the Committee of the Whole of the mutual security appropriation bill (H.R. 7224), a point of order was raised against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. Murray of Illinois: Page 12, after line 10, insert the following section:

"Sec. 109. No part of any appropriation contained in this act shall be used to make grants or loans, or otherwise to furnish assistance, to any country the government of which the Secretary of State believes to be substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of the Subversive Activites Control Act of 1950."

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I reserve a point of order against the amendment.

MR. [JAMES C.] MURRAY [of Illinois]: Mr. Chairman, I am going to be very brief. I think the language of my amendment speaks for itself, and urge its adoption.

MR. PASSMAN: Mr. Chairman, I make a point of order against the amendment that it is legislation on an appropriation bill.

THE CHAIRMAN:[20] The amendment offered by the gentleman from Illinois imposes on the Secretary of State additional duties, and, in the opinion of the Chair, the imposition of those additional duties constitutes legislation on an appropriation bill. Therefore, the point of order is sustained.

Curtailing Funds to Nations Restricting Emigration

§ 59.18 To a general appropriation bill containing funds for foreign assistance, an amendment denying the availability of those funds to any nation "which requires payment above nominal and customary costs" for emigration permits was held to impose additional duties of investigation and interpretation upon federal officials and was ruled out as legislation in violation of Rule XXI clause 2.

On Sept. 21, 1972,[1] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 16705), a point of order was raised against the following amendment:

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I offer an amendment.

19. 101 Cong. Rec. 10245, 84th Cong. 1st Sess.

20. Francis E. Walter (Pa.).

1. 18 CONG. REC. 31835, 31836, 92d Cong. 2d Sess.

The Clerk read as follows:

Amendment offered by Mr. Vanik: On page 17, after line 12, add the following new section:

"Sec. 506. None of the funds appropriated or made available pursuant to this Act for carrying out the Foreign Assistance Act of 1961, as amended, may be used to provide loans, credits, financial and investment assistance, or insurance guarantees on sales to or investments in any Nation which requires payment above nominal and customary costs for exit visas, exit permits, or for the right to emigrate."

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I reserve a point of order against the amendment. . . .

THE CHAIRMAN:[2] The gentleman will state his point of order.

MR. PASSMAN: The amendment imposes additional duties on the executive branch in that it requires a determination as to what constitutes a payment above normal and customary cost for exit visas, permits, or the right to emigrate. I would not know how this could be determined without imposing additional duties upon the executive branch.

Upon that basis I plead that the point of order should and I hope it will be sustained.

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

MR. VANIK: I do not feel that the ancient, decadent body of precedent should prevent a Member from making a legitimate and proper amendment to this bill. We should not be restrained in our legislative efforts in dealing with present-day problems by the dead hand of the past.

I ask for a ruling, Mr. Chairman.

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

The Chair has examined the amendment, and finds that it would prohibit use of funds appropriated or made available pursuant to this act, in any nation which requires payment above nominal and customary costs for exit visas, exit permits, or for the right to emigrate. It is apparent to the Chair that someone must make a determination of the "nominal" and "customary" cost, thus imposing additional duties on the executive branch; and therefore in the opinion of the Chair the language constitutes legislation on an appropriation bill. The Chair sustains the point of order.

Prohibiting Funds for International Organizations for Interest Costs

§ 59.19 An amendment to a general appropriation bill prohibiting the availability of funds for international organizations to pay interest costs for loans was ruled out as legislation, requiring federal officials to make determinations not required by existing law as to interest costs paid by international organizations.

On Dec. 9, 1982,[3] during consideration in the Committee of the

2. Charles M. Price (Ill.).

3. 128 CONG. REC.——, 97th Cong. 2d Sess.

Whole of the Departments of Commerce, Justice, State, and the Judiciary appropriation bill (H.R. 6957), a point of order against an amendment was sustained as follows:

The Clerk read as follows:

Amendment offered by Mr. [Neal] Smith of Iowa: On page 30, line 2, after "$449,815,000" insert the following: "*Provided,* That none of the funds appropriated in this paragraph shall be available for a United States contribution to an international organization for any interest costs for loans incurred on or after October 1, 1982.". . .

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I make a point of order on the same basis that I have raised the point of order on the proviso that was in the bill originally. This amendment will still require the executive branch to make a determination of what international organizations are paying interest, and to what extent, and that this money would not therefore be available in that portion of our U.S. assessment. So, this goes beyond the present procedure that the executive branch is required to make on our existing law.

Therefore, the amendment of the gentleman from Iowa as substituted for the original language in the bill would clearly impose upon the executive branch the new duties not now required by law; and, I submit, still fundamentally legislation in an appropriation bill and is in violation of the letter and spirit of clause 2, rule XXI. I hope that the point of order will be sustained. . . .

It is the understanding of the gentleman from Iowa that in order to make a determination as to the amount of interest, the executive branch would have to require the organizations to make an investigation to what extent interest payments are included in the U.S. assessment. May I further ask, would the gentleman's amendment also require that conditions be imposed on our contribution requiring an agreement with the United Nations that we now do have as far as our assessment, but not as far as to what the proviso or the amendment of the gentleman from Iowa provides?

MR. SMITH of Iowa: Mr. Chairman, I do not think we get into what kind of an agreement may be necessary here. We do not even attempt to do that. But they have the records that would be necessary anyway in reviewing their contributions and how much we owed the United Nations. The State Department has those records anyway. They have to have them in order to make the payments. So there is not anything extra here other than some incidental matter of looking at some papers.

THE CHAIRMAN:[4]. . . The gentleman from Wisconsin (Mr. Zablocki) makes a point of order with regard to the amendment offered by the gentleman from Iowa (Mr. Smith) for essentially the same reasons that he used against the original proviso, in that it constitutes legislation on an appropriations bill by virtue of the fact that it imposes additional duties upon the executive branch.

It is the opinion of the Chair that the gentleman from Wisconsin (Mr. Zablocki) is correct, that there are additional duties which are not trivial

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

which are imposed upon the executive branch, to determine interest amounts and, therefore, the Chair sustains the point of order.

Parliamentarian's Note: The amendment offered above by Mr. Smith sought to achieve the same result as language that had been ruled out of order when carried in the original bill. [See § 52.31, supra, for the language of the bill and the ruling on the point of order.] Subsequently, on Dec. 9, Mr. Smith offered the following amendment:

Amendment offered by Mr. Smith of Iowa: On page 30, line 2, after "$449, 815,000" insert the following: "*Provided,* That none of the funds appropriated in this paragraph shall be available for a United States contribution to an international organization for those interest costs made known to the United States Government by such international organization for loans incurred on or after October 1, 1982.

The amendment in this form was not subject to a point of order. See 7 Cannon's Precedents § 1695, where information "already known" to a federal official was held in order as a proper limitation not requiring new determinations. Where the language on its face merely recites a passive situation as a condition precedent for receipt of funds, as opposed to imposing an ongoing responsibility on a federal official to ascertain information, the language may be a proper limitation.

Limiting Funds for Medical Expenses to Percentage of Customary Charges

§ 59.20 A portion of a paragraph in a general appropriation bill denying the use of funds therein under the CHAMPUS program for reimbursement of health care providers in excess of the 80th percentile of customary charges made for similar services in the same locality was ruled out as legislation in violation of Rule XXI clause 2, where existing law did not impose an affirmative requirement for such determinations but merely authorized issuance of regulations on the subject of reimbursement, even though federal officials were in fact already making such findings pursuant to regulations.

On Aug. 8, 1978,[5] during consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 13635), a point of order was sustained against the following provision in the bill:

The Clerk read as follows:

5. 124 CONG. REC. 24959, 24960, 95th Cong. 2d Sess.

> Sec. 844. None of the funds contained in this Act available for the Civilian Health and Medical Program of the Uniformed Services under the provisions of section 1079 (a) of title 10, United States Code, shall be available for . . . (f) reimbursement of any physician or other authorized individual provider of medical care in excess of the eightieth percentile of the customary charges made for similar services in the same locality where the medical care was furnished. . . .

MR. [ELWOOD H.] HILLIS [of Indiana]: Mr. Chairman, I make a point of order against the language of section 844(f) on the grounds that it violates rule XXI, clause 2 of the rules of the House in that it constitutes legislation in an appropriation bill.

Section 844 refers to section 1079(a), title 10 of the United States Code. However, section 1079(a) states that the "methods for making payment shall be prescribed under joint regulations issued by the Secretary of Defense and the Secretary of Health, Education, and Welfare.". . .

Mr. Chairman, I also cite section 842 of Jefferson's Manual which states in part that—

> Propositions to establish affirmative directions for executive offices even in cases where they may have discretion under the law so to do are subject to a point of order.

While section 1076 of title 10, United States Code grants the Secretary authority to promulgate regulations, part (f) of section 844 of this bill dictates to him the method of determining payments thereby eliminating any discretionary authority on his part. This is clearly legislation insomuch as it requires the Secretary to determine customary charges made for similar services in the same locality where the medical care was furnished. Nowhere in the permanent law is the Secretary required to make these determinations. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, this provision in the defense bill grows out of the legislation establishing the CHAMPUS operation. The committee maintains that the language in the bill specifically provides for a limitation in expenditures and that the provision in the bill is not subject to a point of order.

THE CHAIRMAN:[6] What the gentleman from Texas (Mr. Mahon) suggests does not apply to that part of the paragraph to which the gentleman from Indiana (Mr. Hillis) makes the point of order.

The Chair observes that the language does require a determination as to what local and customary charges are, and there is nothing presently in existing law that requires those determinations to be made during the next fiscal year. The authorization bill containing such authority is not yet law.

The Chair sustains the point of order with respect to subparagraph (f) to which the gentleman referred.

Parliamentarian's Note: The authorizing law was later amended to require the determination of customary charges.

Limiting Funds for International Narcotics Control; Requiring New Duties

§ 59.21 To a foreign aid general appropriation bill, an amend-

6. Daniel D. Rostenkowski (Ill.).

ment prohibiting the use of international narcotics control funds contained therein for the eradication of marihuana through the use of paraquat unless used with another substance which effectively warns potential users of the marihuana that paraquat has been used on it, was ruled out as legislation requiring new duties and determinations of the executive branch (where an authorization bill requiring similar findings had not yet been signed into law).

The ruling of the Chair on Aug. 4, 1978,[7] was that, while a limitation on the use of funds in a general appropriation bill does not constitute a violation of Rule XXI clause 2 if it merely restates identical language in existing law, the legislation in question must have been signed into law. The proceedings are discussed in § 23.24, supra.

§ 60. District of Columbia

Limiting Duties of Teachers, Not Funds

§ 60.1 A provision in a District of Columbia appropriation bill that teachers shall not perform any clerical work except that necessary or incidental to their regular classroom teaching assignments was ruled out as legislation.

On Apr. 2, 1937,[8] the Committee of the Whole was considering provisions of H.R. 5996, relating to appropriations for personal services of teachers.

> For personal services of teachers and librarians in accordance with the act approved June 4, 1924 (43 Stat., pp. 367–375) . . . $7,157,820: *Provided,* That as teacher vacancies occur during the fiscal year 1938 in grades 1 to 4, inclusive, of the elementary schools, such vacancies may be filled by the assignment of teachers now employed in kindergartens . . . : *Provided further,* That teachers shall not perform any clerical work except that which is necessary or incidental to their regular classroom teaching assignments. . . .
>
> MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order against the language contained on page 25, beginning in line 4, as follows—
>
> > That teachers shall not perform any clerical work except that which is necessary or incidental to their regular classroom teaching assignments—
>
> for the reason that it is legislation and modifies existing law. . . .
>
> THE CHAIRMAN:[9] Patently this is legislation on a general appropriation

7. 124 CONG. REC. 24436, 24437, 95th Cong. 2d Sess.

8. 81 CONG. REC. 3106, 3107, 75th Cong. 1st Sess.

9. Jere Cooper (Tenn.).

bill, and there is no saving or retrenchment shown. Therefore, it being legislation, the Chair sustains the point of order.

Directing Water Supply Treatment in District of Columbia

§ 60.2 An amendment to an appropriation bill providing that the Commissioners of the District of Columbia shall provide for treating the water supply of the District of Columbia with a fluoride for dental protection was conceded to be legislation on an appropriation bill and held not in order.

On June 7, 1951,[10] during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 4329), a point of order was raised against the following amendment:

MR. [ARTHUR L.] MILLER of Nebraska: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Miller of Nebraska: Page 17, line 12, after the period, insert "*Provided further*, That the Board of Commissioners shall provide for treating the water supply of the District of Columbia with a flouride or chemical compound to the extent that it will provide dental protection for the people of the District of Columbia."

MR. [JOE B.] BATES of Kentucky: Mr. Chairman, I make the point of order against the amendment on the ground that it is legislation on an appropriation bill. . . .

Mr. Chairman, I insist on my point of order.

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

THE CHAIRMAN:[11] The gentleman from Nebraska concedes the point of order, and the Chair sustains the point of order.

Emergency Authority Conferred on Federal Official

§ 60.3 An amendment in the form of a limitation providing that no part of an appropriation be used for the purchase or sale of real estate or for establishing new offices outside the District of Columbia, except that in an emergency, when Congress is not in session, approval may be given therefor by the Director of the Budget, was conceded to be legislation and held not in order.

On Apr. 14, 1949,[12] During consideration in the Committee of the Whole of the independent offices appropriation bill (H.R.

10. 97 CONG. REC. 6271, 82d Cong. 1st Sess.

11. Charles M. Price (Ill.).

12. 95 CONG. REC. 4657, 81st Cong. 1st Sess.

4177), a point of order was raised against the following amendment:

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I offer an amendment in behalf of the committee.

The Clerk read as follows:

Amendment offered by Mr. Case of South Dakota: On page 63, line 3, insert a new section in lieu thereof, as follows:

"Sec. 109. No part of any appropriations made available by the provisions of this title shall be used for the purchase or sale of real estate or for the purpose of establishing new offices outside the District of Columbia: *Provided*, That this limitation shall not apply to programs which have been approved by the Congress and appropriations made therefor: *Provided further*, That in the event of an emergency, when the Congress is not in session, approval may be given by the Director of the Bureau of the Budget, within the limits of available funds."

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Chairman, a point of order. I make the point of order, Mr. Chairman, that that is legislation on an appropriation bill, the latter part of the amendment giving additional power and responsibility to the Director of the Budget.

THE CHAIRMAN:[13] Does the gentleman from South Dakota desire to be heard on the point of order?

MR. CASE of South Dakota: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The Chair sustains the point of order.

Authorizing Travel

§ 60.4 Language in an appropriation bill providing that, "when specifically authorized by the Commissioners this appropriation may be used for visiting any ward of the Department of Public Welfare placed outside of the District of Columbia and the States of Virginia and Maryland" was conceded and held to require additional duties and not to be in order.

On Apr. 8, 1957,[14] during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 6500), a point of order was raised against the following provision:

The Clerk read as follows:

PUBLIC WELFARE

Department of Public Welfare, including relief and rehabilitation of indigent residents, maintenance pending transportation of indigent persons, burial of indigent residents of the District of Columbia, temporary care of children while being transferred from place to place . . . and care of boys committed to the National Training School for Boys by the courts of the District of Columbia under a contract to be made by the Commissioners or their designated agent with the Attorney General at a rate of not to exceed the actual cost for each boy committed, $12,450,000: *Provided*, That when specifically authorized by the Commissioners this appropriation may be used for visiting any ward of the Department of Public Welfare placed outside of the District of Columbia and the States of Virginia and Maryland. . . .

13. Francis E. Walter (Pa.).

14. 103 CONG. REC. 5293, 85th Cong. 1st Sess.

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Chairman, I make a point of order.

THE CHAIRMAN:[15] The gentleman will state it.

MR. HOFFMAN: My point of order is with reference to the language on page 16, line 9, beginning with the word "*Provided*" down to and including the word "Maryland" on line 13. That is legislation on an appropriation bill in that it requires additional duties of the Commissioners and also is unlimited as to amount. It may be used in visiting any ward of the Department of Public Welfare anywhere in the United States. The language says outside the District of Columbia and the States of Virginia and Maryland. That would permit them to travel anywhere.

THE CHAIRMAN: Does the gentleman from Michigan (Mr. Rabaut) desire to be heard on the point of order?

MR. [LOUIS C.] RABAUT: Mr. Chairman, this language has been carried in the bill for probably 4 years. The language itself indicates its purpose. If the gentleman insists on his point of order, I will have to concede the point of order.

MR. HOFFMAN: Mr. Chairman, of course I insist on the point of order; otherwise I would not have made it.

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

THE CHAIRMAN: The point of order is sustained.

Restriction on Obligational Authority

§ 60.5 Language in a supplemental appropriation bill providing for "such sums as may be necessary" for public buildings projects in the District of Columbia and further specifying that "no obligation shall be incurred for any . . . project . . . which will (1) result in a deficit in the general fund of the District of Columbia, or (2) exceed the estimated cost as submitted therein to the Congress" was held to be legislation and not in order.

On June 23, 1960,[16] During consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 12740), a point of order was raised against the following provision:

CAPITAL OUTLAY, PUBLIC BUILDING CONSTRUCTION AND DEPARTMENT OF SANITARY ENGINEERING

For an additional amount for "Capital outlay, Public Building Construction" and "Capital outlay, Department of Sanitary Engineering", for construction projects as authorized by the Act of April 22, 1904 (33 Stat. 244), the Act of May 18, 1954 (68 Stat. 105), and the Act of June 6, 1958 (72 Stat. 183) and as submitted to the Congress in House Document Numbered 403 of June 1, 1960, such sums as may be necessary, but no obligation shall be incurred for any item or project proposed in said document which will (1) result in a def-

15. Charles M. Price (Ill.).

16. 106 CONG. REC. 14086, 86th Cong. 2d Sess.

icit in the general fund of the District of Columbia, or (2) exceed the estimated cost as submitted therein to the Congress.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language appearing on page 5, beginning with line 3 and running through line 16. I refer especially to the following language:

> But no obligation shall be incurred for any item or project proposed in said document which will (1) result in a deficit in the general fund of the District of Columbia, or (2) exceed the estimated cost as submitted therein to the Congress.

Mr. Chairman, I make the point of order that this is legislation on an appropriation bill and is subject to other considerations.

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, it certainly was the intention of the committee, and we think the language is clear, to put a straight limitation on the use of these funds.

THE CHAIRMAN:[17] The Chair is prepared to rule.

The gentleman from Iowa makes a point of order against certain language on page 5. The Chair has had an opportunity to study this language, and finds that there is no question but what this is legislation on an appropriation bill. Therefore the Chair sustains the point of order.

Imposing New Employment Quotas

§ 60.6 An amendment providing that no funds appropriated in the act shall be available for the appointment of persons to non-civil-service positions in excess of certain quotas applicable by law only to appointments to classified positions was held to be legislation and not a limitation.

On Mar. 28, 1940,[18] During consideration in the Committee of the Whole of a general appropriation bill [H.R. 9007), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Sec. 702. No funds appropriated in this act shall be available for the appointment of persons to non-civil-service positions in the departmental service in the District of Columbia unless such appointment is not in excess of the quota of apportionment, established in the manner provided by the civil-service laws for appointment in the classified civil service, for positions (compensated by the funds in the respective titles of this act) of a non-civil-service character: *Provided*, That this section shall not apply to any position, the appointment of which is made by the President.

MR. [SCHUYLER OTIS] BLAND [of Virginia]: Mr. Chairman, I make a point of order against the section on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN:[19] Does the gentleman from Georgia desire to be heard on the point of order?

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

18. 86 CONG. REC. 3632, 76th Cong. 3d Sess.

19. Frank H. Buck (Calif.).

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I was aware, of course, that a point of order would be made. I am of the opinion that the language in the section is clearly a limitation on the appropriation and comes within the spirit of the Holman rule. I am advised, however, that the Parliamentarian maintains other views, and for this reason I shall not resist the sustaining of the point of order although I desire to offer amendatory language to take the place of the stricken section.

THE CHAIRMAN: The Chair is ready to rule. In the opinion of the Chair, the language in lines 14 and 15, "unless such appointment is not in excess of the quota of apportionment," and so forth, is clearly subject to a point of order.

The Chair sustains the point of order.

Authorizing Employment at Rates to be Set by Corporation Counsel

§ 60.7 A paragraph in a general appropriation bill for the District of Columbia permitting the use of funds in the bill by the Office of the Corporation Counsel to retain professional experts at rates fixed by the commissioner was conceded to be legislation and was ruled out in violation of Rule XXI clause 2.

On June 18, 1973,[20] during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 8685), the following point of order was raised:

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language to be found on page 11, lines 5 through 10, as not being a limitation upon an appropriation bill, and not authorized.

The portion of the bill to which the point of order relates is as follows:

> Sec. 5. Appropriations in this Act shall be available for services as authorized by 5 U.S.C. 3109 and shall be available to the Office of the Corporation Counsel to retain the services of consultants including physicians, diagnosticians, therapists, engineers, and meteorologists at rates to be fixed by the Commissioner.

THE CHAIRMAN:[1] Does the gentleman from Kentucky desire to be heard on the point of order raised by the gentleman from Iowa (Mr. Gross)

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Chairman, I should like to say to the members of the Committee that this is a new provision that is carried in the bill at this time. This was sent up from downtown. We at this time, Mr. Chairman, concede the point of order.

THE CHAIRMAN: The point of order is sustained.

20. 119 CONG. REC. 20068, 93d Cong. 1st Sess.

1. Dante B. Fascell (Fla.).

§ 61. Education, Health, and Labor

Description of Eligibility for Education Funding; Prohibition on Busing in Order to Overcome Racial Imbalance

§ 61.1 An amendment to a general appropriation bill providing that no part of the funds therein may be used to force busing or attendance of students at a particular school in order to overcome racial imbalance as a condition precedent to obtaining federal funds was held to impose additional duties on federal officials and was ruled out as legislation.

On July 31, 1969,[2] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill [H.R. 13111), a point of order was raised against the following amendment:

> Amendments offered by Mr. [Silvio O.] Conte [of Massachusetts]: On page 56, line 11, strike lines 11 through 15 and insert the following:
>
> "Sec. 408. No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parent or parents, in order to overcome racial imbalance."
>
> And on page 56, line 16. Strike lines 16 through 20 and insert the following:
>
> "Sec. 409. No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school or the attendance of students at a particular school in order to overcome racial imbalance as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school."

Note: The provisions sought to be amended were as follows:

> "Sec. 408. No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parents or parent.
>
> "Sec. 409. No part of the funds contained in this Act shall be used to force busing of students, the abolishment of any school or the attendance of students at a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district, or school."

MR. [ROBERT L. F.] SIKES [of Florida]: Mr. Chairman, I wish to make a point of order against the amendment.

THE CHAIRMAN:[3] The Chair will hear the gentleman.

MR. SIKES: Mr. Chairman, it appears to me that the rulings of the Chair heretofore on this bill this afternoon show clearly that this is legislation on an appropriation bill and not a simple

2. 115 CONG. REC. 21675, 91st Cong. 1st Sess.

3. Chet Holifield (Calif.).

limitation in that the language of the amendment will require someone in the executive department to determine whether busing is to overcome racial imbalance. Therefore, it imposes additional duties and as such I consider it to be legislation on an appropriation bill. The Chair has so ruled on a number of occasions on this bill to date.

THE CHAIRMAN: Does the gentleman from Massachusetts (Mr. Conte) care to be heard on the point of order?

MR. CONTE: I certainly do.

Mr. Chairman, I do not see where these amendments I have, which only change several words in order to overcome racial imbalance, and these are the words that I add, and that is the crucial term—I do not see where it gives the Department of Health, Education, and Welfare or its head or anyone under the Secretary any additional burdens that the present Jamie Whitten sections 408 or 409 do not. I think it is certainly a limitation on the expenditure of funds, and, therefore, the point of order should be overruled.

Further, I may say, Mr. Chairman, if a point of order would lie on this, it will certainly lie on sections 408 and 409, and I will offer such.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: Certainly.

MR. WHITTEN: Mr. Chairman, I would like to affirm the statement made by the gentleman from Florida (Mr. Sikes), with respect to the earlier ruling by the Chair this afternoon, this being the same factual situation. I submit it is clearly subject to a point of order and clearly in line with the earlier ruling of the Chair this afternoon.

THE CHAIRMAN: The Chair is prepared to rule. The Chair recognizes that this is a very difficult matter. The proposed amendment for section 408 is different from section 408 of the bill in that it has added the words "in order to overcome racial imbalance."

The Chair believes that this would impose duties upon officials which they do not have at the present time and, therefore, it is legislation on an appropriation bill. . . .

The additional words in the amendment to section 409 are "in order to overcome racial imbalance" and this clearly requires additional duties on the part of the officials. Therefore, it is not negative in nature and is legislation on an appropriation bill.

The Chair, therefore, sustains the point of order.

Parliamentarian's Note: See § 68.8, infra, where prohibition against use of funds to "force busing of students" was held in order on the same day as a limitation where new determinations of intent were not required.

Limiting Funds, Not Discretion

§ 61.2 Where, under existing law, federal officials have some discretionary authority to withhold federal funds where the recipients are not in compliance with a federally expressed policy, it is nevertheless in order, by way of a limitation on an appropriation bill, to deny the use

of funds for a particular purpose, even though such executive discretion is thereby restricted by implication.

On July 31, 1969,[4] a point of order against the following provision was overruled:

> Sec. 409. No part of the funds contained in this Act shall be used to force busing of students, the abolishment of any school or the attendance of students at a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district, or school.

The proceedings of that date are discussed in § 51.10, supra.

Exception From Busing Limitation

§ 61.3 To provisions prohibiting the use of funds in the bill for purposes, in part, of promoting busing in school districts, amendments limiting the application of such provisions to school districts which are not formed on the basis of race or color were held in order as not imposing additional duties on the federal official administering the fund.

On Feb. 19, 1970,[5] the Committee of the Whole was considering H.R. 15931, a Departments of Labor, and Health, Education, and Welfare appropriation bill. The following proceedings took place:

> Amendments offered by Mr. [James G.] O'Hara [of Michigan]: On page 60, line 20 after the words "school district" insert "in which students are assigned to particular schools on the basis of geographic attendance areas drawn without consideration of the race or color of prospective students and in which personnel are assigned without regard to race or color" and on line 23 after the words "particular school" insert the words "other than his neighborhood school."

Parliamentarian's Note: The provision as sought to be amended is shown below, parentheses indicating the language inserted by the amendment:

> "§ 409. No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school or the attendance of students at a particular school (other than his neighborhood school) in order to overcome racial imbalance as a condition precedent to obtaining Federal funds otherwise available to any State, school district (in which students are assigned to particular schools on the basis of geographic attendance areas drawn without consideration of the race or color of prospective students and in which personnel are assigned without regard to race or color) or school."

MR. GERALD R. FORD [of Michigan]: Mr. Chairman, I reserve a point of order against the amendments as legislation on an appropriation bill. . . .

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4. 115 CONG. REC. 21677, 21678, 91st Cong. 1st Sess.

5. 116 CONG. REC. 4029, 91st Cong. 2d Sess.

But to refer to the point of order, as I read the language proposed in the amendment, it seems crystal clear to me that the language imposes on the executive branch additional burdens and consequently is contrary to the rules of the House as far as legislation on an appropriation bill is concerned. . . .

MR. O'HARA: . . . Mr. Chairman, the limitation is in sections 408 and 409. It is a bona fide limitation. All my amendment seeks to do is to prescribe with particularity the school districts to which the limitation in sections 408 and 409 will apply. . . .

MR. GERALD R. Ford: There is nothing in Federal law today which would authorize such action by the proper officials in the executive branch of the Government. This addition to the limitation in sections 408 and 409 does put additional burdens on the executive branch of the government to determine these kinds of school districts. It is perfectly obvious by the proposed language that it has to be done in each and every case. It is not authorized by law. It is a new burden. It is therefore legislation on an appropriation bill.

THE CHAIRMAN:[6] The Chair is prepared to rule.

The Chair has had occasion to study both of the amendments and the language contained therein. It is clear to the Chair that the language relates to the limitations which are already a part of sections 408 and 409. It defines the limitations further by adding an additional definition to the limitations and in the opinion of the Chair is negative insofar as additional action is concerned on the ground that it really is a description of the school district as it exists at the present time. Therefore, the Chair is constrained to overrule the point of order.

6. Chet Holifield (Calif.).

Denying Education Funds Requiring Evaluation of Conduct; Imposing Condition Precedent to Funding

§ 61.4 To a general appropriation bill, an amendment providing that none of the funds therein may be used for financial assistance to students who have engaged in certain types of disruptive conduct, and including as a condition precedent to the termination of such assistance a requirement that the college or university at which such student is enrolled has initiated or completed a hearing procedure which is not dilatory, was held to impose additional duties on executive officers and was ruled out as legislation.

On July 31, 1969,[7] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 13111), the following proceedings took place:

7. 115 CONG. REC. 21631–33, 91st Cong. 1st Sess.

THE CHAIRMAN:[8] The Clerk will read.

The Clerk read as follows:

> Sec. 407. No part of the funds appropriated under this Act shall be used to provide a loan . . . a grant, the salary of or any remuneration whatever to any individual applying for admission, attending, employed by, teaching at, or doing research at an institution of higher education who has engaged in conduct on or after October 12, 1968, which involves the use of (or the assistance to others in the use of) force or the threat of force or the seizure of property under the control of an institution of higher education, to require or prevent the availability of certain curriculum, or to prevent the faculty, administrative officials, or students in such institution from engaging in their duties or pursuing their studies at such institution: *Provided*, That such limitation upon the use of money appropriated in this Act shall not apply to a particular individual until the appropriate institution of higher education at which such conduct occurred shall have had an opportunity to initiate or has completed such proceedings as it deems appropriate but which are not dilatory in order to determine whether such individual was involved in such conduct: *Provided further*, That none of the funds appropriated by this Act shall be used to formulate or carry out any grant or loan or interest subsidy to any institution of higher education other than to such institutions certifying to the Secretary of Health, Education, and Welfare at quarterly or semester intervals that they are in compliance with this provision.

MR. [OGDEN R.] REID of New York: Mr. Chairman, I have a point of order against section 407 of H.R. 13111, as it constitutes legislation on an appropriation bill.

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

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

MR. REID of New York: Mr. Chairman, I will.

Mr. Chairman, section 407 constitutes legislation on an appropriation bill, and, in my judgment, is inconsistent with rule XXI, section 843 of the Rules of the House of Representatives for the 91st Congress. While a straight limitation on an appropriation bill is in order, it is my understanding of rule XXI which I quote that—

> Such limitations must not give affirmative directions, and must not impose new duties upon an executive officer.

Specifically, Mr. Chairman, section 407 of the bill in my judgment imposes permanent new duties on the executive and requires as well a number of judgmental decisions not now required by law, which are complex and far reaching. . . .

Specifically, Mr. Chairman, following this language and keeping in mind rule XXI which prohibits limitations from giving affirmative directions or imposing new duties upon an executive officer, I ask the following questions:

One. Who is to determine whether proceedings are not dilatory?

Two. Who is to determine which institutions did not file certifications?

Three. Who, Mr. Chairman, is to determine and make the judgment as to whether the conduct involved the "threat of force" or the "assistance to others in the threat of force"?

Four. What constitutes "property under the control of an institution of higher education"? Does this involve rent, leasehold, or what?

8. Chet Holifield (Calif.).

Five. What constitutes requiring or preventing "the availability of certain curriculum"?

Put another way, Mr. Chairman, the statute requires that a judgment be made as to time, the character of the action involved, and the intent of those so involved.

Further as to the point of order, Mr. Chairman, under section 1706 of Cannon's Precedents, volume 7, I would quote briefly from the Chairman during the 1923 debate on a D.C. appropriation bill concerning the compensation of jurors. The Chairman asked, and I quote:

> Is (this limitation) accompanied by a phrase which might be construed to impose additional duties or permit an official to assume an intent to change existing law?
>
> Does the limitation curtail or extend, modify, or alter existing powers or duties, or terminate old or confer new ones? If it does, then it must be conceded that legislation is involved, for without legislation these results could not be accomplished.

The point of order in this instance against the provision was sustained. . . .

Likewise, Mr. Chairman, the new duties imposed on an executive officer in section 407 include: First, that he shall receive quarterly or semester certifications from institutions; second, that he shall determine which institutions failed to certify; third, that he shall terminate all aid to those institutions which failed to certify; and, fourth, that student funds are mandatorily to be cut off following the institution of certain proceedings.

These are, in my judgment, rather formidable new and affirmative duties—national in character.

Lastly, Mr. Chairman, the institution must initiate such proceedings as it deems appropriate to determine whether a student is involved in this conduct.

However, such proceedings must not be dilatory. What is not a matter of institutional determination is that which is or is not dilatory. Hence a Federal standard determined by Federal officials will be required.

MR. [ROBERT L. F.] SIKES [of Florida]: Mr. Chairman, I would like to be heard on the point of order. I rise in opposition to the point of order raised by the gentleman from New York.

Section 407 I feel should be held in order. It is a limitation. It is not legislation on an appropriation bill. It relates clearly to funds appropriated under this act and sets and establishes certain criteria to be met before the funds can be used. It does not force any institution to take any action. It simply requires that certain conditions be met if funds are to be obtained for loans and grants to students and teachers. If the institutions do not care to meet the requirements, they are not under any obligation to take the money. . . .

. . . I would call the Chair's attention to section 3942 of volume 4 of Hinds' Precedents, which required certification before money could be paid to the Agricultural College of Utah—the certification to be to the effect that no trustee, officer, instructor, or employee of such college is engaged in the practice of polygamy.

I want to quote, Mr. Chairman, from section 3942:

> While it is not in order to legislate as to qualifications of the recipients

of an appropriation, the House may specify that no part of the appropriation shall go to recipients lacking certain qualifications. . . .

THE CHAIRMAN: Does the gentleman from New York (Mr. Reid) desire to be heard further on the point of order?

MR. REID of New York: Yes, Mr. Chairman, I would add one or two brief words. First, there are specific new affirmative directions in section 407, specifically the determination as to whether the proceedings are or are not dilatory. That is a specific requirement upon the Secretary and clearly a new duty.

In addition, it is very clear that the new duties include determining institutional cutoffs for about 2,300 colleges and universities throughout the United States and the termination of funds to any individual not as a result of conviction or even of completed proceedings. These clearly constitute new duties and affirmative directions.

THE CHAIRMAN: The Chair has listened with great attention to the gentleman from New York who has raised the point of order and also the gentleman from Florida (Mr. Sikes) who has cited a number of precedents.

The Chair has read the precedents cited and is ready to rule.

The gentleman from New York (Mr. Reid) has raised this point of order against section 407 on the ground that it constitutes legislation on an appropriation bill.

The Chair has examined the section referred to and notes while it imposes a restriction on the use of funds now in the bill, it also carries a condition precedent to the imposition of this limitation which would require determinations regarding whether or not the limitation is to apply. Some official or officials would be required to follow the hearing procedures at each institution of higher education in many of several forms, including whether the institution has had an opportunity to initiate hearing procedures; whether such procedures are final, and whether they have been dilatory.

The Chair has examined the ruling made by Chairman Fascell on October 4, 1966, of the 89th Congress, second session, Congressional Record, volume 112, part 18, page 24976, regarding a similar proposition. It was held at that time, that:

> While the House may, by way of a limitation, restrict the use of funds in an appropriation bill, it may not, under the guise of a limitation impose additional new determinations on an Executive.

The Chair, therefore, sustains the point of order.

Parliamentarian's Note: In another ruling, on July 31, 1969,[9] an amendment providing that no part of the funds carried in a pending appropriation bill were to be used for financial assistance for students who had engaged in force or had used the threat of force to prevent faculty or students from carrying out their duties or studies was held in order as a limitation not imposing additional duties. It is unlikely that this ruling would be followed in current prac-

9. 115 CONG. REC. 21636, 21637, 91st Cong. 1st Sess.

tice, since the imposition of duties, not contemplated in existing law, on federal officials, including the determination of intent and other findings to be made with respect to student activities would certainly be viewed as a change in existing law.

4 Hinds' Precedents Sec. 3942, referred to by Mr. Sikes, above, is discussed in Sec. 52.2, supra.

Determinations Requiring Evaluations and Judgments May Disqualify Limitation

§ 61.5 An amendment providing that no part of the funds carried in a pending general appropriation bill may be used for financial assistance for students who have engaged in "conduct of a serious nature" contributing to "a substantial campus disruption" and who have used force or the threat thereof to prevent the pursuit of academic aims, was held to impose new duties of determination and judgment on federal officials and was ruled out as legislation.

On July 31, 1969,[10] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 13111), a point of order was raised against the following amendment:

> MR. [JOHN R.] DELLENBACK [of Oregon]: Mr. Chairman, I offer a substitute amendment to the amendment offered by the gentleman from Florida (Mr. Sikes). . . .
>
> The Clerk read as follows:
>
> Substitute amendment offered by Mr. Dellenback to the amendment offered by Mr. (Robert L. F.) Sikes: On page 55 after line 8 insert the following:
>
> "Sec. 407. None of the funds appropriated by this Act shall be used to formulate or carry out any grant to any institution of higher education that is not in full compliance with Section 504 of the Higher Education Amendments of 1968.[11]
>
> "No part of the funds appropriated under this Act shall be used to provide a loan, guarantee of a loan, a grant, the salary of or any remuneration whatever to any individual applying for admission, attending, employed by, teaching at, or doing research at an institution of higher education who has engaged in conduct on or after August 1, 1969, which was of a serious nature, contributed to a substantial campus disruption, and involved the use of (or the assistance to others in the use of) force or the threat of force or the seizure of property under the control

10. 115 CONG. REC. 21645, 91st Cong. 1st Sess. See § 52.4, supra, for further discussion of the effect of provisions requiring officials to perform certain duties of evaluation, investigation, and discernment of motive or intent.

11. See note in § 63.5, infra, for provisions of Sec. 504.

of an institution of higher education, to require or prevent the availability of certain curriculum, or to prevent the faculty, administrative officials, or students in such institution from engaging in their duties or pursuing their studies at such institution."

MR. [JOHN] BRADEMAS [of Indiana]: Mr. Chairman, a point of order.

THE CHAIRMAN:[12] The gentleman will state it.

MR. BRADEMAS: Mr. Chairman, I must make a point of order against the amendment offered by the gentleman on the ground that it constitutes legislation on an appropriation bill.

I call the attention of the Chair to the fact that the amendment offered by the gentleman from Oregon contains a number of phrases each of which will require a burden on the part of the Department of Health, Education, and Welfare to make certain judgments and determinations.

For example, Mr. Chairman, the gentleman's amendment uses language which refers to conduct that is "of a serious nature." Who is to decide, Mr. Chairman, when conduct is "of a serious nature" or is not "of a serious nature"?

His amendment contains language which says that the conduct must have "contributed to a substantial campus disruption." Who defines "disruption"? Who defines "substantial"? Those determinations will be burdens imposed upon officials of the executive branch of the Government.

The gentleman's amendment has a phrase referring to conduct which "involved the use of force" or "the threat of force." Once again these phrases require determinations which must be made by the executive branch.

Mr. Chairman, the gentleman's amendment contains the phrase, "to require or prevent" certain kinds of action or occurrences. This is language which clearly involves the stipulation of a purpose which must be in the mind of the person complained of, and a determination must thus be made by the executive branch of the Government on the issue of whether such conduct was indeed intended "to require or prevent" the availability of certain curriculums or to prevent the faculty, students, or administrative officials from engaging in their duties, or pursuing their studies.

For all these reasons, Mr. Chairman, I believe it is very clear that the gentleman's amendment constitutes legislation on an appropriation bill, and I believe the amendment should be disallowed. . . .

THE CHAIRMAN: . . . The Chair is ready to rule. It is clear from the language of the gentleman's amendment that it does go beyond a negative type of amendment and it does impose upon officials certain duties of determination and judgment which are legislative and subject to a point of order on an appropriation bill.

The Chair sustains the point of order.

New Determinations Not Required by Law in Making Allocation of Funds

§ 61.6 Where existing law (20 USC Sec. 238) provided, in its allotment formula for determining entitlements of local

12. Chet Holifield (Calif.).

educational agencies to a certain category of assistance in federally affected areas, that the Commissioner shall determine the "number of children who . . . resided with a parent employed on federal property situated in the same State as such agency or situated within reasonable commuting distance from the school district of such agency", an amendment to an appropriation bill containing funds for "impacted school assistance" prohibiting the use of funds in that bill for assistance "for children whose parents are employed on Federal property outside the school district of such agency" was held to impose the additional duty on federal officials of determining whether the parent was employed within the school district and was ruled out as legislation in violation of Rule XXI clause 2.

The proceedings of June 26, 1973,[13] are discussed in § 52.18, supra.

13. 119 CONG. REC. 21393, 21394, 93d Cong. 1st Sess.

New Direction in Fund Distribution Not Required by Law

§ 61.7 A provision in an amendment to a general appropriation bill denying the use of any funds for impacted school aid until the official allocating the funds makes an apportionment thereof contrary to the formula prescribed by existing law was held to impose additional duties upon that official, thus changing existing law and constituting legislation on an appropriation bill.

On Apr. 14, 1970,[14] during consideration in the Committee of the Whole of the Education Department appropriation bill (H.R. 16916), a point of order was raised against the following amendment:

> MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Chairman, I offer an amendment in the nature of a substitute.
>
> The Clerk read as follows:
>
> Amendment in the nature of a substitute offered by Mr. Michel: Strike all after the enacting clause and insert:
>
> TITLE I—OFFICE OF EDUCATION
>
> SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS
>
> For carrying out title I of the Act of September 30, 1950, as amended (20 U.S.C., ch. 13), and the Act of

14. 116 CONG. REC. 11676, 11677, 91st Cong. 2d Sess.

September 23, 1950, as amended (20 U.S.C., ch. 19), $440,000,000 of which $425,000,000 shall be for the maintenance and operation of schools as authorized by said title I of the Act of September 30, 1950, as amended, and $15,000,000 which shall remain available until expended, shall be for providing school facilities as authorized by said Act of September 23, 1950: *Provided,* That this appropriation shall not be available to pay local educational agencies pursuant to the provisions of any other section of said title I until payment has been made of 90 per centum of the amounts to which such agencies are entitled pursuant to section 3(a) of said title and 100 per centum of the amounts payable under section 6 of said title. . . .

MR. [JAMES G.] O'HARA [of Michigan]: Then I make a point of order against the amendment offered by the gentleman from Illinois.

THE CHAIRMAN:[15] The Chair will hear the gentleman on the point of order.

MR. O'HARA: Mr. Chairman, the point of order against the amendment offered by the gentleman from Illinois is that it contains legislation in an appropriation bill, to wit, the language on page 2, lines 6 to 12 is clearly legislation on an appropriation bill providing for different dispositions of funds under those sections than are provided by law. Therefore I make a point of order against the amendment offered by the gentleman from Illinois. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, it is as plain as the nose on my face, and I have got a nose, that this is clearly a limitation upon the expenditure of funds. That is clearly it. I suggest the point must be overruled.

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

MR. O'HARA: Mr. Chairman, I would like to be heard. I would like to say first, Mr. Chairman, if the proviso to which I have referred authorizes the use on a different formula than that provided in the basic authorizing legislation, and I do not believe that the proviso is a limitation or retrenchment of appropriations which would be an expansion, the proviso is neither a limitation nor retrenchment of appropriations, because it permits payment to be made in excess of the payments authorized by the above quoted section of Public Law 81–874.

It may be helpful to the Chairman and to my colleagues in understanding the point that the reference contained in section 5(c) just quoted, that various other sections of entitlements to payments are to the so-called familiar references to categories A and B children under impacted aid.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Michigan (Mr. O'HARA), has raised a point of order against the proviso appearing in the amendment in the nature of a substitute and referred to in the original bill as the proviso on page 2 of the bill on the ground that it constitutes legislation on an appropriation bill in violation of clause 2, rule XXI. That proviso would make appropriations in the bill unavailable for payment to local educational agencies pursuant to the provisions of any other section of title I of the act of September 30, 1950—which authorizes school assistance in federally affected areas—until payment has been made of 90 percent of entitled allotments

15. Chet Holifield (Calif.).

pursuant to section 3(a) of said title I and of 100 percent of amounts payable under section 6 of that title. The gentleman from Michigan contends that such a requirement for payments of funds appropriated in this bill has the effect of changing the allotment formula in the authorizing legislation of funds for "category A students," and is therefore legislation on an appropriation bill prohibited by clause 2, rule XXI.

On June 26, 1968, during consideration of the Department of Labor and Health, Education, and Welfare appropriation bill for fiscal year 1969, the Chair—the gentleman now occupying it—sustained a point of order against an amendment prohibiting the use of funds in the bill for educationally deprived children until there was made available therefrom for certain local educational agencies an amount at least equal to that allotted in the preceding year, since that amendment would have required the Commissioner of Education to make an apportionment of appropriated funds contrary to the formula prescribed by existing law, thus imposing additional duties on that official and changing existing law.

The Chair feels that that decision is controlling in this instance. To make the appropriations authorized under certain sections of the "impacted school aid" legislation contingent upon allotment of certain percentages of entitled funds under other sections of that authorizing legislation is to impose additional duties on the official making the allotment and to change the enforcement formula in the authorizing legislation is in violation of clause 2, rule XXI.

The Chair therefore sustains the point of order.

Affirmative Directive to Nonfederal Recipient of Funds

§ 61.8 An amendment to an appropriation bill, in the form of a limitation providing that none of the funds appropriated would be used for support of military training courses in civil schools unless the authorities of such institutions make certain information known to prospective students, was held to be legislation and not in order.

On Feb. 14, 1936,[16] an amendment to a War Department appropriation bill was ruled out as legislation. The provision sought to be amended was as follows:

> For the procurement, maintenance, and issue, under such regulations as may be prescribed by the Secretary of War, to institutions at which one or more units of the Reserve Officers' Training Corps are maintained [of supplies, etc.].

The amendment that was ruled against is set out below:

> On page 59, line 6, after the words "corps", insert "*Provided further*, That none of the funds appropriated in this act shall be used for or toward the support of military training courses in any civil school or college the authorities of which choose to maintain such courses on a compulsory basis, unless the au-

16. 80 CONG. REC. 2091–94, 74th Cong. 2d Sess.

thorities of such institutions provide, and make known to all prospective students by duly published regulations, arrangements for the unconditional exemption from such military courses, and without penalty, for any and all students who prefer not to participate in such military courses because of convictions conscientiously held, whether religious, ethical, social, or educational, though nothing herein shall be construed as applying to essentially military schools or colleges."

The proceedings that occurred in this connection are discussed in greater detail in Sec. 53.1, supra.

Requiring Judgment Whether Duty Is Incidental to Teaching

§ 61.9 A provision in a District of Columbia appropriation bill that teachers shall not perform any clerical work except that necessary or incidental to their regular classroom teaching assignments was ruled out as legislation.

The proceedings of Apr. 2, 1937,[17] relating to a point of order against a provision as described above, are discussed in Sec. 60.1, supra.

Indian Health Activities; Temporary Services at Per Diem Rates When Authorized by Surgeon General

§ 61.10 Language in a general appropriation bill to provide for Indian health activities "including . . . temporary services at rates not to exceed $100 per diem . . . when authorized by the Surgeon General" was held to be legislation and not in order.

On Mar. 29, 1960,[18] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education and Welfare appropriation bill (H.R. 11390), a point of order was raised against the following provision:

The Clerk read as follows:

INDIAN HEALTH ACTIVITIES

For expenses necessary to enable the Surgeon General to carry out the purposes of the Act of August 5, 1954 (42 U.S.C. 2001) (including not to exceed $10,000 for temporary services at rates not to exceed $100 per diem for individuals, when authorized by the Surgeon General); purchase of not to exceed twenty-seven passenger motor vehicles, of which fourteen shall be for replacement only; hire of passenger motor vehicles and aircraft; purchase of reprints; payment for telephone service in private residences in the field,

17. 81 CONG. REC. 3106, 3107, 75th Cong. 1st Sess.

18. 106 CONG. REC. 6863, 6864, 86th Cong. 2d Sess.

when authorized under regulations approved by the Secretary; and the purposes set forth in sections 321, 322(d), 324, and 509 of the Public Health Service Act, $48,276,000.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 28 beginning in line 4 as follows: "(including not to exceed $10,000 for temporary services at rates not to exceed $100 per diem for individuals, when authorized by the Surgeon General)" on the ground that this is legislation on an appropriation bill.

THE CHAIRMAN:[19] Does the gentleman from Rhode Island desire to be heard?

MR. [JOHN E.] FOGARTY (of Rhode Island): It is my understanding, Mr. Chairman, that this language is needed in order to get some of our best brains to go into remote areas of these Indian reservations. By not allowing the language to remain in the bill is doing a disservice to the Indian population. I do believe in the basic law there is authority permitting such language as this. . . .

THE CHAIRMAN: The Chair sustains the point of order.

Making Lesser Determination Than That Contemplated by Law

§ 61.11 To a section of a general appropriation bill exempting cases where the life of the mother would be endangered if the fetus were carried to term from a denial of funds for abortions, an amendment exempting instead cases where the health of the mother would be endangered if the fetus were carried to term was held not to constitute further legislation, since determinations on the endangerment of life necessarily subsume determinations on the endangerment of health, and the amendment did not therefore require any different or more onerous determinations.

The proceedings of June 27, 1984,[20] are discussed in § 52.30, supra.

Determining That Life of Mother Endangered if Fetus Carried to Term

§ 61.12 A provision in a general appropriation bill requiring new determinations by federal officials is legislation and subject to a point of order, regardless of whether or not private or state officials administering the federal funds in question routinely make such determinations.

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

20. 130 CONG. REC. ——, 98th Cong. 2d Sess.

On June 17, 1977,[1] a point of order was sustained against the following provision in the Departments of Labor, and Health, Education and Welfare and related agencies appropriation bill (H.R. 7555):

> None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

The proceedings of that date are discussed more fully in § 52.33, supra.

Requiring Determination of Motive or Intent

§ 61.13 An amendment to a general appropriation bill prohibiting the use of funds therein for abortions or abortion-related material and services, and defining "abortion" as the intentional destruction of unborn human life, which life begins at the moment of fertilization was conceded to impose affirmative duties on officials administering the funds (requiring determinations of intent of recipients during abortion process) and was ruled out as legislation in violation of Rule XXI clause 2.

The proceedings of June 27, 1974,[2] relating to a point of order against the amendment described above, are discussed in § 25.14, supra.

Duties Already Being Performed Pursuant to Provisions in Annual Appropriation Acts

§ 61.14 A provision in a general appropriation bill prohibiting the use of funds therein to perform abortions except where the life of the mother would be endangered if the fetus were carried to term, and providing that the several states shall remain free not to fund abortions to the extent they deem appropriate, is legislation requiring federal officials to make determinations and judgments not required by law, notwithstanding the inclusion in prior year appropriation bills of similar legislation applicable to funds in prior years.

On Sept. 22, 1983,[3] a point of order was made and sustained

1. 123 CONG. REC. 19698, 19699, 95th Cong. 1st Sess.
2. 120 CONG. REC. 21687, 93d Cong. 2d Sess.
3. 129 CONG. REC. —— 98th Cong. 1st Sess.

against a provision in a general appropriation bill, as described above. The proceedings of that date are discussed in greater detail in § 52.44, supra.

Determination Whether Life of Mother is at Risk as Prelude to Abortion

§ 61.15 A paragraph in a general appropriation bill prohibiting the use of funds in the bill to perform abortions except where the mother's life would be endangered if the fetus were carried to term was ruled out of order as legislation, since requiring federal officials to make new determinations and judgments not required by law as to the danger to the mother in each individual case.

The proceedings of June 17, 1977,[4] relating to a point of order against a paragraph as described above, are discussed in § 53.4, supra.

§ 61.16 An amendment to a general appropriation bill prohibiting the use of funds in the bill to perform abortions, except where a physician has certified the abortion is necessary to save the life of the mother, was ruled out as legislation since some of the physicians required to make such certification would be federal officials not required under existing law to make such determinations and judgments.

The proceedings of June 17, 1977,[5] are discussed in § 53.5, supra.

Permitting Transfer of Funds With Approval of Bureau of the Budget

§ 61.17 Language in a general appropriation bill authorizing the Secretary of Labor to allot or transfer, with the approval of the Director of the Budget, funds from a certain appropriation in the bill to any bureau of the Department of Labor, to enable such agency to perform certain services, was held to be legislation and not in order on a general appropriation bill.

On Jan. 20, 1939,[6] the Committee of the Whole was consid-

4. 123 Cong. Rec. 19698, 19699, 95th Cong. 1st Sess.

5. 123 Cong. Rec. 19699, 19700, 95th Cong. 1st Sess.

6. 84 Cong. Rec. 591, 592, 76th Cong. 1st Sess.

ering H.R. 2868, a deficiency appropriation bill. The Clerk read a paragraph providing an appropriation for the Department of Labor, Wage and Hour Division, which contained the following proviso:

> *Provided,* That the Secretary of Labor may allot or transfer, with the approval of the Director of the Bureau of the Budget, funds from this appropriation to any bureau or office of the Department of Labor to enable such agency to perform services for the Wage and Hour Division.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the proviso beginning in line 3, page 5, and including the rest of the section on the ground that it is legislation on an appropriation bill that imposes additional duties upon the Bureau of the Budget.
>
> THE CHAIRMAN:[7] Does the gentleman from Virginia desire to be heard on the point of order?
>
> MR. [CLIFTON A.] WOODRUM of Virginia: No.
>
> THE CHAIRMAN: The Chair sustains the point of order.

Limiting Funds for Certain Ascertainable Class of Employers

§ 61.18 To a paragraph in a general appropriation bill containing funds for the Occupational Safety and Health Administration, an amendment prohibiting the use of those funds for expenses of inspection of employers who have submitted plans for compliance with the Occupational Safety and Health Act where the Secretary of Labor has approved such plans, was allowed, since the language was merely descriptive of certain employers as to whom the limitation on the use of funds was made applicable.

On Sept. 19, 1972,[8] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 16654), a point of order was raised against the following amendment:

> MR. [JAMES A.] MCCLURE [of Idaho]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. McClure: Page 6, line 24, immediately before the period insert the following: "*Provided,* That none of these funds shall be used to pay for expenses of inspection in connection with any employer who has submitted to the Secretary of Labor a plan for compliance with the Occupational Safety and Health Act of 1970 and such plan has been approved by the Secretary.". . .

7. Wall Doxey (Miss.).

8. 118 CONG. REC. 31322, 92d Cong. 2d Sess.

THE CHAIRMAN:[9] Does the gentleman from Massachusetts wish to press the point of order?

MR. [SILVIO O.] CONTE [of Massachusetts]: Yes, Mr. Chairman.

Mr. Chairman, I raise the point of order that this gives the Secretary additional burdens and duties to ascertain whether a plan is acceptable or not. Further, I believe it is nongermane. It is not related to the organic law at all. As I understand the OSHA law, it does not require a plan to be submitted to the Secretary of Labor. Therefore, it is completely nongermane to the legislation. Therefore, I feel a point of order lies against the amendment.

THE CHAIRMAN: Does the gentleman from Idaho wish to respond to the point of order?

MR. MCCLURE: Yes, Mr. Chairman. I thank the Chairman. I recognize the argument that has been made by the gentleman concerning the fact that it imposes a duty, but the duty is already imposed by the OSHA Act to require the Secretary to do certain things with respect to safety regulations. This changes the method by which that action is complied with but does not impose an additional duty.

THE CHAIRMAN: The Chair is ready to rule. The Chair has listened carefully to the arguments for and against the point of order. The Chair believes that this is a limitation of funds and it is restricted to the funds contained in the pending bill. It is a limitation on using those funds for inspection of certain employers who have submitted plans for compliance with the Occupational Safety and Health Act where those plans have been approved. The amendment is negative and imposes no new duties on Federal officials. Therefore the Chair holds the amendment in order and overrules the point of order.

9. Chet Holifield (Calif.).

To the Extent the Secretary Finds Necessary

§ 61.19 In an appropriation bill, providing funds for grants to states for unemployment compensation, language stating "only to the extent that the Secretary finds necessary," was held to impose additional duties and to be legislation on an appropriation bill and not in order.

On Mar. 27, 1957,[10] a point of order was made and sustained against a provision in H.R. 6287 (a Departments of Labor, and Health, Education, and Welfare appropriation bill) as described above. The proceedings of that date are discussed in greater detail in § 52.14, supra.

Requiring Evaluation of "Propriety" and "Effectiveness".

§ 61.20 Language in the guise of a limitation requiring federal officials to make evaluations of propriety and effec-

10. 103 CONG. REC. 4559, 4560, 85th Cong. 1st Sess.

tiveness not required to be made by existing law is legislation; a proviso in a general appropriation bill prohibiting the use of funds therein for grants "not properly reviewed under procedures used in the prior fiscal year" or for grantees not having "an established and effective program in place" was held to require new determinations by federal officials not required by existing law for the fiscal year in question and to be legislation in violation of Rule XXI clause 2.

On Oct. 6, 1981,[11] a point of order was made and sustained against a provision in an appropriation bill (H.R. 4560) as described above. The proceedings of that date are discussed in greater detail in § 52.32, supra.

Denying Fund Availability to Beneficiary Already Receiving Another Entitlement

§ 61.21 An amendment to a general appropriation bill denying availability of funds therein to pay certain benefits to persons simultaneously entitled by law to other benefits, or in amounts in excess of those other entitlement levels, was held in order as a limitation, since existing law already required executive officials to determine whether and to what extent recipients of funds contained in the bill were also receiving those other entitlement benefits.

The determination of the Chair on June 18, 1980,[12] was that, where existing law (19 USC § 2292) established trade readjustment allowances to workers unemployed because of import competition and required the disbursing agency to take into consideration levels of unemployment insurance entitlements under other law in determining payments, an amendment to a general appropriation bill reducing the availability of funds therein for trade adjustment assistance by amounts of unemployment insurance did not impose new duties upon officials, who were already required to make those reductions. The proceedings of that date are discussed in greater detail in § 52.36, supra.

11. 127 CONG. REC. 23361, 97th Cong. 1st Sess.

12. 126 CONG. REC. 15354–56, 96th Cong. 2d Sess.

Limiting Funds to Administer or Enforce Law With Respect to Small Firms

§ 61.22 While an amendment to a general appropriation bill may not directly curtail executive discretion delegated by law, it is in order to limit the use of funds for an activity, or a portion thereof, authorized by law if the limitation does not require new duties or impose new determinations.

Where an amendment to a general appropriation bill prohibited the use of funds therein for the Occupational Safety and Health Administration to administer or enforce regulations with respect to employers of 10 or fewer employees included in a category having an "occupational injury lost work day case rate" less than the national average, except to perform certain enumerated functions and authorities, but exempted from the prohibition farming operations not maintaining a temporary labor camp, the amendment was held not to constitute additional legislation on an appropriation bill.

The proceedings of Aug. 27, 1980,[13] are discussed in § 73.11, infra.

13. 126 CONG. REC. 23519–21, 96th Cong. 2d Sess.

Eligibility for Food Stamps Where Principal Wage Earner is on Strike

§ 61.23 An amendment to a general appropriation bill prohibiting the use of funds therein for food stamps to a household whose *principal* wage earner is on strike on account of a labor dispute to which he or his organization is a party, except where the household was eligible for and participating in the food stamp program immediately prior to the dispute, and except where a member of the household is subject to an employer's lockout, was held to impose new duties and require new investigations by executive branch officials and was ruled out as legislation.

On June 21, 1977,[14] a point of order was sustained against an amendment as described above. The proceedings of that date are discussed in detail in § 52.45, supra.

§ 62. Interior

14. 123 CONG. REC. 20150–52, 95th Cong. 1st Sess.

Appropriation Available Pursuant to Regulations by Secretary

§ 62.1 A paragraph in a general appropriation bill providing that appropriations in the bill available for travel expenses shall be available for expenses of attendance of officers and employees at meetings or conventions "under regulations prescribed by the Secretary," was conceded to be legislation and held not in order.

On May 2, 1951,[15] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3790), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Sec. 104. Appropriations in this act available for travel expenses shall be available, under regulations prescribed by the Secretary, for expenses of attendance of officers and employees at meetings or conventions of members of societies or associations concerned with the work of the bureau or office for which the appropriation concerned is made.
>
> MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make the point of order against section 104 that it is legislation on an appropriation bill and involves additional duties.
>
> THE CHAIRMAN:[16] Does the Chair understand that the gentleman from New York raises objection to the paragraph because of the use of the language "under regulations prescribed by the Secretary" in lines 18 and 19?
>
> MR. KEATING: I do object to those words, and feel that that makes the section out of order as it now stands, but I would still press the point of order even with those words eliminated.
>
> MR. [HENRY M.] JACKSON of Washington: I wonder if the gentleman would accept the section if it remains as is except for the elimination of the words "under regulations prescribed by the Secretary."
>
> MR. KEATING: I feel that even with the elimination of those words it would still involve legislation on an appropriation bill, for exactly the same reasons for which the Chair has held section 102 subject to a point of order.
>
> MR. JACKSON of Washington: Mr. Chairman, I concede the point of order.
>
> THE CHAIRMAN: The point of order is sustained.

Available if Determined to be "Advantageous"

§ 62.2 Language in an appropriation bill making available appropriations for the installation of telephones in government-owned residences occupied by employees of the National Park Service, provided the Secretary of the Interior deter-

15. 97 CONG. REC. 4738, 82d Cong. 1st Sess.

16. Wilbur D. Mills (Ark.).

mines that such services are advantageous in the administration of the park areas, was conceded and held to impose new duties on the Secretary and therefore to be legislation.

On Mar. 16, 1939,[17] 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:
>
> Appropriations herein made for the National Park Service shall be available for the installation and operation of telephones in Government-owned residences, apartments, or quarters occupied by employees of the National Park Service, provided the Secretary determines the provision of such services are advantageous in the administration of these areas.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph on the ground it is not authorized by law and also because it imposes additional duties on the Secretary in the putting in of telephones in private houses.
>
> MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, I concede the point of order and offer an amendment.
>
> THE CHAIRMAN:[18] The point of order is sustained.

17. 84 CONG. REC. 2893, 76th Cong. 1st Sess.

18. Frank H. Buck (Calif.).

Determination of Electric Power Needs

§ 62.3 An amendment to an appropriation bill providing that no funds therein shall be used to operate transmission lines to carry power developed at Fort Randall Dam across the boundaries of South Dakota, unless such power exceeds the requests for power in that state, was held to be legislation on an appropriation bill, imposing new duties on officials, and not in order.

On Mar. 30, 1949,[19] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3838), a point of order was raised against the following amendment:

> MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I offer my amendment at this time and ask that it be read.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Case of South Dakota: On page 47, line 7, strike out the period, insert a colon and the following: "*Provided further*, That no part of these funds shall be used to build, operate, or administer transmission lines to carry power developed at Fort Randall Dam across the boundaries of the State of South Dakota in which the power is produced, unless the power so produced

19. 95 CONG. REC. 3520, 81st Cong. 1st Sess.

shall exceed the requests for power in that State.". . .

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I make the point of order that this particular amendment is legislation on an appropriation bill and imposes additional duties on the Bureau of Reclamation. . . .

THE CHAIRMAN:[20] The Chair is prepared to rule. . . .

The Chair has examined the amendment with some degree of care and invites attention especially to the language appearing wherein it is stated, "unless the power so produced shall exceed the requests for power in that State."

The insertion of that language in the amendment would impose additional duties under the amendment, therefore would be legislation on an appropriation bill.

The Chair sustains the point of order.

Requiring Approval by State Officials of Federal Project

§ 62.4 An amendment to the Interior Department appropriation bill providing that none of the funds therein may be used for the purchase of material for new construction of electrical generating equipment in any state unless approved by the Governor or board having jurisdiction over such matters was held to be legislation on an appropriation bill and not in order.

On Mar. 30, 1949,[1] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3838), a point of order was raised against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [Ben F.] Jensen [of Iowa]: On page 43, line 3, insert: "None of the funds herein appropriated may be used for the purchase of material for the beginning of any new construction of electrical generating equipment, transmission lines, or related facilities in any State unless approved by the governor, by the board, or commission of the respective States having jurisdiction over such matters."

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I make a point of order against the amendment on the ground that it is clearly legislation on an appropriation bill.

THE CHAIRMAN:[2] Does the gentleman from Iowa desire to be heard on the point of order?

MR. JENSEN: If the Chair pleases; yes.

THE CHAIRMAN: The Chair will hear the gentleman, briefly.

MR. JENSEN: Mr. Chairman, again I contend, and I am sure rightly so, that

20. Jere Cooper (Tenn.).

1. 95 CONG. REC. 3530, 3531, 81st Cong. 1st Sess. For discussion of the effect of duties imposed on state or local officials generally, see § 53, supra.

2. Jere Cooper (Tenn.).

my amendment is purely a limitation of appropriation. In many States there are State authorities which pass on such matters as this. They find it is good for the States because of the fact they do not want the Government of the United States to encroach on State rights. So this is in harmony with the programs which are carried on in many of the States at the present time. It is very important and I think for the welfare of this Nation. It is proper and is not legislation on an appropriation bill.

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

The Chair has examined the amendment and especially invites attention to the following language appearing in the amendment: "unless approved by the governor, by the board, or commission of the respective States having jurisdiction over such matters."

There can be no doubt but what that language would impose additional duties on the governor and the commission and would require affirmative action, therefore it constitutes legislation, and the Chair sustains the point of order.

Parliamentarian's Note: This precedent best represents current rulings on issues such as those raised here. But see the "Note on Contrary Rulings," which follows § 53.6, supra, especially the ruling of Mar. 29, 1966, wherein prior approval by state officials was held merely descriptive of qualifications of recipients and not to impose new duties on state officials; and the ruling of June 23, 1971.

Granting Discretionary Authority

§ 62.5 Language in a general appropriation bill providing that the Secretary of the Interior may utilize appropriations for encouraging self-support among Indians through several stated means, and requiring the exercise of discretion by the Secretary was held to be legislation on an appropriation bill and not in order.

On Mar. 1, 1938,[3] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation bill. The following proceedings took place:

For the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops, $240,000 . . . *Provided*, That the expenditures for the purposes above set forth shall be under conditions to be prescribed by the Secretary of the Interior for repayment to the United States on or before June 30, 1944, except in the case of loans on irrigable lands for permanent improvement of said lands, in which the period for repayment may run for not exceeding 20 years, in the discretion of the Secretary of the Interior . . . *Provided further*, That the Secretary of the Interior is hereby authorized, in his discretion and under

3. 83 CONG. REC. 2637, 2638, 75th Cong. 3d Sess.

such rules and regulations as he may prescribe, to make advances from this appropriation to old, disabled, or indigent Indian allottees, for their support, to remain a charge and lien against their land until paid: *Provided further*, That not to exceed $15,000 may be advanced to worthy Indian youths to enable them to take educational courses . . . and advances so made shall be reimbursed in not to exceed 8 years, under such rules and regulations as the Secretary of the Interior may prescribe. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph that it is legislation on an appropriation bill and requires additional duties of the Secretary of the Interior. I call the attention of the Chair to the language beginning at the end of line 18 and running through the entire proviso; to the proviso beginning in line 5 on page 29; to the proviso beginning on page 29, line 10; and to the proviso beginning on page 29, line 17. Every one of these is subject to a point of order, because each of them requires additional duties of the Secretary of the Interior and is legislation on an appropriation bill.

I make the point of order against the entire paragraph. . . .

THE CHAIRMAN:[4] Does the gentleman from Oklahoma desire to be heard on the point of order?

MR. [JED] JOHNSON of Oklahoma: I do not care to be heard on it, Mr. Chairman.

THE CHAIRMAN: The Chair is ready to rule.

It seems to the Chair the proviso beginning on page 29, line 5; the second proviso, beginning on line 10; and the third proviso, beginning on line 14, are all subject to a point of order, being legislation on an appropriation bill. The point of order is made to the entire paragraph, and, with these items included, the entire paragraph is subject to the point of order.

The point of order is therefore sustained.

§ 62.6 An appropriation for the giving of educational lectures in national parks to be designated by the Secretary of the Interior in his discretion is legislation.

On May 17, 1937,[5] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 6958), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Appropriations herein made for the national parks, national monuments, and other reservations under the jurisdiction of the National Park Service shall be available for the giving of educational lectures therein and for the services of field employees in cooperation with such nonprofit scientific and historical societies engaged in educational work in the various parks and monuments as the Secretary, in his discretion, may designate.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph on page 109, lines 18 to 25, that it is legislation on an appropriation bill not authorized by law.

4. Marvin Jones (Tex.).

5. 81 CONG. REC. 4713, 4714, 75th Cong. 1st Sess.

THE CHAIRMAN:[6] Does the gentleman from Oklahoma desire to be heard on the point of order?

MR. [JED] JOHNSON of Oklahoma: I do not care to be heard.

THE CHAIRMAN: The Chair sustains the point of order.

§ 62.7 An appropriation for the expenses of organizing Indian chartered corporations or other tribal organizations was held to be authorized by law; but a provision in the same paragraph that "in the discretion of the Secretary of the Interior, not to exceed $3 per diem in lieu of subsistence may be allowed" to Indians traveling on organization work was ruled out as legislation, causing the entire paragraph to be stricken.

On May 14, 1937,[7] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

For expenses of organizing Indian chartered corporations, or other tribal organizations, in accordance with the provisions of the act of June 18, 1934 (48 Stat., p. 986), including personal services, purchase of equipment and supplies, not to exceed $3,000 for printing and binding, and other necessary expenses, $100,000 of which not to exceed $25,000 may be used for personal services in the District of Columbia: *Provided*, That in the discretion of the Secretary of the Interior, not to exceed $3 per diem in lieu of subsistence may be allowed to Indians actually traveling away from their place of residence when assisting in organization work.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph upon the ground that it contains legislation and changes existing law, that the provision appearing on page 16, from lines 16 to 20, is legislation not authorized by law, and I make the point of order against the entire paragraph. . . .

THE CHAIRMAN:[8] The Chair is ready to rule. The Chair thinks that the first part of the paragraph down to the proviso in line 16 on page 16 is authorized under section 9 of the statute approved June 18, 1934, and, therefore, is in order. The Chair thinks, however, so far as the proviso, line 16 down to the word "work" on line 20, is concerned, that it does not appear on the face of this proviso that it necessarily is a saving, and therefore does not come within the Holman rule and appears to be legislation on an appropriation bill. The Chair, therefore, sustains the point of order as to the proviso.

MR. TABER: Mr. Chairman, I make the point of order against the whole paragraph.

THE CHAIRMAN: If the gentleman from New York insists on his point of

6. Jere Cooper (Tenn.).

7. 81 CONG. REC. 4592, 75th Cong. 1st Sess.

8. Lister Hill (Ala.).

order to the entire paragraph, the entire paragraph will go out, and the Chair so rules.

Bestowing New Responsibilities on Secretary

§ 62.8 Language in the Interior Department appropriation bill reserving such part of the storage capacity of the Cascade Reservoir for other projects "as shall be determined by the Secretary of the Interior" was conceded to be legislation and held not in order.

On May 13, 1941,[9] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 4590), the following proceedings took place:

The Clerk read as follows:

Boise project, Idaho, Payette division, $500,000: *Provided*, That such part of the storage capacity of the Cascade Reservoir, and the costs thereof, shall be reserved for other irrigation or power developments in and adjacent to the Boise project, as shall be determined by the Secretary of the Interior.

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make a point of order against the language on page 78, beginning in line 15, reading as follows:

Provided, That such part of the storage capacity of the Cascade Reservoir, and the cost thereof, shall be reserved for other irrigation or power development in and adjacent to the Boise project, as shall be determined by the Secretary of the Interior—

On the ground that this is legislation on an appropriation bill.

MR. [CHARLES H.] LEAVY [of Washington]: Mr. Chairman, does the gentleman make the point of order just against the proviso?

MR. RICH: Yes.

MR. LEAVY: Mr. Chairman, we concede the point of order.

THE CHAIRMAN:[10] The point of order is sustained.

Directions to Secretary; New Reporting Requirement

§ 62.9 A provision in an appropriation bill that the "Secretary of the Interior shall include in his annual report a full statement of all expenditures made under authority of this paragraph" was held to be legislation and not in order on an appropriation bill.

On Mar. 14, 1939,[11] 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:

For investigating official matter under the control of the Department of

9. 87 CONG. REC. 4009, 77th Cong. 1st Sess.

10. Jere Cooper (Tenn.).

11. 84 CONG. REC. 2733, 76th Cong. 1st Sess.

the Interior; for protecting timber on the public lands, and for the more efficient execution of the law and rules relating to the cutting thereof . . . and for traveling and other expenses of persons employed hereunder, $548,000. . . . The Secretary of the Interior shall include in his annual report a full statement of all expenditures made under authority of this paragraph.

MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[12] The gentleman will state it.

MR. TABER: Mr. Chairman, I make a point of order against the paragraph that it is not authorized by law. There is no authority in the law, as I understand it, for the maintenance of this division. It went out on a point of order last year, and, as I remember the situation, there has been no change in the law since. I believe that is all that needs to be said on the subject at this time. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair believes the last sentence in the paragraph as it now stands, reading, "The Secretary of the Interior shall include in his annual report a full statement of all expenditures made under authority of this paragraph," is clearly legislation and is subject to a point of order. If the gentleman from New York insists upon his point of order going against the entire section, the Chair will necessarily be forced to sustain it. The Chair does sustain the point of order.

Authorizing Advances Under Rules to be Promulgated

§ 62.10 Language in an appropriation bill appropriating money to be advanced for certain purposes coupled with a direction that such advances shall be reimbursable during a fixed period under rules and regulations prescribed by an executive officer was held to be legislation and not in order.

On May 14, 1937,[13] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

For the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruit, grains, and other crops, $165,000 . . . *Provided further,* That not to exceed $15,000 may be advanced to worthy Indian youths to enable them to take educational courses, including courses in nursing home economics, forestry, and other industrial subjects in colleges, universities, or other institutions, and advances so made shall be reimbursed in not to exceed 8 years, under such rules and regulations as the Secretary of the Interior may prescribe.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph beginning on page 26, line 4. The point of order is that this is legislation on an appropriation bill and it imposes discretionary

12. Frank H. Buck (Calif.).

13. 81 CONG. REC. 4598, 4599, 75th Cong. 1st Sess.

duties upon the Secretary of the Interior. The language at the bottom of the bill, beginning with *"Provided further"*, line 22, and the last proviso are entirely the same. They provide that the Secretary of the Interior shall make rules and regulations and there is no question but what it imposes additional duties upon the Secretary of the Interior all the way through.

In lines 17 and 18 the terms of repayment are made subject to the discretion of the Secretary of the Interior and in lines 9 and 10 it is subject to that same discretion. This is all on page 26. The whole paragraph is subject to discretion and imposes duties upon the Secretary. . . .

THE CHAIRMAN:[14] The Chair would like to inquire . . . of the gentleman with reference to the language appearing in lines 7 and 8, page 27, reading as follows:

> And advances so made shall be reimbursed in not to exceed 8 years under such rules and regulations as the Secretary of the Interior may prescribe.

Will the gentleman advise the Chair as to any provision of existing law upon which this language is based?

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, this is the exact language that has been used for several years and the gentleman from Oklahoma knows of no specific basis of law for it.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York makes a point of order against the entire paragraph beginning in line 4, page 26, extending down to and including line 9, page 27. The gentleman from New York [Mr. Taber] in making his point of order invited attention to certain language appearing in lines 10 and 11, page 26, with reference to the discretion of the Secretary of the Interior.

The Chair has examined the act commonly referred to and known as the Snyder Act and invites attention to section 13 of that act, in which the following appears:

> Expenditures of appropriations by Bureau of Indian Affairs: The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate for the benefit, care, and assistance of the Indians throughout the United States for the following purposes: General support and civilization, including education; for industrial assistance and advancement and general administration of Indian problems. Further, for general and incidental expenses in connection with the administration of Indian affairs.

It is the opinion of the Chair that the act to which attention has been invited confers upon the Secretary of the Interior rather broad discretionary authority. The Chair is of opinion that the language to which the gentleman invited attention is not subject to a point of order, but that the language to which the Chair invited the attention of the gentleman from Oklahoma with reference to the provisos does constitute legislation on an appropriation bill not authorized by the rules of the House. It naturally follows that as the point of order has to be sustained as to these two provisos, it has to be sustained as to the entire paragraph. The

14. Jere Cooper (Tenn.).

Chair therefore sustains the point of order made by the gentleman from New York.

Historic Preservation; Limiting Legal Authority, Not Funds

§ 62.11 Language in an appropriation bill providing that "hereafter the authority of the Secretary of the Interior . . . to acquire by gift on behalf of the United States any historic site, building, object, and antiquity of national significance, shall not be effective until an appropriation has been made for the operation and maintenance thereof subsequently to such proposed acquisition," was conceded and held to be a change in law and legislation on an appropriation bill.

On Mar. 20, 1939,[15] 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:
>
> Historic sites and buildings: For carrying out the provisions of the act entitled "An act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes," approved August 21, 1935 (49 Stat. 666), including personal services in the District of Columbia, $24,000: *Provided*, That hereafter the authority of the Secretary of the Interior contained in such act, to acquire by gift on behalf of the United States any historic site, building, object, and antiquity of national significance, shall not be effective until an appropriation has been made for the operation and maintenance thereof subsequently to such proposed acquisition.

MR. [SCHUYLER OTIS] BLAND [of Virginia]: Mr. Chairman, I desire to make a point of order against the proviso, commencing with the word "*Provided*," line 17, page 119, down to the end of the paragraph, in that it is legislation on an appropriation bill. According to the report, it expressly changes the language of the act.

THE CHAIRMAN:[16] Does the gentleman from Oklahoma [Mr. Johnson] desire to be heard?

MR. [JED] JOHNSON: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

§ 63. Other Agencies and Departments

"No Funds Unless or Until Approved" by

§ 63.1 Language in an appropriation bill providing funds for the Tennessee Valley Authority, stating that no part of the funds shall be used

15. 84 CONG. REC. 3000, 76th Cong. 1st Sess.

16. Frank H. Buck (Calif.).

"unless and until" approved by the Director of the Bureau of the Budget was conceded to be legislation and held not in order.

On May 22, 1956,[17] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 11319), the following point of order was raised:

> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I make a point of order against certain language in the Tennessee Valley Authority paragraph as follows: . . .
>
> . . . Lines 13 to 22, the proviso reading "That no part of funds available for expenditure by this agency shall be used, directly or indirectly, to acquire a building for use as an administrative office of the Tennessee Valley Authority unless and until the Director of the Bureau of the Budget, following a study of the advisability of the proposed acquisition, shall advise the Committees on Appropriations of the Senate and the House of Representatives and the Tennessee Valley Authority that the acquisition has his approval. . . ."
>
> MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, the language read by the gentleman is unquestionably legislation on an appropriation bill and I therefore concede the point of order.
>
> THE CHAIRMAN:[18] . . . It is clearly legislation on an appropriation bill and the point of order is sustained.

17. 102 CONG. REC. 8725, 84th Cong. 2d Sess.

18. Jere Cooper (Tenn.).

§ 63.2 To a provision in an appropriation bill restricting the use of certain appropriations therein, an amendment limiting such use "unless the Director of the Bureau of the Budget specifically approves" projects to be constructed and submits explanatory reports to designated committees of Congress was conceded and held to impose additional duties upon an official.

On Mar. 20, 1952,[19] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7072), a point of order was raised against an amendment to the following paragraph:

> Plant and equipment: For expenses of the Commission in connection with the construction of plant and the acquisition of equipment and other expenses incidental thereto necessary in carrying out the purposes of the Atomic Energy Act of 1946, including purchase of land and interests in land, $371,741,000: *Provided,* That no part of this appropriation shall be used—
>
> (A) to start any new construction project for which an estimate was not included in the budget for the current fiscal year;
>
> (B) to start any new construction project the currently estimated cost of

19. 98 CONG. REC. 2613–15, 82d Cong. 2d Sess.

which exceeds by 35 percent the estimated cost included therefor in such budget. . . .

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Jackson of Washington: On page 8, lines 10 and 11, after "estimated cost of which exceeds," strike out "35 percent of the estimated cost included therefor in such budget" and insert "the estimated cost included therefor in such budget:

"(C) to continue any community facility construction project whenever the currently estimated cost thereof exceeds the estimated cost included therefor in such budget; unless the Director of the Bureau of the Budget specifically approves the start of such construction project or its continuation and a detailed explanation thereof is submitted forthwith by the Director to the Appropriations Committees of the Senate and the House of Representatives and the Joint Committee on Atomic Energy; the limitations contained in this proviso shall not apply to any construction project the total estimated cost of which does not exceed $500,000: and, as used herein, the term 'construction project' includes the purchase, alteration, or improvement of buildings, and the term "budget" includes the detailed justification supporting the budget estimates: *Provided further,* That whenever the current estimate to complete any construction project (except community facilities) exceeds by 15 percent the estimated cost included therefor in such budget or the estimated cost of a construction project covered by clause (A) of the foregoing proviso which has been approved by the Director, the Commission shall forthwith submit a detailed explanation thereof to the Director of the Bureau of the Budget and the Committees on Appropriations of the Senate and the House of Representatives and the Joint Committee on Atomic Energy: *Provided further,* That the two foregoing provisos shall have no application with respect to technical and production facilities (1) if the Commission certifies to the Director of the Bureau of the Budget that immediate construction or immediate continuation of construction is necessary to the national defense and security, and (2) if the Director agrees that such certification is justified."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, a point of order.

THE CHAIRMAN:[20] The gentleman will state it.

MR. THOMAS: Mr. Chairman, I make the point of order against the amendment on the ground that it places extra duties on the Director of the Bureau of the Budget and that it is legislation on an appropriation bill. . . .

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

MR. JACKSON of Washington: For the sake of time, I will concede the point of order, Mr. Chairman.

THE CHAIRMAN: The point of order is sustained.

Requiring Subjective Determinations by Bureau of Public Roads

§ 63.3 To a general appropriation bill providing funds for federal highways, an amendment specifying that no funds "shall be used for any

20. Wilbur D. Mills (Ark.).

highway program . . . which requires either the unjustified or harmful nonconforming use of . . . land" was held to be legislative in nature since it imposed additional duties on the Director of the Bureau of Public Roads.

On Oct. 4, 1966,[1] the Committee of the Whole was considering H.R. 18119, a State, Justice, Commerce Departments, and related agencies appropriation bill. The following proceedings took place:

FEDERAL-AID HIGHWAYS (TRUST FUND)

For carrying out the provisions of title 23, United States Code, which are attributable to Federal-aid highways, to remain available until expended, $3,968,400,000. . . .

MR. [JAMES C.] CLEVELAND [of New Hampshire]: Mr. Chairman, I offer an amendment:

The Clerk read as follows:

Amendment offered by Mr. Cleveland: On page 41, end of line 2, after the period, add the following: "None of the funds appropriated in this section shall be used for any highway program or project which requires either the unjustified or harmful nonconforming use of any land from a public park, recreation area, wildlife and waterfowl refuge or historic site."

MR. [JOHN J.] ROONEY of New York: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from New Hampshire, but will reserve it at this time. . . .

Mr. Chairman, I must insist on my point of order. . . .

This appropriation item entitled "Federal-Aid highways (trust funds)" contains funds for the payment of contract authorizations, many of which have already been entered into. . .

. . . [I]t would call for additional duties on the part of the Bureau of Public Roads to determine what is unjustified and what is harmful.

So, Mr. Chairman, I must insist on my point of order. . . .

THE CHAIRMAN:[2] The Chair is prepared to rule. The gentleman from New York raises a point of order to the amendment offered by the gentleman from New Hampshire on the ground that, in effect, it is legislation on an appropriation bill, and also it would impose additional duties on the Department. The gentleman from New Hampshire opposes the point of order. He argues that the amendment is in consonance with the precedents of the House.

The Chair is constrained to find from the facts as related by the gentleman from New York, the effect of the amendment would not be a limitation, but would in effect be legislation on an appropriation bill. The amendment does impose additional duties on the Department in that a determination would have to be made as to what is unjustified, harmful, or nonconforming.

In a previous ruling in our precedents, in a matter where there was only one qualifying word—a deter-

1. 112 CONG. REC. 24975, 24976, 89th Cong. 2d Sess.

2. Dante B. Fascell (Fla.).

mination of the word "incapacitated"—the ruling was that this would impose additional duties.

Therefore, the Chair sustains the point of order.

Denying Funds "Unless Subject to Audit by Comptroller General"

§ 63.4 An amendment to a legislative branch appropriation bill denying the obligation or expenditure of certain funds contained therein unless such funds were subject to audit by the Comptroller General was ruled out of order as legislation where it appeared that the amendment was intended by its proponents to extend and strengthen the authority of the Comptroller General under law to audit legislative accounts.

On June 14, 1978,[3] during consideration of H.R. 12935 (legislative branch appropriations for fiscal 1979), proceedings occurred as indicated below:

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: Mr. Chairman, I offer an amendment, my amendment No. 2.

The Clerk read as follows:

Amendment offered by Mr. Coughlin: On page 6, after line 23, insert the following new section:

Sec. 102. (a) None of the funds appropriated by any provision described in subsection (b) shall be expended or obligated for any purpose specified in such provision unless such funds so expended or obligated are subject to audit by the Comptroller General of the United States.

(b) For purposes of subsection (a), any provision in Title I of this Act following the provision relating to "Compensation of Members" and preceding the heading "Joint Items" is a provision described in this subsection. . . .

MR. [GEORGE E.] SHIPLEY [of Illinois]: Mr. Chairman, I reserve a point of order on the amendment. . . .

MRS. [MARGARET M.] HECKLER [of Massachusetts]: Mr. Chairman, the operations of the Comptroller General under this amendment would continue as under existing circumstances in that site at the Capitol where the office is presently located. The authority would provide an audit of Members' accounts and committee accounts. It would provide that authority to be utilized by the GAO.

MR. SHIPLEY: Mr. Chairman, if the gentleman will yield further, does it extend in any way the present audit system that we have now in the House?

MR. COUGHLIN: Mr. Chairman, I yield to the gentlewoman from Massachusetts.

MRS. HECKLER: Mr. Chairman, it extends the authority that now exists in law but is not necessarily a change in existing law. It affirms the authority of the GAO which presently exists in the House; however, I do not believe that the GAO is able to examine Members' accounts and this amendment clarifies that authority. However, it does not

3. 124 CONG. REC. 17650, 17651, 95th Cong. 2d Sess.

mandate audits across the board of every Member at any particular time. . . .

MR. SHIPLEY: Mr. Chairman, I would like to be heard on the point of order.

Mr. Chairman, I insist on my point of order.

Mr. Chairman, I object to the amendment and make a point of order against it on the grounds that it imposes additional duties on the Comptroller General and, as such, is in violation of clause 2, rule XXI of the House. The additional duties implied by the amendment might involve the Comptroller General insisting that time and attendance reporting systems be set up in Members and committee offices and may require setting up annual and sick leave systems and involve examination of Members' personal diaries, perhaps even their personal financial records. These are duties and procedures clearly beyond the offices of the Comptroller General's present audit authority. Under paragraph 842 of clause 2, rule XXI:

> An amendment may not impose additional duties, not required by law, or make the appropriation contingent upon the performance of such duties. . .then it assumes the character of legislation and is subject to a point of order.

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

THE CHAIRMAN PRO TEMPORE:[4] The gentleman from Pennsylvania [Mr. Coughlin] is recognized.

MR. COUGHLIN: Mr. Chairman, let me say that the amendment imposes no additional duties on the General Accounting Office. It proposes that these accounts be subject to audit by the GAO.

Title 31, section 67, of the United States Code annotated says as follows:

> . . . the financial transactions of each executive, legislative, and judicial agency, including but not limited to the accounts of accountable officers, shall be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States. . . .

Mr. Chairman, it is very clear that the General Accounting Office already has the authority and the duty to audit the accounts of the legislative branch, and this amendment in no way expands or extends that authority. The General Accounting Office has taken a position that it is interested in having an expression of the will of the legislative branch as to whether it wishes the General Accounting Office to carry out that function. This amendment would be an expression of that will.

Mr. Chairman, the amendment would in no way expand the authority of the General Accounting Office or impose additional duties on the General Accounting Office; it would only make these accounts subject to audit. . . .

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

The Chair certainly agrees that the language in the amendment is ambiguous. The Chair takes into account, however, the debate, and the debate as observed by the Chair indicates the amendment certainly does extend the authority of the Comptroller General and is subject to a point of order.

4. Daniel D. Rostenkowski (Ill.).

The Chair does recognize that there are conflicting interpretations of the amendment under discussion. However, the Chair has a duty under the precedents to construe the rule against legislation strictly where there is an ambiguity. The Chair feels he must sustain the point of order based on the interpretations given the amendment during the debate.

Parliamentarian's Note: The amendment in this instance was ruled out of order when it appeared that it was intended by its proponents to work a change in the law and to require audits, rather than simply state a condition precedent for obligation and expenditure of the funds. A subsequent amendment which denied the use of funds not subject to audit "as provided by law" was offered and adopted. In a ruling in 1970,[5] now effectively overruled by the precedent above, a provision prohibiting the use of funds in an appropriation bill for programs which are not subject to audit by the Comptroller General had been held in order as a negative restriction on the availability of funds. The language objected to in the proceedings in 1970 was as follows:

None of the funds herein appropriated for "International Financial Institutions" shall be available to assist in the financing of any project or activity the expenditures for which are not subject to audit by the Comptroller General of the United States.

Denying Funds to College Not in Compliance With Existing Law

§ 63.5 To an appropriation bill providing funds for construction of college housing, an amendment specifying that none of the funds may be allocated to an institution unless it is in full compliance with a law requiring the withholding of funds to students who are convicted of engaging in campus disorders was held to be a limitation (not requiring additional duties on the part of any federal official) and in order.

On June 24, 1969,[6] the Committee of the Whole was considering H.R. 12307, an independent offices and Department of Housing and Urban Development appropriation bill. The following proceedings took place:

5. See 116 CONG. REC. 18412, 18413, 91st Cong. 2d Sess., June 4, 1970.

6. 115 CONG. REC. 17085, 91st Cong. 1st Sess. For further discussion of this and related precedents, see Sec. 53, supra, particularly the "Note on Contrary Rulings," which follows Sec. 53.6.

COLLEGE HOUSING

For payments authorized by section 1705 of the Housing and Urban Development Act of 1968, $2,500,000: *Provided,* That the limitation otherwise applicable to the total payments that may be required in any fiscal year by all contracts entered into under such section is increased by $5,500,000.

MR. [WILLIAM J.] SCHERLE [of Iowa]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Scherle: On page 35, at the end of line 24, strike the period and insert the following: "*And provided further,* That none of the funds appropriated by this act for payments authorized by section 1705 of the Housing and Urban Development Act of 1968, shall be used to formulate or carry out any grant or loan to any institution of higher education unless such institution shall be in full compliance with section 504 of Public Law 90–575."

MR. [WILLIAM F.] RYAN (of New York): Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[7] The gentleman will state his point of order.

MR. RYAN: I make a point of order on the ground that this amendment is legislation on an appropriation bill. . . .

MR. SCHERLE: Mr. Chairman, the amendment is in order because it is in conformity with rule 21, clause 2, Jefferson's Manual in pages 426–427, specifying that amendments to appropriation bills are in order if they meet the qualifications of the "Holman Rule."

My amendment is germane, negative in nature, and shows retrenchment on its face. It does not either impose any additional or affirmative duties or amend existing law.

Very simply, my amendment states that none of the funds appropriated in this section will be given to institutions of higher education if they do not comply with the present law, section 504—Public Law 90–575—of the Higher Education Amendments of 1968.

In support of my amendment, I cite section 843 of the rules of the House discussing the Holman rule under rule 21. . . .

THE CHAIRMAN: The Chair is prepared to rule and holds that the amendment is a proper limitation. Therefore, the Chair overrules the point of order.

Parliamentarian's Note: Section 504 of Public Law No. 90–575, referred to above, provided in part:

> (a) If an institution of higher education determines, after affording notice and opportunity for hearing to an individual attending, or employed by, such institution, that such individual has been convicted by any court of record of any crime which was committed after the date of enactment of this Act and which involved the use of . . . force, disruption, or the seizure of property under control of any institution of higher education to prevent officials or students in such institution from engaging in their duties or pursuing their studies, and that such crime was of a serious nature and contributed to a substantial disruption of the administration of the institution with respect to which such crime was

7. John S. Monagan (Conn.).

committed, then the institution which such individual attends, or is employed by, shall deny for a period of two years any further payment to, or for the direct benefit of, such individual under [specified] programs. . . .

(b) If an institution of higher education determines, after affording notice and opportunity for hearing to an individual attending, or employed by, such institution, that such individual has willfully refused to obey a lawful regulation or order of such institution after the date of enactment of this Act, and that such refusal was of a serious nature and contributed to a substantial disruption of the administration of such institution, then such institution shall deny, for a period of two years, any further payment to, or for the direct benefit of, such individual under (specified) programs.

Export-Import Bank—Denial of Funding for Certain Countries

§ 63.6 To a supplemental appropriation bill including funds for the Export-Import Bank, an amendment providing that none of the funds made available by the bill shall be used by the bank to guarantee the payment of obligations incurred by Communist countries, or to participate in extension of credit to any such country, was held in order as a proper limitation merely defining non-eligible recipients of those funds.

On Oct. 18, 1966,[8] the Committee of the Whole was considering H.R. 18381. The following proceedings took place:

Amendment offered by Mr. [Paul] Findley [of Illinois]: On page 16, after line 3, add the following:

"Sec. 803. None of the funds made available because of the provisions of this bill shall be used by the Export-Import Bank to either guarantee the payment of any obligation hereafter incurred by any Communist country (as defined in section 620(f) of the Foreign Assistance Act of 1961, as amended) or any agency or national thereof, or in any other way to participate in the extension of credit to any such country, agency, or nation in connection with the purchase of any product by such country, agency or nation."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, it appears, although I have not had an opportunity to examine a copy of the amendment submitted by the gentleman from Illinois, that the amendment is subject to the point of order that it is legislation on an appropriation bill and seemingly requires additional duties. . . .

MR. FINDLEY: Mr. Chairman, this amendment is taken exactly from the language of an amendment which was part of an appropriation bill in 1963. I am sure many of the Members present today will recall the Christmas Eve session which did extend to that late date because of this amendment. The amendment itself does not impose any burdens, duties, or obligations on the President. It is simply an act of re-

8. 112 CONG. REC. 27425, 89th Cong. 2d Sess.

trenchment and withholding and denial of funds for specific purposes. . . .

THE CHAIRMAN:[9] The Chair is prepared to rule.

The Chair finds that the amendment offered by the gentleman from Illinois [Mr. Findley] is in the nature of a limitation on an appropriation and does not, in the opinion of the Chair, impose extra burdens or administrative duties upon the administration in a way that would subject it to a point of order. Therefore, the Chair overrules the point of order.

General Services Administration—"Buy-American" Requirements

§ 63.7 A section in a general appropriation bill prohibiting the use of funds in the bill for the purchase of foreign-made tools except to the extent that the Administrator of the General Services Administration determines that domestically produced tools are unavailable for procurement, was held to impose additional duties on that federal official and was ruled out as legislation in violation of Rule XXI clause 2.

On June 22, 1972,[10] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 15585), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 505. No part of any appropriation contained in this Act shall be available for the procurement of or for the payment of the salary of any person engaged in the procurement of any hand or measuring tool(s) not produced in the United States or its possessions except to the extent that the Administrator of General Services or his designee shall determine that a satisfactory quality and sufficient quantity of hand or measuring tools produced in the United States or its possessions cannot be procured as and when needed from sources in the United States and its possessions or except in accordance with procedures prescribed by section 6–104.4(b) of Armed Services Procurement Regulation dated January 1, 1969, as such regulation existed on June 15, 1970. This section shall be applicable to all solicitations for bids opened after its enactment.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order.

THE CHAIRMAN:[11] The gentleman will state it.

MR. GROSS: I make a point of order against the language to be found on page 31, beginning on line 25, section 505, and running to page 32 to and including line 14, as being legislation on an appropriation bill. I specifically refer, Mr. Chairman, to the language found on page 32 which directs "that the Administrator of General Services or his designee shall determine that a satisfactory quality and sufficient quantity of hand or measuring tools

9. James G. O'Hara (Mich.).

10. 118 CONG. REC. 22097, 22098, 92d Cong. 2d Sess.

11. John S. Monagan (Conn.).

produced in the United States" and so on and so forth.

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

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, this proviso has been in the legislation for a great many years. At this date and time it imposes no function on the GSA it is not already doing. So we think it is a very regular part of the bill, and I think by precedent it is entitled to remain.

THE CHAIRMAN: The Chair is ready to rule.

The fact that the provision has been carried in prior appropriation bills is not conclusive in connection with the point of order that is raised at this time. The provision does add additional requirements and duties. In the opinion of the Chair this is legislation on an appropriation bill, and the point of order is sustained.

Parliamentarian's Note: Mr. Steed did make the point that since this provision had been carried for several years, the Administrator of the General Services Administration was in fact already performing the "extra duties" which were required by the amendment.

The extra duties which may invalidate an amendment as being "legislation" are duties not now required by law for the fiscal year in question. The fact that they may be presently in effect, as required for present and prior years in annual appropriation acts would not protect an amendment from a point of order under Rule XXI clause 2.

Denying Housing Funds—Availability Contingent on New Analysis of Need

§ 63.8 To an appropriation bill, an amendment providing that no funds in the bill be used for expenses of preparing housing market analyses which do not include a breakdown of the housing needs of the various segments of the population was held to be legislation imposing new duties to provide information, where no law was cited authorizing the type of analysis required by the amendment.

On Mar. 31, 1954,[12] during consideration in the Committee of the Whole of the independent offices appropriation bill [H.R. 8583], a point of order was raised against the following amendment:

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I offer another amendment.

The Clerk read as follows:

Amendment offered by Mr. Yates: Page 65, line 11, after the colon and

12. 100 CONG. REC. 4267, 4268, 83d Cong. 2d Sess.

following the words "(12 U.S.C. 1701)", insert the following: "That no part of any appropriation or fund in this act shall be used for administrative expenses in connection with the preparation of any housing market analyses which do not include a breakdown of the housing needs of the various segments of the population including those segments which are unable to obtain adequate housing under established home-financing programs."

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, I make the same point of order that I did to the other amendment. It is legislation upon an appropriation bill and requires additional duties and responsibilities of an administrative agency.

MR. YATES: Mr. Chairman, in response to that, let me say this is certainly a proper limitation upon an appropriation. Funds are provided right now for the preparation of such housing market analyses. All this would do would be to limit the funds to certain types of housing market analyses and I submit, therefore, the amendment is proper.

THE CHAIRMAN:[13] The Chair is ready to rule.

Up to the word "analyses," in the opinion of the Chair, the amendment is all right. Following that, the amendment is an infringement upon the duties of an executive and imposes additional duties. In the opinion of the Chair, the point of order should be sustained and is sustained.

13. Louis E. Graham (Pa.).

National Aeronautics and Space Administration; Denial of Funds for U.S.-Soviet Joint Venture

§ 63.9 To a general appropriation bill, including funds for the National Aeronautics and Space Administration, an amendment providing that no part of the funds therein shall be used for expenses of a joint United States-Russian manned lunar landing was held a proper limitation restricting the availability of funds and in order.

On Oct. 10, 1963,[14] the Committee of the Whole was considering H.R. 8747, an independent offices appropriation bill. The following proceedings took place:

Amendment offered by Mr. [Thomas M.] Pelly [of Washington]: Page 37, after line 17, insert the following new paragraph:

"No part of any appropriation made available to the National Aeronautics and Space Administration by this Act shall be used for expenses of participating in a manned lunar landing to be carried out jointly by the United States and any Communist, Communist-controlled, or Communist-dominated country, or for expenses of any aeronautical and space activities [as defined in sec. 103(1) of the National Aeronautics and Space Act of 1958]

14. 109 CONG. REC. 19258–60, 88th Cong. 1st Sess.

which are primarily designed to facilitate or prepare for participation in such a joint manned lunar landing, except pursuant to an agreement hereafter made by the President by and with the advice and consent of the Senate as provided by section 205 of the National Aeronautics and Space Act of 1958."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make a point of order against the amendment. . . .

THE CHAIRMAN:[15] The Chair would like to ask the gentleman from Washington a question. What is the reason for the inclusion of language at the end of the amendment reading:

> Except pursuant to an agreement hereafter made by the President by and with the advice and consent of the Senate as provided by section 205 of the National Aeronautics and Space Act of 1958.

The Chair, to make it clear why he is asking the question, has examined section 205 of that act. That says:

> INTERNATIONAL COOPERATION
>
> Sec. 205. The Administration, under the foreign policy guidance of the President, may engage in a program of international cooperation in work done pursuant to this Act, and in the peaceful application of the results thereof, pursuant to agreements made by the President with the advice and consent of the Senate.

The problem the Chair is considering is why there is any need to include the language at the end of the amendment unless in some way it changes existing law?

MR. PELLY: Mr. Chairman, I would say that it does not change existing law but simply follows it. But, in order to clarify this matter I ask unanimous consent to strike from the amendment the words from "except pursuant to an agreement" to the end.

THE CHAIRMAN: Is there objection to the request of the gentleman from Washington?

There was no objection. . . .

THE CHAIRMAN: Does the gentleman from Texas desire to be heard?

MR. THOMAS: Yes, Mr. Chairman. That partially cures it, but it does not cure it by any means. I read:

> Or for expenses of any aeronautical and space activities (as defined in section 103(1) of the National Aeronautics and Space Act of 1958) which are primarily designed to facilitate or prepare for participation in such a joint manned lunar landing.

Somebody is going to have to spend a whole lot of time on this.

You are placing a tremendous burden upon somebody to do what? "To primarily decide or prepare for participation in a joint moon landing."

Mr. Chairman, there are four or five conditions contained in this. It is extra duty. Somebody is going to have to make that decision. It is purely legislation . . . and I said to my distinguished friend from Washington a while ago, we will take it to conference and I know the gentleman will give us the liberty of throwing it out if we get in trouble and get too far into foreign affairs. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The Chair has examined the amendment and the Chair is of the opinion that it is a proper limitation. Therefore, the point of order is overruled.

15. Richard Bolling (Mo.).

Imposing Delay on Expenditure

§ 63.10 To a bill appropriating funds for the National Aeronautics and Space Administration (which had authority by law to use appropriations for capital expenditures providing that the Committee on Science and Astronautics of the House was notified) an amendment specifying that no funds therein appropriated could be used for capital items until 14 days after the notification required by law, was held to be a limitation upon the expenditure of funds, not imposing additional duties and in order.

On June 29, 1959,[16] the Committee of the Whole was considering H.R. 7978, a supplemental appropriation bill. The following proceedings took place:

> Amendment offered by Mr. [Albert] Thomas [of Texas]: On page 4, line 16, after "expended" insert: "*Provided,* That no part of the foregoing appropriation shall be available for other items of a capital nature which exceed $250,000 until 14 days have elapsed after notification as required by law to the Committee on Science and Astronautics of the House of Representatives and the Committee on Aeronautical and Space Sciences of the Senate." . . .
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment on the ground that it changes existing law and requires additional duties on the part of the Space Agency. . . .
>
> THE CHAIRMAN:[17] The Chair is prepared to rule. . . .
>
> The Chair calls attention to that portion of subsection (b) of Public Law 86–45 approved June 15, 1959, with reference to expenditures in excess of $250,000 and notice to the legislative committees. In addition thereto, the amendment contains a period of notice of 14 days. However, this does not impose a new duty, because it is a limitation upon the expenditure of the funds within a period of 14 days.
>
> The Chair therefore overrules the point of order.

Denial of Research and Development Funds Under Certain Types of Contracts

§ 63.11 An amendment providing that none of the funds appropriated in the bill may be used to enter into research or development contracts under which new inventions or patents, conceived in the process of per-

16. 105 CONG. REC. 12125, 12126, 86th Cong. 1st Sess. For another precedent involving the issues raised by an attempt to regulate the rate or timing of expenditures, see § 80.5, infra.

17. Paul J. Kilday (Tex.).

forming the contract, do not become the property of the United States was held to be a limitation merely describing contracts which may not be funded and imposing only incidental additional duties on the executive branch and therefore in order.

On May 5, 1960,[18] the Committee of the Whole was considering H.R. 11998, a Department of Defense appropriation bill. The following proceedings took place:

EMERGENCY FUND, DEPARTMENT OF DEFENSE

For transfer by the Secretary of Defense, with the approval of the Bureau of the Budget, to any appropriation for military functions under the Department of Defense available for research . . . and evaluation, or procurement or production related thereto, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation to which transferred, $150,000,000. . . .

MR. [HARRIS B.] MCDOWELL [Jr., of Delaware]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. McDowell: On page 29, after line 13, insert the following:

"Sec. 501. None of the funds appropriated in this act shall be available for making payments on any research or development contract under which any invention, improvement, or discovery conceived or first actually reduced to practice in the course of performance of such contract or any subcontract thereof, or under which any patent based on such invention, improvement, or discovery, does not become the property of the United States."

And renumber the following sections accordingly.

MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[19] The gentleman will state it. . . .

MR. [GEORGE H.] MAHON [of Texas]: The point of order is that this proposed amendment would imply additional duties beyond the scope of the bill. . . .

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

The Chair has had an opportunity to reread the language of the amendment and to refer to the precedents applicable, in the opinion of the Chair, thereto. It is the opinion of this occupant of the chair that the amendment offered by the gentleman from Delaware is, in fact, a limitation on the appropriations appropriated in this act, and while it may be argued that the limitation imposed causes or results in additional burdens on the executive branch, in the opinion of this occupant of the chair, that is normal and reasonable to

18. 106 CONG. REC. 9624–27, 86th Cong. 2d Sess.

An issue that might be addressed more directly today is whether, under existing law, the Department of Defense is given discretion with regard to entering into contracts of the type described. The effect of provisions which affect the discretionary authority of officials that is conferred by law is discussed in § 51, supra.

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

expect in the carrying out of the limitation.

Therefore, the Chair is constrained to overrule the point of order.

The point of order is overruled.

Setting Affirmative Policy

§ 63.12 Language in an appropriation bill making appropriations for the Patent Office for issuance of certain publications and providing that "such other papers when reproduced for sale to be sold at such prices as determined by the Commissioner" was conceded to be legislation on an appropriation bill and held not in order.

On May 15, 1947,[20] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 3311), a point of order was raised against the following provision:

PATENT OFFICE

Salaries and expenses: For necessary expenses, including personal services in the District of Columbia and the salary of the Commissioner at $10,000 per annum . . . production by photolithographic process of copies of weekly issue of drawings of patents and designs, reproduction of copies and drawings and specifications of exhausted patents, designs, trade-marks, foreign patent drawings, and other papers, such other papers when reproduced for sale to be sold at such prices as determined by the Commissioner; photo prints of pending application drawings; and other contingent and miscellaneous expenses of the Patent Office: *Provided,* That the headings of the drawings for patented cases may be multigraphed in the Patent Office for the purpose of photolithography; $8,000,000.

MR. [RALPH E.] CHURCH [of Illinois]: Mr. Chairman, a point of order.

THE CHAIRMAN:[1] The gentleman will state it.

MR. CHURCH: Mr. Chairman, I make a point of order against the language appearing on page 53, lines 10 and 11, as follows:

> Such other papers when reproduced for sale to be sold at such prices as determined by the Commissioner—

That sentence is legislation on an appropriation bill and unauthorized by law. . . .

I cannot, Mr. Chairman, withdraw my point of order. I insist on my point of order.

MR. [KARL] STEFAN [of Nebraska]: We concede the point of order, Mr. Chairman.

THE CHAIRMAN: The Chair sustains the point of order.

Post Office—Denial of Funds for Seizure of Mail

§ 63.13 An amendment to a Treasury and Post Office De-

20. 93 CONG. REC. 5383, 80th Cong. 1st Sess.

1. Carl T. Curtis (Nebr.).

partments appropriation bill, providing that no funds therein may be used for the seizure of mail (in connection with income tax investigations) without a search warrant authorized by law, was held to be a limitation not imposing additional duties and in order.

On Apr. 5, 1965,[2] the following proceedings took place:

Amendment offered by Mr. [Durward G.] Hall [of Missouri]: On page 8, immediately before the period in line 11, insert the following: ": *Provided,* That no appropriation made by any provision of this Act for the fiscal year ending June 30, 1966, may be used for the seizure of mail without a search warrant authorized by law in carrying out the activities of the United States in connection with the seizure of property for collection of taxes due to the United States."

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, I reserve a point of order on this amendment.

THE CHAIRMAN:[3] The gentleman from Oklahoma reserves a point of order. . . .

MR. STEED: Mr. Chairman, I renew my point of order against the amendment because it is not a limitation on appropriations. It requires actions by the Bureau of Internal Revenue, which can be authorized only by legislation.

THE CHAIRMAN: The language is a limitation here. The Chair overrules the point of order. The point of order is not sustained.

Parliamentarian's Note: But see the proceedings of June 16, 1977 (discussed in the Parliamentarian's Note following § 77.1, infra), where a requirement for a search warrant "based on probable cause as authorized by law" was ruled out as legislation imposing new affirmative duties to make applications to courts, a procedure not uniformly required by the federal courts.

Treasury Department to Determine Rates of Exchange

§ 63.14 Language in an appropriation bill providing for purchase of foreign currencies at rates of exchange determined by the Treasury Department was held to be legislation and not in order.

On Aug. 7, 1957,[4] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9131), a point of order was raised against the following provision:

The Clerk read as follows:

EDUCATIONAL, SCIENTIFIC, AND CULTURAL ACTIVITIES

For expenses to carry out the provisions of section 1011(d) of the

2. 111 CONG. REC. 6869, 6870, 89th Cong. 1st Sess.

3. John A. Blatnik (Minn.).

4. 103 CONG. REC. 13797, 13911, 13912, 85th Cong. 1st Sess.

United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1442(d)), $3,525,000: *Provided,* That this amount shall be used for purchase of foreign currencies from the special account for the informational media guaranty program, at rates of exchange determined by the Treasury Department, and the amounts of any such purchases shall be covered into miscellaneous receipts of the Treasury. . . .

MR. [HOMER H.] BUDGE [of Idaho]: Mr. Chairman, I make a point of order against the language contained in lines 1 through 10, page 18, the point of order being that it is legislation upon an appropriation bill giving affirmative direction and, further, that it imposes new duties on the Treasury Department. I think the language obviously imposes a new duty on the Treasury Department and also there is obviously a proviso which is legislation on an appropriation bill.

THE CHAIRMAN:[5] Does the gentleman from New York [Mr. Rooney] desire to be heard?

MR. [JOHN J.] ROONEY: Yes, Mr. Chairman; but before referring to the basic law I should like to point out that the language presently contained at page 18 of the bill was submitted to the committee by the Department of State, through Deputy Assistant Secretary Wilkinson and Special Assistant to the Assistant Secretary Bernard Katzen. The department drafted it.

Section 1442, subdivision (d), of title 22 of the United States Code is entitled "Sale of Foreign Currencies—Special Account—Availability." This provides that—

Foreign currencies available after June 30, 1955, from conversions made pursuant to the obligation of informational media guarantees may be sold, in accordance with Treasury Department regulations, for dollars which shall be deposited in the special account and shall be available for payments under new guaranties. Such currencies shall be available as may be provided for the Congress in appropriation acts, for use for educational, scientific, and cultural purposes which are in the national interest of the United States, and for such other purposes of mutual interest as may be agreed to by the governments of the United States and the country from which the currencies derive.

Now, the proviso beginning on line 5 of page 18 of the pending bill states:

Provided, That this amount shall be used for purchase of foreign currencies from the special account for the informational media guaranty program, at rates of exchange determined by the Treasury Department, and the amounts of any such purchases shall be covered into miscellaneous receipts of the Treasury.

The purpose of this language is to provide that the appropriation of $3,525,000 referred to in lines 1 to 5 on that page of the bill shall be used to purchase from the United States Treasury Israeli pounds in that amount and with which this appropriation is connected so that they will be covered into miscellaneous receipts of the Treasury.

THE CHAIRMAN: May the Chair inquire of the gentleman from New York if the section of the code from which he read refers to purchases as well as sales?

MR. ROONEY: I assume from the language contained in that section of the

5. Paul J. Kilday (Tex.).

code that it refers to both purchases and sales. This proviso makes it clear and certain that the money appropriated would not come from the general fund.

THE CHAIRMAN: Then, the gentleman from New York states it as a fact that the section of the code from which he read uses only the word "sale" or "sold" rather than "purchase"?

MR. ROONEY: I must concede that only the "sold" is contained in the section, Mr. Chairman.

However, I should like to add that when this section of the code refers to a sale it is certainly implied that it also means a purchase. There cannot be a sale without a purchase.

MR. BUDGE: Mr. Chairman, if the gentleman will yield, the gentleman from New York has not addressed himself to the language "at rates of exchange determined by the Treasury Department," which language obviously gives the Treasury Department additional duties which are not in the original act. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Idaho [Mr. Budge] has made a point of order against that portion of the bill appearing on lines 1 through 10 on page 18 on the ground that it is legislation on an appropriation bill. The gentleman from New York [Mr. Rooney] has cited the language contained in title 22, United States Code, section 1442(d), and that the reference to that section indicates that authority and duty in connection with the sale of foreign currencies is imposed, whereas the language in the bill imposes the duty in connection with purchases of foreign currencies.

The Chair is of the opinion that the language constitutes legislation on an appropriation bill and sustains the point of order.

Indian Affairs; Travel Expenses of Tribal Councils

§ 63.15 Appropriations for expenses of tribal councils for travel, including supplies and equipment, $5 per day in lieu of subsistence, and 5 cents per mile for use of automobiles (including visits to Washington, D.C.) when authorized and approved by the Commissioner of Indian Affairs, was held not authorized by law and to include legislation.

On Mar. 1, 1938,[6] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. When the following amendment was offered, a point of order was raised against certain of its provisions:

Amendment offered by Mr. Johnson of Oklahoma: Page 63, line 8, insert:

"Expenses of tribal councils or committees thereof (tribal funds): For traveling and other expenses of members of tribal councils, business committees, or other tribal organizations, when engaged on business of the tribes, including supplies and equipment, not to exceed $5 per diem in lieu of subsistance,

6. 83 CONG. REC. 2646, 75th Cong. 3d Sess.

and not to exceed 5 cents per mile for use of personally owned automobiles, and including visits to Washington, D.C., when duly authorized or approved in advance by the Commissioner of Indian Affairs, $50,000, payable from funds on deposit to the credit of the particular tribe interested: *Provided,* That except for the Navajo Tribe, not more than $5,000 shall be expended from the funds of any one tribe or band of Indians for the purposes herein specified."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it is not authorized by law and that it creates additional duties for the Commissioner of Indian Affairs and, generally, that the entire matter is unauthorized.

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, this is authorized under the Snyder Act, and I call attention to title 25, section 13, which clearly authorizes this expenditure. . . .

THE CHAIRMAN:[7] The Chair is ready to rule. . . .

The item to which attention has been called in the last paragraph of section 13, title 25, United States Code, includes the following language:

> And for general and incidental expenses in connection with the administration of Indian affairs.

It does not seem to the Chair that this language is sufficient to include the various items that are included in the amendment offered by the gentleman from Oklahoma, and the Chair therefore feels constrained to sustain the point of order.

7. Marvin Jones (Tex.).

Denying Salary to Postal Service Officer Who Undertakes Certain Actions

§ 63.16 Where an amendment to an appropriation bill denied the availability of funds for payment of the salary of any officer of the Postal Service who took certain actions with respect to employees who communicated with Members of Congress concerning the Postal Service, the Chair found that such provision did not impose additional duties on federal officers, but ruled the amendment out of order on other grounds.

On June 28, 1971,[8] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9271), a point of order was raised against the following amendment:

> MR. WILLIAM D. FORD [of Michigan]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. William D. Ford: On page 36, insert "(a)" immediately after "Sec. 508." in line 10; and immediately below line 14 on page 36 insert the following:
>
> "(b) No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee

8. 117 CONG. REC. 22442, 22443, 92d Cong. 1st Sess.

of the United States Postal Service, or any officer or employee of the Government of the United States outside the United States Postal Service, who—

"(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any officer or employee of the United States Postal Service from having any direct oral or written communication or contact with any member or committee of Congress in connection with any matter pertaining to the employment of such officer or employee or pertaining to the United States Postal Service in any way, irrespective of whether such communication or contact is at the initiative of such officer or employee or in response to the request or inquiry of such Member or committee; or

"(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, status, pay, or performance or efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any officer or employee of the United States Postal Service, or attempts or threatens to commit any of the foregoing actions with respect to such officer or employee, by reason of any communication or contact of such officer or employee with any Member or committee of Congress as described in paragraph (1) of this subsection."

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I make a point of order against the amendment, and I should like to be heard on the point of order.

THE CHAIRMAN:[9] At this point?

MR. BOW: Yes, Mr. Chairman.

Mr. Chairman, this, it seems to me, is subject to a point of order in several instances. First of all, there is paragraph (b) of the amendment. There is a provision that no part of any appropriation contained in this or any other act shall be available for the payment of the salary of any officer or employee of the U.S. Postal Service. It is not limited to this act but to any other act, which I think makes it subject to a point of order.

Furthermore, under the next provision, which prohibits or prevents, or attempts or threatens to prohibit or prevent, that puts such additional duties on the director of the Postal Service that it becomes almost impossible for him to administer this, particularly as to further threats in the future.

I believe it is very apparent from reading this that additional duties are placed on the executive branch of the Government, on the Postal Service, and in addition to any objections to part (b) or the rest of the amendment, I believe it is sufficient to sustain the point of order.

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

MR. WILLIAM D. FORD: Yes, I do, Mr. Chairman.

First of all, it is not necessary to legislate with this amendment, because the law that this amendment attempts to enforce has been on the books and it has been the law of this country since 1912. We now have substantive law which now very substantially says that you shall not do any of the things set forth in this act. What this amendment proposes to do is withhold the expenditure of the supplemental funds being appropriated by this bill to the operation of the Postal Service from anyone

9. John S. Monagan (Conn.).

who violates the law that has been the law since 1912. The only determination that is necessary to be made by anybody is not to violate the law. . . .

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

The Chair finds that this amendment does not impose additional duties to the extent that is objectionable under the precedents relating to limitations on appropriation bills. However, the Chair also finds that the amendment does seek to cover matters beyond those which are in the purview of this bill since it provides that no part of any appropriation contained in this or any other act shall be available for certain purposes with respect to officers or employees of the Government whether inside or outside the U.S. Postal Service or agencies covered by this bill.

Therefore, this constitutes legislation on the pending appropriation bill and the Chair sustains the point of order.

F. PERMISSIBLE LIMITATIONS ON USE OF FUNDS

§ 64. Generally

When points of order are made under the rule prohibiting legislation on appropriation bills, rulings thereon will frequently turn on whether the proposition in question is in fact one of legislation, or whether it is merely a permissible "limitation" on the funds sought to be appropriated. The basic theory of limitations is that, just as the House may decline to appropriate for a purpose authorized by law, it may by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it. The limitation cannot change existing law, but may negatively restrict the use of funds for an authorized purpose or project. A limitation may furthermore serve the purpose of foreclosing possible interpretations of language in an appropriation bill that otherwise might be administratively construed to include matters other than those actually contemplated by the bill.[10]

A useful discussion and a list of tests to be applied in determining whether language in an appropriation bill or amendment thereto constitutes a permissible limitation can be found in a ruling made on Jan. 8, 1923.[11] The Chairman,[12] in the course of rul-

10. See the statement of the Chair at 83 CONG. REC. 2655, 75th Cong. 3d Sess., Mar. 1, 1938, in the course of ruling on a point of order against language contained in H.R. 9621, an Interior Department appropriation bill.

11. 64 CONG. REC. 1422, 67th Cong. 4th Sess.

12. Frederick C. Hicks (N.Y.).

ing on a point of order against provisions of a District of Columbia appropriation bill, set forth a series of tests for determining the validity of a purported limitation under the rules. The checklist is reproduced here for quick reference:

1. Does the limitation apply solely to the appropriation under consideration?

2. Does it operate beyond the fiscal year for which the appropriation is made?

3. Is the limitation accompanied or coupled with a phrase applying to official functions, and if so, does the phrase give affirmative directions in fact or in effect, although not in form?

4. Is it accompanied by a phrase which might be construed to impose additional duties or permit an official to assume an intent to change existing law?

5. Does the limitation curtail or extend, modify, or alter existing powers or duties, or terminate old or confer new ones? If it does, then it must be conceded that legislation is involved, for without legislation these results could not be accomplished.

The statement of the Chair was as follows:

> The Chair is cognizant of confusion in the rulings in cases somewhat akin to this one, and realizes that in considering questions of limitations as in determining questions of germaneness there is considerable latitude between what is clearly permissible and what is as clearly repugnant to the rule. The Chair feels that in traversing this twilight zone he is justified in leaning toward the side of conservatism in regard to admission of legislation on appropriation bills. In the last few years there has been a very perceptible increase in the amount of legislative provisions incorporated in bills reported by the Appropriations Committee. The growth of this practice, in the opinion of the Chair, is unwise and is not warranted by the rules or procedure of the House. It is probably due to the fact that, as formerly many of the standing committees had jurisdiction over both appropriations and legislation, a clear distinction of these separate functions was not made in the bills reported, which left the Appropriations Committee in the position of finding that many of the items for which it desired to appropriate were unauthorized. This made it incumbent upon the Appropriations Committee, in order to carry on its work, to devise these legislative limitations.
>
> Under our rules the Committee on Appropriations can consider only questions of appropriations, the subjects of legislation and authorization being confined to the jurisdiction of standing committees constituted for that very purpose and equipped with facilities to conduct investigations. Feeling that each committee should be held strictly to the consideration of its own particular work, the Chair is of the opinion that too much latitude has been given in the employment of limitations, and that the practice of resorting to

this method of securing, in an indirect way, legislation on appropriation bills has been abused, and extended beyond the intention of the rule. . . .

Since Congress has the right to appropriate, Congress has the right to refuse to appropriate, even though the appropriation is authorized, and this may be done in two ways: First, by not appropriating for a certain purpose at all, and second, by denying the use of a part of an appropriation for a certain purpose. This is the principle on which the theory of limitations is grounded and should always be kept in mind in construing a limitation.

To use the illustration of the late James R. Mann, of honored memory, Congress, having the right to appropriate for red-headed men, may specifically deny the use of an appropriation for the payment of red-headed men. Therefore, while it is not in order to require the employment of red-headed men or even the payment of red-headed men, it is in order to deny the use of an appropriation for the payment of red-headed men, even though existing law permits the employment and payment of red-headed men.

But the misapplication and the difficulty in construing the rule has occurred when a limitation is accompanied by something additional in the nature of a further limitation or restriction.

For example, there is no difficulty in the following provision: "No part of this appropriation may be expended in the payment of red-headed men."

But take the following proposition: "No part of this appropriation may be used for the payment of any persons except red-headed men."

In construing the last example it is necessary for the Chair to look to the effect rather than to the form. Does the language merely deny the use of the appropriation or does it go further and require the employment of red-headed men? If existing law does not authorize the employment of red-headed men, or expressly prohibits the employment of red-headed men, the language clearly becomes not a limitation but becomes legislation making an appropriation for an unauthorized purpose and in addition proposes legislation permitting the employment of red-headed men contrary to existing law. But if the law authorizes the employment of red-headed men the language merely becomes explanatory of the recipient of the appropriation, and is in fact merely an appropriation for a certain purpose. Therefore, as a test in determining the legality of such language, the Chair may properly ask himself this question: "Would it be in order to make a direct appropriation for this purpose instead of denying the use of this appropriation except for the specified purpose?" If the question could be answered in the affirmative this particular class of limitations would be in order.

Approaching the point of order now before us, in the consideration of which the merits of the proposition are not under review, the Chair will cite a number of precedents that bear on the subject of limitations, quoting from Hinds' Precedents:

"No. 3931. Legislation may not be proposed under the form of a limitation.

"No. 3976. The language of limitation prescribing the conditions under which the appropriation may be used

may not be such as, when fairly construed, would change existing law.

"No. 3812. The enactment of positive law where none exists is constructed as a "provision changing existing law," such as is forbidden in an appropriation bill.

"No. 3967. A limitation is negative in its nature and may not include positive enactments establishing rules for executive officers.

"No. 3854. A proposition to establish affirmative directions for an executive officer constitutes legislation and is not in order on a general appropriation bill. Also a ruling of Chairman Towner, April 15, 1920.

"Chairman Crisp, March 11, 1916: Limitations must not impose new duties upon an executive officer.

"No. 3984. Where a proposition might be construed by the executive officer as a modification of a statute, it may not be held as such a limitation of appropriation as is permissible on a general appropriation bill.

"No. 3927. A limitation may be attached only to the money of the appropriation under consideration and may not be made applicable to moneys appropriated in other acts.

"No. 3957. The limitation must be upon the appropriation and not an affirmative limitation of official functions.

"No. 3966. Limitations which directly, or indirectly, vest in any executive officer any discretion, or impose any duty upon the officer, directly or indirectly, in the expenditure of money, would be obnoxious. But (No. 3968) the House may provide that no part of an appropriation shall be used in a certain way even though executive discretion be thereby negatively restricted.

"No. 3936. A provision proposing to construe existing law is in itself a proposition of legislation and, therefore, not in order on an appropriation bill as a limitation.

"No. 3936. The fact that a paragraph on an appropriation bill would constitute legislation for only a year does not make it admissible as a limitation.

"No. 3936. 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.

"No. 3929. A limitation must apply solely to the present appropriation and may not be made as a permanent provision of law.

"No. 3942. While it is not in order to legislate as to qualifications of the recipients of an appropriation, the House may specify that no part of the appropriation shall go to recipients lacking certain qualifications."

In section 3935 of Hinds' Precedents is a ruling by Speaker Cannon, which has been referred to and which the Chair feels covers the point under consideration. The language is clear and specific, and in view of Mr. Cannon's approaching retirement from Congress after a long and distinguished career, the Chair is glad to refer to it in this instance:

"The merits of the proposition are not involved in the point of order. What is the object of the motion and of the instruction? If it does not change existing law, then it is not necessary. If it does change existing law, then it is subject to the point of order. Much has been said about limitation; and the doctrine of limitation is sustained upon

the proposition under the rule that, as Congress has the power to withhold every appropriation, it may withhold the appropriation upon limitation. Now, that is correct. But there is another rule, another phase of that question. If the limitation, whether it be affirmative or negative, operates to change the law or to enact new law in effect, then it is subject to the rule that prohibits legislation upon a general appropriation bill; and the Chair, in view of the fact that the amendment would impose upon officials new duties as to purchasing canal supplies, has no difficulty in arriving at the conclusion that the instructions are subject to the point of order for the reasons stated."

In viewing propositions of a legislative character the Chair feels we should look to the substance and not to the form in which it is presented. In the case before us what does the proviso propose? Does it impose a simple restriction on the expenditure of funds? No. Does it stipulate that the use of the funds is conditional upon the possession by the recipients of certain qualifications or distinctions? No. It goes much further, for by the use of the words "until" and "unless," in connection with certain things to be done, it implies—yes, asserts—that these activities must be undertaken before the appropriation becomes available. This is a direction to officers and imposes new duties upon them which is repugnant to our practice. By requiring the court to perform functions which are not now required, it clearly implies a change of law, otherwise it would be futile to suggest it. This is legislation under the guise of a limitation which is contrary to our procedure.

As a general proposition the Chair feels that whenever a limitation is accompanied by the words "unless," "except," "until," "if," "however," there is ground to view the so-called limitation with suspicion, and in case of doubt as to its ultimate effect the doubt should be resolved on the conservative side. By doing so appropriation bills will be relieved of much of the legislation which is being constantly grafted upon them and a check given a practice which seems to the Chair both unwise and in violation of the spirit, as well as the substance, of our rules. Without endeavoring to lay down any hard and fast rule, the Chair feels that the following tests may be helpful in deciding a question of order directed against a limitation, first having determined the powers granted or the duties imposed by existing laws:

Does the limitation apply solely to the appropriation under consideration?

Does it operate beyond the fiscal year for which the appropriation is made?

Is the limitation accompanied or coupled with a phrase applying to official functions, and if so, does the phrase give affirmative directions in fact or in effect, although not in form?

Is it accompanied by a phrase which might be construed to impose additional duties or permit an official to assume an intent to change existing law?

Does the limitation curtail or extend, modify, or alter existing powers or duties, or terminate old or confer new ones? If it does, then it must be conceded that legislation is involved, for without legislation these results could not be accomplished.

If the limitation will not fairly stand these tests then in my opinion the point of order should be sustained.

The following sections contain illustrations of limitations deemed by the Chair to be permissible under the rule.

The rule prohibiting unauthorized appropriations and legislation on general appropriation bills, and the broad qualifications on the application of the rule, are discussed in more detail at the beginning of the chapter.[13]

General Rule

§ 64.1 An amendment prohibiting the use of funds in a general appropriation bill for a certain purpose is in order, although the availability of funds for that purpose is authorized by law.

On June 22, 1973,[14] uring consideration in the Committee of the Whole of a general appropriation bill (H.R. 8825), a point of order was raised against the following amendment:

> The Clerk read as follows:
>
> Amendment offered by Ms. [Bella S.] Abzug [of New York]: Page 9, lines 2 and 3, strike out "$2,194,000,000, to remain available until expended." and insert in lieu thereof "$1,719,000,000, to remain available until expended: *Provided*, That none of the funds appropriated in this Act shall be used to further in any way the research, development or construction of any reusable space transportation system or space shuttle or facilities therefor."
>
> And on page 10, lines 2 through 19, strike out all of subparagraph (12) and redesignate the succeeding subparagraphs accordingly.

MR. [BURT L.] TALCOTT [of California]: Mr. Chairman, I reserve a point of order against the amendment. . . .

THE CHAIRMAN:[15] The Chair will hear the gentleman from California.

MR. TALCOTT: Mr. Chairman, my point of order is quick and clean. This is more than just a reduction of funds. It is legislation on an appropriation bill when it says:

> none of the funds appropriated in this act shall be used to further in any way the research, development or construction of any reusable space transportation system or space shuttle or facilities therefor.

This is completely changing the authorization by the Committee on Science and Astronautics.

THE CHAIRMAN: The Chair is prepared to rule on the point of order.

It seems to the Chair that the provision in the gentlewoman's amendment is pretty clearly a limitation on an appropriation. It does not impose any affirmative obligation on the administration, nor does it provide any legislative direction. It is simply a limitation on the use of the funds to be appropriated.

The Chair therefore overrules the point of order.

§ 64.2 An amendment denying use of funds for purposes otherwise authorized by law may be in order as a limitation.

13. See § 1, supra.

14. 119 CONG. REC. 20998, 20999, 93d Cong. 1st Sess.

15. James G. O'Hara (Mich.).

On May 19, 1964,[16] during consideration in the Committee of the Whole of the Department of Agriculture appropriation bill for fiscal 1965 (H.R. 11202), a point of order was raised against the following amendment:

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

The Clerk read as follows:

Amendment offered by Mr. Findley: On page 14, line 12, after the figure "$39,389,000" strike the period, insert a colon and the following: "*Provided*, That no part of the funds appropriated by this Act shall be used for any expenses incident to the assembly or preparation of information for transmission over Government-leased wires directly serving privately-owned radio or television stations or newspapers of general circulation, or for transmission over Government-leased wires which are subject to direct interconnection with wires leased by nongovernmental persons, firms or associations.". . .

THE CHAIRMAN:[17] The gentleman from Mississippi will state his point of order.

MR. [JAMIE L.] WHITTEN [of Mississippi]: The law requires, in subsection k of section 1622 of the Agricultural Marketing Act of 1946, 7 U.S.C. 1621–27, as follows:

To collect, tabulate, and disseminate statistics of marketing agricultural products, including, but not restricted to statistics on market supplies, storage stocks, quantity, quality, and condition of such products in various positions in the marketing channel, utilization of such products, and shipments and unloads thereof.

That statute is absolutely mandatory and requires the Department to bring together that information. The gentleman's amendment does not limit funds for the discharge of the duties under that section. It attempts to deprive the Secretary of authority conferred by law which was determined in an earlier ruling (IV, 3846) to be legislation. Further, I respectfully submit it will require additional duties of folks in the Department of Agriculture, which is also legislation.

May I point out again, Mr. Chairman, in the last part of it, it says the information cannot be collected for the purpose of being disseminated. I respectfully submit it is legislation on an appropriation bill calling for new duties and responsibilities on the one hand, and limiting executive authority on the other. . . .

THE CHAIRMAN: . . . The Chairman would call the attention of the Committee to the fact that the existence of substantive law and the provisions thereof are quite obviously not necessarily binding on the Appropriations Committee. The Chair feels, therefore, that where that committee seeks to appropriate funds and an amendment is offered that seeks to deny the use of those funds even for functions otherwise required by law, that that amendment is in the nature of a limitation of appropriations and therefore overrules the point of order.

Must Apply Only to Funds in Bill

§ 64.3 To qualify as a limitation, restrictive language in

16. 110 CONG. REC. 11391, 11392, 88th Cong. 2d Sess.

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

a general appropriation bill must apply solely to the funds carried in the bill and not to all funds which might otherwise be available for that purpose.

On Apr. 26, 1972,[18] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 14582), a point of order was raised against the following provision of the bill:

FEDERAL HOME LOAN BANK BOARD

Increases of $177,000 in the limitation on the amount available for administrative expenses and of $351,000 in the limitation on the amount available for nonadministrative expenses: *Provided,* That none of the funds available for administrative or nonadministrative expenses of the Federal Home Loan Bank Board shall be used to finance the relocation of all or any part of the Federal Home Loan Bank from Greensboro, North Carolina, nor for the supervision, direction or operation of any district bank for the fourth district other than at such location;

MR. (JOHN J.) FLYNT (Jr., of Georgia): Mr. Chairman, I make a point of order against the language in the bill beginning after the colon on line 25 of page 42, and which continues through line 6 on page 43, which reads as follows:

"*Provided—*"

And so forth, down through "at such location."

I make the point of order on the ground that the language goes beyond the scope of the time frame covered by this appropriation bill, by the pending legislation. . . .

THE CHAIRMAN:[19] The gentleman from Texas (Mr. Mahon) is recognized.

MR. [GEORGE H.] MAHON: Mr. Chairman, under the government corporation control law, we are entitled to enact an annual budget involving the handling of corporate funds. That is what this goes to, and it is a limit on those funds.

It would appear to be clearly in order. So I trust, Mr. Chairman, that the point of order will not be sustained.

MR. [EDWARD P.] BOLAND [of Massachusetts]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The gentleman from Massachusetts is recognized.

MR. BOLAND: Mr. Chairman, I am reading from page 8455, United States Code, under title 31.

Paragraph 849 reads as follows:

§ 849. Consideration of programs by Congress; enactment of necessary legislation; effect of section on certain existing authority of corporations.

The Budget programs transmitted by the President to the Congress shall be considered and legislation shall be enacted making necessary appropriations as may be authorized by law, making available for expenditure for operating and administrative expenses such corporate funds or other financial resources or limiting the use thereof as the Congress may determine. . . .

Mr. Chairman, that is precisely what the language of the bill does. It limits the funds of the corporation, and it is

18. 118 CONG. REC. 14456, 14457, 92d Cong. 2d Sess.

19. Jack B. Brooks (Tex.).

my contention that the point of order is out of order.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Georgia (Mr. Flynt) makes a point of order against the language in the bill on page 42, line 25 to page 43, line 6.

The proviso in this paragraph goes to all of the expense funds that might be available to the Federal Home Loan Bank Board. It does not merely restrict the funds in this bill.

The Chair finds the restriction is not limited to funds in the bill and must be construed as legislation.

The Chair therefore sustains the point of order made by the gentleman from Georgia (Mr. Flynt).

§ 64.4 To qualify as a "limitation," the restrictive language must apply to the appropriations carried in the bill and not to all funds which may have been provided under the authorizing legislation or to the provisions of the authorization itself.

On June 4, 1970,[20] during consideration in the Committee of the Whole of the foreign assistance appropriation bill for fiscal 1971 (H.R. 17867), a point of order was raised against the following provision of the bill:

> (b) No economic assistance shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry items of economic assistance to Cuba, so long as it is governed by the Castro regime, or to North Vietnam.

MR. [PETER H. B.] FRELINGHUYSEN [of New Jersey]: Mr. Chairman, I make a point of order that the language on lines 13 through 17, page 9, section 107(b) constitutes legislation on an appropriation bill and therefore should be stricken.

I should like to point out, also, there is comparable language, but stronger language, already in the Foreign Assistance Act. I refer to section 620(a)(3) with respect to the prohibition against trade with Cuba, and section 620(n), the language with respect to North Vietnam.

THE CHAIRMAN:[1] Does the gentleman from Louisiana desire to be heard on the point of order?

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, the committee believes now, as we have believed for many years, that this was a limitation on expenditures. It says:

> No economic assistance—

Referring first to U.S. dollars—

> shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry items of economic assistance to Cuba, so long as it is governed by the Castro regime, or to North Vietnam.

According to the committee's interpretation, this is a limitation, and I ask for a ruling.

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20. 116 CONG. REC. 18404, 18405, 91st Cong. 2d Sess.

1. Hale Boggs (La.).

THE CHAIRMAN: The Chair is prepared to rule.

The first two lines read:

> No economic assistance shall be furnished under the Foreign Assistance Act of 1961—

It is entirely possible that there is a variety of programs under the Foreign Assistance Act of 1961. Therefore, this is clearly a limitation upon the Act and not on the bill and comes within the prohibition of rule XXI, clause 2, and the point of order is sustained.

§ 64.5 A limitation to be in order must relate specifically to the appropriation to which it is offered and not contain language so broad as to cover other appropriations.

On Mar. 28, 1939,[2] the Committee of the Whole was considering H.R. 5269, an Agriculture Department appropriation bill. The Clerk read as follows:

> Amendment offered by Mr. [Edward H.] Rees of Kansas to the amendment offered by Mr. Cannon of Missouri: At the end of Mr. Cannon's amendment add the following: "*Provided*, That total payments to any person, firm, or corporation under soil conservation and parity payments shall not exceed $2,500."

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill.

THE CHAIRMAN:[3] Does the gentleman from Kansas desire to be heard on the point of order?

MR. REES of Kansas: No, I do not believe I do, Mr. Chairman, although I do not believe it is legislation.

MR. [JOHN] TABER [of New York]: Mr. Chairman, this is a pure limitation, as I understand it, limiting the amount that can be paid out under the bill to any one person and therefore is clearly in order.

THE CHAIRMAN: The Chair is of the opinion that the amendment is entirely too broad in that it would not only include this appropriation but other appropriations as well and the point of order is therefore sustained.

Restricting Funds for Purpose Not Funded in Bill

§ 64.6 To a bill appropriating funds for defense procurement, an amendment providing that none of the funds therein shall be available for paying the cost of a conventional powerplant for a designated ship was held to be a proper limitation and in order even though it was apparent that there were no funds in the bill for the ship in question.

On Apr. 22, 1964,[4] the Committee of the Whole was considering H.R. 10939, a Department of

2. 84 CONG. REC. 3446, 76th Cong. 1st Sess.

3. Wright Patman (Tex.).

4. 110 CONG. REC. 8802, 88th Cong. 2d Sess.

Defense appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Craig] Hosmer [of California]: On page 42, line 18, after line 18 insert a new section 540—and renumber the following sections—to read as follows:

"None of the funds appropriated herein shall be available for paying the cost of a conventional powerplant for CVA–67."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make the point of order that there are no funds in this bill for an aircraft carrier.

THE CHAIRMAN:[5] Does the gentleman desire to be heard on the point of order?

MR. HOSMER: Yes, I do.

THE CHAIRMAN: The Chair will be pleased to hear him.

MR. HOSMER: My point is, it is irrelevant whether or not there are any funds in this bill. An amendment of this nature will lie irrespective.

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

. . . Apparently the only basis for that point of order is that there are no funds in the pending bill to accomplish that which is sought to be accomplished by the amendment. As futile, therefore, as the amendment might be, it is in fact a limitation of the funds herein appropriated and the Chair therefore overrules the point of order.

§ 64.7 To a section of the legislative branch appropriation bill making appropriations for the Government Printing Office, an amendment providing that no part of the appropriation shall be used to pay the salary of any person who shall perform any service or authorize any expenditure in connection with the printing and binding of the Yearbook of Agriculture was held as a valid limitation and in order.

On Mar. 18, 1942,[6] the Committee of the Whole was considering H.R. 6802. The Clerk read as follows:

Amendment offered by Mr. [Everett M.] Dirksen [of Illinois]: On page 45, line 3, after "1942", insert "*Provided further*, That no part of this appropriation shall be used to pay the salary of any person who shall perform any service or authorize any expenditure in connection with the printing and binding of part 2 of the annual report of the Secretary of Agriculture (known as the Year Book of Agriculture) for 1942."

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I make a point of order against the amendment. There are no funds carried in this bill for the purposes which are inhibited by the gentleman's amendment. It would be nugatory and of no effect, and I can conceive of no rule under which it might be in order.

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

6. 88 CONG. REC. 2681, 77th Cong. 2d Sess.

MR. DIRKSEN: I think the amendment will speak for itself. I think it is a limitation and would be germane and in order, irrespective of whether any funds are carried, but the fact of the matter is that the yearbook is not printed ordinarily until after the first of the year. Consequently the personnel and salaries for clerical work and mechanical work in the Government Printing Office is done after the beginning of the fiscal year 1943. I therefore regard it as a proper limitation and in order. . . .

THE CHAIRMAN:[7] The Chair thinks that the limitation is a valid one, and, therefore, the point of order is overruled.

§ 64.8 To a section of a supplemental appropriation bill making appropriations for the Air Force, an amendment providing that none of the funds appropriated therein shall be used in the branches of the Department of the Air Force in which there exists racial segregation was held germane and a proper limitation.

On Apr. 15, 1948,[8] the Committee of the Whole was considering H.R. 6226, a supplemental appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Adam C.] Powell [Jr., of New York]: On page 2, line 25, insert "*Provided further,* That none of the funds herein appropriated shall be used in the branches of the Department of the Air Force in which there exists racial segregation."

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, a point of order.

THE CHAIRMAN:[9] The gentleman will state it.

MR. RANKIN: Mr. Chairman, I make the point of order that this amendment is not germane and it is, therefore, not in order on this bill; that it is legislation on an appropriation bill; that imposes additional burdens and restrictions that are entirely out of place.

This is an aircraft procurement bill. This is not a labor bill. I submit that the amendment is out of order from practically every standpoint.

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

MR. POWELL: Yes, Mr. Chairman. This is an amendment which has limitations; it is negative; it is the type that has been ruled in order on previous appropriation bills.

THE CHAIRMAN: The Chair is ready to rule. The gentleman from New York has offered an amendment against which the gentleman from Mississippi has made a point of order. The Chair is constrained to rule that the amendment is germane and is in order and consequently overrules the point of order.

Committee Report as Containing Limitations

§ 64.9 The Chair does not pass on the question as to wheth-

7. William R. Thom (Ohio).
8. 94 CONG. REC. 4543, 89th Cong. 2d Sess.
9. James G. O'Hara (Mich.).

er "limitations" written in a committee report on an appropriation bill but not written into the wording of the bill are binding; that is a matter for the Committee of the Whole to consider during its deliberation on the bill.

On Apr. 14, 1955,[10] the Committee of the Whole was considering H.R. 5502, a bill making appropriations for the Departments of State, Justice, the Judiciary, and related agencies. The following occurred:

MR. [ROBERT C.] WILSON of California: I have a question relative to the United States Information Agency as it affects the report of the committee. As printed I notice there are several limitations written into the report. For instance, not to exceed $300,000 is provided for the "presentation" program; not to exceed $200,000 is provided for exhibits for which $334,000 was requested, and other limitations of that type.

I am wondering if the fact that these limitations appear in the report make them actual limitations in law. I notice they are not mentioned in the bill itself, and I wonder if the committee regards them as binding on the agency, because there are many serious limitations, particularly in regard to exhibits, for example. I would just like to hear the opinion of the chairman.

MR. [JOHN J.] ROONEY [of New York]: I may say to the gentleman from California that it is expected that they will be the law; and that they are binding. The fact that they have not been inserted in the bill is not important. They represent the considered judgment of the committee and we expect the language of the report to be followed.

MR. WILSON of California: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN:[11] The gentleman will state it.

MR. WILSON of California: Are limitations written in a committee report such as this, but not written into the wording of the legislation, binding?

THE CHAIRMAN: That is not a parliamentary inquiry. That is a matter to be settled by the members of the Committee of the Whole.

MR. WILSON of California: I merely wanted it for my own understanding and information, for I am fairly new here. It seems to me rather unusual to consider matter written into a report of the same binding effect on an administrator as though written into the law itself.

THE CHAIRMAN: It is not the prerogative of the Chair to pass upon the sufficiency or insufficiency of a committee report.

Condition Subsequent—Obligation Terminated on Occurrence of Future Event

§ 64.10 An amendment to an appropriation bill, terminating the use of funds therein after the passage of

10. 101 CONG. REC. 4463, 4464, 84th Cong. 1st Sess.

11. Jere Cooper [Tenn.].

certain legislation pending before the Congress, is a valid limitation and in order.

On May 19, 1964,[12] during consideration in the Committee of the Whole of the Department of Agriculture appropriation bill (H.R. 11202), a point of order was raised against the following amendment:

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

The Clerk read as follows:

> Amendment offered by Mr. Findley: On page 12, line 24, after the word "consumer" change the colon to a comma and insert the following: "except that no part of the funds appropriated herein may be obligated for this special study subsequent to the enactment of legislation establishing a National Commission on Food Marketing:".

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

THE CHAIRMAN:[13] The gentleman from Mississippi will state his point of order.

MR. WHITTEN: The language provides:

> Except that no part of the funds appropriated herein may be obligated for this special study subsequent to the enactment of legislation establishing a national commission.

The point of order I make is that this is not a limitation on an appropriation bill as such but is entirely dependent on a contingency that may never occur. For that reason the point of order should be sustained.

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

MR. FINDLEY: Yes. My amendment shows retrenchment on the face of it, and in my opinion is within the rules.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Illinois offers an amendment, which has been fully reported, and provides that no part of the funds appropriated in the pending section may be obligated for the special study provided therein subsequent to the enactment of legislation establishing a National Commission on Food Marketing, to which amendment the gentleman from Mississippi made his point of order that it was, in effect, legislation on an appropriation bill. The Chair, however, is of the opinion that this amendment constitutes a limitation on the funds herein appropriated even though that limitation may be conditioned upon a condition subsequent which may never come into existence and, therefore, overrules the point of order.

Obligation Triggered by Future Event

§ 64.11 To a bill appropriating funds for NASA [which had, under its authorizing legislation, authority to use appropriations for capital expenditures providing that the Committee on Science and Astronautics of the House

12. 110 CONG. REC. 11388, 11389, 88th Cong. 2d Sess.

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

was notified of the proposed expenditure], an amendment specifying that no funds therein appropriated could be used for capital items until 14 days after the notification required by law, was held to be a limitation upon the expenditure of funds and in order.

On June 29, 1959,[14] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7978), a point of order was raised against the following amendment:

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Thomas: On page 4, line 16, after "expended" insert: "*Provided,* That no part of the foregoing appropriation shall be available for other items of a capital nature which exceed $250,000 until 14 days have elapsed after notification as required by law to the Committee on Science and Astronautics of the House of Representatives and the Committee on Aeronautical and Space Sciences of the Senate."

MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[15] The gentleman will state it.

MR. TABER: Mr. Chairman, I make the point of order against the amendment on the ground that it changes existing law and requires additional duties on the part of the Space Agency. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Texas [Mr. Thomas] has offered an amendment which has been reported. The gentleman from New York [Mr. Taber] has made a point of order that it is legislation on an appropriation bill.

The Chair calls attention to that portion of subsection (b) of Public Law 86–45 approved June 15, 1959, with reference to expenditures in excess of $250,000 and notice to the legislative committees. In addition thereto, the amendment contains a period of notice of 14 days. However, this does not impose a new duty, because it is a limitation upon the expenditure of the funds within a period of 14 days.

The Chair therefore overrules the point of order.

Exception From Limitation Carried in Same Bill

§ 64.12 Where an appropriation bill carried a provision limiting certain administrative expenses in various accounts therein, a paragraph subsequently reached in the reading was held in order where it carried a provision excepting an authorized appropriation project from those limitations.

On May 17, 1937,[16] the Committee of the Whole was consid-

14. 105 CONG. REC. 12125, 12126, 86th Cong. 1st Sess.

15. Paul J. Kilday (Tex.).

16. 81 CONG. REC. 4685, 4686, 75th Cong. 1st Sess.

ering H.R. 6958, an Interior Department appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Boulder Canyon project: For the continuation of construction of the Boulder Canyon Dam and incidental works in the main stream of the Colorado River at Black Canyon, to create a storage reservoir, and of a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from such reservoir $2,550,000, to be immediately available and there shall also be available from power and other revenues not to exceed $500,000 for operation and maintenance of the Boulder Canyon Dam, power plant, and other facilities; which amounts of $2,550,000 and $500,000 shall be available for personal services in the District of Columbia . . . and for all other objects of expenditure that are specified for projects hereinbefore included in this act, under the caption "Bureau of Reclamation, Administrative provisions and limitations", without regard to the amounts of the limitations therein set forth.

MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I reserve a point of order for the purpose of asking the chairman of the subcommittee the effect of the language in lines 19 and 20 of the paragraph under consideration, "without regard to the amounts of the limitations therein set forth." . . .

MR. [JAMES G.] SCRUGHAM [of Nevada]: Mr. Chairman, the paragraph applies to limitations on appropriations, and I hold it to be clearly in order.

THE CHAIRMAN:[17] The Chair is prepared to rule.

The gentleman from Massachusetts makes the point of order against the language appearing in lines 19 and 20.

There is no point made here that the provisions referred to are not covered by authorization of law. It is apparent from examining this provision, and referring back to the provisions contained on page 68, that the purpose here is to remove certain limitations imposed by the language on page 68 under the heading "Administrative provisions and limitations." Therefore the Chair is of the opinion that this language is not subject to a point of order and overrules the point of order.

See 83 CONG. REC. 2707, 75th Cong. 3d Sess., Mar. 2, 1938, for a similar ruling.

Exceptions From Limitations

§ 64.13 To an amendment prohibiting the expenditure of any government funds during fiscal 1971 for American ground forces in Cambodia, offered to a legislative provision in a general appropriation bill prescribing an overall limitation on budget outlays for that fiscal year, an amendment excepting from such prohibition those expenditures which protect the lives of American troops re-

17. Jere Cooper (Tenn.).

maining within South Vietnam was held in order as a germane exception to the prohibition merely descriptive of a Presidential duty as Commander in Chief to protect U.S. troops, and as not adding legislation to the provision permitted to remain in the bill.

On May 7, 1970,[18] the Committee of the Whole was considering H.R. 17399, a supplemental appropriation bill. A point of order against an amendment to an amendment was overruled as indicated below:

The Clerk read as follows:

TITLE V

LIMITATION ON FISCAL YEAR 1971 BUDGET OUTLAYS

Sec. 501. (a) Expenditures and net lending (budget outlays) of the Federal Government during the fiscal year ending June 30, 1971, shall not exceed $200,771,000,000: *Provided,* That whenever action, or inaction, by the Congress on requests for appropriations and other budgetary proposals varies from the President's recommendations reflected in the Budget for 1971 (H. Doc. 91–240, part 1), the Director of the Bureau of the Budget shall report to the President and to the Congress his estimate of the effect of such action or inaction on budget outlays, and the limitation set forth herein shall be correspondingly adjusted: *Provided further,* That the Director of the Bureau of the Budget shall report to the President and to the Congress his estimate of the effect on budget outlays of other actions by the Congress (whether initiated by the President or the Congress) and the limitation set forth herein shall be correspondingly adjusted, and reports, so far as practicable, shall indicate whether such other actions were initiated by the President or by the Congress.

MR. [EDWARD P.] BOLAND [of Massachusetts]: Mr. Chairman I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Boland: On page 53 on line 25 after the amount [$200,771,000,000], insert the following: ", of which expenditures none shall be available for use for American ground combat forces in Cambodia.". . .

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I offer an amendment to the amendment offered by the gentleman from Massachusetts (Mr. Boland).

The Clerk read as follows:

Amendment offered by Mr. Findley to the amendment offered by Mr. Boland: In front of the period insert the following: "except those which protect the lives of American troops remaining within South Vietnam."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment. . . .

I make a point of order on the ground that the amendment requires particular and special duties. . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make the further point of order that it is legislation on an appropriation bill.

THE CHAIRMAN:[19] The Chair has examined the proposed amendment to

18. 116 CONG. REC. 14569–71, 91st Cong. 2d Sess.

19. James G. O'Hara (Mich.).

the amendment. In the opinion of the Chair the proposed amendment to the amendment constitutes an exception to the limitation that was offered by the gentleman from Massachusetts, does not constitute additional legislation, and is germane. Therefore the Chair overrules the point of order.

During ensuing debate, Mr. Findley stated:

Mr. Chairman, I would hope that no Member of this body would wish to leave the impression, by supporting any amendment today, that subsequent to July 1 he would wish the President of the United States as Commander in Chief to fail to do what he feels is necessary to protect the lives of American troops remaining in South Vietnam.

That is why I propose this amendment.

§ 64.14 An exception to a valid limitation in a general appropriation bill is in order, providing the exception does not add language legislative in effect. Thus, an amendment inserting "Except as required by the Constitution" in provisions in a general appropriation bill prohibiting the use of funds therein to force a school district to take action involving the busing of students, was held in order as providing an exception from valid limitations in the bill.

On Feb. 19, 1970,[20] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill for fiscal 1970 (H.R. 15931), a point of order was raised against the following amendments:

MR. [JEFFERY] COHELAN [of California]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Cohelan: On page 60, strike out line 19 and all that follows through line 25, and substitute in lieu thereof the following:

"Sec. 408. Except as required by the Constitution no part of the funds contained in the Act may be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of any student attending any elementary or secondary school to a particular school against the choice of his or her parent or parents."

MR. COHELAN: Mr. Chairman, I ask unanimous consent that my amendments on sections 408 and 409 be considered en bloc.

THE CHAIRMAN:[1] The Clerk will report the amendment to section 409.

The Clerk read as follows:

Amendment offered by Mr. Cohelan: On page 61, strike out line 1 and all that follows through line 6 and substitute in lieu thereof the following:

"Sec. 409. Except as required by the Constitution no part of the funds

20. 116 CONG. REC. 4019, 91st Cong. 2d Sess.

1. Chet Holifield (Calif.).

contained in this Act shall be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of students to a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school."

THE CHAIRMAN: Is there objection to the request of the gentleman from California (Mr. Cohelan) that the amendments be considered en bloc?

There was no objection.

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I make a point of order against the amendments.

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

MR. BOW: Mr. Chairman, the point of order is that the language puts additional duties upon the Secretary of Health, Education, and Welfare to make a determination of the constitutionality of the provisions.

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

MR. COHELAN: Mr. Chairman, obviously all that my amendments will do is to restore the language of the original bill.

Prior to my presenting these amendments I checked with the parliamentarian. It is my understanding that they are perfectly proper amendments. I ask that they be considered so.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from California (Mr. Cohelan) has offered amendments en bloc to insert the provision "Except as required by the Constitution" at the beginning of sections 408 and 409 of the bill. The gentleman from Ohio (Mr. Bow) has raised a point of order against the amendments on the ground that they constitute legislation on an appropriation bill in violation of clause 2, rule XXI.

The precedents of the House establish that it is in order in a general appropriation bill to include, along with a valid limitation, an exception therefrom. On April 27, 1950, a provision limiting the use of an appropriation and specifying certain exceptions to the limitation was held in order—Chairman Cooper, Tennessee, 81st Congress, Record, page 5910.

For the reason stated the Chair overrules the point of order.

§ 64.15 An exception from a valid limitation may be included in an amendment to an appropriation bill so long as it does not contain provisions which are legislative in effect; in an amendment prohibiting the use of funds for food stamp assistance for households that need such assistance solely because a member therein is a member of a striking union, language stating that such limitation shall not apply to a household eligible for general assistance directly payable by a local government was held to constitute a valid exception not imposing additional duties on federal administrators.

On June 29, 1972,[2] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 15690), a point of order was raised against the following amendment:

MR. [GARRY E.] BROWN of Michigan: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Brown of Michigan: On page 43, line 9, delete the period after the figure "$2,341,146,000" and insert the following: "Provided that no part of the funds appropriated by this Act shall be used during the fiscal year ending June 30, 1973 to make food stamps available to a household where the necessity and eligibility of such household for assistance stems solely from the unemployment of a member of such household who is a member of an employee unit which has voluntarily terminated employment due to a labor dispute or controversy, except that such limitation shall not apply to a household eligible for general assistance directly payable by such household's local union of government."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make a point of order against the amendment. It is legislation on an appropriation bill and, for all practical purposes, it is a perfecting amendment and identical to the one we have already voted on. . . .

THE CHAIRMAN:[3] Does the gentleman from Michigan desire to be heard on the point of order?

MR. BROWN of Michigan: I do, Mr. Chairman.

In the first place, it is not legislation on an appropriation bill because it only further limits the thrust of the appropriation, and establishes a further standard, that standard to be applied for the eligibility, to be determined by the State and local agencies, and under various appropriations to the food stamp program, eligibility standards which are determined by these State and local agencies.

Second, it is not the same amendment as the Michel amendment because it is not an absolute prohibition on food stamps to strikers, so called. It says that eligibility for food stamps shall be based upon eligibility for general assistance, not the food stamp program itself.

MR. WHITTEN: Mr. Chairman, in view of the statement made by the gentleman from Michigan, and having seen the amendment and having read it and understood it, I state that it calls for new duties to determine new regulations for eligibility, therefore it is definitely legislation on an appropriation bill.

THE CHAIRMAN: The Chair is ready to rule.

The Chair has carefully read the amendment.

In the first place, it is not identical to the amendment previously offered, nor is it subject to the interpretation that it would simply do exactly the same thing as the amendment previously offered and rejected. It is clearly distinguishable in its provisions.

As to the second question, that of its being rendered out of order because it supposedly requires affirmative actions on the part of an administrator, the Chair believes that the latter part of

2. 118 CONG. REC. 23378, 23379, 92d Cong. 2d Sess.

3. James C. Wright, Jr. (Tex.).

the amendment—to which the gentleman from Mississippi has referred—simply provides an exception to the application of the limitation imposed by the first part of the amendment. It does not impose additional duties. The Chair holds that the amendment offered by the gentleman from Michigan (Mr. Brown), is in order and overrules the point of order.

Prohibiting Funds for Salaries for Carrying out Certain Programs

§ 64.16 An amendment to a general appropriation bill which is negative in character and which prohibits the use of funds therein for salaries of persons carrying out certain programs which extend in duration beyond that fiscal year is in order as a limitation on the funds in that bill.

On June 15, 1973,[4] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 8619), the following occurred:

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Conte: Page 3 after line 12, insert the following: ": *Provided further,* That none of the funds appropriated by this Act shall be used during the fiscal year ending June 30, 1974, to formulate or carry out any single 1974 crop year price support program (other than for sugar and wool) under which the total amount of payments to any person or State government would be more than $20,000". . . .

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I offer a substitute amendment for the amendment offered by the gentleman from Massachusetts (Mr. Conte).

The Clerk read as follows:

Substitute amendment offered by Mr. Findley for the amendment offered by Mr. Conte: None of the funds provided by this Act shall be used to pay the salaries of personnel who formulate or carry out:

(1) programs for the 1974 crop year under which the aggregate payments for the wheat, feed grains and upland cotton programs for price support, set-aside, diversion and resource adjustment to one person exceed $20,000, or

(2) a program effective after December 31, 1973 which sanctions the sale or lease of cotton acreage allotments.

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

THE CHAIRMAN:[5] The gentleman reserves a point of order.

MR. WHITTEN: Mr. Chairman, the Commodity Credit Corporation of the Department of Agriculture has some $3 or $4 billion; it has certain obligations and authority under its charter, and that money they now have is not in this bill.

4. 119 CONG. REC. 19836, 19837, 93d Cong. 1st Sess.

5. James C. Wright, Jr. (Tex.).

This amendment, if passed, would in no way affect the Corporation. It has 3 or 4 billions of dollars which in turn it already had with obligations under the charter under which it is formulated.

The amendment at this point would not reach funds already available with existing authority and under a charter.

THE CHAIRMAN: Does the gentleman from Mississippi make a point of order against the substitute?

MR. WHITTEN: Yes, I will make the point of order at this point, that if it be held that this goes to the action of a corporation that presently has $3 to $4 billion, that presently has a charter which directs it to carry out what is prohibited by this provision; that if this amendment attempts to reach that corporation which has a corporation charter, it is legislation on an appropriations bill and, therefore, subject to a point of order. . . .

THE CHAIRMAN: Does the gentleman from Illinois desire to be heard?

MR. FINDLEY: Yes. . . .

The amendment which I have offered as a substitute to the Conte amendment is a limitation of salaries of personnel. Personnel, of course, includes the Secretary of Agriculture, all of his lieutenants right down to the CCC level. Even if, as the gentleman argues, the limitation could not apply to the salaries of CCC personnel, which I do not concede, nevertheless this amendment would be effective in establishing the limitation it seeks to effect, because it would go to the salary of the Secretary. All of the authority that is in the draft bill now before the Committee on Agriculture dealing with continuing farm legislation goes to the Secretary as a person.

This is a limitation on the expenditure of funds, a limitation that goes to the expenditure of salaries, and therefore entirely within the rules of the House as being germane. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Massachusetts (Mr. Conte) has offered an amendment, for which the gentleman from Illinois (Mr. Findley) has offered a substitute.

The gentleman from Mississippi has raised a point of order against the substitute amendment offered by the gentleman from Illinois on the ground that it constitutes legislation in an appropriation bill.

The Chair has listened to the arguments and has carefully read the text of the proposed substitute. The Chair notes that the substitute would restrict funds provided by this act, providing that none of such funds should be used to pay salaries of personnel to carry out certain programs. As such, insofar as it applies to the funds provided in this act, the substitute would be a limitation on the appropriation bill and would not be legislation, and is therefore in order.

The Chair would point out that nothing in such substitute could act officially or affirmatively to inhibit payment of funds that are not provided in this act. As the Chair reads the proposed substitute, there is no language which would affect, limit, or inhibit funds other than those provided in this act.

Therefore, the Chair overrules the point of order.

Limiting Funds "In Any Fiscal Year"

§ 64.17 Where a limitation seeks to provide that "funds

appropriated by this Act" shall not be used "in any fiscal year" for a certain purpose, the addition of the phrase "in any fiscal year" has no effect, because the measure can apply only to the fiscal year for which funds are being appropriated; thus the phrase does not destroy the character of the limitation.

On May 26, 1965,[6] during consideration of an Agriculture Department appropriation bill (H.R. 8370), it was held that an amendment, specifying that no part of the funds therein shall be used "in any fiscal year" for farm program payments aggregating more than $50,000 to any person or corporation, was a proper limitation. The proceedings were as follows:

> Sec. 506. Not less than $1,500,000 of the appropriations of the Department for research and service work authorized by the Acts of August 14, 1946, July 28, 1954, and September 6, 1958 (7 U.S.C. 427, 1621–1629; 42 U.S.C. 1891–1893), shall be available for contracting in accordance with said Acts.
>
> MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Dingell: Page 37, after line 2, insert the following section:
>
> "Sec. 507. No part of any funds appropriated by this Act may, in any fiscal year, be used, directly or indirectly, to make payments to any person, partnership, or corporation in an aggregate amount in excess of $50,000 in connection with any price-support program or combination of programs for price support or stabilization, irrespective of whether such payments are on account of loans, purchases, or subsidies or are otherwise authorized.". . .
>
> [A point of order was made, as follows:]
>
> MR. [JAMIE L.] WHITTEN [of Mississippi]: This amendment would require the keeping of books, it would require substantive additional duties on many people because many producers produce many different crops. This would be legislation on an appropriation bill.
>
> THE CHAIRMAN:[7] The gentleman from Michigan [Mr. Dingell] offered an amendment to page 37, line 2, which is a new section. . . .
>
> To which amendment the gentleman from Mississippi makes the point of order that it is legislation on an appropriation bill.
>
> The Chair is of the opinion that since the amendment is directed to funds appropriated by the pending act, the phrase "in any fiscal year" is not applicable, nor in fact is it necessary. But the Chair is further of the opinion that this is an express limitation on the funds appropriated by the pending bill, and holds that the amendment is in order, and overrules the point of order.

6. 111 CONG. REC. 11660–62, 89th Cong. 1st Sess.

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

When Amendment May Be Offered

§ 64.18 To an appropriation bill, an amendment in the form of a new section limiting the use of all appropriations in the bill may be offered after sufficiently diverse parts of the bill have been read and is not required to come at the end of the bill.

On June 28, 1952,[8] the Committee of the Whole was considering H.R. 8370, a supplemental appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [Ben F.] Jensen [of Iowa]: Page 37, after line 2 insert a new section as follows:

"Sec.—. (a) No part of any appropriation made by this act for any purpose shall be used for the payment of personal services in excess of an amount equal to 85 percent of the amount requested for personal services for such purpose in budget estimates heretofore submitted to the Congress for the fiscal year 1953; and the total amount of each appropriation, any part of which is available for the payment of personal services for any purpose, is hereby reduced by an amount equal to 15 percent of the amount requested in such budget estimates for personal services for such purpose less an amount representing the reduction, if any, between the amount requested for personal services in the budget estimates and the amount appropriated herein for such services.

"(b) This section shall not apply to—

"(1) not to exceed 25 percent of all vacancies;

"(2) positions filled from within the Mutual Security Agency and related Government functions provided for in this act;

"(3) offices or positions required by law to be filled by appointment of the President by and with the advice and consent of the Senate;

Provided further, That subsection (1) of paragraph (b) shall operate to accomplish the provisions of paragraph (a), and the said 85 percent shall not be exceeded at any time during fiscal year 1953; and *Provided further,* each agency shall impound and deposit in the general fund of the Treasury as soon as practicable, but not less frequently than quarterly an amount equivalent to the savings resulting from the vacant positions which are prohibited from being filled by this section, based on the salaries of the prior incumbents of the positions."

MR. [J. VAUGHAN] GARY of Virginia: Mr. Chairman, I make a point of order against the amendment. The amendment applies to the act and should be placed at the end of the act, rather than at the end of the chapter which we are now considering. I wonder if the gentleman will not withdraw the amendment at this time, and offer it at the conclusion of the act.

THE CHAIRMAN:[9] The Chair is ready to rule.

8. 98 CONG. REC. 8502, 8503, 82d Cong. 2d Sess.

9. Francis E. Walter (Pa.).

The language contained in this amendment might well appear at any part of the act. It is not of such a nature that it must come at the conclusion of the measure now under consideration. The Chair overrules the point of order.

Legislation Permitted by Special Rule

§ 64.19 The House, by resolution, has given the Committee on Appropriations authority to incorporate in any appropriation measure legislative recommendations emanating from the investigation authorized to be conducted by that committee in that resolution, as, for example, a prohibition of expenditures in other acts for salary or compensation to certain persons found by the committee to be subversive, notwithstanding Rule XXI clause 2.

On May 17, 1943,[10] H.R. 2714, an urgent deficiency appropriation, was being considered in the Committee of the Whole. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. (John H.) Kerr (of North Carolina): On page 36, after line 23, insert as a new section the following:

"Sec. 304. No part of any appropriation, allocation, or fund (1) which is made available under or pursuant to this act, or (2) which is now, or which is hereafter made, available under or pursuant to any other act, to any department, agency, or instrumentality of the United States, shall be used to pay any part of the salary, or other compensation for the personal services, of Goodwin B. Watson, William E. Dodd, Jr., and Robert Morss Lovett: *Provided*, That this section shall not operate to deprive any such person of payment for leaves of absence or salary, or of any refund or reimbursement, which have accrued prior to the date of the enactment of this act."

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[11] The gentleman will state the point of order.

MR. MARCANTONIO: I make a point of order against the language in line 3 of the amendment just offered, as follows:

Which is now, or which is hereafter made, available under or pursuant to any other act, to any department, agency, or instrumentality of the United States—

And so forth. This amendment seeks to limit an appropriation in some other appropriation bill. It goes beyond this bill.

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

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, this amendment is made in order by House Resolution 105, authorizing the investigation, providing—as shown on page 2 of the re-

10. 89 CONG. REC. 4558, 78th Cong. 1st Sess.

11. Wright Patman (Tex.).

port, House Report No. 448—as follows:

> Any legislation approved by the committee as a result of this resolution may be incorporated in any general or special appropriation measure emanating from such committee or may be offered as a committee amendment to any such measure notwithstanding the provisions of clause 2 of rule XXI.

Under that provision, the amendment is in order.

MR. MARCANTONIO: May I say in reply, Mr. Chairman, that would be true if the amendment offered were limited to this appropriation, but the amendment offered extends to appropriations not made by this bill.

THE CHAIRMAN: The language appears to be rather plain and specific to the Chair, "any legislation approved by the Committee as a result of this resolution may be incorporated in any general or special appropriation measure."

Therefore the point of order is overruled.

Note: The text of House Resolution 105 was as follows: (12)

Resolved, That the Committee on Appropriations, acting through a special subcommittee thereof appointed by the chairman of such committee for the purposes of this resolution, is authorized and directed to examine into any and all allegations or charges that certain persons in the employ of the several executive departments and other executive agencies are unfit to continue in such employment by reason of their present association or membership or past association or membership in or with organizations whose aims or purposes are or have been subversive to the Government of the United States. Such examination shall be pursued with the view of obtaining all available evidence bearing upon each particular case and reporting to the House the conclusions of the committee with respect to each such case in the light of the factual evidence obtained. Any legislation approved by the committee as a result of this resolution may be incorporated in any general or special appropriation measure emanating from such committee or may be offered as a committee amendment to any such measure notwithstanding the provisions of clause 2 of rule XXI.

For the purposes of this resolution, such committee or any subcommittee thereof is hereby authorized to sit and act during the present Congress at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses, and the production of such books or papers or documents or vouchers by subpena or otherwise, and to take such testimony and records as it deems necessary. Subpenas may be issued over the signature of the chairman of the committee or subcommittee, or by any person designated by him, and shall be served by such person or persons as the chairman of the committee or subcommittee may designate. The chairman of the committee or subcommittee, or any member thereof, may administer oaths to witnesses.

Restriction on Transfer of Funds to Activities Funded in Paragraph

§ 64.20 A provision in a paragraph of a general appro-

12. 89 CONG. REC. 734, 78th Cong. 1st Sess., Feb. 9, 1943.

priation bill prohibiting the transfer of funds therein to any other account or activity unless specifically authorized was held to be a proper limitation on the use of funds in the paragraph.

On Aug. 1, 1973,[13] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9590), the following occurred:

> MR. [TOM] STEED [of Oklahoma]: Mr. Chairman, the points of order made against the language are conceded down to line 7, page 23, but the language of that "*Provided further,*" is a simple limitation on an appropriation bill and is not subject to a point of order.
>
> THE CHAIRMAN:[14] The Chair agrees with the gentleman from Oklahoma.
>
> The various points of order that are conceded are sustained, and that language is stricken. The language:
>
> > *Provided further,* That none of the funds available under this heading shall be available for transfer to any other account nor for the funding of any activities other than those specifically authorized under this heading.
>
> Which is a proper limitation and appears beginning in line 7, page 23, through line 10, remains in the bill, since the point of order has not been made against the entire paragraph.

13. 119 CONG. REC. 27289, 93d Cong. 1st Sess.
14. Richard Bolling (Mo.).

Permanent Legislation; Use of "Hereafter"

§ 64.21 An amendment to an appropriation bill in the form of a limitation but containing the word "hereafter" was held to be legislation and not in order.

On Jan. 31, 1936,[15] during consideration in the Committee of the Whole of the Department of the Interior appropriation bill (H.R. 10630), a point of order was raised against the following amendment:

> Amendment offered by Mr. (Byron N.) Scott (of California): On page 48, line 13, after the word "Interior", add: "*Provided,* That hereafter no part of any appropriation for these Indian schools shall be available for the salary of any person teaching or advocating the legislative program of the American Liberty League."
>
> MR. [EDWARD T.] TAYLOR OF Colorado: Mr. Chairman, I make a point of order against the amendment. It is legislation on an appropriation bill. . . .
>
> THE CHAIRMAN:[16] The Chair is ready to rule. The word "hereafter" in the amendment makes the provision permanent legislation. Permanent legislation on an appropriation bill would not be in order. The language of the amendment here offered not only applies to the appropriations of this bill but it would apply to subsequent ap-

15. 80 CONG. REC. 1300, 1305, 1306, 74th Cong. 2d Sess.
16. Robert L. Doughton (N.C.).

propriations. Therefore, the amendment contains legislation; and the point of order is sustained.

Change in Administrative Policy by Negative Restriction on Use of Funds

§ 64.22 While a limitation may not involve a permanent change of existing law, the allegation that it may result in a change of administrative policy would not itself render it subject to a point of order if only a negative limitation on use of funds.

On May 11, 1960,[17] 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 section:

> Sec. 408. No part of the funds appropriated by this Act shall be used to pay the compensation of any employee or officer of the Department, except the Secretary of Agriculture, who, in addition to other regularly assigned responsibilities, serves as a member of the Board of Directors or as an officer of the Commodity Credit Corporation after February 1, 1961.
>
> MR. [PAUL] BROWN of Georgia: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[18] The gentleman will state it.
>
> MR. BROWN of Georgia: Mr. Chairman, section 408 provides that none of the funds appropriated by H.R. 12117, making appropriations for the Department of Agriculture and Farm Credit Administration, shall be used to pay the salary of any officer or employee of the Department—except the Secretary—who serves as a member of the Board of Directors of CCC, or as an officer of CCC, in addition to other regular duties with the Department.

This reverses a decision made by the Banking and Currency Committee and the Congress in 1949, when the CCC Charter Act was amended to strike out a similar restriction which had been enacted in 1948. It is, therefore, legislation, and the mere fact it is put in the form of a limitation on the use of funds appropriated by the bill does not save it. As paragraph 1691, volume 7, of Cannon's Precedents of the House of Representatives puts it:

> The purpose rather than the form of a proposed limitation is the proper criterion by which its admissibility should be judged, and if its purpose appears to be a restriction of executive discretion to a degree that may be fairly termed a change of policy rather than a matter of administrative detail it is not in order.

Again in paragraph 1606 of the same volume, the following is found:

> Whenever a purported limitation makes unlawful that which before was lawful or makes lawful that which before was unlawful it changes existing law and is not in order on an appropriation bill.
>
> A proper limitation is negative and in the nature of a veto, and when it assumes affirmative form by direction to an executive in the discharge of his duties under existing law it

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17. 106 CONG. REC. 10053, 10054, 86th Cong. 2d Sess.

18. Paul J. Kilday (Tex.).

ceases to be a limitation and becomes legislation.

Section 408 in effect requires the Secretary to take affirmative action. To carry out the farm programs financed by CCC, the Secretary would have to appoint new Board members, recruited from private life, to replace the six Department officers other than himself who now serve on the Board. He would also have to recruit and appoint new personnel to serve as officers of the Corporation. This not only means the section constitutes legislation, but also means it is not entitled to the protection of the Holman rule, because it would not save the Government money. On the contrary, it would require hiring new employees at additional expense to the Government.

THE CHAIRMAN: Does the gentleman from Mississippi [Mr. Whitten] desire to be heard on the point of order?

MR. [JAMIE L.] WHITTEN: Mr. Chairman, the section clearly provides a limitation on the use of funds that are appropriated in this bill. It does not change the Commodity Credit Corporation charter. It does not change any basic law. It just simply limits what the money in this bill can be used for. It has been my experience and observation during the years here that the Chair has many times said that it is a negative limitation on the use of money and that it is clearly in order, and on that I rest the committee's position.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Georgia [Mr. Brown] makes a point of order against the language in section 408 of the bill on the ground that it constitutes legislation on an appropriation bill.

The Chair has had an opportunity to examine the precedents in this connection, including the precedents to which the gentleman from Georgia has referred and from which he has read. The Chair would also refer to paragraph 1694 of Cannon's Precedents, volume 7, the language being:

> While a limitation may not involve change of existing law or affirmatively restrict executive direction, it may properly effect a change of administrative policy and still be in order.

The Chair has examined additional precedents bearing on this question. The Chair is constrained to hold that section 408 is a restriction on a manner in which the funds can be used, and constitutes a negative limitation, and, therefore, overrules the point of order.

Parliamentarian's Note: There are other recent rulings in which the Chair has chosen to rely on 7 Cannon's Precedents § 1694 rather than on § 1691 in permitting limitations on use of funds. See 118 CONG. REC. 30749, 30750, 92d Cong. 2d Sess., Sept. 14, 1972; 120 CONG. REC. 20601, 20602, 93d Cong. 2d Sess., June 21, 1974; 120 CONG. REC. 34716, 93d Cong. 2d Sess., Oct. 9, 1974. The two rulings noted above, found at 7 Cannon's Precedents §§ 1691 and 1694, are discussed in more detail in § 5s1, supra.

Burden of Proof as to Whether Language "Changes Existing Law"

§ 64.23 The Chair strictly interprets the provisions of

Rule XXI clause 2 prohibiting amendments to general appropriation bills which change existing law; and if a proposed limitation on the use of funds goes beyond the traditionally permissible objects of a limitation, as for example restricting discretion in the timing of expenditure of funds rather than restricting their use for a specific object or purpose, the Chair is constrained to rule that the amendment is legislation failing a convincing argument by the proponent showing that the amendment does not change existing law.

On July 28, 1980,[19] the Committee of the Whole having under consideration the Department of Housing and Urban Development, and independent agencies appropriation bill (H.R. 7631), an amendment was offered and ruled upon as follows:

MR. [HERBERT E.] HARRIS [II, of Virginia): Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Harris: Page 45, after line 23, insert the following:

Sec. 413. No more than an amount equal to 20 percent of the total funds appropriated under this Act for any agency for any fiscal year and apportioned to such agency pursuant to section 3679 of the Revised Statutes of the United States (31 U.S.C. 665) may be obligated during the last two months of such fiscal year. . . .

THE CHAIRMAN:[20] Does the gentleman from Indiana (Mr. Myers) insist on his point of order?

MR. [JOHN T.] MYERS of Indiana: I do, Mr. Chairman.

Mr. Chairman, the gentleman has offered an amendment to limit the appropriations to a specific time; but I respectfully suggest that the fact the gentleman has added the words, "No more than" is still not, in fact, a limitation. . . .

Mr. Chairman, the fact that you are limiting here, not directing, but limiting the authority to the last 2 months how much may be spent takes away the discretionary authority of the Executive which might be needed in this case. It clearly is more than an administrative detail when you limit and you take away the right of the Executive to use the funds prudently, to take advantage of saving money for the Executive, which we all should be interested in, and I certainly am, too; but Mr. Chairman, rule 843 provides that you cannot take away that discretionary authority of the Executive.

This attempt in this amendment does take that discretionary authority to save money, to wisely allocate money prudently and it takes away, I think, authority that we rightfully should keep with the Executive, that you can accumulate funds and spend them in the last quarter if it is to the advantage of the taxpayer and the Executive. . . .

19. 126 CONG. REC. 19924, 19925, 96th Cong. 2d Sess.

20. Elliott H. Levitas (Ga.).

MR. HARRIS: . . . Mr. Chairman, let me first address the last point, probably because it is the weakest that the gentleman has made with respect to his point of order.

With respect to the discretion that we are in any way limiting the President, we cannot limit the discretion which we have not given the President directly through legislation. There is no discretion with regard to legislation that we have overtly legislated and given to the President.

Mr. Chairman, section 665(c)(3) of title 31 of the United States Code, which states the following:

> Any appropriation subject to apportionment shall be distributed as may be deemed appropriate by the officers designated in subsection (d) of this section to make apportionments and reapportionments.

Clearly grants agency budget officers the discretionary authority to apportion the funds in a manner they deem appropriate. My amendment would not interfere with this authority to apportion funds. On the contrary, my amendment reaffirms this section of the United States Code, as Deschler's Procedures, in the U.S. House of Representatives, chapter 26, section 1.8, states:

> The provision of the rule forbidding in any general appropriation bill a "provision changing existing law" is construed to mean the enactment of law where none exists, or a proposition for repeal of existing law. Existing law may be repeated verbatim in an appropriation bill, but the slightest change of the text causes it to be ruled out.

My amendment, Mr. Chairman, as the Chair will note, specifically restates by reference the existing law, which in no way gives discretion as to spending, but gives discretion as to apportionment.

Mr. Chairman, as the Chair knows, the budget execution cycle has many steps. Whereas the Chair's earlier ruling related to the executive branch authority to apportion, my amendment addresses the obligation rate of funds appropriated under the fact. As OMB circular No. A–34 (July 15, 1976) titled "Budget Execution" explains:

> Apportionment is a distribution made by OMB.
>
> Obligations are amounts of orders placed, contracts awarded, services received, and similar transactions.

Mr. Chairman, my amendment proposes some additional duties, but only a very minimal additional duty upon the executive branch.

Deschler's chapter 26, section 11.1 says:

> The application of any limitation on an appropriation bill places some minimal extra duties on Federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation. . . .

THE CHAIRMAN: . . . In the first instance, the Chair would observe that it is not the duty of the Chair or the authority of the Chair to rule on the wisdom or the legislative effect of amendments.

Second, the Chair will observe that the gentleman from Virginia, in the way in which his amendment has been drafted, satisfies the requirements of the Apportionment Act, which was the subject of a prior ruling of the Chair in connection with another piece of legislation.

The Chair agrees with the basic characterization made by the gentleman from Indiana that the precedents of the House relating to limitations on general appropriation bills stand for the proposition that a limitation to be in order must apply to a specific purpose, or object, or amount of appropriation. The doctrine of limitations on a general appropriation bill has emerged over the years from rulings of Chairmen of the Committee of the Whole, and is not stated in clause 2, rule XXI itself as an exception from the prohibition against inclusion of provisions which "change existing law." Thus the Chair must be guided by the most persuasive body of precedent made known to him in determining whether the amendment offered by the gentleman from Virginia (Mr. Harris) "changes existing law." Under the precedents in Deschler's Procedure, chapter 26, section 1.12, the proponent of an amendment has the burden of proving that the amendment does not change existing law.

The Chair feels that the basic question addressed by the point of order is as follows: Does the absence in the precedents of the House of any ruling holding in order an amendment which attempts to restrict not the purpose or object or amount of appropriation, but to limit the timing of the availability of funds within the period otherwise covered by the bill, require the Chair to conclude that such an amendment is not within the permissible class of amendments held in order as limitations? The precedents require the Chair to strictly interpret clause 2, rule XXI, and where language is susceptible to more than one interpretation, it is incumbent upon proponent of the language to show that it is not in violation of the rule (Deschler's chapter 25, section 6.3).

In essence, the Chair is reluctant, based upon arguments submitted to him, to expand the doctrine of limitations on general appropriation bills to permit negative restrictions on the use of funds which go beyond the amount, purpose, or object of an appropriation, and the Chair therefore and accordingly sustains the point of order.

Limiting Commingled Funds

§ 64.24 As long as a limitation on the use of funds in a general appropriation bill restricts the expenditure of federal funds carried in the bill without changing existing law, the limitation is in order, even if those federal funds are under the program in question commingled with nonfederal funds which would have to be accounted for separately in carrying out the limitation.

On Aug. 20, 1980,[1] the Chair ruled that an amendment to a general appropriation bill denying the use of funds therein to pay for an abortion, or administrative expenses in connection with any federal employees' health benefits plan which provides any benefits or coverage for abortions after the

1. 126 CONG. REC. 22171, 22172, 96th Cong. 2d Sess.

last day of contracts currently in force, did not constitute legislation, since the amendment did not directly interfere with executive discretion (in contracting to establish such plans). (It is permissible by limitation to negatively deny the availability of funds although discretionary authority may be indirectly curtailed and contracts may be left unsatisfied.) The proceedings are discussed in § 74.5, infra. See § 51, supra, for discussion of provisions affecting the discretionary authority of officials.

Limitation Resulting in Unsatisfied Contracts

§ 64.25 An appropriation may be withheld from a designated object by a negative limitation on the use of funds in a general appropriation bill, although contracts may be left unsatisfied thereby.

On July 10, 1975,[2] an amendment to a general appropriation bill prohibiting the use of Interstate Highway System funds in the bill by any state which permits the Interstate System to be used by vehicles in excess of certain sizes and weights but not interfering with contractual obligations entered into prior to enactment was held in order as a negative limitation on the use of funds in the bill which did not impose new duties on federal officials (who were already under an obligation to determine vehicle weights and widths in each state) and which did not directly change an allocation formula in existing law. The proceedings are discussed in detail in § 69.8, infra.

Limitation Interfering With Discretion

§ 64.26 A negative restriction on the availability of funds in a general appropriation bill may be a proper limitation, although it indirectly interferes with an executive official's discretionary authority by denying the use of funds, as long as it does not directly amend existing law and is merely descriptive of functions and findings already required to be undertaken by existing law.

On June 24, 1976,[3] it was held that, where existing law prohibited the implementation by any court, department, or agency of a plan to transport students to a school other than the school nearest or next nearest their homes

2. 121 CONG. REC. 22006, 22007, 94th Cong. 1st Sess.

3. 122 CONG. REC. 20408–10, 94th Cong. 2d Sess.

which offers the appropriate grade level and type of education for each student (thus requiring determinations of school proximity and curriculum to be made by federal officials), a paragraph in a general appropriation bill prohibiting the use of funds therein for the transportation of students to a school other than the school nearest their homes and offering the courses of study pursued by such students was in order as a negative limitation on the use of funds in that bill which did not directly amend existing law and which did not impose new determinations on federal officials which they were not already required by law to make. The proceedings were as indicated below:

The Clerk read as follows:

> Sec. 208. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, and which offers the courses of study pursued by such student, in order to comply with title VI of the Civil Rights Act of 1964. . . .

MR. [LOUIS] STOKES [of Ohio]: Mr. Chairman, I make the point of order that the language set forth in section 208 of this bill constitutes legislation in an appropriation bill, in clear violation of rule XXI, section 2. . . .

Under existing law, that is, section 215(a) of the Equal Educational Opportunity Act of 1974 (title II of P.L. 93–380, enacted August 21, 1974), the transportation of students as part of a school desegregation plan or effort under mandate of Federal authorities is permitted or authorized, but only within prescribed distances from a student's home.

Section 215(a) prescribes that:

> No court, department, or agency of the United States shall, pursuant to Section 214, order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

Mr. Chairman, this is the standard of existing law, governing the ordering of transportation of a student for purposes of school desegregation, that is, not beyond the school closest or next closest to his place of residence. . . .

On its face, section 208, the so-called Byrd amendment, changes existing law (section 215(a) cited above) in the following particulars:

First: Whereas existing law permits the transportation of a student to the closest or "next closest" school, section 208 restricts such transportation to the "nearest" school, only, thereby changing existing law;

Secondly: Whereas existing law is silent on the point, section 208 forbids student transportation "directly or indirectly" beyond the "closest" school, thereby creating new law on that point;

Third: Whereas existing law only forbids HEW's implementation of a school desegregation plan requiring transportation beyond the "next closest" school, section 208 forbids transportation be-

yond the "closest" school, plan or no plan, thereby changing existing law; and

Fourth: Whereas existing law prohibits transportation to a school other than one "which provides the appropriate grade level and type of education for such student", section 208 of this appropriation bill changes existing law by restricting such transportation to a school "which offers the courses of study pursued by such student", only. While section 208 would be in order if it merely repeated, verbatim, the provisions of existing law (that is, section 215(a) described above), it clearly differs from, goes beyond, and changes section 215(a) in the several ways that I have indicated.

That, Mr. Chairman, is a fatal defect, for subsection 842 of rule XXI declares existing law may be repeated verbatim in an appropriation bill (IV Hinds' precedents, 3814, 3815) but the slightest change of the text causes it to be ruled out (IV Hinds' precedents 3817; Cannon's precedents 1391, 1394; Cong. Record, June 4, 1970, p. 18405). . . .

Mr. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, very simply, and very clearly, and the legal minds will understand the terminology, this provision is in the form of a limitation, period. It is strictly limited to the funds appropriated in this bill. The clear intent here is to impose what is known as a negative prohibition—a negative prohibition—of the use of the funds contained in this bill. It would not under any circumstances impose any additional duties or any additional burdens on the executive branch other than those already required in the enforcement of existing law. . . .

THE CHAIRMAN:[4] May the Chair inquire of the chairman of the Appropriations Subcommittee with respect to whether or not the terms of section 208 would require additional determinations by the administrator. The Chair would ask the gentleman from Pennsylvania for his response as to whether the standard of an appropriate grade level and type of education for such students, which is stipulated in the Equal Educational Opportunity Act of 1974, is a different standard from that set forth in section 208 of the bill pending before us—that is, courses of study pursued by such student.

The question that the Chair is attempting to arrive at basically is whether or not the requirement of a determination with respect to courses of study pursued by such student would in any substantial way differ from the requirement in the statute of a determination of the appropriate grade level and type of education offered by the schools.

MR. FLOOD: No, Mr. Chairman, the direct answer is this does not require different standards. It is merely an expression in a different way. It is not a requirement of any different standards. It is an expression in a different way.

THE CHAIRMAN: The Chair thanks the gentleman from Pennsylvania. The Chair is prepared to rule.

The gentleman from Ohio (Mr. Stokes) makes the point of order against section 208 of the present bill and supports his point of order with a well documented brief and very persuasive verbal argument on the subject.

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4. James C. Wright, Jr. (Tex.).

Basically, three questions seem to be involved. The first question is whether or not section 208 repeals or changes existing law.

It seems to the Chair that that question is answered satisfactorily by the chairman of the subcommittee when he declares that it does not directly amend existing law, but rather imposes a negative restriction only with respect to moneys contained in this present appropriation bill and that it is written as a limitation upon funds in this bill.

The second question occurs, of course, as to whether or not it imposes additional duties upon a Federal official.

That divides itself into two basic subquestions in the opinion of the Chair.

The first is whether the requirement in section 208 referring only to the school nearest the student's residence requires an additional duty over and above that required under the Equal Education Opportunity Act of 1974. That law proscribes a court or department or agency from ordering the transportation of students to schools other than those either closest or next closest to their homes. The Chair believes that no additional duties would be imposed upon the Administrator by section 208 of the bill since the Administrator already is required under existing law to make determinations to ascertain the existence and location of the comparable schools nearest and next nearest to the students' homes. Therefore the Chair feels that the determination of the existence of the school nearest the student's home would not be an additional burden in that the law already compels the Administrator to make that finding.

The second subquestion involved is that of whether or not an additional burden would be imposed by reason of the reference under section 208 to "the courses of study pursued by such student" in the schools involved. And the Chair, relying primarily upon the information provided in response to its inquiry by the gentleman from Pennsylvania and relying upon his own impression as well believes that "the courses of study pursued by such student" are essentially the same tests as that required in the Equal Education Opportunity Act, the appropriate grade level and type of education.

Now only one other question was addressed, it seems to the Chair, and that was the question bearing upon a fairly well established rule to the effect that existing law may be repeated verbatim in an appropriation bill but the slightest change of the text causes it to be ruled out. The Chair does not believe that section 208 purports to be a statement of existing law. For each of these reasons, and based upon the precedent cited by the gentleman from Pennsylvania and recognizing that the committee could have refused to appropriate any funds for implementation of transportation plans, the Chair believes that section 208 is properly in order as a limitation on an appropriation bill and overrules the point of order.

Prohibiting Use of Funds to Enforce Particular Internal Revenue Service Ruling

§ 64.27 An amendment to a general appropriation bill

prohibiting the use of funds therein to carry out any ruling of the Internal Revenue Service which rules that taxpayers are not entitled to certain charitable deductions was held in order as a limitation, since the amendment was merely descriptive of an existing ruling already promulgated by that agency and did not require new determinations as to the applicability of the limitation to other categories of taxpayers.

On July 16, 1979,[5] during consideration in the Committee of the Whole of H.R. 4393 (Treasury Department, Postal Service, and general government appropriation bill), a point of order against an amendment was overruled, as follows:

> The Clerk read as follows:
>
> Amendment offered by Mr. [Robert K.] Dornan [of California]: Page 39, after line 18, add the following new section:
>
> Sec. 613. None of the funds available under this Act may be used to carry out any revenue ruling of the Internal Revenue Service which rules that a taxpayer is not entitled to a charitable deduction for general purpose contributions which are used for educational purposes by a religious organization which is an exempt organization as described in section 170(c)(2) of the Internal Revenue Code of 1954. . . .
>
> MR. [TOM] STEED [of Oklahoma]: Mr. Chairman, I want to insist upon my point of order.
>
> Regardless of the merit of the subject matter here, this obviously is not a limitation on an appropriation. It is evident by the author's own statement that many things will be involved if this amendment is adopted, that would be forced upon the agency, that are not otherwise involved. It is in direct violation of clause 2, rule XXI, because it does create legislative action.
>
> This is obviously a matter that only the legislative committee can cope with, and so because it is a violation of that rule I insist that the point of order be sustained. . . .
>
> MR. DORNAN: . . . I can assure the gentleman from Oklahoma (Mr. Steed) that I checked out this amendment with the Parliamentarian's Office, and I was told that the amendment was in order as a limitation on an appropriations bill. There is no additional burden imposed on Federal executive offices. IRS officials already perform the simple ministerial requirement of analyzing our tax returns. The amendment is negative in nature. It shows retrenchment on its face. It is germane. Nevertheless, for the benefit of the gentleman, if he desires, I will read some relevant excerpts from Cannon's Precedents which demonstrate that the amendment is in order. . . .
>
> [I]n section 1515:
>
> An amendment prohibiting payment of fees to officials under certain contingencies was held to retrench expenditures and to come within the exception to the rule against admis-

5. 125 CONG. REC. 18808–10, 96th Cong. 1st Sess.

sion of legislation on appropriation bills. . . .

Section 1491:

> If the obvious effect of an amendment is to reduce expenditures, it is not necessary that it provide for such reduction in definite terms and amount in order to come within the exception.

Section 1493, and I will conclude with this one—

> A cessation of Government activities was held to involve a retrenchment of expenditures. . . .

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, this amendment obviously adds a burden to the IRS to establish a different standard from that which would be applicable under existing law. If it did not, the amendment would be of no effect. What is attempted to be done here is to provide a different rule of law and impose that on the IRS by what is called a retrenchment in an appropriations bill. If this may be done in the name of retrenchment of expenditures, then any law of this Nation may be changed. Funds may not be permitted to go to any agency which makes a determination of an administrative sort unless that determination is different from that which the law would permit to apply under the circumstances. . . .

THE CHAIRMAN:[6] The Chair is prepared to rule on the point of order. The Chair is of the opinion that retrenchment precedents under the Holman rule, do not apply in this situation since no certain reduction in funds is involved. The Chair is of the opinion that there are no precedents directly in point and the Chair is not aware that the gentleman has sought the advice of the Chair's advisers on this particular amendment but on a somewhat similar amendment.

The Chair is of the opinion that what is involved in the amendment is a particular ruling which applied to a single case and that, therefore, no new determination has to be made by the IRS. It does not require the IRS to make new rulings or determinations. The amendment does not describe a situation where the IRS must look at every religious contribution to determine if it applies. The amendment is somewhat analogous to that in Deschler's [Procedure], chapter 25, section 10.16, which was held in order.

Therefore, the Chair thinks the amendment is in order, and the point of order is overruled.

Parliamentarian's Note: A different result might now be required under clause 5(b) of the present Rule XXI, which provides:[7]

> No bill or joint resolution carrying a tax or tariff measure shall be reported by any committee not having jurisdiction to report tax and tariff measures, nor shall an amendment in the House or proposed by the Senate carrying a tax or tariff measure be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A question of order on a tax or tariff measure in any such bill, joint resolution, or amendment thereto may be raised at any time.

6. Richardson Preyer (N.C.).

7. *House Rules and Manual* § 846b, 99th Cong. (1985).

In a ruling under this provision on Sept. 12, 1984,[8] a Senate amendment to a general appropriation bill prohibiting the use of funds in that or any other act by the Internal Revenue Service to impose or assess any tax due under a designated provision of the Internal Revenue Code was held to be a tax measure within the meaning of Rule XXI clause 5(b), as it had the effect of repealing a tax by rendering it uncollectable through the use of all funds available to the collecting agency. Of course, the amendment in question in the 1984 ruling was not a proper limitation. The extent to which any and all proper limitations on Internal Revenue Service funds are to be construed as tax or tariff measures under Rule XXI clause 5(b) is a matter to be spelled out in subsequent rulings. For example, on Aug. 1, 1986, during consideration of H.R. 5294 (Treasury Department and Postal Service appropriation bill for fiscal 1987), it was held that a proposed limitation on the use of funds may violate Rule XXI clause 5(b) where it is shown that the imposition of the restriction on Internal Revenue Service funding for the fiscal year would effectively and inevitably preclude the IRS from collecting revenues otherwise due and owing by law, or require collection of revenue not legally due or owing.

Restricting Use of Funds—to Carry Out Particular Regulation

§ 64.28 It is in order on a general appropriation bill to deny the use of funds to carry out an existing regulation, and the fact that the regulation for which funds are denied may have been promulgated pursuant to court order and pursuant to constitutional provisions is an argument on the merits of the amendment and does not render it legislative in nature.

On Aug. 19, 1980,[9] the Chair held that an amendment to a general appropriation bill denying the use of funds therein for the Internal Revenue Service to carry out certain published tax procedures did not impose new duties or determinations on the executive branch and did not constitute leg-

8. 130 CONG. REC. ——, 98th Cong. 2d Sess. Under consideration was H.R. 5798, Treasury Department and Postal Service appropriations for fiscal 1985.

9. 126 CONG. REC. 21981, 21983, 21984, 96th Cong. 2d Sess.

islation. The proceedings were as indicated below:

The Clerk read as follows:

> Amendment offered by Mr. [Robert K.] Dornan [of California]: Page 8, after line 22, insert the following new sections:
>
> Sec. 104. None of the funds appropriated by this title may be used to carry out the proposed revenue procedure 4830–01–M of the Internal Revenue Service entitled "Proposed Revenue Procedure on Private Tax-Exempt Schools" (44 F.R. 9451 through 9455, February 13, 1979, F.R. Document 79–4801), or the proposed revenue procedure 4830–01 of the Internal Revenue Service entitled "Proposed Revenue Procedure on Private Tax-Exempt Schools" (43 F.R. 37296 through 37298, August 22, 1978, F.R. Document 78–23515); or parts thereof. . . .

MR. [CHARLES B.] RANGEL [of New York]: Mr. Chairman, I join in a reservation of a point of order. . . .

Mr. Chairman, I think what we are doing is that we are attempting again to legislate on an appropriation bill. It is clear that the proponents of this type of amendment on previous occasions were saying that the IRS has attempted to legislate and to go beyond the scope that the Congress wanted to go and that they were waiting for a court to review the jurisdiction of the IRS to make certain that they would not be doing acts which this Congress has the responsibility to perform.

Now we find that the courts have responded, and they responded specifically not only to the proposed regulations but to the constitutional obligations that we not fund schools that involved themselves in racial discrimination; and certainly no Member of the House, including the proponents of this amendment, would support that. But they have specifically given guidelines. They have directed what the Commissioner of the Internal Revenue would have to do, and the Commissioner would indeed be guilty of contempt if he did not follow those court directions.

It would seem to me that that is one argument as to why my point of order should be sustained; but my second argument would be that certainly it would not be equal protection under the law if what the proponent of this amendment is really saying that if, indeed, a teaching institution found itself losing its tax exemption in Mississippi because of the Green case and then right across the Mississippi River we found a different standard that had been enacted by the IRS, I do not believe that this is what our constitutional fathers really thought was equal protection under the law. . . .

MR. DORNAN: . . . I refer again to Deschler's Procedure, chapter 25, section 10.16:

> § 10.16 To a paragraph of a general appropriation bill containing funds for expenses of the Internal Revenue Service, an amendment prohibiting the use of any funds in the bill for financing revenue rulings, letters, or advice not made available to the general public was held in order as a negative limitation which did not affirmatively impose new duties on that agency. 120 CONG. REC. 21029, 21030, 93d Cong. 2d Sess., June 25, 1974 [H.R. 15544].

Under section 10.18:

> § 10.18 While language in a general appropriation bill may not by its terms directly curtail a discretionary authority conferred by law, the Committee on Appropriations may, by re-

fusing to recommend funds for all or part of an authorized executive function, thereby effect a change in policy to the extent of its denial of availability of funds. 120 CONG. REC. 34716, 34717, 93d Cong. 2d Sess., Oct. 8, 1974 [H.R. 16901], where a section in a general appropriation bill prohibiting the use of any funds therein by the Environmental Protection Agency—

As a case example—

"to administer any program to tax, limit or otherwise regulate parking facilities" was held in order as a negative limitation on the use of funds in the bill.

Also, I think section 10.19 supports my amendment:

§ 10.19 It is in order on a general appropriation bill to provide that no part, or only a specified amount, of an appropriation shall be used in a certain way, even though executive discretion be thereby negatively restricted. 118 CONG. REC. 30749, 92d Cong. 2d Sess., Sept. 14, 1972 [H.R. 16593]—

They gave as an example:

where an amendment to a defense appropriation bill providing that not more than a certain amount of funds therein for alteration, overhaul, and repair of naval vessels shall be available for such work in Navy shipyards was held in order as a limitation on the use of funds in the bill. . . .

MR. [LOUIS] STOKES [of Ohio]: Mr. Chairman, the word "charitable" is used in its common law sense in the Internal Revenue Code. . . .

In the case of education, the . . . public policy of nondiscrimination in both public and private schools [is well established, being] derived from the 14th amendment to the Constitution and its application in the case of Brown versus Board of Education, subsequent judicial decisions and certain provisions of the Civil Rights Act of 1964. Thus, schools which follow discriminatory admission policies fail to qualify as charitable and, therefore, are not tax exempt.

Under the amendment proposed by the gentleman from California, Mr. Chairman, new duties are imposed upon the Internal Revenue Service. Obviously, we are then legislating upon an appropriations bill. . . .

Obviously, once again we are referring back to the previous law of 1978, while in the interim period we have now had new Federal judicial determinations relative to 501(C).

As the gentleman from New York (Mr. Rangel) made a very salient point, is the fact that you cannot have Internal Revenue in the posture where they must apply one set of rules and regulations to the State of Mississippi and another set of rules and regulations to the other 49 States.

Obviously, the amendment proposed by the gentleman would create confusion and also would impose new duties and regulations upon the Internal Revenue Service not previously imposed upon them, either by the law or their own regulations. . . .

THE CHAIRMAN PRO TEMPORE:[10] . . . [T]he Chair is prepared to rule.

In a similar instance on July 16, 1979, an amendment to this general appropriations bill last year prohibiting the use of funds therein to carry out any ruling of the Internal Revenue Service, which rules that taxpayers are

10. Richardson Preyer (N.C.).

not entitled to certain charitable deductions, was held in order as a limitation, since the amendment was merely descriptive of an existing ruling already promulgated by that agency and did not require a new determination as to the applicability of the limitation to other categories of taxpayers.

In essence, the wording of this amendment is similar to the wording of the amendment which was found in order. The Chair does not see any new duties in any way imposed by the amendment.

With reference to the court order issue, the language of the amendment does not in any way speak to the question of court orders or address the viability of court orders with regard to the agency's actions.

Lastly, with regard to the equal protection clause argument, although those may be constitutional arguments which go to the substance of the amendment, they do not go to the merits of the parliamentary argument.

Therefore, the point of order is overruled.

—*For Changing an Existing Regulation*

§ 64.29 While an agency may have authority to promulgate new regulations which would change existing regulations, it is in order in a general appropriation bill to deny the use of funds therein for agency proceedings relating to changes in regulations.

The ruling of the Chair on June 27, 1984,[11] was that language in a general appropriation bill prohibiting the use of funds therein to eliminate an existing legal requirement for sureties on customs bonds was in order as a valid limitation merely denying funds to change existing law and regulations. The point of order was as follows:

MR. [BILL] FRENZEL [of Minnesota]: Mr. Chairman, I make a point of order against section 513 on page 38.

The portion of the bill to which the point of order relates is as follows:

> Sec. 513. None of the funds made available by this Act for the Department of Treasury may be used for the purpose of eliminating any existing requirement for sureties on customs bonds. . . .

[This provision] violates rule XXI, clause 2. The section prohibits the use of funds for the continuation of customs rulemaking with respect to existing requirements for sureties on customs bonds.

The Customs Service has broad administrative authority to establish guidelines for posting bonds for the payment of customs duties.

The rulemaking process is now underway to determine whether existing requirements for sureties on customs bonds should be modified or replaced altogether.

Section 513 goes beyond the limitations of funds which are the subject of this appropriation and constitutes an effort to change existing law under the guise of a limitation. . . .

THE CHAIRMAN:[12] The Chair is ready to rule. . . .

11. 130 CONG. REC. ——, 98th Cong. 2d Sess.

12. Anthony C. Beilenson (Calif.).

The Chair would rule that in fact this section does constitute a proper limitation consistent with the existing law and overrules the gentleman's point of order.

New Duties Required to Invalidate Limitation

§ 64.30 While all limitations on funds on appropriation bills require federal officials to construe the language of that law in administering those funds, that duty of statutory construction, absent a further imposition of an affirmative direction not required by law, does not destroy the validity of the limitation.

On June 27, 1974,[13] an amendment restricting the use of funds in an appropriation bill for abortions or abortion referral services, abortifacient drugs or devices, and the promotion or encouragement of abortion, was held to be a negative limitation on funds in the bill imposing no new duties on federal officials other than to construe the language of the limitation in administering the funds. The proceedings are discussed in § 73.8, infra.

13. 120 CONG. REC. 21687, 93d Cong. 2d Sess.

§ 65. Imposing "Incidental" Duties

Duties Already Required by Law

§ 65.1 The fact that a limitation on the use of funds in a general appropriation bill will impose certain incidental burdens on executive officials will not destroy the character of the limitation so long as those duties—such as statistical comparisons and findings of residence and employment status—are already mandated by law.

On Aug. 25, 1976,[14] the Chair held that, where existing law authorizing public works employment programs required a federal official to consider the severity and duration of unemployment in project areas and to make grants to local governments to be administered for the direct benefit and employment of unemployed residents of the affected community, language in a general appropriation bill prohibiting the use of funds therein where less than a certain percentage of the prospec-

14. 122 CONG. REC. 27737–39, 94th Cong. 2d Sess. See also § 52, supra, for general discussion of provisions imposing new duties on executive officials. And see § 73.8, infra.

tive employees had resided in the area and had been unemployed for a stated length of time was in order as a limitation which did not impose upon federal officials any substantially new duties not already required by existing law. The proceedings were as indicated below:

The Clerk read as follows:

> For expenses necessary to carry out title I of the Public Works Employment Act of 1976 (Public Law 94–369), $2,000,000,000: *Provided*, That not to exceed $10,000,000 may be used for necessary administrative expenses, including expenses for program evaluation by the Secretary of Commerce: *Provided further*, None of the funds appropriated under this Chapter shall be available for any project where less than ten percent of the personnel to be employed on the project have currently resided for at least thirty days in the area used in determining project eligibility under Section 108(e) of Public Law 94–369 and have been currently unemployed for at least thirty days.

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Chairman, I make a point of order against the language included in the proviso which begins on page 2, line 11, and includes line 17, page 2. . . .

Quite obviously, Mr. Chairman, this language is legislation, in that it imposes requirements not present in the authorizing legislation and not present in existing law. It imposes duties or determinations upon the administrator who would be required to investigate, quite obviously, all of the personnel to be employed on various projects and to make determinations as to where they reside and how long they have there resided and, in addition, to make determinations as to which of them have been currently unemployed for at least 30 days.

Now, that does indeed impose a new burden and a new determination and a new duty upon the Administrator.

Citing Deschler's Procedures in the U.S. House of Representatives, chapter 26, section 11, I quote the following:

> When an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make investigation, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order.

It should not be necessary for me to recite any lengthy number of precedents since they abound. May I offer only two. In the 1st session of the 91st Congress, on July 31, 1969, the Chair ruled that an amendment to an education appropriation bill including the words, "in order to overcome racial imbalance," would be legislation on an appropriation bill because it would impose additional duties and determinations on school officials.

On another occasion, during the second session of the 89th Congress, on October 4, 1966, it was held by the Chair that a general appropriation bill providing funds for Federal highways constituted legislation if it included a provision specifying that "No funds shall be used for any highway . . . which requires either unjustified or harmful nonconforming use of land."

In both of those cases, as well as in numerous other cases, it has been uni-

formly held by the Chair that any provision in an appropriation bill which imposes additional determinations and requirements upon an administrator to make investigations or compile evidence or make judgments and determinations not otherwise required by law is legislation and, therefore, is subject to a point of order. . . .

MR. [ELFORD A.] CEDERBERG [of Michigan]: Mr. Chairman, [the proviso] is a limitation on funds in the bill, and it is restricted only to funds in the bill. It is consistent with but does not change existing law. The application of the limitation requires only information which it is the intention of the Department of Commerce to obtain under the rules and regulations required by existing law.

. . . Public Law 94–369, the Public Works Employment Act of 1976, provides in section 107—and I will read only part of the section—as follows:

> The Secretary shall consider among other factors (1) the severity and duration of unemployment in proposed project areas, (2) the income levels and extent of underemployment in proposed project areas. . . .

Then section 108(e) of the act . . . [requires] the Department of Commerce to issue rules and regulations and also [requires] that any grant made to a local government based upon the unemployment rate of a community or neighborhood within its jurisdiction . . . be for a project of direct benefit to, or provide employment for, unemployed persons who are residents of that community or neighborhood.

The law was enacted on July 22, 1976. The Department of Commerce on August 23, 1976, in accordance with the act, released the required regulations; and I have copies of them here. . . .

The official guidelines provide [in part]:

> The applicant's intent to hire the unemployed of a specific area must be considered. . . .

[And]

> The project must definitely benefit or provide employment for unemployed persons within that neighborhood or community. . . .

Mr. Chairman, the limitation does not require any significant new duty, but is based on information and findings provided for in the authorization or anticipated in the regulations issued under the authorization. Such limitations have been found in order. . . .

I would also like to point out, Mr. Chairman, that the burden of certification . . . would rest on the contractors. It is the contractors who will certify that they will obtain information from applicants on their residence and employment. . . .

MR. WRIGHT: . . . I want to say two basic things which I think are pertinent to this question.

The first is that it is wholly inappropriate to rely upon so-called official guidelines promulgated by an administrative agency to support a contention that language in an appropriation bill does not place obligations upon the administrator which are not required by law. The question is whether it imposes additional obligations upon that administrator which are not required by existing law.

If this Congress ever should reach the point of declaring that some administrative guideline published in the

Federal Register and lying there for 30 days constitutes law, then we shall have abrogated our most basic responsibilities. . . .

The gentleman from Michigan (Mr. Cederberg) quoted from a portion of section 107 of the act in an effort to demonstrate that the act itself requires these same determinations and findings that the language in the appropriation bill would require. There is a very significant difference between what the act requires and what this proviso included in the appropriation bill would require.

I call the attention of the chairman to the very language which was cited by the gentleman from Michigan:

> The Secretary shall consider among other factors (1) the severity and duration of unemployment in proposed project areas, (2) the income levels and extent of underemployment in proposed project areas, and (3) the extent to which proposed projects will contribute to the reduction of unemployment.

In other words, the requirements imposed by the law upon the Secretary are very easily satisfied by statistical data available through the Bureau of Labor Statistics with respect to unemployment in specific areas geographically denominated within the country.

Beyond that, however, the language which was proposed as an exclusion in the appropriation bill would go much further than ask the administrator to determine statistics with respect to general areas. . . .

It would expand the requirement of the determination from a determination with respect to statistics applying to geographical areas, to make this determination include individual employees proposed to be employed on the project. And that is an enormous expansion. . . .

THE CHAIRMAN:[15] The Chair is prepared to rule.

The question, of course, is whether or not this limitation, or so-called limitation, imposes substantial new duties on an official of the executive branch. That question has been the subject of more points of order on appropriation bills than perhaps any other, or at least as many as any other. It is very difficult to make that determination in circumstances like the present one, because, for instance, as the gentleman from Michigan cited in Deschler's Procedure, chapter 25, section 10.7:

> It is not in order in an appropriation bill to insert by way of amendment a proposition which places additional duties on an executive officer; but the mere requirement that the executive officer be the recipient of information is not considered as imposing upon him any additional burdens and is in order. . . .

The Chair is also aware of the rulings involving certain limitations on appropriations for food stamps. Those amendments involved the issue of whether or not the household's need for food stamps was a result of the fact that a breadwinner within the household was unemployed because he was engaged in a concerted work stoppage in a strike and imposed certain incidental duties on the executive branch to make the necessary determinations. In those cases the language was held to be a valid limitation upon the appropriation.

In regard to the language now before the chairman for decision, the Sec-

15. James G. O'Hara (Mich.).

retary is required in the administration of the bill to make a determination that not less than 10 percent of the personnel to be employed on the project have been currently for at least 30 days in the area, and have been currently unemployed for at least 30 days.

The Chair notes that the basic law does impose rather substantial requirements in the sense that it requires, first, that the Secretary consider among other matters the three factors listed in section 107 that were mentioned by the gentleman from Texas as statistical factors. The Chair agrees they are statistical factors. He notes as well, though, that the gentleman from Michigan has brought up the provisions of section 108(e) which go somewhat further than that, and they require that any grant made to a local government based upon the unemployment rate of a community or neighborhood within its jurisdiction must be for a project of direct benefit to, or provide employment for, unemployed persons who are residents of that community or neighborhood.

So the law already imposes some substantial duties and determinations similar to those which would be required by the proposed limitation in this proviso. The Chair therefore would hold that the particular proviso under consideration is one that does impose a valid limitation upon the use of an appropriation and that the duties imposed upon the Administrator are purely incidental and do not impose any substantial new duties on the administrator. Therefore the Chair overrules the point of order.

§ 66. Exceptions From Limitations

Proviso Construing Terms as "Exception"

§ 66.1 Where a limitation in an amendment to an appropriation bill prohibited certain payments to persons in "excess of . . . $500," a further provision stating that such limitation would not be "construed to deprive any share renter of payments" to which he might be otherwise entitled was held to be in order as an exception to a limitation.

On Mar. 24, 1944,[16] during consideration of the Department of Agriculture appropriation bill for 1945 (H.R. 4443), the following proceedings occurred:

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Rees of Kansas: On page 62, line 5, after the colon following the word "inclusive", insert the following: "*Provided further,* That no payment or payments hereunder to any one person or corporation shall be in excess of the total sum of $500: *And provided further,* That this limitation shall not be construed to deprive any share renter of payments not exceeding the amount to which he would otherwise be entitled."

16. 90 CONG. REC. 3095, 78th Cong. 2d Sess.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I make a point of order against the amendment because of the inclusion of the second proviso therein, which, in my judgment, constitutes legislation upon an appropriation bill. It is in effect a construction of the preceding proviso, and which legislatively provides that the preceding proviso in the case of tenants shall not be taken at its face value but that a different rule shall be applicable to them. Because that provision is included, I think the entire amendment is subject to a point of order because of its being legislative in character. . . .

. . . [I]t is my opinion, having heard the amendment read, although I have not had the opportunity to examine it carefully, that the second proviso does not constitute merely an exception to the limitation made in the first proviso, but it is legislative in character and constitutes a legislative construction of the language contained in the first proviso and is, therefore, clearly in itself legislation. I know no reason why the gentleman from Kansas should not offer or be permitted to offer the first proviso. But I think the second proviso which reads, *"And provided further,* That this limitation shall not be construed to deprive any share renter of payments not exceeding the amount to which he would otherwise be entitled," is clearly a legislative construction of the preceding proviso and, therefore, in itself constitutes legislation.

THE CHAIRMAN:[17] Does the gentleman from Kansas desire to be heard further?

MR. REES OF KANSAS: Just one point. Let me observe that the so-called limitation is a limitation only on the first proviso of the amendment and does not constitute legislation on the bill.

THE CHAIRMAN: The Chair is ready to rule. The Chair is of the opinion that the second proviso constitutes an exception to the provisions of the amendment as contained in the first proviso. The Chair overrules the point of order.

Excepting Project From Dollar Limit Otherwise Applicable

§ 66.2 A provision in the general appropriation bill, 1951, providing that no part of the appropriation shall be used for beginning construction of any building costing in excess of $15,000, except that a poultry breeding house may be constructed at Purdue University at a cost of not to exceed $29,000, was held to be a valid exception from a proper limitation and in order inasmuch as the authorization for such projects contained no ceiling on such expenditures and the exception was not construed as separate construction authority.

On Apr. 27, 1950,[18] the Committee of the Whole was considering H.R. 7786. A point of order

17. William M. Whittington (Miss.).

18. 96 CONG. REC. 5910, 5911, 81st Cong. 2d Sess.

against a provision in the bill was overruled as follows:

Mr. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make a point of order against the language appearing in lines 15 to 17 on page 157, reading "Except that a poultry breeding house may be constructed at Purdue University," on the ground that it is legislation in an appropriation bill.

THE CHAIRMAN:[19] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [JAMIE L.] WHITTEN [of Mississippi]: Yes, Mr. Chairman. Mr. Chairman, I wish to call attention to the fact that under the Research and Marketing Act, section 7–A, 7 United States Code 427(h), the Department of Agriculture is authorized to construct agricultural buildings without limitation on the amounts. This committee has put restrictions heretofore on these amounts, fixing the individual amount at $15,000 per unit. We carry that provision with the exception that in this instance we let them go above it.

It traces back to the legislative authorization in the Research and Marketing Act under which they have authority to build such houses without any limitation.

In effect this is a limitation.

The authorization reads as follows:

> The money appropriated in pursuance of this title shall also be available for the purchase or rental of land and the construction and acquisition of buildings necessary for conducting research provided for in this title.

In effect this is a limitation fixing the amount they may spend for this purpose.

THE CHAIRMAN: . . . The Chair has examined the provisions of existing law cited by the gentleman from Mississippi and invites attention to the fact that the first part of this paragraph appears clearly to be a limitation and the latter part of the paragraph appears to be an exception to the limitation for a purpose authorized by law.

The Chair, therefore, overrules the point of order.

Duties Involved in Applying Limitation Already Required by Law

§ 66.3 It is in order as an exception from a limitation in a general appropriation bill to include language precisely descriptive of authority provided in law so long as the exception only requires determinations already required by law and does not impose new duties on federal officials.

On Aug. 3, 1978,[20] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 12931), a point of order was raised against the following amendment:

The Clerk read as follows:

> Amendment offered by Mr. [Tom] Harkin [of Iowa]: Page 11, strike out the period on line 17 and insert in

19. Jere Cooper (Tenn.).

20. 124 CONG. REC. 24249, 24250, 95th Cong. 2d Sess.

lieu thereof ", except that funds appropriated or made available pursuant to this Act for assistance under part I of the Foreign Assistance Act of 1961 (other than funds for the Economic Support Fund or peacekeeping operations) may be provided to any country named in this section (except the Socialist Republic of Vietnam) in accordance with the requirements of section 116 of the Foreign Assistance Act of 1961.". . .

MR. [CLARENCE D.] LONG OF Maryland: Mr. Chairman, I do make a point of order against the Harkin amendment. . . .

The gentleman's amendment clearly would place substantial additional new duties on officers of the Government. Mr. Chairman, in chapter 26, section 11.1, of "Deschler's Procedures," the following is stated:

> But when an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order.

Mr. Chairman, the gentleman's amendment intends that aid should be provided to certain countries if such assistance will directly benefit the needy people in such countries. Several legislative provisions currently exist that presently provide for such determinations, but these provisions do not apply to all the funds appropriated in this bill.

In addition, the gentleman's amendment would require officials to make judgments and determinations that they are not required to make at the present time. We presently have no AID programs or AID missions in any of these countries. In two of the countries we do not have diplomatic relations, Vietnam and Cambodia. In one country we have no U.S. Government representative, and that country is Uganda. The gentleman's amendment would not only allow direct assistance to flow to these countries, which is not now possible, but also would require some U.S. Government official to determine if the assistance is reaching the needy. This would require a U.S. Government official to travel to these countries to make an onsite inspection since there are no AID missions in any of these countries and no U.S. Government representation present in three of the countries. The gentleman's amendment definitely places substantial additional duties on U.S. Government officials.

Also current law prohibits any direct assistance to Vietnam, Laos, Cambodia, Uganda, Mozambique, or Angola. The gentleman's amendment would allow direct assistance to flow to these countries if the assistance would benefit the needy people. This in effect changes the existing law. The amendment is legislative in nature and in violation of clause 2, rule XXI. . . .

MR. HARKIN: Mr. Chairman, by the fact that I have included section 116 of the Foreign Assistance Act of 1961, by that very inclusion those four countries so named and listed are then put in the category of being gross violators of human rights, and because of the inclusion, then, of section 116, which I have laid out in my amendment, there are no new duties imposed in my amendment—only the requirements of existing law. . . .

MR. LONG OF MARYLAND: I would simply say that we do not have missions in these countries, and the duties that would be required, to find out whether needy people would get the money, would require us to send people there. That clearly imposes duties on the Government which are not implied in the current legislation.

THE CHAIRMAN:[1] The Chair is ready to rule.

According to the amendment, the only funds that the amendment refers to are funds provided for in the bill, and the only exception would be to the Socialist Republic of Vietnam; but funds are to be provided in accordance with the requirements of law and the law cited is, on its face, applicable to the countries covered by the amendment; so the Chair does not see that there are any new duties imposed on anyone by the amendment. Therefore, the Chair respectfully overrules the point of order.

Statement of Purpose Should Not Accompany

§ Sec. 66.4 A limitation on the use of funds in a general appropriation bill, or an exception therefrom, may not be accompanied by language stating a motive or purpose in carrying out the limition or exception.

On Aug. 8, 1978,[2] the Committee of the Whole had under consideration the Defense Department appropriation bill (H.R. 13635), when a point of order was sustained against a provision in the bill as indicated below:

The Clerk read as follows:

Sec. 860. None of the funds appropriated by this Act shall be available for the pay of a prevailing rate employee, as defined in paragraph (A) of section 5342(a)(2) of title 5, United States Code, at a rate that is greater than 104 percent of the rate of pay payable to an employee in the second step of the grade of the regular, supervisory, or special wage schedule, in which the prevailing rate employee is serving: *Provided*, That to assure that this limitation does not (1) reduce the rate of pay of a prevailing rate employee, continuously employed after September 30, 1978, as set forth hereafter, below the rate of pay for that employee in effect on September 30, 1978, or (2) prevent such employee from receiving the first 5.5 percent increase in rate of pay as the result of any adjustments in pay pursuant to section 5343 of title 5, United States Code, that become effective on or after October 1, 1978, the pay of a prevailing rate employee who was employed before October 1, 1978, shall not be reduced by this limitation (1) below that to which the employee was entitled based on his or her rate of pay on September 30, 1978, or (2) after a pay adjustment pursuant to section 5343 effective during fiscal year 1979, below 105.5 percent of that to which the employee would be entitled based on his or her rate of pay on September 30, 1978, if the employee—

(A) continues to be employed after October 1, 1978, without a break in service of one work day or more; and

(B) is not demoted or reassigned for personal cause, or at his or her request.

1. Abraham Kazen, Jr. (Tex.).
2. 124 CONG. REC. 24969, 24970, 95th Cong. 2d Sess.

MR. [RICHARD C.] WHITE [of Texas]: Mr. Chairman, I raise a point of order to section 860, that the provisions of this section constitute legislation in an appropriation bill in violation of rule XXI, clause 2 of the rules and regulations of the House of Representatives.

In support, I cite Deschler's Procedures, page 367, section 1.2, in which it states:

> Language in an appropriation bill changing existing law is legislation and not in order.

And Cannon's Precedents, section 704, which states that the language controlling executive discretion is legislation and is not in order on an appropriation bill.

I believe that section 860 enacted into law can be construed as requiring lower payment of salaries than may be required by law, specifically Public Law 93–952, and thus it changes existing law. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the object of the provision is to limit expenditures and retrench programs and expenditures, it is a limitation on an appropriation bill, which is designed to save tremendous sums of money over the long run.

THE CHAIRMAN:[3] The Chair is ready to rule.

The first part of the section seems to be a proper limitation, however the proviso placed on line 3, page 57, certainly is a legislative statement of purpose and not merely an exception from the limitation.

The Chair sustains the point of order against the entire section.

3. Daniel D. Rostenkowski (Ill.).

Additional Duties and Determinations Not Required by Existing Law

§ 66.5 To a proviso in a general appropriation bill denying the use of funds to pay price differentials on contracts made for the purpose of relieving economic dislocations, an amendment exempting from that prohibition contracts determined by the Secretary of the Army pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations was ruled out as legislation imposing new duties on the Secretary, absent any showing of existing provisions of law requiring such a determination to be made.

On Sept. 16, 1980,[4] during consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 8105), a point of order against an amendment was sustained as follows:

> . . . No funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations: *Provided further,*

4. 126 CONG. REC. 25606, 25607, 96th Cong. 2d Sess.

That none of the funds appropriated in this Act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

The Clerk read as follows:

> Amendment offered by Mr. [Joseph P.] Addabbo [of New York]: Page 41, line 23, strike out "*Provided further,*" and all that follows through "economic dislocations:" on page 42, line 1, and insert in lieu thereof "Provided further, That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations other than contracts made by the Defense Logistics Agency and such other contracts of the Department of Defense as may be determined by the Secretary of Defense pursuant to existing law and regulations as not to be inappropriate therefor by reason of national security considerations:". . . .

MR. [JACK] EDWARDS of Alabama: Mr. Chairman, I make a point of order against the amendment as legislation in a general appropriation bill, and therefore in violation of clause 2 of rule XXI.

I respectfully direct the attention of the Chair to Deschler's Procedure, chapter 25, section 11.2 which states:

> It is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by an executive official which he is not otherwise required by law to make.

I also respectfully direct the attention of the Chair to section 843 of the House Manual, which states in part:

> The fact that a limitation on the use of funds may . . . impose certain incidental burdens on executive officials does not destroy the character of the limitation as long as it does not directly amend existing law and is descriptive of functions and findings already required to be undertaken under existing law. . . .

Mr. Chairman, the amendment prohibits the payment of price differentials on contracts except—and I quote:

> As may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations.

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense which is not now required under the current law. Although the determination is limited "pursuant to existing laws and regulations," there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law and require this new determination. . . .

THE CHAIRMAN:[5] The Chair is ready to rule.

The amendment would appear to call for a determination by the Secretary of Defense as to appropriateness by reason of national security considerations. Unless the gentleman from New York (Mr. Addabbo) can cite to the Chair those provisions of existing law requiring such determinations with respect to defense contracts, the Chair must conclude that the amendment would impose new duties upon the Secretary and would constitute legislation.

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5. Daniel D. Rostenkowski (Ill.).

Responsibilities Already Required in Broad Terms

§ 66.6 An exception from a limitation on the use of funds in a general appropriation bill, stating that the limitation does not prohibit use of funds for designated federal activities which were already required by law in more general terms, was held in order as not containing new legislation.

In proceedings on June 27, 1979,[6] an amendment denying the use of funds for state plan monitoring visits by the Occupational Safety and Health Administration where the workplace has been inspected by a state agency within six months, but also providing that the limitation would not preclude the federal official from conducting a monitoring visit at the time of the state inspection, to investigate complaints about state procedures, or as part of a special study program, or to investigate a catastrophe, was held not to require new determinations by federal officials, where existing law directed state agencies to inform federal officials of all their activities under state plans.

MRS. [BEVERLY B.] BYRON [of Maryland]: Mr. Chairman, I offer an amendment.

(The portion of the bill to which the amendment relates is as follows:)

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Occupational Safety and Health Administration, $181,520,000: *Provided,* That none of the funds appropriated under this paragraph shall be obligated or expended for the assessment of civil penalties issued for first instance violations of any standard, rule, or regulation promulgated under the Occupational Safety and Health Act of 1970 (other than serious, willful, or repeated violations under section 17 of the Act) resulting from the inspection of any establishment or workplace subject to the Act, unless such establishment or workplace is cited, on the basis of such inspection, for 10 or more violations: . . . *Provided further,* That none of the funds appropriated under this paragraph shall be obligated or expended for the proposal or assessment of any civil penalties for the violation or alleged violation by an employer of 10 or fewer employees of any standard, rule, regulation, or order promulgated under the Occupational Safety and Health Act of 1970 (other than serious, willful or repeated violations and violations which pose imminent danger under section 13 of the Act) if, prior to the inspection which gives rise to the alleged violation, the employer cited has (1) voluntarily requested consultation under a program operated pursuant to section 7(c)(1) or section 18 of the Occupational Safety and Health Act of 1970 or from a private consultative source approved by the Administration and (2) had the consultant examine the condition cited and (3) made or is in the process of making a reasonable good faith effort to eliminate the hazard created

6. 125 CONG. REC. 17033–35, 96th Cong. 1st Sess.

by the condition cited as such, which was identified by the aforementioned consultant, unless changing circumstances or workplace conditions render inapplicable the advice obtained from such consultants.

The Clerk read as follows:

Amendment offered by Mrs. Byron: Page 10, line 20, after the period, insert the following: "None of the funds appropriated under this paragraph may be obligated or expended for any state plan monitoring visit by the Secretary of Labor under section 18 of the Occupational Safety and Health Act of 1970, of any factory, plant, establishment, construction site, or other area, workplace or environment where such a workplace or environment has been inspected by an employee of a State acting pursuant to section 18 of such Act within the 6 months preceding such inspection, provided that this limitation does not prohibit the Secretary of Labor from conducting such monitoring visit at the time and place of an inspection by an employer of a State acting pursuant to section 18 of such Act, or in order to investigate a complaint about state program administration, a discrimination complaint under section 11(c) of such Act, or as part of a special study monitoring program, or to investigate a fatality or catastrophe.". . .

MR. [WILLIAM D.] FORD of Michigan: . . . I make the point of order that this amendment constitutes legislation in an appropriations bill in violation of rule XXI, clause 2, in that it imposes additional duties upon the executive to the extent that OSHA would be required to determine whether or not an employer had been inspected by a third inspector within the previous 6 months. The law does not now require OSHA to do this. This would clearly pose additional duties and goes beyond the simple limitation.

As a matter of fact, Mr. Chairman, if you look at the language of the authorization funded under this section of the appropriations bill the chairman will determine the extent to which the States participate as enforcers of the Federal OSHA regulations. This now would have a Federal official presumably trying to monitor the activities of State inspectors who are not, in fact, OSHA inspectors. This is a very unusual result because we do not now impose that duty in any way upon the OSHA inspectors. . . .

MRS. BYRON: . . . It is my understanding that the State has the opportunity when they are investigating, they are then monitored by the Federal. This would then notify the Federal of where a State inspection was taken care of; therefore, the Federal would be following along after the State inspection. It would, therefore, not be new legislation in an appropriations bill. . . .

THE CHAIRMAN:[7] The Chair has read the statute entitled 29 and would like to propound an inquiry to the gentleman from Michigan, on part of his point of order.

The statute in subparagraph (f) states that the Secretary, meaning the Secretary of Labor—

> shall, on the basis of reports submitted by the State agency and its own inspections, make a continuing evaluation of the matter in which each State having a plan approved under this section is carrying out such plan.

Does that pertain to how frequently the plan must be reviewed?

MR. FORD of Michigan: Mr. Chairman, the amendment attempts to uti-

7. Don Fuqua (Fla.).

lize that language by talking about an attempt not to interfere with the power of the Secretary to conduct monitoring visits, but the fact is that the Secretary is required to determine, in order to determine whether or not they have jurisdiction to conduct a safety inspection, whether a State inspection had been conducted within the previous 6 months. The amendment does not even define what State inspection might be. It is not clear from reading the amendment without further explanation, whether that means an inspection is confined to OSHA or some overlapping State regulation. . . .

THE CHAIRMAN: The Chair is prepared to rule.

It appears that the interpretation that is being given by the gentleman from Michigan in his point of order is a personal interpretation and does not appear to be in the statutes.

The amendment of the gentlewoman states "no funds appropriated under this paragraph," and it appears to be a limitation on the expenditures of funds under certain conditions suggesting evaluations already imposed in broad terms upon Federal officials by existing law, and, therefore, does not provide any additional responsibilities that are not presently contained in existing statutes.

The Chair therefore rules against the point of order.

Exception to Limitation Not Adding Legislation

§ 66.7 An exception from a limitation or from a legislative amendment retrenching expenditures which does not add legislation to a general appropriation bill is in order.

On July 30, 1980,[8] during consideration in the Committee of the Whole of the Department of Agriculture appropriation bill (H.R. 7591), a point of order against an amendment was not sustained, as indicated below:

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Whitten to the amendment offered by Mr. [Herbert E.] Harris [of Virginia]: Strike [out the] period and add: ", except that this limitation shall not apply to emergency or disaster programs of the Farmers Home Administration and the Agricultural Stabilization and Conservation Service and programs for the control of infectious or contagious diseases of humans and animals carried out by the Food and Drug Administration and the Animal and Plant Health Inspection Service.".

MR. HARRIS: Mr. Chairman, I would like to make a point of order on that amendment. . . .

I feel the amendment is clearly legislation on an appropriation bill and does in fact do violence to my amendment. . . .

MR. WHITTEN: . . . Deschler's Procedure, chapter 25, section 9.7 [states]:

> An exception to a valid limitation in a general appropriation bill is in order, providing the exception does not add language legislative in effect.

8. 126 CONG. REC. 20503, 96th Cong. 2d Sess.

I do not consider that this adds legislative language to the amendment. It is an exception to the limiting provision as offered. I respectfully submit that it is in order and should be considered.

THE CHAIRMAN:[9] The Chair is ready to rule.

An exception to a limitation or a retrenchment which does not add legislation is clearly in order under the precedents, and the point of order is not sustained.

§ 66.8 An exception to a limitation on the use of funds in a general appropriation bill is in order if it does not impose new duties or determinations on the executive branch.

On July 13, 1979,[10] it was held that, to an amendment retrenching expenditures in a general appropriation bill by reducing amounts therein and prohibiting their availability to particular recipients, an amendment lessening the amount of the reduction and also providing an exception from the limitation may be in order as a perfection of the retrenchment if funds contained in the bill remain reduced thereby. The proceedings are discussed in § 4.8, supra.

§ 66.9 To an amendment to a general appropriation bill prohibiting the use of funds therein to enforce any embargo on the export of agricultural commodities, an amendment excepting from that prohibition any subsequently imposed Presidential embargo based solely upon a determination that the export would be detrimental to U.S. foreign policy or national security was held in order as a valid exception from a limitation which did not impose new duties but which merely repeated responsibilities already required by law.

On July 23, 1980,[11] during consideration in the Committee of the Whole of H.R. 7584 (Departments of State, Justice, Commerce, and the Judiciary appropriation bill), the following amendment was held in order:

The Clerk read as follows:

Amendment offered by Mr. [E. Thomas] Coleman [of Missouri] to the amendment offered by Mr. [Mark] Andrews of North Dakota:[12]

9. James C. Corman (Calif.).

10. 125 CONG. REC. 18456, 18457, 96th Cong. 1st Sess.

11. 126 CONG. REC. 19295, 96th Cong. 2d Sess.

12. The Andrews amendment provided: "None of the funds appropriated by this Act may be used to carry out or enforce any restriction on the export of any agricultural commodity." See 126 CONG. REC. 19087, 96th Cong. 2d Sess., July 22, 1980.

After the word "commodity" in the last line insert: "unless on or subsequent to October 1, 1980, the President imposes a restriction on the export of any such commodity solely on the basis that such export would prove detrimental to the foreign policy or national security of the United States". . . .

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I make a point of order against the amendment in that it exceeds the limitation and imposes additional duties upon the President of the United States. . . .

MR. COLEMAN: . . . Mr. Chairman, the point of order is not well taken because my amendment does not establish any new additional duties. It simply says that if the President of the United States subsequent to October 1, 1980, imposes an embargo then none of these funds shall be used to fund that embargo. It imposes absolutely no new duties. It simply states that if the President on his own takes some action, that none of these funds shall be used to support that action. . . .

THE CHAIRMAN:[13] The Chair is prepared to rule.

The gentleman from Massachusetts (Mr. Conte) makes a point of order against the amendment of the gentleman from Missouri (Mr. Coleman) on the grounds that it imposes an additional duty, and constitutes legislation on an appropriation bill. Ordinarily, such Presidential determination language on an appropriation bill would constitute legislation, but the amendment only repeats verbatim the determination authority contained in the section of existing law (section 4(c) of the Export Administration Act of 1979) which has been called to the Chair's attention.

Therefore, the amendment does not constitute new legislation in any way discernible to the Chair.

Parliamentarian's Note: Ensuing debate on the Coleman amendment by Mr. Thomas S. Foley, of Washington, and Mr. Jonathan B. Bingham, of New York, suggested that section 7 of the Export Administration Act, relating to domestic short supply of agricultural products, imposed a different standard from section 4(c) relied upon by the Chair and that the use of the term "solely" therefore infringed upon the Secretary's discretionary authority under section 7. A reading of subsection 7(g) suggests that the same standard is applied in permitting the President and Secretary of Agriculture to issue export licenses of agricultural commodities not in short supply, but that under subsection 7(a), with regard to agricultural commodities which are in short domestic supply, the President may curtail export of such commodities regardless of whether such policy is in the best security or foreign policy interest of the United States.

Effect of Limitation Where Funds for Agency Are Eliminated From Bill

§ 66.10 A paragraph of a general appropriation bill deny-

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

ing use of funds therein for antitrust actions against units of local government, but providing that the limitation did not apply to private antitrust actions, where the appropriation for the FTC (which had brought such actions) had been stricken on a point of order, was held in order as a proper limitation not directly changing existing law, since the provision was confined to the funds in the bill and affected federal court jurisdiction only insofar as it was a simple denial of the use of funds in the bill.

On May 31, 1984,[14] during consideration in the Committee of the Whole of the Departments of State, Justice, and Commerce appropriation bill (H.R. 5172), a point of order was overruled as indicated below:

The Clerk read as follows:

Sec. 610. None of the funds appropriated or otherwise made available by this Act may be obligated or expended to issue, implement, administer, conduct or enforce any antitrust action against a municipality or other unit of local government, except that this limitation shall not apply to private antitrust actions. . . .

MR. [JOHN EDWARD] PORTER [of Illinois]: Mr. Chairman, I raise a point of order against section 610, which would be lines 23 to 25 on page 56, and lines 1 to 3 on page 57 as being legislation on an appropriations bill under clause 2 of rule XXI.

I would note to the Chair two points. First, the wording of section 610 would apply to all funds under the act. That would include funds for the Federal judiciary and the operations of Federal courts. If, in fact, the language of section 610 were to apply to the Federal courts, it would limit Federal jurisdiction in cases involving antitrust suits against municipalities. If, in fact, it would limit Federal jurisdiction in that way, it seems to me, Mr. Chairman, that what it is is direct legislation both in terms of the basic law and in terms of the laws under which the courts operate.

Second, I would point out to the Chair that if, in fact, it does not apply to the Federal judiciary, under a ruling in 1959 of the Chair, indicated in Deschler's Procedure, chapter 26, section A, paragraph 1, subparagraph 1.5, there the Chair held that where there was a provision that was previously stricken on a point of order that limiting language to that provision was itself legislating.

And previously this afternoon the Chair has stricken on a point of order all authorizing language respecting the FTC, which agency would have jurisdiction over the subject matter.

So, Mr. Chairman, in either case it seems to me that this section 610 is in fact legislation on an appropriations bill. . . .

MR. [MARTIN O.] SABO [of Minnesota]: . . . Section 610 of this bill is simply a limitation on the expenditure

14. 130 CONG. REC.——, 98th Cong. 2d Sess.

of Federal funds. It does not provide for any new power. It is simply a limitation on the expenditure of funds, which clearly is well within the rules of the House. . . .

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Chairman, as we look at section 610, the last clause reads: "except that this limitation shall not apply to private antitrust actions." So the word, "limitation," refers to the entire limitation in section 610 and does not affect the right to bring an action or the right to enforce a judgment.

It is my judgment, therefore, that the language of the bill allows private parties to bring actions under antitrust laws. It also allows the enforcement of outstanding judgments in favor of private parties, and as there is no limitation on the judicial powers, we do not reach the question of courts being affected by this limitation, as was stated in one of the arguments propounded on this point of order.

THE CHAIRMAN:[15] The Chair is prepared to rule.

The gentleman from Illinois (Mr. Porter) makes a point of order against section 610 on the ground that it constitutes legislation on an appropriation bill and would limit the power of the courts.

It is the Chair's opinion that the fact that the powers of the courts might be limited by the restrictions on the funds or that the FTC appropriation has been stricken on a point of order, does not in itself constitute legislation, and that the section is indeed only a limitation on expenditure of funds on the bill and as such is proper in this section.

MR. PORTER: Mr. Chairman, does the Chair's ruling indicate, therefore, that the language in section 610 does not affect Federal court jurisdiction over the type of suits described in that section, not including private suits?

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, as I recall, the point of order was in two parts. The Chair has ruled on the first part. I await with some interest the ruling of the Chair on the second part.

THE CHAIRMAN: The Chair had felt that he ruled on both parts. The Chair feels that it is not . . . for the Chair to rule on the effect of the negative limitation on the jurisdiction of the courts. That is a matter for the House and the courts to determine. From a parliamentary standpoint, the limitation is a valid limitation and falls within the rules of the House.

Parliamentarian's Note: Even if FTC funds, no longer in the bill, were the only possible moneys affected, the provision would have been an appropriate denial of use of funds in the bill. But the federal courts were also funded by the bill. The authority of the courts to preside over such actions despite the limitation was a legal issue not for the Chair to decide.

§ 67. Subject Matter: Agriculture

Change in Administrative Policy

§ 67.1 While a limitation may not involve a change of exist-

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

ing law, it may properly effect a change of administrative policy and still be in order (7 Cannon's Precedents § 1694). For example, language in an appropriation bill providing that none of the funds therein shall be used to pay any employee of the Department of Agriculture who serves as a member of the Board of Directors or as an officer of the Commodity Credit Corporation was held to be a limitation and in order.

On May 11, 1960,[16] the Committee of the Whole was considering H.R. 12117, a bill making appropriations for the Department of Agriculture. The Clerk read as follows:

> Sec. 408. No part of the funds appropriated by this Act shall be used to pay the compensation of any employee or officer of the Department, except the Secretary of Agriculture, who, in addition to other regularly assigned responsibilities, serves as a member of the Board of Directors or as an officer of the Commodity Credit Corporation after February 1, 1961.
>
> MR. [PAUL] BROWN of Georgia: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[17] The gentleman will state it.
>
> MR. BROWN of Georgia: Mr. Chairman, section 408 provides. . . .
>
> This reverses a decision made by the Banking and Currency Committee and the Congress in 1949, when the CCC Charter Act was amended to strike out a similar restriction which had been enacted in 1948. It is, therefore, legislation, and the mere fact it is put in the form of a limitation on the use of funds appropriated by the bill does not save it. As paragraph 1691, volume 7, of Cannon's Precedents of the House of Representatives puts it:
>
> > The purpose rather than the form of a proposed limitation is the proper criterion by which its admissibility should be judged, and if its purpose appears to be a restriction of executive discretion to a degree that may be fairly termed a change of policy rather than a matter of administrative detail it is not in order.
>
> Again in paragraph 1606 of the same volume, the following is found:
>
> > Whenever a purported limitation makes unlawful that which before was lawful or makes lawful that which before was unlawful it changes existing law and is not in order on an appropriation bill.
> >
> > A proper limitation is negative and in the nature of a veto, and when it assumes affirmative form by direction to an executive in the discharge of his duties under existing law it ceases to be a limitation and becomes legislation.
>
> Section 408 in effect requires the Secretary to take affirmative action. To carry out the farm programs financed by CCC, the Secretary would have to appoint new Board members, recruited from private life, to replace the six Department officers other than himself who now serve on the Board. He would

16. 106 CONG. REC. 10053, 10054, 86th Cong. 2d Sess.

17. Paul J. Kilday (Tex.).

also have to recruit and appoint new personnel to serve as officers of the Corporation. This not only means the section constitutes legislation, but also means it is not entitled to the protection of the Holman rule, because it would not save the Government money. On the contrary, it would require hiring new employees at additional expense to the Government. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Georgia [Mr. Brown] makes a point of order against the language in section 408 of the bill on the ground that it constitutes legislation on an appropriation bill.

The Chair has had an opportunity to examine the precedents in this connection, including the precedents to which the gentleman from Georgia has referred and from which he has read. The Chair would also refer to paragraph 1694 of Cannon's Precedents, volume 7, the language being:

> While a limitation may not involve change of existing law or affirmatively restrict executive direction, it may properly effect a change of administrative policy and still be in order.

The Chair has examined additional precedents bearing on this question. The Chair is constrained to hold that section 408 is a restriction on a manner in which the funds can be used, and constitutes a negative limitation, and, therefore, overrules the point of order.

Restriction Effective on Future Enactment of Legislation

§ 67.2 To a bill making appropriations for the Department of Agriculture, including an item for a study of the price spread between farmers and consumer, an amendment providing that no part of these funds may be obligated after enactment of legislation establishing a National Commission on Food Marketing, was held a proper limitation and in order.

On May 19, 1964,[18] the Committee of the Whole was considering H.R. 11202. The Clerk read as follows:

ECONOMIC RESEARCH SERVICE

Salaries and expenses

For necessary expenses of the Economic Research Service in conducting economic research and service relating to agricultural production, marketing, and distribution, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), and other laws, including economics of marketing; analyses relating to farm prices, income and population, and demand for farm products, use of resources in agriculture, adjustments, costs and returns in farming, and farm finance; and for analyses of supply and demand for farm products in foreign countries and their effect on prospects for United States exports, progress in economic development and its relation to sales of farm products, assembly and analysis of agricultural trade statistics and

18. 110 CONG. REC. 11388, 11389, 88th Cong. 2d Sess.

analysis of international financial and monetary programs and policies as they affect the competitive position of United States farm products; $9,476,000: *Provided,* That not less than $350,000 of the funds contained in this appropriation shall be available to continue to gather statistics and conduct a special study on the price spread between the farmer and consumer: *Provided further,* That this appropriation shall be available for employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (5 U.S.C. 574), and not to exceed $75,000 shall be available for employment under section 15 of the Act of August 2, 1946 (5 U.S.C. 55a): *Provided further,* That not less than $145,000 of the funds contained in this appropriation shall be available for analysis of statistics and related facts on foreign production and full and complete information on methods used by other countries to move farm commodities in world trade on a competitive basis.

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

The Clerk read as follows:

> Amendment offered by Mr. Findley: On page 12, line 24, after the word "consumer" change the colon to a comma and insert the following: "except that no part of the funds appropriated herein may be obligated for this special study subsequent to the enactment of legislation establishing a National Commission on Food Marketing:".

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

THE CHAIRMAN:[19] The time of the gentleman has expired.

Does the gentleman from Mississippi insist on his point of order?

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

THE CHAIRMAN: The gentleman from Mississippi will state his point of order.

MR. WHITTEN: . . . The point of order I make is that this is not a limitation on an appropriation bill as such but is entirely dependent on a contingency that may never occur. For that reason the point of order should be sustained. . . .

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

. . . The Chair . . . is of the opinion that this amendment constitutes a limitation on the funds herein appropriated even though that limitation may be conditioned upon a condition subsequent which may never come into existence and, therefore, overrules the point of order.

Parliamentarian's Note: See 4 Hinds' Precedents § 4004 for an example of a condition subsequent held in order.

Recipients With Income in Excess of Certain Limit

§ 67.3 To an appropriation bill, an amendment providing that none of the funds for the soil conservation program shall be paid to any person having a net income in excess of $10,000 in the previous calendar year was held to be a proper limitation restricting the availability of funds and in order.

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

On May 1, 1952,[20] the Committee of the Whole was considering H.R. 7314, a Department of Agriculture appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [James G.] Fulton [of Pennsylvania]: Page 31, line 13, after the figure $2,500 insert "and none of the funds shall be paid to any person having a net income in excess of $10,000 in the previous calendar year."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make a point of order against the amendment as being legislation on an appropriation bill. It would require a determination that one's income was or was not beyond $10,000. It is my recollection that a man's income and the amount of his income is not subject to finding out on the part of the Government and I do not believe we could determine it if it were in the legislation. . . .

MR. FULTON: Mr. Chairman, my amendment is simply a limitation as to the persons receiving it. Any person whose total income in the previous calendar year is more than $10,000 will not receive this money. It is a limitation on the payment of money. There is no additional duty placed. After consulting with the gentleman from New York [Mr. Taber] I believe he agrees with me that this is not a further duty and is within the legislation.

The point of order should not be upheld because it is simply a limitation on the payment of money. There are limitations on the payment of money in other bills and this is simply limiting the payment of money.

MR. H. CARL ANDERSEN [of Minnesota]: Mr. Chairman, this goes beyond a limitation and brings in an entirely new principle that is not included in the basic act. It is clearly legislation on an appropriation bill, and, I might add, it is class legislation of the worst kind.

THE CHAIRMAN:[1] The Chair is prepared to rule.

The Chair has studied the amendment and that part of the bill to which it refers and finds that it is a limitation upon the expenditure of money in this bill to any person having an income in excess of a given figure. It is definitely a limitation and under the circumstances the Chair is constrained to overrule the point of order.

Parliamentarian's Note: This precedent is supported by the ruling carried in 7 Cannon's Precedents § 1669 where a limitation on payments to persons receiving pay from another source in excess of a certain amount was held in order.

Rural Electrification, Limiting Funds to Areas of Low Population

§ 67.4 An amendment to the Rural Electrification appropriation providing in part that none of the money appropriated shall be used to finance the construction and operation of generating

20. 98 CONG. REC. 4733, 4734, 82d Cong. 2d Sess.

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

plants, electric transmission and distribution lines in any city, village, or borough having a population in excess of 1,500 inhabitants was held to be a proper limitation on an appropriation bill and in order.

On Mar. 24, 1944,[2] the Committee of the Whole was considering H.R. 4443, an Agriculture Department appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [Lyle H.] Boren [of Oklahoma]: Page 78, line 5, add the following: "*Provided*, That the moneys appropriated or otherwise authorized under this caption ('Rural Electrification Administration') and expended or loaned under the authority conferred by section 4 of the act approved May 20, 1936, shall be used only to finance the construction and operation of generating plants, electric transmission and distribution lines, or systems, for the furnishing of electric energy to persons in rural areas who are not now receiving central station service: *Provided further*, That none of the moneys appropriated or otherwise authorized under this caption ('Rural Electrification Administration') shall be used to finance the construction and operation of generating plants, electric transmission and distribution lines, or systems in any area of the United States included within the boundaries of any city, village, or borough having a population in excess of 1,500 inhabitants."

MR. [WILLIAM R.] POAGE [of Texas]: Mr. Chairman, a point of order.

THE CHAIRMAN:[3] The gentleman will state his point of order.

MR. POAGE: Mr. Chairman, I make the point of order that, rather than being a limitation on the appropriation, this is a change in the substantive law that authorized the Rural Electrification Administration; and I call the attention of the Chair to a ruling that was handed down on April 19, 1943, when substantially the same amendment was offered, the only difference being that the word "exclusively" has now been changed to "only." I submit those words have exactly the same meaning and that the ruling applied at that time would be applicable at this time. . . .

MR. BOREN: Mr. Chairman, I submit that the proposed amendment merely reaffirms existing law. It does not change existing law. It does not change existing law or the substantive law that created the Rural Electrification Administration or that governs its organization and I submit that the proposals are limiting to the appropriation in that the sole purpose and object of the proposals are to prevent the use of this particular money outside the provisions of existing law. That is, that they cannot use the particular money involved in the appropriation in line 5, page 78, to buy out electrical systems

2. 90 CONG. REC. 3105–07, 78th Cong. 2d Sess. See §§ 9 and 22, supra, for discussion of the burden of proof on the issue of whether a provision is authorized by existing law, and the effect of a failure to cite the law relied upon as authorization for provisions in appropriation bills.

3. William M. Whittington (Miss.).

in towns in excess of a population of 1,500.

Mr. Chairman, to support my contention that this is existing law I want to say that the language of the first proviso is lifted directly from section 4 of the R. E. A. Act approved May 20, 1936, section 4 of which reads as follows:

> Sec. 4. The Administrator is authorized and empowered, from the sums hereinbefore authorized, to make loans to persons, corporations, States, Territories, and subdivisions and agencies thereof, municipalities, peoples, utility districts and cooperatives, nonprofit, or limited-dividend associations organized under the laws of any State or Territory of the United States, for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems for the furnishing of electric energy to persons in rural areas who are not receiving central station service.

That language is the language that is in the act of May 20, 1936, substantially word for word.

THE CHAIRMAN: If the Chair may interrupt the gentleman, if it is existing law what is the necessity for it being in the amendment?

MR. BOREN: Mr. Chairman, the Chair anticipates the point of my discussion in justifying the amendment. The reason is that so far as appropriations are concerned, they have issued opinions down there by a circuitous route and have managed to go ahead and buy electrical systems in towns with a population in excess of 1,500. They have done it in connection with other appropriations. So I want to pick up this particular $20,000,000 and say that this $20,000,000 shall not be expended in that illegal fashion.

Mr. Chairman, the language of the second proviso is lifted directly from section 13 of the R. E. A. Act approved May 20, 1936. Section 13 reads as follows:

> Sec. 13. As used in this act the term "rural area" shall be deemed to mean any area of the United States not included within the boundaries of any city, village, or borough having a population in excess of 1,500 inhabitants, and such term shall be deemed to include the farm and nonfarm population thereof.

Mr. Chairman, it so happens that I served on the committee which created the R.E.A. and I was a member of the subcommittee that created it. I have a thorough familiarity with the act and with the amendments that have been made to the act since its original creation. I know what was in the mind of the committee when this organization was created. But in spite of that, they are spending this money to buy electrical plants in towns with a population as high as 10,000 people. I want to limit the use of this appropriation so that they cannot buy out existing facilities in cities having populations of ten or twenty thousand.

Mr. Chairman, I submit that the point of order is not substantiated by the facts in this case. First, this is a limitation and, second, the language used has been lifted verbatim from the substantive act creating this organization. . . .

MR. POAGE: I understood the gentleman to say that the amendment was lifted word for word from the existing law. I have not seen the amendment, Mr. Chairman, in writing, I have only heard it read, but I understood from the reading of the amendment that the

word "only" is in the amendment. The amendment states, as I understand it, that this money shall be used only for these purposes. When you refer to the existing law the word "only" is not in existing law. I wonder if the gentleman will tell us whether the word "only" has been inserted in the proposed amendment? . . .

THE CHAIRMAN: Does the word "only" appear in the statute, in response to the question asked by the gentleman from Texas [Mr. Poage]?

MR. BOREN: The word "only" does not appear in the statute.That is in the second proviso. Neither do the words "shall not be used for other purposes" but I make the contention that is the thing that makes it limiting. . . .

MR. [FRANCIS H.] CASE [of South Dakota]: Would the gentleman's amendment expand the basic law and authorize expenditures for anything not authorized in the basic law?

MR. BOREN: It does not. It is solely limiting.

MR. CASE: In the use of the word "only," does that word "only" limit the appropriation to expenditures for only a particular purpose?

MR. BOREN: It does not. It does not preclude any of the purposes in the substantive law.

MR. CASE: I wonder if the gentleman would explain this. My understanding of a limitation is that it restricts the appropriation to a portion of the original purposes. You cannot expand an appropriation but you can restrict it. If the use of the word "only" limits to only a certain part of the basic appropriation, then it is a restriction and a limitation.

MR. BOREN: My amendment does not in any iota expand or take in any new purposes. It limits the practice that is going on.

The reason I answered the gentleman as I did is, I am unwilling, in my own judgment, to hold that the other practices outside of this limitation are justified by law, but it does limit them in some of the practices they are carrying on that they are claiming come under the law. . . .

MR. [EARL C.] MICHENER [of Michigan]: As I understand the gentleman's interpretation of the word "only," it is synonymous to saying at that point in his amendment that "this money shall be used for no other purposes than."

MR. BOREN: Exactly.

THE CHAIRMAN: The Chair is ready to rule.

Reference has been made to similar amendments that have been heretofore presented. It has also been stated that the language of the amendment offered is identical with an amendment presented on April 19, 1943, but an examination of the amendment offered at that time will show that the language was considerably and materially different than the language of the proposed amendment. Aside from that, the Chair is more anxious to be correct than perhaps consistent.

MR. POAGE: Mr. Chairman, I do not want it to be understood that I said that the wording of these amendments were identical.

THE CHAIRMAN: The Chair did not so state that the gentleman or any other Member said that. That was brought to the attention of the Chair a few minutes ago. As the Chair stated, he is more interested in being correct than consistent.

Inasmuch as it is conceded that the language of the first proviso is the lan-

guage of the substantive law except for the word "only," the first proviso is a limitation, and in view of the fact the second proviso is also a limitation, the point of order is overruled.

Rural Electrification, Construction

§ 67.5 To a paragraph of the Agriculture Department appropriation bill making appropriations for the Rural Electrification Administration, an amendment providing that "during the period of the war . . . no part of [the appropriation] shall be expended for administrative services which have to do with the construction of any facilities for the production . . . of electric power in any area now receiving central station service" was held germane and a proper limitation and in order.

On Mar. 13, 1942,[4] the Committee of the Whole was considering H.R. 6709. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Charles I.] Faddis [of Pennsylvania]: Page 88, line 18, after the period at the end of the line, insert a comma and the following: "*Provided*, That during the period of the war in which the United States is now engaged, no part of this money shall be expended for administrative services which have to do with the construction of any facilities for the production or transmission of electric power in any area now receiving central station service."

MR. [JOHN E.] RANKIN of Mississippi: Mr. Chairman . . . .

I call the attention of the Chair to the fact that the duties of the Rural Electrification Administration are already prescribed in existing law. This amendment attempts to change that, which makes it purely legislation on an appropriation bill. Besides, as I pointed out a moment ago, this expense account has nothing whatever to do with the disposition of the money borrowed by the rural electrification cooperatives from the R. F. C. or through the R. F. C. . . .

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, may I offer an observation in connection with argument? The limitation which the gentleman seeks to impose upon the administrative expenses cannot be germane to this paragraph of the bill, which has nothing to do with administrative expenses but merely with the item of loans. The item of administrative expenses has already been passed. . . .

THE CHAIRMAN:[5] The Chair is ready to rule. . . .

The gentleman from Mississippi makes the point of order [that the amendment] is not germane. The Chair feels that the present amendment as distinguished from the former

4. 88 CONG. REC. 2445, 2446, 77th Cong. 2d Sess.

5. Robert Ramspeck (Ga.).

amendment, being limited to the amount proposed to be appropriated for the Rural Electrification Administration, and being a limitation only upon the expenditure of those funds, is in order; therefore, the point of order is overruled.

Agricultural Stabilization and Conservation Service

§ 67.6 To an appropriation bill providing funds for the Agricultural Stabilization and Conservation Service, an amendment specifying that "none of the funds appropriated by this act shall be used during the period ending June 30, 1971 to . . . carry out any 1971 crop-year program under which the total amount of payments to a person . . . would [exceed] $20,000" was held in order as a limitation.

On June 9, 1970,[6] the Committee of the Whole was considering H.R. 17923, a Department of Agriculture general appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

For necessary administrative expenses of the Agricultural Stabilization and Conservation Service, including expenses to formulate and carry out programs authorized by title III of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1301–1393) . . . and laws pertaining to the Commodity Credit Corporation, $152,690,000: . . . *Provided further,* That no part of the funds appropriated or made available under this Act shall be used (1) to influence the vote in any referendum. . . .

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

The Clerk read as follows:

Amendment offered by Mr. Findley: On page 23, line 8, after the word "regulations", strike the period, add a colon and the following:

"*Provided further,* That none of the funds appropriated by this act shall be used during the period ending June 30, 1971 to formulate or carry out any 1971 crop-year program under which the total amount of payments to a person under such program would be in excess of $20,000."

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

THE CHAIRMAN:[7] does the gentleman from Mississippi desire to be heard on his point of order?

MR. WHITTEN: I do, Mr. Chairman.

If the Chair will note, the amendment is offered to a particular section of the bill, but the language provides that "none of the funds appropriated by this act," so it is a limitation, which means it applies to the Commodity Credit Corporation. The Commodity Credit Corporation was created under the laws of Delaware in 1933. It was given the power, it was given the right, and it was given the obligation of mak-

6. 116 CONG. REC. 18997, 18998, 91st Cong. 2d Sess.

7. James C. Wright, Jr. (Tex.).

ing payments, to make loans under the Corporation Control Act, and it was provided that nothing in that act should let the Congress prevent the corporation from discharging its functions. . . .

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

This point was made last year with respect to an amendment offered by the gentleman from Massachusetts (Mr. Conte), which, while not identical, is, in the opinion of the Chair, sufficiently similar to the presently offered amendment, as to govern.

On that occasion the gentleman from Massachusetts offered an amendment which would have provided:

> That no part of the funds appropriated by this Act shall be used to formulate or carry out any price support program (other than for sugar) under which payments aggregating more than $20,000 under all such programs are made to any producer or any crops planted in the fiscal year 1970.

On the basis of previous rulings of the Chair, it is the opinion of the present occupant of the chair, that the amendment offered by the gentleman from Illinois is a limitation on an appropriation bill and is therefore in order.

The point of order is overruled.

Countries Trading With North Vietnam

§ 67.7 To a general appropriation bill, an amendment providing that no funds appropriated therein "shall be used to . . . administer programs for the sale of agricultural commodities" to any nation which sells, or permits ships or aircraft under its registry to transport, materials to North Vietnam, "so long as North Vietnam is governed by a Communist regime," was held a limitation restricting the availability of funds and in order.

On Apr. 26, 1966,[8] the Committee of the Whole was considering H.R. 14596, a Department of Agriculture appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

> Page 36, line 1:
>
> "COMMODITY CREDIT CORPORATION
>
> "*Reimbursement for net realized losses*
>
> "To partially reimburse the Commodity Credit Corporation for net realized losses sustained but not previously reimbursed, pursuant to the Act of August 17, 1961 (15 U.S.C. 713a–11, 113a–12), $3,500,000,000."

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

8. 112 CONG. REC. 8969, 8970, 89th Cong. 2d Sess.

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:[9] Does the gentleman from Mississippi insist upon his point of order?

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

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. . . .

MR. FINDLEY: Mr. Chairman, I feel that this amendment is in order for precisely the same reason as the amendment just ruled upon [that it seeks to impose an express limitation on the funds appropriated by the pending bill]. It does provide a limitation on funds under certain conditions, and therefore certainly is completely within the rule.

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

The Chair would state that it is satisfied that established precedents in accord with the pending question justifies its holding the language of the proposed amendment as a limitation on the appropriation, and therefore overrules the point of order.

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

No Funds for Purpose Prohibited by State Law

§ 67.8 To a general appropriation bill providing funds for the Department of Agriculture and including a specific allocation of funds for animal disease and pest control, an amendment providing that "no appropriation . . . in this act shall be used for the purchase or application of chemical pesticides" where such action "would be prohibited by State law" was held to be germane to the paragraph to which offered and in order as a limitation on the use of the funds therein.

On May 26, 1969,[10] the Committee of the Whole was considering H.R. 11612, a general appropriation bill providing funds for the Department of Agriculture, with a specific allocation of funds for animal disease and pest control. The Clerk read as follows, and proceedings ensued as indicated below:

Plant and animal disease and pest control: For operations and measures, not otherwise provided for, to control and eradicate pests and plant and animal diseases and for carrying out as-

10. 115 CONG. REC. 13752, 13753, 91st Cong. 1st Sess.

signed inspection, quarantine, and regulatory activities, as authorized by law, including expenses pursuant to the Act of February 28, 1947, as amended (21 U.S.C. 114b–c), $89,-493,000. . . .

MR. [RICHARD L.] OTTINGER [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Ottinger: On page 5, line 5, change the semicolon to a colon and add the following: "*Provided,* That no appropriation contained in this act shall be used for the purchase or application of chemical pesticides, except for small quantities for testing purposes, within or substantially affecting States in circumstances in which the purchase or application of such pesticides would be prohibited by State law or regulation, for any citizen or instrumentality of State or local government."

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

MR. OTTINGER: . . . The amendment I am offering is designed merely to prohibit the use of chemical pesticides by the Federal Government in any State where those pesticides could not be legally used, under State law or regulation.

DDT and similar chemical pesticides have been extensively criticized in recent years, and the intensity of this criticism has been considerably increased in the past few months; many scientists have suggested that these chemicals should be banned outright.

Responding to this attack, Arizona and Michigan have banned the use of these chemicals, and several other States are considering similar bans; in addition, many States have the authority to prohibit by regulation or executive action the use of chemicals which are found to be harmful.

I do not feel that the Congress should be guilty of imposing its own judgment in this area by permitting the use of these chemicals in cases where the responsible State authorities have concluded that they should be prohibited. My amendment would subject the Department of Agriculture to no greater restrictions than now operate upon citizens and State agencies in those States, and in States where similar bans may be imposed in the future. . . .

THE CHAIRMAN:[11] Does the gentleman from Mississippi desire to be heard on his point of order?

MR. WHITTEN: Mr. Chairman, upon reading the amendment, I notice it goes further than I thought it did. In the first place, I do not know of any provision in this bill for the purchase of chemical pesticides.

May I say further, Mr. Chairman, that the amendment before us goes to the State law, exempting or including pesticides based on those States which have passed State laws.

On that basis, Mr. Chairman, I contend that the amendment is not germane and goes far beyond the legislation before us. . . .

THE CHAIRMAN: The amendment offered by the gentleman from New York (Mr. Ottinger) provides that no appropriation contained in this act shall be used for the purchase or application of chemical pesticides.

The amendment notes certain exceptions within or substantially affecting

11. James C. Wright, Jr. (Tex.).

States in circumstances in which the purchase or application of such pesticides would be prohibited by State law or regulation, or any citizen or instrumentality of State or local government.

It is a well-established rule that an amendment to an appropriation bill is germane wherein it denies the use of funds for a specific purpose.

The amendment offered by the gentleman from New York (Mr. Ottinger) appears to fall within that rule. It is a limitation upon the use of funds appropriated in the bill. It is a denial of the use of those funds for a specific purpose. Therefore, the Chair overrules the point of order.

Parliamentarian's Note: A possible argument in support of the point of order might have been the imposition on federal officials of a duty to become conversant with a variety of state laws and regulations. Whether such duty would be considered as a new or additional one not contemplated in existing law, or whether federal officials might already have such a duty in law, would then be an issue. A related question would be whether implied duties incidental to an apparent limitation on the use of funds are as objectionable as language which expressly imposes duties of a more extensive nature. For further discussion of the imposition of duties on officials as grounds for ruling language out of order, see §§ 52 and 53, supra.

Dissemination of Market Information

§ 67.9 To an Agriculture Department appropriation bill, including funds for the Agricultural Marketing Service, an amendment providing that no part of these funds may be used for dissemination of market information over government-owned or leased wires serving privately owned newspapers, radio, or television was held to be a proper limitation although those functions were required by law to be performed.

On May 19, 1964,[12] the Committee of the Whole was considering H.R. 11202. The Clerk read as follows:

AGRICULTURAL MARKETING SERVICE

Marketing Services

For expenses necessary to carry on services related to agricultural marketing and distribution as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) and other laws, including the administration of marketing regulatory acts connected therewith and for administration and coordination of payments to States; and this appropriation shall be available for field employment pursuant to

12. 110 CONG. REC. 11391, 11392, 88th Cong. 2d Sess.

section 706(a) of the Organic Act of 1944 (5 U.S.C. 574), and not to exceed $25,000 shall be available for employment at rates not to exceed $75 per diem under 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; $39,389,000.

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

The Clerk read as follows:

> Amendment offered by Mr. Findley: On page 14, line 12, after the figure "$39,389,000" strike the period, insert a colon and the following: "*Provided*, That no part of the funds appropriated by this Act shall be used for any expenses incident to the assembly or preparation of information for transmission over Government-leased wires directly serving privately-owned radio or television stations or newspapers of general circulation, or for transmission over Government-leased wires which are subject to direct interconnection with wires leased by nongovernmental persons, firms or associations.". . .

THE CHAIRMAN:[13] The gentleman from Mississippi will state his point of order.

MR. [JAMIE L.] WHITTEN [of Mississippi]: The law requires, in subsection k of section 1622 of the Agricultural Marketing Act of 1946, 7 U.S.C. 1621–27, as follows:

> To collect, tabulate, and disseminate statistics of marketing agricultural products, including, but not restricted to statistics on market supplies, storage stocks, quantity, quality, and condition of such products in various positions in the marketing channel, utilization of such products, and shipments and unloads thereof.

That statute is absolutely mandatory and requires the Department to bring together that information. The gentleman's amendment does not limit funds for the discharge of the duties under that section. It attempts to deprive the Secretary of authority conferred by law which was determined in an earlier ruling (IV, 3846) to be legislation. Further, I respectfully submit it will require additional duties of folks in the Department of Agriculture, which is also legislation.

May I point out again, Mr. Chairman, in the last part of it, it says the information cannot be collected for the purpose of being disseminated. I respectfully submit it is legislation on an appropriation bill calling for new duties and responsibilities on the one hand, and limiting executive authority on the other.

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

MR. FINDLEY: Mr. Chairman, here again I believe it is very clear on the face of this amendment that it amounts to retrenchment. Contrary to placing new burdens on department employees it would actually relieve them of the responsibilities which they assumed last April 1 in connection with the Weather Bureau services and which they assumed August 1 in connection with the establishment of the new Market News Service.

THE CHAIRMAN: The gentleman from Illinois offers an amendment addressed to page 14, line 12, which adds a proviso to the section preceding that line as follows:

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

Provided, That no part of the funds appropriated by this Act shall be used for any expenses incident to the assembly or preparation of information for transmission over Government-leased wires directly serving privately owned radio or television stations or newspapers of general circulation, or for transmission over Government-leased wires which are subject to direct interconnection with wires leased by nongovernmental persons, firms, or associations.

To this amendment the gentleman from Mississippi [Mr. Whitten] makes the point of order that it is legislation on an appropriation bill and points out that the functions sought in this amendment as a limitation of the appropriation are functions that are required by other substantive law.

The Chairman would call the attention of the Committee to the fact that the existence of substantive law and the provisions thereof are quite obviously not necessarily binding on the Appropriations Committee. The Chair feels, therefore, that where that committee seeks to appropriate funds and an amendment is offered that seeks to deny the use of those funds even for functions otherwise required by law, that that amendment is in the nature of a limitation of appropriations and therefore overrules the point of order.

Technical Assistance to Foreign Countries

§ 67.10 To an appropriation bill, an amendment providing that none of the funds in the bill shall be used for technical assistance for agricultural production of commodities exported by certain countries was held to be a proper limitation and therefore in order.

On July 11, 1955,[14] the Committee of the Whole was considering H.R. 7224, a mutual security appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [Jamie L.] Whitten [of Mississippi]: On page 10, line 15, change the period to a semicolon and add the following: "Nor shall any of these funds be used for technical or other assistance for agricultural production of commodities exported by such country."

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill. It would impose additional duties, and it is not within the scope of the bill being considered.

THE CHAIRMAN:[15] The Chair does not agree with the gentleman. The Chair firmly feels that this is a limitation within the rules. Therefore, the Chair overrules the point of order.

Prohibiting Funds for Certain Type of Crop Insurance Program

§ 67.11 To an appropriation bill providing funds for the Federal Crop Insurance Cor-

14. 101 CONG. REC. 10240, 84th Cong. 1st Sess.

15. Francis E. Walter (Pa.).

poration, and limiting the amount of premium income derived from the fund which may be used for operating expenses, an amendment providing instead that "no funds (herein) shall be used to formulate . . . a federal crop insurance program . . . that does not meet its . . . operating expenses from premium income" was held to be a proper limitation restricting the availability of funds and in order as not constituting an affirmative direction.

On Apr. 26, 1966,[16] the Committee of the Whole was considering H.R. 14596. The Clerk read as follows, and proceedings ensued as indicated below:

FEDERAL CROP INSURANCE CORPORATION FUND

Not to exceed $4,150,000 of administrative and operating expenses may be paid from premium income: *Provided*, That in the event the Federal Crop Insurance Corporation Fund is insufficient to meet indemnity payments and other charges against such Fund, not to exceed $500,000 may be borrowed from the Commodity Credit Corporation under such terms and conditions as the Secretary may prescribe, but repayment of such amount shall include interest at a rate not less than the cost of money to the Commodity Credit Corporation for a comparable period.

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

The Clerk read as follows:

Amendment offered by Mr. Findley: On page 35, strike all language on lines 11 and 12, and insert the following:

"No fund appropriated by the Act shall be used to formulate or administer a Federal crop insurance program for the current fiscal year that does not meet its administrative and operating expenses from premium income: *Provided*,". . . .

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.

May I say that the gentleman from Illinois gave the matter away, in my opinion, when he said that the purpose of his amendment was to set premium rates that the Government would charge. I think that shows clearly what is involved. This amendment provides that no funds shall be used to administer this program under certain conditions. The program now in existence is based on contracts to which the Government is a party. For us in this bill to try to prohibit the handling of existing contracts on the part of the Government would clearly be legislation. It not only would be legislation but it would interfere with meeting obligations under existing contracts and commitments on the part of the Government. . . .

MR. FINDLEY: . . . Mr. Chairman, the amendment I have offered is clearly a limitation of funds, requiring that

16. 112 CONG. REC. 8968, 8969, 89th Cong. 2d Sess.

no funds be appropriated for the administration or formulation of programs. Therefore, on the basis of that it seems to me that the amendment is in order.

MR. WHITTEN: Mr. Chairman, if I may make one observation, the amendment has to do with setting premiums and is quite clearly an affirmative action.

THE CHAIRMAN:[17] The Chair is prepared to rule. . . .

It might be said that the effect of any proposed amendment is truly not within the competence of the Chair. But a reading of this language indicates to this occupant of the chair that there is here sought an express limitation on the funds appropriated by the pending bill and the Chair, therefore, overrules the point of order.

Agricultural Conservation

§ 67.12 To a bill appropriating funds for agricultural conservation, a provision that no part of the appropriation for soil building and soil and water conserving practices shall be used to make small payment increases (though authorized by law) was held to be a limitation restricting the availability of funds and in order.

On May 18, 1959,[18] the Committee of the Whole was considering H.R. 7175, a Department of Agriculture and Farm Credit Administration appropriation bill.

AGRICULTURAL CONSERVATION PROGRAM

For necessary expenses to carry into effect the program authorized in sections 7 to 16, 16(a), and 17 of the Soil Conservation and Domestic Allotment Act. . . . *Provided further,* That none of the funds herein appropriated shall be used to pay the salaries or expenses of any regional information employees or any State information employees, but this shall not preclude the answering of inquiries or supplying of information at the county level to individual farmers: . . . *Provided further,* That no part of any funds available to the Department, or any bureau, office, corporation, or other agency constituting a part of such Department, shall be used in the current fiscal year for the payment of salary or travel expenses of any person who has been convicted of violating the Act entitled "An Act to prevent pernicious political activities", approved August 2, 1939, as amended, or who has been found in accordance with the provisions of title 18, United States Code, section 1913, to have violated or attempted to violate such section which prohibits the use of Federal appropriations for the payment of personal services or other expenses designed to influence in any manner a Member of Congress to favor or oppose any legislation or appropriation by Congress except upon request of any Member or through the proper official channels. . . .

MR. [JOHN W.] BYRNES of Wisconsin: Mr. Chairman, I offer an amendment.

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

18. 105 CONG. REC. 8328, 8329, 8331, 8332, 86th Cong. 1st Sess.

The Clerk read as follows:

> Amendment offered by Mr. Byrnes of Wisconsin: On page 14, line 18, strike out the period in line 18, insert a colon and add "*Provided further,* That no part of any funds appropriated herein for soil building and soil and water conserving practices, under the Act of February 29, 1936, as amended, shall be used to make small payment increases as provided in section 8(e) of that Act."

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

MR. BYRNES of Wisconsin: . . . [T]he purpose of this amendment and the real effect of this amendment would be to increase the payments under the agricultural conservation program for actual conservation practices without any increase in the appropriation for that purpose.

I did not realize that this was the situation until I was advised by the chairman of our State ASC committee in Wisconsin of problems that they have encountered under section 8(e) in the 1938 act, which provides these so-called small payments. Under the law enacted in 1938 payments made to farmers under the ACP program are increased by specific percentage amounts if the payments are less than $200. This is known as the small payments increase provision. All of these increases are in small amounts. Under the formula provided by law they run from $8 to $14 a farm, depending upon the size of the payment which the farmer otherwise would earn as a result of his practices.

In the aggregate, however, they represent a sizeable portion of the funds paid by the Federal Government for conservation practices. In 1957, for example, the latest year for which I have data, small payment increases cost the Federal Government $10,743,000.

Mr. Chairman, I suggest that the amendment being not only what I consider meritorious to improve our soil conservation program and make available more money for actual soil conservation practices is in order as a limitation on an appropriation bill.

MR. WHITTEN: . . . The gentleman's amendment is tied to the money which this bill would appropriate to pay for contracts entered into last year. I would respectfully submit here that to tie strings to the money that is authorized under the basic act for this additional contribution under small payments on contracts which the Government owes, certainly should not lie here. That is a matter having to do with legislation. If the law needs to be changed, I am certain the gentleman could ably offer his recommendations to the legislative committee on agriculture where this matter should go.

Here in this bill, and we fought over this many times, Mr. Chairman, in the conservation program, the ACP program, you do two things. You announce next year's program and you provide funds for the payment of existing contracts which have been entered into under the previous year's announced program.

THE CHAIRMAN:[19] The Chair is prepared to rule.

The gentleman from Wisconsin has offered an amendment which has been reported by the Clerk. The gentleman from Mississippi has made a point of

19. Paul J. Kilday (Tex.).

order against the amendment on the ground that it constitutes legislation on an appropriation bill. The Chair would point out that the amendment as offered by the gentleman from Wisconsin, is a proviso to the language contained in the bill providing that no part of any funds appropriated herein—and then states the limitation of purpose for which the funds appropriated in this bill shall not be used. Therefore, the Chair is constrained to hold that this constitutes a limitation on the use of the funds and, therefore, would be in order. The Chair overrules the point of order.

Soil Conservation Service

§ 67.13 An amendment to the Department of Agriculture chapter, general appropriation bill, 1951, 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 negatively restricting the availability of funds and therefore in order.

On Apr. 27, 1950,[20] the Committee of the Whole was considering H.R. 7786. The Clerk read as follows:

Amendment offered by Mr. [Jamie L.] Whitten [of Mississippi]: On page 191, line 17, after the colon insert: "*Provided further,* 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 formulating and carrying out the agricultural conservation program, and the funds so allocated shall not be utilized by the Soil Conservation Service for any purpose other than technical and other assistance in such county." . . .

MR. [FRED] MARSHALL [of Minnesota]: Mr. Chairman, I raise the same objection to this amendment as I heretofore raised, that it is legislation on an appropriation bill. . . .

MR. WHITTEN: I would just like to say that we made an effort to modify the amendment to strike out the language which we believe caused the Chair to hold earlier that it was subject to a point of order. We have tried to bring it within the limits of a limitation on an appropriation bill.

MR. [KARL] STEFAN [of Nebraska]: Is this amendment offered in an effort to eliminate duplication?

MR. WHITTEN: It is an effort to try to coordinate these activities. I believe it holds high promise to give us a start on the point which the gentleman raised previously.

THE CHAIRMAN:[1] The Chair is prepared to rule. . . .

The Chair has examined the amendment and is of the opinion that it con-

20. 96 CONG. REC. 5930, 5931, 81st Cong. 2d Sess.

1. Jere Cooper (Tenn.).

stitutes a limitation on an appropriation bill and is in conformity with the rules of the House.

The point of order, therefore, is overruled.

Parliamentarian's Note: Earlier during consideration of the same bill, language in the bill which had given an affirmative direction 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. See § 39.11, supra.

Printing of Yearbook of Agriculture

§ 67.14 To a section of the legislative branch appropriation bill making appropriations for the Government Printing Office, an amendment providing that no part of the appropriation shall be used to pay the salary of any person who shall perform any service or authorize any expenditure in connection with the printing and binding of the Yearbook of Agriculture was held as a valid limitation and in order, although there were no funds in the bill designated for that purpose.

On Mar. 18, 1942,[2] the Committee of the Whole was considering H.R. 6802. The Clerk read as follows:

Amendment offered by Mr. [Everett M.] Dirksen [of Illinois]: On page 45, line 3, after "1942", insert "*Provided further*, That no part of this appropriation shall be used to pay the salary of any person who shall perform any service or authorize any expenditure in connection with the printing and binding of part 2 of the annual report of the Secretary of Agriculture (known as the Year Book of Agriculture) for 1942."

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I make a point of order against the amendment. There are no funds carried in this bill for the purposes which are inhibited by the gentleman's amendment. It would be nugatory and of no effect, and I can conceive of no rule under which it might be in order.

MR. DIRKSEN: I think the amendment will speak for itself. I think it is a limitation and would be germane and in order, irrespective of whether any funds are carried, but the fact of the matter is that the yearbook is not printed ordinarily until after the first of the year. Consequently the personnel and salaries for clerical work and mechanical work in the Government Printing Office is done after the beginning of the fiscal year 1943. I

2. 88 CONG. REC. 2681, 77th Cong. 2d Sess.

therefore regard it as a proper limitation and in order. . . .

THE CHAIRMAN:[3] The Chair thinks that the limitation is a valid one, and, therefore, the point of order is overruled.

Funds for Publishing Certain Types of Parity Ratios

§ 67.15 To an Agriculture Department appropriation bill, including funds for a statistical reporting service, an amendment denying use of these funds for publishing any "parity" ratio other than that which is defined in section 301 of the Agricultural Adjustment Act was held a limitation and in order as not affirmatively restricting executive discretion.

On May 19, 1964,[4] the Committee of the Whole was considering H.R. 11202. The Clerk read as follows:

STATISTICAL REPORTING SERVICE

Salaries and expenses

For necessary expenses of the Statistical Reporting Service in conducting statistical reporting and service work, including crop and livestock estimates, statistical coordination and improvements, and marketing surveys, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) and other laws, $11,431,000: *Provided,* That no part of the funds herein appropriated shall be available for any expense incident to publishing estimates of apple production for other than the commercial crop.

MR. [ANCHER) NELSEN [of Minnesota]: Mr. CHAIRMAN, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Nelsen: Page 13, line 20, add the following: *Provided further,* That no part of the funds herein appropriated shall be available for any expense incident to preparing or publishing either an 'adjusted parity ratio' or any other parity ratios except the parity ratio defined in section 301 (a) (B) of the Agricultural Adjustment Act of 1938, as amended."

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

THE CHAIRMAN:[5] Does the gentleman from Mississippi insist upon the point of order?

MR. WHITTEN: I do, Mr. Chairman.

THE CHAIRMAN: The gentleman will state the point of order.

MR. WHITTEN: I would point out that here again it is legislating on an appropriation bill. I would point particularly to the fact that the law requires the Secretary to make this determination. Also there are a number of statutes which have to do with that. I further point out that the precedents support my contention that this is a limitation on the discretion of an executive exercised under existing law. This has

3. William R. Thom (Ohio).

4. 110 CONG. REC. 11389, 11390, 88th Cong. 2d Sess.

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

been held on past occasions as legislating on an appropriation bill.

I say here where the law definitely says that the Secretary of Agriculture, a cabinet officer, is authorized to make this determination or issues in his name, which is the same, such orders or regulations, you prevent him from carrying out duties that are imposed upon him by law. While it is under the guise of the use of funds, the effect is to neutralize and deprive the executive department of the power and authority granted under the law. . . .

MR. NELSEN: I would like to point out that under the Holman rule you can legislate on an appropriation bill if you show retrenchment.

I would like to refer to the language which appears on page 13 to which my amendment has been offered. There the committee itself states:

> That no part of the funds herein appropriated shall be available for any expense incident to possible estimates of apple production for other than the commercial crop.

In effect the committee is legislating in this field through that very language. If my amendment is out of order, so is the language in this section.

I would like to point out further that I see no restriction on the Secretary of Agriculture by virtue of my amendment. He can publish all that he wants, as far as money that is being appropriated in the various programs is concerned, but the parity concept is established by law and it should be followed until the Congress of the United States makes a change.

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

The Chair will call the attention of the gentleman from Mississippi to the language cited by the gentleman from Minnesota appearing on page 13, lines 17 through 20.

The Chair is of the opinion that while the question is always present as to whether the form of an amendment is in fact a limitation or whether it is legislation in the guise of a limitation, the Chair is of the opinion that this amendment specifically limits the expenditure of the appropriated funds for any purpose other than that provided by existing law and, therefore, overrules the point of order.

Restriction on Salary of Employees Performing Certain Tasks

§ 67.16 To a bill appropriating funds for the Department of Agriculture, an amendment providing that none of the funds therein shall be used to pay the salary of any employee who performs duties incidental to supporting the price of cotton at a level specified was held to be a limitation and in order.

On June 6, 1963,[6] the Committee of the Whole was considering H.R. 6754. The Clerk read as follows, and proceedings ensued as indicated below:

> Amendment offered by Mr. [Paul] Findley [of Illinois]: Page 33, after line 12, insert the following:

6. 109 CONG. REC. 10411, 10412, 88th Cong. 1st Sess.

"Sec. 607. None of the funds provided herein shall be used to pay the salary of any officer or employee who negotiates agreements or contracts or in any other way, directly or indirectly, performs duties or functions incidental to supporting the price of Upland Middling Inch cotton at a level in excess of 30 cents a pound."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make a point of order against the amendment, but I will reserve the point of order at this time. . . .

MR. FINDLEY: Mr. Chairman, the legislative history of the agricultural act of 1958 applied to cotton as well as to feed grains and very clearly indicated a gradual but steady stepdown in the level of price supports for cotton.

Secretary Freeman when taking office immediately raised the level of price supports in direct contradiction of the intent of the legislative act of 1958. He continued the price supports at this excessive level. The purpose of my amendment is simply to withhold funds for payment to any officers or employees of the department who would be entering into contracts or agreements providing for this unrealistic price support of more than 30 cents per pound for upland Middling inch cotton.

Mr. Chairman, I urge support for the amendment on the basis of that argument. One of the reasons we had the supplemental appropriation bill for the Commodity Credit Corporation earlier this year was because the price supports for cotton had been set at an unrealistic level. I would also like to mention to those who may not have been in the Chamber earlier today that I had made a unanimous consent request to return to the language on page 17 of this bill. That request was objected to so my point of order was not disposed of by the Chair. I had wished at that time to point out that we are being asked today to legislate a new type cotton subsidy program in the appropriation bill. . . .

THE CHAIRMAN:[7] Does the gentleman from Mississippi [Mr. Whitten] press his point of order? . . .

MR. WHITTEN: Mr. Chairman, I make the point of order on the basis that the prohibition that would be set up here would require new duties to be performed in determining who negotiates, whether their actions constitute negotiations, or whether their actions in any of these particulars are in such a manner as to have their salaries not paid, particularly in view of other laws which require that employees of the Federal Government be paid certain specified sums.

Mr. Chairman, it does call for new duties and there is no limitation in its entirety.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Illinois [Mr. Findley] has offered an amendment which provides for the insertion of a new section, which amendment provides in words that none of the funds provided in the pending bill shall be used to pay the salary of any officer or employee who does certain things.

In the opinion of the Chair, that constitutes within the rules of the House a limitation on the funds being appropriated and is a proper form of limita-

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

tion. Therefore, the Chair overrules the point of order.

Prohibitions on Salaries of Employees Imposing Certain Demands on Farmers

§ 67.17 An amendment to the Agriculture Department appropriation bill providing that none of the funds appropriated in such bill shall be paid out for the salary, per diem allowance, or expenses of any person who personally or by letter demands that a farmer join the triple A program as a condition of draft deferment or for the granting of a priority certificate for any rationed article or commodity was held a proper limitation merely descriptive of a certain type of official activity.

On Mar. 23, 1944,[8] the Committee of the Whole was considering H.R. 4443. The Clerk read as follows:

Amendment offered by Mr. [Forest A.] Harness of Indiana: On page 65, line 18, after the end of the bracket, strike out the period and insert "*Provided further,* That none of the funds appropriated in this bill shall be paid out for the salary, per diem allowance or expenses of any person who personally or by letter demands that a farmer join the triple A program as a condition of draft deferment or for the granting of a priority certificate for any rationed article or commodity.". . .

Mr. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I desire first to raise the question of whether or not the amendment offered by the gentleman from Indiana is in order. I conceive that the amendment requires the performance of additional duties on the part of employees of the Department, in that, if I understand the amendment correctly, it would require in the case of all of the thousands of employees, administrative investigation and determination to be made as to whether any of those employees had written a letter or a postal card or done anything in violation of the requirement of the gentleman's amendment before the salary check of such employee could be issued for the month for which he was being compensated. . . .

It certainly seems to me, while it is in the form of a limitation so as to be in order under the Holman rule, the effect of this is to require performance of additional duties on the part of the employees of the Department. For that reason it is legislative in character and should not be considered in order. . . .

MR. HARNESS of Indiana: I submit that the argument of the gentleman does not point out anything except that this is a limitation. It does not require any duty on the part of any of the A.A.A. officials. It simply prohibits payment when this thing has been done. It simply acts as a safeguard so that the A.A.A. officials who want to enforce this act, who do not want these things to be done, could withhold payment when it has been done.

8. 90 CONG. REC. 2999, 78th Cong. 2d Sess.

MR. TARVER: Mr. Chairman, will the gentleman yield?

MR. HARNESS of Indiana: I yield.

MR. TARVER: How are those authorized to pay the salaries of these employees to ascertain whether these employees have written a letter or a postal card as prohibited in the gentleman's amendment? Will it not be necessary to make an investigation in each case every month?

MR. HARNESS of Indiana: No; of course it would not. If this amendment is adopted it will stop this practice. These people will not do it.

MR. TARVER: The gentleman is just figuring on everybody being good because he tells them to be?

MR. HARNESS of Indiana: Well, that is true. If your argument is sound, any limitation will require the same thing.

THE CHAIRMAN:[9] The Chair is prepared to rule. The proviso offered by the gentleman from Indiana [Mr. Harness] in the opinion of the Chair is a limitation and the point of order is overruled.

Prohibition on Salary to Employees Who Make Certain Loans

§ 67.18 A section of the Agriculture Department appropriation bill providing in part that no part of any appropriation in this act or authorized hereby to be expended shall be used to pay compensation or expenses of any officer or employee engaged in making loans under the provisions of section 201(e) of the Emergency Relief and Construction Act of 1932 was held a proper limitation and in order.

On Apr. 19, 1943,[10] the Committee of the Whole was considering H.R. 2481. The Clerk read as follows:

> Sec. 2. No part of any appropriation contained in this act or authorized hereby to be expended shall be used to pay the compensation or expenses of any officer or employee of the Department of Agriculture, or any bureau, office, agency, or service of the Department, or any corporation, institution, or association supervised thereby, who engages in, or directs, or authorizes any other officer or employee of the Department, or any such bureau, office, agency, service, corporation, institution, or association to engage in, the making of loans under the provisions of section 201(e) of the Emergency Relief and Construction Act of 1932 (12 U.S.C. 1148), as amended, or the making of loans or advances in accordance with the terms and conditions set forth in food production financing bulletins F–1 or F–2 of the Farm Credit Administration operating under the Food Production Administration, Production Loan Branch.
>
> MR. [CLIFFORD R.] HOPE [of Kansas]: Mr. Chairman, I make a point of order against the section just read on the ground it is legislation on an appropriation bill. . . .

9. William M. Whittington (Miss.).

10. 89 CONG. REC. 3597, 78th Cong. 1st Sess.

This section has for its apparent purpose a prohibition of further loans by the Regional Agricultural Credit Corporation. There is no provision in this bill making an appropriation for this corporation. So the limitation on its face is against officials of the Department of Agriculture who might exercise supervisory functions over it and its activities.

The Regional Agricultural Credit Corporations were created in 1932 under the Hoover administration. There were originally 12 corporations, 1 in each Federal land bank district. Later legislation was passed which authorized the consolidation of the Regional Agricultural Credit Corporations and the return of capital not needed to the Reconstruction Finance Corporation to be held as a revolving fund subject to the Governor of the Farm Credit Administration.

In the meantime, and on March 27, 1933, an Executive order was issued which transferred the jurisdiction and control of the regional agricultural credit corporations from the Reconstruction Finance Corporation, under whose jurisdiction they had originally been set up, to the Farm Credit Administration, and in that order the functions which were transferred were defined as follows:

> The functions of the Reconstruction Finance Corporation and its board of directors relating to the appointment of officers and agents to manage regional agricultural credit corporations formed under section 201(e) of the Emergency Relief and Construction Act of 1932; relating to the establishment of rules and regulations for such management and relating to the approval of loans and advances made by such corporations and of the terms and conditions thereof.

Under that Executive order and under the law it is the duty and the function of the Farm Credit Administration to make rules and regulations to supervise the operations of the regional agricultural credit corporations and to approve loans made by them. I think it is generally recognized under the rules of the House that any language purporting to be a limitation which either imposes new duties upon a Government agency or prohibits it from performing the duties which have been assigned to it is not a limitation but is legislation.

In this particular case the Farm Credit Administration is prohibited or rather its officers are prohibited under the legislation from directing or authorizing the Regional Agricultural Credit Corporation, to make loans and perform the other functions that are imposed upon it by law. That being the case, it is apparent that the officials of the Farm Credit Administration will be unable to carry out their duties in supervising the operations of the corporation, in approving loans, and other duties which have been assigned to them.

It can very readily be determined that this is legislation, I think, by considering the interpretation which officials of the Farm Credit Administration will place upon our action if the section remains in the bill. Certainly they would understand it to mean that Congress no longer expected them to carry on the functions which under the law they are to exercise over the Regional Agricultural Credit Corporation. In other words they will conclude that

Congress had changed its policy and has forbidden them to do what heretofore under the law they have been authorized and directed to do. That, Mr. Chairman, in my opinion very clearly constitutes legislation. . . .

MR. [EVERETT M.] DIRKSEN [of Illinois]: Mr. Chairman, I merely want to submit to the Chair the very purpose of the limitation is to prevent the expression of a certain task, function, or duty. It may never achieve that result, as a matter of fact, in substance, but that is its primary purpose. So I submit this is a very good limitation and quite within the rules and does not constitute legislation.

THE CHAIRMAN:[11] The Chair is ready to rule. . . .

It is the view of the Chair this section is clearly a limitation, and if there are no funds provided in this section the limitation will be ineffective. The Chair overrules the point of order.

Incidental Additional Duties (Crop Support Payments—Limitation on Type of Program)

§ 67.19 An amendment to a general appropriation bill which is strictly limited to funds appropriated in the bill, and which is negative and restrictive in character and prohibits certain uses of the funds, is in order as a limitation even though its imposition will change the present distribution of funds and require incidental duties on the part of those administering the funds.

On May 26, 1969,[12] the Committee of the Whole was considering H.R. 11612, a Department of Agriculture appropriation. An amendment was offered by Mr. Silvio O. Conte, of Massachusetts:

The Clerk read as follows:

Amendment offered by Mr. Conte: On page 22, line 17, strike the period and insert the following: ": *Provided further*, That no part of the funds appropriated by this Act shall be used to formulate or carry out any price support program (other than for sugar) under which payments aggregating more than $20,000 under all such programs are made to any producer on any crops planted in the fiscal year 1970."

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

. . . [T]his subject has been discussed a number of times. There are several new features in this amendment that have not been included in previous amendments.

Congress set up the Commodity Credit Corporation as a corporation so that it could act as such. It gets its authority from several sources. One is borrowing authority granted by the Congress on the recommendation of the Banking and Currency Committee. Another is the sale of commodities on hand. The Corporation is given the right to sue and be sued. It is given

11. William M. Whittington (Miss.).

12. 115 CONG. REC. 13757–59, 91st Cong. 1st Sess.

the right to conduct itself in all ways as a corporation. . . .

So I respectfully submit that in the absence of a law repealing the Government Corporation Control Act and the charter of the Commodity Credit Corporation, under which it was given certain functions and commitments, that we would have to change that act in order to limit its functions. . . .

We say in our report that if Mr. Conte's amendment should be adopted, or Mr. Findley's, and if out of the funds in this bill the Corporation can pay only $20,000, we say that the Corporation would still have to do what its charter authorizes and binds it to do—because they have these contracts—and that is to go ahead and pay the remainder, over and above $20,000, out of other moneys they have. . . . The Corporation's charter provides its authority. We have not amended that charter. We passed legislation letting us supervise its activities, but in that law permitting us to survey it, it says nothing shall be done to keep that corporation from carrying out its functions under its charter.

THE CHAIRMAN:[13] The Chair is prepared to rule.

The gentleman from Massachusetts (Mr. Conte) has offered an amendment against which the gentleman from Mississippi (Mr. Whitten) has made a point of order on the ground that the amendment constitutes legislation on an appropriation bill in violation of clause 2 of rule XXI.

As the gentleman from Mississippi points out and as was further pointed out by the gentleman from Massachusetts, amendments almost exactly identical to that offered by the gentleman from Massachusetts have been offered on numerous previous occasions, as early as 1959 and as recently as May 1, 1968. On several of those occasions points of order have been raised against this amendment or its equivalent on similar grounds. On all of those previous occasions the occupants of the chair have held that the amendment is a valid limitation on funds appropriated by the bill, and on all of those occasions the point of order has been overruled. The Chair has had occasion to observe the elaborate and scholarly argument presented on May 1, 1968, by the gentleman from Mississippi (Mr. Whitten), and to hear his further argument today. The gentleman from Mississippi (Mr. Whitten) contends that the amendment would limit and restrict the activities of a Government corporation created and regulated by other law and that therefore constitutes legislation. The Chair finds on the face of the amendment that what it limits and restricts is the application of funds appropriated in this bill to a Government corporation, and as such the Chair believes that it falls well within the rulings by Chairman Kilday in 1959, by Chairman Harris on January 26, 1965, and by Chairman Corman on two occasions, June 6, 1967, and May 1, 1968. The Chair therefore holds that the amendment is a valid limitation on the funds appropriated in the bill and therefore overrules the point of order.

§ 67.20 An amendment to a general appropriation bill which is negative in character and which prohibits,

13. James C. Wright, Jr. (Tex.).

during the fiscal year covered by the bill, certain uses of the funds therein to carry out a program whose duration extends beyond that fiscal year, is in order as a limitation, even though its imposition would require incidental duties on the part of those administering the funds.

On June 9, 1970,[14] during consideration in the Committee of the Whole of the Department of Agriculture appropriation bill for fiscal 1971 (H.R. 17923), a point of order was raised against the following amendment:

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

The Clerk read as follows:

Amendment offered by Mr. Findley: On page 23, line 8, after the word "regulations," strike the period, add a colon and the following:

"*Provided further*, That none of the funds appropriated by this act shall be used during the period ending June 30, 1971 to formulate or carry out any 1971 crop-year program under which the total amount of payments to a person under such program could be in excess of $20,000."

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

THE CHAIRMAN:[15] Does the gentleman from Mississippi desire to be heard on his point of order?

MR. WHITTEN: I do, Mr. Chairman.

If the Chair will note, the amendment is offered to a particular section of the bill, but the language provides that "none of the funds appropriated by this act," so it is a limitation, which means it applies to the Commodity Credit Corporation. The Commodity Credit Corporation was created under the laws of Delaware in 1933. It was given the power, it was given the right, and it was given the obligation of making payments, to make loans under the Corporation Control Act, and it was provided that nothing in that act should let the Congress prevent the corporation from discharging its functions. I might say the same thing applies to the TVA.

I respectfully, therefore, submit, Mr. Chairman, that to change the Corporation Control Act and to relieve it of its responsibilities which have been carefully protected by the Congress on at least two occasions, even in the Anti-Deficiency Act, which was some years later, would take legislation. It can only be done that way, and since it would require legislation to change it, anything that has that effect here of necessity must be legislation.

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

MR. FINDLEY: I do, Mr. Chairman.

Mr. Chairman, I rise in opposition to the point of order. This is the similar

14. 116 CONG. REC. 18997, 18998, 91st Cong. 2d Sess.

See also 117 CONG. REC. 21634–36, 92d Cong. 1st Sess., June 23, 1971 [H.R. 9270, agriculture, environmental, and consumer protection appropriations for fiscal 1972].

15. James C. Wright, Jr. (Tex.).

argument that has been extended by the gentleman from Mississippi on several previous occasions. One such occasion was January 26, 1965; another occasion was June 6, 1967, and another occasion related to an amendment offered by the gentleman from Massachusetts (Mr. Conte) on May 26, 1969.

On each of those occasions the limitation went to the entire act, as does this amendment. It stated on each occasion that "no part of this appropriation shall be used, or none of the funds appropriated by this act,"—language of that sort. The language applies to administrative salaries of ASDA organizations. The limitation is clearly negative on its face. It clearly shows retrenchment, the reduction in spending, and, therefore is entirely within the Holman rule, and I believe it is completely in order.

THE CHAIRMAN: The Chair is prepared to rule.

As the gentleman from Illinois declares, the point of order and the arguments supporting it have been offered on previous occasions, and on occasion by the gentleman from Mississippi, as recently as the 26th of May last year.

This point was made last year with respect to an amendment offered by the gentleman from Massachusetts (Mr. Conte), which, while not identical, is, in the opinion of the Chair, sufficiently similar to the presently offered amendment, as to govern.

On that occasion the gentleman from Massachusetts offered an amendment which would have provided:

> That no part of the funds appropriated by this Act shall be used to formulate or carry out any price support program (other than for sugar) under which payments aggregating more than $20,000 under all such programs are made to any producer on any crops planted in the fiscal year 1970.

On the basis of previous rulings of the Chair, it is the opinion of the present occupant of the chair, that the amendment offered by the gentleman from Illinois is a limitation on an appropriation bill and is therefore in order.

The point of order is overruled.

§ 67.21 An amendment to a general appropriation bill which is negative in character and which prohibits, during the fiscal year covered by the bill, certain uses of the funds therein to carry out a program whose duration extends beyond that fiscal year, is in order as a limitation even though its imposition might require incidental duties (not contemplated in the legislation establishing the administrative agency) on the part of those administering the funds.

On June 29, 1972,[16] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 15690), a point of order was raised against the following amendment:

> Amendment offered by Mr. [Silvio O.] Conte [of Massachusetts]:

16. 118 CONG. REC. 23353–55, 92d Cong. 2d Sess.

On page 19, line 21, strike the period and insert the following: "*And provided further,* That none of the funds appropriated by this act shall be used during the fiscal year ending June 30, 1973, to formulate or carry out any single 1973 crop-year price support program (other than for sugar and wool) under which the total amount of payments to a person under any such program would be in excess of $20,000."

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

THE CHAIRMAN:[17] The gentleman from Mississippi reserves a point of order against the amendment. . . .

Does the gentleman from Mississippi desire to address himself to his point of order?

MR. WHITTEN: I do, Mr. Chairman. . . .

As to my point of order, Mr. Chairman, the amendment, to which I make the point of order, goes to tying strings on the Commodity Credit Corporation. The Commodity Credit Corporation at the present time is a creature of statutory law originally created and incorporated under the laws of the State of Delaware. It was made into a corporation so that it could perform and discharge all of the duties of a corporation, that is, sue and be sued. It had an independence created by statute. With time the Congress made it a U.S. corporation and brought forward the provisions which are incorporated in the Corporation Control Act. It appears in the compilation of statutes of February 17, page 154, 69 Stat. 1007.

In addition, the Commodity Credit Corporation by law and in the law is created for the purpose of stabilizing, supporting, and protecting farm income.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Massachusetts has offered an amendment to which the gentleman from Mississippi has made a point of order on the ground that it would constitute legislation on the pending appropriation bill, and thus be in violation of clause 2, rule XXI.

There have been at least six rulings on points of order offered against similar or identical amendments in recent years.

Chairman Kilday in 1959, Chairman Harris in 1965, Chairman Corman in 1967 and 1968, and the present occupant of the chair in 1969, 1970, and 1971.

All have ruled on similar points of order. On each occasion the amendments have been held to be in order as being limitations on an appropriation bill.

In the present instance, the Chair has examined the amendment and is of the opinion that it applies only to funds which would be appropriated in the pending appropriation bill and that it does no more than limit the use or application of the funds made available in the pending bill.

Therefore, consistent with the precedents that the Chair has cited, the Chair holds that the amendment is in order as a limitation on an appropriation bill and the point of order is overruled.

Commodity Credit Corporation, Employee Salary

§ 67.22 Language in an appropriation bill providing that

17. James C. Wright, Jr. (Tex.).

none of the funds therein shall be used to pay any employee of the Department of Agriculture who serves as a member of the Board of Directors or as an officer of the Commodity Credit Corporation was held to be a negative limitation and in order, though indirectly effecting a change in policy.

On May 11, 1960,[18] the Committee of the Whole was considering H.R. 12117, an Agriculture Department appropriation bill. The Clerk read as follows:

> Sec. 408. No part of the funds appropriated by this Act shall be used to pay the compensation of any employee or officer of the Department, except the Secretary of Agriculture, who, in addition to other regularly assigned responsibilities, serves as a member of the Board of Directors or as an officer of the Commodity Credit Corporation after February 1, 1961.
>
> MR. [PAUL] BROWN of Georgia: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[19] The gentleman will state it.
>
> MR. BROWN of Georgia: . . . This reverses a decision made by the Banking and Currency Committee and the Congress in 1949, when the CCC Charter Act was amended to strike out a similar restriction which had been enacted in 1948. It is, therefore, legislation, and the mere fact it is put in the form of a limitation on the use of funds appropriated by the bill does not save it. As paragraph 1691, volume 7, of Cannon's Precedents of the House of Representatives puts it:
>
> > The purpose rather than the form of a proposed limitation is the proper criterion by which its admissibility should be judged, and if its purpose appears to be a restriction of executive discretion to a degree that may be fairly termed a change of policy rather than a matter of administrative detail it is not in order.
>
> Again in paragraph 1606 of the same volume, the following is found:
>
> > Whenever a purported limitation makes unlawful that which before was lawful or makes lawful that which before was unlawful it changes existing law and is not in order on an appropriation bill.
> >
> > A proper limitation is negative and in the nature of a veto, and when it assumes affirmative form by direction to an executive in the discharge of his duties under existing law it ceases to be a limitation and becomes legislation.
>
> Section 408 in effect requires the Secretary to take affirmative action. To carry out the farm programs financed by CCC, the Secretary would have to appoint new Board members, recruited from private life, to replace the six Department officers other than himself who now serve on the Board. He would also have to recruit and appoint new personnel to serve as officers of the Corporation. This not only means the section constitutes legislation, but also means it is not entitled to the protec-

18. 106 CONG. REC. 10053, 10054, 86th Cong. 2d Sess. See also §§ 52, 53, supra, for discussion of proposed language in appropriation bills as imposing additional duties on officials.

19. Paul J. Kilday (Tex.).

tion of the Holman rule, because it would not save the Government money. On the contrary, it would require hiring new employees at additional expense to the Government. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, the section clearly provides a limitation on the use of funds that are appropriated in this bill. It does not change the Commodity Credit Corporation charter. It does not change any basic law. It just simply limits what the money in this bill can be used for. It has been my experience and observation during the years here that the Chair has many times said that it is a negative limitation on the use of money and that it is clearly in order, and on that I rest the committee's position.

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

The Chair has had an opportunity to examine the precedents in this connection, including the precedents to which the gentleman from Georgia has referred and from which he has read. The Chair would also refer to paragraph 1694 of Cannon's Precedents, volume 7, the language being:

> While a limitation may not involve change of existing law or affirmatively restrict executive direction, it may properly effect a change of administrative policy and still be in order.

The Chair has examined additional precedents bearing on this question. The Chair is constrained to hold that section 408 is a restriction on a manner in which the funds can be used, and constitutes a negative limitation, and, therefore, overrules the point of order.

Parliamentarian's Note: A discussion comparing the precedents cited above, 7 Cannon's Precedents §§ 1691 and 1694 can be found in § 51, supra. An issue suggested by the debate on May 11, 1960, is whether language in an appropriation bill should be ruled out if it may lead prospectively or indirectly to the imposition of duties on officials, by the operation of other laws. The ruling suggests that only where the duties are imposed directly by the language of the provision in question is it subject to a point of order.

"Stream Channelization

§ 67.23 An amendment to an appropriation bill prohibiting the use of funds therein for stream channelization projects under the Secretary of Agriculture unless construction had begun by a date certain was held not to impose additional affirmative duties on the Secretary and in order as a limitation on the use of funds in the bill.

On June 23, 1971,[20] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9270), a point of

20. 117 CONG. REC. 21648, 21649, 92d Cong. 1st Sess.

order was raised against the following amendment:

Amendment offered by Mr. [Henry S.] Reuss [of Wisconsin]: On page 37, immediately after line 25, insert the following:

"STREAM CHANNELIZATION

"No part of the funds appropriated by this Act shall be used for engineering or construction of any stream channelization measure under any program administered by the Secretary of Agriculture unless such channelization is in a project a part of which was in the project construction stage before July 1, 1971."

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

Mr. Chairman, I recognize that the Chair, in the other ruling pointed up the section which was dropped. That being sufficient, I take it, the Chair did not feel any need to study the other parts. Since it was going out on one ground there was no need to study the others.

The part that is left says that "under any program administered by the Secretary of Agriculture."

The program, apparently, that this is directed to is the Soil Conservation projects. I would respectfully call the attention of the Chair to the fact that these are two things which must be done on these projects. The Department of Agriculture does not have any right of eminent domain in order to get ground on which to build these projects. Under the law there is required a local sponsor, who in most cases is a drainage or similar district, which in turn issues bonds or borrows money, with which they buy rights-of-way. Those rights-of-way having been bought, this comes under the administration of the Soil Conservation Service.

In this instance, with all these projects throughout the United States, in most cases they have to be approved by the local courts, which have to determine whether all of the requirements of the law have been carried out.

This would be imposing upon the Secretary of Agriculture the duty to go into each of those instances and to see whether that project was, as we quote here, "A part of which was in project construction stage before July 1, 1971." Those things do not come to the Secretary of Agriculture. They are handled, as I pointed out, in the initial stage at the local level with a local sponsorship and approved by local courts.

I say here this would be imposing additional duties on the Secretary of Agriculture not imposed on him by existing law. This again, although not pointed up by the Chair in the earlier ruling, would make it subject to a point of order. . . .

MR. [ROBERT E.] JONES of Alabama: Mr. Chairman, the amendment that goes to the appropriation item is one carried in Public Law 566. In that Public Law there are certain requirements which are made upon all of the political subdivisions which are participants under that existing law.

The Chair has just ruled that that requirement, the Cooper Decision, such as the Chair just ruled upon, would put an additional burden or an addi-

tional requirement on the administrative offices and would be an infringement upon the legislative function, which should not be carried in an appropriation act.

Here is the situation. The situation is such that this amendment goes into an infinite requirement.

Suppose the amendment had said, "The Soil Conservation Service should not use a soil depleting plant and it should require not fescue but say four-leaf clover." That would be just as sensible as the amendment offered by the gentleman from Wisconsin.

I do not know how the administrative officer assigned the duties under Public Law 566 is going to be responsible, when the amendment offered by the gentleman from Wisconsin is going to tell him how to function, how much water to use, how much plant leaf, or how much forestation, and all the varieties of programs that are employed in the total scheme and development of the overall program. It does not make sense to me that we are going to have amendments offered here that are going to tell administrative agencies how much they are going to employ in a certain area, for geographical distribution, and how they are going to develop a sound and sensible program.

Now, Mr. Chairman, all of us aspire to develop all of the advantages of our resources. We are totally dedicated to the proposition. There is not a single one of us here who is not as anxious as he can be to accomplish this, or who wants to deplete, dissipate or misuse the water resources of our country. I think we are all in unity on that, but I would hate to see us come up here and fragment the total programs that have been so far established by the various committees of the Congress and thereby lose our grip on the total water resources of this country. I cannot think of anything worse, or any situation that would create more disunity and create a greater loss of hope that we can work together in the development of these programs in the future.

Mr. Chairman, I hope that the point of order raised by the gentleman from Mississippi to the amendment will be sustained. . . .

MR. REUSS: . . . This amendment is entirely germane. It is within all of the precedents as a limitation on an appropriation. It requires no duties on the part of the Secretary of Agriculture other than for him to show up at the office in the morning and find out what projects have been started. If they have been started, my amendment would not touch them. Accordingly I hope that the point of order will be ruled against.

THE CHAIRMAN:[1] The Chair is ready to rule.

The Chair feels that the burden, if any, which is imposed on the Secretary of Agriculture or any administrator in the present amendment offered by the gentleman from Wisconsin is clearly different from that on the basis of which the Chair ruled that the amendment previously offered would be legislation on an appropriation bill, and would, therefore, be out of order. The Chair believes that this present amendment before the House follows the pattern of limitation on an appropriation bill, and that it does not constitute new legislation. Therefore the Chair overrules the point of order.

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1. James C. Wright, Jr. (Tex.).

Parliamentarian's Note: On the same day, a provision requiring state approval of certain projects was ruled out as legislation. See Sec. 53.6, supra; see also the note following Sec. 53.6.

Removal of Dollar Limit on Building Cost; No Authorization Ceiling

§ 67.24 A provision in the general appropriation bill, 1951, providing that no part of the appropriation shall be used (by the Secretary of Agriculture under the Research and Marketing Act) for beginning construction of any building costing in excess of $15,000, except that a poultry breeding house may be constructed at Purdue University at a cost of not to exceed $29,000, was held to be a limitation and in order inasmuch as the authorization for such projects contained no ceiling on such expenditures.

On Apr. 27, 1950,[2] the Committee of the Whole was considering H.R. 7786. A provision therein provided that no part of the appropriation shall be used [by the Secretary of Agriculture under the Research and Marketing Act] for beginning construction of any building costing in excess of $15,000, except that a poultry breeding house may be constructed at Purdue University at a cost of not to exceed $29,000. A point of order was made, as follows:

> Mr. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make a point of order against the language appearing in lines 15 to 17 on page 157, reading "Except that a poultry breeding house may be constructed at Purdue University," on the ground that it is legislation in an appropriation bill.
>
> THE CHAIRMAN:[3] Does the gentleman from Mississippi desire to be heard on the point of order?
>
> Mr. [JAMIE L.] WHITTEN [of Mississippi]: Yes, Mr. Chairman. Mr. Chairman, I wish to call attention to the fact that under the Research and Marketing Act, section 7–A, 7 United States Code 427(h), the Department of Agriculture is authorized to construct agricultural buildings without limitation on the amounts. This committee has put restrictions heretofore on these amounts, fixing the individual amount at $15,000 per unit. We carry that provision with the exception that in this instance we let them go above it.
>
> It traces back to the legislative authorization in the Research and Marketing Act under which they have authority to build such houses without any limitation.
>
> In effect this is a limitation.
>
> The authorization [now 7 U.S.C. 361(d)] reads as follows:

2. 96 CONG. REC. 5910, 5911, 81st Cong. 2d Sess.

3. Jere Cooper (Tenn.).

The money appropriated in pursuance of this title shall also be available for the purchase or rental of land and the construction and acquisition of buildings necessary for conducting research provided for in this title.

In effect this is a limitation fixing the amount they may spend for this purpose.

THE CHAIRMAN: . . . The Chair has examined the provisions of existing law cited by the gentleman from Mississippi and invites attention to the fact that the first part of this paragraph appears clearly to be a limitation and the latter part of the paragraph appears to be an exception to the limitation for a purpose authorized by law.

The Chair, therefore, overrules the point of order.

Price Support Programs; Limit on Single Payments

§ 67.25 To a paragraph of a bill making appropriations for parity payments, an amendment limiting such payments to any person or corporation to $1,000 was held a proper limitation restricting the availability of funds and in order.

On Mar. 9, 1942,[4] the Committee of the Whole was considering H.R. 6709, an Agriculture Department appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. (Jed) Johnson of Oklahoma: On page 75, line 13, after "Government" and before the period, insert the following: ": *Provided further,* That no payment or payments hereunder to any one person or corporation shall be in excess of the total sum of $1,000."

In response to a point of order made by Mr. William M. Whittington, of Mississippi, the Chairman[5] made the following ruling:

From Cannon's Procedure, on page 61, the Chair reads the following:

The House in Committee of the Whole has the right to refuse to appropriate for any object either in whole or in part, even though that object may be authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as part of the parliamentary law of the Committee of the Whole.

That was a ruling made by Mr. Chairman Nelson Dingley, of Maine, January 17, 1896. The present amendment against which the point of order has been made undertakes to limit payments which have heretofore been provided for by law. In the opinion of the Chair, the amendment is a limitation; and, therefore, the Chair overrules the point of order.

Limits on Payments or Loans Under Farm Program

§ 67.26 To an appropriation bill providing funds for pro-

4. 88 CONG. REC. 2114, 2115, 77th Cong. 2d Sess.

5. Robert Ramspeck (Ga.).

grams operated by the Commodity Credit Corporation, and permitting a transfer of certain corporation funds to those programs, an amendment providing that no funds in the act be used for price support programs under which payments to producers exceed specified amounts was held in order as a limitation restricting the availability of funds.

On May 26, 1969,[6] the Committee of the Whole was considering H.R. 11612, a Department of Agriculture appropriation bill. During consideration, the Chair overruled a point of order against a substitute amendment, as indicated below:

Substitute amendment offered by Mr. [Albert H.] Quie [of Minnesota]: On page 22, line 17, strike the period and insert the following: ": *Provided further,* That no part of the funds appropriated by this Act shall be used to formulate or carry out any price support program on cotton, wheat, or feed grains planted during the fiscal year 1970 under which payments to any single producer exceed an amount determined as follows: [A table of payments was inserted here.]

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

THE CHAIRMAN:[7] The gentleman will state his point of order.

MR. WHITTEN: It is legislation on an appropriation bill, and requires additional duties.

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

MR. QUIE: Yes, I do, Mr. Chairman.

I believe this amendment is in order, because the opening language is identical with that of the Conte amendment. The only difference is that where his cutoff is at $20,000 mine provides for a graduation or scaling down of the cutoff above that. It applies only to the funds in this act and is a limitation on the funds in this act. Therefore, Mr. Chairman, I believe it is in order.

THE CHAIRMAN: The Chair is ready to rule.

For reasons declared in a previous ruling the Chair is going to hold that the substitute amendment offered by the gentleman from Minnesota (Mr. Quie), is a limitation on the appropriation and is therefore in order. The Chair overrules the point of order.

§ 67.27 To an appropriation bill providing funds for programs operated by the Commodity Credit Corporation, and permitting a transfer of certain corporation funds to those programs, an amendment specifying that no funds appropriated by the act be used to formulate or carry out price support programs which include payments in excess of $20,000 to any producer, was held in order as a limitation restricting the availability of funds.

6. 115 CONG. REC. 13762, 13763, 91st Cong. 1st Sess.

7. James C. Wright, Jr. (Tex.).

On May 26, 1969,[8] the Committee of the Whole was considering H.R. 11612, a Department of Agriculture appropriation bill. The following amendment was offered:

> Amendment offered by Mr. [Silvio O.] Conte [of Massachusetts]: On page 22, line 17, strike the period and insert the following: ": *Provided further*, That no part of the funds appropriated by this Act shall be used to formulate or carry out any price support program (other than for sugar) under which payments aggregating more than $20,000 under all such programs are made to any producer on any crops planted in the fiscal year 1970."

In response to a point of order against the amendment, the Chairman, James C. Wright, Jr., of Texas, ruled as follows:

> The gentleman from Massachusetts (Mr. Conte) has offered an amendment against which the gentleman from Mississippi (Mr. Whitten) has made a point of order on the ground that the amendment constitutes legislation on an appropriation bill in violation of clause 2 of Rule XXI.
>
> As the gentleman from Mississippi points out and as was further pointed out by the gentleman from Massachusetts, amendments almost exactly identical to that offered by the gentleman from Massachusetts have been offered on numerous previous occasions, as early as 1959 and as recently as May 1, 1968. On several of those occasions points of order have been raised against this amendment or its equivalent on similar grounds. On all those previous occasions the occupants of the chair have held that the amendment is a valid limitation on funds appropriated by the bill, and on all of those occasions the point of order has been overruled. The Chair has had occasion to observe the elaborate and scholarly argument presented on May 1, 1968, by the gentleman from Mississippi (Mr. Whitten), and to hear his further argument today. The gentleman from Mississippi (Mr. Whitten) contends that the amendment would limit and restrict the activities of a Government corporation created and regulated by other law and that therefore constitutes legislation. The Chair finds on the face of the amendment that what it limits and restricts is the application of funds appropriated in this bill to a Government corporation, and as such the Chair believes that it falls well within the rulings by Chairman Kilday in 1959, by Chairman Harris on January 26, 1965, and by Chairman Corman on two occasions, June 5, 1967, and May 1, 1968. The Chair therefore holds that the amendment is a valid limitation on the funds appropriated in the bill and therefore overrules the point of order.

§ 67.28 The Committee of the Whole having stricken from an appropriation bill one limitation on compensation under an acreage reserve program, an amendment proposing another limitation of compensation to any one producer to $5,000 under

8. 115 CONG. REC. 13757–59, 91st Cong. 1st Sess.

such program was held to be in order and a proper limitation.

On May 15, 1957,[9] the Committee of the Whole was considering H.R. 7441, an Agriculture Department appropriation bill. The Clerk read as follows:

ACREAGE RESERVE, SOIL BANK

For necessary expenses to carry out an acreage reserve program in accordance with the provisions of subtitles A and C of the Soil Bank Act (7 U.S.C. 1821–1824 and 1802–1814), $60,000,000: *Provided*, That no part of this appropriation shall be used to formulate and administer an acreage reserve program which would result in total compensation being paid to producers in excess of $500,000,000 with respect to the 1958 crops.

MR. [BURR P.] HARRISON of Virginia: I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Harrison of Virginia: On page 21, strike out all following the word "program" in line 2 and strike out all of line 3. . . .

So the amendment was agreed to.

MR. [HENRY S.] REUSS [of Wisconsin]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Reuss: On page 21, line 4, change the period to a comma and add the following: "or in total compensation being paid to any one producer in excess of $5,000 with respect to the 1958 crops.". . .

MR. H. CARL ANDERSEN [of Minnesota]: Mr. Chairman, a point of order.

THE CHAIRMAN:[10] he gentleman will state it.

MR. H. CARL ANDERSEN: The gentleman's amendment, as just reported, affects a section of the bill already stricken by the amendment just agreed to, and furthermore I see no reason for any further discussion upon this particular amendment. . . .

THE CHAIRMAN: Upon what grounds does the gentleman make his point of order?

MR. H. CARL ANDERSEN: That the language to which this amendment applies has already been stricken out and, further, that it is legislation upon an appropriation bill.

THE CHAIRMAN: The Chair calls the attention of the gentleman to the fact that the amendment offered by the gentleman from Virginia, which was adopted, struck out only a portion of the proviso to this section. But, there is language remaining to which the gentleman has offered an amendment, and stated it would be at the end of that paragraph. It is also a limitation on the use of the appropriation. The point of order made by the gentleman from Minnesota is overruled.

§ 67.29 To a bill appropriating funds for the Commodity Credit Corporation, a provision that no funds appropriated in this section shall be used to process a loan

9. 103 CONG. REC. 7023, 7033, 7034, 85th Cong. 1st Sess.

10. Paul J. Kilday (Tex.).

which is in excess of $50,000 was held to be a limitation restricting the availability of funds and in order.

On May 18, 1959,[11] the Committee of the Whole was considering H.R. 7175, a Department of Agriculture and Farm Credit Administration appropriation bill. The Clerk read as follows:

TITLE II—CORPORATIONS

The following corporations and agencies are hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accord with law, and to make such contracts and commitments without regard to fiscal year limitation as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the budget for the fiscal year 1960 for such corporation or agency, except as hereinafter provided: . . .

Limitation on Administrative Expenses

Nothing in this Act shall be so construed as to prevent the Commodity Credit Corporation from carrying out any activity or any program authorized by law: *Provided,* That not to exceed $39,600,000 shall be available for administrative expenses of the Corporation: *Provided further,* That $1,000,000 of this authorization shall be available only to expand and strengthen the sales program of the Corporation pursuant to authority contained in the Corporation's charter: *Provided further,* That not less than 7 per centum of this authorization shall be placed in reserve to be apportioned pursuant to section 3679 of the Revised Statutes, as amended, for use only in such amounts and at such time as may become necessary to carry out program operations: *Provided further,* That all necessary expenses (including legal and special services performed on a contract or fee basis, but not including other personal services) in connection with the acquisition, operation, maintenance, improvement, or disposition of any real or personal property belonging to the Corporation or in which it has an interest, including expenses of collections of pledged collateral, shall be considered as nonadministrative expenses for the purposes hereof. . . .

MR. [WILLIAM H.] AVERY [of Kansas]: Mr. Chairman, I have an amendment at the desk on page 27.

THE CHAIRMAN:[12] The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. Avery: Page 27, line 18 strike out the period, add a colon, and insert "*Provided further,* That no funds appropriated in this section shall be used to process a Commodity Credit loan which is in excess of $50,000.' . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, the point of order I make is this: The Commodity Credit Corporation is chartered and its charter gives it certain authority. The language which the gentleman offers is legislation.

We are here dealing with the administration of the Commodity Credit Cor-

11. 105 CONG. REC. 8337, 8338, 86th Cong. 1st Sess.

12. Paul J. Kilday (Tex.).

poration in this bill. The gentleman's limitation would apply to what the Corporation would do and would have the effect of amending the charter of the Commodity Credit Corporation. . . .

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

The Chair would point out that the amendment by its language is a restriction upon the purpose for which the funds appropriated in this bill may be used.

The Chair would point out further that even though there should be an existing liability on the Government or should be through other legislation granting powers to an organization of the Government, still a provision in an appropriation bill limiting the purpose for which the funds appropriated in that bill may be used is a limitation and not legislation.

The Chair, therefore, overrules the point of order.

§ 67.30 To an Agriculture Department appropriation bill, an amendment specifying that no part of the funds therein shall be used, in any fiscal year, for farm program payments aggregating more than $50,000 to any person or corporation was held to be a proper limitation since confined to the funds in the bill.

On May 26, 1965,[13] he Committee of the Whole was considering H.R. 8370, a Department of Agriculture appropriation bill. The Clerk read as follows:

The Clerk: Page 36, line 20:

Sec. 506. Not less than $1,500,000 of the appropriations of the Department for research and service work authorized by the Acts of August 14, 1946, July 28, 1954, and September 6, 1958 (7 U.S.C. 472, 1621–1629; 42 U.S.C. 1891–1893), shall be available for contracting in accordance with said Acts.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Dingell: Page 37, after line 2, insert the following section:

"Sec. 507. No part of any funds appropriated by this Act may, in any fiscal year, be used, directly or indirectly, to make payments to any person, partnership, or corporation in an aggregate amount in excess of $50,000 in connection with any price-support program or combination of programs for price support or stabilization, irrespective of whether such payments are on account of loans, purchases, or subsidies or are otherwise authorized."

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

MR. DINGELL: Mr. Chairman and Members of the Committee, you will be interested to know that the U.S. Department of Agriculture's Commodity Credit Corporation publishes a list of recipients of price support loans which runs to 13 closely typed pages. . . .

THE CHAIRMAN:[14] Does the gentleman from Mississippi press his point of order? . . .

13. 111 CONG. REC. 11660–62, 89th Cong. 1st Sess.

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

MR. WHITTEN: This amendment would require the keeping of books, it would require substantive additional duties on many people because many producers produce many different crops. This would be legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Michigan desire to be heard?

MR. DINGELL: Mr. Chairman, if I may be heard, I would point out this is very simple. I am sure the gentleman from Mississippi knows no duties are imposed upon any persons by this. . . .

This is really a limitation.

THE CHAIRMAN: The gentleman from Michigan [Mr. Dingell] offered an amendment. . . .

To which amendment the gentleman from Mississippi makes the point of order that it is legislation on an appropriation bill.

The Chair is of the opinion that since the amendment is directed to funds appropriated by the pending act, the phrase "in any fiscal year" is not applicable, nor in fact is it necessary. But the Chair is further of the opinion that this is an express limitation on the funds appropriated by the pending bill, and holds that the amendment is in order, and overrules the point of order.

§ 67.31 To a bill making appropriations for the Department of Agriculture, including an appropriation for reimbursement to the Commodity Credit Corporation, an amendment specifying that no funds appropriated by the Act be used for agricultural price support programs under which payments in excess of $25,000 will be made to any single recipient was held to be a proper limitation restricting the availability of funds and in order.

On June 6, 1967,[15] the Committee of the Whole was considering H.R. 10509. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Paul] Findley [of Illinois]: On page 34, line 18, after the word "hereof" strike the period and insert the following: "*Provided further*, That none of the funds appropriated by this Act shall be used to formulate or carry out price support or commodity programs during the period ended June 30, 1968, under which the total amount of payments in excess of $25,000 would be made to any single recipient as (1) incentive payments, (2) diversion payments, (3) price support payments. . . ."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I rise to make a point of order against the amendment. While the gentleman's amendment applies to a number of things that might be tied to appropriations in the bill, the amendment will stand or fall on all of its provisions. As I pointed out earlier, the Commodity Credit Corporation was set up as a corporation with certain rights and powers. Later it was brought under surveil-

15. 113 CONG. REC. 14853, 14854, 90th Cong. 1st Sess.

lance, and under both acts which brought it under congressional surveillance it was provided that—

> Nothing in this act of surveillance shall interfere with the operations of the Corporation in maintaining price supports.

If you read the amendment that has been offered by the gentleman from Illinois, you will see that item 3 states, "Price support payments may not exceed $25,000." So that language clearly would interfere with price support payments and would repeal the two acts that I mentioned. It would, to that extent, change the authority of the Commodity Credit Corporation. . . .

MR. FINDLEY: Mr. Chairman, I believe the amendment comes clearly within the Holman rule. It is negative. It represents a retrenchment. It designates things for which funds may not be spent.

I would call the attention of the Chair to the Congressional Record, volume 111, part 9, page 11656.

On that occasion the gentleman from Illinois [Mr. Michel] offered an amendment which had almost the same, almost the precise language—the substantive phrases at least. The Chair overruled the point of order made by the gentleman from Mississippi [Mr. Whitten]. So I do believe this is very much in order and in keeping with previous amendments of the same sort.

THE CHAIRMAN:[16] The Chair is ready to rule.

On January 26, 1965, the gentleman from Arkansas, Mr. Harris, was in the chair when a similar amendment was offered to a bill appropriating funds to reimburse the Commodity Credit Corporation. The Chair ruled that the proposed amendment was a limitation that applied only to the appropriations carried in the bill before the Committee at that time. The Chair therefore overruled the point of order. . . .

The Chair holds that the amendment is a limitation and, therefore, the Chair overrules the point of order.

§ 67.32 To an appropriation bill providing funds for the Agricultural Stabilization and Conservation Service including programs operated by the Commodity Credit Corporation, an amendment specifying that "one of the funds appropriated by this act shall be used during the period ending June 30, 1971 to formulate or carry out any 1971 crop-year program under which the total amount of payments to a person under such program would be in excess of $20,000" was held in order as a limitation.

On June 9, 1970,[17] the Committee of the Whole was considering H.R. 17923, a Department of Agriculture appropriation bill. The Clerk read as follows:

16. James C. Corman (Calif.).

17. 116 CONG. REC. 18997, 18998, 91st Cong. 2d Sess.

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

EXPENSES, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

For necessary administrative expenses of the Agricultural Stabilization and Conservation Service, including expenses to formulate and carry out programs authorized by title III of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1301–1393); Sugar Act of 1948, as amended (7 U.S.C. 1101–1161); sections 7 to 15, 16(a), 16(d), 16(e), 16(f), 16(i), and 17 of the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590g–590q); subtitles B and C of the Soil Bank Act (7 U.S.C. 1831–1837, 1802–1814, and 1816); and laws pertaining to the Commodity Credit Corporation, $152,690,000: *Provided*, That in addition, not to exceed $68,779,000 may be transferred to and merged with this appropriation from the Commodity Credit Corporation fund (including not to exceed $30,228,000 under the limitation on Commodity Credit Corporation administrative expenses): *Provided further*, That other funds made available to the Agricultural Stabilization and Conservation Service for authorized activities may be advanced to and merged with this appropriation: *Provided further*, That no part of the funds appropriated or made available under this Act shall be used (1) to influence the vote in any referendum; (2) to influence agricultural legislation, except as permitted in 18 U.S.C. 1913; or (3) for salaries or other expenses of members of county and community committees established pursuant to section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, for engaging in any activities other than advisory and supervisory duties and delegated program functions prescribed in administrative regulations.

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

The Clerk read as follows:

> Amendment offered by Mr. Findley: On page 23, line 8, after the word "regulations", strike the period, add a colon and the following:
>
> "*Provided further*, That none of the funds appropriated by this act shall be used during the period ending June 30, 1971 to formulate or carry out any 1971 crop-year program under which the total amount of payments to a person under such program would be in excess of $20,000."

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

THE CHAIRMAN:[18] Does the gentleman from Mississippi desire to be heard on his point of order?

MR. WHITTEN: I do, Mr. Chairman.

If the Chair will note, the amendment is offered to a particular section of the bill, but the language provides that "none of the funds appropriated by this act," so it is a limitation, which means it applies to the Commodity Credit Corporation. The Commodity Credit Corporation was created under the laws of Delaware in 1933. It was given the power, it was given the right, and it was given the obligation of making payments, to make loans under the Corporation Control Act, and it was provided that nothing in that act should let the Congress prevent the corporation from discharging its func-

18. James C. Wright, Jr. (Tex.).

tions. I might say the same thing applies to the TVA.

I respectfully, therefore, submit, Mr. Chairman, that to change the Corporation Control Act and to relieve it of its responsibilities which have been carefully protected by the Congress on at least two occasions, even in the Anti-Deficiency Act, which was some years later, would take legislation. It can only be done that way, and since it would require legislation to change it, anything that has that effect here of necessity must be legislation. . . .

THE CHAIRMAN: The Chair is prepared to rule.

As the gentleman from Illinois declares, the point of order and the arguments supporting it have been offered on previous occasions, and on occasion by the gentleman from Mississippi, as recently as the 26th of May last year.

This point was made last year with respect to an amendment offered by the gentleman from Massachusetts (Mr. Conte), which, while not identical, is, in the opinion of the Chair, sufficiently similar to the presently offered amendment, as to govern.

On that occasion the gentleman from Massachusetts offered an amendment which would have provided:

> That no part of the funds appropriated by this Act shall be used to formulate or carry out any price support program (other than for sugar) under which payments aggregating more than $20,000 under all such programs are made to any producer or any crops planted in the fiscal year 1970.

On the basis of previous rulings of the Chair, it is the opinion of the present occupant of the chair, that the amendment offered by the gentleman from Illinois is a limitation on an appropriation bill and is therefore in order.

The point of order is overruled.

§ 67.33 To an Agriculture Department appropriation bill, an amendment specifying that none of the funds therein shall be used for commodity programs under which payments to any single farmer would exceed a certain dollar amount was held a proper limitation and in order.

On May 1, 1968,[19] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 16913), a point of order was raised against the following amendment:

> The Clerk read as follows:
>
> Amendment offered by Mr. [Paul] Findley [of Illinois]: On page 33, line 5, after the word "hereof", strike the period and insert the following: "*Provided further*, That none of the funds appropriated by this Act shall be used to formulate or carry out price support or commodity programs during the period ending June 30, 1969, under which the total amount of payments in excess of $10,000 would be made to any single recipient as (1) incentive payments, (2) diversion payments, (3) price support payments, (4) wheat marketing certificate payments, (5) cotton equali-

19. 114 CONG. REC. 11281–88, 90th Cong. 2d Sess.

zation payments, and (6) crop-land adjustment payments."

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

Mr. Chairman, may I point out several things? The Commodity Credit Corporation was created as a corporation under the laws of Delaware some years ago. It was incorporated so as to have, in connection with the farm program, all the rights and responsibilities that a corporation under general law has.

This is the right to buy and sell and the right to discharge its responsibilities assigned to it by the Congress such as supporting the farm program which the Congress passed and the President signed. The very purpose of creating the Corporation was to be freed of restrictions such as we offered here, which any Congress might impose, from year to year, on appropriated bills, if the erroneous rulings are continued. . . .

The purpose of the Corporation's Charter Act is to avoid such action as is offered here which would make the Corporation a part of the Department of Agriculture. Through the years every time the Congress has tried to restrict this Corporation, the Congress has carefully provided that such act could not be used to keep the Corporation from discharging its duties and its functions under its charter.

Now, Mr. Chairman, I am going to ask you to reverse the prior decisions of other Chairmen who have presided, and have had this question before them. Also may I say the present amendment is very different from the one that we had before. This one reads:

None of the funds appropriated by this Act shall be used to formulate or carry out price support or commodity programs during the period ending June 30, 1969, under which the total amount of payments in excess of $10,000 would be made to any single recipient as (1) incentive payments——

The funds in this bill are to restore past losses. So I respectfully submit that the Corporation, being a corporation, has a right to hire its own employees. . . .

Mr. Chairman, I have with me here a brief, and I have sent a copy of this brief to the Parliamentarian earlier so I am sure he has had time to study it. My brief, which I shall present to you, points out that, if you will go through all of the legislation since this Corporation was set up as a corporation, you will see that Congress has carefully said that no action under appropriation bills should be taken to prevent the Corporation from performing its functions.

Mr. Chairman, I submit that you cannot limit the basic powers of the Corporation by the imposition of a restriction thereon in an appropriation bill because Congress has carefully seen that such a procedure could not prevent the Corporation from carrying out its responsibilities. . . .

THE CHAIRMAN:[20] The Chair has read the amendment and is ready to rule.

Consistent with the decision of Chairman Harris in 1965 and Chairman Kilday in 1959, and consistent with the Chair's own ruling on June 6, 1967, the Chair finds that the amendment is a limitation on appropriations.

20. James C. Corman (Calif.).

Restriction on Contract Authority Contained in Bill

§ 67.34 To a section of an Agriculture Department appropriation bill containing legislation authorizing the Secretary of Agriculture to make such additional commitments as may be necessary in order to provide full parity payments, an amendment providing that the payments shall not exceed an amount necessary to equal parity "when added to the market price and the payment made for conservation . . . of agricultural land resources," was held a proper limitation restricting the availability of funds which did not add further legislation to that already contained in the bill.

On Mar. 9, 1942,[1] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill, the Clerk read the following provisions:

PARITY PAYMENTS

To enable the Secretary of Agriculture to make parity payments to producers of wheat, cotton, corn (in the commercial corn-producing area), rice, and tobacco pursuant to the provisions of section 303 of the Agricultural Adjustment Act of 1938, there are hereby reappropriated the unobligated balances of the appropriations made under this head by the Department of Agriculture Appropriation Acts for the fiscal years 1941 and 1942, to remain available until June 30, 1945, and the Secretary is authorized and directed to make such additional commitments or incur such additional obligations as may be necessary in order to provide for full parity payments: . . . *Provided further,* That such payments with respect to any such commodity shall be made with respect to a farm in full amount only in the event that the acreage planted to the commodity for harvest on the farm in 1943 is not in excess of the farm acreage allotment established for the commodity under the agricultural conservation program, and, if such allotment has been exceeded, the parity payment with respect to the commodity shall be reduced by not more than 10 percent for each 1 percent, or fraction thereof, by which the acreage planted to the commodity is in excess of such allotment. The Secretary may also provide by regulations for similar deductions for planting in excess of the acreage allotment for the commodity on other farms or for planting in excess of the acreage allotment or limit for any other commodity for which allotments or limits are established under the agricultural conservation program on the same or any other farm.

An amendment was offered as follows:

Amendment offered by Mr. (John) Taber (of New York): On page 77, line 5, after the word "farm," strike out the period, insert a colon and a proviso as

1. 88 CONG. REC. 2124, 2125, 77th Cong. 2d Sess.

follows: "*Provided further,* That parity payments, under the authority of this paragraph, shall not exceed such amount as is necessary to equal parity when added to the market price and the payment made or to be made for conservation and use of agricultural land resources under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act approved February 29, 1936, as amended; and the provisions of the Agricultural Adjustment Act of 1938 as amended; *Provided further,* That the total expenditures made and the contracts entered into in pursuance of this paragraph shall not exceed in all $212,000,000.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I submit a point of order against the amendment proposed by the gentleman from New York [Mr. Taber]. . . .

MR. TABER: . . . The bill, on page 75, provides that the Secretary is authorized and directed to make such additional commitments or incur such additional obligations as may be necessary in order to provide for full parity payments.

That is legislation. It is brought in order under the rule. The language that I have submitted is clearly germane to that provision because it provides a method. It is purely a limitation to the payments that shall be made for parity under the authority of this paragraph. For this reason it is clearly germane and it is clearly in order.

It would be in order if there was no legislation in the paragraph because it is a pure limitation.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, may I be heard?

THE CHAIRMAN:[2] The Chair will hear the gentleman from South Dakota.

MR. CASE of South Dakota: Mr. Chairman, may I make the observation that if the proposal is clearly a limitation, even though it embraces some legislation, it is in order under the Holman rule.

THE CHAIRMAN: The Chair would like to ask the gentleman from New York [Mr. Taber] if there are any funds other than those appropriated in this bill to be used for parity payments?

MR. TABER: None.

THE CHAIRMAN: Just the funds in this bill?

MR. TABER: That is correct.

THE CHAIRMAN: The amendment the gentleman is offering is to limit the funds offered in this bill?

MR. TABER: That is my intention. I think perhaps I ought to insert after the word "payments" in the third line the words "under the authority of this paragraph." With that in, it would clearly be in order.

THE CHAIRMAN: Does the gentleman from New York [Mr. Taber] ask to modify his amendment?

MR. TABER: I do, Mr. Chairman.

THE CHAIRMAN: The gentleman from New York asks unanimous consent to modify his amendment by inserting after the word "payments" "under the authority of this paragraph." Is there objection to the request of the gentleman from New York [Mr. Taber]?

There was no objection.

THE CHAIRMAN: The gentleman from New York [Mr. Taber] has offered an amendment, on page 77, line 5, under-

2. Robert Ramspeck (Ga.).

taking to provide further limitations on the payment and the administration of parity payments, to which the gentleman from Georgia has made a point of order.

It seems to the Chair that the language of the amendment offered by the gentleman from New York constitutes a limitation upon the funds appropriated by this paragraph or proposed to be appropriated by this paragraph and does not constitute legislation.

The Chair therefore overrules the point of order.

Acreage Reserve, Payment Per Acre

§ 67.35 An amendment to an appropriation bill providing that no payment under the acreage reserve shall be made above $16 per acre out of the appropriation was held to be a limitation restricting the availability of funds in the bill and in order.

On Feb. 25 and 26, 1958,[3] The Committee of the Whole was considering H.R. 10881, a supplemental appropriation bill. The Clerk read as follows:

ACREAGE RESERVE PROGRAM

For an additional amount for "Acreage reserve program," fiscal year 1958, $250,000, which shall be available to formulate and administer an acreage reserve program in accord with the provisions of subtitles A and C of the Soil Bank Act (7 U.S.C. 1821–1824 and 1802–1814), with respect to the 1958 crops, in an amount not to exceed $175 million in addition to the amount specified for such purposes in Public Law 85–118.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Taber: On page 4, line 9, strike out the period and insert: "Provided, That no payment under acreage reserve shall be made above $16 per acre out of this appropriation."

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

. . . Under the basic act the Secretary has authority to set the rate of payment, and I respectfully submit that were this amendment to change that legislative authority which is vested in the Secretary of Agriculture, that it is legislation on an appropriation bill.

THE CHAIRMAN:[4] Does the gentleman from New York desire to be heard?

MR. TABER: It is a pure limitation on the funds involved in that paragraph. . . .

THE CHAIRMAN: The Chair will rule on the point of order that has been made. The point of order is not sustained.

Limit on Authorized Purchase of Motor Vehicles

§ 67.36 Language in a general appropriation bill providing

3. 104 CONG. REC. 2766, 2895, 85th Cong. 2d Sess.

4. Francis E. Walter (Pa.).

that not to exceed a certain amount of money be available for the purchase of motor vehicles was held to be a proper limitation on an appropriation bill for a purpose otherwise authorized by law.

On Apr. 23, 1937,[5] the Committee of the Whole was considering H.R. 6523, an Agriculture Department appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

FEDERAL-AID HIGHWAY SYSTEM

For carrying out the provisions of the act entitled "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes", approved July 11, 1916 (39 Stat., pp. 355–359), and all acts amendatory thereof and supplementary thereto, to be expended in accordance with the provisions of said act, as amended, including not to exceed $556,000 for departmental personal services in the District of Columbia, $150,000,000. . . . *Provided further,* That not to exceed $45,000 of the funds provided for carrying out the provisions of the Federal Highway Act of November 9, 1921 (U.S.C., title 23, secs. 21 and 23), shall be available for the purchase of motor-propelled passenger-carrying vehicles necessary for carrying out the provisions of said act, including the replacement of not to exceed one such vehicle for use in the administrative work of the Bureau of Public Roads in the District of Columbia. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order that the part of the paragraph beginning with the word "Provided', on page 72, line 13, and running down as far as the word "Columbia", in lines 21 and 22, is not authorized by law.

This refers to the purchase of automobiles. . . .

Mr. [CLARENCE] CANNON of Missouri: Mr. Chairman, this is merely a limitation. Otherwise the whole amount could be spent for automobiles. This proviso limits the amount which may be used. It is not legislation, and is not subject to a point of order. . . .

The Chairman:[6] The Chair is ready to rule.

The Chair overrules the point of order on the ground that the proviso constitutes a limitation, without which the Secretary could spend any amount within the total of the appropriation for this purpose.

Parliamentarian's Note: While the language in the bill was not specifically limited to the funds appropriated, the Chair evidently did construe it as limited to the appropriated funds.

§ 68. Civil Liberties

Segregation by Race, Color, Creed; Limitation on Funds

§ 68.1 An amendment to a District of Columbia appropria-

5. 81 CONG. REC. 3783, 3784, 75th Cong. 1st Sess.

6. Franklin W. Hancock, Jr. (N.C.).

tion bill providing that no part of the money contained in the act shall be used for any agency, office, or department of the District of Columbia which segregates the citizens of the District in employment, facilities afforded, services performed, accommodations furnished, instructions, or aid granted, on account of the race, color, creed, or place of national origin of the citizens of the District was held a proper limitation and in order.

On Apr. 5, 1946,[7] the Committee of the Whole was considering H.R. 5990. The Clerk read as follows:

Amendment offered by Mr. [Adam C.] Powell [Jr., of New York]: In line 7, page 2, insert the following: "*Provided*, That no part of any appropriation contained in this act shall be used for any of the purposes therein mentioned by any agency, office, or department of the District of Columbia which segregates the citizens of the District of Columbia in employment, facilities afforded, services performed, accommodations furnished, instructions or aid granted, on account of the race, color, creed, or place of national origin of the citizens of the District of Columbia."

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, I make a point of order against the amendment.

The Chairman:[8] The gentleman will state the point of order.

MR. RANKIN: Mr. Chairman, I make the point of order that the amendment is not germane, and that it is legislation on an appropriation bill, in that it attempts to change the fundamental laws of the District of Columbia that have been established and in effect for at least 80 years or probably a hundred years.

This amendment, if adopted, would destroy the school system of the District of Columbia. It would stir up race hatred and bring about race trouble, the like of which nothing else has ever done in all the history of the District. If it is done, the effect will be to destroy the legislation providing funds with which to carry on the public schools in the District of Columbia.

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, a point of order. The gentleman is not addressing himself to the point of order but is addressing himself to the merits of the legislation.

MR. RANKIN: I am not surprised that the gentleman from New York does not understand me when I am talking to a point of order.

THE CHAIRMAN: The gentleman will address himself to the point of order.

MR. MARCANTONIO: It is very difficult to understand the gentleman when he is talking propaganda.

7. 92 CONG. REC. 3227–29, 79th Cong. 2d Sess. This precedent was followed in later rulings: see Sec. 68.2, infra, for the ruling of Apr. 19, 1950, and see 95 CONG. REC. 1743, 1744, 81st Cong. 1st Sess., for the Mar. 2, 1949, ruling on identical issues.

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

MR. RANKIN: Mr. Chairman, I am developing the point that if this amendment is adopted it will destroy the school system of the District.

THE CHAIRMAN: The gentleman will talk strictly to the point of order.

MR. RANKIN: That is what I am doing now.

It is legislation on an appropriation bill designed to destroy the school system of the District of Columbia for which we are required to appropriate. The people of the District of Columbia have to look to Congress to legislate for them. They have no legislative body of their own. They have maintained this separate school system at least for the last 80 years and probably ever since the District of Columbia was created. This amendment would destroy it, and in my opinion would close the white schools of the District. For that reason I say it is more far reaching than any mere limitation, it is a change in fundamental law, and the point of order should be sustained.

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

MR. [JOHN M.] COFFEE [of Washington]: Mr. Chairman, I make the point of order that the amendment proposes to incorporate a legislative provision in an appropriation bill that does not come within the purview of the Holman rule and that it sets up an affirmative agency in the law.

MR. [HOWARD W.] SMITH of Virginia: Mr. Chairman, I desire to add further points of order upon which I should like to be heard at a later time in the discussion.

THE CHAIRMAN: The Chair would appreciate very much the gentleman's talking to the points of order to help the Chair arrive at a decision.

MR. SMITH of Virginia: I merely want to make them at this time. I will discuss them later.

MR. MARCANTONIO: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. MARCANTONIO: Then there will be two points of order pending at the same time.

THE CHAIRMAN: Any number of reasons can be given for the point of order.

MR. MARCANTONIO: But reasons are different from points of order. I submit the points of order to be dealt with one at a time and the first point of order raised must be passed on before others are made.

MR. RANKIN: Oh, no. That is not the rule.

MR. MARCANTONIO: The Chair will make the ruling, not the gentleman form Mississippi. I am addressing the Chair.

MR. SMITH of Virginia: Mr. Chairman, I make the further point of order that this amendment would impose additional duties upon the executive officials.

I make the further point of order that it does not necessarily and will not even if carried out result in any reduction of expenditures as required under the Holman rule.

I make the further point of order that it is obvious on the face of the amendment that the object is not to effect a retrenchment, as required by the Holman rule, but to effect legislation.

I ask to be heard on these points of order at a later time.

THE CHAIRMAN: Does the gentleman from New York care to be heard on the point of order?

MR. POWELL: Mr. Chairman, I do.

The first point of order is that it would change the laws of the District of Columbia. There are no laws of the District of Columbia which guarantee segregation.

As to the second point of order that it would add to expenses, we can cite that segregation has always been more expensive than democracy.

MR. MARCANTONIO: Mr. Chairman, I should like to be heard on the points of order.

THE CHAIRMAN: The Chair will hear the gentleman.

MR. MARCANTONIO: Mr. Chairman, this amendment is definitely a negative limitation. It prohibits the use of funds appropriated in this bill for certain specific purposes which are enumerated in the amendment. It does not change any existing law and Congress has the right to withhold the funds for any purpose enumerated in an appropriation act or to withhold funds for any purpose for which an appropriation is being made.

This bill makes appropriations for the District of Columbia. The amendment simply states that none of the funds appropriated in this bill shall be expended to do certain things. We have had that up time and time again. I recall distinctly the Lea amendment in which funds were withheld from the National Labor Relations Board for taking jurisdiction over so-called agricultural workers.

There is no additional duty imposed upon anyone. The amendment deals with an existing condition, that is, segregation in education, segregation in recreation, in hospitals and other places. I repeat there is no additional duty imposed on anyone. The amendment strictly is a negative limitation which we have had in this committee time and time again. . . .

MR. SMITH OF VIRGINIA: Mr. Chairman, this question all revolves around the so-called Holman rule, which is rule XXI. The theory of the Holman rule is that legislation on an appropriation bill is out of order unless it retrenches expenses and to that has been added by various rulings of the Chair from time to time further limitations upon the rule.

THE CHAIRMAN: Can the gentleman from Virginia give the Chair the benefit of his advice as to how this is a limitation of the fund?

MR. SMITH of Virginia: It is a very definite limitation. It says, "No part of the fund shall be expended," for certain facilities, for certain things, either done or omitted to be done.

THE CHAIRMAN: The Chair is trying to find out whether or not this is a proper limitation. The Chair does not believe that the Holman rule is involved so much as the limitation question.

MR. SMITH of Virginia: Mr. Chairman, if we go to the question of limitation, we still have the same rule to this extent, and you will find it in the rule book under section 845. I will not undertake to read all of it:

> But such limitation must not give affirmative direction and must not impose new duties upon an executive officer.

I made that point of order because if this amendment were adopted it would

cover every executive agent performing the duties covered by these appropriations to proceed to carry out this rule of segregation. It would impose not only affirmative duties but arduous duties upon every executive officer who has anything to do with carrying out these facilities.

It is a very definite rule which has been sustained time and time again by the Speaker and by the chairmen of various committees that no limitation is in order which imposes any other duty upon an executive officer.

Passing that point to another, let me quote:

> And it must not be coupled with legislation not directly instrumental in effecting a reduction.

Let us look at this amendment and see whether it effects any reduction. I ask the gentlemen who oppose the point of order, will this amendment, if adopted, save the District of Columbia a single dollar?

MR. MARCANTONIO: Certainly it would.

MR. SMITH of Virginia: Will it remove a single facility?

MR. MARCANTONIO: Absolutely. Instead of having two school systems you will have one.

MR. SMITH of Virginia: Exactly the same facilities will be required; exactly the same number of children will go to school and exactly the same number of teachers, janitors, the same amount of heat and every other thing appropriated for in this bill will be required.

MR. MARCANTONIO: The gentleman has asked a question. May I answer it? . . .

The point is, Mr. Chairman, in response to the gentleman's question, that with segregation you double the number of administrative offices, the number of facilities, and the expenditures are thereby increased, and therefore the amendment definitely is a saving to the Treasury of the United States.

MR. SMITH of Virginia: That is just the gentleman's conclusion.

MR. MARCANTONIO: Well, the gentleman asked the question.

MR. SMITH of Virginia: My conclusion is just the opposite; that it will not do any such thing. As to the burden of proof when such an amendment is offered and the point of order is made the authorities are clear that it is the duty of the proponent of the amendment to show definitely that there will be a retrenchment in expenditures and a reduction in the necessary appropriations. . . .

MR. POWELL: Since I am the proponent of the measure, I would like to tell my colleague, the gentleman from Virginia, that here in the District of Columbia an entirely duplicate system of superintendence is maintained out of the treasury of the District of Columbia. You have a Negro superintendent and a white superintendent with exactly the same position right down the line. That would be a saving.

MR. SMITH of Virginia: And you would have to have just as many superintendents, and just as many schools, and just as many school children, and just as many teachers.

MR. POWELL: But not as many superintendents.

MR. SMITH of Virginia: I do not know about that. I expect you would have just as many, if not a few more.

Mr. Chairman, there is one other point I wanted to make. It is another

very definite rule of parliamentary law. . . .

MR. RANKIN: This would also increase the number of police required, and increase the expenses of the District instead of curtailing them.

MR. SMITH of Virginia: Well, again, as I say, as I said to the gentleman from New York, that is just one man's opinion, and there has not been any proof that it will save a nickel.

I call attention of the Chairman to the third point I wanted to make. This is on construing a proposed limitation, and I think very crucial and very decisive on this point of order.

> In construing a proposed limitation, if the Chair finds the purpose to be legislative, in that the intent is to restrict executive discretion to a degree that may be fairly termed a change in policy rather than a matter of administrative detail, he should sustain the point of order.

Now, this is definitely a situation where obviously the purpose is to change an administrative policy, a policy that has long prevailed, and the authorities on that are so definite and so clear that it seems there can be no doubt left.

I would like to read the Chair what Chairman Luce said on January 8, 1925, when this amendment was up, which was offered by Mr. Hull, of Iowa, which reads:

> No part of the moneys appropriated in this act shall be used to pay any officer to recruit the Army beyond the limit of 100,000, 3-year enlisted strength.

There was long discussion about the point of order on that amendment, and this is the conclusion of the Chair on page 1497:

> In the judgment of the Chair there is no adequate proof embodied in the amendment, or any necessary conclusion from the amendment, that there will be a reduction of expenditure.

Therefore, the Chair is unable to see that it complies in this regard with the second paragraph of rule XXI, commonly known as the Holman rule.

I think that is all I have to say except to call attention to one more extract of a ruling that took place on February 18, 1918, when Mr. Saunders, of Virginia, was in the chair and a similar question arose. He said:

> The situation developed by this amendment is as follows: The amendment first proposes to reduce the amount carried in this paragraph. That is perfectly competent under parliamentary law. In addition, it is proposed for legislation to accompany the reducing portion of the amendment. But this legislation has no sort of relation to the proposed reduction. It is perfectly competent to legislate on an appropriation bill, provided the legislation proposed necessarily effects a reduction; but it is just as plainly incompetent to propose a reducing amendment to an appropriation bill, a motion which can be made at any time without reference to the Holman rule, and then undertake to attach to this motion legislation which does not effect the reduction and is not in any wise related to it.

I submit, Mr. Chairman, that the amendment is clearly subject to the point of order. . . .

MR. RANKIN: I call the gentleman's attention also to the fact that it has been held time and time again that the reduction or entrenchment must show on the face of the amendment. This amendment shows no such reduction.

MR. SMITH of Virginia: That would show it would be a saving of money?

MR. RANKIN: Yes. This amendment makes no such showing. . . .

MR. MARCANTONIO: First of all, the Chair has ruled with regard to the Holman rule. What is involved here, as the gentleman from Virginia pointed out, is whether or not there is a change of policy or law; and when we are talking about policy we are talking about law. This amendment does not involve a change in the law at all. This restricts, or rather, prohibits the use of funds with regard to an administration which is not authorized by law at all. Congress has passed no law providing for segregation in the District of Columbia. Segregation is only an administration ruling applied by various agencies and departments of the District of Columbia. Congress certainly has the right to say, by means of a negative limitation, that none of those agencies can have any funds in carrying out that particular practice. I see no difference between this negative limitation and all of the others that we have had before this Committee. It simply says to the various bureaus, "No funds shall be given to you, not for the carrying out of any law, but no funds shall be given to you for the carrying out of a practice not authorized by law." Therein lies the distinction between the situation the gentleman from Virginia tried to set up and what we actually have involved in this amendment.

MR. RANKIN: Mr. Chairman, I would like to be heard for a moment on the point of order.

THE CHAIRMAN: The Chair will hear the gentleman from Mississippi.

MR. RANKIN: I call the attention of the Chair to the fact, as I pointed out to the gentleman from Virginia a moment ago, that it has been held time and time again that in order to be in order under the Holman rule the reduction or retrenchment must show on the face of the amendment. All the reduction they propose is speculative.

If you are going off into the realm of speculation, I submit that this amendment will probably increase expenses far more than it will curtail them, by increasing the police force, hospital facilities, doctors, jail facilities, and other things of that kind. I submit that this is merely a fantastic attempt to stir up race trouble in the District of Columbia, and the point of order should be sustained.

THE CHAIRMAN: The Chair is ready to rule.

The Chair has listened very attentively to the arguments pro and con and has reached the conclusion that the Holman rule is not in issue at the present moment. The wording of the amendment reads, "Provided, that no part of any appropriation contained in this act shall be used for any of the purposes therein mentioned," and they are enumerated.

After serious consideration, the Chair is of the opinion that the amendment is a proper limitation and overrules the point of order.

§ 68.2 An amendment to a chapter of the general appropriation bill, 1951, providing that no part of any appropriation contained in this chapter shall be used for any of the purposes therein men-

tioned by any agency, office, or department of the District of Columbia which segregates the citizens of the District of Columbia in employment, facilities afforded, services performed, accommodations furnished, instructions or aid granted, on account of race, color, creed, or place of national origin of the citizens of the District of Columbia, was held to be a proper limitation restricting the availability of funds and therefore in order.

On Apr. 19, 1950,[9] the Committee of the Whole was considering H.R. 7786. The Clerk read as follows:

Amendment offered by Mr. (Vito) Marcantonio (of New York): Page 2, line 5, after the period, insert the following: "*Provided*, That no part of any appropriation contained in this chapter shall be used for any of the purposes therein mentioned by any agency, office or department of the District of Columbia which segregates the citizens of the District of Columbia in employment, facilities afforded, services performed, accommodations furnished, instructions or aid granted, on account of race, color, creed, or place of national origin of the citizens of the District of Columbia."

MR. [JOE B.] BATES of Kentucky: Mr. Chairman, I make a point of order against the amendment.

Mr. Chairman, I make the point of order that the amendment is not germane. It goes beyond the scope of the chapter that we have under consideration.

MR. MARCANTONIO: . . . The amendment is a negative limitation. It does not violate the Holman rule. It provides for a saving. We had the same situation on March 2, 1949, and on April 5, 1946, and the germaneness of the amendment was sustained by the Chairmen. I call the Chair's attention to the two precedents, the one on March 2, 1949, and the one on April 5, 1946. . . .

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, I just rise to say that this amendment is not in order. In the first place it is legislation on an appropriation bill. It attempts to change a law, to change the requirements, you might say, for the use of this money in the District of Columbia, and in that way attempts to write legislation into an appropriation bill, and is therefore not in order.

THE CHAIRMAN:[10] The Chair is prepared to rule. The gentleman from New York has offered an amendment which has been reported. Of course, the decision of the Chair has to be in conformance with the precedents and the rules of the House, and it certainly does not reflect any individual views of the Chair.

The Chair invites attention to the fact that the identical amendment was offered on two previous occasions, on April 5, 1946,[11] and on March 2, 1949.[12] In both instances the point of order was overruled. Under the prece-

9. 96 CONG. REC. 5390, 81st Cong. 2d Sess.

10. Jere Cooper (Tenn.).

11. See § 68.1, supra.

12. See 95 CONG. REC. 1743, 1744, 81st Cong. 1st Sess.

dents here cited, the Chair is compelled to overrule the point of order.

§ 68.3 To a section of a supplemental appropriation bill making appropriations for the Air Force, an amendment providing that none of the funds appropriated therein shall be used in the branches of the Department of the Air Force in which there exists racial segregation was held germane and a proper limitation restricting the availability of funds.

On Apr. 15, 1948,[13] the Committee of the Whole was considering H.R. 6226. The Clerk read as follows:

> Amendment offered by Mr. [Adam C.] Powell [Jr., of New York]: On page 2, line 25, insert "*Provided further,* That none of the funds herein appropriated shall be used in the branches of the Department of the Air Force in which there exists racial segregation.". . .
>
> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, I make the point of order that this amendment is not germane and it is, therefore, not in order on this bill; that it is legislation on an appropriation bill; that it imposes additional burdens and restrictions that are entirely out of place.
>
> This is an aircraft procurement bill. This is not a labor bill. I submit that the amendment is out of order from practically every standpoint.
>
> THE CHAIRMAN:[14] Does the gentleman from New York desire to be heard on the point of order?
>
> MR. POWELL: Yes, Mr. Chairman. This is an amendment which has limitations; it is negative; it is the type that has been ruled in order on previous appropriation bills.
>
> THE CHAIRMAN: The Chair is ready to rule. . . . The Chair is constrained to rule that the amendment is germane and is in order and consequently overrules the point of order.

§ 68.4 To the Federal Security Agency title of the general appropriation bill, 1951, an amendment providing that "No part of any appropriation under this title shall be paid as grants to any State or educational institution in which, because of race, color, or creed, discriminatory practices deny equality of educational opportunity or employment to anyone to pursue such educational courses or employment as are provided by such a grant," was held to be a proper limitation restricting the availability of funds and in order.

On Apr. 26, 1950,[15] the Committee of the Whole was consid-

13. 94 CONG. REC. 4543, 80th Cong. 2d Sess.

14. Joseph P. O'Hara (Minn.).

15. 96 CONG. REC. 5816, 5817, 81st Cong. 2d Sess.

ering H.R. 7786. The Clerk read as follows:

Amendment offered by Mr. (Vito) Marcantonio (of New York): On page 151, line 5, after the period, add a new section:

"Sec. 209. No part of any appropriation under this title shall be paid as grants to any State or educational institution in which, because of race, color, or creed, discriminatory practices deny equality of educational opportunity or employment to anyone to pursue such educational courses or employment as are provided by such a grant."

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, a point of order. I make the point of order that the amendment is not germane and that it is legislation on an appropriation bill. I do not see how those conclusions can be escaped. It is clearly legislation on an appropriation bill, and an attempt to interfere with and direct the affairs of every State in the Union and of every Territory. The point of order should be sustained.

THE CHAIRMAN:[16] Does the gentleman from New York desire to be heard on the point of order?

MR. MARCANTONIO: Yes, I do, Mr. Chairman. I refer the Chairman to the Congressional Record of March 8, 1948, page 2356. This identical amendment was offered by me on that day and a point of order was made by the gentleman from Mississippi, against the amendment. It is the same amendment, word for word, to the same section of the bill, and the point of order was overruled. It is definitely a negative limitation.

MR. RANKIN: Mr. Chairman, I just want to state in reply that because one Chairman makes a mistake does not bind the House for all time to come. There was an error on the part of the Chairman, 2 years ago.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Mississippi knows that the present occupant of the chair is bound by the decisions and precedents of the House.

The gentleman from New York [Mr. Marcantonio] has offered an amendment which has been reported, and the gentleman from Mississippi has made a point of order against the amendment. The Chair has examined the amendment and has compared it with the language appearing in the amendment offered by the gentleman from New York on March 8, 1948, against which a point of order was made by the gentleman from Mississippi on the same grounds as stated by him on this occasion. At that time the Chair ruled that the amendment was a limitation on an appropriation bill. Of course, it is the duty of the occupant of the chair to follow the rules of the House and the precedents and decisions of the House. So, in view of this decision the Chair is compelled to and has no other recourse than to overrule the point of order.

Parliamentarian's Note: In the Mar. 8, 1948, ruling[17] referred to by Mr. Marcantonio, the Chairman, Forest A. Harness, of Indiana, decided that an identical amendment was germane to H.R.

16. Jere Cooper (Tenn.).

17. 94 CONG. REC. 2356, 80th Cong. 2d Sess.

5728, the Labor-Federal Security appropriation bill. Mr. Rankin made the point of order:

MR. RANKIN: Mr. Chairman, I make a point of order against the amendment that the amendment is not germane and it is not in order at this point in the bill. . . .

Mr. MARCANTONIO: . . . The amendment certainly is germane. It is simply a negative limitation. It restricts the use of the funds and it is clearly in order.

THE CHAIRMAN: There is no question but that the amendment is germane. This is an appropriation bill and the amendment deals with an appropriation made in the bill. Therefore the Chair overrules the point of order.

§ 68.5 In an appropriation bill providing funds for grants for hospital construction, an amendment providing that "no part of any appropriation contained in this section shall be used . . . by any agency or facility which segregates . . . on account of race, color, ancestry or religion" was held to be a limitation and in order.

On Apr. 3, 1957,[18] the Committee of the Whole was considering H.R. 6287, a Departments of Labor, and Health, Education, and Welfare appropriation bill. The Clerk read as follows:

Grants for hospital construction: For payments under parts C and G, title VI, of the act, as amended, $121,200,000, of which $99,000,000 shall be for payments for hospitals and related facilities pursuant to part C, $1,200,000 shall be for the purposes authorized in section 636 of the act, and $21,000,000 shall be for payments for facilities pursuant to part G, as follows: $6,500,000 for diagnostic or treatment centers, $6,500,000 for hospitals for the chronically ill and impaired, $4,000,000 for rehabilitation facilities, and $4,000,000 for nursing homes: *Provided,* That allotments under such parts C and G to the several States for the current fiscal year shall be made on the basis of amounts equal to the limitations specified herein. . . .

MR. [ADAM C.] POWELL [Jr., of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Powell: On page 25, line 17, before the period insert "*Provided,* That no part of any appropriation contained in this section shall be used for any of the purposes therein mentioned by any agency or facility which segregates citizens in facilities offered, services performed, and granted on account of race, color, ancestry or religion." . . .

MR. [ROSS] BASS of Tennessee: Mr. Chairman, I make a point of order that the amendment is not germane for the same reason that the other amendment was not germane. . . .

MR. POWELL: Mr. Chairman, I would like to say this amendment in exact language as submitted has been held to be germane for the 13 years I have been a Member of the House of Representatives and I submit the following

18. 103 CONG. REC. 5018, 5024, 85th Cong. 1st Sess.

pages in the Record: For instance, in the 83d Congress, 1st session, volume 99, part 5, page 5921, where the Parliamentarian upheld my views.

THE CHAIRMAN:[19] The Chair is ready to rule, having ruled on a quite similar motion back in 1946 when the District of Columbia appropriation bill was up for consideration. The Chair held then that it was a limitation on the use of the money and so holds now, and therefore overrules the point of order.

§ 68.6 To a bill appropriating funds for the Civil War Centennial Commission, an amendment providing that none of the funds appropriated may be used for activities conducted in facilities in which individuals are segregated or discriminated against because of race, religion, or color was held to be a limitation and in order.

On Apr. 18, 1961,[20] the Committee of the Whole was considering H.R. 6345, a Department of the Interior appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [Harold M.] Ryan [of Michigan]: Page 41, immediately before the period in line 18, insert the following: ", except that no part of such amount shall be expended for activities of the Civil War Centennial Commission conducted in facilities in which individuals are segregated on the basis of race, religion, or color, or for any activities of the Commission in which individuals are discriminated against on the basis of race, religion, or color."

MR. [MICHAEL J.] KIRWAN [of Ohio]: Mr. Chairman, I make a point of order against the amendment, in that it is legislation on an appropriation bill. . . .

MR. RYAN: Mr. Chairman, I submit the amendment is in order because it is a limitation on the appropriation and how it shall be spent. I believe the amendment is in order under previous rulings and under section 843 of the rules of the House.

THE CHAIRMAN:[1] The Chair is ready to rule.

It appears to the Chair that this is merely a limitation on an appropriation bill; therefore, the point of order is overruled.

§ 68.7 To an appropriation bill providing funds for hospital construction, an amendment providing that no part of the appropriations in the paragraph under consideration be used for any hospital having separate facilities on the basis of race, creed, or color was held to be a limitation and in order.

On Mar. 27, 1962,[2] the Committee of the Whole was consid-

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

20. 107 CONG. REC. 6132, 87th Cong. 1st Sess.

1. Charles M. Price (Ill.).

2. 108 CONG. REC. 5164, 5165, 87th Cong. 2d Sess.

ering H.R. 10904, a Department of Health, Education, and Welfare appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

HOSPITAL CONSTRUCTION ACTIVITIES

To carry out the provisions of title VI of the Act, as amended, $188,572,000, of which $125,000,000 shall be for grants or loans for hospitals and related facilities pursuant to part C. . . .

MR. [WILLIAM FITTS] RYAN of New York: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Ryan of New York: On page 25, line 21, immediately before the period insert the following ": *Provided further,* That no part of the amounts appropriated in this paragraph may be used for grants or loans for any hospital, facility, or nursing home established, or having separate facilities for population groups ascertained on the basis of race, creed, or color". . . .

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I reserve the point of order.

MR. RYAN of New York: Mr. Chairman and Members of the House, I rise to support an amendment which would provide a limitation upon the appropriations for hospital construction activities: that is, relating to page 25 of the bill.

Mr. Chairman, this amendment would prevent the use of funds appropriated under the Hill-Burton Act for hospital construction for segregated facilities.

The Hill-Burton program has provided Federal financing to help construct more than 2,000 medical care facilities in 11 Southern States. Since the inception of the Hill-Burton program these States have received $562,921,000 for hospital construction. Authorities have pointed out that virtually all of these institutions discriminate in various ways against Negro citizens.

Patterns of discrimination may vary. For example, some hospitals bar Negro patients altogether. The New York Times on February 13, 1962, reported that, according to the Department of Health, Education, and Welfare, 100 of the 4,000 Hill-Burton hospitals bar Negroes. Others admit Negro patients, but segregate them within the hospital. One hospital in Georgia, for example, provides only 12 beds for Negro patients, and the beds are located in a segregated section of the hospital in the basement. This hospital also refuses to admit any Negro pediatric or maternity cases. In addition, many Southern hospitals refuse to allow Negro doctors to treat patients in the hospital, and discriminate against Negroes in their employment practices.

Recently, discriminatory practices in federally aided hospitals have been dramatized. On February 13, 1962, six Negro doctors and three Negro dentists and two Negroes in need of medical care filed a complaint in a Federal district court in Greensboro, N.C. The complaint alleged that discriminatory practices in hospitals violate the due process and equal protection clause of the fifth amendment. The court has been asked to issue an injunction prohibiting the defendants from—

Continuing to enforce the policy, practice, custom, and usage of deny-

ing admission to patients on the basis of race and in any way conditioning or abridging the admission to, and use of, the said facilities on the basis of race.

The pattern of discrimination may vary, Mr. Chairman, but there is abundant evidence that the results seldom do. The policy of "separate but equal" in our medical care system almost invariably results in the unequal or inadequate medical care for many American citizens. Equality must be more than a mere slogan. It must, if we are to be true to our democratic principles, be a reality.

I believe that the elimination of Federal expenditures for segregated facilities is long overdue and that it is time for the U.S. Congress to make clear that it does not condone racial segregation in our hospitals nor the practice of using taxpayer's money to support this doctrine. I hope that all the Members of this body will support this amendment and uphold the principles upon which our Nation was founded.

Civil rights is the great unfinished business facing America. It is the unfinished business of Congress. Of course, I do not mean to imply by my amendment that the executive branch is without power to act in this situation, but I do believe that Congress has a present responsibility. By adopting this simple amendment, we have the opportunity to strike down one area of discrimination. Mr. Chairman, I urge its adoption. . . .

MR. FOGARTY: Mr. Chairman, ever since I have been on this committee I have opposed legislation on appropriation bills. In my opinion, even though this is technically a limitation, this would have the effect of changing existing law, the so-called Hill-Burton Act. Therefore, I request that the amendment be voted down. . . .

THE CHAIRMAN:[3] The gentleman from Rhode Island has reserved his point of order. Does the gentleman from Rhode Island insist on the point of order?

MR. FOGARTY: Mr. Chairman, I waive the point of order. I have stated my reasons as to why the amendment should be defeated and I ask the committee to vote down the amendment. . . .

MR. JAMES C. DAVIS [of Georgia]: Mr. Chairman, I was on my feet at the time the gentleman from Rhode Island was recognized and I was on my feet for the purpose of making a point of order against the amendment. . . .

THE CHAIRMAN: The gentleman from Georgia [Mr. James C. Davis] now states he was on his feet attempting to press a point of order against the amendment, but the Chair had understood that the gentleman from Rhode Island did insist on his point of order. However, the Chair was in error as to that and the gentleman from Georgia is now recognized to make his point of order. . . .

MR. JAMES C. DAVIS: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill. . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York has offered an amendment to which a point of order has been made. . . .

The Chair is of the opinion that the amendment is a proper limitation

3. Omar T. Burleson (Tex.).

under the rules of the House and, therefore, overrules the point of order.

Busing of Students

§ 68.8 A provision in an appropriation bill prohibiting the use of the funds therein "to force busing of students, the abolishment of any school or the attendance of students at a particular school as a condition precedent to obtaining Federal funds" was held in order as a limitation.

On July 31, 1969,[4] the Committee of the Whole was considering H.R. 13111, an appropriation bill for the Departments of Labor, and Health, Education, and Welfare.

The Clerk Read as follows:

Sec. 409. No part of the funds contained in this Act shall be used to force busing of students, the abolishment of any school or the attendance of students at a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district, or school.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I raise the point of order on section 409 on page 56 of the bill that this is legislation on an appropriation bill. It violates section 834 of the House rules. It does not comply with the Holman rule. It is not a retrenchment. In fact, it adds additional burdens and additional duties, just as the Chair ruled against my amendment to section 408 because it would require additional personnel to determine whether busing has been used, one, for the abolishing of any school and, two, to require the attendance of any student at any particular school. You would have to have investigators there to determine this as a condition precedent to obtaining Federal funds otherwise available to any State school district or school: No. 1, for the abolition of any school, and No. 2, whether the attendance of any student at any particular school could be investigated there to determine this as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.

Therefore, Mr. Chairman, I urge the Chairman to sustain the point of order. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: . . . Mr. Chairman, I raised the point awhile ago that the gentleman, having asked unanimous consent that the amendments to the two sections be considered en bloc and having obtained that unanimous-consent request, and after having the amendments considered en bloc in connection with the two sections, that the House has already considered section 409 and the point of order comes too late. That is the situation on the one hand.

Second, a reading of the section clearly shows that the House has already considered section 409 in connection with the prior amendments. In addition to that, this is clearly a limitation on an appropriation bill and does not have to conform to the Holman rule.

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Chairman—

4. 115 CONG. REC. 21677, 21678, 91st Cong. 1st Sess.

THE CHAIRMAN:[5] Does the gentleman from Louisiana desire to be heard on the point of order?

MR. WAGGONNER: I do, Mr. Chairman.

Mr. Chairman, this is clearly a limitation on the expenditure of funds provided in this legislation. The wording of section 409 is identical in every respect with the wording of the language included in the bill last year and agreed to by this House. Therefore, we have the precedent of its having been accepted without a point of order having been made.

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

THE CHAIRMAN: The Chair recognizes the gentleman from Massachusetts for that purpose.

MR. CONTE: The point of order that was ruled against the amendment offered was passed by this House last year on a unanimous vote and no one raised a point of order on that.

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

The clear intent of this section is to impose a negative restriction on the use of the moneys contained in this bill.

The Chair has examined a decision in a situation similar to that presented by the current amendment in the 86th Congress, during consideration of the Defense Department appropriation bill, an amendment was offered by Mr. O'Hara, of Michigan, which provided—and the Chair is now paraphrasing—no funds appropriated in that bill should be used to pay on a contract which was awarded to the higher of two bidders because of certain Defense Department policies. The Chairman of the Committee of the Whole, Mr. Keogh, of New York, held the amendment in order as a limitation, even though it touched on the policy of an executive department—86th Congress, May 5, 1960; Congressional Record, volume 106, part 7, page 9641. Chairman Keogh quoted, in his decision, the precedent carried in section 3968 of volume IV, Hinds' Precedents, and the Chair thinks the headnote of that earlier precedent is applicable here:

> The House may provide that no part of an appropriation shall be used in a certain way, even though executive discretion be thereby negatively restricted.

The Chair overrules the point of order.

Parliamentarian's Note: But see § 61.1, supra, where a prohibition against the use of funds "in order to overcome racial imbalance" was held to impose additional duties on federal officials and was ruled out as legislation on July 31, 1969.

§ 68.9 To provisions in a general appropriation bill prohibiting the use of funds therein to force any school district to take any actions involving the busing of students, or other specified actions, against the will of parents, or as a condition precedent to obtaining federal funds, amendments limiting

5. Chet Holifield (Calif.).

the application of such provisions to those school districts in which students are assigned to particular schools on the basis of geographic attendance areas drawn without consideration of race were held in order as adding definitions to the valid limitations in the bill and as being merely descriptive of the school districts covered thereby.

On Feb. 19, 1970,[6] the Committee of the Whole was considering H.R. 15931, a Departments of Labor, and Health, Education, and Welfare, appropriation bill, which contained the following provisions:

> Sec. 408. No part of the funds contained in this Act may be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of any student attending any elementary or secondary school to a particular school against the choice of his or her parents or parent.
>
> Sec. 409. No part of the funds contained in this Act shall be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of students to a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.

The following amendments were offered to such provisions, and a point of order against the amendments was subsequently made:

> Amendments offered by Mr. [James G.] O'Hara [of Michigan]: On page 60, line 20 after the words "school district" insert "in which students are assigned to particular schools on the basis of geographic attendance areas drawn without consideration of the race or color of prospective students and in which personnel are assigned without regard to race or color" and on line 23 after the words "particular school" insert the words "other than his neighborhood school."
>
> On page 61, line 2, after the words, "school district," insert the words, "in which students are assigned to particular schools on the basis of geographic attendance areas drawn without consideration of the race or color of prospective students and in which personnel are assigned without regard to race or color." And on line 4, after the words, "particular school," insert the words, "other than his neighborhood school." . . .
>
> MR. O'HARA: Mr. Chairman, these are the neighborhood school amendments.
>
> We have heard a good deal of oratory recently to the effect that the problem of segregation in the South is just exactly like the problem of segregation in the North, and that we ought to treat the two alike and consider them the same.

6. 116 CONG. REC. 4028, 4029, 91st Cong. 2d Sess. The provisions in the appropriation bill containing the prohibition described above are quoted on p. 4022, by Mr. Jamie L. Whitten (Miss.).

Well, I do not happen to agree with that, Mr. Chairman, but I am here giving a clear-cut opportunity to any southern school system to enjoy the benefits of the Whitten amendment by establishing a neighborhood school system in which attendance areas are drawn without regard to race and in which personnel are assigned without regard to race.

This amendment is designed to prevent a school district from having its cake and eating it at the same time. The Whitten amendment, if my amendments are adopted, would apply only to school systems that have a bona fide neighborhood school system. It would not apply to a school system that is already busing pupils in order to maintain segregation. The Whitten amendments, if my amendments are adopted, would not apply to dual school systems—the school systems where they are now taking a black child who might live next door to the white school and busing him across the county to the black school. They would not obtain any benefit from the Whitten amendments if my amendments to them are adopted.

Mr. Chairman, this is an eminently reasonable amendment, and I hope it will be adopted.

MR. GERALD R. FORD [of Michigan]: . . . [A]s I read the language proposed in the amendment, it seems crystal clear to me that the language imposes on the executive branch additional burdens and consequently is contrary to the rules of the House as far as legislation on an appropriation bill is concerned. It is clearly an instance of where the language proposed adds burdens and is contrary to the rules of the House as far as legislation on an appropriation bill is concerned. None of the additional burdens were previously authorized by law. . . .

MR. O'HARA: . . . Mr. Chairman, the limitation is in sections 408 and 409. It is a bona fide limitation. All my amendment seeks to do is to prescribe with particularity the school districts to which the limitation in sections 408 and 409 will apply. It does not seek to insert the limitation or to provide for legislation. It simply seeks to describe with more particularity the school districts and the school systems to which the limitations in sections 408 and 409 will apply. Therefore I submit it is not legislation. . . .

MR. GERALD R. FORD: There is nothing in Federal law today which would authorize such action by the proper officials in the executive branch of the Government. This addition to the limitation in sections 408 and 409 does put additional burdens on the executive branch of the Government to determine these kinds of school districts. It is perfectly obvious by the proposed language that it has to be done in each and every case. It is not authorized by law. It is a new burden. It is therefore legislation on an appropriation bill.

THE CHAIRMAN:[7] The Chair is prepared to rule.

The Chair has had occasion to study both of the amendments and the language contained therein. It is clear to the Chair that the language relates to the limitations which are already a part of sections 408 and 409. It defines the limitations further by adding an additional definition to the limitations and in the opinion of the Chair is negative insofar as additional action is

7. Chet Holifield (Calif.).

concerned on the ground that it really is a description of the school district as it exists at the present time. Therefore, the Chair is constrained to overrule the point of order.

§ 69. Commerce and Public Works

Maritime Commission; Limiting Funds for Vessel Construction

§ 69.1 To a paragraph of a bill providing money for construction of ships by the Maritime Commission, an amendment prohibiting such appropriation for the construction of any vessel for use as a naval auxiliary that is not constructed on a reimbursable basis from funds appropriated to the Navy Department pursuant to an act as specified, was held a proper limitation on an appropriation bill and in order.

On Feb. 26, 1943, the Committee of the Whole was considering H.R. 1974, a deficiency appropriation bill. Under consideration was the following provision: (8)

Construction fund, United States Maritime Commission: To increase the construction fund established by the Merchant Marine act, 1936, $4,000,000,000: *Provided,* That the amount of contract authorizations contained in prior acts for ship construction and facilities incident thereto is hereby increased by $5,250,000,000 (toward which $3,076,280,455 is included to the amount appropriated herein): *Provided further,* That without regard to the limitations imposed thereon in the Independent Offices Appropriation Act, 1943, the Commission is hereby authorized to incur obligations for administrative expenses, including the objects specified in such Appropriation Act, during the fiscal year 1943, of not to exceed $16,625,000.

An amendment was offered, against which a point of order was made: (9)

Amendment offered by Mr. [Carl] Vinson of Georgia: Page 11, line 4, before the word "*Provided*", insert the following: "*Provided further,* That no funds appropriated under this act shall be available for the construction or acquisition and conversion of any vessel for use as a naval auxiliary which is not constructed or acquired and converted on a reimbursable basis from funds appropriated to the Navy Department pursuant to an act authorizing the construction or acquisition and conversion of auxiliary vessels for the Navy Department, and."

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I raise a point of order against the amendment. . . .

MR. VINSON of Georgia: Mr. Chairman, this is on the point or order. I

8. 89 CONG. REC. 1359, 1360, 78th Cong. 1st Sess.

9. *Id.* at pp. 1362, 1363.

submit this is not legislation on an appropriation bill. It is a limitation on the money to be used in the construction of certain types of ships. . . .

MR. [W. STERLING] COLE of New York: Mr. Chairman, this appropriation bill provides money for the construction of ships by the Maritime Commission. As I understand the amendment offered by the gentleman from Georgia, it simply limits those funds as to the type of ships for which the funs might be used and is, therefore, very definitely a limitation on the appropriation itself and not legislation.

MR. [SCHUYLER OTIS] BLAND [of Virginia]: Mr. Chairman, may I be heard briefly?

THE CHAIRMAN:[10] Yes.

MR. BLAND: Mr. Chairman, the beginning of the section is that the appropriation is made to increase the construction fund established by the Merchant Marine Act, 1936, and any amendment such as proposed by the gentleman effects an amendment to the Merchant Marine Act, 1936. If legislation is brought in to accomplish the purpose which the gentleman desires, I have no objection, but I am unable and he is unable to say what effect it will have upon the fund that is provided for the work now in progress. But whether that is true or not, it would be an amendment to the construction fund provided by the Merchant Marine Act.

MR. VINSON of Georgia: Mr. Chairman, here is an authorization for the Maritime Commission to build ships, any kind of ships. We put a limitation on it and say they cannot build a certain type of ship. That certainly is not legislation. It is a limitation.

That is the whole point. . . .

THE CHAIRMAN: The amendment offered by the gentleman from Georgia [Mr. Vinson] provides for a limitation upon the appropriation contained in this bill. Therein it differs from the last amendment offered. . . .

The Chair thinks that clearly this is merely a limitation upon an appropriation, therefore overrules the point of order.

Note: This amendment would probably be ruled out of order today, because it appears to make the availability of funds contingent upon future authorizations and future appropriations. Mr. Vinson's concern is proposing the amendment seemed to be to ensure that money would not be available, from the construction fund cited in the bill, for construction of auxiliary vessels without specific authorization. He had earlier[11] offered the following amendment.

Amendment offered by Mr. Vinson of Georgia: Page 11, line 4, insert "*Provided further,* That no funds appropriation under this act or heretofore or hereafter appropriated under this heading, shall be available for the construction or acquisition and conversion of any vessels for use as a naval auxiliary, except on a reimbursable basis from funds appropriation to the Navy Department, pursuant to an act authorizing the construction or acquisition and conversion of auxiliary vessels for the Navy Department."

10. Howard W. Smith (Va.).

11. 89 CONG. REC. 1360, 78th Cong. 1st Sess.

Explaining the amendment, Mr. Vinson stated:

> Mr. Chairman, this is a very important matter, and I shall state to the Committee how it happened, how it arose. In January the Navy Department submitted to the Budget in the usual method required by the Department for clearance, a bill to authorize the construction of a million tons of auxiliary. Bear in mind that from the beginning of time down to date the Navy has always controlled what is known in the Navy as the auxiliary shipping bills. For instance, in 1941 and 1942 we authorize 2,500,000 tons of auxiliaries. In the past that authorization has been brought before the House in a separate bill from the Naval Affairs Committee, and when it becomes law, then we go to the Committee on Appropriations to get the money to carry out the authorization. When the Navy Department in January desired to build a million tons of auxiliary, what happened? The Naval budget officer from the Navy, on January 13 went before the general Budget officials and they said this:
>
> > They state that they were already giving to the Maritime Commission, Admiral Land, sufficient money to finance the building of the merchant ships which can be built according to the types which we call naval auxiliary tonnage. In addition to that, they have given and propose to continue to give the War Shipping Administration, also Admiral Land, plenty of money to convert many of the ships for Army or Navy use. The paper today states a request for $4,000,000,000 before Congress for the Maritime Commission.
>
> Here it is in the bill. Now, what does that mean? It means that if the construction of the auxiliaries for the Navy, which are composed of tankers, supply ships, repair ships, and other ships that are armed but do not carry armament, they propose by the set-up that is not being worked out with the Maritime Commission or the War Shipping Administration, to give to the Navy its auxiliaries. Now, I am opposed to the War Shipping Administration or the Maritime Commission taking the place of Congress. In other words, what is under way now is to circumvent Congress in making the authorization, the Naval Affairs Committee in presenting it to the House, and the Naval Appropriations Committee from making the appropriation. We have no objection to the Maritime Committee acting as the agent of the Navy to construct any of its auxiliaries, but we do propose to enter a vigorous protest against the Navy Department becoming the pensioner of the Maritime Commission or the War Shipping Administration.

The amendment in that instance, however, was conceded to be out of order.

Limiting Purchase of Foreign Agricultural Products if Domestic Supplies Adequate

§ 69.2 To an appropriation bill, an amendment in the form of a motion to recommit which provided that no funds should be used to purchase any foreign dairy or other competitive agricultural products produced in the

United States in sufficient quantities to meet needs, was held a limitation and in order.

On May 19, 1939,[12] the House was considering H.R. 6392, a State, Justice, and Commerce Departments and Judiciary appropriation bill. The Clerk read as follows:

MR. [CHARLES] HAWKS [Jr., of Wisconsin] moves to recommit the bill to the committee with instructions to report it back forthwith with the following amendment: At the end of the bill insert a new paragraph, as follows:

"No part of the funds appropriated in this bill shall be used for the purpose of purchasing any foreign dairy or other competitive foreign agricultural products which are not [sic] produced in the United States in sufficient quantities to meet domestic needs."

MR. THOMAS S. MCMILLAN [of South Carolina]: Mr. Speaker, I make a point of order against the motion to recommit.

THE SPEAKER:[13] The gentleman will state the point of order.

MR. THOMAS S. MCMILLAN: Mr. Speaker, I make the point of order that the motion to recommit is not in order in that it is an attempt to place legislation in an appropriation bill.

MR. [JOSEPH W.] MARTIN [Jr.] of Massachusetts: Mr. Speaker, it is a limitation on appropriations.

THE SPEAKER: The Chair is ready to rule on the point of order made by the gentleman from South Carolina.

The point of order has been made that the motion to recommit is not in order because of the fact that it sets up matters of legislation in an appropriation bill. The Chair has tried carefully to read the provisions of the motion. On a fair reading and construction of the whole motion it appears that there is nothing affirmative in the motion in the way of legislation. It appears to the Chair on the whole to be a restriction or a limitation upon the expenditure of funds.

The Chair, therefore, overrules the point of order.

More recently, a provision with a similar intent contained in H.R. 14262, the Department of Defense appropriation bill, was ruled out of order.[14] In that case, the portion of the bill in question stated:

Sec. 723. No part of any appropriation contained in this Act shall be available for the procurement of any article of food, clothing, cotton, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or speciality metals including stainless steel flatware, not grown, reprocessed, reused, or produced in the United States or its possessions, except to the extent that the Secretary of the Department concerned shall determine that a satisfactory quality and sufficient quantity of any articles of food or clothing or any form of cotton, woven silk and woven silk

12. 84 CONG. REC. 5856, 76th Cong. 1st Sess.

13. William B. Bankhead (Ala.).

14. See 122 CONG. REC. 19014, 94th Cong. 2d Sess., June 17, 1976.

blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, wool, or specialty metals including stainless steel flatware, grown, reprocessed, reused, or produced in the United States or its possessions cannot be procured as and when needed at United States market prices.

The affirmative and express duty placed on the Secretary to make the determinations described was probably a determining factor in the Chair's ruling.

Federal-aid Airports

§ 69.3 To a section of an appropriation bill providing an appropriation for the federal-aid airport program, an amendment providing that "no part of the appropriation . . . shall be used for the development of class 4 and larger airports unless approval of Congress is hereafter granted" was held to be a limitation on an appropriation bill restricting the availability of funds and in order where existing law permitted inclusion of language making that appropriation contingent upon subsequent congressional approval.

On May 15, 1947,[15] the Committee of the Whole was considering H.R. 3311, a State, Justice, and Commerce Departments and Judiciary appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [Kenneth B.] Keating [of New York]: On page 49, line 2, after the word "appropriation", insert the following: "*Provided further*, That no part of the appropriation made herein shall be used for the development of class 4 and larger airports unless approval of Congress is hereafter granted.". . .

MR. [J. PERCY] PRIEST [of Tennessee]: Mr. Chairman, I make a point of order against this amendment as being legislation on an appropriation bill. . . . It seems to me that the argument with reference to the other point of order would apply here. The Administrator, on February 19, 1947, has complied with the requirement of law and has made the required report to Congress.

In reading section 8 of the act, the distinguished gentleman from New York [Mr. Keating], in commenting on the point of order made against the other amendment, it seems to me did not properly interpret the last part of section 8 of the act, and that the amendment actually would change the law by action on an appropriation bill, when the act specifically says:

> In granting any funds that thereafter may be appropriated to pay the United States' share of allowable project costs during the next fiscal year, the Administrator may consider such appropriation as granting the authority requested, unless a contrary intent shall have been manifested by the Congress by a law or by concurrent resolution.

This, it would seem to me, would be by amendment to an appropriation bill

15. 93 CONG. REC. 5379, 80th Cong. 1st Sess.

rather than by a law or by a concurrent resolution, and it would appear that the amendment is legislation on an appropriation bill.

MR. KEATING: Mr. Chairman, as indicated by the gentleman from South Dakota [Mr. Case], this is clearly simply a limitation upon the amount of an appropriation, and it seems to me to be clearly in order.

THE CHAIRMAN:[16] The Chair is of the opinion that the amendment is a limitation, and the point of order is overruled.

Parliamentarian's Note: The Chair apparently took the view that existing law [60 Stat. 174, § 8 of which was referred to by Mr. Priest, above] permitted inclusion of the language making the appropriation contingent upon subsequent congressional approval.

Public Works

§ 69.4 Language in an appropriation bill providing funds for the construction of public works and specifying that none of the funds appropriated should be used for projects not authorized by law "or which are authorized by a law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated" was held to limit expenditures to authorized projects and a point of order against the language as legislation was overruled.

On May 24, 1960,[17] the Committee of the Whole was considering H.R. 12326. At one point the Clerk read as follows:

CONSTRUCTION, GENERAL

For the prosecution of river and harbor, flood control, shore protection, and related projects authorized by law; detailed studies, and plans and specifications, of projects (including those for development with participation or under consideration for participation by States, local governments, or private groups) authorized or made eligible for selection by law (but such studies shall not constitute a commitment of the Government to construction); and not to exceed $1,400,000 for transfer to the Secretary of the Interior for conservation of fish and wildlife as authorized by law; $662,622,300, to remain available until expended: *Provided,* That no part of this appropriation shall be used for projects not authorized by law or which are authorized by a law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated. . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order against the language to be found on page 4, beginning on line 18 and into line 21, "or which are authorized by a

16. Carl T. Curtis (Nebr.).

17. 106 CONG. REC. 10979, 10980, 86th Cong. 2d Sess.

law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated."

Mr. Chairman, I make the point of order against that language on the ground that it is legislation on an appropriation bill. I make the further point of order that this is authorizing appropriations for projects not authorized by law. . . .

THE CHAIRMAN:[18] The Chair is prepared to rule.

It so happens that almost an identical point of order to an identical paragraph was raised on June 18, 1958, by the gentleman from New York [Mr. Taber]. It also happens that the present occupant of the chair was in the chair at that time. The Chair ruled then that the language was specific, that there was no question about its referring to the controlling phrase "authorized by law," and none of the appropriation can be expended unless authorized by law.

The Chair overrules the point of order and sustains the ruling made on June 18, 1958.

Parliamentarian's Note: It should be emphasized that the provision in question did not permit appropriations for unauthorized projects, but merely stated that where projects are authorized, even just for planning, money is only available within limits now or hereafter changed. This and related precedents are discussed further in § 7, supra. See, for example, the June 18, 1958, ruling discussed at § 7.10, supra.

18. Hale Boggs (La.).

Public Works Acceleration

§ 69.5 An amendment to a supplemental appropriation bill providing funds for public works acceleration but prohibiting use of such funds for (1) projects previously rejected and (2) projects, other than for forest preservation, not requiring state or local matching funds was held to be a limitation and in order.

On Apr. 10, 1963,[19] the Committee of the Whole was considering H.R. 5517. The Clerk read as follows:

Amendment offered by Mr. [Edward P.] Boland [of Massachusetts]:

Page 7, after line 14 insert:

"PUBLIC WORKS ACCELERATION

"For an additional amount for 'Public Works Acceleration', $450,000,000: *Provided,* That no part of this appropriation shall be used for any project that has ever been rejected by the Senate or House of Representatives or by any Committee of the Congress: *Provided further,* That no part of this appropriation shall be used for any project that does not require a financial contribution from State or local sources except projects dealing with

19. 109 CONG. REC. 6130–32, 88th Cong. 1st Sess.

preservation of forests in the jurisdiction of the Department of Agriculture and the Department of the Interior.". . .

MR. [MELVIN R.] LAIRD [of Wisconsin]: I make the point of order against the amendment on the basis that you are legislating in an appropriation bill. This particular language which is added by this amendment is, in fact, legislation.

THE CHAIRMAN:[20] Will the gentleman state in what respect it is legislation?

MR. LAIRD: The legislation is in the proviso as far as the matching formula is concerned, which is contrary to the basic law. The second proviso of the amendment does not follow the basic act which was passed in the last session of Congress and is, in fact, legislation. . . .

MR. [ALBERT] THOMAS [of Texas]: . . . Mr. Chairman, I submit that this language is accurate and in order. The gentleman refers to the proviso "providing further that no part of this appropriation shall". It only deals with this appropriation. It is a limitation on the use of the fund and, therefore, I submit it is in order.

THE CHAIRMAN: The Chairman has had an opportunity to examine the amendment and feels that the matter discussed is a limitation on the appropriation. Therefore the Chair overrules the point of order.

Parliamentarian's Note: The authorizing law, Public Law No. 87–658 (the Public Works Acceleration Act of 1962) required matching funds for projects but did not contain the exception stated in the amendment for projects dealing with preservation of forests. Had the argument been pressed that to provide such an exception would allow an unauthorized use of funds for forest projects which do not meet the conditions of the authorizing legislation the Chair should have upheld the point of order.

20. Richard Bolling (Mo.).

Public Buildings

§ 69.6 To an appropriation bill an amendment providing that "none of the funds herein appropriated shall be used for providing facilities at Flint, Mich." was held in order as a limitation restricting the availability of funds.

On July 22, 1954,[1] the Committee of the Whole was considering H.R. 9936, a supplemental appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

For expenses necessary for alteration of Federal buildings to provide facilities for additional Federal judges as authorized by the act of February 10, 1954 (68 Stat. 8), and additional court personnel, and for expansion of existing court facilities, including costs of moving agencies thereby displaced from space in Federal buildings, $3

1. 100 CONG. REC. 11459, 11460, 83d Cong. 2d Sess.

million, to remain available until June 30, 1956.

MR. [ELFORD A.] CEDERBERG [of Michigan]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Cederberg: On page 12, line 21, after "1956", insert "*Provided,* That none of the funds herein appropriated shall be used for providing facilities at Flint, Mich."

MR. [PAUL W.] SHAFER [of Michigan]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill.

MR. CEDERBERG: Mr. Chairman, this is a limitation upon the appropriation bill rather than legislation.

THE CHAIRMAN:[2] The Chair is ready to rule. The amendment offered by the gentleman from Michigan is definitely a limitation. The point of order is overruled.

Tennessee Valley Authority Personal Services

§ 69.7 To an appropriation bill, an amendment placing a limitation on the amounts in the bill to be used for personal services in the Tennessee Valley Authority was held to be a proper limitation since restricted to funds in the bill.

On Mar. 21, 1952,[3] the Committee of the Whole was considering H.R. 7072, an independent offices appropriation bill. During consideration, a point of order against an amendment was overruled as indicated below:

Amendment offered by Mr. [Kenneth B.] Keating [of New York]: Page 35, line 24, strike out the period and insert a comma and add the following: "and not to exceed $99,131,125 of funds available under this section shall be used for personal services.". . .

MR. [ALBERT] THOMAS [of Texas]: I made the point of order that it is legislation on an appropriation bill. It says "funds available." There are two types of funds available to the TVA—appropriated funds and its own revenues. . . .

THE CHAIRMAN:[4] The Chair is ready to rule.

The Chair is of the opinion that the amendment refers only to funds contained within this section of this bill and is merely a negative limitation, which is in order. Therefore, the Chair overrules the point of order.

Parliamentarian's Note: Just prior to this ruling, the Chair had ruled out of order an amendment stating that "not to exceed $99,131,125 of the funds available to the Tennessee Valley Authority shall be used for personal services." [See 98 Cong. Rec. 2673, 2674]. The Chair stated that that amendment was not limited to funds contained in the bill.

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2. Leo E. Allen (Ill.).

3. 98 CONG. REC. 2674, 82d Cong. 2d Sess.

4. Wilbur D. Mills (Ark.).

Restricting Highway Funds to Limit Vehicle Weights

§ 69.8 An amendment to a general appropriation bill prohibiting the use of Interstate Highway System funds in the bill by any state which permits the Interstate System to be used by vehicles in excess of certain sizes and weights but not interfering with contractual obligations entered into prior to enactment was held in order as a negative limitation on the use of funds in the bill which did not impose new duties on federal officials (who were already under an obligation to determine vehicle weights and widths in each state) and which did not directly change any allocation formula in existing law.

On July 10, 1975,[5] during consideration in the Committee of the Whole of the Department of Transportation appropriation bill (H.R. 8365), a point of order against an amendment was overruled as follows:

The Clerk read as follows:

Amendment offered by Mr. [Edward I.] Koch [of New York]: page 35, after line 21, insert:

Sec. 315. (a) No part of any appropriation for the Interstate System contained in this Act shall be available for expenditure or obligation in any State within the boundaries of which the Interstate System may lawfully be used by vehicles with weight in excess of eighteen thousand pounds carried on any one axle, or with a tandem-axle weight in excess of thirty-two thousand pounds, or with an overall gross weight in excess of seventy-three thousand two hundred and eighty pounds, or with a width in excess of ninety-six inches, or the corresponding maximum weights or maximum widths permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956 (or in the case of the State of Hawaii February 1, 1960), whichever is the greater.

(b) Subsection (a) of this section shall take effect in each State on the 30th day after the 1st day of a regular session of the legislature of that State which session begins after the date of enactment of this Act.

(c) Nothing in this section shall be deemed to prohibit the payment of any contractual obligation of the United States entered into prior to the date of enactment of this Act.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I raise a point of order against the amendment on the ground it is legislation in an appropriation bill.

It imposes a tremendous amount of new duties on the Secretary of Transportation, the Administrator of the Federal Highway System, in order to enforce the law. . . .

MR. [JAMES C.] WRIGHT [Jr., of Texas]: . . . This amendment, if adopted, would require a great number of the States—28 of them, if my information is current and correct—to amend

5. 121 CONG. REC. 22006, 22007, 94th Cong. 1st Sess.

or repeal their own basic laws, adopted in good faith and in total conformity with applicable Federal law, under pain of losing their Federal highway apportionments. If that is not changing the basic law, Mr. Chairman, it would be difficult, indeed, to conceive of a provision which would change basic law.

This amendment, if adopted, would impose upon the administrators in the Federal Highway Administration and the Department of Transportation the duty of ascertaining just which States had complied with this new directive, when they had come into compliance with the new directive, whether their individual statutes met the test herein prescribed, part of which test is totally new to Federal law, whether their individual legislative action had been timely within the meaning of this amendment, and precisely how much of their entitlements were to be withheld based upon their untimeliness or their total failure to comply. . . .

Moreover, the effect of the amendment would go far beyond the period covered by the annual appropriation. I invite the attention of the Chair to subsection (b) of the amendment as offered by the gentleman from New York, which reads as follows:

> Subsection (a) of this section shall take effect in each State on the 30th day after the 1st day of a regular session of the legislature of that State which session begins after the date of enactment of this Act.

Therefore, this would be applicable at different times in different States. Furthermore, it is a well-known and verifiable fact, Mr. Chairman, that in some of the States the next regular session of the legislature will not occur until the year 1977, and therefore, the applicability of this provision in the current 1976 appropriations bill, if it were adopted, would not occur in some of the States until many months after the expiration of the period for which this appropriations bill is written, almost 2 years from the present date.

An understanding of title 23 of the United States Code, which sets forth the basic highway laws of the Nation, makes it abundantly clear that the presently offered amendment, by its very terms, would profoundly affect not only the present appropriation, but future appropriations and apportionments under the law and the basic legal relationship which present law prescribes between the States and the Federal Government. . . .

Sections 104, 106, and 118 of title 23 set forth the manner of apportionment and obligation of funds among the States, including the approval of plans, specifications, and estimates for individual projects, and mandate advance contractual obligations on the part of the Federal Government.

They contain the declaration that—

> On or after the date the funds are apportioned, they shall be available for expenditure.

Section 104 requires that apportionments among the States be based upon a ratio concerning the estimated cost of completing the Interstate System within each such State. It also requires, Mr. Chairman, in the interest of orderly planning and continuity, that apportionments be made as far in advance of each fiscal year as possible and, in no case, less than 18 months prior to the beginning of that year.

So, if this amendment were adopted and were to go into effect in some

States 18, 20 or 23 months from now, it would have a profound effect on the duties of the Administrator in that not only would he have to make ascertainments, he would have to make guesses in advance as to whether a given State were going to comply with this act, because the language compels him to make that apportionment 18 months in advance; and any apportionments withheld as a result of this amendment clearly would affect and even control appropriations and expenditures in future fiscal years. . . .

THE CHAIRMAN:[6] the gentleman from Massachusetts and the gentleman from Texas make a point of order against the amendment offered by the gentleman from New York on the grounds that it constitutes legislation and is not in order on an appropriation bill.

The Chair would first state that it is well settled that the House may in an appropriation bill negatively deny the use or availability of funds for certain purposes or to certain recipients even though authorized by law, if the denial is limited to funds contained in the bill and if the limitation does not constitute new legislation.

The amendment offered by the gentleman from New York limits itself to appropriations contained in the bill for the Interstate System. The amendment denies the availability of such funds for expenditure or obligation within States wherein certain truck weights and widths may be lawfully used on the Interstate System.

The determination by the Federal Government, whether States would meet the test mandated by the amendment, would not require new affirmative duties. As Chairman Price ruled on December 11, 1973—the decision is noted in Deschler's Procedure, chapter 25, section 16.2—almost any limitation on an appropriation bill requires some determination to establish the fact whether the limitation would apply, and it is in order to restrict the availability of funds to recipients not meeting certain qualifications as long as the determination of those qualifications is readily ascertainable under existing law and facts. The Chair would note that under section 127 of title 23 of the United States Code, as amended by the Federal Aid Highway Amendments of 1974, the Federal Government has the authority and duty to determine the vehicle weights and widths which may be used in each State on the Interstate System.

It has been contended that the amendment constitutes legislation because it denies the availability of funds not only for expenditures but also for obligation. Yet the limitation is confined to the funds carried in the bill and would deny only their use for certain obligations entered into. The amendment reaches no funds which are not carried in the bill, and that goes to the point raised by the gentleman from Texas that some State legislatures are not in session on an annual basis. It has been held in order on an appropriation bill to deny the use of funds in the bill for the Export-Import Bank to guarantee the payment of certain obligations therein-after incurred, as cited in Deschler's Procedure, chapter 25, section 16.5. Again Deschler's Procedure, chapter 25, section 17.1, indicates that an amendment

6. John M. Murphy (N.Y.).

to an appropriation bill may provide that none of the funds therein shall be available for payments on certain contracts, and 4 Hinds' Precedents, section 3987, lays down the principle that an appropriation may be withheld from a designated object although contracts may be left unsatisfied thereby.

The amendment in issue does not seek to directly change a formula, repeal a provision of law or require the use or allocation of funds contrary to law. It simply denies appropriation for a purpose which is authorized by law. For that reason the Chair overrules the point of order.

§ 70. Defense

Prohibiting Funds for Invasion of North Vietnam

§ 70.1 To a bill making supplemental defense appropriations, an amendment providing that none of the funds so appropriated be available for implementation of any plan to invade North Vietnam was held in order as a valid limitation restricting the availability of funds.

On Mar. 16, 1967,[7] the Committee of the Whole was considering H.R. 7123. During the proceedings, a point of order against an amendment was overruled as indicated:

Amendment offered by Mr. [George E.] Brown of California: On page 7, after line 13, insert the following:

"General Provision.—None of the funds appropriated in this Act shall be available for the implementation of any plan to invade North Vietnam with ground forces of the United States, except in time of war."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill. It appears to be a limitation, but it is in fact legislation, and I make a point of order on that ground. . . .

MR. BROWN of California: Mr. Chairman, I regret that the distinguished chairman of the Committee [on Appropriations] has seen fit to raise a point of order in connection with my amendment in view of the language which is already contained in the bill with regard to limitations on expenditures with regard to airlift and in view of the precedents of the House with regard to limitations of this sort. . . .

I would like to cite for the benefit of the Chairman Cannon's precedents, paragraph 1657:

> On March 22, 1922, the War Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:
>
> "No part of the appropriations made herein for pay of the Army shall be used, except in time of emergency, for the payment of troops garrisoned in China or for payment of more than 500 officers and enlisted men on the Continent of Eu-

7. 113 CONG. REC. 6886, 6887, 90th Cong. 1st Sess.

rope; nor shall such appropriations be used, except in time of emergency"—

And I call your attention specifically to the phrase "except in time of emergency"—

"for the payment of more than 5,000 enlisted men in the Panama Canal Zone or more than 5,000 enlisted men in the Hawaiian Islands."

A point of order was made against this amendment on the same grounds that the distinguished chairman of the Committee on Appropriations, the gentleman from Texas [Mr. Mahon], has just made his point of order—that it constituted legislation in a general appropriation bill.

Mr. Chairman, the then chairman, Nicholas Longworth of Ohio, ruled, in part, as follows:

The Chair will be very frank in saying that he is so much opposed to this proposition that he has tried to find some way of holding it out of order. But the Chair does not see how that is possible in any way in compliance with the rules of the House. . . .

THE CHAIRMAN:[8] the Chair is prepared to rule.

The Chair is aware of the precedents cited by the gentleman from California [Mr. Brown].

It appears clear to the Chair that the effect of the amendment would be to impose a limitation upon the funds provided in this appropriation bill. It is not within the province of the Chair to pass judgment upon the broad philosophical intent or purpose or, indeed, upon the broad philosophical effect of such an amendment.

The amendment, under the rules, appears clearly to follow precedents. Its effect would be to restrict the application for funds otherwise provided in the bill, and it appears to the Chair that the amendment is in order as a limitation upon an appropriation bill—and the Chair so rules. The Chair overrules the point of order.

Age of Draftees

§ 70.2 A proposed amendment to an appropriation bill providing that the appropriations in the Act not be available for the pay or allowance of any person over a specified age who is inducted without his consent into the armed forces, and that such appropriations not be available, after a certain date, for any other person inducted without his consent, was held to be a proper limitation and in order.

On Apr. 13, 1949,[9] the Committee of the Whole was considering H.R. 4146, a national military establishment appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [James G.] Fulton [of Pennsylvania]: On page 76, insert after line 12, the following new section:

"Sec. 601. The appropriations in this act shall not be available for the pay,

8. James C. Wright, Jr. (Tex.).

9. 95 CONG. REC. 4533, 81st Cong. 1st Sess.

allowances, or travel of any person inducted without his consent into the armed forces under the Selective Service Act of 1948, who is, on July 1, 1949, over 22 years of age. The appropriations in this act shall not be available, after September 24, 1949, for the pay, allowances, or travel of any other person inducted without his consent into the armed forces under the Selective Service Act of 1948. This section shall not apply with respect to any person who, after June 24, 1948, or after the date of enactment of this act, shall voluntarily have extended the term of his service.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[10] the Chair is ready to rule.

An examination of the amendment offered by the gentleman from Pennsylvania indicates that it is in the nature of a limitation on the appropriation.

The point of order is overruled.

Compulsory College Military Training

§ 70.3 An amendment to a general appropriation bill providing that none of the funds therein appropriated shall be used toward the support of any compulsory military course or training in any civil school or college was held to be a proper limitation restricting the availability of funds and in order.

On Apr. 30, 1937,[11] the Committee of the Whole was considering H.R. 6692, a War Department appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

CITIZENS' MILITARY TRAINING

RESERVE OFFICERS' TRAINING CORPS

For the procurement, maintenance, and issue, under such regulations as may be prescribed by the Secretary of War, to institutions at which one or more units of the Reserve Officers' Training Corps are maintained, of such public animals, means of transportation, supplies, tentage, equipment, and uniforms as he may deem necessary, including cleaning and laundering of uniforms and clothing at camps; and to forage, at the expense of the United States, public animals so issued, and to pay commutation in lieu of uniforms at a rate to be fixed annually by the Secretary. . . .

MR. [FRED] BIERMANN [of Iowa]: Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. Biermann: On page 62, line 7, before the period, insert *"Provided further,* That none of the funds appropriated in this act shall be used for or toward the support of any compulsory military course or military training in any civil school or college, or for

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

11. 81 CONG. REC. 4070, 75th Cong. 1st Sess.

the pay of any officer, enlisted man, or employee at any civil school or college where a military course or military training is compulsory, but nothing herein shall be construed as applying to essentially military schools or colleges.". . .

MR. [JOHN] TABER [of New York]: I make the point of order that it is legislation. . . .

MR. BIERMANN: May I call the attention of the Chairman to the fact this identical amendment was ruled on a year ago?

THE CHAIRMAN:[12] If the Chair were in doubt; the Chair would welcome the gentleman's contribution.

This matter has been passed upon before.[13] the amendment is clearly a limitation, and the Chair, therefore, overrules the point of order.

Army Social Centers—Intoxicants

§ 70.4 To a paragraph making appropriations for the welfare of enlisted men of the Army, an amendment providing that "no part of the funds appropriated under this head shall be available for expenditure for the operation and maintenance of facilities where intoxicating beverages are sold or dispensed" was held to be a proper limitation restricting the availability of funds and in order.

On Sept. 26, 1940,[14] the Committee of the Whole was considering H.R. 10572, a supplemental national defense appropriation. A point of order against an amendment was overruled as follows:

For welfare of enlisted men, $2,572,594.

MR. [ULYSSES S.] GUYER of Kansas: Mr. Chairman, I offer an amendment which is at the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. Guyer of Kansas: Page 2, line 25, after the heading of "Welfare, enlisted men", strike out the period, insert a colon and the proviso, "*Provided*, That no part of the funds appropriated under this head shall be available for expenditure for the operation and maintenance of facilities where intoxicating beverages are sold or dispensed."

MR. [THOMAS C.] HENNINGS [Jr., of Missouri]: Mr. Chairman, I make a point of order that the amendment is not in order.

MR. GUYER of Kansas: Mr. Chairman, it is a limitation upon an appropriation. . . .

THE CHAIRMAN:[15] The Chair is prepared to rule. The Chair feels that as the bill under consideration is a general appropriation bill, appropriating among other things funds for the personnel of the Army, the amendment offered by the gentleman from Kansas (Mr. Guyer) is a proper limitation upon the use of the money and therefore in

12. John W. McCormack (Mass.).
13. See 7 Cannon's Precedents § 1694.
14. 86 CONG. REC. 12697, 76th Cong. 3d Sess.
15. Joseph A. Gavagan (N.Y.).

order. The Chair overrules the gentleman's point of order.

Air Force Academy Construction

§ 70.5 To an appropriation bill, an amendment providing that no part of the funds therein shall be used for construction of the Air Force Academy chapel was held to be a limitation and in order.

On Aug. 6, 1957,[16] the Committee of the Whole was considering H.R. 9131, a supplemental appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Errett P.] Scrivner [of Kansas]: On page 6, line 14, strike out the period, insert a semicolon and the following: "*Provided*, That no part hereof shall be applied to the construction of the Air Force Academy chapel."

MR. [FRANK] THOMPSON [Jr.] of New Jersey: Mr. Chairman, a point of order.

THE CHAIRMAN:[17] the gentleman will state it.

MR. THOMPSON of New Jersey: Mr. Chairman, I make the point of order that the amendment offered by the gentleman from Kansas [Mr. Scrivner] is not in order since it is legislation on an appropriation bill.

MR. SCRIVNER: Mr. Chairman, this is a limitation on the expenditure of funds, therefore the amendment I have offered is in order.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from New Jersey [Mr. Thompson] makes the point of order that the amendment offered by the gentleman from Kansas constitutes legislation on an appropriation bill. The proviso offered by the gentleman from Kansas is a limitation upon the purpose for which the funds appropriated may be used therefore is not legislation. The point of order is overruled.

Monitoring Workers' Efficiency

§ 70.6 Language in the military establishment appropriation bill providing that no part of the appropriation made in the act would be available for the salary of any officer having charge of any employee while making (with a stop watch or other measuring device) a time study of any job or the movements of any employee was held to be a proper limitation on an appropriation bill and in order.

On June 21, 1946,[18] during consideration in the Committee of the Whole of the military establishment appropriation bill (H.R. 6837), the following point of order was raised:

Mr. [ELLSWORTH B.] BUCK [of New York]: Mr. Chairman, I make the point

16. 103 CONG. REC. 13788, 85th Cong. 1st Sess.

17. Paul J. Kilday (Tex.).

18. 92 CONG. REC. 7354, 79th Cong. 2d Sess.

of order against section 2 on page 5, which is plainly legislation on an appropriation bill. . . .[19]

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

THE CHAIRMAN:[20] The Chair will hear the gentleman from New York.

MR. BUCK: Mr. Chairman, the whole point of the section is to discourage a supervisory employee from putting into effect efficient operation. Further, it is entirely contradictory to the provision in section 16, on pages 64 and 65, whereby efficiency is to be increased. The two just do not go together.

THE CHAIRMAN: On March 28, 1924, the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union when the Clerk read a paragraph similar to this, which was held to be a limitation rather than legislation. Therefore, the point of order is overruled.

19. Section 2 provided: "No part of the appropriations made in this Act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch, or other time-measuring device, a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this Act be available to pay any premiums or bonus or cash reward to any employee in addition to his regular wages, except as may be otherwise authorized in this Act."

20. R. Ewing Thomason (Tex.).

Lighter-than-air Craft Prohibited

§ 70.7 Language in a general appropriation bill providing that "no appropriation contained in this act shall be expended upon lighter-than-air craft" was held to be a proper limitation and in order.

On Apr. 30, 1937,[1] the Committee of the Whole was considering H.R. 6692, a War Department appropriation bill. At one point the Clerk read as follows:

AIR CORPS

AIR CORPS, ARMY

For creating, maintaining, and operating at established flying schools and balloon schools courses of instruction for officers, students, and enlisted men, including cost of equipment and supplies . . . *Provided further,* That no available appropriation shall be used upon lighter-than-air craft, other than balloons, not in condition for safe operation on June 30, 1937, or that may become in such condition prior to July 1, 1938. . . .

MR. [DOW W.] HARTER [of New York]: Mr. Chairman, I make a point of order against the language on page 37, beginning in line 22, all of lines 23 and 24, and that part of line 1 on page 38 ending with the semicolon after the figures "1938."

MR. [J. BUELL] SNYDER of Pennsylvania: Mr. Chairman, I concede the

1. 81 CONG. REC. 4060–68, 75th Cong. 1st Sess.

point of order. We will offer an amendment later on.

THE CHAIRMAN:[2] The point of order is sustained. . . .

MR. SNYDER of Pennsylvania: Mr. Chairman, I offer a committee amendment.

The Clerk read as follows:

> Committee amendment offered by Mr. Snyder of Pennsylvania: On page 37, after line 21, insert the following: "*Provided further,* That no appropriation contained in this act shall be expended upon lighter-than-air craft, other than balloons, not in condition for safe operation on July 1, 1937, or that may become in such condition prior to July 1, 1938."

MR. HARTER: Mr. Chairman, a point of order. That is purely legislation and not proper on an appropriation bill. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The amendment as drawn is different from the proviso that was contained in the bill as reported by the committee. The proviso contained in the bill as reported by the committee related to all existing appropriations. It was not confined to the present bill. The amendment offered by the committee confines itself to the present bill, and, in the opinion of the Chair, is clearly a limitation. For this reason the point of order is overruled.

Work in Navy Shipyards

§ 70.8 An amendment to a Defense Department appropriation bill providing that not more than a certain amount of funds therein for alteration, overhaul, and repair of naval vessels shall be available for such work in Navy shipyards was held in order as a limitation on the use of funds in the bill.

On Sept. 14, 1972,[3] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 16593), a point of order was raised against the following amendment:

> Amendment offered by Mr. [Glenn R.] Davis of Wisconsin: Page 51, line 21, insert a new section 743 as follows:
>
> "Of the funds made available by this Act for the alteration, overhaul, and repair of naval vessels, not more than $646,704,000 shall be available for the performance of such works in Navy shipyards.". . .
>
> MR. [LOUIS C.] WYMAN [of New Hampshire]: I make the point of order that the amendment proposed by the gentleman from Wisconsin in the form in which it is presently worded does not constitute a limitation, but is rather legislation upon an appropriations bill contrary to the rules of the House.
>
> THE CHAIRMAN:[4] Does the gentleman from Wisconsin care to be heard on the point of order?
>
> MR. DAVIS OF WISCONSIN: I do, Mr. Chairman. I submit to the Chair that this is definitely a limitation on the amount of money which may be spent for a specific purpose. I would suggest

2. John W. McCormack (Mass.).

3. 118 CONG. REC. 30749, 30750, 92d Cong. 2d Sess.

4. Daniel D. Rostenkowski (Ill.).

to the Chair that it is clearly within the rules of the House as a limitation on an appropriations bill.

THE CHAIRMAN: The Chair has examined the amendment and feels that it is a valid limitation on the funds made available in the bill and overrules the point of order.

§ 71.—Military Contracts

Conventional Powerplant for Ship

§ 71.1 To a bill appropriating funds for defense procurement, an amendment providing that none of the funds therein shall be available for paying the cost of a conventional powerplant for a designated ship was held to be a proper limitation and in order even though it was apparent that there were no funds in the bill for the ship in question.

On Apr. 22, 1964,[5] the Committee of the Whole was considering H.R. 10939, a Department of Defense appropriation bill. A point of order against an amendment was overruled as follows:

Amendment offered by Mr. [Craig] Hosmer [of California]: On page 42, line 18, after line 18 insert a new section 540—and renumber the following sections—to read as follows:

"None of the funds appropriated herein shall be available for paying the cost of a conventional powerplant for CVA–67."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make the point of order that there are no funds in this bill for an aircraft carrier.

THE CHAIRMAN:[6] Does the gentleman desire to be heard on the point of order?

MR. HOSMER: Yes, I do.

THE CHAIRMAN: The Chair will be pleased to hear him.

MR. HOSMER: My point is, It is irrelevant whether or not there are any funds in this bill. An amendment of this nature will lie irrespective.

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

. . . Apparently the only basis for that point of order is that there are no funds in the pending bill to accomplish that which is sought to be accomplished by the amendment. As futile, therefore, as the amendment might be, it is in fact a limitation of the funds herein appropriated and the Chair therefore overrules the point of order.

Retired Military Officers Employed by Defense Contractors; Incidental Duties Imposed on Officials

§ 71.2 Where the manifest intent of a proposed amendment is to impose a negative limitation on the use of funds

5. 110 CONG. REC. 8802, 88th Cong. 2d Sess.

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

appropriated in the bill, the implication that the administration of the limitation will impose certain incidental burdens on executive officers does not destroy the character of the limitation. For example, an amendment providing that none of the funds appropriated in a bill could be used to enter into contracts with any concern having on its payroll a retired or inactive military officer was held to be a limitation and in order.

On June 3, 1959,[7] the Committee of the Whole was considering H.R. 7454, a Department of Defense appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

CONSTRUCTION OF SHIPS, MILITARY SEA TRANSPORTATION SERVICE, DEPARTMENT OF DEFENSE

The appropriation to the Department of Defense for "Construction of ships, Military Sea Transportation Service," shall not be available for obligation after June 30, 1959.

MR. [ALFRED E.] SANTANGELO [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Santangelo: On page 25, after line 17, add new section, as follows:

GENERAL PROVISIONS

"Sec. 301. None of the funds contained in this Title may be used to enter into a contract with any person, organization, company or concern which provides compensation to a retired or inactive military or naval general officer who has been an active member of the military forces of the United States within 5 years of the date of enactment of this act.". . .

MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, it is legislation on an appropriation bill. I will reserve a point of order. . . .

Mr. Chairman, I renew my point of order. . . .

THE CHAIRMAN:[8] The Chair is prepared to rule. . . .

It is obvious that the intent of this amendment is to impose a limitation on the expenditure of the funds here appropriated, and while the point might be made that imposing limitations will impose additional burdens, it is nevertheless the opinion of the Chair clearly a limitation on expenditures, and therefore the Chair overrules the point of order.

Parliamentarian's Note: In a similar ruling, on May 5, 1960, the Chair allowed an amendment stating in part:

None of the funds contained in this Title may be used to pay or reimburse any Defense Contractor which . . . within two years from the release from active duty of a retired commissioned officer knowingly permits any such retired commissioned officer to sell or aid in the selling of anything of value to

7. 105 CONG. REC. 9741, 9742, 86th Cong. 1st Sess.

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

the Department of Defense or an Armed Force of the United States.[9]

In the current practice, however, it would probably be held that the language denying funds to contractors who "knowingly" permit retired officers to participate in the sales in question constitutes legislation, in that it places on administrative officials the additional burden of making findings as to the intent or state of knowledge of the defense contractors described.

Resale of Subsidized Commodities

§ 71.3 An amendment to the war agencies appropriation bill providing that no part of the appropriation in the pending bill shall be used for payment to any person who pays any subsidy, authorizes the payment of a subsidy, or participates in any of several stated manners in the payment of subsidies involving the purchase of any commodity by the government for the purpose of its resale at a lower price than that paid by the government was held to be a proper limitation and in order.

On June 18, 1943,[10] the Committee of the Whole was considering H.R. 2968. The Clerk read as follows:

> Salaries and expenses: For all necessary expenses of the Office of Price Administration in carrying out the provisions of the Emergency Price Control Act of 1942, as amended by the act of October 2, 1942 (50 U.S.C. App. 901), and the provisions of the act of May 31, 1941 (55 Stat. 236), as amended by the Second War Powers Act, 1942 (50 U.S.C. App. 622), and all other powers, duties, and functions which may be lawfully delegated to the Office of Price Administration . . . $165,000,000 . . . [*Provided*], That no part of this appropriation shall be available for making any subsidy payments: *Provided further*, That no part of this appropriation shall be used to enforce any maximum price or prices on any agricultural commodity or any commodity processed or manufactured in whole or substantial part from any agricultural commodity unless and until (1) the Secretary of Agriculture has determined and published for such agricultural commodity the prices specified in section 3(a) of the Emergency Price Control Act of 1942; (2) in case of a comparable price for such agricultural commodity, the Secretary of Agriculture has held public hearings and determined and published such comparable price in the manner prescribed by section 3(b) of said act; and (3) the Secretary of Agriculture has determined after investigation and proclaimed that the maximum price or prices so established on any

9. 106 CONG. REC. 9632, 9634–36, 86th Cong. 2d Sess.

10. 89 CONG. REC. 6111, 78th Cong. 1st Sess.

such agricultural commodity will reflect to the producer of such agricultural commodity a price in conformity with section 3(c) of said act: *Provided further,* That any employee of the Office of Price Administration is authorized and empowered, when designated for the purpose by the head of the agency, to administer to or take from any person an oath, affirmation, or affidavit when such instrument is required in connection with the performance of the functions or activities of said Office.

An amendment was offered, as follows:[11]

Amendment offered by Mr. [Everett M.] Dirksen [of Illinois]: Page 13, after line 3, add the following: "*Provided further,* That no part of any appropriation contained herein shall be used for payment of the salary or expense of any person who, directly or indirectly, pays any subsidy of any kind or character whatsoever, or who directs or authorizes the payment of a subsidy, or who participates in the preparation of or calculations for the payment of a subsidy, or who directs any other person to pay or prepare or calculate or supply information for the payment of a subsidy, or any person who, directly or indirectly, collaborates with, consults, cooperates with, or directly or indirectly aids any other Federal agency for the payment or the preparation of a subsidy; or of any person who engages or participates as aforesaid in the preparation, formulation, or carrying out of any plan or scheme involving the purchase of any commodity by the Government for the purpose of its resale at a price lower than that paid by the Government."

MR. [EMANUEL] CELLER [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[12] The gentleman will state it.

MR. CELLER: Mr. Chairman, I make the point of order that the amendment offered by the gentleman from Illinois is not germane and is legislation on an appropriation bill. The rule under which this bill was brought into this Chamber waived all points of order with reference to limitations that were engrafted on the bill itself by the Appropriations Committee. For example, a proviso was inserted to the effect that no part of this appropriation shall be available for making any subsidy payments. This type of provision was made impervious to a point of order by the rule which brought this bill into this Chamber, but I believe the rule would not preclude a point of order I now make with reference to the amendment the gentleman from Illinois has offered. So I make the point of order that the amendment is legislation on an appropriation bill and not a mere limitation of amount of appropriation nor a mere limitation of purpose of the appropriation.

THE CHAIRMAN: Does the gentleman from Illinois desire to be heard?

MR. DIRKSEN: Yes, Mr. Chairman. The point needs no belaboring. This is purely a limitation.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York makes the point of order against the

11. *Id.* at p. 6123.

12. John J. Sparkman (Ala.).

amendment that it is legislation on an appropriation bill and that it is not germane. The Chair thinks that the amendment is a limitation and is not subject to the point of order, and therefore overrules the point of order.

Inventions From Research and Development

§ 71.4 An amendment providing that none of the funds appropriated in the bill may be used to enter into research or development contracts under which new inventions or patents, conceived in the process of performing the contract, do not become the property of the United States was held to be a limitation restricting the availability of funds and in order.

On May 5, 1960,[13] the Committee of the Whole was considering H.R. 11998, which included the appropriation of funds for research and development to be carried out directly by government personnel and by contract. The following proceedings took place:

MR. [HARRIS B.] MCDOWELL [JR., OF DELAWARE]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. McDowell: On page 29, after line 13, insert the following:

"Sec. 501. None of the funds appropriated in this Act shall be available for making payments on any research or development contract under which any invention, improvement, or discovery conceived or first actually reduced to practice in the course of performance of such contract or any subcontract thereof, or under which any patent based on such invention, improvement, or discovery, does not become the property of the United States."

And renumber the following sections accordingly. . . .

THE CHAIRMAN:[14] The gentleman will state his point of order.

MR. [GEORGE H.] MAHON [of Texas]: The point of order is that this proposed amendment would imply additional duties beyond the scope of the bill.

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

MR. MCDOWELL: Yes; I do, Mr. Chairman.

Mr. Chairman, I cited to the Chair certain Hinds' and Cannon's precedents which adequately demonstrate that the amendment does not in any way restrict the administrative procedures under the act. It is not retroactive in any sense of the word. With that, I simply leave the matter at this point to the Chair for a ruling.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Delaware [Mr. McDowell] offered an amendment in the language heretofore reported, and a point of order was made by the gentleman from Texas [Mr. Mahon] that it was, in effect, legislation on an appropriation bill, imposing additional du-

13. 106 CONG. REC. 9624, 9627, 86th Cong. 2d Sess.

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

ties on the executive branch of the Government.

The Chair has had an opportunity to reread the language of the amendment and to refer to the precedents applicable, in the opinion of the Chair, thereto. It is the opinion of this occupant of the chair that the amendment offered by the gentleman from Delaware is, in fact, a limitation on the appropriations appropriated in this act, and while it may be argued that the limitation imposed causes or results in additional burdens on the executive branch, in the opinion of this occupant of the chair, that is normal and reasonable to expect in the carrying out of the limitation.

Therefore, the Chair is constrained to overrule the point of order.

The point of order is overruled.

Prohibiting Funds for Contracts Containing Specified Clause

Conditions for Dispute Settlement

§ 71.5 Language in an appropriation bill providing that no funds in the bill shall be used for the purpose of entering into contracts containing a certain condition was held to be a proper limitation restricting the availability of funds and in order.

On Apr. 9, 1952,[15] the Committee of the Whole was considering H.R. 7391, a Department of Defense appropriation bill. The Clerk read as follows:

Sec. 635. No funds contained in this act shall be used for the purpose of entering into contracts containing article 15 of the Standard Government Contract, which reads as follows:

"Disputes: Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer subject to written appeal by the contractor within 30 days to the head of the department concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties thereto. In the meantime the contractor shall diligently proceed with the work as directed."

MR. [OVERTON] BROOKS [of Louisiana]: Mr. Chairman, I make a point of order against the language in Section 365 on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN:[16] If no one desires to be heard on the point of order, the Chair is ready to rule. The Chair holds, after careful consideration of the paragraph to which the gentleman from Louisiana makes a point of order, that the language is a limitation on an appropriation bill and therefore overrules the point of order.

§ 72. District of Columbia

Public Assistance; Apportionment to Escape Deficiency

§ 72.1 An amendment to the District of Columbia appro-

15. 98 CONG. REC. 3891, 82d Cong. 2d Sess.

16. James W. Trimble (Ark.).

priation bill providing that no part of the appropriation for public assistance shall be expended in such a manner as to require a deficiency to supplement the appropriation was held to be a proper limitation and in order as not changing the law 31 USC § 665(c) (see Revised Statutes § 3679) already requiring expenditures in such manner.

On Feb. 1, 1938,[17] the Committee of the Whole was considering H.R. 9181. The Clerk read as follows, and proceedings ensued as indicated below:

PUBLIC ASSISTANCE

For the purpose of affording relief to residents of the District of Columbia who are unemployed or otherwise in distress because of the existing emergency, to be expended by the Board of Public Welfare of the District of Columbia by employment and direct relief, in the discretion of the Board of Commissioners and under rules and regulations to be prescribed by the board and without regard to the provisions of any other law, payable from the revenues of the District of Columbia, $900,000, and not to exceed 7½ percent of this appropriation and of Federal grants reimbursed under this appropriation shall be expended for personal services: *Provided* That all auditing, disbursing, and accounting for funds administered through the Public Assistance Division of the Board of Public Welfare, including all employees engaged in such work and records relating thereto, shall be under the supervision and control of the Auditor of the District of Columbia: *Provided further,* That this appropriation shall be so apportioned and distributed by the Commissioners over the fiscal year ending June 30, 1939, and shall be so administered, during such fiscal year, as to constitute the total amount that will be utilized during such fiscal year for such purposes: *Provided further,* That not more than $75 per month shall be paid therefrom to any one family. . . .

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. Collins: On page 58, line 2, after the colon, insert "*Provided,* That no part of this appropriation shall be expended in such a manner as to require a deficiency to supplement such appropriation."

MR. [GERALD J.] BOILEAU [of Wisconsin]: Mr. Chairman, a point of order.

THE CHAIRMAN:[18] The gentleman from Wisconsin [Mr. Boileau] will state the point of order.

MR. BOILEAU: Mr. Chairman, I make the point of order that the amendment offered by the gentleman from Mississippi [Mr. Collins] would be legislation on an appropriation bill and therefore not in order. The same argument and the same reasons would apply to this amendment as to the former pro-

17. 83 CONG. REC. 1364, 75th Cong. 3d Sess.

18. William J. Driver (Ark.).

viso which was stricken. It is legislation on an appropriation bill.

THE CHAIRMAN: The Chair is ready to rule.

The Chair has examined the amendment carefully and is of the opinion this is a limitation; therefore the point of order is overruled.[19]

Segregation

§ 72.2 An amendment to a District of Columbia appropriation bill providing that no part of the money contained therein should be used for any agency, office, or department of the District of Columbia which segregates the citizens of the District of Columbia in employment, facilities afforded, services performed, accommodations furnished, instructions, or aid granted, on account of the race, color, creed, or place of national origin of the citizens of the District of Columbia was held a proper limitation restricting the availability of funds and therefore in order.

On Apr. 5, 1946,[20] the Committee of the Whole was considering H.R. 5990. The Clerk read as follows:

Amendment offered by Mr. [Adam C.] Powell [Jr., of New York]: In line 7, page 2, insert the following: "*Provided*, That no part of any appropriation contained in this act shall be used for any of the purposes therein mentioned by any agency, office, or department of the District of Columbia which segregates the citizens of the District of Columbia in employment, facilities afforded, services performed, accommodations furnished, instructions or aid granted, on account of the race, color, creed, or place of national origin of the citizens of the District of Columbia."

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[1] The gentleman will state the point of order.

MR. RANKIN: Mr. Chairman, I make the point of order that the amendment is not germane, and that it is legislation on an appropriation bill, in that it attempts to change the fundamental laws of the District of Columbia that have been established and in effect for at least 80 years or probably a hundred years.

This amendment, if adopted, would destroy the school system of the District of Columbia. It would stir up race hatred and bring about race trouble, the like of which nothing else has ever

19. The amendment was in fact in conformity with existing law [see 31 USC § 665(c)], which required expenditures to be carried out in the manner described in the amendment.

20. 92 CONG. REC. 3227–29, 79th Cong. 2d Sess.

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

done in all the history of the District. If it is done, the effect will be to destroy the legislation providing funds with which to carry on the public schools in the District of Columbia. . . .

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, this amendment is definitely a negative limitation. It prohibits the use of funds appropriated in this bill for certain specific purposes which are enumerated in the amendment. It does not change any existing law and Congress has the right to withhold the funds for any purpose enumerated in an appropriation act or to withhold funds for any purpose for which an appropriation is being made.

This bill makes appropriations for the District of Columbia. The amendment simply states that none of the funds appropriated in this bill shall be expended to do certain things. . . .

There is no additional duty imposed upon anyone. The amendment deals with an existing condition, that is, segregation in education, segregation in recreation, in hospitals and other places. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair has listened very attentively to the arguments pro and con and has reached the conclusion that the Holman rule is not in issue at the present moment. The wording of the amendment reads, "Provided that no part of any appropriation contained in this act shall be used for any of the purposes therein mentioned," and they are enumerated.

After serious consideration, the Chair is of the opinion that the amendment is a proper limitation and overrules the point of order.

Teachers Doing Clerical Work

§ 72.3 An amendment to a District of Columbia appropriation bill providing that no part of an appropriation shall be used to pay the salary of any teacher performing any clerical work other than that necessary or incidental to the classroom teaching assignments was held to be a proper limitation and in order.

On Apr. 2, 1937,[2] the Committee of the Whole was considering provisions of H.R. 5996, relating to appropriations for personal services of teachers. An amendment was offered:

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, I offer an amendment, which is at the desk.

The Clerk read as follows:

Amendment offered by Mr. Collins: On page 25, line 3, after the word "grades" insert "*Provided*, That no part of this appropriation shall be used to pay the salary of any teacher performing any clerical work other than that necessary or incidental to the classroom teaching assignments."

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I raise a point of order to that amendment for the same reason.[3] The existing law today says

2. 81 CONG. REC. 3106, 3107, 75th Cong. 1st Sess.

3. The Chairman had just ruled out of order a provision in the bill that

nothing about clerical work being done by teachers. This amendment, of course, is introduced for the purpose of preventing teachers from doing any clerical work. Even though it places a limitation on some clerical work that they may be doing, it is contrary to existing law and the point of order would lie.

THE CHAIRMAN:[4] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. COLLINS: I do not, Mr. Chairman.

THE CHAIRMAN: The amendment here offered by the gentleman from Mississippi provides that no part of this appropriation shall be used to pay the salary of any teacher performing any clerical work other than that necessary or incidental to the regular classroom teaching assignment.

The Chair is of opinion that this amendment in the form presented is very clearly a limitation and retrenchment of expenses, that it is germane, and that the point of order should be overruled.

Airport Access Road

§ 72.4 To a bill appropriating funds for an additional Washington, D.C. airport, an amendment placing a limit on the amount of the appropriation which may be used for the construction of an authorized access road was held to be a proper limitation and in order.

On June 29, 1959,[5] the Committee of the Whole was considering H.R. 7978, a supplemental appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [Albert] Thomas [of Texas]: On page 3, line 6, after the word "expended," insert "provided that not to exceed $400,000 of the foregoing appropriation may be used for an access road north from the airport."

MR. [H.R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill.

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

MR. THOMAS: Mr. Chairman, we think the amendment cures the objection raised by the distinguished gentleman from Iowa. We think this one is purely a straight limitation. It requires no outside effort on the part of anybody. . . .

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

The Chair is constrained to hold that inasmuch as the access roads were authorized by legislation creating the airport and that the amount of $400,000 is a limitation on the purposes for which funds may be used, that it is

"teachers shall not perform any clerical work except that which is necessary or incidental to their regular classroom teaching assignments."

4. Jere Cooper (Tenn.).

5. 105 CONG. REC. 12121, 86th Cong. 1st Sess.

6. Paul J. Kilday (Tex.).

germane to the bill and is not legislation.

The Chair overrules the point of order.

Personal Services

§ 72.5 Language in the District of Columbia appropriation bill appropriating for personal services and providing that no other appropriation made in the bill would be available for the employment of additional assistant engineers or watchmen for the care of the district buildings was held authorized by law and in order.

On Jan. 31, 1938,[7] the Committee of the Whole was considering H.R. 9181, the District of Columbia appropriation bill for 1939. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> For personal services, including temporary labor, and service of cleaners as necessary at not to exceed 48 cents per hour, $129,000: *Provided*, That no other appropriation made in this act shall be available for the employment of additional assistant engineers or watchmen for the care of the District buildings.
>
> MR. [BYRON B.] HARLAN [of Ohio]: Mr. Chairman, I wish to make a point of order against the proviso in this paragraph, but first I wish to raise a point of order as to the entire paragraph. . . .
>
> THE CHAIRMAN:[8] The Chair is ready to rule. In the pending appropriation bill this proviso is found on page 4, line 15, with respect to the care of District buildings:
>
> > *Provided*, That no other appropriation made in this act shall be available for the employment of additional assistant engineers or watchmen for the care of the District Building.
>
> To that proviso the gentleman from Ohio [Mr. Harlan] directs a point of order upon the ground that the proviso is in the nature of legislation which is not authorized by law.
>
> MR. [MILLARD F.] CALDWELL [of Florida]: Mr. Chairman, a parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman will state it.
>
> MR. CALDWELL: May I ask whether the point of order was not later changed from the particular language referred to to the entire section?
>
> THE CHAIRMAN: The Chair will reach that in a moment. The Chair is now directing his attention to the proviso because the gentleman from Ohio [Mr. Harlan], the gentleman from Mississippi [Mr. Collins], and the gentleman from Oklahoma [Mr. Nichols] directed their arguments largely to that proviso.
>
> The authority for making appropriations for the care of District buildings is found in Fiftieth Statutes at Large, page 377, in this language:
>
> > *Provided*, That all buildings belonging to the District of Columbia

7. 83 CONG. REC. 1303, 1304, 75th Cong. 3d Sess.

8. William J. Driver (Ark.).

> shall be under the jurisdiction and control of the Commissioners of the District.

This proviso does not in any manner seek to take from the District Commissioners their authority as custodians of the buildings under their duties and responsibilities as Commissioners of the District. This proviso in no manner contravenes the language of this positive law. It is more in the nature of a limitation upon the appropriation than a contravention or change of existing law.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, will the Chair permit an interruption?

THE CHAIRMAN: The Chair will hear the gentleman.

MR. NICHOLS: The point is, Mr. Chairman, that before this proviso the existing law was that all of the buildings in the District of Columbia should be under the control of the Commissioners of the District, except certain buildings included in which was the court building by specific provision. That was under the control of the judges of the courts. This proviso wipes out the control of the judges over this court building and places the control in the Commissioners of the District of Columbia. To this extent the proviso does change existing law.

THE CHAIRMAN: The Chair will state to the gentleman from Oklahoma that the feature to which the Chair is especially addressing the ruling is whether this is a change of existing law. The gentleman from Ohio bases his point of order on the ground that this is a change of the law affecting the custody of the building according to the statute the Chair just quoted. The proviso under consideration in no manner changes existing law but is merely a limitation on an appropriation. The Chair so holding must necessarily overrule the point of order.

The gentleman from Ohio also directed the point of order against the paragraph the first portion of which includes this language:

> For personal services, including temporary labor, and service of cleaners as necessary at not to exceed 48 cents per hour, $129,000.

Standing alone, as a matter of course, this language is immune from a point of order because it is solely an appropriation for personal services, and so forth. If, therefore, the argument directed to the proviso goes down, necessarily the point of order against the paragraph as a whole must go down.

The Chair overrules the point of order directed against the paragraph.

§ 73. Education and Community Service; Health; Labor

Educational Assistance to Federally Impacted Areas

§ 73.1 To a general appropriation bill providing funds for educational assistance to "federally impacted areas," an amendment providing that the appropriation shall not be available for a certain percentage of children of parents who live or work on

federal property or where local contribution rates are not determined in accordance with certain requirements specified in the authorizing law was held a proper limitation restricting the availability of funds and in order.

On May 4, 1966,[9] the Committee of the Whole was considering H.R. 14745, a Departments of Labor, and Health, Education, and Welfare appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Frank T.] Bow [of Ohio]: On page 17, at the end of line 18, strike out the period and insert the following: "*Provided further*, That this appropriation shall not be available for payments to any local educational agency on account of (1) three per centum of the total number of children in average daily attendance in cases of children of parents who reside and work on Federal property, or (2) six per centum of the total number of children in average daily attendance in cases of children of parents who reside or work on Federal property, or (3) local contribution rates not determined in accordance with the first two sentences of section 3(d) of such Act, as amended (20 U.S.C. 238(d)), with respect to the areas covered thereby."

MR. [JOEL T.] BROYHILL of Virginia: Mr. Chairman, a point of order.

THE CHAIRMAN:[10] the gentleman will state his point of order.

MR. BROYHILL of Virginia: I make a point of order in that this would be legislation on an appropriation bill, because it would change the basic formula which is contained in the authorizing legislation. . . .

THE CHAIRMAN: The Chair notes that the three categories which are set forth in the amendment are merely limitations on an appropriation bill and are proper in its context. The point of order is overruled.

Parliamentarian's Note: The Chair apparently took the view that the distribution of funds under the amendment did not represent an alteration of the formula existing in law for allocating funds in federally impacted areas; rather, that the amendment merely withheld a portion of the funds that otherwise would have been distributed, the statutory formula nevertheless remaining intact. In other rulings, provisions relating to appropriations for educational assistance have been prohibited as constituting a distributional scheme different from that set forth in the authorizing law and, in some cases, as requiring additional duties not found in existing law on the part of administrative officials. See, for example, §§ 36.10–36.12, 52.18 and 52.19, supra.

9. 112 CONG. REC. 9833, 89th Cong. 2d Sess.

10. Frank Thompson, Jr. (N.J.).

§ 73.2 Where legislation authorizing funds for impacted school aid establishes an apportionment formula for distribution of that aid to educational agencies, language in a general appropriation bill reducing, in a uniform manner, amounts available to all agencies for a certain category of such aid does not violate Rule XXI clause 2.

On Apr. 7, 1971,[11] during consideration in the Committee of the Whole of the Education Department appropriation bill (H.R. 7016), a point of order was raised against the following provision:

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

For carrying out title I of the Act of September 30, 1950, as amended (20 U.S.C., ch. 13), and the Act of September 23, 1950, as amended (20 U.S.C., ch. 19), $577,000,000, of which . . . $15,000,000 . . . shall be for providing school facilities as authorized by said Act of September 23, 1950: *Provided*, That none of the funds contained herein shall be available to pay any local educational agency in excess of 68 per centum of the amounts to which such agency would otherwise be entitled pursuant to section 3(b) of title I: *Provided further*, That none of the funds contained herein shall be available to pay any local educational agency in excess of 90 per centum of the amounts to which such agency would otherwise be entitled pursuant to section 3(a) of said title I if the number of children in average daily attendance in the schools of that agency eligible under said section 3(a) is less than 25 per centum of the total number of children in such schools.

MR. [JAMES G.] O'HARA [of Michigan]: Mr. Chairman, a point of order.

THE CHAIRMAN:[12] The gentleman will state his point of order.

Mr. O'Hara: Mr. Chairman, I make a point of order against the provisos appearing on page 3, beginning at line 4 and running through line 15.

Mr. Chairman, the point of order is that the language referred to constitutes legislation in an appropriation bill. It provides a different method of making adjustments where necessitated by appropriations than that provided in the authorizing legislation; to wit, in section 203(c)(4) of Public Law 91–230. . . .

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

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Thank you, Mr. Chairman.

Mr. Chairman, the language to which the gentleman objects is clearly a limitation on the use of funds contained in this bill. The language is germane and it is completely negative. In the words of Chairman Nelson Dingley of Maine, which are quoted in Cannon's Procedure in the House of Representatives—Chairman Dingley said:

11. 117 Cong. Rec. 10096, 92d Cong. 1st Sess.

12. Chet Holifield (Calif.).

The House in Committee of the Whole has the right to refuse to appropriate for any object, either in whole or in part, even though that object may be authorized by law. That principal of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The precedents which the gentleman from Michigan (Mr. O'Hara) pointed to are quite familiar to the Chair. There is a subtle difference between those amendments and the language that is before us.

[The Chair has] examined these two provisions appearing in the bill on page 3 and [has] reviewed the provisions of Public Law 874, including the two rulings which were made by the Chair a year ago on April 14 and February 19.

The first proviso uniformly reduces the amount available to the school districts which are entitled to funds under section 3(b) of Public Law 874, which is the section of the law which applies to local educational agencies where the impact is due to children of parents who reside or work on Federal property.

The second proviso limits the entitlement of certain local educational agencies where the impact is due to school attendance of children whose parents both reside and work on Federal property as determined by section 3(a) of Public Law 874 if the number of such children is less than 25 percent of the total number of children in such school.

Under the law, the Commissioner of Education is already required to determine the number of such children in this category in average daily attendance and the schools so affected. Determining these districts or local agencies where the 25-percent limitation applies thus presents the Commissioner with no substantial additional duties. He is already required by basic law to make that determination.

The Chair feels the decision of the committee is valid; that these provisos are in fact limitations couched in negative language on the funds in the bill. The Chair therefore overrules the point of order.

Health, Education, and Welfare Building Construction

§ 73.3 Language in an appropriation bill providing that none of the funds in the bill shall be used for construction or planning of any building of the Department of Health, Education, and Welfare, nor to pay the salary of anyone in connection therewith, under the lease-purchase program, was held to be a limitation and in order.

On Apr. 3, 1957,[13] during consideration in the Committee of the Whole of H.R. 6287, a Departments of Labor, and Health, Education, and Welfare appropriation bill, a point of order was overruled as follows:

Sec. 211. None of the funds provided herein shall be used, either directly or

13. 103 CONG. REC. 5040, 85th Cong. 1st Sess.

indirectly, for construction or planning of any building for the Department of Health, Education, and Welfare under the lease-purchase program, nor shall any of the funds provided herein be used to pay the salary of any person who assists or consults with anyone in connection with the construction or planning of any building for the Department of Health, Education, and Welfare under the lease-purchase program.

Mr. (JOHN W.) Byrnes of Wisconsin: Mr. Chairman, I make a point of order against section 211 in its entirety as being legislation on an appropriation bill. . . .

The Chairman:[14] The Chair is ready to rule.

The gentleman from Wisconsin makes a point of order against section 211 on page 38 of the bill. The Chair has read the section and finds that it is a pure limitation, and therefore overrules the point of order.

College Housing Construction; No Funds "Unless in Compliance With Law"

§ 73.4 To an appropriation bill providing for construction of college housing, an amendment specifying that none of the funds may be allocated to an institution unless it is in full compliance with a law requiring the withholding of funds to students who are convicted of engaging in campus disorders was held to be a limitation (not requiring additional duties on the part of any federal official) and in order.

On June 24, 1969,[15] the Committee of the Whole was considering H.R. 12307, an appropriation bill for independent offices and the Department of Housing and Urban Development. The Clerk read as follows:

For payments authorized by section 1705 of the Housing and Urban Development Act of 1968, $2,500,000: *Provided,* That the limitation otherwise applicable to the total payments that may be required in any fiscal year by all contracts entered into under such section is increased by $5,500,000.

MR. [WILLIAM J.] SCHERLE [of Iowa]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Scherle: On page 35, at the end of line 24, strike the period and insert the following: "*And provided further,* That none of the funds appropriated by this act for payments authorized by section 1705 of the Housing and Urban Development Act of 1968, shall be used to formulate or carry out any grant or loan to any institution of higher education unless such institution shall be in full compliance with section 504 of Public Law 90–575."

MR. [WILLIAM F.] RYAN [of New York]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[16] The gentleman will state his point of order.

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

15. 115 CONG. REC. 17085, 91st Cong. 1st Sess.

16. John S. Monagan (Conn.).

MR. RYAN: I make a point of order on the ground that this amendment is legislation on an appropriation bill. . . .

MR. SCHERLE: Mr. Chairman, the amendment is in order because it is in conformity with rule 21, clause 2 . . . specifying that amendments to appropriation bills are in order if they meet the qualifications of the "Holman Rule."

My amendment is germane, negative in nature, and shows retrenchment on its face. It does not either impose any additional or affirmative duties or amend existing law. . . .

In support of my amendment, I cite section 843 of the rules of the House discussing the Holman rule under rule 21: . . .

THE CHAIRMAN: The Chair is prepared to rule and holds that the amendment is a proper limitation. Therefore, the Chair overrules the point of order.

Parliamentarian's Note: This ruling (and Public Law No. 90–575 § 504) are discussed more fully in § 53, supra, in relation to other rulings which concern the issue of what constitutes the imposition of additional duties on officials, and whether the imposition of such duties on nonfederal officials or private parties amounts to legislation on appropriation bills. (See the "Note on Contrary Rulings" following § 53.6.) Such rulings have not been uniform, and some effort in § 53 is made to clarify the trend of these rulings. Rulings discussed include those with respect to attempts to limit or prohibit funds for certain types of projects not having "local" approval, where such approval is not required in the authorizing law.

Discrimination

§ 73.5 To the labor-federal security appropriation bill, an amendment providing that no part of any appropriation under one of its titles shall be paid as grants to state or educational institutions in which because of race, color, or creed, discriminatory practices deny equality of educational opportunity or employment was held germane and in order.

On Mar. 8, 1948,[17] an amendment was offered as follows to the Department of Labor and Federal Security Agency appropriation bill of 1949:[18]

Amendment offered by Mr. [Vito] Marcantonio [of New York]: On page 27, after line 22, insert a new section:

"Sec. 207. No part of any appropriation under this title shall be paid as grants to any State or educational institution in which, because of race, color, or creed, discriminatory practices

17. 94 CONG. REC. 2356, 80th Cong. 2d Sess.

18. H.R. 5728.

deny equality of educational opportunity or employment to any one to pursue such educational courses or employment as are provided for by such a grant."

The point of order which followed did not expressly raise the issue of whether the above language constituted legislation, but the Chair, in ruling that the amendment was germane, implicitly recognized Mr. Marcantonio's position that the amendment was permissible as a negative limitation on the use of funds. The point of order and ruling thereon were as follows:

MR. [JOHN E. RANKIN] [of Mississippi]: Mr. Chairman, I make a point of order against the amendment that the amendment is not germane and it is not in order at this point in the bill. I will reserve the point of order if the gentleman wants to discuss the matter.

MR. MARCANTONIO: No. Let us have it decided now. . . . The amendment certainly is germane. It is simply a negative limitation. It restricts the use of the funds and it is clearly in order.

THE CHAIRMAN [FOREST A. HARNESS, OF INDIANA]: There is no question but that the amendment is germane. This is an appropriation bill and the amendment deals with an appropriation made in the bill. Therefore the Chair overrules the point of order.[19]

Cut Off in Certain Education Funds to Students

§ 73.6 Where existing law authorized basic opportunity grants for higher education assistance to students in all years of study, an amendment prohibiting the availability of funds in a general appropriation bill for assistance to students enrolled prior to a date certain was held in order as a negative limitation on the use of funds in the bill.

On June 27, 1974,[20] during consideration of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 15580), the following amendment was ruled in order as indicated below:

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Flood: Page 18, line 7, insert ": *Provided*, That none of the funds in this Act shall be used to pay any amount for basic opportunity grants for full-time students at institutions of higher education who were enrolled as regular students at such institutions prior to April 1, 1973." . . .

MRS. [EDITH] GREEN of Oregon: Mr. Chairman, I make a point of order

19. See also §§ 61 and 68, supra, for more precedents relating to civil liberties.

20. 120 CONG. REC. 21671, 21672, 93d Cong. 2d Sess.

against this amendment. The point of order is what I cited a moment ago, Cannon's Procedure in the House of Representatives, on page 246:

> If a part of a paragraph . . . is out of order, all is out of order and a point of order may be raised against the portion out of order or against the entire paragraph. . . .

THE CHAIRMAN:[1] The Chair is prepared to rule.

The amendment offered by the gentleman from Pennsylvania (Mr. Flood), does appear to meet the tests of a limitation on an appropriation bill. It limits the funds in this specific bill and it is negatively stated. For these reasons it would clearly appear to be admissible as a limitation, distinguishable from that language which was stricken in the proviso that had appeared in the original bill.

The Chair does not understand that the gentlewoman had raised a point of order against the entire paragraph. The gentlewoman raised two specific points of order on which the Chair ruled.

If the gentlewoman had at that time intended to make a point of order against the entire paragraph she should so have stated, and the Chair believes that a point of order at this moment on those grounds would be untimely made since an amendment to the paragraph is now pending.

Busing to Schools Nearest Home

§ 73.7 Where existing law prohibited the implementation by any court, department, or agency of a plan to transport students to a school other than the school nearest or next nearest their homes which offers the appropriate grade level and type of education for each student (thus requiring determinations of school proximity and curriculum to be made by federal officials), a paragraph in a general appropriation bill prohibiting the use of funds therein for the transportation of students to a school other than the school nearest their homes and offering the courses of study pursued by such students was held in order as a negative limitation on the use of funds in that bill, since it did not directly amend existing law and did not require new determinations by federal officials that they were not already required by law to make.

The proceedings of June 24, 1976,[2] are discussed in § 64.26, supra.

1. James C. Wright, Jr. (Tex.).

2. 122 CONG. REC. 20408–10, 94th Cong. 2d Sess.

Abortion; Broad Limitation of Funds

§ 73.8 An amendment restricting the use of funds in an appropriation bill for abortion or abortion referral services, abortifacient drugs or devices, the promotion or encouragement of abortion, etcetera, was held to be a negative limitation on funds in the bill imposing no new duties on federal officials other than to construe the language of the limitation in administering the funds.

On June 27, 1974,[3] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 15580), an amendment was held in order as follows:

> The Clerk read as follows:
>
> Amendment offered by Mr. [Angelo D.] Roncallo of New York:
>
> Amend H.R. 15580 by adding a new section 412 on page 39 of the bill as follows:
>
> Sec. 412. No part of the funds appropriated under this Act shall be used in any manner directly or indirectly to pay for abortions or abortion referral services, abortifacient drugs or devices, the promotion or encouragement of abortion, or the support of research designed to develop methods of abortion, or to force any State, school or school district or any other recipient of Federal funds to provide abortions or health or disability insurance abortion benefits. . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make a point of order against the second amendment proposed by the gentleman from New York.

My grounds are the same as to the previous amendment, Mr. Chairman; namely, that this is legislation on an appropriation bill.

Second, that it requires new duties on the part of officials in connection with the operation of this amendment.

I particularly call the attention of the Chair to the use of the term "promotion or encouragement of abortion."

This phrase will require additional duties on the part of the outside officials. Therefore, it goes beyond the scope of an appropriation provision. . . .

MR. [BOB] ECKHARDT [of Texas]: . . . The language of the revised section 412 necessarily requires a definition of what constitutes the moment of fertilization, in that the term abortifacient drug or devices is used.

Now, the question of whether or not a drug or device is abortifacient depends on the moment of fertilization. If it is to be not abortifacient, it prevents fertilization. If it comes under the language of this act, the moment of fertilization must occur before the drug or the device acts upon the inseminated egg.

Therefore, there is an absolutely necessary determination by the agency of the moment of fertilization.

Furthermore, there is the term abortion, the term abortion must nec-

3. 120 CONG. REC. 21687, 93d Cong. 2d Sess.

essarily determine the definition as contained in the last line and, therefore, requires affirmative duties on the part of the agency. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, as originally offered, the amendment of the gentleman from New York definitely did require some sort of action on the part of the Government officials, but I heartily disagree with the statements that have been made here.

There are no additional duties imposed whatsoever. In fact, like the antibusing amendment in the two other sections, it is a limitation on the expenditure of funds in this bill just as the rules provide. No new duties and no directions are allowed. Abortion is a well understood term, and is found in any dictionary. It is perfectly admissible under the rules of the House.

THE CHAIRMAN:[4] The Chair is prepared to rule.

As originally offered, the amendment contained a definition of abortion which would have defined that term as being the intentional destruction of unborn human life, which subjected the amendment to a successful challenge on the ground that it would have imposed upon an administrator the responsibility of determining a question of another person's intent.

There have been precedents under which that type of a requirement has been held to be legislation on an appropriation bill.

As presently constituted, the amendment secondly offered by the gentleman from New York, in the opinion of the Chair, contains no direction nor immediately discernible new duty incumbent upon its administrator beyond the fact that every limitation is a compilation of words if it is written into a law, and it always would devolve upon an administrator to interpret the meaning of the words therein contained. It would be, of course, manifestly contrary to the main thrust of the rulings of the Chair if limitations were to be construed as legislation merely because their enactment would require some statutory interpretation.

Under the circumstances, the Chair, the present occupant having carefully examined the amendment and carefully listened to the arguments, is constrained to overrule the point of order.

Occupational Safety and Health Act Enforcement—Salary Cut Off for Inspectors of Certain Size Firms

§ 73.9 An amendment prohibiting the payment of funds for salaries of federal employees "who inspect firms employing 25 or fewer persons to enforce compliance with the Occupational Safety and Health Act" was held in order as a negative limitation on the availability of funds in a general appropriation bill which merely described a category of employees who would not be compensated from those funds.

On June 27, 1974,[5] during consideration in the Committee of the Whole of

4. James C. Wright, Jr. (Tex.).

5. 120 CONG. REC. 21652, 21662, 21663, 93d Cong. 2d Sess.

the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 15580), an amendment was held in order as follows:

The Clerk read as follows:

For necessary expenses for the Occupational Safety and Health Administration, $100,816,000.

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

The Clerk read as follows:

> Amendment offered by Mr. Findley: On Page 6, after line 17, add the following:
>
> "None of the funds appropriated by this Act shall be expended to pay the salaries of any employees of the Federal Government who inspect firms employing twenty-five or fewer persons to enforce compliance with the Occupational Safety and Health Act of 1970." . . .

MR. [JOSEPH M.] GAYDOS [of Pennsylvania]: Mr. Chairman, I have to raise a point of order for the reason it is a limitation on an appropriation bill.

Very hurriedly, let me state that a limitation on an appropriation bill is legitimate if and only if:

First, it is worded so that it limits the use of money, rather than limiting the discretion of an Executive officer to carry out his duties;

Second, it applies only to the use of the present appropriation rather than attempting to legislate a permanent restraint on the spending authority of an Executive officer.

An amendment which forbids the Secretary of the Treasury from paying the salary of OSHA inspectors out of the current DOL appropriation for the inspections of premises of employers with 25 or fewer employees, would seem to meet these criteria. There are, however, three arguments which seem to indicate that this limitation is in fact legislation and therefore not appropriate under House rule 21, clause 2.

First, section 8(f) of the act provides that an employee in any size business may file a complaint with the Secretary of Labor, and the Secretary must respond to such complaint. Further, this employee right is protected by the antidiscrimination clause of section 11(c) of the act. Failure to provide the Secretary with the funds to respond to these employee complaints leaves these employees with a protected right but without a remedy, a situation abhorred by the law. It effectively amends OSHA to remove the right for a group of employees, and there is no rational basis for this sort of discrimination. While it is well established that the Congress may pass a law creating a Government authority or function and then withhold funds from it, it is questionable whether there is any precedent for using a limitation to delete the remedy for a legislatively established right vested in an individual. The mover of the amendment should be asked to provide such a precedent.

Second, the inspectors used by the Secretary of Labor to carry out all investigations are assigned to regions at the present time on the basis of the concentration of businesses in each region—all businesses. The vast majority of businesses do employ under 25 persons, and following the terms of the amendment, these could no longer be counted in the computation by the Secretary of Labor. . . . In short the amendment imposes a substantial burden upon the Secretary of Labor, and

the precedents are clear that a limitation may not impose any additional duties upon an executive officer.

Finally, OSHA is a carefully developed law which was the result of deliberate balancing of employee and employer rights by the appropriate committees of the Congress, and any change in that balance effectively constitutes legislation. Since the amendment would change the rights of some employees, it should, therefore, not be attached to an appropriations bill. . . .

MR. FINDLEY: . . . Mr. Chairman, in fact this language is so close to being identical to a number of other similar amendments offered and sustained by rulings of the Chair, that I am surprised that any point of order would be raised. It is clearly within the rule that it is retrenchment on its face. It establishes no obligation on the part of the executive branch for additional duties. It requires no determination. It does not go beyond the fiscal year involved, and it simply withholds the salaries for a specified purpose. . . .

THE CHAIRMAN:[6] The Chair is prepared to rule.

The gentleman from Pennsylvania makes a point of order that the amendment offered by the gentleman from Illinois constitutes legislation on an appropriation bill, as distinguished from an authorization, and therefore it would be in violation of clause 2, rule XXI.

The Chair has examined the amendment and the provisions of the Occupational Safety and Health Act, Public Law 91–596. The amendment would prohibit the use of funds in the bill for the payment of the salaries of Federal employees who inspect firms employing 25 or fewer persons with respect to compliance under that act.

Clearly, as the gentleman from Pennsylvania acknowledges, and as all the precedents would attest, the House could refuse to appropriate any sums whatever for the administration of the act in question. Or, it could prohibit the appropriation of any funds to pay the salaries of any inspecting officers under the act. This particular amendment merely limits the use of funds in the bill for a certain described category of such employees.

The gentleman from Pennsylvania suggests that this fact would render the burden upon the executive branch and the administrators to make precise determinations, and that it would have a discriminatory effect.

The Chair has examined several precedents which relate to restrictions on the payment of appropriations for certain salaries or expenses. On June 6, 1963, Chairman Keogh ruled that to a bill appropriating funds for the Department of Agriculture, an amendment providing that—

> None of the funds herein shall be used to pay the salary of any . . . employee who . . . performs duties . . . incidental to supporting the price of . . . cotton at a level in excess of 30 cents a pound.

Was a proper limitation, and admissible under the rules of the House.

On June 6, 1941, Chairman Lanham ruled that an amendment to a military appropriation bill providing that no funds therein shall be paid as compensation to any person employed in the manufacture of defense articles who stops work in excess of 10 days on

6. James C. Wright, Jr. (Tex.).

a strike, or who fails to resume work within 3 days after the Government takes over such a plant, was a valid limitation.

The Chair would also simply call attention to Cannon's volume 7, paragraphs 1663 and 1689, which were cited by Chairman Gibbons on the agriculture and environmental consumer appropriation bill on Friday last, when that Chairman overruled a point of order that a limitation therein on the payment of salaries or funds in the bill constituted legislation.

The Chair feels that the amendment offered by the gentleman from Illinois is a valid limitation on the use of funds appropriated in this bill, and therefore overrules the point of order.

—*Monitoring State Procedures*

§ 73.10 An amendment denying the use of funds for state plan monitoring visits by the Occupational Safety and Health Administration where the workplace has been inspected by a state agency within six months, but also providing that the limitation would not preclude the federal official from conducting a monitoring visit at the time of the state inspection, to investigate complaints about state procedures, or as part of a special study program, or to investigate a catastrophe was held not to require new determinations by federal officials, where existing law directed state agencies to inform federal officials of all their activities under state plans.

The proceedings of June 27, 1979,[7] are discussed in § 66.6, supra.

—*No Funds to Enforce Certain Regulations*

§ 73.11 Where an amendment to a general appropriation bill prohibited the use of funds therein for the Occupational Safety and Health Administration to administer or enforce regulations with respect to employers of 10 or fewer employees included in a category having an "occupational injury lost work day case rate" less than the national average, except to perform certain enumerated functions and authorities, but exempted from the prohibition farming operations not maintaining a temporary labor camp, the amendment was held not to constitute additional legislation on an appropriation bill; the determination as to the category in which the business fell

7. 125 CONG. REC. 17033–35, 96th Cong. 1st Sess.

with respect to the average injury lost work day rate, and the determination whether that average was less than the national average, were easily ascertainable from statistics periodically published, pursuant to law, by the Bureau of Labor Statistics; the permissible functions and authorities funded by the amendment were all authorized in existing law; and the exemption as to certain farming operations restated a legislative provision already in the bill, in the paragraph to which the amendment related.

On Aug. 27, 1980,[8] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 7998), a point of order against the following amendment was overruled:

Amendment offered by Mrs. [Beverly B.] Byron (of Maryland): At page 10, line 10, insert after "fishing:" the following new proviso:

"*Provided further*, That no funds appropriated under this paragraph shall be obligated or expended to administer or enforce any standard, rule, regulation, or order under the Occupational Safety and Health Act of 1970 with respect to any employer of ten or fewer employees who is included within a category having an occupational injury lost work day case rate, at the most precise Standard Industrial Classification Code for which such data are published, less than the national average rate as such rates are most recently published by the Secretary, acting through the Bureau of Labor Statistics, in accordance with section 24 of that Act (29 U.S.C. Sec. 673), except . . .

"(6) to take any action authorized by such Act with respect to complaints of discrimination against employees for exercising rights under such Act: *Provided further*, That the foregoing proviso shall not apply to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees". . . .

MR. [JOSEPH M.] GAYDOS [of Pennsylvania]: Mr. Chairman, I raise a point of order against this amendment for the reason that it is legislation on an appropriations bill. The amendment changes existing statutory law and, in effect, amends the Occupational Safety and Health Act of 1970 by exempting a specific class of employers from the integral provisions of the act. This amendment goes far beyond reducing or restricting the amount of money in the appropriation.

The language of this amendment would clearly impose on OSHA officials new additional duties not otherwise required by existing law. Look at all the additional determinations to be made by the Department of Labor. OSHA officials, under this amendment, would be required to make determinations on the exempt status of firms which are not required by existing law. . . .

8. 126 CONG. REC. 23519–21, 96th Cong. 2d Sess.

. . . This amendment serves to change existing law by adding to the basic statute conditions or requirements governing the scope of investigations and the assessment of penalties pursuant to these investigations. In other words, this amendment provides an affirmative direction to executive officials in situations where the statute provides these officials with the discretion in the exercise of their authority. . . .

. . . [A]ccording to Deschler's Procedure, language in a paragraph of a—

General appropriations bill containing funds for the Federal Trade Commission for the purpose of collecting line-of-business data from . . . "not to exceed 250 firms" . . . was conceded to directly interfere with the discretionary authority of the F.T.C.—a restriction on the scope of the investigation rather than a limitation on availability of funds. . . .

The amendment before us directly interferes with the discretionary authority of OSHA by limiting the scope of general schedule safety inspections to only those inspections or investigations meeting the substantive requirements of the amendment. This approach is tantamount to limiting the safety inspections to a fixed number of firms. . . .

MRS. BYRON: . . . Mr. Chairman, I rise in opposition to the point of order. This amendment does not impose any additional duties upon the Secretary of Labor, and therefore is not legislation in an appropriation bill. . . .

. . . In order to comply with the limitation regarding the size of the business and the safety records of the industry, no new duties are required of the Secretary. Section 24 of the Occupational Safety and Health Act already requires the Secretary to maintain occupational and safety health statistics. Section 1904–20 of title XXIX of the Code of Federal Regulations specifically includes the exact statistics that are utilized in the first part of my amendment. . . .

THE CHAIRMAN:[9] . . . The Chair is prepared to rule. . . .

. . . In reviewing the amendment, it would prohibit the use of funds in the bill to enforce standards or rules under the Occupational Safety and Health Act with respect to certain employers, except for enumerated functions and activities authorized under such Act. The amendment applies to employers with 10 or fewer employees whose business falls within a category having an injury work loss day rate less than the national average as indicated by statistics published by the Bureau of Labor pursuant to law. The amendment does not require individual findings of injury rates in each separate business, but only a determination as to the category into which the business falls.

The Chair has reviewed the set of statistics that is required by section 673 of the OSHA law, and finds that the determination as to what category that the business relates to and the relationship between the average rate for that category and the average rate for all business is very easily ascertainable and is now being undertaken under OSHA regulations. . . .

No new duties or determinations are hereby required, and the final proviso, while requiring findings as to the tem-

9. Don Fuqua (Fla.).

porary status of a farm labor camp, is already in the bill and the amendment does not add legislation to that permitted to remain in the bill. . . .

The amendment restricts the use of funds to carry out part of the authorized activity while allowing but not requiring the agency to use funds in the bill to carry out other authorized activities. While an amendment to an appropriation bill may not directly curtail executive discretion delegated by law, it is in order to limit the use of funds for an activity or a portion thereof authorized by law if the limitation does not require new duties or impose new determinations.

The Chair overrules the point of order.

Reduction in Trade Adjustment Assistance by Amount of Unemployment Insurance

§ 73.12 Where existing law (19 § 2292) established trade readjustment allowances to workers unemployed because of import competition and required the disbursing agency to take into consideration levels of unemployment insurance entitlements under other law in determining payments, an amendment to a general appropriation bill reducing the availability of funds therein for trade adjustment assistance by amounts of unemployment insurance was held not to impose new duties upon officials already required to make those reductions.

The proceedings of June 18, 1980,[10] are discussed in § 52.36, supra.

§ 74. Federal Employment

Maximum Age

§ 74.1 To an appropriation bill, an amendment to provide that no part of the funds thereby appropriated shall be used to pay compensation of persons who allocate positions in the classified civil service with a requirement of maximum age for such positions was held to be a proper limitation and in order.

On Mar. 30, 1955,[11] the Committee of the Whole was considering H.R. 5240, an independent offices appropriation bill. The following proceedings took place:

Amendment offered by Mr. [Sidney R.] Yates [of Illinois]: On page 37, after line 25, insert a new section to be designated as section 108, as follows:

"No part of any appropriation contained in this title shall be used to pay the compensation of any officers and employees who allocate positions in the

10. 126 CONG. REC. 15354–56, 96th Cong. 2d Sess.

11. 101 CONG. REC. 4077, 84th Cong. 1st Sess.

classified civil service with a requirement of maximum age for such positions."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from Illinois [Mr. Yates] on the ground that it is legislation and placing a duty upon the agency to determine the age of each applicant. . . .

MR. YATES: Mr. Chairman, this is negative restriction directed solely to funds sought to be appropriated by this bill. It is not legislation on an appropriation bill.

THE CHAIRMAN:[12] The Chair is ready to rule. It appears to the Chair that this is a proper limitation. Therefore, the point of order is overruled.

Limiting Number of Employees in Executive Office of President

§ 74.2 An amendment to a general appropriation bill restricting the total amount of funds used to pay certain salaries and for certain positions constitutes a valid limitation if it is confined to appropriations made by that bill and does not affect funds appropriated in other acts.

On June 22, 1972,[13] During consideration in the Committee of the Whole of a general appropriation bill (H.R. 15585), a point of order was raised against the following amendment:

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Udall: On page 38, line 18, add a new section 611, as follows:

Sec. 611. No part of the appropriation made by this Act shall be expended for the compensation of more than 1647 employees in the Executive Office of the President, including not more than 50 employees of any Department or agency detailed to serve in the Executive Offices;

Nor shall the total amount appropriated to the Executive Office of the President for personnel compensation exceed $29,737,760;

Nor shall any part of the appropriations be expended for the compensation of more than 95 ungraded employees in the Executive Office of the President, whose individual salaries are in excess of the maximum rates of pay established at the pay level of GS–10 of the General Schedule (5 USC 5332);

Nor shall any part of the appropriation be expended for the compensation of more than 549 employees in the Executive Office of the President whose annual rates of pay are more than the minimum rate in effect for GS–13 of the General Schedule (5 USC 5332) but less than the annual rate of pay for Level II of the Executive Schedule (5 USC 5313);

Except that no part of this section shall apply to the compensation of any employees of the White House Office, or the compensation of the President. . . .

MR. [HOWARD W.] ROBISON of New York: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from Arizona.

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12. Albert Rains (Ala.).

13. 118 CONG. REC. 22098, 22099, 92d Cong. 2d Sess.

THE CHAIRMAN:[14] The Chair will hear the gentleman.

MR. ROBISON of New York: Mr. Chairman, it is my understanding that in order to be qualified under the rules and the precedents of the House, a limitation on an appropriation bill must limit the funds appropriated under that act and that act only.

I think the chairman of the subcommittee has already pointed out to the Chair that there are other Executive Office agencies under the heading of the Executive Office of the President to which the amendment seeks to add a limitation. I would say to the Chair that those agencies are, among others, the Council on Environmental Quality, the National Aeronautics and Space Council, the National Commission on Productivity, the National Council on Marine Resources and Engineering, the Office of Consumer Affairs, the Office of Science and Technology, the Special Representative for Trade Negotiations, and finally, Mr. Chairman, the Office of Economic Opportunity, for none of which agencies is money provided under this appropriation bill.

MR. UDALL: Mr. Chairman, I wish to be heard on a point of order; in the first place, my esteemed friend from New York (Mr. Robison) did not reserve a point of order. He is either making the same one my friend from Oklahoma made, or he is making a different one, and the gentleman from Oklahoma's point of order has been ruled upon.

He has no right to make a point of order, since he did not reserve one, and debate had intervened.

On the second ground, I think the Chairman has already covered in his earlier ruling the precise point the gentleman has raised.

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, may I be heard further?

THE CHAIRMAN: Yes, the gentleman is recognized.

MR. STEED: Mr. Chairman, if the Chair will direct his attention to the first paragraph, he will see a specific reference to the number 1,647 employees in the Executive Office of the President. It does not say, in this act. It says, in the entire office. It says:

> Nor shall the total amount appropriated—

Not in this act, but in all acts—

> To the Executive Office of the President for personnel compensation exceed $29,737,760.

Mr. Chairman, there is no way from the record here or any other available record that we can show where the 1,647 limitation does increase or decrease the people available in the Executive Office of the President.

In the rules of the House it is very specific under the Holman rule, that unless a definite reduction can be shown this language would be legislation and would not be appropriate to this bill.

THE CHAIRMAN: The point made by the gentleman from New York is essentially that already made by the gentleman from Oklahoma. This bill does contain appropriations for the Executive Office of the President and the Chair reads the amendment as being a limitation upon those appropriations. And, as pointed out before, the specific provision is that no part of the appropriations made by this act shall be ex-

14. John S. Monagan (Conn.).

pended for certain purposes—detailed in the first four paragraphs of the amendment. The Chair is constrained, therefore, to overrule the point of order.

Hatch Act Application

§ 74.3 To an appropriation bill an amendment providing that no part of any appropriation in the bill be used for compensation of any officer or employee of a designated bureau who for the purposes of the Hatch Act, "shall not be included within the construction of the term 'officer' or 'employee'" was held in order as a limitation where the determinations of employment status were already required by law.

On Mar. 4, 1954,[15] the Committee of the Whole was considering H.R. 8067, a State, Justice, and Commerce Departments appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Louis C.] Rabaut [of Michigan]: At page 52, after line 19, add the following new section:

"Sec. 604. No part of any appropriation contained in this act shall be used to pay the salary or wages of any officer or employee of the Bureau of Security and Consular Affairs of the Department of State who, for the purposes of the act of August 2, 1939, as amended (5 U.S.C. 118i), shall not be included within the construction of the term 'officer' or 'employee'."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill; that it changes existing law and requires new and additional duties.

THE CHAIRMAN:[16] Does the gentleman from Michigan desire to be heard?

MR. RABAUT: Yes, Mr. Chairman. I cite volume VII, Cannon's Precedents, section 1663 and section 1670:

1. Denial of use of an appropriation for payment of salaries of employees of the Department of Agriculture who forecast the price of agricultural products was construed as a proper limitation and in order on an appropriation bill.

The Chairman at that time, March 2, 1928, Allen T. Treadway, of Massachusetts, relied on prior decisions of Chairmen of the Committee of the Whole, Mr. Graham, of Illinois, in 1924, and Mr. Longworth, of Ohio, in 1923, and held such a limitation proper and not subject to a point of order.

2. An amendment forbidding payment of salary authorized by law from any part of an appropriation to a designated individual was held to be a limitation and in order on an appropriation bill. . . .

MR. TABER: . . . This amendment, Mr. Chairman, refers to the so-called Hatch Act, section 118i, of title V of the Code. It reads as follows:

For the purposes of this section the term "officer" or "employee" shall

15. 100 CONG. REC. 2697, 2698, 83d Cong. 2d Sess.

16. Leroy Johnson (Calif.).

not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the Office of the President (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws. The provisions of the second sentence of this subsection shall not apply to the employees of the Alaska Railroad.

This provision in effect brings about the prohibition of payments to these employees who are not determined to be officers or employees within the provisions of this paragraph of section 118. It requires a determination on the part of some officer before the thing can be effective. For that reason, it requires additional duties to be performed by some officer before it can be effective. Therefore, it is subject to the rule that it requires additional duties, and it is an attempt on the part of the amendment to change and enlarge the provisions of that section. . . .

MR. RABAUT: Mr. Chairman, in House Report No. 1365, 82d Congress, relative to H.R. 5678, the McCarran-Walter bill, it is stated on page 36:

The Bureau of Security and Consular Affairs, section 104, creates a new organizational setup within the Department of State to administer the issuance of passports and visas. There will be a responsible authority in the Department of State of rank and power corresponding to the Commissioner of Immigration and Naturalization and to the Director of the Federal Bureau of Investigation—

MR. J. EDGAR HOOVER—

and the Central Intelligence Agency—

Mr. Dulles—

All of whom are to collaborate in the interests of national security.

Is it the contention of anybody here that we would want, for instance, Mr. J. Edgar Hoover going around the country making political speeches? . . .

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

It appears to the Chair that the contention of those who make the point of order is answered by this provision in Hinds' Precedents, volume IV, section 3954:

A provision that no part of an appropriation for pay of retired Army officers should go to one receiving pay for services as a civil employee was held to be a limitation.

Likewise we have a similar expression in Cannon's Precedents, volume VII, section 1651, which contains the provision that no part of an appropriation shall be allotted to a beneficiary failing to comply with certain requirements. That provision was held in order as a proper limitation on an appropriation bill. With those two precedents the Chair is constrained to overrule the point of order, and the Chair so rules.

The point of order is overruled.

Past Employment of Heads of Departments

§ 74.4 An amendment providing that no part of an appropriation shall be paid to

the head of any executive department who, within a specified period was a partner in a firm which derived any income from representing a foreign government, was held to be a proper limitation on an appropriation bill and in order.

On July 26, 1951,[17] the Committee of the Whole was considering H.R. 4740, a State, Justice, Commerce Departments and Judiciary appropriation bill. The Clerk read as follows:

> Amendment offered by Mr. [John] Phillips [of California]: On page 58, following line 14, add a new section to be numbered section 602:
>
> "None of the money appropriated in this act shall be paid to the head of any executive department who, within a period of 5 years preceding his appointment, was a partner in, or a member of, a professional firm which derived any part of its income from representing, or acting for, a foreign government, or who, acting as an individual, derived income from such representation."

Mr. John J. Rooney, of New York, made a point of order on which debate occurred as follows:

> MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Chairman, the proposed amendment starts out under the guise of a limitation, "No money in this appropriation shall be paid," and so forth. A limitation, as I understand it, cannot impose any more duties upon an official, any affirmative duties, any additional duties, that do not presently exist by law.
>
> Let us see what additional duties this amendment imposes upon someone. It does not state here, but someone has to carry out the provisions of this amendment if it were held to be in order and it was adopted. "Who in a period of 5 years preceding his appointment." Who is going to determine the 5–year period? Somebody has got to say. That is an additional duty and responsibility resting upon somebody. This is legislation. "Was a partner in." Somebody has to pass on that. That imposes additional duties upon somebody. "Or a member of a professional firm which derived any part of its income from representing, or acting for a foreign government." That imposes additional duties upon some one, and that duty is not imposed upon anybody by law now. There is no organic law now relating to it. "Or who, acting as an individual, derived income from such representation." There are many firms where men may be partners in one thing and in one case, and not partners in another. Somebody has to determine all of these factors.
>
> Mr. Chairman, under the guise of a limitation I respectfully submit that the proposed amendment constitutes pure legislation. . . .
>
> Mr. PHILLIPS: . . . I am sure that all the information necessary was necessarily obtained before the appointment was made. It all appears, I will say to the gentleman from Massachusetts, in the Senate hearings. . . .
>
> Mr. [CLARE E.] HOFFMAN of Michigan: . . . If [Mr. McCormack's] argu-

17. 97 CONG. REC. 8963, 8965, 82d Cong. 1st Sess.

ment is logically followed through it would not be possible for the Congress to make any appropriation, because every appropriation that we make requires that someone take some action to determine that a condition or situation exists before the money appropriated can be had or used. For example, if we make an appropriation for the armed services, someone has to certify the individuals who are entitled to receive it. Someone must take action to create the obligation which justifies the expenditure. What I say with reference to this appropriation is true with reference to every appropriation bill. Every appropriation requires something be done before the money becomes available, an action which is incidental rather than legislative. . . .

THE CHAIRMAN:[18] . . . The Chair is prepared to rule.

The gentleman from California has offered an amendment which has been reported by the Clerk. The gentleman from New York has made a point of order against the amendment on the ground that it is not a proper limitation on an appropriation bill.

The Chair has examined the amendment with some degree of care. . . .

It should be clear that almost any limitation must necessarily require some action on the part of somebody. One of the classic illustrations given on many occasions by the distinguished parliamentarian to whom the Chair made reference a few moments ago, Hon. James R. Mann, of Illinois, was that if a provision states that "no part of this appropriation shall be paid to a red-headed man," somebody will have to find that red-headed man and determine whether his hair is red; therefore, it would appear that in any instance where a limitation is sought to be imposed there must be some activity contemplated or some effort exerted by someone to carry out the provisions of the limitation.

The Chair would invite attention to section 1593 of Cannon's Precedents. . . .

The Chair is of the opinion that that decision is applicable to the pending question raised by the point of order made by the gentleman from New York. It would appear that the over-all and controlling element of the pending amendment is a limitation on an appropriation bill. It is entirely negative in character, and does not affirmatively impose any additional duties upon anybody.

Therefore the Chair overrules the point of order.

Parliamentarian's Note: As a general rule, it is in order in a general appropriation bill to describe the qualifications of the recipients of funds provided therein and to deny the availability of those funds to persons or purposes not meeting those criteria, so long as the restriction is confined to the fiscal year covered by the bill. See § 54, supra, discussing qualifications of recipients of funds. Of course, a determination must be made by the administrator of the funds as to whether prospective recipients have the qualifications described as a condition to receiving funds, and in some instances

18. Jere Cooper (Tenn.).

that determination may entail the performance of new and substantial duties on the part of the administrator. In such cases, as has been seen (§ 52, supra), the express or implied requirement that such duties be performed would amount to legislation prohibited by Rule XXI. The question of whether the new duties are in fact of such a substantial nature is sometimes a difficult one, especially where those duties are merely implicit in the proposed limitation. The application of any limitation on an appropriation bill places some minimal extra duties on federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation. But when an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order. See 115 CONG. REC. 21653, 21675, 91st Cong. 1st Sess., July 31, 1969 (discussed in § 61.6, supra), ruling that the words "in order to overcome racial imbalance" in an amendment to an appropriation bill would impose additional duties on school officials. If language such as that involved in the 1951 ruling above were to be ruled on today, the issue of whether it constitutes prohibited "legislation" might depend on whether the applicability of the provision could be determined on the basis of information that was already required to be disclosed under existing law, or whether the administrator of the funds in question would have to undertake new duties of an investigative nature.

Abortion; Prohibition Against Federal Funds for Insurance Coverage

§ 74.5 An amendment to a general appropriation bill denying the use of funds therein to pay for an abortion, or administrative expenses in connection with any federal employees health benefits plan which provides any benefits or coverage for abortions after the last day of contracts currently in force, was held not to constitute legislation, since the amendment did not directly interfere with executive discretion (in contracting to establish such plans); it is permissible by limitation to negatively deny

the availability of funds although discretionary authority may be indirectly curtailed and contracts may be left unsatisfied.

On Aug. 20, 1980,[19] during consideration of the Department of Treasury and Postal Service appropriation bill (H.R. 7593), an amendment was ruled in order as follows:

The Clerk read as follows:

Amendment offered by Mr. [JOHN M.] ASHBROOK [of Ohio]: Page 43, after line 5, insert the following:

"Sec. 614. No funds appropriated by this Act shall be available to pay for an abortion or the administrative expenses in connection with any health plan under the Federal Employees Health Benefit Program which provides any benefits or coverage for abortions under such negotiated plans after the last day of the contracts currently in force.". . .

MRS. [PATRICIA] SCHROEDER [of Colorado]: Mr. Chairman, I make a point of order that this amendment constitutes legislation in an appropriation bill. This limitation changes existing law, and imposes new duties on administrative officials.

This amendment changes current law in a variety of ways. Section 8904 of title 5, United States Code, lists the authorized content of a Federal employee health plan. This amendment, in effect, amends this section to add an exclusion. By doing so, the amendment changes the benefits provided to Federal employees. Directly on point is the precedent found in section 9.8 of chapter 26 of Deschler's Procedure, holding that language in a general appropriation bill changing the allowances and benefits due overseas employees of the Foreign Claims Settlement Commission was held to be legislation and not in order (106 Congressional Record 17899, 86th Congress, 2d session, August 26, 1960).

There are other ways in which this amendment changes the basic law. Throughout the development of Federal labor-relations law culminating in passage of the Civil Service Reform Act of 1978, a careful balance was worked out on labor organization rights. Congress did not go along with providing an agency shop in which dues would be required from bargaining unit members, but did allow labor organizations to offer health plans exclusively to their members as a membership and fund-raising device. This amendment would strip one of the attractive features out of these plans and would thereby deny labor organizations one of the rights which they fought hard for during civil service reform. . . .

This amendment imposes considerable new duties on the Office of Personnel Management. The general rule on this is well stated in section 11.3 of chapter 26 of Deschler's Procedure:

> It is not in order, in an appropriation bill, to impose additional duties on an executive officer or to make the appropriation contingent upon the performance of such duties.

Currently, virtually all the health plan contracts for 1981 are written, signed and sealed. Most provide abortion health services or indemnification

19. 126 Cong. Rec. 22171, 22172, 96th Cong. 2d Sess.

for abortions. The adoption of this amendment would force the renegotiation of these contracts in the very limited time prior to the beginning of the open session in October. The administrative burdens are so high, in fact, that I am not certain they can be discharged in time. . . .

Another side of this question of administrative duties has to do with changing the authority of a Federal official. . . .

. . . [S]ections 20.6 and 13.3 of chapter 26 of Deschler's Procedure stand for the proposition that changing the authority of a Federal official renders an amendment out of order. Here, the plenary authority of the Director of the Office of Personnel Management to negotiate health plans is limited by a requirement that he negotiate plans having a certain type of coverage. By tying the Director's hands in this way, the amendment is seriously changing the contracting authority of an executive official. . . .

MR. ASHBROOK: Mr. Chairman, if we read the amendment, the amendment very clearly is a limitation on expenditures, it is a limitation consistent with previous limitations that have been upheld by this Chair.

As I say, it does not require any affirmative actions.

My colleague, the gentlewoman from Colorado, refers to abortions that are in current health benefits programs. I know of no federally protected right that anyone would have for an abortion that comes under a Federal employees' health benefit program.

The truth of the matter is that since June 30, the Supreme Court upheld the right of this Congress to withhold funds. This has been the stated purpose. The Hyde amendment originally withheld funds for activities that up to that time had been legal. There is nothing new about that. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: . . . If the Chair will examine the specific limitations that are embodied in the language, he will find that it would require nothing more than incidental determinations which have been held in the past to be perfectly adequate and within the rule allowing limitations on expenditures.

I would cite to the Chair chapter 25, section 10.4, Deschler's Procedure, where it was ruled in the 86th Congress that:

> Where the manifest intent of a proposed amendment is to impose a limitation on the use of funds appropriated in the bill, the fact that the administration of the limitation will impose certain incidental but additional burdens on executive officers does not destroy the character of the limitation.

In this case, the amendment forbids the use of Federal funds to pay for an abortion or the administrative expenses in connection with any health plan under the Federal employee's health benefit program providing abortions. Those health plans at the present time are well known, are available, their contents are fully known, and no new determinations must be made. . . .

THE CHAIRMAN:[20] The Chair is prepared to rule on the point of order.

The gentlewoman from Colorado makes the point of order that the amendment offered by the gentleman

20. Richardson Preyer (N.C.).

from Ohio (Mr. Ashbrook), is legislation on an appropriation bill in violation of clause 2, rule XXI. The gentlewoman cites statutory provisions relating to the discretionary authority conferred upon the Office of Personnel Management in contracting with health insurance carriers to establish health benefit plans for Federal employees, and also to administer the health benefits fund. The gentlewoman then cites precedents to the effect that it is not in order on a general appropriation bill to directly limit executive discretionary authority, to directly change entitlement benefits or to directly change contracts entered into pursuant to law, or otherwise impose new duties not required by existing law by requiring new investigations or judgments to be made. All of the precedents examined by the Chair standing for the proposition asserted by the gentlewoman from Colorado involve situations where the Chair was able to discern from the language of the amendment itself, rather than from resulting circumstances which might derive from the enactment of the amendment, that a change in law would necessarily result from the amendment.

On the other hand, the great weight of precedent in the House, not only with respect to the denial of availability of funds in a general appropriation bill for abortions but also for any other purpose otherwise authorized by law, indicates that it is permissible as a limitation to negatively deny the availability of funds although discretionary authority may be indirectly curtailed or although contracts may remain unsatisfied thereby. And, while new determinations, which the gentlewoman suggests would necessarily have to be made in order to properly administer the funded program within the terms of the amendment cannot be foreclosed as possibilities, the Chair sees no language in the amendment itself which would require those new findings to be made. Such was the essence of the decision of the Chair on July 17, 1979, where to the D.C. appropriation bill a substitute amendment providing that none of the funds in the bill provided by the Federal payment to the District shall be used to perform abortions was held not to constitute legislation.

The Chair rules therefore that the amendment is in order, and the point of order is overruled.

Striking Employees Not To Be Rehired

§ 74.6 Where existing law (5 U.S.C. §§ 7311, 3333; 18 USC § 1918) provided civil and criminal sanctions against strikes by federal employees, and where a federal court order had enjoined a particular strike by a union representing a group of federal employees, it was held in order as a limitation on a general appropriation bill to deny funds for the rehiring of those employees engaged in a strike, where federal officials administering those funds would know which of the employees in question were "on strike".

On Sept. 10, 1981,[1] an amendment to a general appropriation bill prohibiting the use of funds therein to rehire certain federal employees engaged in a strike in violation of federal law (5 U.S.C. § 7311; 18 U.S.C. § 1918) was held in order as a limitation not requiring new determinations on the part of federal officials administering those funds, since existing law (5 USC § 3333) requiring an affidavit undertaking not to strike to be signed by federal employees, and a court order enjoining the strike in question, already imposed an obligation on the administering officials to enforce the law. The proceedings were as indicated below:

The Clerk read as follows:

> Amendment offered by Mr. [ROBERT S.] WALKER [of Pennsylvania]: On page 38, after line 15, insert the following new section:
>
> "Sec. 322. None of the funds provided in this Act shall be used to rehire Federal air traffic controllers engaged in a strike in violation of Federal law." . . .

MR. [LAWRENCE] COUGHLIN [of Pennsylvania]: . . . Mr. Chairman, I make a point of order that the amendment offered by the gentleman from Pennsylvania is legislation on an appropriation bill, contrary to clause 2 of rule XXI.

I make the further point of order that it places additional duties on officers of the Government or implicitly requires them to make investigations, compile data or otherwise make determinations not otherwise required by law.

Mr. CHAIRMAN, chapter 26 of the Deschler's procedure, section 11.2 states:

> Where an amendment, in the guise of a limitation, imposes additional determinations and duties on an executive, it may be ruled out as legislation on a general appropriation bill. . . .

MR. [DENNIS E.] ECKART [of Ohio]: . . . I would like to draw to the Chair's attention that, in fact, other duties may be incumbent as a result of this point of order in the amendment raised by virtue of the fact that it would require a self-standing judicial determination to be made if, in fact, the strike was a violation of Federal laws, separate judicial determination that has not been made. Therefore, there is a contingency contained in this amendment which I believe would place it within the grounds of the point of order. . . .

THE CHAIRMAN:[2] [T]he determination required of the Federal Government by the amendment involves a set of facts that is within the knowledge of the Federal Government in that the Federal Government is under an obligation to know which of its employees have been engaged in a strike in violation of Federal laws.

The Chair would cite the precedent in Deschler's procedure, chapter 5, section 12.7, which states:

> While an amendment under the guise of a limitation may not require

1. 127 CONG. REC. 20109, 20110, 97th Cong. 1st Sess.

2. Richard A. Gephardt (Mo.).

affirmative action or additional duties on the part of federal officials, it is in order on a general appropriation bill to deny funds to a non-federal recipient of a federal grant program unless he is in compliance with a provision of federal law; for such a requirement places no new duties on a federal official (who is already charged with responsibility for enforcing the law) but only on the non-federal grantee.

The Chair would also cite the related precedents appearing in Cannon's precedents, volume 7, sections 1661 and 1662.

For these reasons the Chair overrules the point of order.

§ 75. Foreign Relations

Nonmarket Economy Countries

§ 75.1 To a general appropriation bill containing funds for foreign assistance, an amendment prohibiting the availability of funds therein for nonmarket economy countries other than those eligible for certain preferential tariff treatment under existing law was held a proper limitation on the use of funds in the bill.

On Dec. 11, 1973,[3] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 11771), a point of order was raised against the following amendment:

MR. [RICHARD H.] ICHORD [of Missouri]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Ichord: Page 18, line 10, strike out the period and insert in lieu thereof the following: "; except that no funds shall be obligated or expended under this paragraph, directly or indirectly, for the use or benefit of any nonmarket economy country (other than any such country whose products are eligible for column 1 tariff treatment on the date of the enactment of this Act)."

MR. [GARNER E.] SHRIVER [of Kansas]: Mr. Chairman, I raise a point of order on this amendment.

This amendment, like the other one, places additional responsibilities and additional duties. It is legislation on an appropriation bill; it requires considerable research and work in order to determine the nonmarket economy country. And then that is put just in parentheses in the bill. . . .

THE CHAIRMAN:[4] The Chair is prepared to rule.

The language, as contained in this amendment, appears to the Chair to be strictly a limitation on the manner in which the funds are to be expended. Almost any limitation requires some determination in order to establish the fact of whether or not the limitation would apply.

So the Chair is constrained to overrule the point of order.

Executive Agreements

§ 75.2 To a bill making appropriations for the mutual se-

3. 119 CONG. REC. 40871, 93d Cong. 1st Sess.

4. Charles M. Price (Ill.).

curity program, an amendment providing that no funds in the bill shall be used to implement certain executive agreements made under authority of the Atomic Energy Act of 1954 was held to be a limitation restricting the availability of funds and in order.

On July 28, 1959,[5] the Committee of the Whole was considering H.R. 8385. The Clerk read as follows:

Amendment offered by Mr. [Charles E.] Bennett of Florida: On page 5, immediately below line 25, insert the following:

"Sec. 103. No part of any appropriation contained in this Act shall be used to carry out any agreement for cooperation heretofore or hereafter entered into which is required to be submitted to the Joint Committee on Atomic Energy under section 123(d) of the Atomic Energy Act of 1954, as amended."

And renumber the following sections accordingly. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill. It is not a limitation because it provides that it shall affect any agreement for cooperation heretofore or hereafter entered into which is required to be submitted to the Joint Committee on Atomic Energy under section 123 of the Atomic Energy Act of 1954 as amended, and it imposes additional duties upon the administrators of that act.

MR. BENNETT of Florida: Mr. Chairman, does not the point of order come too late? The gentleman from New York did not reserve a point of order.

THE CHAIRMAN:[6] It did not.

. . . The Chair has had an opportunity to examine the amendment.

The Chair is of the opinion that the amendment is a simple limitation on an appropriation bill and points out the specific purposes for which funds in this bill cannot be used.

Therefore the Chair overrules the point of order.

Foreign Economic Assistance; Automobile Industry Abroad

§ 75.3 Where an amendment to a mutual security appropriation prohibited the use of funds to establish textile processing plants in any foreign country, an amendment thereto extending the prohibition to "automobile manufacturing plants or any other manufacturing industry now established in the United States" was held to be a limitation restricting the availability of funds.

On July 2, 1958,[7] The following proceedings took place:

5. 105 CONG. REC. 14524, 14525, 86th Cong. 1st Sess.

6. Wilbur D. Mills (Ark.).

7. 104 CONG. REC. 12967–73, 85th Cong. 2d Sess.

Amendment offered by Mr. [Gordon] Canfield [of New Jersey]: On page 7, after line 2, insert a new section as follows:

Sec. 106. None of the funds provided in this act shall be used to establish textile processing plants in any foreign country." . . .

MR. [ROBERT P.] GRIFFIN [of Michigan]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Griffin to the amendment offered by Mr. Canfield: After the words "textile processing plants" insert the words "automobile manufacturing plants or any other manufacturing industry now established in the United States."

MR. [HALE] BOGGS [of Louisiana]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN:[8] This is a limitation on an appropriation bill and the point of order is overruled.

Parliamentarian's Note: The amendment was not germane to the amendment to which offered, but this point of order was not raised.

Payments on Contracts to Former Government Employees

§ 75.4 Language in a proposed new section of an appropriation bill stating that none of the funds in title I of the bill, providing for the International Cooperation Administration, shall be used to enter into contracts with any concern which compensates employees or former employees of such administration, was held to be a limitation and in order.

On June 17, 1960,[9] The Committee of the Whole was considering H.R. 12619, a mutual security program appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Alfred E.] Santangelo [of New York]: On page 9, after line 11, add new section as follows:

"Sec. 114. None of the funds contained in title I of this Act may be used to enter into any contract with any person, organization, company, or concern or any of its affiliates who has offered or who offers to provide compensation to an employee of the International Cooperation Administration or who provides compensation to any former employee of the International Cooperation Administration whose annual salary exceeds $5,000 and who has left employment with the International Cooperation Administration within two years of the date of employment with said person, or organization, company, or concern, or any of its affiliates."

8. Wilbur D. Mills (Ark.).

9. 106 CONG. REC. 13143, 13144, 86th Cong. 2d Sess.

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Chairman, I make the point of order against the amendment on the ground that it is legislation on an appropriation bill. . . .

MR. SANTANGELO: Mr. Chairman, this amendment was offered to a bill last year. Similar language was objected to in a different type of bill, and the Chair, at the time the gentleman from New York [Mr. Keogh], overruled the point of order. This is a limitation upon expenditures. This in no wise is an authorization to do anything except a limitation on funds. I say it does not violate the parliamentary rules. . . .

THE CHAIRMAN:[10] The Chair has had an opportunity to examine the language of the amendment offered by the gentleman from New York [Mr. Santangelo] and has had an opportunity also to review what transpired in connection with a similar matter when it was offered as an amendment to an appropriation bill last year. This amendment seems to be similar to the amendment offered last year except for the $5,000 limitation in this amendment. Last year the present occupant of the Chair, when such an amendment was offered, pointed out that the amendment was in order at that time and overruled the point of order made then.

So, the Chair overrules the point of order made by the gentleman from Virginia.

The ruling here was based on a similar ruling on July 28, 1959. In the 1959 instance,[11] language in the bill[12] stated:

Sec. 113. None of the funds in this title may be used to enter into a contract with any person, organization, company, or concern or any of its affiliates, who has offered or who offers to provide compensation to an employee of the International Cooperation Administration or who provides compensation to any former employee of the International Cooperation Administration who has left employment with International Cooperation Administration within two years from the date of employment with said person, organization, company, or concern or any of its affiliates.

A point of order was made against the language:

MR. [THOMAS E.] MORGAN [of Pennsylvania]: Mr. Chairman, I make a point of order against section 113, on page 8, extending from line 7 down to and including line 17.

Mr. Chairman, I make the point of order that section 113 incorporates a legislative provision in an appropriation bill. It does not retrench expenditure, but actually constitutes a new penal provision which is so broad that it could penalize innocent persons and even make it impossible for a concern to hire a janitor who had been employed by the ICA.

Mr. Chairman, I am fully in sympathy with the purpose of the Appropriations Committee in writing this section, but section 512 of the existing Mutual Security Act already contains stringent provisions against fraudulent or other improper practices by ICA employees. The proper approach to this problem is further study by the legislative committees concerned and any

10. Wilbur D. Mills (Ark.).

11. See 105 CONG. REC. 14529, 86th Cong. 1st Sess.

12. H.R. 8385, appropriations for the mutual security program.

modification that may be found desirable in existing law.

Mr. Chairman, I believe that in spite of the beginning phrase of this section it is clearly legislation in an appropriation bill and properly subject to a point of order, because it actually legislates penal provisions which may go far beyond the intent of the Appropriations Committee itself. I recommend a study of the existing penal provisions, section 512, and I wish to renew my point of order. . . .

MR. SANTANGELO: Mr. Chairman, I rise in opposition to the point of order. The language in the bill which is the subject of the point of order is an amendment which I offered in the full committee and which the full committee accepted.

Mr. Chairman, on June 3, I offered a similar amendment to the defense appropriation bill. The language of that amendment, which appears on page 9741 of the Congressional Record, is almost exactly the same as the language of the amendment before you now.

The amendment submitted on the defense bill attempted to prevent organizations which do business with the Pentagon from creating the possibility of undue influence and favoritism by employing retired military officers. The amendment before you today attempts to prevent organizations who get large contracts under the foreign aid program from influencing the awarding of such contracts by attempting to employ ICA employees or by putting them on their payrolls within 2 years of their separation from that agency.

A point of order was also made against the limitation offered previously. At that time the Chair stated as follows, and I quote from page 9742 of the Congressional Record:

> It is obvious that the intent of this amendment is to impose a limitation on the expenditure of the funds here appropriated, and while the point might be made that imposing limitations will impose additional burdens, it is nevertheless the opinion of the Chair clearly a limitation on expenditures, and therefore the Chair overrules the point of order.

Mr. Chairman, I submit that the ruling just quoted is equally applicable here. It is the intent of this amendment to impose a limitation on the expenditure of funds here appropriated. The wording of the two amendments is almost identical, except for the agencies and people involved. . . .

MR. [JAMES G.] FULTON [of Pennsylvania]: Mr. Chairman, the point should be made on this particular amendment that it does not refer to any time. So that the acts complained of, and which come under the purview of this amendment, can already have happened. That would be legislating on the effect of acts that have happened prior to this date. This is legislation in an appropriation bill. If the amendment had read, "after the passage of this act,"—the amendment would then apply to future acts only—this amendment is too broad because it refers to previous acts which have occurred as well as acts which can occur after the passage of this act.

THE CHAIRMAN [WILBUR D. MILLS, of Arkansas]: The Chair is ready to rule. The gentleman from Pennsylvania [Mr. Morgan] makes a point of order to the language in the bill on page 8, line 7 through line 17, on the ground that the

language is legislation in an appropriation bill. The Chair has had an opportunity to examine the language. The Chair is of the opinion that the language does constitute a valid limitation on an appropriation bill. The language does refer to the funds in this particular appropriation. In addition, the Chair is appreciative of the precedent called to the attention of the Chair by the gentleman from New York.

The Chair overrules the point of order.

Committee Requests for Information

§ 75.5 To a bill making appropriations for the mutual security program, an amendment providing that no funds in the bill shall be used for purposes of the International Cooperation Administration program where more than 20 days have elapsed between the submission of a request by the General Accounting Office or a committee of Congress for certain information and the furnishing of such information was held to be a limitation since the information was required by existing law to be furnished.

On July 28, 1959,[13] the Committee of the Whole was considering H.R. 8385. The Clerk read as follows:

Amendment offered by Mr. [Porter] Hardy [Jr., of Virginia]: On page 8, after line 17, insert the following:

Sec. 114. None of the funds herein appropriated shall be used to carry out any provision of chapter II, III, or IV of the Mutual Security Act of 1954, as amended, during any period when more than twenty days have elapsed between the request for, and the furnishing of, any document, paper, communication, audit, review, finding, recommendation, report, or other material relating to the administration of such provision by the International Cooperation Administration, to the General Accounting Office or any committee of the Congress, or any duly authorized subcommittee thereof, charged with considering legislation or appropriation for or expenditures of the International Cooperation Administration and the Department of State." . . .

MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, on reading the proposed amendment offered by the gentleman from Virginia, it is my belief this amendment does impose on the executive branch of the Government additional burdens that are not required by any existing legislation. For that reason it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[14] The Chair is prepared to rule. . . .

The Chair has had an opportunity to examine the amendment made in the act of 1959 to the Mutual Security Act amending section 534 of that act.

13. 105 CONG. REC. 14530, 85th Cong. 1st Sess.

14. Wilbur D. Mills (Ark.).

The Chair is of the opinion that there is legislative authorization for the furnishing of these documents and for that which is required within this amendment offered by the gentleman from Virginia.

The Chair, therefore, overrules the point of order.[15]

§ 75.6 To a general appropriation bill making appropriations for the Mutual Security Act program, an amendment providing that no funds in the bill shall be used for purposes of the International Cooperation Administration program where more than 20 days have elapsed between the submission of a request by the General Accounting Office or a committee of Congress for information required by existing law to be supplied relating to the administration of ICA and the furnishing of such information, was held to be a limitation and in order.

On June 17, 1960,[16] during consideration in the Committee of the Whole of the mutual security appropriation bill (H.R. 12619), a point of order was raised against the following amendment:

Amendment offered by Mr. [John S.] Monagan [of Connecticut]: On page 6, immediately below line 12, insert the following:

"Sec. 101. None of the funds herein appropriated shall be used to carry out any provision of chapter II, III, or IV of the Mutual Security Act of 1954, as amended, during any period when more than twenty days have elapsed between the request for, and the furnishing of, any document, paper, communication, audit, review, finding, recommendation, report, or other material relating to the administration of such provision by the International Cooperation Administration, to the General Accounting Office or any committee of the Congress, or any duly authorized subcommittee thereof, charged with considering legislation or appropriation for or expenditures of the International Cooperation Administration and the Department of State."

MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[17] The gentleman will state it.

MR. FORD: It is obvious to me, listening to the amendment which has been read, that it puts additional duties on individuals in the executive branch and therefore is subject to a point of order.

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

MR. MONAGAN: Mr. Chairman, this same amendment was offered last

15. *Parliamentarian's Note:* The furnishing of such information was required by Pub. L. No. 86–108, § 534. Therefore, the provision for withholding of funds was a limitation and not legislation.

16. 106 CONG. REC. 13144, 13145, 86th Cong. 2d Sess.

17. Wilbur D. Mills (Ark.).

year. A point of order was raised against it at that time and the point of order was overruled. This is not legislation. It is merely a limitation on the appropriation.

THE CHAIRMAN: The Chair is ready to rule. The Chair has had an opportunity to examine the language of the amendment offered by the gentleman from Connecticut and finds that the language offered by the gentleman is similar, if not identical, with the language which was offered to the appropriation bill last year by the gentleman from Virginia (Mr. Hardy) on July 28, 1959.

MR. MONAGAN: It is identical.

THE CHAIRMAN: The amendment is set forth in the Congressional Record, volume 105, part 11, page 14530. The Chair on that occasion held that the language was a limitation and in order on the appropriation bill and overruled the point of order.

The Chair is constrained to overrule the point of order now.

United Nations Dues or Assessments

§ 75.7 To a general appropriation bill providing funds for the United States contribution to a United Nations assessment, an amendment limiting expenditures under the appropriation to 32.02 percent of the aggregate payments to the United Nations by all members was held to be a limitation and in order.

On Apr. 4, 1962,[18] during consideration in the Committee of the Whole of a general appropriation bill, a point of order was raised against the following amendment:

The Clerk read as follows:

> Amendment offered by Mr. [H.R.] GROSS [of Iowa]: Page 14 line 16, change the period to a comma and add the following: "but expenditures from this appropriation by the Department of State shall be limited to a sum not in excess of 32.02 per centum of the aggregate payments to the United Nations pursuant to the resolution (agenda item 55) adopted by the General Assembly thereof."

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill.

THE CHAIRMAN:[19] Does the gentleman from Iowa wish to be heard on the point of order?

MR. GROSS: Mr. Chairman, a point of order against this amendment is not good, because this is strictly a limitation. It does not go to the scope of this bill. It does not disturb any agreement or any treaty. This is in conformance with the intent and the purpose of this appropriation. I challenge the gentleman to show wherein this amendment is legislation on an appropriation bill.

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

MR. ROONEY: Mr. Chairman, does not the amendment offered by the gentleman from Iowa [Mr. Gross] call

18. 108 CONG. REC. 5943, 5944, 87th Cong. 2d Sess.

19. Oren Harris (Ark.).

upon the executive department for extra duties; and does it not refer to outside matters? . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Iowa [Mr. Gross] offers an amendment to this paragraph, to which the gentleman from New York [Mr. Rooney] has made the point of order that it is legislation on an appropriation bill. The Chair has carefully read the bill and observes that the very purpose of the amendment is a limitation. The Chair, therefore, overrules the point of order.

United Nations Dues in Arrears

§ 75.8 To a bill appropriating funds for foreign assistance programs, an amendment providing in part that none of the funds therein may be used to pay dues or assessments of members of the United Nations was held to be a proper limitation restricting the availability of funds and in order.

On Sept. 20, 1962,[20] the Committee of the Whole was considering H.R. 13172, a foreign assistance appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [A. Paul] Kitchin [of North Carolina]: Add a new section to the title on page 8, after line 4, to read:

"Sec. 113. None of the funds appropriated or made available pursuant to this act for carrying out the Foreign Assistance Act of 1961, as amended, may be used to pay in whole or in part any assessments, arrearages or dues of any member of the United Nations.

Mr. [WAYNE L.] HAYS [of Ohio]: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill. . . .

THE CHAIRMAN:[1] The Chair has had an opportunity to read the language of the amendment offered by the gentleman from North Carolina (Mr. Kitchin) to which the gentleman from Ohio (Mr. Hays) makes a point of order.

The language of the gentleman's amendment is a limitation upon the use of funds contained in the bill and is, therefore, in order as a limitation. The Chair overrules the point of order.

§ 76. Interior

Reclamation Projects; Equating Expenses to Repayments

§ 76.1 A provision that no part of an appropriation shall be available for operation and maintenance of any reclamation projects in excess of the amount of repayments made pursuant to law during a current fiscal year was held to be in order as a limitation

20. 108 CONG. REC. 20187, 20188, 87th Cong. 2d Sess.

1. Wilbur D. Mills (Ark.).

restricting the availability of funds and not requiring the use of repayments.

On May 1, 1951,[2] the Committee of the Whole was considering H.R. 3790, an Interior Department appropriation bill. A point of order against an amendment to the bill was overruled as indicated below.

OPERATION AND MAINTENANCE

For operation and maintenance of reclamation projects or parts thereof and of other facilities, as authorized by law . . . $15,385,000, of which not to exceed $12,883,900 shall be derived from the reclamation fund and not to exceed $1,671,000 shall be derived from the Colorado River dam fund. . . .

Mr. John Phillips, of California, offered an amendment, which was read. The following proceedings then took place:

The Clerk read as follows:

Amendment offered by Mr. [John R.] Murdock [of Arizona] to the amendment offered by Mr. Phillips: On page 16, at the end of the amendment offered by Mr. Phillips insert: "*Provided further*, That no part of this appropriation shall be available for operation and maintenance of any irrigation works in excess of repayments during the current fiscal year pursuant to law."

MR. PHILLIPS: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[3] The gentleman will state the point of order.

MR. PHILLIPS: Mr. Chairman, the amendment is in effect legislation on an appropriation bill, and therefore a violation of rule 21.

I make the further point of order, Mr. Chairman, that the amendment offered by the gentleman from Arizona to my amendment purports to be a limitation but is in effect an authorization. There is no authorization at the present time for expenditures, from the funds to which the gentleman refers, for operation and maintenance of these certain projects. Therefore, if the gentleman from Arizona offers an amendment which says, "You must not spend more than that amount of money," then it is in effect not a limitation but an authorization for the expenditure of money to that point. . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Arizona [Mr. Murdock] offers an amendment which the Clerk has reported to the amendment offered by the gentleman from California (Mr. Phillips). The gentleman from California makes a point of order against the amendment for the reasons which he has stated.

The Chair has had an opportunity to examine the amendment offered by the gentleman from Arizona to the amendment offered by the gentleman from California. The Chair has concluded that the amendment is clearly a limitation, negative in character on an appropriation bill. The amendment limits in a negative manner the amount which can be spent only during the fiscal year covered by the bill presently before the Committee.

2. 97 CONG. REC. 4655, 4656, 82d Cong. 1st Sess.

3. Wilbur D. Mills (Ark.).

The device by which the limitation of the amount is determined is the extent to which the law is complied with. It does not add to the requirements of any law; it does not require compliance with any law; all it does is to say that you may spend this appropriation up to the amount that the law requiring repayment is complied with. The amendment therefore is in order and the Chair overrules the point of order made by the gentleman from California.

Qualification of Employees in Bureau of Reclamation

§ 76.2 An amendment to the Interior Department appropriation bill proposing that no part of the appropriation for the Bureau of Reclamation shall be used for salaries of persons in certain positions who are not qualified engineers with at least 10 years' experience was held to be a proper limitation and in order.

On May 27, 1948,[4] the Committee of the Whole was considering H.R. 6705. An amendment was offered by Mr. Alfred J. Elliott, of California:

Page 38, line 21, insert after the colon the following: "*Provided further,* That no part of any appropriation for the Bureau of Reclamation contained in this act shall be used for the salaries and expenses of a person in any of the following positions in the Bureau of Reclamation, or of any person who performs the duties of any such position, who is not a qualified engineer with at least 10 years' engineering and administrative experience: (1) Commissioner of Reclamation; (2) Assistant Commissioner of Reclamation; and (3) Regional Director of Reclamation."

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Chairman, a point of order.

THE CHAIRMAN:[5] The gentleman will state it.

MR. MCCORMACK: Mr. Chairman, the point of order is that it is legislation upon an appropriation bill, not a limitation. The mere use of the words "*Provided further*" does not mean it makes everything in order. This is legislation relating to the requirements that must be met by one person or certain employees of the Bureau of Reclamation before they may hold office or be appointed.

THE CHAIRMAN: Does the gentleman from California desire to be heard?

MR. ELLIOTT: NO.

THE CHAIRMAN: The Chair is of the opinion that the amendment is a limitation, that it refers to a part of this appropriation; therefore overrules the point of order.

Territories and Former Possessions

§ 76.3 A provision preventing the expenditure of certain funds appropriated for sala-

4. 94 CONG. REC. 6630, 80th Cong. 2d Sess.

5. Carl T. Curtis (Nebr.).

ries, administrative expenses, travel, or other purposes in any territory where refunds of excise-tax collections were being made to such territory was held to be a proper limitation restricting the availability of funds and in order on an appropriation bill.

On Mar. 7, 1940,[6] the Committee of the Whole was considering H.R. 8745, an Interior Department appropriation. The Clerk read as follows:

Amendment offered by Mr. [John G.] Alexander [of Minnesota]: On page 143, after line 14, insert a new section to be known as section 6, to read as follows:

"No funds appropriated herein shall be expended for salaries, administrative expenses, travel, or other purposes in any Territory or former possession where refunds of excise-tax collections are being made to such Territory or former possession."

MR. [JED] Johnson of Oklahoma: Mr. Chairman, I make the point of order against the amendment that it constitutes legislation on an appropriation bill. . . .

MR. ALEXANDER: Mr. Chairman, it does not seem to me that this is legislation that comes within the previous rulings of the Chair, because it is a limitation and therefore comes under the Holman rule. . . .

MR. JOHNSON of Oklahoma: Mr. Chairman, this is not germane because it refers to appropriations not covered by this bill. . . .

The Chairman:[7] The Chair invites attention to the fact that the bill does carry certain appropriations for the Philippine Islands, the Virgin Islands, and insular possessions. The Chair therefore is under the impression that the amendment is germane to the provisons of the pending bill, and the Chair is of the opinion that the amendment offered is in the form of a limitation and would be in order.

The point of order is overruled.

National Park Roads

§ 76.4 In an appropriation bill a provision that none of the funds in the bill shall be used for maintenance of roads, other than parkways, outside the boundaries of national parks was held in order as a limitation restricting the availability of funds.

On Apr. 6, 1954,[8] the Committee of the Whole was considering H.R. 8680, an Interior Department appropriation. The Clerk read as follows:

MAINTENANCE AND REHABILITATION OF PHYSICAL FACILITIES

For expenses necessary for the operation, maintenance, and rehabilitation of roads (including furnishing special road maintenance service to defense

6. 86 CONG. REC. 2542, 2543, 76th Cong. 3d Sess.

7. Jere Cooper (Tenn.).

8. 100 CONG. REC. 4721, 83d Cong. 2d Sess.

trucking permittees on a reimbursable basis), trails, buildings, utilities, and other physical facilities essential to the operation of areas administered pursuant to law by the National Park Service, $8 million: *Provided* That none of the funds herein appropriated shall be used for maintenance of roads, other than national parkways, outside the boundaries of national parks and monuments.

MR. [WESLEY A.] D'EWART [of Montana]: Mr. Chairman, I make a point of order against the language on page 24, starting with the word "*Provided*" on line 11 and ending on line 14. . . .

MR. [BEN F.] JENSEN [of Iowa]: Even though such expenditures are authorized by law, the fact still remains that you can provide a limitation on an appropriation bill, and I so contend. . . .

THE CHAIRMAN:[9] The Chair is ready to rule. The Chair has carefully studied the point of order submitted by the gentleman from Montana (Mr. D'Ewart). The Congress, although it is authorized to make appropriations, can also deny the use of such appropriations by proper limitations.

The Chair feels that this is a limitation and not legislation upon an appropriation bill, and therefore overrules the point of order.

Limiting Draft Deferments

§ 76.5 An amendment to the Interior Department appropriation bill providing that none of the funds therein shall be used to pay the salary of any person who is qualified physically for military duty and who received a deferment under specified circumstances was held a proper limitation and in order.

On Apr. 27, 1944,[10] the Committee of the Whole was considering H.R. 4679. The following proceedings took place:

Amendment offered by MR. [JAMES W.] MOTT [of Oregon]: On page 107, after section 10, insert a new section, numbered section 11, as follows:

"Sec. 11. No part of the money appropriated in this act shall be used to pay the salary of any male person between the ages of 18 and 30 years who is physically and mentally qualified for military duty, as shown by his selective-service classification, and who has been deferred from military duty, either at his own request or the request of the Secretary of the Interior, for reasons other than dependency or as necessary to war production, and who, 30 days after the approval of this act, still retains such deferment."

MR. [JAMES M.] FITZPATRICK [of New York]: Mr. Chairman, I make a point of order against the amendment that it is legislation on an appropriation bill. . . .

The Chairman:[11] The Chair is ready to rule. In the opinion of the Chair the amendment is a limitation, and the point of order is overruled.

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9. Charles B. Hoeven (Iowa).

10. 90 CONG. REC. 3757, 78th Cong. 2d Sess.

11. John J. Delaney (N.Y.).

Limitation Applicable on Condition Subsequent—Unconstitutionality of Authorization Law

§ 76.6 To a paragraph appropriating money for the National Bituminous Coal Commission, an amendment providing that if the act appropriated for is declared unconstitutional by the Supreme Court, none of the money provided in the bill shall thereafter be spent, was held in order as a limitation.

On Jan. 24, 1936,[12] the Committee of the Whole was considering H.R. 10464, a supplemental appropriation bill. The following proceedings took place:

NATIONAL BITUMINOUS COAL COMMISSION

Salaries and expenses, National Bituminous Coal Commission: For all necessary expenditures of the National Bituminous Coal Commission in performing the duties imposed upon said Commission by the Bituminous Coal Conservation Act of 1935, including personal services and rent in the District of Columbia and elsewhere, traveling expenses, contract stenographic reporting services, stationery and office supplies and equipment, printing and binding, and not to exceed $2,500 for newspapers, reference books, and periodicals, fiscal year 1936, $400,000: *Provided*, That this appropriation shall be available for obligations incurred on and after September 21, 1935, including reimbursement to other appropriations of the Department of the Interior for obligations incurred on account of said Commission. . . .

MR. [ROBERT L.] BACON [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Bacon: Page 22, line 11, after the word "Commission", insert "*Provided*, That if the Bituminous Coal Conservation Act of 1935 is declared to be unconstitutional by the Supreme Court of the United States, no money herein provided shall thereafter be spent, and all money herein appropriated and unexpended shall be immediately covered back into the Treasury."

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[13] The gentleman will state his point of order.

MR. WOODRUM: This seems to me to be legislation undertaking to effect a limitation. If, of course, the Supreme Court declares the act unconstitutional expenditures under it will cease and no money may thereafter be expended under the act.

MR. BACON: Mr. Chairman, it seems to me this is an amendment that comes within the Holman rule, that it is a limitation saving money for the Treasury of the United States.

MR. WOODRUM: But it is made contingent on something that may or may not happen.

12. 80 CONG. REC. 994, 996, 74th Cong. 2d Sess.

13. Jere Cooper (Tenn.).

MR. BACON: Yes; it is made contingent on something happening.

MR. [KENT E.] KELLER [of Minnesota]: Mr. Chairman, if the gentleman will yield, is the gentleman suggesting that the Congress should hint the unconstitutionality of a law before it is passed on by the Supreme Court?

THE CHAIRMAN: The Chair is of the opinion that the Holman rule does not necessarily apply. The Chair is of the opinion, however, that the amendment is a limitation. The purport of the amendment taken as a whole impresses the Chair as being a limitation.

MR. WOODRUM: May I call the attention of the Chair to the fact that the amendment means hereafter, any time in the future, any appropriation that hereafter may be made, and that it is not confined to the appropriation in this bill?

THE CHAIRMAN: Yes; that is the very point on which the Chair's decision turns. The Chair interprets the words used in the amendment to mean that it refers to the appropriation provided in this bill. It would, therefore, be a limitation on the appropriation here provided. The Chair, therefore, overrules the point of order.

Consultant Salaries

§ 76.7 A provision in a general appropriation bill authorizing expenditures of funds provided in the bill for temporary services of consultants at rates not in excess of $100 per day was held to be in order as a limitation which did not set rates of pay but merely restricted use of funds in the bill.

On Apr. 24, 1951,[14] The Committee of the Whole was considering H.R. 3790, an Interior Department appropriation bill. The following proceedings took place:

ADMINISTRATIVE PROVISIONS

Appropriations of the Bonneville Power Administration shall be available to carry out all the duties imposed upon the Administrator pursuant to law, including not to exceed $40,000 for services as authorized by section 15 of the act of August 2, 1946 (5 U.S.C. 55a), including such services at rates not to exceed $100 per diem for individuals; purchase of not to exceed 16 passenger motor vehicles of which 12 shall be for replacement only; and purchase (not to exceed 2) of aircraft. . . .

MR. [Edward H.] REES of Kansas: Mr. Chairman, I make a point of order against the language appearing in the bill beginning with line 24, page 5, and continuing through to line 12, page 6, on the ground it is legislation on an appropriation bill. . . .

MR. [Henry M.] JACKSON of Washington: Mr. Chairman, all of the language contained in the point of order raised by the gentleman from Kansas is authorized by law under the Bonneville Project Act and other acts and amendments to the original Bonneville Project Act and may be found in Sixteenth United States Code, section 825. For example, there is contained in the area covered by the gentleman's

14. 97 CONG. REC. 4307, 82d Cong. 1st Sess.

point of order the authority with reference to the purchase of automobiles. This is contained in general authorizing legislation that is applicable to all departments of Government.

The Chairman:[15] Will the gentleman from Kansas be more specific with reference to the language that he deems to be legislation on an appropriation bill?

MR. REES of Kansas: Mr. Chairman, the language in line 4, beginning with the word "including" and ending with the word "individuals" in line 5 is certainly without authorization and for that reason the entire paragraph, in my judgment, is legislation on an appropriation bill and not authorized.

MR. JACKSON of Washington: Mr. Chairman, in response to the gentleman's contention at that point, may I say that Public Law 600 of the Seventy-ninth Congress specifically authorizes the Department to do this very thing.

THE CHAIRMAN: It authorizes the department to pay at the rate of $100 per diem?

MR. JACKSON of Washington: That is right.

THE CHAIRMAN: Will the gentleman from Washington explain to the Chair the reason for carrying it in the appropriation bill itself, if it is authorized?

MR. JACKSON of Washington: Unless the Committee on Appropriations each year authorizes a specific amount, they have no authority to spend any money for this purpose. In other words, existing law gives the department the authority to pay per diem expenses to individuals but the amount as to what should be paid is left to the discretion of the Committee on Appropriations, and the committee from time to time has changed the amount. I will be glad to read from Fifth United States Code, section 55a, as follows:

> The head of any department, when authorized in an appropriation or other act, may procure the temporary (not in excess of 1 year) or intermittent services of experts or consultants or organizations thereof.

I think that section clearly leaves it to Congress, and Congress has to act each year for the simple reason that the authority to make the payment is limited to a maximum of 1 year.

MR. REES of Kansas: Mr. Chairman, may I add this further? It would occur to me then it is an attempt by law to change the Rules of the House and that certainly cannot be done. So, we still have legislation on an appropriation bill.

THE CHAIRMAN: For the information of the gentleman from Kansas the Chair will read from the United States Code, title 5, on page 79, section 35a:

> Temporary employment of experts or consultants; rate of compensation:
>
> The head of any department, when authorized in an appropriation or other act, may procure the temporary (not in excess of 1 year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract and in such cases such service shall be without regard to the civil service and classification laws (but as to agencies subject to sections . . . at rates not in excess of the per diem equivalent of the highest rate payable under said sections, unless other rates are specifically provided in the appropriation or other law) and except in the

15. Wilbur D. Mills (Ark.).

case of stenographic reporting services by organizations without regard to section 5 of title 41.

MR. [JOHN] TABER [of New York]: Might I be allowed to make a suggestion, Mr. Chairman?

THE CHAIRMAN: The Chair will be pleased to hear the gentleman from New York.

MR. TABER: It is the duty of the legislative committees to bring in legislation that will fix the rate of compensation. A limitation by a Committee on Appropriations can be made restricting the amount below the statutory amount. But when you come by a statute to authorize the Committee on Appropriations to bring in legislation, it is utterly void, because the rules of the House provide that the Committee on Appropriations shall not bring in legislation. This not being a limitation or anything of that kind, it is clearly legislation and not in order on this bill.

MR. JACKSON of Washington: If the Chair will permit me to speak further, of course the answer to the statement of the gentleman from New York is that the argument does not apply when the Committee on Appropriations has been authorized by another basic law, and that law itself contemplates the very possibility which has arisen here, namely, that from time to time rates would have to be fixed each year as to the amount that should be paid on a per diem basis. The argument the gentleman from New York has advanced has no application in this instance because specific authorizing legislation has covered this part of it.

THE CHAIRMAN: As the Chair understands, there is no per diem ceiling fixed in the provision to which the Chair has alluded. The gentleman from New York mentions a ceiling, and then the authority of the committee to place a limitation under that ceiling. Does the gentleman from New York know of some ceiling provided in law for per diem pay?

MR. TABER: I do not, but there is legislation to fix the rate of pay, and the authority contained in the legislation would not give the Committee on Appropriations jurisdiction because the jurisdiction of the committee is governed by the rules of the House. You cannot change the rules of the House by legislation.

THE CHAIRMAN: The gentleman from New York is correct that you cannot change the rules of the House by legislation, but the language referred to by the Chair seems to authorize beyond any doubt the per diem payment by this service to individuals. There does not appear to be any ceiling fixed upon what the payment per day may be. So it appears to the Chair that the language contained in the bill in line 4 through "individuals" in line 5 on page 6 is actually in the form of a limitation. Therefore, the Chair overrules the point of order made by the gentleman from Kansas.

Parliamentarian's Note: The Chair by citing the above statute was not ruling that the language of that law specifically permitted the Committee on Appropriations in a general appropriation bill to fix per diem rates of pay—rather that a negative limitation setting a ceiling on use of those funds for per diem pay was in order under Rule XXI clause 2, as a limitation.

Reindeer Industry

§ 76.8 To an appropriation for the purchase of reindeer, an amendment limiting the purchase to an average price of $4 per head was held to be a limitation restricting the availability of funds in the bill and in order.

On Mar. 15, 1939,[16] the Committee of the Whole was considering H.R. 4852, an Interior Department appropriation. The Clerk read as follows, and proceedings ensued as indicated below:

> Reindeer industry, Alaska: For the purchase, in such manner as the Secretary of the Interior shall deem advisable and without regard to sections 3709 and 3744 of the Revised Statutes, of reindeer, abattoirs, cold-storage plants . . . and communication and other equipment, owned by nonnatives in Alaska, as authorized by the act of September 1, 1937 (50 Stat. 900), $820,000 . . . *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:[17] 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.
>
> MR. JOHNSON of Oklahoma: Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Johnson of Oklahoma: Page 60, line 23, insert a new paragraph, as follows:
>
> "Reindeer industry, Alaska: For the purchase, in such manner as the Secretary of the Interior shall deem advisable, of reindeer . . . as authorized by the act of September 1, 1937 (50 Stat. 900), $820,000 . . . *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. SCHAFER of Wisconsin: Mr. Chairman, I make the point of order against the amendment on the ground that it is legislation on an appropriation bill, unauthorized by law, and it delegates to the Department additional authority which it does not now have. . . .
>
> MR. JOHNSON of Oklahoma: Mr. Chairman, I feel that it is unnecessary

16. 84 CONG. REC. 2789, 2790, 76th Cong. 1st Sess.

17. Frank H. Buck (Calif.).

to make an extended argument, as I am sure the Chair is fully advised and ready to rule. Certainly there is no question but that this item is clearly authorized by existing law. Authority will be found in the act of September 1, 1937, Fiftieth Statutes, page 900. It plainly authorizes an appropriation of $2,000,000. I call the attention of the Chair to section 16 which reads as follows:

> The sum of $2,000,000 is hereby authorized to be appropriated for the use of the Secretary of the Interior in carrying out the provisions of this act.

MR. [HAROLD] KNUTSON [of Minnesota]: What more authority do you want? That is enough.

MR. [ALBERT E.] CARTER [of California]: Mr. Chairman, I would like to be heard on the point of order.

THE CHAIRMAN: The gentleman from California is recognized.

MR. CARTER: The opening sentence of the amendment reads:

> For the purchase in such manner as the Secretary of the Interior shall deem advisable.

Now, certainly there is nothing in the statute that gives the Secretary of the Interior that much discretion. In addition to that, Mr. Chairman, I desire to call the attention of the Chair to the proviso in the amendment which reads as the proviso in the bill, which is clearly legislation. Therefore I say the point of order must be sustained against the proposed amendment.

THE CHAIRMAN: The Chair is ready to rule. The act of September 1, 1937, on which the appropriation contained in this paragraph is based, reads in part as follows:

> Sec. 2. The Secretary of the Interior is hereby authorized and directed to acquire, in the name of the United States, by purchase or other lawful means, including exercises of power of eminent domain, for and on behalf of the Eskimos and other natives of Alaska, reindeer, reindeer range, equipment, abattoirs, cold-storage plants, warehouses and other property, real or personal, the acquisition of which he determines to be necessary to the effectuation of the purposes of this act.

This seems to be a broad, all-inclusive grant of power. The language used in the amendment offered by the gentleman from Oklahoma merely restates, in slightly different words, the authorization contained in the act of September 1, 1937.

The proviso to which the gentleman from California (Mr. Carter) refers appears to the Chair to be nothing more than a limitation, in the strictest sense of the word.

For these reasons the Chair overrules both points of order.

§ 76.9 A direction in law to an executive official to acquire, by purchase or otherwise, "necessary" cold storage plants and other equipment for purposes of developing the Alaskan reindeer industry, was held to permit an appropriation for the object to be implemented in such manner as the official shall determine.

The proceedings of Mar. 15, 1939,[18] are discussed in Sec. 76.8, supra. At

18. 84 CONG. REC. 2789, 2790, 76th Cong. 1st Sess.

issue was the amendment offered by Mr. Jed Johnson, of Oklahoma.

§ 77. Treasury and Post Office

Mail Seizure

§ 77.1 An amendment to a Treasury and Post Office Departments appropriation bill, providing that no funds therein may be used for the seizure of mail (in connection with income tax investigations) without a search warrant was held to be a limitation and in order.

On Apr. 5, 1965,[19] The Committee of the Whole was considering H.R. 7060. The Clerk read as follows, and proceedings ensued as indicated below:

> Amendment offered by Mr. [Durward G.] Hall [of Missouri]: On page 8, immediately before the period in line 11, insert the following: ": *Provided*, That no appropriation made by any provision of this Act for the fiscal year ending June 30, 1966, may be used for the seizure of mail without a search warrant authorized by law in carrying out the activities of the United States in connection with the seizure of property for collection of taxes due to the United States".
>
> MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, I reserve a point of order on this amendment.
>
> THE CHAIRMAN:[20] The gentleman from Oklahoma reserves a point of order. . . .
>
> MR. STEED: Chairman, I renew my point of order against the amendment because it is not a limitation on appropriations. It requires actions by the Bureau of Internal Revenue, which can be authorized only by legislation.
>
> THE CHAIRMAN: The language is a limitation here. The Chair overrules the point of order. The point of order is not sustained.

Parliamentarian's Note: Subsequent rulings have cast some doubt on the applicability at present of the above ruling. On June 16, 1977, an amendment which prohibited the use of funds by OSHA for any inspection conducted by that agency without a search warrant based on probable cause as authorized by law was held out of order as legislation since it would impose new affirmative duties to make applications to courts, a procedure not required by statutory law or uniformly required by the federal courts. See 123 CONG. REC. 19373, 95th Cong. 1st Sess. [H.R. 7555]. If a definitive ruling by the Supreme Court had existed which required a probable cause warrant for inspections by OSHA, such ruling might, of course, have constituted a sufficient basis in law for the limitation as proposed to

19. 111 CONG. REC. 6869, 6870, 89th Cong. 1st Sess.

20. John A. Blatnik (Minn.).

be held in order. As it was, the Chair merely took into account (by judicial notice) the fact that federal court rulings had not been uniform or finally dispositive of constitutional requirements as to obtaining search warrants in such cases. The Chair did note in his ruling that the amendment would require such warrants even where inspection was voluntarily submitted to, whereas probable cause warrants are not ordinarily required under the case law when voluntary consent is given to the search.

Again, on June 7, 1978, an amendment to a general appropriation bill denying use of funds for OSHA to conduct inspections of small businesses unless a warrant had been previously obtained was ruled out of order as legislation since existing law as interpreted by the Supreme Court required a warrant for such inspections only where the business under inspection insisted upon such a warrant. See 124 CONG. REC. 16677, 95th Cong. 2d Sess. [H.R. 12929]. It may be noted that the ruling above, on Apr. 5, 1965, is arguably distinguishable from the later rulings, since the amendment held in order on that occasion did not include the term "probable cause" (which is a judicial finding) to define the necessary warrant, which could therefore be an administrative warrant. In the final analysis, however, whether the 1965 amendment was a permissible limitation would depend on whether existing law at the time did require search warrants prior to the seizure of mail in connection with income tax investigations. If so, the amendment would merely be a restatement of existing law and therefore allowable. It would appear, however, that the Internal Revenue Service had a persuasive argument at the time that it had the authority to seize the mail of delinquent taxpayers without a warrant. Section 6331(a) of the Internal Revenue Code provides the Secretary of the Treasury with authority to levy upon all property and upon rights to property of a delinquent taxpayer 10 days after notice and demand. Notwithstanding any other provision of law, the only property which cannot be levied upon is defined in code Sec. 6334(c). In 1965, mail was not enumerated as an exception in code Sec. 6334. The Service relied on several Supreme Court cases to establish that mail was property (*Searight* v *Stokes*, 44 U.S. 151); that judicial seizures of mail did not violate constitutional guarantees (*Ex parte Jackson*, 96 U.S. 721), and that statu-

torily authorized levy procedures do not violate due process guarantees (*Springer* v *U.S.*, 102 U.S. 586). An argument might be made that mail in the hands of the Post Office was not the property of the taxpayer-addressee. But since it had been held that an addressee has a sufficient legal right to the mail to enable him to recover it from third parties (*U.S.* v *Jones*, 31 F2d 755, 3d Cir. 1929), it could be argued that the taxpayer had a sufficient property interest in it upon which the Service could levy.

Distribution of Funds to States

§ 77.2 An amendment to a paragraph of an appropriation bill providing that no part of the funds therein contained shall be distributed to states on a per capita income basis was held to be a proper limitation restricting the use of funds and in order.

On Feb. 7, 1936,[1] the Committee of the Whole was considering H.R. 10919, a Treasury and Post Office Departments appropriation bill. A point of order against an amendment to the bill was overruled as follows:

> Grants to States for public-health work: For the purpose of assisting States, counties, health districts, and other political subdivisions of the States in establishing and maintaining adequate public-health services, including the training of personnel for State and local health work, as authorized in sections 601 and 602, title VI, of the Social Security Act, approved August 14, 1935 (49 Stat. 634), $8,000,000.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> > Amendment offered by Mr. Taber: Page 36, line 19, after the period, strike out the period, insert a comma and the following: "*Provided*, That no part of the funds appropriated in this paragraph shall be distributed to States on a per-capita income basis.
>
> MR. [CARL] VINSON of Kentucky: Mr. Chairman, I make a point of order. The basis for the point of order is that it is legislation on an appropriation bill.
>
> MR. TABER: Mr. Chairman, it is purely a limitation. It prohibits the expenditure for certain purposes.
>
> THE CHAIRMAN:[2] The Chair is of the opinion that it is a limitation on an appropriation, and, therefore, overrules the point of order.

Parliamentarian's Note: Section 602 of 49 Stat. 634 prescribed a broad allotment formula as follows:

> (a) The Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury, shall, at the beginning of each fiscal year, allot

1. 80 CONG. REC. 1679, 74th Cong. 2d Sess.

2. Arthur H. Greenwood (Ind.).

to the States the total of (1) the amount appropriated for such year pursuant to section 601; and (2) the amounts of the allotments under this section for the preceding fiscal year remaining unpaid to the States at the end of such fiscal year. The amounts of such allotments shall be determined on the basis of (1) the population; (2) the special health problems; and (3) the financial needs; of the respective States.

This limitation did not change any stated element in the formula.

Subversive Activities

§ 77.3 An amendment to an appropriation bill, offered as a separate paragraph, prohibiting appropriations to pay the salary or expenses of any persons against whom charges have been brought under House Resolution 105 (relating to investigation of subversion) and not disposed of, was held a proper limitation upon an appropriation bill and in order.

On Feb. 9, 1943,[3] the Committee of the Whole was considering H.R. 1648, a Treasury and Post Office Departments appropriation. A point of order was made and overruled as indicated below:

Amendment offered by Mr. (Everett M.) Dirksen (of Illinois): On page 52, after line 16, insert a new paragraph as follows:

"Section 303. No part of any appropriation or authorization in this act shall be used to pay the salary or expenses of any persons against whom charges have been brought under the terms of House Resolution 105[4] where such charges have not been disposed of by action of the House exonerating such person or by enactment into law of a bill or resolution making some other disposition thereof."

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I raise a point of order against the amendment. I take it the gentleman from Illinois will concede the point of order?

MR. DIRKSEN: I do not concede it. I think it is a perfectly proper limitation.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Chairman, I rise to call the attention of the Chair on the point of order to the fact that this attempted limitation requires affirmative action, additional duties, on the part of some agency of the House or someone else. . . .

THE CHAIRMAN:[5] The Chair is prepared to rule.

While not identical, of course, with amendments along the same line and of the same general nature offered earlier in the debate, the Chair is of the opinion that this amendment partakes of the nature of those amendments offered earlier.

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3. 89 CONG. REC. 754, 78th Cong. 1st Sess.

4. H. Res. 105 authorized the Committee on Appropriations to examine charges against executive employees based on such employees' membership in subversive organizations.

5. Wirt Courtney (Tenn.).

The Chair is of the opinion that this does not require affirmative action, that it does not get into the realm of affirmative legislation, that it is a limitation, and, as the Chair stated when the other amendments were under consideration, the Congress, having the power to appropriate, would by the same token have the right and the authority to limit the appropriation.

The Chair is constrained to hold that the point is not well taken. It is therefore overruled.

Silver Purchase

§ 77.4 An amendment providing that none of the funds appropriated in a bill shall be used for carrying out the purchase of any silver, except newly mined silver from the United States, was held in order as a limitation on an appropriation bill.

On Feb. 28, 1939,[6] he Committee of the Whole was considering H.R. 4492, a Treasury and Post Office Departments appropriation bill. The Clerk read as follows:

Salaries and expenses, mints and assay offices: For compensation of officers and employees of the mints including necessary personal services for carrying out the provisions of the Gold Reserve Act of 1934 and the Silver Purchase Act of 1934 . . . $2,016,000. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Taber: On page 45, line 5, after the comma, strike out "$2,016,000" and insert "$1,916,000" and the following: "*Provided*, That none of the funds appropriated in this bill shall be used for carrying out the purchase of any silver, except newly mined silver mined in the United States.". . .

[Mr. Louis Ludlow, of Indiana, reserved a point of order, but later withdrew such reservation, whereupon Mr. Abe Murdock, of Utah, made a point of order as shown below. Prior to the point of order, debate took place as follows:]

MR. TABER: Mr. Chairman, I have offered this limitation, and it is a pure limitation and clearly in order, to reduce the amount of the appropriation on page 45 by $100,000. This is probably $25,000 less than the amount that should be saved as a result of the operation of the amendment. I have offered the amendment for the purpose of preventing the purchase of any silver by the United States Government under any of the Silver Purchase Acts, with the exception of newly mined silver mined in the United States. . . .

MR. [JOHN A.] MARTIN of Colorado: Just how does shrinking the appropriation by $100,000 prevent the purchase of the foreign silver?

MR. TABER: It prevents the use of any of the funds appropriated in this act for the purpose of such purchase. Without the expenditures for the personnel involved in such purchase there can be no purchase. Without the expenditures for carting and handling the silver to the storage warehouse at

6. 84 CONG. REC. 2021–23, 76th Cong. 1st Sess.

West Point there can be no purchase of foreign silver.

MR. MARTIN of Colorado: If the gentleman will yield further, the gentleman's amendment does not affect the power of the Secretary of the Treasury to make such purchases inasmuch as the Silver Purchase Act confers the power on him.

MR. TABER: My amendment prohibits the expenditure of any of the funds for that purpose. Under this proviso, a limitation, it would be absolutely impossible for the Secretary of the Treasury to spend any of the funds appropriated in this act for the purpose of carrying out the purchase of any silver, with the exception of newly mined silver mined in the United States. . . .

MR. [CHARLES L.] GIFFORD [of Massachusetts]: Would the gentleman tell the Committee the method of paying for this silver by issuing silver certificates on the basis of $1.29 for 44 cents and 64 cents silver and what this would eventually lead to?

MR. TABER: Well, it simply leads, eventually, to inflation, of course, but what I want to do at this time is to bring the folks from the silver territory to a realization of the fact that if they are going to expect any consideration along the line of a subsidy for silver—and that is what this is—they have got to get rid of the burden of foreign-mined and foreign-stored silver. As a result of this operation of handling this foreign-mined and foreign-stored silver the United States will be paying for the operation of the Chinese-Japanese war, and before we get through we will be paying for the operation of the Spanish civil war that has been going on. There must be some limitation somewhere upon these expenditures. . . .

MR. [FRANCIS H.] CASE of South Dakota: The gentleman has already said that this would prohibit the use of any of this money for foreign-produced silver, and now the gentleman states positively that there is nothing in his amendment that would interfere with the purchase of domestically produced silver under the Silver Purchase Act.

MR. TABER: It will not interfere with newly mined domestically produced silver mined in the United States. It will interfere with the purchase of stored silver in the United States.

MR. [FRED L.] CRAWFORD [of Michigan]: Mr. Chairman, will the gentleman yield?

MR. TABER: I yield to the gentleman from Michigan.

MR. CRAWFORD: And one should also keep in mind that we have the Thomas amendment and also the Silver Purchase Act and this amendment which the gentleman proposes would not, under the Thomas amendment of the Silver Purchase Act, interfere with the purchase of domestically mined silver. . . .

MR. MURDOCK of Utah: Mr. Chairman, I make the point of order that the amendment submitted by the gentleman from New York is in violation of the Holman rule and constitutes legislation on an appropriation bill. . . .

THE CHAIRMAN:[7]. . . The Chair simply desires to call the attention of the Committee to a ruling that has been made in the past on a question very similar to this one, and the Chair

7. John W. Boehne (Ind.).

reads from a decision of the Honorable Nelson Dingley, of Maine, Chairman of the Committee of the Whole, on January 17, 1896, in which he ruled:

> The House in Committee of the Whole has the right to refuse to appropriate for any object, either in whole or in part, even though that object may be authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole.

Because of this decision the Chair overrules the point of order.

Air Carriage of Foreign Mails

§ 77.5 An amendment providing that no part of an appropriation for transportation of foreign mails by aircraft shall be paid to any corporation which shall directly or indirectly purchase insurance from any official or employee of the United States was held in order as a limitation on an appropriation bill.

On Feb. 28, 1939,[8] he Committee of the Whole was considering H.R. 4492, a Treasury and Post Office Departments appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

> Foreign air-mail transportation: For transportation of foreign mails by aircraft, as authorized by law $10,200,000.

MR. [JOHN C.] SCHAFER of Wisconsin: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Schafer of Wisconsin: Page 64, line 14, after the period, insert: "*Provided*, That no part of the funds herein appropriated shall be paid to any corporation which shall directly or indirectly purchase insurance from any official or employee of the United States or any member of their immediate family."

MR. [LOUIS] LUDLOW [of Indiana]: Mr. Chairman, a point of order.

THE CHAIRMAN:[9] The gentleman will state it.

MR. LUDLOW: I make the point of order, Mr. Chairman, that it is legislation on an appropriation bill. . . .

MR. SCHAFER of Wisconsin: I wish to be heard briefly, Mr. Chairman.

This is a limitation. My amendment applies to a paragraph of the bill which makes an appropriation of $10,200,000 as a subsidy to aviation corporations which are engaged in the transportation of foreign air mail. In view of the fact that administrative branches of the Government determine what corporations are to receive these large subsidies, it is necessary to include the language of the amendment in order that private personal interests of Government officials and employees and their families might not conflict with the public interest with a resulting increased cost to the taxpayers' Treasury. This amendment is a limitation with a purpose of reducing the cost of

8. 84 CONG. REC. 2034, 2035, 76th Cong. 1st Sess.

9. John W. Boehne (Ind.).

government, and I submit it is in order. . . .

THE CHAIRMAN: The Chair is ready to rule. The Chair is of the opinion that this is definitely a limitation and, therefore, the point of order is overruled.

Pay for Services Related to Investigations

§ 77.6 A provision that no part of an appropriation shall be used to pay any person detailed or loaned for service in connection with any congressional investigation was held to be in order as a proper limitation.

On Feb. 19, 1937,[10] the Committee of the Whole was considering H.R. 4720, a Treasury and Post Office Departments appropriation bill. The Clerk read the following provision of the bill against which a point of order was raised:

> Sec. 5. No part of the appropriations contained in this act shall be used to pay the compensation of any person detailed or loaned for service in connection with any investigation or inquiry undertaken by any committee of either House of Congress under special resolution thereof.
>
> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, I make a point of order against section 5 on the ground it is legislation on an appropriation bill. . . .
>
> The Chairman:[11] . . . The question raised is whether this is a proper limitation to be placed on an appropriation bill. If it be a proper limitation, then the point of order cannot be sustained. It is a question whether any law is changed by this section. If special committees desire to employ any employee from a department, they can still employ them by making proper arrangements and paying for them out of the appropriations that have been made for the special committees, but this is an appropriation bill for the Treasury and Post Office Departments, and the question arises whether the House in Committee of the Whole can place a limitation not only that will save money, but will direct to whom that money will be paid.

There are many decisions defining limitations on appropriation bills, but one of the best that the Chair has found is one given by Chairman Nelson Dingley, of Maine, on January 13, 1896, which is found on page 47 of Cannon's Procedure of the House of Representatives. The ruling of the Chairman at that time was as follows:

> The House in Committee of the Whole has the right to refuse to appropriate for any object, either in whole or in part, even though that object may be authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole. . . .

Again, on December 8, 1922, the Treasury Department appropriation

10. 81 CONG. REC. 1445, 1446, 75th Cong. 1st Sess.

11. Arthur H. Greenwood (Ind.).

bill was under consideration in the Committee of the Whole House on the state of the Union, when the paragraph providing an appropriation for the enforcement of the National Prohibition Act was reached Mr. Tinkham, of Massachusetts, proposed this amendment:

> Add a new provision, as follows: "*Provided* That no part of this appropriation shall be used for the payment of a salary of any employee who shall not have been appointed after a competitive examination and certification by the Civil Service Commission."

Mr. Madden made a point of order against this amendment and cited the section of the law which permitted the Commissioner of Internal Revenue and the Attorney General to select certain employees to help enforce the law.

The Chairman of the Committee of the Whole at that time was the gentleman from Indiana, Mr. Sanders; and the Chair reads his decision:

> The Committee on Appropriations, of course, have no legislative powers except such as are prescribed by the rules, and an amendment cannot be offered which proposes legislation unless it comes within the rules. However, there is a very long line of decisions which permits limitations upon appropriations. An appropriation shall be paid to any certain class of employees, and the Chair knows of no reason why an amendment which provides that no part of this appropriation shall be paid to employees unless they have certain qualifications is not a proper limitation. The Chair therefore overrules the point of order.

That decision may be found in Cannon's Precedents, volume 7, section 1593.

The Chair thinks that the section of the bill against which the point of order is made is a proper limitation upon the use of the appropriation contained in the bill. It does not necessarily have to reduce the amount that shall be paid. It can direct to whom it shall be paid. The Chair is of the opinion, therefore, that the section is clearly within the power of the Committee of the Whole to place a limitation upon an appropriation; and the Chair, therefore, overrules the point of order.

Compensation of Named Persons

§ 77.7 An amendment to a paragraph of an appropriation bill providing that no part of the money contained in the act shall be paid as compensation to several persons, naming them, was held germane and a proper limitation upon an appropriation bill.

On Feb. 5, 1943,[12] the Committee of the Whole was considering H.R. 1648, a Treasury and Post Office Departments appropriation bill. The Clerk read as follows:

> Expenses of loans: The indefinite appropriation "Expenses of loans, act of September 24, 1917, as amended and extended" (31 U.S.C. 760, 761), shall not be used during the fiscal year 1944 to supplement the appropriations otherwise provided for the current work of the Bureau of the Public Debt. . . .

12. 89 CONG. REC. 645, 646, 78th Cong. 1st Sess.

MR. [JOE] HENDRICKS [of Florida]: Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. Hendricks: Page 12, line 22, after the word "Treasury", strike out the period and insert a colon and the following: "*Provided further,* That no part of any appropriation contained in this act shall be used to pay the compensation of William Pickens, Frederick L. Schuman . . . and Edward Scheunemann."

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, I make the point of order that the amendment provides for the refusal of payment of salaries to individuals whose salaries are not provided for in this appropriation bill and, therefore, that the amendment is not germane. Further, I make the point of order that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[13] With respect to the point of order made by the gentleman from New York [Mr. Marcantonio], amendments of this character have been inserted in appropriation bills heretofore. The amendment simply limits the appropriation. If Congress has the right to appropriate, Congress, by the same token, has the right to limit the appropriation.

Bulk Rates for Political Committees

§ 77.8 An amendment reducing an amount in a general appropriation bill for the postal service and providing that no funds therein be used to implement special bulk third-class rates for political committees was held in order either as a negative limitation not specifically requiring new determinations or as a retrenchment of expenditures under the Holman rule even assuming its legislative effect, since the reduction of the amount in the bill would directly accomplish the legislative result.

On July 13, 1979,[14] during consideration in the Committee of the Whole of H.R. 4393 (Treasury Department, Postal Service, and general government appropriation bill) a point of order against an amendment was overruled as indicated below:

THE CHAIRMAN:[15] The Clerk will read.

The Clerk read as follows:

For payment to the Postal Service Fund for public service costs and for revenue foregone on free and reduced rate mail, pursuant to 39 U.S.C. 2401 (b) and (c), and for meeting the liabilities of the former Post Office Department to the Employees' Compensation Fund and to postal employees for earned and unused annual leave as of June 30, 1971, pursuant to 39 U.S.C. 2004, $1,697,558,000.

13. Wirt Courtney (Tenn.).

14. 125 CONG. REC. 18453–55, 96th Cong. 1st Sess.

15. Richardson Preyer (N.C.).

MR. [DAN] GLICKMAN [of Kansas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Glickman: On page 9, line 3, delete "$1,697,558,000." and insert in lieu thereof "$1,672,810,000: *Provided* That no funds appropriated herein shall be available for implementing special bulk third-class rates for 'qualified political committees' authorized by Public Law 95–593.". . .

MR. [ROBERT C.] ECKHARDT [of Texas]: My point of order [which had previously been reserved] is that the amendment places a burden on the Postal Department which would not exist but for this amendment. . . . [I]f the amendment is passed, it does not merely withhold funds, but it requires the Postal Department to adjust the rates of the Postal Department in order to comply with the limitation contained in this amendment. Therefore, this is not a mere limitation on an appropriation but it is a limitation which requires the Postal Department, as the gentleman has stated in his letter, to adjust all rates, determine which rates need adjustments, which ones qualify or would not qualify under the provision, and, thus, reduce those rates to the figures that would permit the reduction in revenue. Therefore, it seems clear to me that this affords an extremely heavy burden on the Postal Department which would not otherwise exist but for the passage of the amendment. If this were not true, the situation would create an anomalous condition which I had pointed out in my initial question to the gentleman in the well and the author of the amendment. It would create a situation in which the benefits provided under section 3626 of title 39 would still be enjoyed by qualifying political committees, and yet the Postal Department would not be able to receive the adjustment due to the additional costs. It seems to me that in effect if the gentleman is correct and if adjustments are made in the rate, there is another change in substantive law occasioned by the adjustment in rates. That is, the adjustment in rates substantively changes Public Law 95–593 so as to deprive qualified political committees, including the Democratic Committee and the Republican Committee, and all others that qualify, of the benefits that we have enacted in another piece of legislation, not one that deals with the Postal Department but deals generally with the rates of political parties with respect to the use of the mails.

MR. GLICKMAN: . . . The amendment is strictly one of limitation. It reduces funding by $25 million and limits the use of that funding with respect to the charging of postal rates. I would state for the gentleman and for the Chair that section 3627 of title 39, United States Code is discretionary authority to adjust rates if the appropriation fails and is not mandatory authority and, therefore, I do believe that the amendment is merely a limitation and is germane. . . .

THE CHAIRMAN: The Chair is prepared to rule on the point of order.

In the opinion of the Chair, the amendment constitutes a negative limitation on how funds in the bill are spent rather than being legislation on an appopriations bill. No new determinations are required. Even if the amendment should be considered as constituting legislation, it constitutes a retrenchment because it cuts the

amounts in the bills and the legislative effect directly contributes to that reduction.

The Chair, therefore, overrules the point of order.

No Funds to Administer Customs Service Reductions

§ 77.9 While a limitation on a general appropriation bill may not involve changes of existing law or affirmatively restrict executive discretion, it may by a simple denial of the use of funds change administrative policy and be in order; thus, a point of order against a provision prohibiting the use of funds for any reduction in Customs Service regions or for any consolidation of Customs Service offices was overruled.

On June 27, 1984,[16] during consideration in the Committee of the Whole of the Treasury Department and Postal Service appropriation bill (H.R. 5798), a point of order against a provision in the bill was overruled, as follows:

The Clerk read as follows:

> Sec. 617. None of the funds made available in this Act may be used to plan, implement, or administer (1) any reduction in the number of regions, districts or entry processing locations of the United States Customs Service; or (2) any consolidation or centralization of duty assessment or appraisement functions of any offices of the United States Customs Service.

MR. [BILL] FRENZEL [of Minnesota]: Mr. Chairman, I make a point of order against section 617. . . .

. . . Section 617 prohibits the use of funds in this appropriation for a reduction in the number of Customs entry processing points and any consolidation of duty assessment or appraisement functions in any of the offices of the Customs Service.

This negates Public Law 91–271 which gives the President the authority to rearrange or make consolidations at points of entry at the District Offices or at headquarters.

In addition, in my judgment the language is so broad as to interfere with existing administrative authority to carry out its appraisement functions as required by law. Section 617 goes beyond the limitation of funds which are the subject of this appropriation and constitutes an effort to change existing law under the guise of a limitation. There seems to be in section 617 almost a complete prohibition of executive discretion to make any changes to help the Customs Service carry out its duties. . . .

MR. [EDWARD R.] ROYBAL [of California] Mr. Chairman, section 617 is a simple limitation again on an appropriation bill. It does not change the application of existing law. It merely prohibits the use of funds to pay for any Government employee who tries to prevent the law from being enforced. . . .

THE CHAIRMAN:[17] The Chair is prepared to rule.

16. 130 CONG. REC. ——, 98th Cong. 2d Sess.

17. Anthony C. Beilenson (Calif.).

It is the opinion of the Chair that the section does not mandate spending but rather limits the use of funds to consolidate Customs regions and is as such a negative limitation on the use of funds. And the Chair would cite Mr. Cannons volume 7 of Precedents, section 1694:

> While a limitation may not involve change of existing law or affirmatively restrict executive discretion, it may properly effect a change of administrative policy and still be in order.[18]

Therefore it is the ruling of the Chair that the gentleman's point of order is overruled.

Parliamentarian's Note: This precedent must be distinguished from cases where an amendment, by double negative or otherwise, can be interpreted to require the spending of more money—for example, an amendment prohibiting the use of funds to keep less than a certain number of people employed. (A "floor" on employment levels would be tantamount to an affirmative direction to hire no fewer than a specified number of employees.)

Enforcement of Internal Revenue Service Policies

§ 77.10 An amendment to a general appropriation bill prohibiting the use of funds therein to carry out any ruling of the Internal Revenue Service which rules that taxpayers are not entitled to certain charitable deductions was held in order as a limitation, since the amendment was merely descriptive of an existing ruling already promulgated by that agency and did not require new determinations as to the applicability of the limitation to other categories of taxpayers.

On July 16, 1979,[19] during consideration in the Committee of the Whole of H.R. 4393 (Treasury Department, Postal Service, and general government appropriation bill), a point of order against an amendment was overruled, as follows:

> The Clerk read as follows:
>
> Amendment offered by Mr. [Robert K.] Dornan [of California]: Page 39, after line 18, add the following new section:
>
> Sec. 613. None of the funds available under this Act may be used to carry out any revenue ruling of the Internal Revenue Service which rules that a taxpayer is not entitled to a charitable deduction for general purpose contributions which are used for educational purposes by a religious organization which is an exempt organization as described in section 170(c)(2) of the Internal Revenue Code of 1954. . . .

18. 7 Cannon's Precedents § 1694 is discussed in § 51, supra.

19. 125 CONG. REC. 18808–10, 96th Cong. 1st Sess.

MR. [TOM] STEED [of Oklahoma]: Mr. Chairman, I want to insist upon my point of order.

Regardless of the merit of the subject matter here, this obviously is not a limitation on an appropriation. It is evident by the author's own statement that many things will be involved if this amendment is adopted, that would be forced upon the agency, that are not otherwise involved. It is in direct violation of clause 2, rule XXI, because it does create legislative action.

This is obviously a matter that only the legislative committee can cope with, and so because it is a violation of that rule I insist that the point of order be sustained. . . .

MR. DORNAN: . . . I can assure the gentleman from Oklahoma (Mr. Steed) that I checked out this amendment with the Parliamentarian's Office, and I was told that the amendment was in order as a limitation on an appropriations bill. There is no additional burden imposed on Federal executive offices. IRS officials already perform the simple ministerial requirement of analyzing our tax returns. The amendment is negative in nature. It shows retrenchment on its face. It is germane. Nevertheless, for the benefit of the gentleman, if he desires, I will read some relevant excerpts from Cannon's Precedents which demonstrate that the amendment is in order. . . .

. . . [I]n section 1515:

> An amendment prohibiting payment of fees to officials under certain contingencies was held to retrench expenditures and to come within the exception to the rule against admission of legislation on appropriation bills. . . .

Section 1491:

> If the obvious effect of an amendment is to reduce expenditures, it is not necessary that it provide for such reduction in definite terms and amount in order to come within the exception.

Section 1493, and I will conclude with this one—

> A cessation of Government activities was held to involve a retrenchment of expenditures. . . .

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, this amendment obviously adds a burden to the IRS to establish a different standard from that which would be applicable under existing law. If it did not, the amendment would be of no effect. What is attempted to be done here is to provide a different rule of law and impose that on the IRS by what is called a retrenchment in an appropriations bill. If this may be done in the name of retrenchment of expenditures, then any law of this Nation may be changed. Funds may not be permitted to go to any agency which makes a determination of an administrative sort unless that determination is different from that which the law would permit to apply under the circumstances. . . .

THE CHAIRMAN:[20] The Chair is prepared to rule on the point of order. The Chair is of the opinion that retrenchment precedents under the Holman rule do not apply in this situation since no certain reduction in funds is involved. The Chair is of the opinion that there are no precedents directly in point and the Chair is not aware that the gentleman has sought the advice of the Chair's advisers on this particular amendment but on a somewhat similar amendment.

The Chair is of the opinion that what is involved in the amendment is

20. Richardson Preyer (N.C.).

a particular ruling which applied to a single case and that, therefore, no new determination has to be made by the IRS. It does not require the IRS to make new rulings or determinations. The amendment does not describe a situation where the IRS must look at every religious contribution to determine if it applies. The amendment is somewhat analogous to that in Deschler's (Procedure), chapter 25, section 10.16, which was held in order.

Therefore, the Chair thinks the amendment is in order, and the point of order is overruled.

Parliamentarian's Note: Rulings such as that cited above would now be affected by Rule XXI clause 5(b),[21] which provides:

> No bill or joint resolution carrying a tax or tariff measure shall be reported by any committee not having jurisdiction to report tax and tariff measures, nor shall an amendment in the House or proposed by the Senate carrying a tax or tariff measure be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A question of order on a tax or tariff measure in any such bill, joint resolution, or amendment thereto may be raised at any time.

An otherwise valid limitation on the use of funds contained in a general appropriation bill may be held to violate this clause where it is shown that the imposition of the restriction on Internal Revenue Service funding for the fiscal year would effectively and inevitably preclude the IRS from collecting revenues otherwise due and owing by law or require collection of revenue not legally due or owing. See, for example, the ruling of Aug. 1, 1986, during consideration of H.R. 5294, Treasury Department and Postal Service appropriation bill for fiscal 1987.

§ 77.11 The Chair held that an amendment to a general appropriation bill denying the use of funds therein for the Internal Revenue Service to carry out certain published tax procedures did not impose new duties or determinations on the executive branch and did not constitute legislation.

In a ruling on Aug. 19, 1980,[1] the Chair indicated that it is in order on a general appropriation bill to deny the use of funds to carry out an existing regulation, and the fact that the regulation for which funds are denied may have been promulgated pursuant to court order and pursuant to constitutional provisions is an argument on the merits of the amendment and does not render it legislative in nature. The pro-

21. *House Rules and Manual* § 846b (1985).

1. 126 CONG. REC. 21981, 21983, 21984, 96th Cong. 2d Sess.

ceedings are discussed in Sec. 64.28, supra.

Regulations as to Sureties on Customs Bonds

§ 77.12 Language in a general appropriation bill prohibiting the use of funds therein to eliminate an existing legal requirement for sureties on customs bonds was held in order as a valid limitation merely denying funds to change existing law and regulations.

The Chair held on June 27, 1984,[2] that, while an agency may have authority to promulgate new regulations which would change existing regulations, it is in order in a general appropriation bill to deny the use of funds therein for agency proceedings relating to changes in regulations. The proceedings are discussed in § 51.16, supra.

Excepting Certain Political Committees From Limitation Affecting Mail Rates

§ 77.13 To an amendment to a general appropriation bill limiting the use of funds for the Postal Service to implement special mail rates for qualified political committees as authorized by law, an amendment lessening the amount of the reduction of funds in the original amendment and also excepting from the limitation certain congressional political committees as defined in law was held in order either as an exception from a valid limitation which did not add legislation (since the determinations as to which political committees fit those descriptions were already required by law of the Postal Service) or as perfecting a retrenchment amendment while still reducing funds in the bill.

The ruling of the Chair on July 13, 1979,[3] as that to an amendment retrenching expenditures in a general appropriation bill by reducing amounts therein and prohibiting their availability to particular recipients, an amendment lessening the amount of the reduction and also providing an exception from the limitation may be in order as a perfection of the retrenchment if funds contained in the bill remain reduced thereby. The proceedings are discussed in § 4.8, supra.

2. 130 CONG. REC. ——, 98th Cong. 2d Sess.

3. 125 CONG. REC. 18456, 18457, 96th Cong. 1st Sess.

§ 78. Veterans' Administration

Service-connected Dental Assistance

§ Sec. 78.1 To an appropriation bill, an amendment providing that no part of an appropriation for the Veterans' Administration shall be available for dental treatment, under specified conditions, was held in order as a limitation.

On Mar. 31, 1954,[4] the Committee of the Whole was considering H.R. 8583, an independent offices appropriation bill. A point of order was raised against an amendment and overruled as indicated below:

> Amendment offered by Mr. [John] Phillips [of California]: On page 47, line 11, after "$76,744,000", insert "*Provided*, That no part of this appropriation shall be available for outpatient dental services and treatment, or related dental appliances with respect to a service-connected dental disability which is not compensable in degree where such condition or disability is not shown to have been in existence at time of discharge and application for treatment is made within 1 year after discharge or by July 27, 1954, whichever is later.
>
> MR. [JAMES P.] SUTTON [of Tennessee]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill; furthermore, that it changes existing law.
>
> THE CHAIRMAN:[5] Does the gentleman from California desire to be heard?
>
> MR. PHILLIPS: This is strictly a limitation under the rules. It saves money.
>
> MR. SUTTON: Mr. Chairman, that is a matter of opinion. Furthermore, might I say that even if it were not a limitation on an appropriation, it imposes additional duties.
>
> THE CHAIRMAN: The Chair is of the opinion that it is a limitation. The Chair overrules the point of order.

Medical Care for Nonveterans

§ 78.2 An amendment providing that "no part of this appropriation can be used for hospitalization or examination of persons other than veterans, unless a reciprocal schedule of pay is in effect with the agency or department involved" was held to be a proper limitation restricting the availability of funds and in order on a general appropriation bill.

On Jan. 18, 1940,[6] the Committee of the Whole was considering H.R. 7922, an independent offices appropriation. An amend-

4. 100 CONG. REC. 4262, 4263, 83d Cong. 2d Sess.

5. Louis E. Graham (Pa.).

6. 86 CONG. REC. 509–11, 76th Cong. 3d Sess.

ment was offered and a point of order against it was overruled as indicated below:

Amendment offered by Mr. [James E.] Van Zandt [of Pennsylvania]: On page 77, line 6, after the period, insert: "*Provided further,* That no part of this appropriation can be used for hospitalization or examination of persons other than veterans, unless a reciprocal schedule of pay is in effect with the agency or department involved."

[Mr. James M. Fitzpatrick, of New York, reserved a point of order.]

MR. VAN ZANDT: During the general debate on this bill, I called to the attention of the gentleman from Virginia [Mr. Woodrum] the fact that the employees of several Federal agencies, including the Civilian Conservation Corps, the Works Progress Administration, the Post Office Department, the Civil Service Commission, and the Unemployment Compensation Commission, also beneficiaries of the Railroad Retirement Board, are being examined by the medical staffs of the Veterans' Administration facilities scattered throughout the country. In many cases the employees of these Federal agencies are hospitalized and spend many weeks in veterans' facilities. I further pointed out at that time that all of the agencies referred to reimburse the Veterans' Administration at the rate of $3.75 a day for each person receiving medical service, with the exception of the Post Office Department, the Civil Service Commission, and the Unemployment Compensation Commission. These three agencies enjoy a special privilege that is charged to the expenses chalked up for the veterans of our wars. Since that discussion of this subject on the floor of this House, I have made special inquiry into this entire matter and I find that the position I took at that time was sound and correct in every detail.

[The point of order having been made, the ruling thereon was as follows:]

THE CHAIRMAN:[7] The gentleman from New York has made a point of order against the amendment offered by the gentleman from Pennsylvania.

The Chair is of the opinion that the amendment is in the nature of a limitation, and therefore, overrules the point of order.

Area and Regional Offices

§ 78.3 Language in an appropriation bill providing that "no part of this appropriation [for the Veterans' Administration] may be used for expenses of any area medical or regional representative offices" was held to be a limitation and in order.

On May 11, 1965,[8] the Committee of the Whole was considering H.R. 7997, an independent offices appropriation bill. A point of order against the following provision in the bill was overruled:

For expenses necessary for administration of the medical, hospital, domi-

7. Lindsay C. Warren (N.C.).
8. 111 CONG. REC. 10168, 89th Cong. 1st Sess.

ciliary, construction and supply, research, employee education and training activities, as authorized by law, $12,596,000: *Provided*, That no part of this appropriation may be used for expenses of any area medical or regional representative offices.

MR. [JOHN P.] SAYLOR [of Pennsylvania]: Mr. Chairman, I make a point of order against the language on page 40, line 8, beginning with the word "*Provided*" through line 10, as being legislation on an appropriation bill.

THE CHAIRMAN:[9] Does the gentleman from Texas desire to be heard on the point of order?

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, that is purely a limitation on the use of funds. We cannot admit that point of order.

THE CHAIRMAN: . . . The language is clearly a limitation on the use of funds. The point of order is overruled.

§ 79. Other Uses

Attorney General's Authority

§ 79.1 To a title in a general appropriation bill for the Department of Justice, an amendment providing that "none of the funds appropriated by this title may be used in the preparation or prosecution of any suit or proceeding in any court by or on behalf of the United States (1) against a State of the Union; or (2) against in excess of twenty-five hundred defendants" was held to be a proper limitation restricting the availability of funds and in order.

On Apr. 4, 1952,[10] the Committee of the Whole was considering H.R. 7289. The following proceedings took place:

Amendment offered by Mr. [Samuel W.] Yorty [of California]: On page 29, after line 4, insert the following: "Sec. 207. None of the funds appropriated by this title may be used in the preparation or prosecution of any suit or proceeding in any court by or on behalf of the United States (1) against a State of the Union; or (2) against in excess of twenty-five hundred defendants."

MR. [EMANUEL] CELLER [of New York]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation grafted on an appropriation bill, and therefore utterly inappropriate. . . . I maintain that that is a restriction on the authority of the officials of the Attorney General and has no place in an appropriation bill. It is [not] the usual limitation upon monies to be expended. It is definitely legislation. . . .

THE CHAIRMAN:[11] the Chair is ready to rule. The point of order is made against the amendment on the ground that it is legislation on an appropriation bill. The Chair has had an opportunity to read and analyze the amendment offered by the gentleman from California at page 29, after line 4, inserting the language which has been

9. Richard Bolling (Mo.).

10. 98 CONG. REC. 3555, 82d Cong. 2d Sess.

11. Oren Harris (Ark.).

read. The Chair is of the opinion that the language of the amendment merely places a negative limitation upon the appropriation and is not a restriction upon discretion of officials. Therefore, the amendment does not constitute legislation and the point of order is overruled.

Congressional Expenditures

§ 79.2 To a legislative appropriation bill, an amendment providing that expenditures for committees of Congress or under the Architect of the Capitol shall be limited to such as are of public record and open for public inspection was held to be a proper limitation on funds in the bill merely descriptive of access procedures pursuant to existing law.

On Apr. 10, 1964,[12] the Committee of the Whole was considering H.R. 10723. A point of order against the following amendment was overruled, as indicated below:

Amendment offered by Mr. Oliver P. Bolton [of Ohio]: On page 26, after line 22, insert the following:

"Sec. 105. The expenditure of any appropriation under this Act by any committee of the Congress or by the Architect of the Capitol shall be limited to those committees and to those funds and contracts supervised by the Architect of the Capitol where such expenditures are a matter of public record and available for public inspection."

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, I make a point of order against the amendment, but will reserve the point of order so the gentleman from Ohio may explain it. . . .

THE CHAIRMAN:[13] Does the gentleman from Oklahoma insist on his point of order?

MR. STEED: Mr. Chairman, in regard to the point of order. . . .

The 1950 act relating to audits by the General Accounting Office is quite specific as to what auditing shall be done in regard to the legislative and judicial branches of the Government. Where it is mandatory for the executive branch activities, it is subject to agreement as to on-site audits in the legislative and judicial branches.

It seems to me any action we take here today on this appropriation bill which affects that would be in effect legislating—even though it may be called a limitation in an appropriation bill. It would be a policy change—one which ought to be considered by a committee in the regular way. . . .

MR. OLIVER P. BOLTON: It is my error, Mr. Chairman, I apologize for not showing you the substitute. The substitute does not contain any reference to the General Accounting Office. It is a pure limitation upon the use of funds appropriated in this act to these committees and to the Architect of the Capitol only where their records are a matter of public record. . . .

12. 110 CONG. REC. 7642, 7643, 88th Cong. 2d Sess.

13. Clark W. Thompson (Tex.).

THE CHAIRMAN: The Chair is prepared to rule.

The amendment reads very clearly that the expenditures are under this act—and it is those expenditures that are limited.

The Chair therefore believes it is a limitation on an appropriation bill and the Chair overrules the point of order.

Persons Claiming Executive Privilege or Holding Two Offices

§ 79.3 An amendment prohibiting the compensation of certain persons from funds in an appropriation bill and describing the persons to whom the restriction applied was held in order as a limitation on the use of the funds where it did not directly curtail the discretionary authority of executive officials or impose affirmative duties upon them.

On June 22, 1972,[14] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 15585), a point of order was raised against the following amendment:

MR. [WILLIAM S.] MOORHEAD [of Pennsylvania]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Moorhead: Page 38 insert between line 6 and line 7 new section:

"No part of the appropriations made by this Act shall be expended for the Compensation of any person other than those designated by the President, not to exceed ten persons employed in the White House Office, who refuses to appear before any committee of the Congress solely on the grounds of 'executive privilege'; nor shall any part of the appropriations made by this Act be expended to compensate any employee of the Executive Office of the President who is employed in or designated as holding two positions in such Office."

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[15] The gentleman will state his point of order.

MR. BOW: Mr. Chairman, this is an attempt to have a limitation. We find the purpose is legislative, in that it is the intent to restrict the executive direction, and can be fairly termed a change in policy rather than a matter of administration detail. We believe that the point of order should be sustained.

This is an attempt to cut down the number of people who can claim executive privilege. In addition to that, it refers to those who fail to appear upon the request of a committee.

I submit that such an amendment violates not only the spirit of legislation passed but also the Constitution, and the limitation is legislation and not a limitation. . . .

MR. MOORHEAD: . . . Mr. Chairman, I believe that this amendment is in order. It is a limitation on an appro-

14. 118 CONG. REC. 22102, 92d Cong. 2d Sess.

15. William S. Monagan (Conn.).

priation. It is not legislation. It does not require any action by anyone. The President is not required to name 10 people. He is not required to do anything under this amendment. Therefore, it is no legislative action; it is merely a limitation.

THE CHAIRMAN: Does the chairman of the subcommittee [Mr. Steed] desire to be heard on the point of order?

MR. [THOMAS J.] STEED [of Oklahoma]: Yes, Mr. Chairman.

A further reason for the fact that this is subject to a point of order is that the amendment says:

> Nor shall any part of the appropriations made by this Act be expended to compensate any employee of the Executive Office of the President who is employed in or designated as holding two positions in such Office.

Mr. Chairman, this has been going on. This part of the amendment changes existing policy. It is clearly legislation in an appropriation bill.

MR. BOW: Mr. Chairman, may I be heard further?

In addition to the points I made originally, this creates additional duties. The President would have to designate the people who are limited under this act.

I submit both from the standpoint of legislation and additional duties on the Executive it is subject to a point of order.

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

Reading the amendment, it provides that no part of the appropriations made by this Act shall be expended for the compensation of certain persons. In other words, the amendment contains descriptions of the persons whose compensation shall be limited: One who refuses to appear before any committee of the Congress and also any employee who in fact is holding two positions.

The Chair does not feel it is incumbent on the Chair to consider the desirability of the language offered. The amendment does not require any additional duties, nor does it affirmatively change policy, and therefore the Chair feels that these are solid limitations on the use of funds in the bill. Such provisions are not legislation on an appropriation bill, so the Chair overrules the point of order.

Presidential Emergency Funds

§ 79.4 To a bill appropriating emergency funds for the President, an amendment providing that none of the funds appropriated in the bill shall be spent "in violation of the provisions of section 209" of the bill was held to be a limitation restricting the availability of funds and in order.

On May 25, 1959,[16] the Committee of the Whole was considering H.R. 7176, a general government matters appropriation bill. A point of order was raised against the following amendment:

> Amendment offered by Mr. [Charles A.] Vanik [of Ohio]: Page 5, line 10,

16. 105 CONG. REC. 9012, 86th Cong. 1st Sess.

strike out the period, insert a colon, and add the following: "*Provided*, That none of the funds appropriated in this Act shall be spent in violation of the provisions of section 209."

MR. [GEORGE W.] ANDREWS [of Alabama]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN:[17] Does the gentleman from Ohio desire to be heard on the point of order?

MR. VANIK: No, Mr. Chairman.

THE CHAIRMAN: The Chair is prepared to rule.

The language of the amendment offered by the gentleman from Ohio specifically places a limitation upon the use of funds appropriated in this act. It is, therefore, a limitation and is not subject to a point of order.

The Chair overrules the point of order.[18]

Printing Silver Certificates

§ 79.5 To a paragraph in an appropriation bill making money available for the purchase of distinctive paper for U.S. securities, an amendment providing that no funds appropriated shall be used for the printing of silver certificates or the purchase of paper therefor was held to be a proper limitation and in order.

On Apr. 28, 1937,[19] the Committee of the Whole was considering H.R. 6730, a deficiency appropriation bill. An amendment was offered and ruled on as follows:

Distinctive paper for United States securities: For an additional amount for distinctive paper for United States currency and Federal Reserve bank currency, fiscal year 1937, including the same objects specified under this head in the Treasury Department Appropriation Act, 1937, $126,600.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Taber: On page 31, line 24, after the figures "$126,000", strike out the period insert a comma and the following: "*Provided, however*, That no funds appropriated in this act shall be used for the printing of silver certificates or the purchase of paper therefor."

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Chairman, a point of order. I think the amendment is subject to a

17. Carl Albert (Okla.).

18. *Parliamentarian's Note:* Section 209 of the bill provided that no part of any appropriation contained in the Act, "or of the funds available for expenditure by any individual, corporation, or agency included in [the] Act," be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. While Sec. 209 might itself have been legislation since not confined to funds in the bill, the amendment offered in this instance was properly restricted to funds in the bill.

19. 81 CONG. REC. 3919, 75th Cong. 1st Sess.

point of order. There is nothing provided here for the printing of silver certificates. The basic law covers that. This is to provide for the purchase of paper for currency. . . .

MR. TABER: Mr. Chairman, this is a clear limitation under the Holman rule. It is a clear limitation that is entirely germane, preventing the use of funds carried in this act for the purpose of buying paper or printing silver certificates. Silver certificates are printed and paper is bought for that purpose out of this particular item. A limitation preventing the use of it for that purpose is clearly in order.

THE CHAIRMAN:[20] . . . The Chair is constrained to hold that the amendment is a limitation upon the money appropriated in the bill, and therefore overrules the point of order.

Readmission of Aliens

§ 79.6 An amendment to a general appropriation bill providing that "No part of any appropriation [in the bill] for the Immigration and Naturalization Service shall be expended for any expense incident to any procedure by suggestion or otherwise, for the admission to any foreign country of any alien unlawfully in the United States for the purpose of endeavoring to secure a visa for readmission to the United States, or for the salary of any employee charged with any duty in connection with the readmission to the United States of any such alien without visa" was held to be a proper limitation on an appropriation bill and in order.

On Feb. 18, 1938,[1] the Committee of the Whole was considering H.R. 9544, an appropriation bill for the Departments of State, Justice, Commerce, and Labor. The Clerk read as follows:

Amendment offered by Mr. [Malcolm C.] Tarver [of Georgia]: On page 104, after line 25, insert a new paragraph, as follows:

"No part of any appropriation contained in this act for the Immigration and Naturalization Service shall be expended for any expense incident to any procedure by suggestion or otherwise, for the admission to any foreign country of any alien unlawfully in the United States for the purpose of endeavoring to secure a visa for readmission to the United States, or for the salary of any employee charged with any duty in connection with the readmission to the United States of any such alien without visa."

MR. [SAMUEL] DICKSTEIN [of New York]: Mr. Chairman, I make the same point of order. This comes right back to the point I made originally, that this provision deals with the present immigration laws and is legislation on an appropriation bill. It changes our present act, which contains the provi-

20. Fred M. Vinson (Ky.).

1. 83 CONG. REC. 2174, 2175, 75th Cong. 3d Sess.

sion that it is mandatory upon the officials of the Department of Labor to advise an alien of his status, whether he is legally or illegally in this country. This provision seems to suggest that even a suggestion or an inference, even a suggestion over the phone, would be a violation of the law, and the men who are on the pay roll of the Government would be penalized. I respectfully submit that the language offered as the amendment to the new section is absolutely in the same category, and that it is not germane to the present bill or to the section now under consideration.

THE CHAIRMAN:[2] The Chair is ready to rule.

. . . The Chair feels he is bound by precedents which have been established for a long time in this House and have been ruled upon by many occupants of the chair more distinguished than he.

The fact that the failure to appropriate money to carry out the purposes of an act may work an actual hardship in the enforcement of that act or may even effect the practical repeal of certain provisions of the act is entirely within the discretion of Congress itself. Congress does not have to appropriate any money for laws which have been authorized by bills reported from legislative committees. As long ago as 1896 Nelson Dingley, Chairman of the Committee of the Whole House, ruled as follows, and I read from page 47 of Cannon's Procedure in the House of Representatives:

> The House in Committee of the Whole House has the right to refuse to appropriate for any object either in whole or in part, even though that object may be authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole.

Therefore, the Chair is unable to agree with the contention of the gentleman from New York and overrules the point of order.

Certain Proposed Regulations Not To Be Enforced

§ 79.7 To a proposition in an appropriation bill appropriating a lump sum for salaries and other expenses of the Securities and Exchange Commission, an amendment providing that no part of it shall be used to promulgate or enforce certain rules or regulations precisely described in the amendment was held to be a proper limitation restricting the availability of funds and in order.

On Feb. 17, 1943,[3] the Committee of the Whole was considering H.R. 1762, an independent offices appropriation bill. The following amendment was held to be in order:

> Amendment offered by Mr. [Wesley E.] Disney [of Oklahoma]: Page 48, line 3, insert a colon, and add the following:

2. Frank H. Buck (Calif.).

3. 89 CONG. REC. 1070–72, 78th Cong. 1st Sess.

"No part of this appropriation shall be used to promulgate or enforce any rule or regulation known as the proposed rule or regulation F–9 and F–10, and providing in substance (1) the engineers' reports shall be mandatory, (2) require the disclosure of the cost of purchase price, and (3) an abridgment of the right to appoint an agent, all with reference to the sale of oil and gas royalties and lease under the jurisdiction of the Oil and Gas Division of the Securities and Exchange Commission.". . .

MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, I insist on the point of order. . . .

I think the amendment is so indefinite it would be impossible for the Chair or anyone else to know whether this is a limitation on anything or what it limits. The gentleman says the funds herein are not to be used for the purpose of enforcing certain orders known as so-and-so and so-and-so. Even after listening to our friend, to whom we always listen with pleasure and profit, those wayfarers who, like myself, are not versed in the parlance of the Securities and Exchange Commission are not able to determine what the amendment means. . . .

MR. DISNEY: I call the attention of the Chair to the fact that this amendment puts a limitation on the use of the funds appropriated.

THE CHAIRMAN:[4] The Chair is ready to rule.

The appropriation under consideration involves $4,000,000 for salaries and other expenses of the Securities and Exchange Commission. A lump sum is thus appropriated. The practice has grown up of undertaking to limit these lump-sum appropriations by preventing expenditures for particular purposes. The amendment offered by the gentleman from Oklahoma [Mr. Disney] undertakes to limit this appropriation by providing that no part of this appropriation shall be used to promulgate or enforce the three rules and regulations mentioned in his amendment. The Chair holds that the amendment constitutes a limitation and overrules the point of order.

4. William M. Whittington (Miss.).

Tennessee Valley Authority Services

§ 79.8 To an appropriation bill, an amendment placing a limitation on the amounts in the bill to be used for personal services in the Tennessee Valley Authority was held to be a proper limitation and in order.

On Mar. 21, 1952,[5] The Committee of the Whole was considering H.R. 7072, an independent offices appropriation bill. An amendment was offered to which a point of order was made and overruled, as indicated below:

Amendment offered by Mr. [Kenneth B.] Keating [of New York]: Page 35, line 24, strike out the period and insert a comma and add the following: "and not to exceed $99,131,125 of funds available under this section shall be used for personal services."

5. 98 CONG. REC. 2674, 82d Cong. 2d Sess.

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, a point of order.

THE CHAIRMAN:[6] The gentleman will state it.

MR. THOMAS: [The provision] is legislation on an appropriation bill. It says "funds available." There are two types of funds available to the TVA—appropriated funds and its own revenues. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair is of the opinion that the amendment refers only to funds contained within this section of this bill and is merely a negative limitation, which is in order. Therefore, the Chair overrules the point of order.

State and Local Administration of Grants

§ 79.9 To a deficiency appropriation bill, an amendment placing a limitation on the amount therein which "may be used for State and local administration" of grants for public assistance was held to be a proper limitation and in order.

On Feb. 5, 1957,[7] The Committee of the Whole was considering H.R. 4249, a deficiency appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [Henderson L.] Lanham [of Georgia]: Page 5, line 7, after "$275,000,000," strike out the colon and insert: "*Provided*, That not more than $15,728,000 of this amount may be used for State and local administration [of grants for public assistance]."

MRS. [EDITH S.] GREEN of Oregon: Mr. Chairman, I make a point of order against the amendment [on the ground that] it is legislation on an appropriation bill.

MR. LANHAM: Mr. Chairman, may I be heard?

THE CHAIRMAN:[8] The Chair will be glad to hear the gentleman briefly.

MR. LANHAM: Mr. Chairman, of course, this is a limitation on an appropriation and it is in no sense legislation on an appropriation bill.

THE CHAIRMAN: The Chair has had an opportunity to examine the language of the amendment offered by the gentleman from Georgia [Mr. Lanham] and is of the opinion that the language constitutes a proper limitation on the appropriation contained in the paragraph; therefore, the language is in order and the Chair overrules the point of order.

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6. Wilbur D. Mills (Ark.).

7. 103 CONG. REC. 1549, 85th Cong. 1st Sess.

8. Wilbur D. Mills (Ark.).

G. LIMITATION ON TOTAL AMOUNT APPROPRIATED BY BILL

§ 80. Generally

Effect on Total Expenditures

§ 80.1 To an appropriation bill, an amendment providing that appropriations in the bill shall be available for expenditure only to the extent that expenditure thereof shall not result in total expenditures of agencies provided for in the bill beyond a specified amount was held to be in order as a limitation upon funds in the bill.

On Mar. 21, 1952,[9] The Committee of the Whole was considering H.R. 7072, an independent offices appropriation. An amendment was offered to which a point of order was made and overruled, as follows:

> Amendment offered by Mr. [Frederic R.] Coudert [Jr., of New York]: On page 64, after line 21, add a new section 405 as follows:
>
> "Sec. 405. Money appropriated in this act shall be available for expenditure in the fiscal year ending June 30, 1953, only to the extent that expenditure thereof shall not result in total aggregate expenditures of all agencies provided for herein beyond the total sum of $6,900,000,000."
>
> MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make the point of order against the amendment on the ground that it is legislation on an appropriation bill. . . .
>
> . . . It changes figures heretofore voted upon in the House in the last 3 days. Therefore, that is legislation. It puts duties on the various agencies not otherwise called for in the bill. . . .
>
> MR. COUDERT: This clearly does not touch the funds of prior years; therefore, it does not appropriate with respect to them. It only places a limitation upon the use to which the funds requested in this bill, the new obligational authority, may be put. It limits the freedom of expenditure and nothing else.
>
> THE CHAIRMAN:[10] The Chair is ready to rule. . . .
>
> The Chair appreciates the fact that the author of the amendment afforded the Chair an opportunity earlier in the day to read the amendment and gave the Chair some time to study the language of the amendment.
>
> The Chair is of the opinion that the amendment is a limitation upon the funds which are contained in the bill H.R. 7072, presently before the Committee; that it is nothing more than a limitation on those funds. The Chair is, therefore, constrained to overrule the point of order and hold the amendment in order.

Parliamentarian's Note: A similar amendment had been ruled out of order on Mar. 3, 1952, on

9. 98 CONG. REC. 2694, 82d Cong. 2d Sess.

10. Wilbur D. Mills (Ark.).

the ground that it affected appropriations not carried in the bill. See 98 CONG. REC. 1781, 1782, 82d Cong. 2d Sess., discussed in §§ 4 [the Holman rule] and 48.9 (conditions precedent to spending), supra. Generally, amendments of this type are not, strictly speaking, limitations if the committee report shows the amount stated in the amendment to be less than the total covered by the bill; in such case, the amendment would constitute a retrenchment and thus be governed by the Holman rule.

Total Expenditure Ceiling

§ 80.2 To an appropriation bill, an amendment providing that "Money . . . in this bill shall be available for expenditure in the fiscal year ending June 30, 1954, only to the extent that expenditures thereof shall not result in total aggregate net expenditures of all agencies provided for herein beyond the total of $5,500,000,000" was held to be a proper limitation only restricting the availability of funds in the bill and in order.

On July 22, 1953,[11] The Committee of the Whole was considering H.R. 6391, a Mutual Security Administration appropriation bill. The following proceedings took place:

> Amendment offered by Mr. [Frederic R.] Coudert [Jr., of New York]: On page 6, after line 1, insert a new section as follows:
>
> "Money appropriated in this bill shall be available for expenditure in the fiscal year ending June 30, 1954, only to the extent that expenditures thereof shall not result in total aggregate net expenditures of all agencies provided for herein beyond the total of $5,500,000,000."
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[12] The gentleman will state it.
>
> MR. TABER: I make the point of order that the amendment imposes additional duties to determine whether or not the expenditures of all agencies provided for therein exceed $5,500,000,000.
>
> THE CHAIRMAN: Does the gentleman from New York desire to be heard on the point of order?
>
> MR. COUDERT: Yes, Mr. Chairman. Let me point out that this amendment is in the very same language as the Smith amendment that was adopted a year ago on the military appropriations bill.
>
> THE CHAIRMAN: The Chair believes that it is a proper limitation and overrules the point of order.[13]

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11. 99 CONG. REC. 9559, 83d Cong. 1st Sess.

12. Leo E. Allen (Ill.).

13. See also the discussion in Sec. 4 (the Holman rule) and 48.9–48.11] (conditions precedent to spending), supra.

Ceiling by Reference to President's Budget

§ 80.3 An amendment to a general appropriation bill restricting the availability for expenditure of all funds therein to the aggregate level provided in the President's budget for that fiscal year for the agencies covered in the bill was held to constitute a valid limitation on the total amount covered by the bill.

On June 15, 1972,[14] During consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill for fiscal 1973 (H.R. 15417), a point of order was raised against the following amendment:

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

The Clerk read as follows:

Amendment offered by Mr. Findley: On page 40, after line 4, insert the following new section:

"Sec. 409. Money appropriated in this Act shall be available for expenditure in the fiscal year ending June 30, 1973, only to the extent that expenditure thereof shall not result in total aggregate net expenditures of all agencies provided for herein beyond 100 per centum of the total aggregate net expenditures estimated therefor in the budget for 1973 (H. Doc. 215)."

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I make a point of order against the amendment.

Mr. Chairman, this is legislation upon an appropriation bill—period.

THE CHAIRMAN:[15] Does the gentleman from Illinois desire to be heard on the point of order?

MR. FINDLEY: Yes, Mr. Chairman.

Mr. Chairman, I would like to explain to the Chair that the language of this amendment with the exception of the percentage figure and the House document reference is identical to the so-called Bow amendment which was offered on many occasions in past years and which has been challenged on previous occasions and which has been sustained being in order on an appropriation bill.

THE CHAIRMAN: The Chair has examined the amendment and will rule that it is in order. It is, in effect, the "Bow" amendment with a very slight variation. It is a restriction on the appropriations in this bill.

The point of order is overruled.

Ceiling Notwithstanding Appropriation

§ 80.4 An amendment to an appropriation bill providing that, notwithstanding any other provisions carried in the bill for printing and binding, the total amount to be expended for printing and binding and related activities shall not exceed a specified sum, was held to be a

14. 118 CONG. REC. 21136, 21137, 92d Cong. 2d Sess.

15. Chet Holifield (Calif.).

proper limitation applying only to appropriations in the pending bill.

On Mar. 27, 1942,[16] the Committee of the Whole was considering H.R. 6845, an Interior Department appropriation. The following proceedings took place:

> Amendment offered by Mr. [Marvin] Jones [of Texas]: On page 141, after line 3, insert a new section, as follows:
>
> "Notwithstanding any other provisions carried in this bill for printing and binding the total amount to be expended for printing, binding, duplicating, mimeographing, lithographing, or reproduction in any other form or by any other device, and including the purchase of reprints of scientific and technical articles published in periodicals and journals shall not exceed for every such purpose included in this bill the sum of $450,000, and that the amounts estimated therefor and not expended within this limitation shall be recovered into the Treasury of the United States."
>
> MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill. . . .
>
> THE CHAIRMAN:[17] the Chair is prepared to rule.
>
> The Chair has examined the amendment offered by the gentleman from Ohio. Although, as indicated by the gentleman from Oklahoma, it does provide, "notwithstanding any other provisions carried in this bill,' it relates to appropriations in the pending bill.
>
> The Chair is of the opinion that it is a limitation and is in order. Therefore, the point of order is overruled.

Restriction on Obligations in Last Two Months of Fiscal Period

§ 80.5 An amendment to a general appropriation bill, providing that no more than a certain percentage of funds therein for any agency and apportioned to such agency by the Office of Management and Budget pursuant to law, may be obligated during the last two months of the fiscal year, was ruled out as legislation, where the proponent of the amendment could not show that because it was not in the form of a limitation permitted by the precedents which negatively restricted the object, purpose, or amount of the appropriation, it did not change existing law.

On July 28, 1980,[18] the Committee of the Whole having under consideration the Housing and Urban Development and independent agencies appropriation bill (H.R. 7631), an amendment

16. 88 CONG. REC. 3096, 77th Cong. 2d Sess.

17. Jere Cooper (Tenn.).

18. 126 CONG. REC. 19924, 19925, 96th Cong. 2d Sess.

was offered and ruled upon as follows:

MR. [HERBERT E.] HARRIS [II, of Virginia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Harris: Page 45, after line 23, insert the following:

> Sec. 413. No more than an amount equal to 20 percent of the total funds appropriated under this Act for any agency for any fiscal year and apportioned to such agency pursuant to section 3679 of the Revised Statutes of the United States (31 U.S.C. 665) may be obligated during the last two months of such fiscal year. . . .

THE CHAIRMAN:[19] Does the gentleman from Indiana (Mr. Myers) insist on his point of order?

MR. [JOHN T.] MYERS of Indiana: I do, Mr. Chairman.

Mr. Chairman, the gentleman has offered an amendment to limit the appropriations to a specific time; but I respectfully suggest that the fact the gentleman has added the words, "No more than" is still not, in fact, a limitation. . . .

Mr. Chairman, the fact that you are limiting here, not directing, but limiting the authority to the last 2 months how much may be spent takes away the discretionary authority of the Executive which might be needed in this case. It clearly is more than an administrative detail when you limit and you take away the right of the Executive to use the funds prudently, to take advantage of saving money for the Executive, which we all should be interested in, and I certainly am, too; but Mr. Chairman, rule 843 provides that you cannot take away that discretionary authority of the Executive.

This attempt in this amendment does take that discretionary authority to save money, to wisely allocate money prudently and it takes away, I think, authority that we rightfully should keep with the Executive, that you can accumulate funds and spend them in the last quarter if it is to the advantage of the taxpayer and the Executive. . . .

MR. HARRIS: . . . Mr. Chairman, let me first address the last point, probably because it is the weakest that the gentleman has made with respect to his point of order.

With respect to the discretion that we are in any way limiting the President, we cannot limit the discretion which we have not given the President directly through legislation. There is no discretion with regard to legislation that we have overtly legislated and given to the President.

Mr. Chairman, section 665(c)(3) of title 31 of the United States Code, which states the following:

> Any appropriation subject to apportionment shall be distributed as may be deemed appropriate by the officers designated in subsection (d) of this section to make apportionments and reapportionments.

Clearly grants agency budget officers the discretionary authority to apportion the funds in a manner they deem appropriate. My amendment would not interfere with this authority to apportion funds. On the contrary, my amendment reaffirms this section of the United States Code, as Deschler's

19. Elliott H. Levitas (Ga.).

Procedures, in the U.S. House of Representatives, chapter 26, section 1.8, states:

> The provision of the rule forbidding in any general appropriation bill a "provision changing existing law" is construed to mean the enactment of law where none exists, or a proposition for repeal of existing law. Existing law may be repeated verbatim in an appropriation bill, but the slightest change of the text causes it to be ruled out.

My amendment, Mr. Chairman, as the Chair will note, specifically restates by reference the existing law, which in no way gives discretion as to spending, but gives discretion as to apportionment.

Mr. Chairman, as the Chair knows, the budget execution cycle has many steps. Whereas the Chair's earlier ruling related to the executive branch authority to apportion, my amendment addresses the obligation rate of funds appropriated under the fact. As OMB circular No. A–34 (July 15, 1976) titled "Budget Execution" explains:

> Apportionment is a distribution made by OMB.
>
> Obligations are amounts of orders placed, contracts awarded, services received, and similar transactions.

Mr. Chairman, my amendment proposes some additional duties, but only a very minimal additional duty upon the executive branch.

Deschler's chapter 26, section 11.1 says:

> The application of any limitation on an appropriation bill places some minimal extra duties on Federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation. . . .

THE CHAIRMAN: . . . In the first instance, the Chair would observe that it is not the duty of the Chair or the authority of the Chair to rule on the wisdom or the legislative effect of amendments.

Second, the Chair will observe that the gentleman from Virginia, in the way in which his amendment has been drafted, satisfies the requirements of the Apportionment Act, which was the subject of a prior ruling of the Chair in connection with another piece of legislation.

The Chair agrees with the basic characterization made by the gentleman from Indiana that the precedents of the House relating to limitations on general appropriation bills stand for the proposition that a limitation to be in order must apply to a specific purpose, or object, or amount of appropriation. The doctrine of limitations on a general appropriation bill has emerged over the years from rulings of Chairmen of the Committee of the Whole, and is not stated in clause 2, rule XXI itself as an exception from the prohibition against inclusion of provisions which "change existing law." Thus the Chair must be guided by the most persuasive body of precedent made known to him in determining whether the amendment offered by the gentleman from Virginia (Mr. Harris) "changes existing law." Under the precedents in Deschler's Procedure, chapter 26, section 1.12, the proponent of an amendment has the burden of proving that the amendment does not change existing law.

The Chair feels that the basic question addressed by the point of order is as follows: Does the absence in the precedents of the House of any ruling

holding in order an amendment which attempts to restrict not the purpose or object or amount of appropriation, but to limit the timing of the availability of funds within the period otherwise covered by the bill require the Chair to conclude that such an amendment is not within the permissible class of amendments held in order as limitations? The precedents require the Chair to strictly interpret clause 2, rule XXI, and where language is susceptible to more than one interpretation, it is incumbent upon proponent of the language to show that it is not in violation of the rule (Deschler's chapter 25, section 6.3).

In essence, the Chair is reluctant, based upon arguments submitted to him, to expand the doctrine of limitations on general appropriation bills to permit negative restrictions on the use of funds which go beyond the amount, purpose, or object of an appropriation, and the Chair therefore and accordingly sustains the point of order.

President Given Authority to Make Reductions

§ 80.6 An amendment adding a new section to a general appropriation bill authorizing the President to reduce each appropriation in the bill by not more than 10 percent was conceded to be legislation (conferring new authority on the President) and was ruled out in violation of Rule XXI clause 2(c).

On May 31, 1984,[20] During consideration in the Committee of the Whole of the Departments of State, Justice, and Commerce appropriation bill (H.R. 5172), a point of order was sustained against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [Robert S.] Walker [of Pennsylvania]: On page 57, after line 3, insert the following new section:

Sec. 611. Notwithstanding any other provision of this Act, the President may reduce any appropriation in this Act by not more than ten percent. . . .

MR. [NEAL] SMITH of Iowa: Mr. Chairman, [the amendment] proposes to change existing law and constitutes legislation on an appropriation bill, and therefore it violates clause 2 of rule XXI. . . .

MR. WALKER: . . . Mr. Chairman, this is the same language that I offered yesterday which was debated in the House and which we did consider in the House.

It does provide a mini-line item veto for the President. This would end up reducing the amount of money in the bill by $1.1 billion.

But the gentleman from Iowa is correct that this does constitute a violation of rule XXI, clause 2, and I concede the point of order.

THE CHAIRMAN:[1] The point of order is conceded, and the Chair sustains the point of order.

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20. 130 CONG. REC. ——, 98th Cong. 2d Sess.

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

Parliamentarian's Note: The proposed amendment would not have been permitted under the Holman rule because the proposed reductions were not certain on the face of the amendment as is required under the Holman rule. A similar amendment offered by Mr. Walker on June 6, 1984,[2] as also conceded to be out of order.

2. 130 CONG. REC. —— , 98th Cong. 2d Sess.