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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.).