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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.