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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."

9. 98 CONG. REC. 2694, 82d Cong. 2d Sess.

> 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

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:
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> "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."
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> 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.