

Chapter CCXXIII.¹

LEGISLATION IN GENERAL APPROPRIATION BILLS.

1. Enactment of new law forbidden by the rule. Sections 1391-1411.
 2. Change of a rule of the House not in order. Section 1412.
 3. Amendments to paragraphs proposing legislation. Sections 1413-1436.
 4. Directions to executive officers not in order. Sections 1437-1445.
 5. Limit of cost of a work not to be made or changed. Sections 1446-1451.
 6. Affirmative provisions regulating the public service not in order. Sections 1452-1473.
 7. General directions. Sections 1474-1479.
 8. Senate amendments. Section 1480.
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1391. A provision purporting to reenact existing law, unless couched in the exact phraseology of the statute proposed to be reenacted, is legislation.

On April 16, 1908,² the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph was reached providing for the construction of submarine torpedo boats.

Mr. William E. Humphrey, of Washington, offered an amendment as follows:

Provided, That any number of such submarine torpedo boats may be built upon either coast as the Secretary of the Navy may direct.

In response to a point of order submitted by Mr. James A. Tawney, of Minnesota, Mr. Oscar W. Underwood, of Alabama, said:

Mr. Chairman, I simply wish to say this: That if under the present paragraph the Secretary of the Navy can build these boats wherever he pleases, then the amendment of the gentleman from Washington does not change existing law; and it seems to me that it is in order.

The Chairman³ held:

That construction would cause the Chair to rule exactly as to what the law is. The Chair could not know what all the law is. The Chair might not be able to determine whether the existing provision is existing law. The Chair thinks that a provision in form legislative, which purports to state existing law, unless it be the exact phraseology of the existing statute, is legislation, and is obnoxious to the rule. The Chair, therefore, sustains the point of order.

1392. While reenactment of law is not subject to a point of order, a provision for observing a statute which has been superceded by subsequent enactments is legislation and is not in order on an appropriation bill.

¹Supplementary to Chapter CXVII.

²First session Sixtieth Congress, Record, p. 1827.

³James R. Mann, of Illinois, Chairman.

An amendment providing that purchase be in conformity with a section of the Revised Statutes circumscribed by later enactments was held to change existing law.

On February 19, 1910,¹ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For the purchase of goods and supplies for the Indian service, including inspection, pay of necessary employees, and all other expenses connected therewith, including advertising, telegraphing, telephoning, and the transportation of Indian goods and supplies, \$300,000: *Provided*, That hereafter the purchase of Indian supplies shall be made in conformity with the requirements of section 3709 of the Revised Statutes of the United States.

Mr. Richard Bartholdt, of Missouri, made the point of order that the proviso in the paragraph provided for a change of law.

The Chairman² ruled:

This proviso is:

“That hereafter the purchase of Indian supplies shall be made in conformity with the requirements of section 3709 of the Revised Statutes of the United States.”

Section 3709 of the Revised Statutes provides that—

“All purchases and contracts for supplies or services in any department of the Government shall be made”—

And so forth.

Now, the Chair finds that there have since been passed certain acts of Congress found in the Statutes at Large, volumes 17, 18, and 19, relating to the purchases of supplies, and so forth, in the Indian Department, making special provisions for that department, and that is what the gentlemen meant, the Chair understands, when they referred to the special law. Now, this proviso clearly would repeal or change these so-called “special laws” and make the purchases subject to the requirements of section 3709 of the Revised Statutes, thereby changing existing law. The Chair must, therefore, hold that the proviso is in violation of the rule of the House prohibiting any change of law upon a general appropriation bill. The point of order is sustained.

1393. A paragraph in an appropriation bill reenacting a provision of existing law properly limiting an appropriation previously made for the same purpose is not subject to a point of order; therefore germane amendments to such paragraphs which do not propose additional legislation are in order.

On May 6, 1920,³ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. When the paragraph providing for the Federal Board for Vocational Education was reached Mr. Simeon D. Fess, of Ohio, offered an amendment providing that the salary limitation of the current fiscal year should apply to appropriations made by the pending bill.

Mr. Thomas L. Blanton, of Texas, made the point of order that the amendment proposed new legislation.

¹ Second session Sixty-first Congress, Record, p. 2135.

² Marlin E. Olmsted, of Pennsylvania, Chairman.

³ Second session Sixty-sixth Congress, Record, p. 6657.

The Chairman¹ held:

The language in the bill to which the gentleman proposes his amendment is as follows:

“That the salary limitations placed upon the appropriation for vocational rehabilitation by the sundry civil appropriation act approved July 19, 1919, shall apply to the appropriation herein made.”

The effect of that language is to reinsert in this bill the language in the sundry civil appropriation bill to which it refers. The amendment of the gentleman from Ohio is in exactly the same language as the limitation carried in the sundry civil appropriation bill of last year, with the exception that the amendment of the gentleman from Ohio increases the salaries beyond the amounts carried by the limitation place in the bill last year. The Chair thinks that if the language of the original limitation was in order⁴ as a limitation on the sundry civil bill last year, and if the language which is not carried in the bill is in order, as the Chair believes it is in order as a limitation, it is in order to amend the limitations in the way proposed by the gentleman from Ohio, as the amendment of the gentleman from Ohio does not change existing law, and the Chair, therefore, overrules the point of order.

1394. In proposing reenactment of an existing law the slightest deviation is out of order.

On January 19, 1923,² the War Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A point of order raised by Mr. Tom Connolly, of Texas, was pending against an amendment offered by Mr. William H. Stafford, of Wisconsin, purporting to reenact existing law.

The Chairman³ said:

When the committee rose yesterday there was pending a point of order to an amendment offered by the gentleman from Wisconsin. The Chair is now ready to rule.

It is a well-settled interpretation of the rule that Congress may appropriate for one object authorized by law and refuse to appropriate for another object equally authorized by law. If the amendment in this case simply provided that a certain part of the appropriation might be used for the purchase of certain goods described, and might not be used for certain other good described, there would be no question. But it seems to the Chair, upon a more careful examination than he was able to make yesterday, that this amendment goes further. The amendment is not in the form of a limitation, and therefore it is necessary for the Chair to turn the amendment into a limitation in form in order to determine whether it conforms to the rule. Upon doing this the Chair is unable to bring the amendment within what he believes to be a proper interpretation of the rule.

Does it change the power, authority, or discretion of the Executive? If this amendment be adopted, will he have greater discretion, power, or authority than he had before, or will he have less? In either case it would be repugnant to the rule.

The gentleman from Virginia, Mr. Moore, read into the Record yesterday a statement of the law to which the Chair desires to refer. At the time the gentleman read it, it did not occur to the Chair as meeting the situation, but the Chair has changed his mind. The gentleman from Virginia read the law as it now exists, and the Chair will repeat a part of it:

“Hereafter, except in cases of emergency, or where it is impracticable to secure competition the purpose of all supplies for the use of the various departments and posts of the Army and of the branches of the Army service shall only be made after advertisement, and shall be purchased where the same can be purchased the cheapest, quality and cost of transportation and the interests of the Government considered.”

¹ Sydney Anderson, of Minnesota, Chairman.

² Fourth session Sixty-seventh Congress, Record, p. 2013.

³ John Q. Tilson, of Connecticut, Chairman.

The proposed amendment is as follows:

“All material purchased under the provisions of this act shall be of American manufacture, except in cases when in the judgment of the Secretary of War it is to the manifest interest of the United States to make purchases abroad.”

Does the proposed amendment mean exactly the same as the law just read by the Chair? In the opinion of the Chair, while in a very general way it accomplishes the same thing, there is a shade of difference which the Chair thinks he ought to recognize. The Chair, therefore, sustains the point of order.

1395. A provision construing or interpreting existing law is legislation and is not in order on an appropriation bill.

On March 13, 1918,¹ the executive, legislative, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Meyer London, of New York, offered this amendment:

To investigate the subject of insurance against unemployment, the sum of \$50,000.

Mr. Joseph W. Byrns, of Tennessee, having raised a question of order, the Chairman² decided:

Upon reflection the Chair is disposed to think that the organic act might be fairly construed by the Bureau of Labor to empower it to investigate the subject proposed in the amendment, if a lump-sum appropriation was made. But this would be a conclusion that the bureau would draw from the general terms used in the act. This amendment appropriating the sum indicated and directing that it shall be used for the investigation mentioned is an interpretation of the organic act. An amendment constructing or interpreting an act is legislation. Legislation on an appropriation bill is forbidden. The point of order is sustained.

1396 The term “hereafter,” as applied to the provisions of an appropriation bill, was held to enact permanent law.

On March 1, 1912,³ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read a paragraph providing for personnel of the Department of Agriculture, including a solicitor.

Mr. Frank Clark, of Florida, made the point of order that an appropriation for a solicitor was not authorized.

The Chairman⁴ ruled.

The point of order is made by the gentleman from Florida against the language in line 2 of page 2 of the bill—

“Solicitor, \$5,000.”

It is contended by the gentlemen from Florida that the employment of the solicitor is not authorized by existing law. Reference has been made to sections 169 and 523 of the Revised Statutes, giving general authority to the heads of the departments, and to the Commissioner or Secretary of Agriculture, by name, to employ persons in his department.

It is contended that this general language, while sufficient to authorize the appropriation for clerks and other employees in general appropriation bills, is not sufficient to authorize the employment of an officer of the dignity of solicitor.

It has several times been held that these two sections are sufficient authority of law for the making of appropriations in general appropriation bills for the number and salary of clerks and other employees of the departments.

¹ Second session Sixty-fifth Congress, Record, p. 3456.

² Edward W. Saunders, of Virginia, Chairman.

³ Second session Sixty-second Congress, Record, p. 2676.

⁴ William P. Borland, of Missouri, Chairman.

In the opinion of the Chair a sound construction of such language would necessarily limit it to employees ejusdem generis with those named or indicated, and that it might not be extended by construction to the employment of officers of a grade or character not falling fairly within the general designation. It would scarcely be a sound construction that would permit an executive officer to reorganize his department under such general rules. If the employment of the solicitor rested upon these two sections the matter might not be free from doubt. But the employment of the solicitor by name rests also upon the appropriation law of 1910, in which the existence of such an officer is specifically recognized and a portion of his duties defined. The Chair finds that it has been held repeatedly that it is possible in appropriation bills to make permanent provisions of law by appropriate words extending the operation of the provision beyond the time provided by the particular appropriation bill, and the appropriate word used is the word "hereafter."

In section 3930 of Hinds' Precedents the gentleman from Illinois, Mr. James R. Mann, made a point of order against a provision in the agricultural appropriation bill, using the words:

"That hereafter, for the purpose of preventing the use"—

And so forth. And in the argument of the gentleman from Illinois, which was the basis of the decision of the Chair, he referred to a decision of the Comptroller of the Treasury, in which it was said:

"Usually the word 'hereafter,' when used in a proviso in such act, indicates an intention to extend the application of the proviso to future appropriations."

The opinion further stated that the word "hereafter" was not the only word appropriate to that purpose, and if the word "hereafter" were not used, the purpose might be gathered otherwise, from the general language of the appropriation bill, but that the use of the word "hereafter" would prima facie have the effect of turning a provision of an appropriation bill into permanent legislation.

In the opinion of the Chair, therefore, the language employed in the agricultural bill of 1910, using the word "hereafter," is sufficient to warrant a permanent creation of the office of solicitor of the Agricultural Department until by appropriate act of general legislation Congress shall reverse that enactment. Therefore the point of order is overruled.

1397. An amendment inserting the word "hereafter," was held to propose permanent law and as such to be forbidden in an appropriation bill.

A special order having been agreed to providing for consideration of a paragraph proposing legislation on an appropriation bill, germane amendments were held in order but amendments proposing additional legislation were not admitted.

On March 14, 1918,¹ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union and a paragraph providing for salaries of employees for the fiscal year 1919, otherwise out of order, was being considered under a special order² of the House.

Mr. Martin B. Madden, of Illinois, proposed an amendment inserting the word "hereafter."

Mr. Joseph W. Byrns, of Tennessee, having submitted a point of order on this amendment, the Chairman³ ruled:

This matter stands as follows: The committee might have reported the amendment now under consideration, as a part of the legislative bill. In that event this matter would have been subject to a point of order, and once made, the point of order would have been sustained, and the offending matter stricken from the bill. But suppose this point of order had not been made.

¹ Second session Sixty-fifth Congress, Record, p. 3515.

² Second session Sixty-fifth Congress, H. Res. 274.

³ Edward W. Saunders, of Virginia, Chairman.

Then the paragraph would have remained in the bill, subject to amendment under the rules. One of these rules is that when offending matter is allowed to remain in a bill, it is then in order to perfect that matter, by appropriate, germane amendments. But that rule does not mean, and should never be held to mean that the presence of illegal matter in a paragraph of an appropriation bill, thereby makes in order any amendment to the paragraph, however much that amendment may increase the original illegality or however far it falls short of being a perfecting amendment. On the contrary, the rule is well established, that while it is in order to amend a paragraph and perfect the otherwise illegal matter by germane amendments, these amendments must not add new and additional illegalities.

What does this amendment propose to do? Not to perfect the matter contained in the committee amendment, but to add a new element of illegality. It would be in order for the gentleman to move to strike out the paragraph. It would also be in order for him to move to increase the amounts proposed to be paid to the clerks. The precise respect in which this amendment would be out of order, if the rule had not made it in order, is that for the duration of this appropriation bill it proposes to increase the compensation of certain indicated clerks, beyond the limits fixed by law. It would be entirely in order to deal with that particular illegality, by the amendment to increase or diminish the amounts proposed to be paid, or by a motion to strike out the paragraph or by some other germane amendment, but that is not what the amendment of the gentleman from Illinois undertakes to do. It proposes to make this increase, permanent law, thereby adding a new and large element of illegality to the paragraph. This addition of a new element of illegality in the way of legislation, can not be fairly construed as a germane, perfecting amendment of the paragraph.

For the reasons given the Chair is clearly of the opinion that the amendment is out of order. The point of order is sustained.

1398. On December 19, 1922,¹ Mr. Martin B. Madden, of Illinois, called up the conference report on the Treasury Department appropriation bill. The report having been agreed to, Mr. Madden moved that the House recede and concur in amendment numbered 1, still in disagreement, with an amendment inserting the word "hereafter."

Mr. Cassius C. Dowell, of Iowa, reserved a point of order on the amendment, contending that the insertion of the word made the provisions permanent law.

The Speaker² sustained the point of order and said:

It seems to the Chair that either the language is surplusage or it does make it permanent law.

1399. Provision that an appropriation remain available until expended constitutes legislation and is not in order on a general appropriation bill.

On April 16, 1908,³ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph was reached making appropriation for the purchase of submarine boats and providing that it should "remain available until expended."

Mr. Ebenezer J. Hill, of Connecticut, made a point of order on the paragraph.

The Chairman⁴ decided:

This item contains an addition to the authorization, and in addition to the appropriation this provision among others, which may also be subject to points of order, "and to remain available until expended." That is legislation which under the rules would change existing law, requiring that these surplus funds be covered into the Treasury at the end of a certain length of time. The Chair, as the paragraph now stands, is constrained to sustain the point of order.

¹ Fourth session Sixty-seventh Congress, Record, p. 697.

² Frederick H. Gillett, of Massachusetts, Speaker.

³ First session Sixtieth Congress, Record, p. 4818.

⁴ James R. Mann, of Illinois, Chairman.

1400. On February 15, 1919,¹ the Army appropriation bill was under consideration of the Committee of the Whole House on the state of the Union, when a paragraph was read establishing rifle ranges for civilian instruction and providing that the appropriation for that purpose should “remain available until expended.”

Mr. Joseph Walsh, of Massachusetts, made the point of order that this provision constituted legislation.

The Chairman² sustained the point of order.

1401. Under the statute exempting appropriations for rivers and harbors from the operation of the law requiring unexpended balances to be covered into the Treasury, a provision that an appropriation for flood control should remain available until expended was held to be in order.

On February 24, 1919,³ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Flood control: For prosecuting work of flood control in accordance with the provisions of the flood-control act approved March 1, 1917, as follows:

Mississippi River, \$6,670,000, to remain available until expended.

Mr. Joseph Walsh, of Massachusetts, raised a question of order on the provision that the appropriation should remain available until expended.

The Chairman⁴ said:

The point of order is made to the following paragraph:

“Flood control: For prosecuting work of flood control in accordance with the provisions of the flood-control act approved March 1, 1917, as follows:

“Mississippi River, \$5,670,000, to remain available until expended.”

The act of 1874 is as follows:

“That from and after the 1st day of July, 1874, and of each year thereafter, the Secretary of the Treasury shall cause all unexpended balances of appropriations which shall have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury: *Provided, That this provision shall not apply to permanent specific appropriations, appropriations for rivers and harbors, lighthouse, fortifications, public buildings, or the pay of the Navy and Marine Corps; but the appropriations named in this proviso shall continue available until otherwise ordered by Congress.*”

It is contended that insasmuch as Congress has seen fit to create a separate committee, known as the Flood Control Committee, and given that committee jurisdiction of all appropriations for the control of floor waters, that the exception in favor of appropriations for rivers and harbors contained in the proviso of the act of 1874 only goes to appropriations made by the Rivers and Harbors Committee and not to appropriations within the jurisdiction of the Flood Control Committee.

In order to determine this question it is necessary to analyze the purpose that Congress had in enacting the statute of 1874. It is evident that Congress at that time realized that there are certain classes of public work that can be prosecuted more economically by continuous work, and that in the very nature of things the work must be uninterrupted, and for that reason it covered the appropriations for that class of work by the proviso in the act of 1874, which provided that appropriations made for that class of public work shall continue available until otherwise ordered by Congress.

¹Third session Sixty-fifth Congress, Record, p. 3494.

²Edward W. Saunders, of Virginia, Chairman.

³Third session Sixty-fifth Congress, Record, p. 4193.

⁴Otis Wingo, of Arkansas, Chairman.

This proviso does not undertake to say that appropriations of a *certain character* for rivers and harbors shall continue available, but it specifically provides for "appropriations for rivers." This language covers all appropriations for rivers of *whatever character* and proposed by *any committee* of Congress. The test is not what committee reports the appropriation; but is the appropriation for rivers? If the appropriation is for rivers or for a river, then the proviso of the act of 1874 covers the appropriation regardless of whether it is reported by the Rivers and Harbors Committee, by the Flood Control Committee, or by any other committee to which the Congress by its rules and for its own convenience and for the purpose of intelligent consideration may have assigned jurisdiction.

The act of March, 1917, under which the pending item is provided for, specifically provides for a continuing work on the Mississippi River, with a limit of \$45,000,000 with a proviso that not more than \$10,000,000 of the total shall be expended in any one year. This appropriation is certainly an "appropriation for rivers," and is further an appropriation for a project of the class that was evidently in the mind of Congress when it enacted the act of 1874, and therefore falls clearly within that class of appropriations which by the proviso of that act shall continue available.

For these reasons the Chair overrules the point of order.

1402. A provision extending the operation of a statute beyond a limit of time provided by law is legislation and is subject to a point of order.

On February 21, 1910,¹ the Indian appropriation bill was under consideration in the Committee in the Whole House on the state of the Union. Mr. John A. Martin, of Colorado, proposed the following amendment:

For the support and education of 200 Indian pupils at the Indian school at Fort Lewis, Colo., \$35,000, and for pay of superintendent, \$1,600: *Provided*, That if said school is disposed of as authorized by the Indian appropriation act for the fiscal year ending June 30, 1910, approved March 3, 1909, the provisions of which act with reference to said school are hereby extended to July 1, 1911, only the pro rata share of the appropriation therefor for the portion of the year which the school is maintained by the United States shall be available.

Mr. Charles H. Burke, of South Dakota, made a point of order against the amendment on the ground that it proposed to change existing law by extending by one year the time within which the state of Colorado might accept the grant referred to.

The Chairman² decided:

If the statement made by the gentleman from South Dakota can not be controverted or explained, it would appear that the amendment does change existing law by changing the time in which the State of Colorado was permitted certain things, and the Chair sustains the point of order.

1403. A proposition to repeal law is legislation and is not in order in an appropriation bill.

On January 23, 1912,³ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, The following paragraph was read:

That all laws and parts of laws to extend that they are inconsistent with this act are repealed.

Mr. James R. Mann, of Illinois, raised a question of order on the paragraph, submitting that it was legislation on an appropriation bill.

¹ Second session Sixty-first Congress, Record, p. 2199.

² Sylvester C. Smith, of California, Chairman.

³ Second session Sixty-second Congress, Record, p. 1235.

The Chairman¹ sustained the point of order.

1404. On February 10, 1919,² the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

The provision in the act entitled "An act making appropriations for the naval service for the fiscal year ending June 30, 1919, and for other purposes," approved July 1, 1918, under the increase of the Navy, which reads as follows: "but not later than June 30, 1919," is hereby repealed.

Mr. James R. Mann, of Illinois, made the point of order that the paragraph was a repeal of law and constituted legislation.

The point of order being conceded, was sustained by the Chairman.²

1405. A paragraph which proposes legislation in a general appropriation bill, being permitted to remain, may be perfected by a germane amendment.

On April 16, 1908,³ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. To a pending amendment proposed by Mr. J. Van Vechten Olcott, of New York, providing for the construction of submarine torpedo boats, Mr. Robert W. Bonyng, of Colorado, offered as a substitute an amendment with a proviso specifying the type of boats to be constructed.

Mr. William H. Stafford, of Wisconsin, raised a question of order on the amendment.

The Chairman⁴ decided:

The Chair is inclined to think that the Chair made an error in ruling that portion of the original proviso in order, because that of itself is legislation. There can be no question that the amendment offered by way of substitute is legislation. But, being offered as an amendment to an amendment already ruled in order, covering the same question, the Chair feels constrained to hold the amendment offered by the gentleman from Colorado to be in order.

1406. A law fixing amount of salary is not repealed by a provision in an appropriation bill that amounts therein appropriated shall be "in full compensation for services for the fiscal year."

On July 16, 1909,⁵ the urgent deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For balance of salary of the Treasurer of the United States as provided by law, from March 4, 1909, to June 30, 1910, both dates inclusive, for the fiscal years as follows:

For the fiscal year 1909, \$650.

For the fiscal year 1910, \$2,000.

Mr. John J. Fitzgerald, of New York, raising a question of order, said:

Mr. Chairman, I make the point of order that this is a change of existing law. I understand the situation to be this, that the salary of the Treasurer of the United States has been \$6,000, and for the fiscal year 1909, \$6,000 was appropriated. For the fiscal year 1910, \$6,000 was

¹ Finis J. Garrett, of Tennessee, Chairman.

² Third session Sixty-fifth Congress, Record, p. 3088.

³ First session Sixtieth Congress, Record, p. 4818.

⁴ James R. Mann, of Illinois, Chairman.

⁵ First session Sixty-first Congress, Record, p. 4504.

appropriated. On the 4th of March in a bill raising the salaries of customs inspectors and employees a provision was inserted raising the salary of the Treasurer of the United States to \$8,000. Of course, that does not affect the situation here. Many salaries are fixed at a certain amount which Congress does not appropriate. If we are to initiate the practice now of bringing in items as deficiencies to make good the difference between the amount appropriated and the amount fixed by law, there will be no end of deficiencies for this purpose. In the legislative act for the fiscal year ending June 30, 1910, which goes into effect on the 1st of July, 1909, appropriation of the \$6,000 for salary is in full compensation for all services rendered by any official appropriated for.

The Chairman ¹ held:

The legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1909, contained a provision that the following sums be, and the same are hereby, appropriated, and so forth, in full compensation for the services for the fiscal year ending June 30, 1909, and fixed \$6,000 for the Treasurer of the United States. That act was approved in 1908. March 4, 1909, an act was passed fixing the compensation of the Treasurer of the United States at \$8,000 per annum, and repealing all laws or parts of laws inconsistent with this provision. It seems clear to the present occupant of the chair that the provisions of this act changed the provisions of the act making appropriations for the fiscal year ending June 30, 1909, and that the Treasurer of the United States would clearly be entitled to receive the difference in the rate of compensation for the period between March 4, 1909, and the end of the fiscal year.

Now, the legislative, executive, and judicial appropriation act for the current fiscal year contained the same provision about the amount appropriated being in full compensation for services for the fiscal year, and this act was approved on the same day as the act changing the salary of the Treasurer of the United States.

If the provision of the legislative, executive, and judicial appropriation bill changes the law as to the salary of the Treasurer of the United States, it would seem to the present occupant of the chair that there could be no presumption in favor of the official; but it has been repeatedly declared, and in a case laid before the present occupant of the chair, decided by Hon. Sereno E. Payne in the first session of the Fifty-fourth Congress (pp. 2009–2019), quoted on page 450 of volume 4 of Hinds' Precedents, it is stated that the words "in full compensation for services for the fiscal year" do not change the law, but if the official concludes not to accept the salary appropriated he has the legal right to go into the Court of Claims and recover the full amount of the salary which the law specifies.

Section 5 of the legislative act, repealing all laws or parts of law inconsistent with this provision, seems to the present occupant of the chair not to be held to repeal the provisions of Public Act No. 343, fixing the salary of the Treasurer of the United States. It relates to appropriations, and not to fixing the salaries; and if, while the current fiscal year run along, the Treasurer drew his salary under the provisions of that legislation, he would be barred from going into the Court of Claims to recover any balance of salary; yet it does not seem as if the provisions of the act of March 4, 1909, so far as anything appears to the committee, have been in anywise affected, and the Chair overrules the point of order and holds that the appropriation is in order.

1407. The appropriation of funds held in trust in the Federal treasury is legislation and is not in order on a general appropriation bill.²

On April 5, 1912,³ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

The Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, at his discretion, the sum of \$25,000, or so much thereof as may be necessary, of the

¹ Irving P. Wanger, of Pennsylvania, Chairman.

² Such provision in a bill reported by a legislative committee is also held subject to a point of order. See decision by Chairman Horace M. Towner, Feb. 3, 1923, fourth session Sixty-seventh Congress, Record, p. 2988.

³ Second session Sixty-second Congress, Record, p. 4362.

funds on deposit to the credit of the Kiowa, Comanche, and Apache Tribes of Indians in Oklahoma, for the support of the agency and pay of employees maintained for their benefit, and he is hereby authorized to withdraw from the Treasury the further sum of \$40,000, or so much thereof as may be necessary, of the funds on deposit to the credit of the Kiowa, Comanche, and Apache Tribes of Indians in Oklahoma, for the construction and equipment of an Indian hospital upon the Fort Sill Indian School Reservation in Oklahoma, to be used only for the benefit of Indians belonging to said tribes; in all, \$65,000

Mr. James R. Mann, of Illinois, having reserved a point of order on the paragraph, Mr. Scott Ferris, of Oklahoma, called attention to the provisions of the following statute:¹

Provided, That the money arising from the sale of said lands shall be paid into the Treasury of the United States and placed to the credit of said tribe of Indians, and said deposit of money shall draw 4 per cent interest per annum, and the principal and interest of said deposit shall be expended for the benefit of said Indians in such manner as Congress may direct.

The Chairman² concluded:

The citation by the gentleman from Oklahoma of the statute which he says authorizes this action by the committee seems to the Chair to provide that the funds of these Indians derived from the sale of lands shall be placed in the National Treasury to their credit and draw a specified interest. But it occurs to the Chair that after these funds are placed there by statutory enactment it would certainly require legislation of some sort to take these funds out and disburse them, and therefore require new legislation of some sort to take these funds out and disburse them, and therefore require new legislation. The Chair is inclined to hold that the point of order by the gentleman from Illinois is well taken, and does so hold.

1408. An amendment increasing the total amount appropriated by a paragraph without increasing constituent items in the paragraph to correspond thereto was held not to be in order.

On April 14, 1914,³ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the following paragraph was reached:

Children's Bureau: Chief, \$5,000; assistant chief, \$2,400; statistical expert, \$2,000; private secretary to chief of bureau, \$1,500; clerks—2 of class 4, 2 of class 3, 1 of class 2, 1 of class 1, 1, \$1,000; special agents—1, \$1,400; 1, \$1,200; copyist; messenger; in all, \$25,640.

Mr. William F. Murray, of Massachusetts, offered the following amendment:

Strike out "\$25,640" and insert "\$50,640."

Mr. Joseph T. Johnson, of South Carolina, having raised a question of order on the amendment, the Chairman⁴ held:

May the Chair call the gentleman's attention to this fact: This appropriation carries a total of \$25,640, and the gentleman from Massachusetts does not propose to increase any item, but simply proposes to increase the total. What would be the difference if you had \$125,000 or \$25,000? The Chair can see no logic in an amendment of that kind and can not find any precedent authorizing an amendment of that kind. The Chair believes it to be good practice to have the total amount agree with the items, and he is going to sustain the point of order.

The gentleman from Massachusetts offers an amendment to increase the total to \$50,640; he offers no amendment to increase the items in the paragraph. The Chair sustains the point of order. Now, if the gentleman from Massachusetts offers an amendment which increases the various items, then an amendment increasing the total will be in order.

¹ Revised Statutes, p. 213.

² Henry A. Barnhart, of Indiana, Chairman.

³ Second session Sixty-third Congress, Record, p. 6709.

⁴ John N. Garner, of Texas, Chairman.

1409 A paragraph in an appropriation bill reenacting verbatim an existing law is not subject to a point of order.

In passing upon a point of order it is not within the province of the Chair to consider contingencies which might subsequently affect the question presented.

On January 31, 1918,¹ the Agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Asbury F. Lever, of South Carolina, offered this amendment:

Insert as a new paragraph the following:

"For enabling the Secretary of Agriculture to investigate and certify to shippers the conditions as to soundness of fruit, vegetables, and other food products, when received at such important central markets as the Secretary of agriculture may from time to time designate and under such rules and regulations as he may prescribe: *Provided*, That certificates issued by authorized agents of the department shall be received in all courts as prima facie evidence of the truth of the statements therein contained."

Mr. William H. Stafford, of Wisconsin, submitted a point of order to the effect that the amendment was legislation and not authorized by existing law.

In reply, Mr. Lever said:

Mr. Chairman, in answer to the suggestion of the gentleman that this is not authorized by existing law, I desire to call the Chair's attention to the act of Congress known as the food survey law and food control law, on page 2, and I quote to the Chair the following language from section 8. It says:

"For enabling the Secretary of Agriculture to investigate and certify to shippers the condition as to soundness of fruits, vegetables, and other food products, when received at such important central markets as the Secretary of Agriculture may from time to time designate and under such rules and regulations as he may prescribe: *Provided*, That certificates issued by the authorized agents of the departments shall be received in all courts as prima facie evidence of the truth of the statements therein contained."

And then the amount of money is stated. In the amendment I have offered we put in the amount. The Chair will recognize the language, just read, I think, that it is the law and will continue to be the law so long as this war lasts, the identical language of the amendment which I have sent to the desk.

Mr. Stafford argued:

Mr. Chairman, the chairman of the committee admits that the authority on which he bases this amendment is limited to the contingency as found in the enabling act, the food survey law and the food control law, to the duration of the war. The duration of the war is a contingency that may end at any moment.

The amendment that is offered by the chairman of the committee is not limited, as the original act is to the duration of the war. The war may end during this present fiscal year, and if this bill was presented to the House after the war is concluded, under the rules now existing it would be subject to a point of order. Allow this amendment to be held in order in its present phraseology, and if the war comes to an end prior to the consideration of the Agricultural appropriation bill at the next session of Congress, the fact that we have undertaken this work without any such limitation as the existing law provides would make a similar provision in order. But if this authorization is limited to the existence of the war, that would present a different question. The law as it stands today only authorizes the Secretary of Agriculture to undertake this work during the existence of the war. As soon as the war terminates the authority lapses. But if the amendment is agreed to and the war terminates, he would have authority to still continue it, and under what authorization?

¹Second session Sixty-fifth Congress, Record, p. 1566.

The Chairman¹ ruled:

The gentleman from South Carolina offers an amendment against which the gentleman from Wisconsin lodges a point of order, claiming that it is new legislation, and that therefore it is not in order on a general appropriation bill.

Under clause 2 of Rule XXI, no amendment changing existing law shall be in order upon an appropriation bill. Therefore, the question presents itself to the Chair as to whether or not the proposed amendment is new legislation. Under the act "To provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products," approved August 10, 1917, there is a provision of law identical with the amendment proposed by the gentleman from South Carolina.

The gentleman from Wisconsin contends that the act of Congress that the Chair has just cited lasts only during the continuance of the war, which is an uncertain contingency, and that the Chair would not be authorized to hold the amendment is in accordance with existing law. The Chair is of the opinion that the only matter for the Chair to decide is whether the law is in existence at the time the Chair is to pass upon the amendment authorizing it, for any law may be subsequently repealed. Section 3814 of Hinds' Precedents, volume 4, provides:

"A paragraph in an appropriation bill reenacting verbatim an existing law is not subject to a point of order."

The Chair is of the opinion that there is law authorizing the legislation proposed in the amendment and that the amendment simply proposes an appropriation to carry out existing law, and therefore the Chair overrules the point of order.

1410. A statute appropriating annually a sum for a stated purpose without limitation upon the amount to be so appropriated in the future is not legislation and a paragraph in an appropriation bill increasing the amount, was held not to change existing law.

On January 31, 1919,² the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For cooperative agricultural extension work, to be allotted, paid, and expended in the same manner, upon the same terms and conditions, and under the same supervision as the additional appropriations made by the act of May 8, 1914 (33 Stats. L., p. 372), entitled "An act to provide for cooperative agricultural extension work between the agricultural colleges in the several States receiving the benefits of an act of Congress approved July 2, 1862, and of acts supplementary thereto, and the United States Department of Agriculture," \$1,500,000; and all sums appropriated by this act for use for demonstration or extension work within any State shall be used and expended in accordance with plans mutually agreed upon by the Secretary of Agriculture and the proper officials of the college in such State which receives the benefits of said act of May 8, 1914.

Mr. William H. Stafford, of Wisconsin, made the point of order that the paragraph proposed new legislation and said:

Mr. Chairman, on the face of the bill it shows that it is a modification of existing law, namely, the Smith-Lever Act. It seeks to increase the amount of appropriations provided in the Smith-Lever Act, which carries a definite amount of appropriation each year which could be used by the National Government in cooperation with State organizations. As far as that law is concerned certainly it is a change of existing law. Read the paragraph:

"For cooperative agricultural extension work, to be allotted, paid, and expended in the same manner, upon the same terms and conditions, and under the same supervision, as the additional appropriations made by the act of May 8, 1914."

¹ Charles R. Crisp, of Georgia, Chairman.

² Third session Sixty-fifth Congress, Record, p. 2451.

It describes that act. It is admitted by the chairman of the committee that this money is in addition to the permanent amount appropriated by the Smith-Lever Act referred to in this paragraph.

Mr. James R. Mann, of Illinois, suggested:

On the contrary, does not the Smith-Lever Act appropriate, itself, so much money each year without any limit of the amount which Congress may appropriate? If I remember the Smith-Lever Act, and I am sure the gentleman's recollection will be correct, the Smith-Lever Act is not an authorization of an appropriation at all. In itself it appropriates so much money each year. It is not an authorization of an appropriation and Congress does not appropriate each year the money. It at one time appropriated for the future, each year, without any limitation on what the Congress may appropriate, and without any authorization whatever as to the amount appropriated.

The Chairman¹ ruled:

The Chair feels that the point of order raised by the gentleman from Wisconsin would turn very largely upon the wording of the Smith-Lever Act. If it should be thought to be on a par with an authorization of a limit of cost on a public building, the point of order would be well taken if an attempt were made to increase the amount of the limit. But the Chair, without looking at the Smith-Lever Act at the present time, is under the impression that that law simply permanently appropriated a certain amount to be available annually, but in no respect prohibited Congress from increasing the amount if they deemed it necessary. The recollection of the Chair is, briefly stated, that that bill assured the different States cooperating with the Federal Government that there will be available a certain sum of money from the Federal Government each year, but does not undertake to say that Congress may not from time to time increase that amount. The Chair therefore overrules the point of order.

1411. An amendment striking from a paragraph a provision for the observance of an existing statute was held not to involve a change of law.

On January 21, 1924,² the Interior Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A point of order made by Mr. Thomas L. Blanton, of Texas, was pending on the following amendment offered by Mr. Charles I. Stengle, of New York, to a paragraph of the bill providing salaries for the office of the Secretary of the Interior:

Strike out "in accordance with the classification act of 1923."

The Chairman³ decided:

The gentleman from Texas can not be serious when he claims that by striking out a few words in this bill it changes existing law. The mere fact of striking out a reference to a law does not change the law in any respect. The Chair overrules the point of order.

1412. An amendment authorizing payment of telegraph tolls from the contingent fund was held to constitute legislation.

On May 24, 1912,⁴ on motion of Mr. John J. Fitzgerald, of New York, by unanimous consent, the joint resolution (H. J. Res 319) making appropriations to supply deficiencies in the contingent expenses of the House of Representatives for the current fiscal year, was considered in the House as in the Committee of the Whole House on the state of the Union.

¹ Courtney W. Hamlin, of Missouri, Chairman.

² First session Sixty-eighth Congress, Record, p. 1231.

³ John Q. Tilson, of Connecticut, Chairman.

⁴ Second session Sixty-second Congress, Journal, p. 1047; Record, p. 7104.

Mr. Fitzgerald offered the following amendment:

For miscellaneous items and expenses of special and select committees, exclusive of salaries and labor, unless specifically ordered by the House of Representatives, \$55,000: *Provided*, That no part of this sum shall be expended for telegrams hereafter sent, except such as are sent on official business upon the authority of officers, whips, or committees of the House, and bills therefor shall be payable only on approval by the Committee on Accounts of the House of Representatives.

Mr. James R. Mann, of Illinois, made the point of order that there was no authority of law for the amendment.

The Speaker¹ said:

This proviso on the face of it at the first impression looks as if it was limiting the telegraph privileges, when, in fact, it develops that there is no law authorizing it at all, and the proviso is evidently new law. The amendment is out of order at this time. The effect of this proviso is to create new law. Therefore the point of order of the gentleman from Illinois is well taken.

1413. A paragraph proposing legislation in a general appropriation bill being permitted to remain may be perfected by a germane amendment.

To a proposition governing the making of a contract in a number of particulars an amendment proposing to govern the making of the contract in another particular was held to be germane.

On April 8, 1910,² the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The Clerk read a paragraph providing that the contract for certain ships to be constructed for the Navy (1) should be awarded to the lowest bidder; (2) should specify materials prescribed in the act of August 3, 1886; and (3) should provide for completion within reasonable time.

No point of order being presented against the paragraph, Mr. John J. Fitzgerald, of New York, offered the following amendment thereto:

Shall contain a provision requiring said vessels to be built in accordance with the provisions of an act entitled "An act relating to the limitation of hours for daily service of laborers and mechanics employed on public works for the United States and the District of Columbia," approved August 1, 1892, and.

Mr. George E. Foss, of Illinois, made the point of order that the amendment provided new legislation, and was not germane.

The Chairman³ ruled:

The paragraph in the bill provides that the contract for the construction of said vessels shall be awarded by the Secretary of the Navy to the lowest best responsible bidder, and so forth, and contains various provisions, such as that in the construction of the vessels the provisions of the act of August 3, 1886, shall be enforced, and that all the parts shall be of domestic manufacture, and that the steel material shall be of domestic manufacture, and so forth, and various other provisions affecting the construction of the vessels, and, in a way, affecting the contracts or bids under which the vessels are constructed. The gentleman from New York offers an amendment to make the beginning of the paragraph read as follows:

"And the contract for the construction of said vessels shall contain a provision requiring said vessels to be built in accordance with the provisions of an act entitled 'An act relating to the limitation of the hours of daily service of laborers and mechanics employed upon the public works

¹ Champ Clark, of Missouri, Speaker.

² Second session Sixty-first Congress, Record, p. 4440.

³ James R. Mann, of Illinois, Chairman.

of the United States and of the District of Columbia,' approved August 1, 1892, and shall be awarded by the Secretary of the Navy to the lowest best responsible bidder, having in view the best results"—
And so forth.

The original paragraph in the bill was legislation and subject to a point of order. It frequently has been declared that a germane amendment to a paragraph which was subject to a point of order is in order, although the amendment by itself will be subject to a point of order and legislation; and there have been rulings to the effect that new and substantive propositions were not in order. The Chair thinks that the amendment offered by the gentleman from New York is similar to the other provisions of the paragraph in the bill, so far as principle and form are concerned. The Chair therefore overrules the point of order.

1414. A paragraph proposing legislation, being permitted to remain, may be perfected by germane amendment.

On May 3, 1912,¹ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Clerk hire, Members and Delegates: To pay each Member, Delegate, and Resident Commissioner, for clerk hire, necessarily employed by him in the discharge of his official and representative duties, \$1,500 per annum, in monthly installments, \$618,975, or so much thereof as may be necessary; and Representatives and Delegates elect to the Congress whose credentials in due form of law have been duly filed with the Clerk of the House of Representatives, in accordance with the provisions of section 31 of the Revised Statutes of the United States, shall be entitled to payment under this appropriation.

Mr. Joseph G. Cannon, of Illinois, offered the following amendment:

Strike out the figures \$1,500 and insert the figures \$2,000.

Mr. Joseph T. Johnson, of South Carolina, having reserved a point of order on the paragraph, the Chairman² ruled:

The law at present provides that clerk hire for each Member of Congress shall be \$1,200. That is the existing law. The committee has reported a paragraph to this bill providing that the clerk hire of Members of Congress shall be \$1,500 a year. If a point of order had been made against the paragraph in time the Chair would have held that it was subject to the point of order, because it was contrary to existing law. No point of order having been made against the paragraph, it comes before this House in the condition that a new amendment would come before the House that was offered that was subject to the point of order, and the point of order not having been made, it would be in order to offer a germane amendment. Now, in Hinds' Precedents, volume 4, paragraph 3823, the same proposition was before the House, and the Chair will ask the Clerk to read the paragraph.

The Clerk read as follows:

"A paragraph which proposes legislation in a general appropriation bill being permitted to remain, it may be perfected by a germane amendment."

Now, the proposition pending before the House is in the same position as if it were offered as an independent amendment that was subject to the point of order, but the point of order not being made, it is open to a germane amendment. The Chair for that reason overrules the point of order.

1415. A legislative provision in an appropriation bill, being permitted to remain, may be perfected by a germane amendment.

¹ Second session Sixty-second Congress, Record, p. 5847.

² Oscar W. Underwood, of Alabama, Chairman.

To a proposition relating to motor trucks and passenger-carrying automobiles an amendment relating to motor trucks, passenger-carrying automobiles, motor cycles, and trailers was held to be germane.

On May 9, 1921,¹ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The Clerk read a paragraph providing for transportation of the Army and its supplies, including a provision for the sale of trucks and automobiles.

To this paragraph Mr. Clarence MacGregor, of New York, offered the following amendment:

That the Secretary of War is authorized and directed to sell forthwith at public auction or private sale all motor trucks, passenger-carrying automobiles, motor cycles, and trailers now in the possession of the War Department in excess of the requirements of an army of the strength provided for in this act, any provision of law to the contrary notwithstanding.

Mr. Daniel R. Anthony, jr., of Kansas, made the point of order that the amendment was not germane and changed existing law.

The Chairman² held:

The pending Army appropriation bill contains a paragraph beginning on line 12 of page 33 which is clearly legislation, but to which the point of order was not made. Therefore, for the purpose of deciding this point of order, we may consider this paragraph as it stands as a bill being considered by the House. The paragraph provides—

“That the Secretary of War is authorized and directed to sell, or to dispose of by transfer to the Department of Agriculture under existing laws, for its own use and the use of the several States in road work and maintenance of roads, not less than one-half by sale, so many motor trucks and passenger-carrying automobiles as will, in addition to such trucks and automobiles as have been sold or transferred since January 1, 1921, aggregate during the first six months of the calendar year 10,000 motor trucks and 2,000 passenger-carrying automobiles.”

To this the gentleman from New York offers an amendment providing that the Secretary of War is authorized and directed to sell forthwith at public auction or private sale, all motor trucks, passenger-carrying automobiles, motor cycles, and trailers now in the possession of the War Department, and so on. Against this amendment a point of order is made upon the ground that is not germane to the original paragraph.

What is the subject of the original paragraph? To dispose of automotive vehicles, enumerating motor trucks and passenger automobiles; to dispose of them, first by sale, and second, by transfer to the Department of Agriculture. It is clear that if the committee wished to do so it could strike out this part of the paragraph, “or by transfer to the Department of Agriculture,” so that it would leave only the authority to sell. It is clear that the Committee would have power to change the method of sale, and this the amendment attempts to do.

It is contended, however, that in the language, “motor cycles and trailers,” which is different from the language carried in the original paragraph, the scope is so widened as to render the amendment not germane.

Upon an examination of the language it seems that there is only this difference: The original paragraph provided for motor trucks and passenger-carrying automobiles. The proposed amendment carries motor trucks, passenger-carrying automobiles, motor cycles, and trailers. It seems to the Chair that this change is not of such a character as to render the amendment not germane to the original paragraph. Therefore, the Chair overrules the point of order.

¹First session Sixty-seventh Congress, Record, p. 1223.

²John Q. Tilson, of Connecticut, Chairman.

1416. A paragraph proposing legislation in a general appropriation bill, being permitted to remain, may be perfected by a germane amendment.

On April 15, 1908,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

That, for the purpose of further increasing the naval establishment of the United States, the President is hereby authorized to have constructed, by contract or in navy yards, as hereinafter provided, two first-class battleships to cost, exclusive of armor and armament, not exceeding \$6,000,000 each, similar in all essential characteristics to the battleship authorized by the act making appropriations for the naval service for the fiscal year ending June 30, 1908.

Mr. Henry M. Goldfogle, of New York, offered an amendment as follows:

At least one of such battleships shall be built and constructed, under the direction of the Secretary of the Navy, at one of the navy yards; the other of said battleships may also be constructed at one of the navy yards, in the discretion of the Secretary of the Navy, or by contract, as hereinafter provided.

Mr. Martin B. Madden, of Illinois, having raised a question of order on the amendment, the Chairman² ruled:

The Chair has not before him the ruling made at the last Congress, although the impression and recollection of the Chair is that the amendment was then offered to a succeeding paragraph in the bill. But the paragraph now before the committee contains the provision that the Secretary of the Navy may build the vessels herein authorized by contract or in such navy yards as he may designate. That provision of itself might be considered legislation, but, if so, any amendment germane to it would be in order. The Chair thinks the amendment offered by the gentleman from New York is germane, and the Chair therefore overrules the point of order.

1417. On February 22, 1910,³ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The Clerk read as follows:

The Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, at his discretion, the sum of \$250,000, or so much thereof as may be necessary, of the funds on deposit to the credit of the Kiowa, Comanche, and Apache tribes of Indians in Oklahoma and pay out the same for the benefit of the members of said tribes, including their maintenance and support and improvement of their homesteads, for the ensuing year in such manner and under such regulations as he may prescribe.

No question of order being raised on the paragraph, Mr. John H. Stephens, of Texas, offered this amendment:

Provided, That said Indians shall not be required to spend said fund in any licensed trader's store, under any red-card regulation or otherwise, but said Indians shall be permitted to purchase the necessary supplies with said fund wherever they may desire, and said money shall be paid to each individual Indian in person.

Mr. Charles H. Burke, of South Dakota, made the point of order that the amendment embodied legislation.

¹First session Sixtieth Congress, Record, p. 4807.

¹James R. Mann, of Illinois, Chairman.

¹Second session Sixty-first Congress, Record, p. 2212.

The Chairman¹ held:

The amendment proposed does undoubtedly change existing law, and would be out of order if it were offered to a provision which were itself in order. This paragraph to which the amendment is proposed does not make any appropriation. It is itself legislation upon a general appropriation bill in violation of section 2 of Rule XXI, and a point of order against it must have been sustained had it been proposed. But no point of order having been made, the paragraph remains in the bill by unanimous consent. In such cases it has been ruled over and over again, while a new substantive proposition involving legislation upon a different point would not be in order as an amendment to such paragraph, nevertheless an amendment which is germane, which introduces no new substantive matter of legislation, but is germane to the paragraph itself, is in order.

It seems to the Chair that this proviso is germane to the paragraph, and therefore the point of order is overruled.

1418. On January 6, 1923,² the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. When the paragraph providing salaries for the public schools was reached Mr. James T. Begg, of Ohio, offered an amendment increasing the salary of the superintendent of schools from \$6,000, as provided in the paragraph to \$10,000.

Mr. Louis C. Cramton, of Michigan, raised a point of order against the amendment, which was sustained by the Chairman.³

Subsequently the Chairman said:

Before the Clerk proceeds with the reading of the bill, the Chairman desires to make a statement. The Chair rendered a decision a few moments ago upon a point of order on an amendment offered by the gentleman from Ohio which proposed to increase the salary of the superintendent of public schools. The Chair made his ruling based upon what he thought was a statutory provision that the salary was fixed at \$6,000 per year. To fortify his opinion the Chair has sent for the law and finds, somewhat to his surprise, that the statutory provision is for \$5,000 a year, not \$6,000, which completely alters the proposition. The Chair wants to be entirely fair in his ruling. The Chair made his ruling based upon what he thought was a statutory provision, namely, a salary of \$6,000. The amount put in the bill was \$1,000 above the law, and it would seem to the Chair that that provision of the bill was clearly subject to a point of order if it had been made, but it was not made. In accordance with the procedure, when any provision which is subject to a point of order is allowed to remain, then any germane amendment is in order, which, standing by itself, would have violated the rule. Therefore, if the Chair's position is correct, the amendment of the gentleman from Ohio would have been in order and should not have been ruled out a moment ago, as no point of order was made against the provision in the text of the bill.

1419. February 3, 1927,⁴ during consideration of the District of Columbia appropriation bill in the Committee of the Whole House on the state of the Union, the Clerk read:

The children of officers and men of the United States Army, Navy, and Marine Corps and children of other employees of the United States stationed outside the District of Columbia shall be admitted to the public schools without payment of tuition.

Mr. Grant M. Hudson, of Michigan, offered the following amendment:

Provided, That no part of the appropriation made for the public schools for the District of Columbia shall be used for the instruction of pupils who dwell outside of the District of Columbia below the ninth grade.

¹Marlin E. Olmsted, of Pennsylvania, Chairman.

²Fourth session Sixty-seventh Congress, Record, p. 1374.

³Frederick C. Hicks, of New York, Chairman.

⁴Second session Sixty-ninth Congress, Record, p. 2897.

Mr. John Philip Hill, of Maryland, submitted a point of order on the ground that the amendment proposed to change existing law.

The Chairman¹ held:

This amendment is offered to the following paragraph of the bill:

“The children of officers and men of the United States Army, Navy, and Marine Corps, and children of other employees of the United States stationed outside the District of Columbia shall be admitted to the public schools without payment of tuition.”

That paragraph, in the opinion of the Chair, would have been subject to a point of order if a point of order had been made against it, because it is clearly legislation upon an appropriation bill, not involving any retrenchment or limitation of expenditures. The rule is that a paragraph subject to a point of order, retaining its place in a bill without having been challenged by a point of order, is subject to germane amendments, and germane amendments are in order even though the original independent proposition might have been subject to a point of order. It seems to the Chair that the language in the paragraph of the text opens up the schools of the district to all children of officers and men of the United States Army, Navy, and Marine Corps, and other employees of the Government stationed outside the District of Columbia in all grades, in all departments of the public schools of the District. The amendment offered by the gentleman from Michigan proceeds to limit that general permission so as to exclude the instruction of pupils below the ninth grade. The limitation provides, substantially, that no part of the appropriations in this bill shall be available for pupils below the ninth grade.

The District of Columbia appropriation act, approved March 3, 1925, contained the following paragraph:

“The children of officers and men of the United States Army and Navy and children of other employees of the United States stationed outside of the District of Columbia shall be admitted to the public schools without payment of tuition.”

Similar provisions were contained in District appropriation acts approved March 3, 1917, August 31, 1918, July 11, 1919, and in the urgent deficiency act of March 28, 1918.

The similar provision in this bill extends the privilege so as to include children of officers and men of the Marine Corps and is, therefore, in its entirety, under the precedents, itself legislation and, as already suggested, would have been subject to a point of order, if one had been made. The pending amendment is germane to the paragraph to which it is offered, and, in the opinion of the Chair, is a limitation upon the appropriation in this bill for the purposes stated in the paragraph in question and also upon expenditures under the broader provision contained in the District of Columbia appropriation act approved March 3, 1915, which reads:

“Hereafter all pupils whose parents are employed officially or otherwise in the District of Columbia shall be admitted and taught free of charge in the schools of said District.”

The pending amendment is clearly a limitation upon this last broad provision as well as upon the narrower one in this bill permitting parents of children not residing in the District to send their children to the District schools.

As it stands, the text in the bill permits the appropriation to be available for all grades and all departments of the public schools in the District of Columbia to the children therein described, and the gentleman's amendment takes out of the provision in the text all grades below the ninth grade. The Chair therefore overrules the point of order.

1420. A paragraph changing existing law, being permitted to remain by general consent, may be perfected by germane amendments which do not provide additional legislation.

On February 17, 1908,² the legislative, executive, and judicial appropriation bill was ordered to be engrossed and was read a third time, when Mr. Gilbert M. Hitchcock, of Nebraska, moved that the bill be recommitted to the Committee on

¹ Carl R. Chindblom, of Illinois, Chairman.

² First session Sixtieth Congress, Journal, p. 1069; Record, p. 2103.

Appropriations, with instructions to report it back to the House with an amendment adding to the agenda on which agents, investigating foreign trade conditions, were required to report.

Mr. James A. Tawney, of Minnesota, made the point of order that the amendment was not germane to the bill and proposed expenditures not authorized by law.

The Speaker¹ said:

The gentleman from Nebraska moves to recommit the bill to the Committee on Appropriations with an instruction to report the same back to the House amending that portion of the bill which reads as follows:

“For compensation at no more than \$10 per day and actual necessary traveling expenses of special agents to investigate trade conditions abroad, with the object of promoting the foreign commerce of the United States, \$35,000; and the results of such investigations shall be reported to Congress”—by adding at the end after the word “Congress” the following: “including information showing the prices at which American-made goods are sold abroad to merchants and at retail.”

The Chair has verified his impression that the item as reported in the bill and agreed to by the House dwells in the bill alone, or in other words, it is not authorized by existing law, and if a point of order had been made upon it in Committee of the Whole, or if it had been considered in the House, and the present occupant of the Chair had been called upon to rule upon that point of order, he would have sustained it. The authorities are many and uniform touching the effort to amend upon a motion of this kind.

On page 360 of the Manual, under the title of “change of existing law,” the Chair reads as follows:

“A paragraph which changes existing law being allowed by general consent to remain, it may be perfected by any germane amendment. But this does not permit an amendment which adds additional legislation.”

This adds, as is patent upon its face, additional legislation, and it seems to the Chair to dispose of the point of order. The Chair listened with interest to the gentleman from Alabama. This is a motion to recommit, which motion—the Chair does not now speak of instructions—is in order notwithstanding the previous question has been ordered which cuts off all amendment. But you can not do indirectly that which you can not do directly. If you could not make the amendment while it was being considered in the committee you can not make the amendment on a motion to recommit. The Chair could rule upon the second point as to whether it is germane or not, but the Chair is admonished from rulings of Speakers in all the past that when you find something that disposes of the point of order there is no use in piling Pelion upon Ossa. Therefore the Chair sustains the point of order.

1421. On May 1, 1908,² the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, and the following paragraph was pending:

Transportation of fractional silver coin: For transportation of fractional silver coin, by registered mail or otherwise, \$60,000; and in expending this sum the Secretary of the Treasury is authorized and directed to transport from the Treasury or subtreasuries, free of charge, fractional silver coin when requested to do so: *Provided*, That an equal amount in coin or currency shall have been deposited in the Treasury or such subtreasuries by the applicant or applicants. And the Secretary of the Treasury shall report to Congress the cost arising under this appropriation.

¹Joseph G. Cannon, of Illinois, Speaker.

²First session Sixtieth Congress, Record, p. 5545.

Mr. J. Warren Keifer, of Ohio, proposed an amendment striking out the word "fractional" wherever occurring in the paragraph, to which amendment Mr. Walter I. Smith, of Iowa, raised a question of order.

The Chairman¹ decided:

The Chair is clearly of the opinion that the motion made by the gentleman from Ohio is subject to a point of order. It does not appear that there is any authorization by law for the paragraph in the bill. The gentleman from Ohio made the statement that the act of 1878 had been construed by somebody as an authorization for that purpose. The Chair has carefully read the act of 1878, and in the opinion of the Chair no such authorization exists. None having been cited by the gentleman from Ohio, or any person in support of the proposition he makes, the Chair is of the opinion that the entire proposition under the head of "transportation of fractional silver coin," page 23, is contrary to law and would have been stricken out had the point of order been made. Therefore the only question that remains to be decided is as to whether or not the proposition of the gentleman from Ohio, being germane to the paragraph, embodies an additional matter of unauthorized expenditure.

This whole subject was decided in a very well-considered decision rendered by the distinguished gentleman from Ohio, Mr. Burton, sitting as Chairman of the Committee of the Whole House on the state of the Union, in the Fifty-seventh Congress. The Chair will not read very much of the decision, but read the final summing up by the gentleman from Ohio, in which he took up and discussed the conflict that theretofore existed on the proposition of germaneness to a proposition which in and of itself was contrary to existing law.

The Chair finally said:

"The Chair, though somewhat doubtful, thinks this the best rule: That if a paragraph has been included in the bill which has in it a taint of illegality or of being contrary to existing law, that paragraph can be corrected or perfected by an amendment; but if the further paragraph which is proposed as an amendment carries a further degree of illegality affecting the whole paragraph as amended, then it is not in order."

The Chair thinks that is the best rule. The Chair also has read the decision quoted by the gentleman from Tennessee, Mr. Gaines, that a paragraph which changes existing law, being allowed by general consent to remain, it may be perfected by any germane amendment; but this does not permit an amendment which adds additional legislation; and that, the Chair thinks, is the better rule.

The Chair also read the other lines read by the gentleman:

"A paragraph of an appropriation bill changing existing law may be perfected by a germane amendment which also changes existing law."

The Chair is of opinion that that is not the rule. It is an earlier decision, and has reference to another matter, into which the Chair has not gone. The Chair thinks it is a bad rule, and that the point of order should be sustained in accordance with the decision made by the gentleman from Pennsylvania, Mr. Dalzell, which is certainly on all fours with the pending proposition, for it is the opinion of the Chair that the amendment now proposed by the gentleman from Ohio is practically the same in effect as the amendment he proposed the other day, on which the gentleman from Pennsylvania made a ruling similar to that now made by the Chair, and the Chair therefore sustains the point of order.

1422. On June 16, 1910,² the general deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

International Institute of Agriculture at Rome, Italy: The appropriation of \$4,800 provided in the act making appropriations for the Diplomatic and Consular Service for the fiscal year 1911, for the payment of the quota of the United States for the support of the International Institute of Agriculture for the calendar year 1910, is hereby extended and made available for the calendar year 1911.

¹James E. Watson, of Indiana, Chairman.

²Second session Sixty-first Congress, Record, p. 8358.

Mr. David J. Foster, of Vermont, offered the following amendment:

For compensation to one member of the permanent committee, and for the payment of actual and necessary expenses of delegates to the general assembly of the International Institute of Agriculture at Rome, established under the international convention concluded at Rome on June 7, 1905, \$8,600, or so much thereof as may be necessary, to remain available during the fiscal year ending June 30, 1911.

Mr. James R. Mann, of Illinois, made the point of order that the amendment was not germane and was without authority of law.

The Chairman¹ held:

It seems to the Chair that the amendment is germane to the paragraph. The fact that the paragraph itself would be subject to a point of order as unauthorized would not make in order an amendment providing for something else unauthorized, such as additional legislation, even though germane. The Chair reads from the Manual, in section 824:

“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.”

This amendment clearly adds a new, and so far as it has been presented to the Chair, an unauthorized expenditure. While it may be germane, it is not in the nature of perfecting the other expenditure. Therefore the Chair sustains the point of order.

1423. On January 25, 1912,² the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union and this amendment was pending, no point of order having been raised against it:

No part of any money appropriated in this act for public schools shall be used for the tutelage or otherwise of pupils in the public schools of the District of Columbia who do not reside in said District, or who, during such tutelage, do not own property in and pay taxes levied by the government of the District of Columbia in excess of the estimated cost of their tuition, or whose parents do not reside or are not engaged in public duties therein or during such tutelage pay taxes levied by the District of Columbia in excess of such estimated cost of tuition.

To this amendment Mr. John J. Fitzgerald, of New York, offered the following amendment:

Pupils shall not be admitted to or taught free of charge in the public schools of the District of Columbia who do not reside in said District, or who during such tutelage do not own property in and pay taxes levied by the government of the District of Columbia in excess of the tuition charged hereunder to other nonresident pupils, or whose parents do not reside or are not engaged in public duties therein, or during such tutelage pay taxes levied by the government of the District of Columbia in excess of the tuition charged hereunder to other nonresident pupils: *Provided*, That any other nonresident pupil may be admitted to and taught in said public schools on the payment of such amount, to be fixed by the board of education, with the approval of the Commissioners of said District, as will cover the expense of tuition and cost of textbooks and school supplies used by such pupil; and all payments hereunder shall be paid into the Treasury of the United States, one-half to the credit of the United States and one-half to the credit of the District of Columbia.

Mr. Charles C. Carlin, of Virginia, made a point of order on the amendment proposed by Mr. Fitzgerald.

The Chairman³ ruled:

The amendment proposed by the gentleman from New York as a substitute for the amendment is in precise language the amendment which has heretofore been ruled out by the Chair.

¹ John Q. Tilson, of Connecticut, Chairman.

² Second session Sixty-second Congress, Record, p. 1316.

³ Finis J. Garrett, of Tennessee, Chairman.

It is insisted, however, that the parliamentary situation has changed, and that by virtue of certain legislation having come in in the way of a limitation upon an appropriation, then an amendment which was probably subject to the point of order having been added to that, therefore it is now in order to bring in this original proposition, which has been two or three times removed from the bill on a point of order, and offer it as a germane substitute.

The Chair finds this in Hinds' Precedents:

"In an appropriation bill a paragraph embodying legislation may be perfected by a germane amendment, but this does not permit an amendment which adds additional legislation."

And, after stating the case, there is this reasoning of the Chair, Mr. Theodore E. Burton, of Ohio, being the Chairman:

"The Chair, though somewhat doubtful, thinks this the best rule: That if a paragraph has been included in the bill which has in it a taint of illegality or of being contrary to existing law, that paragraph can be corrected or perfected by an amendment, but if the further paragraph which is proposed as an amendment carries a further degree of illegality affecting the whole paragraph as amended, then it is not in order."

Concededly, the amendment proposed by way of a substitute by the gentleman from New York does broaden the legislation and extends it beyond the scope included in the amendment offered by the gentleman from Maryland and to that extent carries what Mr. Burton described as "a further degree of illegality." The Chair thinks the reasoning sound. The Chair thinks the amendment is not in order, and sustains the point of order.

1424. On March 27, 1928,¹ the Committee of the Whole House on the state of the Union was considering the naval appropriation bill, when the paragraph providing for the Bureau of Aeronautics was read.

Mr. James T. Begg, of Ohio, offered the following amendment as a proviso:

Provided further, That the Navy Department is directed to proceed at once to enter into contract for such rigid airships with the most favorable bidder in accordance with provision of existing law.

Mr. John Taber, of New York, made the point of order that the amendment was legislation and was not germane.

The Chairman² held:

The Chair thinks there can be no question that the proviso suggested in the amendment offered by the gentleman from Ohio, which reads as follows:

"Provided further, That the Navy Department is directed to proceed at once to enter into contract for such rigid airships with the most favorable bidder in accordance with the provision of existing law"—

is itself legislation, but it is offered as an amendment to a proviso reading as follows:

"Provided, That the contract for such rigid airships shall (a) reserve to the Government the right of cancellation of the construction of the second airship if changed circumstances, in the judgment of the Secretary of the Navy, shall suggest that course as being in the best interests of the Government, such right of cancellation to continue until the first airship shall have been tested in flight and accepted, and (b) provide that in the event of such cancellation the total cost of the first airship and all payments under and expenses incident to the cancellation of the contract for the second airship shall not exceed \$5,500,000."

The Chair finds that paragraph 1 of section 2 of "An act to authorize the construction and procurement of aircraft and aircraft equipment in the Navy and Marine Corps, and to adjust and define the status of operating personnel in connection therewith," approved June 24, 1926, being Public Act No. 422 of the Sixty-ninth Congress, provides as follows:

¹ First session Seventieth Congress, Record, p. 5459.

² Carl R. Chindblom, of Illinois, Chairman.

“PARAGRAPH 1. Two rigid airships of a type suitable for use as adjuncts to the fleet and of approximately 6,000,000 cubic feet volume each at a total cost not to exceed \$8,000,000 for both ships, construction of one to be undertaken as soon as practicable and prior to July 1, 1928: *Provided*, That the two airships herein authorized shall be constructed in the United States: *Provided further*, That one or both of said airships shall be constructed either under contract similar to contracts covering the construction of other vessels for the Navy, or by the Navy Department, as the Secretary of the Navy may deem to be in the best interest of the Government.”

It seems to the Chair that the proviso already in the bill, to which no point of order has been made, is clearly legislation, and goes even further than the amendment suggested by the gentleman from Ohio, and that the amendment offered by the gentleman from Ohio only in a very small particular, with reference to the requirement for immediate letting of contracts, differs from existing law, and in fact provides that even such letting shall be in accordance with the provision of existing law. The amendment is clearly germane to the proviso already in the bill, which was itself subject to a point of order as legislation on an appropriate bill, and the amendment does not enlarge the scope of that proviso. The Chair, therefore, overrules the point of order.

1425. A paragraph which proposes legislation in a general appropriation bill, being permitted to remain, may be perfected by the germane amendment. But this does not permit an amendment which adds additional legislation.

On March 9, 1916,¹ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For securing information for census reports, provided for by law, semimonthly reports of cotton production, periodical reports of stocks of baled cotton in the United States and of the domestic and foreign consumption of cotton; quarterly reports of tobacco; per diem compensation of special agents and expenses of same and of detailed employees, whether employed in Washington, D.C., or elsewhere; the cost of transcribing State, municipal, and other records, temporary rental of quarters outside of the District of Columbia; for supervising special agents, and employment by them of such temporary service as may be necessary in collecting the statistics required by law including \$15,000 for collecting tobacco statistics authorized by law in addition to any other fund available therefor: *Provided*, That hereafter there shall be in the official organization of the bureau a separate, distinct, and independent division called the Division of Cotton and Tobacco Statistics, \$512,000.

To this paragraph Mr. James P. Buchanan, of Texas, offered the following amendment:

And provided further, That the Chief of the Bureau of Foreign and Domestic Commerce be, and is hereby, authorized under the direction of the Secretary of Commerce to collect for the census reports and published from time to time statistics of the production and consumption of cotton and cotton goods in foreign countries, including the number of spindles in activity, number of cotton bales on hand, amount of cotton goods on hand, value of same, construction of new mills, closing down of mills, demand for and probable purchasers of cotton and cotton goods, and methods of merchandising the same. That in order to carry into effect the above provision the Secretary of Commerce is authorized to appoint four expert agents to cover England, France, Russia, Germany, Austria, Italy, China, Japan, and India, and an additional sum of \$25,000, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated to be expended in carrying into effect the provisions of this act, including clerical assistants in the District of Columbia or elsewhere or to secure by purchase or otherwise such reports, manuscripts, and publications as may be necessary to carry out in the most efficient manner the provisions of this act.

¹First session Sixty-fourth Congress, Record, p. 3863.

Mr. Joseph W. Byrns, of Tennessee, made the point of order that the amendment was legislation and was not germane to the bill.

The Chairman¹ said:

The gentleman from Texas offers an amendment, which the Chair will not take the time to read in full, it having been read by the Clerk.

To this amendment the gentleman from Tennessee makes the point of order.

Under the rules of the House it is not in order to legislate on appropriation bills unless the legislation comes within the purview of the Holman rule by retrenching expenditures in one of the methods stated in the rule.

The Chair is aware that the usual practice of the House is that where a provision is inserted in an appropriation bill that is of itself subject to a point of order and allowed to remain in the bill it is in order further to amend that provision by germane amendments. But the rulings of the House have been that it is not in order to amend such a paragraph by adding additional affirmative legislation; that the amendment must be germane and must add no new legislation.

The Chair cites section 3836 of Hinds' Precedents:

"In an appropriation bill a paragraph embodying legislation may be perfected by a germane amendment, but this does not permit an amendment which adds additional legislation."

The same principle is stated in paragraph 3837, in a ruling by Mr. Burton, and also a ruling by Vice President Sherman when he was a Member of this House. The same principle is also enunciated in paragraph 3838 of Hinds' Precedents.

The Chair can not escape the conclusion, from the reading of the amendment, that it adds additional legislation. While the Chair believes that the proviso of the paragraph in the bill, which taints the whole paragraph, is subject to the point of order, yet that having been withdrawn, the paragraph is subject to germane amendment which does not add new legislation.

But the Chair thinks the amendment in question does add new legislation, and for that reason sustains the point of order.

1426. On February 20, 1917,² the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. To a paragraph proposing legislation which had remained in the bill, no point of order having been made against it, Mr. Augustus P. Gardner, of Massachusetts, offered the following amendment:

Provided, That hereafter the monthly pay of enlisted men of the Army shall be increased as follows: Master electricians and all others receiving \$75, to \$85; master engineer, junior grade, Corps of Engineers, from \$65 to \$75; sergeant, first class, Medical Department, from \$50 to \$60; first sergeants, from \$45 to \$65; sergeant, first class, Corps of Engineers, and all others receiving \$45, to \$55; battalion sergeants major of Infantry, and all others receiving \$40, to \$50; sergeants of Engineers, and all others receiving \$36, to \$46; sergeants of Cavalry, Infantry, and Artillery, from \$30 to \$40; quartermaster sergeants of Cavalry, and all others receiving \$30, to \$40; corporals of Engineers, Ordnance, Signal Corps, Cavalry, Artillery, and Infantry, from \$24 and \$21 to \$38; chief mechanics, and all others receiving \$24, to \$34; saddlers, and all others receiving \$21, to \$31, privates, first class, and all others receiving \$18, to \$28; privates, second class, and all others receiving \$15, to \$25.

Mr. Hubert S. Dent, jr., of Alabama, made the point of order that the amendment was an attempt to change law.

¹ Charles R. Crisp, of Georgia, Chairman.

² Second session Sixty-fourth Congress, Record, p. 3711.

The Chairman¹ held:

The gentleman from Massachusetts a day or two ago called the attention of the Chair to certain precedents, in this connection. These precedents have been duly examined and found to be difficult of reconciliation. The general proposition with which the Members are all familiar is that a paragraph in a bill which contains matter not in order is subject to a point of order even though the offending and illegal matter may constitute but a relatively small proportion of the entire paragraph. This point of order is good either against the entire paragraph or the offending matter. But if the point of order not made to the paragraph, or offending matter, then the entire paragraph becomes in order. It has been held in the latter case that such a paragraph may be perfected by a germane amendment. (Hinds, Vol. IV, secs. 3823–3835, 3838). Hence the question has often arisen whether these perfecting amendments should be germane to the paragraphs as a whole, thereby adding a new and greater proposition of illegality than that contained in the original offending matter, or germane only to this matter which has become in order by reason of the failure to raise the question of illegality. The precedents are conflicting. It has been held that the right to perfect a paragraph which would have been out of order if the question has been raised, by a germane amendment, does not permit an amendment which adds an additional proposition of illegality (Hinds, Vol. IV, secs. 3836, 3837, 3862).

In other words, the later precedents require the perfecting amendment to be germane to the original offending language in the paragraph. If the amendments carrying additional legislation are germane to the offending language, they are in order, but not so if they relate rather to the body of the paragraph. This proposition is clearly stated in the following decision:

“If a paragraph has been included in a bill which has in it a taint of illegality, that paragraph can be corrected or perfected by an amendment, but if the paragraph which is proposed as an amendment, carries a further degree of illegality, affecting the whole paragraph as amended, then it is not in order.”

The offending matter in the paragraph under consideration is contained in these words:

“As expert first-class gunners, Field Artillery, \$5 per month.”

It can hardly be said that the amendment offered by the gentleman from Massachusetts is germane to this language, and designed to perfect it. This being so, the Chair holds that a new and comprehensive proposition of illegality is sought to be added to the paragraph by the proposed amendment. For this reason, and in conformity with the precedent last cited, the Chair sustains the point of order.

1427. On March 5, 1918,² the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the paragraph providing clerk hire for Members and Delegates was read.

Mr. William H. Stafford, of Wisconsin, offered the following amendment:

Clerk hire, Members and Delegates: To pay each Member, Delegate, and Resident Commissioner, for clerk hire necessarily employed by him in the discharge of his official and representative duties, \$2,000 per annum, in monthly installments, \$880,000, or so much thereof as may be necessary; and Representatives and Delegates elect to Congress whose credentials in due form of law have been duly filed with the Clerk of the House of Representatives, in accordance with the provisions of section 31 of the Revised Statutes of the United States, shall be entitled to payment under this appropriation: *Provided*, That all clerks to Members, Delegates, and Resident Commissioners shall be placed on the roll of employees of the House and be subject to be removed at the will of the Member, Delegate, or Resident Commissioner by whom they are appointed; and any Member, Delegate, or Resident Commissioner may appoint one or more clerks, who shall be placed on the roll as the clerk of such Member, Delegate, or Resident Commissioner making such appointments.

¹ Edward W. Saunders, of Virginia, Chairman.

² Second session Sixty-fifth Congress, Record. p. 3066.

A point of order against the amendment having been reserved and withdrawn, Mr. Finis J. Garrett, of Tennessee, proposed this amendment to the amendment:

Provided, further, That said amount of \$2,000 shall be the annual allowance for clerk hire for each Member, Delegate, and Resident Commissioner hereafter, to be paid under the limitations and upon the conditions herein prescribed.

In ruling upon a point of order raised against the amendment to the amendment by Mr. James W. Good, of Iowa, the Chairman¹ said:

The Chair will ask the indulgence of the committee for a few moments while he states the principles upon which his ruling will be based. These principles are often appealed to, and merit a very precise and definite statement in order that they may be clearly understood and their application readily followed. If a paragraph contains an offending matter, and I mean by this any matter that is subject to a point of order, then the entire paragraph is subject to a point of order. It is competent, however, for a Member to direct his point of order to the offending matter alone, and if he thus restricts his objection, then the offending matter only will be expunged. But if the point of order is directed to an entire paragraph any portion of which is not in order, the point of order will be sustained as to the paragraph in its entirety. On the other hand a paragraph containing offending matter but not objected to on that account remains in the bill as a whole and, within certain limitations, is open to amendment. The statement is often made that under the conditions last stated the paragraph is open to amendments that would otherwise be out of order. But this is not a very precise statement of the rule, since it is calculated to convey the erroneous idea that the door is wide open to amendments whatever their character or the extent of their illegality. The true ruling and the one fully supported by the precedents is that a paragraph embodying legislation which is allowed to remain in an appropriation bill may be perfected by a germane amendment, but this does not permit an amendment which adds additional legislation. Fourth Hinds, section 3836, ruling by Theodore Burton, Chairman. The Chairman, as a part of his ruling, made the following statement:

“The Chair, though somewhat doubtful, thinks the best rule is: That if a paragraph has been included in a bill which has in it a taint of illegality, or of being contrary to existing law, that paragraph can be corrected or perfected by an amendment; but if the further paragraph which is proposed, as an amendment, carries a further degree of illegality, affecting the whole paragraph as amended, then it is not in order.”

Manifestly this ruling is fundamentally sound. The existence of illegality in a paragraph should not furnish the groundwork, or afford the excuse, to engraft upon the paragraph additional and perhaps more sweeping illegalities in the form possibly of radical changes of existing law. The principle fundamental to the whole situation is that is it undesirable to enact essential legislation in an appropriation bill. The distinction made by the Chairman in the decision cited, is clearly in the interest of good legislation, and wholesome procedure. It is one that was not only proper to be made upon the facts in that case, but one that ought to be followed, since otherwise, if some nonessential, but offending matter, should be allowed to remain in a paragraph, amendments of the most sweeping character, embodying new and additional illegalities might be construed to be in order, upon the theory that the presence of the offending matter in the paragraph under consideration, removed the right to object to new illegalities. Further rulings sustaining the position of Chairman Burton will be found in Fourth Hinds, section 3823, section 3826, section 3832, section 3838.

The conclusion of this matter then is that:

“In an appropriation bill a paragraph embodying legislation and allowed to remain in the bill may be perfected by a germane amendment,”
that is, an amendment germane to this otherwise illegal matter,
“but this does not permit an amendment which adds additional legislation which is not a development, or perfecting of the original offending matter.”

¹ Edward W. Saunders, of Virginia, Chairman.

The amendment which the gentleman from Tennessee submits, proposes to add a new feature of permanent law to the proposition now under consideration. If there is illegal matter in the pending proposition, to what extent can the matter proposed by the gentleman from Tennessee be considered a development, or perfecting of that matter? It is an enlargement of the illegal content of the proposition before the committee, in the way of new and permanent legislation. The Chair does not consider that this amendment fairly comes within the principle announced with respect to perfecting offending matter allowed to remain in an appropriation bill, and the point of order is sustained.

Thereupon Mr. Charles Pope Caldwell, of New York, offered the following as an amendment to the pending amendment proposed by Mr. Stafford:

And in addition thereto each Member, Delegate, and Resident Commissioner, who shall certify that additional help is necessary in the discharge of his official duties, one clerk, who shall be a stenographer, \$100 per month during the session of Congress, to pay which so much as may be necessary is hereby appropriated.

The Chairman ruled:

The Chair will not restate the principles previously announced.

The Chair has been cited to the decision of Mr. Chairman Harrison, and has examined it carefully, and also the other decisions on the principle involved. Mr. Chairman Harrison seemed to consider that the amendment was in order on the general ground that the paragraph contained illegal matter, and therefore other illegal matter could be submitted by way of amendment. There was no precise statement of the principle, or citation of precedents. I have tried to point out the limitations which surround the admission of illegal matter to a paragraph already tainted with illegality.

The amendment provides an additional allowance for clerk hire for Members, and provides further that this additional allowance shall be expended for a stenographer. Looking to the proposition proposed to be amended, what is the illegal matter in that proposition which this amendment will develop, and perfect, and to which it may be fairly considered germane?

It would be difficult I think, to indicate this matter. The amendment is illegal in more than one respect. The paragraph, or amendment to which this amendment is offered, contains illegal matter, in that the amount allowed by basic law is increased from \$1,200 to \$2,000. Can it be fairly construed that an amendment which increases further that allowance, and provides in addition that this increase shall be expended upon a stenographer, merely perfects the illegal increase in the original allowance, without adding a new element of illegality, namely that the Members will be compelled to apply this increase to the employment of a stenographer? The amendment reduces the discretion of the Members in the application of the money appropriated for clerk hire. It directs their discretion, and requires it to be exercised in an accurately prescribed fashion.

It would be perfectly appropriate and in order to increase by amendment the amount of \$2,000, and make it \$3,000, if the committee chooses to do so, or \$4,000, or any other amount that may be desired. Such amendments would be germane developments of the illegal matter. Should this be done, the Members could utilize the increase over the original allowance for the employment of a stenographer, since there is no limitation in the basic law upon the use of the money appropriated for clerk hire.

A Member may expend his allowance upon one, two, three or four clerks; they may be all stenographers; they may be clerks who are not stenographers; they may be typists; they may be both stenographers and typists. These details are left to the discretion of the Member when selecting his clerks. But this amendment takes away this discretion in the use of the increase proposed. It prescribes that the increased amount to be appropriated for clerk hire shall be expended upon the employment of a stenographer, and for no other purpose. Existing law leaves to the Members the free exercise of discretion in the application of the funds to be expended to secure clerical assistance. The amendment proposes new law. It creates an additional fund for clerk hire, a fund that can be expended in but one direction, namely the employment of a stenographer. This will

be legislation on an appropriation bill, and new illegality. It is not a perfecting amendment to existing illegality, that is to say to what would be existing illegality if the increased appropriation for clerk hire had not been allowed to remain in the amendment without objection. The point of order is sustained.

1428. January 26, 1920,¹ the diplomatic and consular appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph was reached providing for the collection of inheritance taxes on estates of diplomatic officers dying abroad.

This paragraph being considered by virtue of a special order previously adopted by the House, Mr. Tom Connally, of Texas, offered the following amendment:

Provided, That hereafter in each private and administration proceeding in said courts there shall be, and is hereby, levied on each respective estate and there shall be assessed and collected by the clerk of the court before entering the order of final distribution, to be paid into the Treasury of the United States, as fees of court, an amount of money equal to the amount of inheritance taxes that would be due and collectible under the laws of the United States in the case of the estate of a decedent who resided within the territorial jurisdiction of the United States of an equal value.

Mr. Nicholas Longworth, of Ohio, made a point of order against the word “hereafter” as providing permanent law.

The Chairman² said:

If this were on a legislative bill, the Chair thinks that he would hold the amendment to be in order, but this is an appropriation bill, and what applies to a legislative bill does not apply to an appropriation bill. Anything that adds new legislation to the pending section under the rules of the House can not be in order. The Chair sustains the point of order.

1429. On February 24, 1920,³ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The Clerk read a paragraph making appropriation for clerk hire for Members and Delegates, and including a proviso which, though providing legislation, was permitted to remain in the bill by general consent.

Mr. Charles Pope Caldwell, of New York, offered an amendment inserting the word “hereafter,” against which Mr. Eugene Black, of Texas, raised the question of order that it proposed permanent law.

The Chairman⁴ ruled:

The gentleman from Texas makes the point of order to the amendment offered by the gentleman from New York which, by the use of the word “hereafter”, makes permanent law of this appropriation. The Chair is a little bit perplexed as to this question, and thinks it is a pretty close point. Of course, if the point of order had been raised to the proviso as in the bill, the Chair would have been compelled to rule it out and to have sustained the point of order, as it is legislation on an appropriation bill. It is, however, in order under the rules to offer to a provision subject to a point of order, but upon which no point is made, another provision, which is also subject to a point of order, provided it is germane to the provision to which it is offered. The Chair thinks that inasmuch as the item carried in the bill relates only to the expenditure of this money for the fiscal year 1921, an amendment which extends it to the years 1922, 1923, and so forth, ad infinitum, goes beyond the purview of the item as originally carried in the bill, and feels constrained to sustain the point of order.

¹ Second session Sixty-sixth Congress, Record, p. 2083.

² Martin B. Madden, of Illinois, Chairman.

³ Second session Sixty-sixth Congress, Record, p. 3421.

⁴ Nicholas Longworth, of Ohio, Chairman.

1430. On March 27, 1920,¹ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. Charles R. Davis, of Minnesota, proposed an amendment increasing the rate of taxation in the District of Columbia.

No point of order having been raised on the amendment. Mr. L. J. Dickinson, of Iowa, offered an amendment to the amendment further changing the rate of taxation.

Mr. James R. Mann, of Illinois, made a point of order against the amendment to the amendment.

The Chairman² ruled:

The gentleman from Minnesota, under the rule, has introduced an amendment, as follows:

“That the rate of taxation on real estate in the District of Columbia, under the provisions of section 5 of the District of Columbia appropriation act approved July 1, 1902, is hereby increased from 1½ per cent to 2½ per cent, and the rate of taxation on tangible personal property in the District of Columbia, under the provisions of section 6 of the said act is hereby increased from 1½ per cent to 2½ per cent.”

The gentleman from Iowa proposes an amendment, which reads as follows:

“And the rate of taxation on intangible property as provided for in section 9 of the act making appropriations to provide for the expenses of the District of Columbia, approved March 3, 1917, is hereby increased from three-tenths of 1 per cent to 1 per cent.”

To this amendment a point of order has been made, as to its germaneness.

Under the rules of the House, and under the rulings that have been made frequently by gentlemen presiding over the Committee of the Whole House on the state of the Union, it has been held that a paragraph which proposes legislation, being permitted to remain, may be perfected by a germane amendment. But this does not permit an amendment if it adds additional legislation. It can not be contended that this will relieve the Treasury of the United States from any additional burden, for on the face of the amendment there is nothing to indicate that the Treasury will be made less liable to expenditures than it has been in the past, and inasmuch as the legislation proposed under the amendment offered by the gentleman from Iowa does introduce new legislation, notwithstanding the fact that it may be germane, the Chair, under all the rules and under all the rulings that he has been able to find, is bound to hold the point of order well taken.

1431. A paragraph in an appropriation bill embodying legislation to which no point of order has been directed is subject to germane amendment, but an amendment providing further legislation is not in order.

On January 6, 1923,³ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A paragraph was read appropriating for miscellaneous and contingent expenses of the metropolitan police, and including the following proviso:

Provided, That the War Department may, in its discretion, furnish the commissioners, for use of the police, upon requisition, such worn mounted equipment as may be required.

The proviso being unobjected to, Mr. Thomas L. Blanton, of Texas, offered this amendment:

Provided, That all members of the police force shall be furnished with their uniforms and all required equipment.

¹ Second session Sixty-sixth Congress, Record, p. 4933.

² Martin B. Madden, of Illinois, Chairman.

³ Fourth session Sixty-seventh Congress, Record, p. 1384.

Mr. Louis C. Cramton, of Michigan, made the point of order that the proviso to which the amendment was offered as not subject to a point of order and therefore did not admit an amendment carrying legislation, and that the amendment proposed was not germane.

The Chairman ¹ decided:

The Chair feels that when the amendment was originally offered there was no question of its being subject to the point of order because of the wording which the Chair pointed out to the gentleman from Texas, a provision, by the way, with which the Chair sympathizes. Now the amendment is nearer the line, but the Chair still feels that it is open to objection; first, because it is repugnant to the rule to endeavor to amend one specific subject by another specific subject; second, because, as the subject matter sought to be amended deals with equipment supplied by the War Department and the amendment provides for equipment to be furnished free of expense, the amendment lacks the necessary relationship to make it germane.

A similar proposition was presented when it was sought to amend the war risk insurance act by a free-policy amendment. If the Chair recalls correctly the incident, Chairman Tilson ruled the amendment out of order. The Chair in this instance sustains the point of order.

1432. On February 22, 1917,² the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. To a paragraph of the bill relating to the number of officers of the General Staff to be detailed to service in the District of Columbia, and proposing legislation, Mr. Martin B. Madden, of Illinois, offered an amendment providing additional legislation.

Mr. Hubert S. Dent, Jr., of Alabama, having raised the question of order on the amendment, Mr. Madden said:

I submit, Mr. Chairman, that the item to which this is proposed as an amendment is itself subject to a point of order; and the rules of the House provide that where an amendment is offered to an item which is in itself subject to a point of order the item offered is in order, if germane. For, if the House admits the right of consideration of any paragraph or any portion of a paragraph that is not in order, it must be conceded that an amendment otherwise subject to a point of order would be in order to that paragraph. There can be no question about that. That is the universal practice. It has been the rule of the House. It has been held by every presiding officer of the House on all occasions. I submit, Mr. Chairman, that this rule, in face of the fact that the provision in the bill to which it is proposed as an amendment is itself subject to a point of order, makes this amendment in order. I contend, Mr. Chairman, that this is germane in the first instance; that it deals with the General Staff, and the provision to which it is proposed as an amendment is a provision which itself deals exclusively with the General Staff. To-day the General Staff consists of 55 men, only one-half of whom are permitted to serve in Washington, at headquarters. And the proposal of the committee is to change the law so as to permit the whole of the General Staff to serve at headquarters. And my proposition is to so amend the amendment of the committee as to make the General Staff not 55 but 92.

The Chairman ³ held:

The chief difficulty that the Chair has had in this matter has been the difficulty in arriving at the facts necessary for a decision. The gentleman from Illinois seeks to bring this amendment within the rule relative to perfecting by amendment a paragraph, originally not in order, but which has become in order by the failure to raise the question of order. The existing law which the paragraph in the bill proposes to suspend is as follows:

“Not more than one-half of all of the officers detailed in said corps shall at any time be stationed or assigned to or employed upon any duty in or near the District of Columbia.”

¹ Frederick C. Hicks, of New York, Chairman.

² Second session Sixty-fourth Congress, Record, p. 3942.

³ Edward W. Saunders, of Virginia, Chairman.

The language of the amending paragraph is intended to suspend the operation of the above-cited law, under certain prescribed conditions. Should the paragraph containing this language remain in the bill, the President in time of actual war, or in an emergency will have authority to call all of the detailed officers to Washington. An amendment germane to this particular proposition would be one providing, for instance, that some number of detailed officers, less than the total might be stationed or employed in or near the District of Columbia. Other germane amendments will naturally suggest themselves. But the amendment of the gentleman from Illinois is not limited to affecting or controlling the number of officers that may be assigned to duty in or near the District of Columbia. It proposes a comprehensive scheme of legislation in the guise of a perfecting amendment, and falls within the following principle:

“To a bill amending a general law on a specific point, an amendment relating to the terms of the law, rather than to those of the bill, was offered and ruled not to be germane. (5 Hinds’, sec. 5806.)”

It also falls within this principle:

“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 contains additional legislation. (Rules of House, sec. 824.)”

Assuredly the amendment of the gentleman from Illinois contains a large amount of additional legislation.

The Chair sustains the point of order.

1433. On December 13, 1917,¹ the Post Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph was read providing for censorship of foreign mails. It was conceded that the paragraph comprised legislation, but no point of order being made against it Mr. Halvor Steenerson, of Minnesota, offered the following amendment:

Provided, That all persons employed under this appropriation shall be appointed from the list of eligibles to be supplied by the Civil Service Commission in accordance with the civil-service law: *Provided further*, That the authority under this appropriation shall cease to be in effect when the existing state of war shall have passed, the date of which shall be ascertained and proclaimed by the President: *And provided further*, That it shall be the duty of the Postmaster General to submit to Congress at the beginning of its regular session in December of each year a detailed statement of all persons appointed, and the salary or compensation paid or allowed to each.

Mr. John A. Moon, of Tennessee, made the point of order that the amendment proposed new law.

The Chairman² ruled:

On page 18, line 21, provision is made for a censorship of foreign mails. That provision was subject to the point of order, but has already been accepted, no point of order having been made against it. The Chair thinks that any matter by way of amendment that is germane should be acceptable and not subject to the point of order, but the Chair thinks that the first proviso of the amendment is not germane and modifies the existing civil service law. Therefore this invades the rule as to germaneness, and the Chair sustains the point of order.

On an appeal by Mr. Steenerson, the decision of the Chair was sustained by a vote of 18 yeas, 14 noes.

1434. On December 13, 1928,³ the Committee of the Whole House on the state of the Union was considering the Interior Department appropriation bill. This paragraph was pending:

For expenses necessary to the purchase of goods and supplies for the Indian Service, including inspection, pay of necessary employees, and all other expenses connected therewith, including

¹ Second session Sixty-fifth Congress, Record, p. 269.

² Scott Ferris, of Oklahoma, Chairman.

³ Second session Seventieth Congress, Record, p. 534.

advertising, storage, and transportation of Indian goods and supplies, \$600,000: *Provided*, That no part of this appropriation shall be used in payment for any services except bill therefor is rendered within one year from the time the service is performed.

Mr. Thomas L. Blanton, of Texas, made the point of order that the paragraph proposed legislation, but before decision by the Chairman withdrew the point of order and offered the following amendment:

Provided, That hereafter no appropriation for this purpose shall be used in payment for any service except bill therefor is rendered within one year from the time the service is performed.

Mr. William F. Stevenson, of South Carolina, raised a question of order against the amendment.

The Chairman ¹ held:

The Chair is of the opinion that no matter whether the proviso in the bill originally was subject to a point of order or not, the amendment offered by the gentleman from Texas goes beyond the scope and purpose of the proviso in the bill itself. The proviso in the bill itself refers only to the appropriation contained in the bill, while the amendment offered by the gentleman from Texas will operate as a permanent limitation upon all appropriations of this character. It therefore goes beyond the purport of the bill. The Chair will merely refer to a well-known decision² by Chairman Frederick C. Hicks, of New York, on January 8, 1923. The Chair believes that decision is ample authority in the present situation, and the Chair sustains the point of order.

1435. An amendment perfecting a paragraph in an appropriation bill proposing legislation but unobjected to is not in order if not germane or if providing additional legislation.

On February 24, 1925,³ the second deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was read:

The appropriation of \$3,850,000, and the authority to incur obligations in addition thereto for \$3,000,000, for additional hospital and out-patient dispensary facilities for patients of the United States Veterans' Bureau, contained in the "second deficiency act, fiscal year 1924," are extended until June 30, 1926.

The paragraph being permitted to remain in the bill, Mr. Tom Connally, of Texas, offered the following amendment:

And in order to provide sufficient hospital and out-patient dispensary facilities to enable the United States Veterans' Bureau to care for its beneficiaries in Veterans' Bureau hospitals rather than in contract temporary facilities and other institutions, the Director of the United States Veterans' Bureau, subject to the approval of the President, is hereby authorized to provide additional hospital and out-patient dispensary facilities for persons entitled to hospitalization under the World War veterans' act, 1924, by purchase, replacement, and remodeling or extension of existing plants, and by construction on sites now owned by the Government or on sites to be acquired by purchase, condemnation, gift, or otherwise, such hospitals and out-patient dispensary facilities, to include the necessary buildings and auxiliary structures, mechanical equipment, approach work, roads and trackage facilities leading thereto; vehicles, livestock, furniture, equipment, and accessories, and also to provide accommodations for officers, nurses, and attending personnel; and also to provide proper and suitable recreational centers, and the Director of the United States Veterans' Bureau is authorized to accept gifts or donations for any of the purposes named herein.

¹ Carl R. Chindblom, of Illinois, Chairman.

² Sec. 8514 of this work.

³ Second session Sixty-eighth Congress, Record, p. 4588.

Mr. Martin B. Madden, of Illinois, presented a point of order against the amendment.

The Chairman¹ decided:

The Chair has examined the authority cited by the gentleman from Texas in Hinds' Precedents, volume 4, paragraph 3823, the substance of which is that a paragraph which proposes legislation on a general appropriation bill being permitted to remain, it may be perfected by a germane amendment. That, of course, is a familiar rule of procedure in the House and in the committee, but the Chair is of the opinion that the amendment offered by the gentleman from Texas does not relate to the same legislation that is covered in the bill pending before the committee. The gentleman from Texas offers a new authorization with new provisions for carrying out the purposes of the amendment, and in many ways it is broader and more complete than the authorization contained in the second deficiency act for the fiscal year 1924. In other words, the amendment offered by the gentleman from Texas does not amend, modify, or change the second deficiency act for the fiscal year 1924, but is an entirely new proposal.

The gentleman's amendment, which covers practically three pages, contains a large number of provisions which are not contained in the second deficiency act of 1924, besides making a new authorization. The Chair feels constrained to sustain the point of order.

1436. On April 8, 1910,² the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union and the Clerk had read a paragraph authorizing the construction of two battleships for the Navy.

Mr. William M. Calder, of New York, offered the following amendment.

At least one of such battleships shall be built and constructed under the direction of the Secretary of the Navy at one of the navy yards. The other of said battleships may also be constructed at one of the navy yards, in the discretion of the Secretary of the Navy, or by contract, as hereinafter provided.

Mr. George E. Foss, of Illinois, made the point of order that the amendment proposed legislation and was not germane.

The Chairman³ ruled:

On April 15, 1908, this item was in the naval appropriation bill:

"Increase of the Navy: That, for the purpose of further increasing the Naval Establishment of the United States, the President is hereby authorized to have constructed by contract or in navy yards, as hereinafter provided, two first-class battleships, to cost"—

And so forth.

To that amendment was offered, proposing to strike out the words "by contract or in navy yards, as hereinafter provided," and inserting a provision similar to the amendment now offered, and the Chair held that the amendment thus offered providing a method constructing the battleships was germane to the paragraph in the bill, which itself provided for a method of constructing the battleships.

The paragraph itself contained legislation, or at least contained a method for the construction, and any amendment germane to that was in order.

The paragraph now before the House provides

"That, for the purpose of further increasing the naval establishment of the United States the President is hereby authorized to have constructed two first-class battleships"—

without any provision legislating as to the manner of constructing the battleships. It seems to the Chair that the amendment offered—

¹ Carl R. Chindblom, of Illinois, Chairman.

² Second session Sixty-first Congress, Record, p. 4432.

³ James R. Mann, of Illinois, Chairman.

“That at least one of such battleships shall be constructed under the direction of the Secretary of the Navy at one of the navy yards, and that the other of such battleships may be also constructed at one of the navy yards, in the discretion of the Secretary, or by contract, as hereinafter provided”—comes under very different conditions from the amendment which was offered in 1908 to the paragraph then pending in the naval appropriation bill.

The Chair begs to call attention to a very clear distinction. In the paragraph of the bill of 1908 the method of building the vessels by contract or otherwise was in the paragraph itself, and the Chair held that an amendment to the paragraph was germane. That proposition is not contained in this paragraph. The gentleman informs the Chair that in a subsequent paragraph of the bill there is a matter relating to the same subject. If so, it may be that the gentleman's amendment will be in order when that subject matter is reached. But it has not yet been reached. The Chair sustains the point of order.

1437. A limitation on the discretion exercised under law by an executive is a change of law.

On March 9, 1916,¹ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The Clerk read the paragraph appropriating for the support of the Bureau of Foreign and Domestic Commerce, and Mr. Asbury F. Lever, of South Carolina, offered the following amendment:

And provided further, That out of this sum there may be expended \$25,000 for the collection and publication, from time to time, of statistics of production and consumption of, and demand for, cotton and cotton goods in foreign countries.

In response to a point of order on the amendment presented by Mr. Joseph W. Byrns, of Tennessee, Mr. Lever quoted the language of the act creating the Department of Commerce.

Mr. James R. Mann, of Illinois, said:

I drew that language. Does the gentleman think that general language of that kind authorizes an appropriation for a specific purpose? That would require the Chair, then, to determine whether, in his opinion, the investigation proposed would foster, promote, or develop industries. That would be a matter of opinion. The gentleman will find, I think, in the same law, that it provides that the Department of Commerce shall gather and compile and publish information. Does the gentleman think that would authorize an appropriation for the gathering of specific information? It has never been held that way anywhere in any of the provisions creating the departments. Of course, I know we have gone the limit on the Department of Agriculture, but there is quite an easy differentiation between the two. We might say in an act that the Government shall do useful things for the citizens of the United States; but that would not authorize a specific appropriation which, in the opinion of some gentlemen, would be a useful thing for the citizens of the United States. Those terms have never in my experience been considered as authority for specific appropriations for specific acts. Otherwise no one would ever dare use general terms.

The Chairman² ruled:

The Chair is of opinion that the paragraph providing for the taking of these various statistics, being in the legislative, executive, and judicial appropriation bill is out of order. Being out of order the question arises whether, having been allowed to remain in the bill, it can be amended by inserting new matter. As the Chair has several times today ruled, under the practice of the House under these conditions the provision of the bill could be further amended

¹First session Sixty-fourth Congress, Record, p. 3872.

²Charles R. Crisp, of Georgia, Chairman.

by germane amendments. The Chair, therefore, must consider whether the amendment is germane to the section of the bill and whether it is obnoxious to the point of order that it is legislation on an appropriation bill. The provision of the bill appropriates \$125,000, to be expended under the direction of the Secretary of Commerce, for the purpose named in the bill. The amendment in question seeks to limit and control and interfere with executive discretion by providing that \$25,000 of the amount shall be used for the specific purpose denominated in the amendment. The Chair thinks it interferes with that legislative discretion vested by law in the Secretary of Commerce, and to that extent changes existing law; and the Chair, while in thorough sympathy with the amendment, feels constrained to sustain the point of order.

1438. A provision limiting discretion vested in an executive officer is legislation and is not in order on an appropriation bill.

On January 23, 1933,¹ the Committee of the Whole House on the state of the Union had under consideration the War Department appropriation bill.

Mr. Henry E. Barbour, of California, offered an amendment containing this provision:

CITIZENS' MILITARY TRAINING CAMPS

That in the selection of trainees to attend such camps preference shall be given to persons who are unemployed or the heads of whose families are unemployed and who are otherwise qualified.

Mr. Ross A. Collins, of Mississippi, made the point of order that the amendment restricted executive discretion in that it limited the authority conferred on reserve officers by section 47 of the national defense act, reading as follows:

The Secretary of War is hereby authorized to maintain upon military reservations or elsewhere schools or camps for the military instructions and training with a view to their appointment as reserve officers or noncommissioned officers or such warrant officers, enlisted men, and civilians as may be selected upon their own application.

The Chairman² sustained the point of order and said:

It is very clear to the Chair that the amendment is legislation. It changes existing law in that it deprives the Secretary of War of the discretion that he now has with respect to these applications. For this reason the Chair sustains the point of order.

1439. The law authorizing the Secretary of Agriculture to sell seed for cash, a proposition authorizing him to sell for credit was held to be legislation.

On February 18, 1918,³ the urgent deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union when the Clerk read:

For additional for procuring, storing, and furnishing seeds as authorized by section 3 of the act entitled "An act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products," approved August 10, 1917, including not to exceed \$5,000 for rent and personal services in the District of Columbia, \$4,000,000, which may be used as a revolving fund until June 30, 1918.

Mr. Patrick D. Norton, of North Dakota, proposed this amendment:

Provided, That the Secretary of Agriculture may sell the said seed to farmers on security approved by the Secretary and under rules and regulations prescribed by him.

¹ Second session Seventy-second Congress, Record, p. 2317.

² John W. McCormick, of Massachusetts, Chairman.

³ Second session Sixty-fifth Congress, Record, p. 2278.

Mr. Swagar Sherley, of Kentucky, made a point of order on the amendment and said:

Mr. Chairman, I insist on the point of order. Section 3 of this law provides:

“That whenever the Secretary of Agriculture shall find that there is or may be a special need in any restricted area for seeds suitable for the production of food or feed crops, he is authorized to purchase or contract with persons to grow such seeds, to store them, and to furnish them to farmers for cash, at cost, including the expense of packing and transportation.”

The Chairman¹ decided:

The paragraph in the bill is in aid of section 3, the food survey law. That provides that the Secretary shall sell for cash. The amendment provides that the Secretary shall have authority to sell it for credit. That is an enlargement of the power of the Secretary; it is legislation on an appropriation bill and is out of order. The Chair sustains the point of order.

1440. A proposition to authorize the construction of vessels for the Navy was held to involve legislation.

On February 10, 1919,² the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph authorizing the construction of new vessels was read.

Mr. James R. Mann, of Illinois, made the point of order that the paragraph proposed legislation.

The Chairman³ cited former decisions⁴ on similar questions, and said:

The gentleman from Illinois makes the point of order upon the paragraph which reads:

“For the purpose of further increasing the Naval Establishment of the United States the President of the United States is hereby authorized to undertake prior to July 1, 1922, the construction of the vessels enumerated below.”

The point of order, as the Chair understands, is generally that that constitutes legislation upon an appropriation bill, which is not in order under the general rules of the House. Of course, all gentlemen are familiar in a general way with what has been the procedure upon naval appropriation bills with reference to the increases provided. The Chair stated in the beginning of the discussions that his recollection was that the first ruling was one made by Mr. Chairman James B. McCreary, of Kentucky, and, in so far as time has permitted for a hasty examination, the Chair was correct in his recollection.

There is a reason for the rule which prevents legislation upon appropriation bills, else that rule would not have been continued through all these long years. The reason is obvious. By attaching legislation to appropriation bills necessary and vital to the existence of the Government—I mean appropriations necessary and vital to the existence of the Government—gentlemen may be compelled to vote against their deliberate judgement. That is to say, they may be compelled to vote for legislation to which they are opposed or else let the Government starve. Therefore, the present occupant of the chair feels that from the parliamentary standpoint it would be unwise to broaden the rule beyond the point to which it has already been broadened. In the case which was ruled upon by Mr. Chairman McCreary the authorization and appropriation went hand in hand. That which was proposed in the amendment offered by Mr. Sayers was a proposition to make the ships provided for in that amendment an immediate and tangible part of the Naval Establishment, being appropriated for in that particular bill, and hence it was held to be a continuing public work.

¹John N. Garner, of Texas, Chairman.

²Third session, Sixty-fifth Congress, Record, p. 3096.

³Finis J. Garrett, of Tennessee, Chairman.

⁴Hinds Precedents, sections 3723, 3724.

The proposition involved in this bill, to which the gentleman from Illinois has made his point of order, is to authorize a program for the future, not connected with any immediate program and not making any appropriations therefor. It seems to the Chair that that is making an extension of the rule that ought not to be made, and the Chair therefore sustains the point of order.

1441. An authorization which under its terms may be ignored by the executive upon whom conferred does not interfere with official discretion and is not legislation, but a proposition to substitute “shall” for “may” in a statute conferring executive discretion is a change of law and is not in order on an appropriation bill.

On February 11, 1920,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Thomas L. Rubey, of Missouri, offered this amendment:

Provided, That \$25,000 may be used by the Secretary of Agriculture for the purpose of ascertaining the appraised value of pasturage upon the national forests, which appraised value when determined may, in the discretion of the Secretary of Agriculture, be made the basis of the charge for grazing permits upon such forests.

Mr. Carl Hayden, of Arizona, made the point of order that the amendment proposed to limit the discretion vested in the Secretary of Agriculture and amounted to a change of law.

The Chairman² ruled:

The gentleman from Missouri offers an amendment to the pending paragraph by adding after the \$105,000 appropriated for that item a proviso that \$25,000 may be used by the Secretary of Agriculture “for the purpose of ascertaining the appraised value of pasturage on the national forest, which appraised value when determined may, in the discretion of the Secretary of Agriculture, be made the basis of charge for grazing permits on such forests.”

The gentleman from Arizona makes the point of order that this is legislation and a change of existing law. The Chair thinks upon examination of this amendment that the sum set apart is not required to be used by the Secretary of Agriculture for the purpose suggested; and, furthermore, that if the Secretary of Agriculture does use the sum which is made available for that purpose that he is not bound to use the appraised value which is ascertained as the basis of a charge for grazing permits on forests. It seems to the Chair that this amendment is so phrased as not to change or modify the discretion resting in the Secretary of Agriculture by existing law, but simply permits the Secretary, if he so finds, to expend this money, and then within the discretion already given him by the law to make use of it in the manner which the amendment suggests. The paragraph reads—

“For estimating and appraising timber and other resources on the national forests preliminary to disposal by sale or to the issuance of grazing permits.”

The Chair thinks that this is one of the resources to which occupancy permits apply, and while the Chair has in mind the various rulings that he made upon this subject when the various items were under consideration yesterday, the Chair can not say that this in any way hampers the discretion which the Secretary of Agriculture has made under existing law, because under the language in which this amendment is phrased it may be ignored by the Secretary of Agriculture entirely; it is a permissive discretion. The Chair thinks the Secretary is authorized now to exercise discretion that is being sought in this amendment, and is within the existing discretion vested in that official. The Chair overrules the point of order.

¹ Second session Sixty-sixth Congress, Record, p. 2774.

² Joseph Walsh, of Massachusetts, Chairman.

Whereupon Mr. Sydney Anderson, of Minnesota, proposed the following amendment to the amendment by Mr. Rubey:

After the figures "\$25,000," in the first line of the amendment, strike out "may" and insert "shall," and in the next to the last line, strike out the words "may in the discretion of the Secretary of Agriculture" and insert in lieu thereof the word "shall."

Mr. Hayden presented a point of order as follows:

Mr. Chairman, I made the point of order that this is clearly interfering with the discretion of the Secretary of Agriculture by changing the word "may" to the word "shall," Certainly it can not under the guise of an amendment to an amendment be held in order to now proceed to change existing law.

The Chairman¹ sustained the point of order.

1442. A proposition to establish affirmative directions for an executive officer constitutes legislation, and is not in order on a general appropriation bill.

Requirement that an executive make allotments from a lump sum appropriation, and a requirement that he report such allotments, were alike construed as limitations upon official discretion, and held to involve changes of law.

On January 31, 1921,² the river and harbor appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

For the preservation and maintenance of existing river and harbor works, and for the prosecution of such projects heretofore authorized as may be most desirable in the interests of commerce and navigation, \$15,000,000: *Provided*, That allotments from this sum shall be made by the Secretary of War upon the recommendations of the Chief of Engineers: *Provided further* That at the beginning of the second session of the Sixty-seventh Congress a special report shall be made to Congress by the Secretary of War showing the amount allotted under this appropriation for each work of improvement or maintenance.

Mr. Thomas L. Blanton, of Texas, raised the question of order that each of the provisos affected changes of law and was out of order on an appropriation bill.

The Chairman³ ruled:

The gentleman from Texas makes the point of order against both of the provisos carried in paragraph 1 of the bill that these provisos contain new legislation, which is not proper within the rule on a general appropriation bill. The first proviso is in form a limitation, but there is a rule that limitations must not interfere with the executive discretion, and this limitation, which provides that allotments from this sum be made by the Secretary of War upon the recommendation of the Chief of Engineers, seems to the Chair to be a clear interference with the discretion of the Secretary of War in that it compels him to obtain the recommendation of one of his officers.

The second proviso is to the effect that the Secretary of War shall submit to Congress a special report covering these matters. There is no provision of law which has been called to the Chair's attention or which the Chair can find which authorizes the making of these special reports. It seems to the Chair, therefore, that this is clearly new legislation carried on a general appropriation bill, and the Chair sustains the point of order as to the two provisos.

¹ Joseph Walsh, of Massachusetts, Chairman.

² Third session Sixty-sixth Congress, Record, p. 2348.

³ James W. Husted, of New York, Chairman.

1443. Provisions including affirmative directions and imposing new duties are in the nature of legislation and are not in order on a general appropriation bill.

A provision that money appropriated for prohibition enforcement be expended in the several States in proportion to population was held to constitute legislation.

On December 10, 1926,¹ during consideration of the Treasury and Post Office Departments appropriation bill, in the Committee of the Whole House on the state of the Union, Mr. Fiorello H. LaGuardia, of New York, offered the following amendment:

Provided further, That the money herein appropriated for the enforcement of prohibition shall be expended in the several States in equal pro rata amounts based on the population of the respective States.

Mr. Martin B. Madden, of Illinois, raised a question of order. The Chairman² held:

The rule specifically provides that a limiting amendment must not give affirmative directions and must not impose new duties on the executive whose duty it is to carry out the law. The amendment offered by the gentleman from New York provides for both, and is subject to the point of order. The point of order is sustained.

1444. On December 7, 1928,³ the Committee of the Whole House on the state of the Union was considering the Treasury and Post Office appropriation bill.

The Clerk read a paragraph making appropriation for the support of the Bureau of Prohibition, including the following proviso:

Provided further, That moneys expended from this appropriation for the purchase of narcotics and subsequently recovered shall be deposited in the Treasury to the credit of the appropriation for enforcement of narcotic and national prohibition acts current at the time of the deposit.

Mr. Fiorello H. LaGuardia, of New York, having submitted a point of order against the proviso, the Chairman ruled it out of order.

Thereupon, Mr. LaGuardia offered this amendment:

Provided, That the money herein appropriated for the enforcement of the provisions of the national prohibition act shall be proportionately expended in each of the several States of the Union, such proportion to be fixed by the Secretary of the Treasury, based on the population and area of the several States.

Mr. William R. Wood, of Indiana, raised a question of order.

The Chairman⁴ held:

The amendment offered by the gentleman from New York states that the money used under the enforcement provision shall be expended in each of the several States of the Union, such proportion to be fixed by the Secretary of the Treasury based on the population and area of the several States. This amendment definitely takes away from the Secretary of the Treasury all discretion in enforcing the prohibition act and gives him definite instructions as to what he shall do and such instructions or duties that have not heretofore been authorized by law. There is no doubt that this is new legislation on an appropriation bill, and the point of order is sustained.

¹ Second session Sixty-ninth Congress, Record, p. 26.

² Bertrand H. Snell, of New York, Chairman.

³ Second session Seventieth Congress, Record, p. 248.

⁴ Bertrand H. Snell, of New York, Chairman.

1445. An amendment descriptive of the object for which an appropriation is made is not legislation.

The fact that an item has been carried in appropriation bills for many years does not exempt it from a point of order.

On April 16, 1908,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

Armor and armament: Toward the armor and armament of domestic manufacture for vessels authorized, \$7,000,000.

Mr. Gilbert M. Hitchcock, of Nebraska, raised a question of order against the words "domestic manufacture."

The Chairman² ruled:

In the opinion of the present occupant of the chair the fact that the item has been in for 20 years, more or less, in the annual appropriation bill providing for the purchase of armor and armament of domestic manufacture, does not affect the item in this bill. And the Chair has some doubt and is inclined to the opinion that the fact that there may be contracts outstanding providing for the purchase of domestic manufacture does not require Congress to make an appropriation for that purpose. But in the rulings, which have been uniform for years, items of appropriations for new vessels in the Navy have been sustained as works or objects in progress. It is within the discretion of Congress to provide, as a part of that work in progress, for the purchase of armament and armor. The present occupant of the chair thinks it would be in order to say red armor or green armament, so long as it is purely descriptive of the article to be purchased and not a change of law, simply describing the article which is to be provided; and Congress having the power to provide for the purchase of armor can provide by describing the kind of armor which shall be purchased. The Chair therefore overrules the point of order.

1446. A limit of cost on a public work may not be made or changed on an appropriation bill.

On April 5, 1910,³ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Navy yard, New York, N.Y.: Dry Dock No. 4 (limit of cost is hereby increased to \$2,500,000), to continue \$500,000; improvement of water front, \$215,000; to complete cement shed, \$1,000; in all, navy yard, New York, N.Y., \$716,000.

Mr. William H. Stafford, of Wisconsin, made the point of order that the paragraph changed existing law.

The Chairman⁴ ruled:

The gentleman from Wisconsin makes the point of order on the portion of the paragraph which reads as follows:

"The limit of cost is hereby increased to \$2,500,000."

In the naval appropriation act of two years ago the limit of cost for this dry dock was fixed at \$1,500,000, and this is clearly a legislative change, and therefore is subject to a point of order, and the Chair sustains the point of order on the language inclosed in the parentheses.

¹ First session Sixtieth Congress, Record, p. 4830.

² James R. Mann, of Illinois, Chairman.

³ Second session Sixty-first Congress, Record, p. 4301.

⁴ James R. Mann, of Illinois, Chairman.

1477. On February 22, 1911,¹ the diplomatic and consular appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Henry D. Flood, of Virginia, proposed an amendment as follows:

That the Secretary of State is hereby authorized and directed to secure, by purchase or otherwise, a suitable building for an embassy building in the City of Mexico, and \$100,000 or so much thereof as may be necessary, is appropriated for that purpose.

Mr. William H. Stafford, of Wisconsin, having raised a question of order on the amendment, Mr. James R. Mann, of Illinois, said:

Mr. Chairman, I am inclined to think that it would be better not to have the point of order ruled upon. The act that passed the other day, and which is now a law, and a copy of which I hold in my hand, provides that the Secretary of State is authorized to acquire diplomatic and consular establishments for the United States, and so forth, suitable buildings and lands, and that not more than \$500,000 shall be expended in this fiscal year under the authorization herein made, and then contains this proviso:

“Provided further, That in submitting estimates of appropriations to the Secretary of the Treasury for transmission to the House of Representatives the Secretary of State shall set forth the limit of cost for the acquisition of sites and buildings and for the construction, alteration, and repair, and furnishing of buildings at each place in which the expenditure is proposed, which limit of cost shall not exceed the sum of \$150,000 at any one place, and which limit thereafter shall not be exceeded in any case except by new and express authorization of Congress.”

The purpose of that proviso was to secure Congress against improvident appropriations which would not be subject to points of order in the House, and the clear contemplation of the act was that the Secretary of State, in making his annual estimates or special estimates, would transmit to Congress a limit of cost as to each building or site to be acquired, and that is clearly expressed; so that if the Secretary of State had now transmitted an estimate with limit of cost \$100,000 for a site and embassy building at Mexico City, that limit of cost could not thereafter be exceeded. There is, however, no provision in the act which would cover the offering of an amendment in either House of Congress.

The act provides that no more than \$500,000 shall be expended in any one year, and that sum has not been reached in this appropriation bill, so that that limit of cost would not strike out the paragraph.

The Chairman² ruled:

The existing law, act of February 17, 1911, provides that the Secretary of State shall submit estimates of appropriations to the Secretary of the Treasury for transmission to the House of Representatives, and it establishes a limit of cost for those buildings contemplated by the act and provides a method of establishing that limit. In the light of existing law fixing a limitation of cost, and the method of procedure by the Secretary of State, the amendment presented by the gentleman from Virginia is clearly not in order. It is new legislation and therefore unauthorized by existing law. The Chair sustains the point of order.

1448. While a proposition to change a limit of cost is legislation, any provision of cost within that limit is not subject to that point of order.

While a proposition to create a commission is legislation, a provision involving appointment of a commission already authorized by law was held to be in order.

¹Third session Sixty-first Congress, Record, p. 3161.

²J. Hampton Moore, of Pennsylvania, Chairman.

On January 13, 1917,¹ the Post Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:

For the transmission of mail by pneumatic tubes or other similar devices, \$449,500.

Mr. Peter F. Tague, of Massachusetts, offered an amendment as follows:

After the word "devices," strike out "\$449,500" and insert in lieu thereof "\$1,061,000, for continuance of service now existing in New York, Philadelphia, Boston, Chicago, St. Louis, and Brooklyn."

Mr. John A. Moon, of Tennessee, made a point of order on the amendment and explained:

A chapter of the Postal Laws and Regulations, section 1374 and following, contains the law on the subject of pneumatic tubes. It must be confessed that this is a question arising about this statute that has not heretofore arisen, so far as my knowledge goes, nor has it been submitted to the decision of the Chair. Here is a simple item in a bill authorized by law providing for pneumatic tubes and other devices. The appropriation is limited in the act to a specific sum of money. This act is a part of the chapter, sections 1374, 1375, and 1376, of the Postal Laws and Regulations. It is a rule of law that all of the laws on a given subject must be construed together, or that part of all laws that have remained intact, notwithstanding amendments that did not by direct affirmative action or by implication repeal the existing law. It was lawful under this act for this House to appropriate under these provisions \$1,200,000 for pneumatic tubes. It was unlawful under this act, and is unlawful under this act, for any contract to be made for the pneumatic-tube service or any sum of money appropriated for that purpose until the conditions of the act shall have been complied with. What are the conditions of the act? That the contract for this service shall be subject to the provisions of the Postal Laws and Regulations.

The Chairman² ruled:

The amendment offered by the gentleman from Massachusetts proposes an increase in the amount appropriated in the bill for pneumatic-tube service to \$1,061,000, and provides that it shall be used for the pneumatic-tube service in the cities of New York, Philadelphia, Boston, Chicago, St. Louis, and Brooklyn. Under the law this pneumatic-tube service is authorized in those particular cities, and the law provides in letting contracts for the pneumatic-tube service in those particular cities the Postmaster General shall observe the law relating to letting of mail contracts except, before a contract shall be entered into for pneumatic-tube service within those name cities, he shall first appoint a commission and that commission shall report recommending that the service be used.

In the opinion of the Chair the amendment does not enlarge the number of cities authorized by law to have pneumatic-tube service. The amendment increases the amount appropriated for this service, but the amount proposed comes within the amount limited by statute. In the opinion of the Chair, if this amendment should prevail, the Postmaster General is not required to use it; but the Postmaster General would have the right, if he saw fit, to appoint another commission, and if that commission recommended the use of the service he would have funds at his disposal to continue the service as provided by law. Therefore the Chair overrules the point of order.

1449. Provision in an appropriation bill limiting cost of a public work, though expiring at the end of the fiscal year, is nevertheless current law, and a proposition to increase the limit so provided is legislation.

¹ Second session Sixty-fourth Congress, Record, p. 1340.

² Charles R. Crisp, of Georgia, Chairman.

On February 9, 1921,¹ the urgent deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The following paragraph was read:

Maintenance, Bureau of Supplies and Accounts: The limitation specified in the naval appropriation act for the fiscal year 1921 on expenditures for pay of chemists and for clerical, inspection, and messenger service in the supply and accounting departments of the navy yards and naval stations and disbursing offices for the fiscal year 1921, under "Maintenance, Supplies and Accounts," is increased by \$750,000.

Mr. Thomas L. Blanton, of Texas, made the point of order that the paragraph changed a limit of cost and was legislation.

The Chair² held:

It is not contended that this item is authorized by statute law, but at best only by current law as carried in the appropriation bill of 1921. In that bill, in that provision which generally applies to the Bureau of Supplies and Accounts, there is a proviso which runs as follows:

Provided, That the sum to be paid out of this appropriation, under the direction of the Secretary of the Navy, for chemists and for clerical, inspection, and messenger service in the supply and accounting departments of the navy yards and naval stations and disbursing offices for the fiscal year ending June 30, 1921, shall not exceed \$3,500,000."

That is the proviso which this particular item undertakes to amend. It is clear to the Chair that if there is any law at all on the subject, it is current law, and that the intention of this paragraph is to change the existing law.

The Chair is familiar with the rulings holding that items carried in an appropriation bill create law at least for the year in which the appropriation is carried. It seems to the Chair that is an attempt to change the current law, or at least to extend the limitation provided in the current law. It seems to the Chair that if this item in the bill was in order it would be idle to put any limitation on an appropriation bill in current law. The Chair feels compelled to sustain the point of order.

1450. A statute authorizes changes in the limit of cost of public buildings in accordance with estimates submitted by the Bureau of the Budget.

On December 7, 1928,³ the Committee of the Whole House on the state of the Union was considering the Treasury and Post Office Departments appropriation bill, when the Clerk read:

Washington, D. C., Archives Building: Toward the construction of building and acquisition of site, and the Secretary of the Treasury is authorized to enter into contracts for the entire estimated cost of such building and site, including stacks, for not to exceed \$8,750,000, in lieu of \$6,900,000 fixed in act of July 3, 1926.

Mr. Eugene Black, of Texas, made a point of order against the change in the limit of cost of the building provided for in the paragraph.

Mr. William R. Wood, of Indiana, in debating the point of order, said:

Mr. Chairman, I will call the gentleman's attention to the Elliott bill, which gives us the very authority he is denying we have:

Provided further, That unless specifically provided for in the act making appropriations for public buildings, which provision is hereby authorized, no contract for the construction, enlarging, remodeling, or extension of any building or for the purchase of land authorized by this act shall be entered into until moneys in the Treasury shall be made available for the payment of all

¹Nicholas Longworth, of Ohio, Chairman.

²Third session Sixty-sixth Congress, Record, p. 2885.

³Second session Seventieth Congress, Record, p. 259.

obligations arising out of such contract, and unless the said act making appropriations for public buildings shall otherwise specifically provide, as hereinafter authorized, appropriations shall be made and expended by the Secretary of the Treasury in accordance with the estimates submitted by the Bureau of the Budget.”

The act to which the gentleman refers, the act of July 3, 1926,¹ is an appropriation act.

Under the Elliott bill, if the gentleman listened to what I was reading, we have a right to fix the limit of cost ourselves.

It was certainly the intention of Congress to give it. If the language means anything, it means that the appropriations Committee has that right.

The Chairman² inquired if the provision in the bill was within the limit submitted by the Bureau of the Budget, and being answered in the affirmative, said:

From a direct reading of that law it is the Chair's opinion that the Committee on Appropriations is within its rights, and he overrules the point of order.

1451. On May 24, 1921,³ the deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Maintenance, Bureau of Supplies and Accounts: The limitation specified under this head in the naval appropriation act for the fiscal year 1921 on expenditures for pay of chemists and for clerical, inspection, and messenger service in the supply and accounting department of the navy yards and naval stations and disbursing offices for the fiscal year 1921 is further increased by \$400,000.

Mr. Thomas L. Blanton, of Texas, made a point of order on the paragraph. The Chairman⁴ said:

This raises an interesting and important question for the House, because of the enlarged jurisdiction of the Committee on Appropriations. Prior to the consolidation of the appropriating power of all the committees of the House in the Committee on Appropriations, that committee had exclusive jurisdiction only over certain appropriation bills. Since the appropriating power of the whole House for all of the appropriations of the Government has been given to the Committee on Appropriations, another question arises. The Chair expressed some reluctance on yesterday when the question was immediately before him to reverse a long line of decisions, and resisted the very persuasive arguments made in support of the proposition that the Committee on Appropriations now having exclusive jurisdiction of all appropriations should be enabled to bring in any item in a deficiency appropriation bill that that committee saw fit to bring in. The Chair now has no misgivings on that decision. The matter now before the Chair raises a different question from the one that was before the House on yesterday; but the identical question that is before the Chair at this time was before a Chairman of the Committee of the Whole on the 9th of last February. The identical question was then raised that is before the Chair now, and upon the identical subject. The Chairman at that time held that the item in the deficiency bill was a change of current law, in that it enlarged the limitation that was made in the regular appropriation bill for the maintenance of the Navy for the ensuing year by enlarging the limitation.

In view of the importance of the matter and in view of the fact that the Committee on Appropriations now has jurisdiction of all these matters, the Chair is disposed to let the House decide this question. The Chair sustains the point of order.

¹Sec. 344, title 40, supplement 1, U.S. Code.

²Bertrand H. Snell, of New York, Chairman.

³First session Sixty-seventh Congress, Record, p. 1692.

⁴Philip P. Campbell, of Kansas, Chairman.

1452. 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.

Authorization for a general appropriation is not to be construed as authorizing an appropriation for a specific purpose.

On February 24, 1909,¹ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Ambrose Channel, New York: For the purchase of buoys and equipment, \$40,000.

Mr. James R. Mann, of Illinois, having raised a point of order on the paragraph, Mr. James A. Tawney, of Minnesota, said:

The lump-sum appropriation for buoys is \$926,000. That is a general appropriation for buoys—new buoys, and the repair of old buoys—and all of the expense incident to the maintenance of this service. Now, we simply make a specific appropriation of \$40,000 for this particular channel, which precludes them from foraging upon this general appropriation for that purpose. I fail to see on what ground the point of order can be sustained.

The Chairman² said:

The Chair thinks that the item is subject to a point of order. The present occupant of the chair is not free from doubt at all, but it seems to be a peculiar case. The gentleman from Minnesota himself made points of order in the last Congress in cases on all fours with this case, in the consideration of the fortification appropriation bill. For instance, Mr. Maynard of Virginia proposed an amendment in this language in the fortification appropriation bill:

“To make all necessary surveys, borings, and other investigations necessary for and the preparation of an accurate detailed estimate of what it would cost to construct proposed artificial islands for fortifications between Capes Charles and Henry, Chesapeake Bay, and to ascertain whether the title to the site of said proposed artificial island can be obtained without expense to the United States, \$3,000.”

Mr. Smith of Iowa made the point of order, and the point was decided by Mr. Mann of Illinois, the then occupant of the chair. The Chair thinks it would be in order to quote the decision of the gentleman from Illinois, because it shows that the gentleman from Illinois was not free from doubt and expressed the opinion at the time that his decision might be somewhat arbitrary.

“The Chair does not understand that the act of Congress authorizing the appointment of the Endicott Board by law provided that that report should be adopted or that any act of Congress has been enacted since that time specifically adopting the report of the Endicott Board. On the other hand, Congress has provided in annual appropriation bills for the expenditure of money for fortification purposes, usually in general language naming appropriations for purposes general in their nature, to be expended by the War Department.

“In the opinion of the Chair, expressed with some doubt, under the practice of the House, at least, the items in the appropriation bill in general language are probably in order, although the Chair does not undertake to rule upon the question at this time; but the Chair thinks that the introduction of a new item for a work not in progress is not in order, and the Chair therefore sustains the point of order.”

It seems as though, under the decisions of this House or in Committee of the Whole in times gone by, general authorizations have been held in order; but specific items—Mr. Hinds says sometimes they have been held in order. The Chair believes probably that is a fair statement

¹Second session Sixtieth Congress, Record, p. 3057.

²James E. Watson, of Indiana, Chairman.

of the ruling; but after all, it seems that general appropriations have been held in order, but that specific appropriations for specific purposes, even though coming under the general authorization and following the same line, have been held not in order, and the present occupant of the chair really fails to draw the distinction; but following the precedent, he sustains the point of order.

1453. Specific provision for office and salary formerly provided under lump-sum appropriation is not subject to a point of order.

On April 6, 1912,¹ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For pay of one stenographer and typewriter, \$900 per annum, in addition to employees otherwise provided for at the Shawnee Agency.

Mr. Robert H. Fowler, of Illinois, made the point of order that the paragraph created a new office and fixed a salary not authorized by law.

Mr. John H. Stephens, of Texas, explained:

Mr. Chairman, this is the same kind of an item that the Chair ruled on three times yesterday. It has been recently ruled on by other Chairmen. This item provides for the pay of one stenographer and typewriter, \$900 per annum, in addition to employees otherwise provided for at the Shawnee Agency. This item is now segregated instead of being included in the lump sum. It creates no new office and no new conditions concerning it, except to transfer it from one part of the bill to another. This is contained in the act of June 7, 1897, a reenactment of the act of 1875, and provides:

“That hereafter not more than \$10,000 shall be paid in any one year for salaries or compensation of employees regularly employed at any one agency for its conduct and management, and the number and kind of employees at each agency shall be prescribed by the Secretary of the Interior.”

Now, up to the limitation of not exceeding \$10,000 the Secretary of the Interior has the authority to employ these people. They are now employed, and now we are simply providing for them specifically out of the lump sum.

The Chairman² held:

The gentleman from Illinois in his elaborate and careful presentation has gone into a good many details not relative to the point of order, as the Chair sees it. For instance, he cites, I believe, in the first reference that a clerk in some previous ruling had had a salary increased by \$200. That was clearly new legislation and subject to a point of order. Later he gives numerous citations which pertain entirely to employees and departments within the District, and last he gives a citation on the increase of clerks and of salaries. The Chair has held, as he believes he has authority for so doing, that this appropriation for these clerks is already provided in this bill in a lump sum. The committee has not sought to usurp any legislative authority, because it is already authorized by law to do that very thing. The committee has seen fit to subdivide this lump appropriation into subsequent paragraphs and specify thereby what shall be done with the lump-sum appropriation. That, in the opinion of the Chair, is not new legislation, and the Chair therefore overrules the point of order.

1454. Overruling an interpretation formerly observed, it was held that a proposition to make payments for interest and sinking fund from the revenues of the District and the Federal Treasury jointly was a change of law and not in order on an appropriation bill.

¹Second session Sixty-second Congress, Record, p. 4379.

²Henry A. Barnhart, of Indiana, Chairman.

On February 4, 1913,¹ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Albert S. Burluson, of Texas, appealed from a decision rendered by the Chairman on a question of order.

Pending the putting of the question, the Chairman,² by unanimous consent made the following statement:

The gentleman from Texas asks unanimous consent that the Chair make a statement of the situation in order that the Members now present may be apprised of what has been done. Is there objection? [After a pause.] The Chair hears none. The Chair will comply with the order of the committee and accordingly submits the following statement:

While the committee was engaged in consideration of the bill H. R. 28499—the District of Columbia appropriation bill—in the course of the reading of the bill the following paragraph was reached in its order:

“INTEREST AND SINKING FUND.

“For interest and sinking fund on the funded debt, \$975,408.”

Against that paragraph the gentleman from Kentucky, Mr. Johnson, made a point of order, the point of order being that the paragraph was not authorized by existing law. Debate was had on the point of order, argument being made in favor of the point of order and against the point of order. The gentleman from Kentucky maintained that the District of Columbia was chargeable with the entire interest and sinking fund covered by this paragraph. The first paragraph of the pending bill provides as follows:

“That the half of the following sums named, respectively, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, and the other half out of the revenues of the District of Columbia, in full for the purposes following.”

The gentleman from Kentucky contended that in view of that paragraph the effect of the paragraph, which the Chair has already read, was to charge the District of Columbia with one-half of the interest and sinking fund and the Treasury of the United States with the other half. That contention was not combated by the gentleman in charge of the bill, but it was contended by gentlemen in charge of the bill that the District of Columbia was liable for only 50 per cent of the interest and, finally, of the principal of the bonds, and that the Federal Government, under the law, was liable for the other half; and that therefore the point of order of the gentleman from Kentucky was not well taken. It was stated and contended by the gentlemen opposing the point of order that every appropriation bill since the act of 1878 had provided, substantially as the present bill provides.

The gentleman from Virginia, Mr. Saunders, read the debate taking place as early as 1879 in which it was contended that the District was chargeable with half of the interest and sinking-fund moneys. On February 4, 1896, the question again arose on a point of order. The paragraph appeared in the District appropriation bill that year as it does now. Mr. De Armond, of Missouri, moved to amend by providing that the entire amount for interest and sinking fund be charged to the District of Columbia. Mr. Chairman Payne, of New York, was presiding; debate was had, and, without taxing the committee with too great details, the gentleman from New York, Mr. Payne, the then Chairman, decided that, in his opinion, under the law the Federal Government was chargeable primarily and liable for one-half of the interest and one-half of the sinking fund, and the amendment, therefore, of the gentleman from Missouri was overruled. Thereafter, on January 25, 1912, the paragraph then being as the paragraph now is, the gentleman from Kentucky raised a point of order upon the same grounds as presented here to-day, which grounds have already been stated to the committee. The gentleman from Tennessee, Mr. Garrett, was then presiding. Extended arguments were heard and a full decision rendered on that date by the gentleman from Tennessee.

¹Third session Sixty-second Congress, Record, p. 2571.

²S. A. Roddenbery, of Georgia, Chairman.

The gentleman from Tennessee in effect decided that the Government of the United States was authorized under the law to make an appropriation for the payment of the interest and sinking fund, and that he would not go into the question of the respective liability of the United States Government or the District, respectively, but that that remained for the administration of the appropriate department charged with carrying out the law. Accordingly, the point of order was again overruled. On today, when the same item—for interest and sinking fund—was reached, the gentleman from Kentucky renewed the same point of order. Debate was had. The act of 1874 was submitted to-day by gentlemen in the debate. The act of 1878 and the act of 1879, with reference to the proportional appropriations covering both the interest and the sinking fund, were also submitted during the debate. After debate was had, participated in by several gentlemen, the Chair rendered the following decision, sustaining the point of order. It is due the committee for the Chair to state that the decision is not written in full, but was rendered from abbreviated notes, and the Chair will undertake now to repeat, as nearly as he can, the decision as it was made, from the notes.

“In the opinion of the Chair the question presented is more of a legal question than a parliamentary one. In fact, it is essentially a legal question. Once the legal aspect of the matter is determined, the parliamentary conclusion follows and is simple. The Chair has carefully considered the ruling of Mr. Chairman Payne, rendered February 4, 1896, as appears in full in Hinds' Precedents, section 3883, holding that the payment of this item was chargeable half and half to the United States and the District of Columbia. The Chair has also carefully examined the ruling of Mr. Chairman Garrett, holding that the Government of the United States was authorized to appropriate for the payment of the interest and sinking fund, and that it was the duty of the Treasury Department to see that the amount was credited according to law. The Chair has the greatest respect for the opinion of both of these distinguished Chairmen, and dislikes to rule contrary to their decisions; but the Chair, acting in a quasi judicial capacity, feels it is his duty to rule in accordance with his views of what the law is.

“The Chair is of the opinion that the acts of June 11, 1878, and March 3, 1879, authorized the United States to advance sufficient sums to pay the interest and sinking fund of the District of Columbia, but the entire amount is chargeable to the District of Columbia, and, therefore, no part to the United States. In the opinion of the Chair, all sums appropriated by the present bill are disbursed in accordance with the provisions of the bill and not in accordance with some other law, unless specifically so provided in the bill. The only bearing other acts have on the question under consideration is whether or not there is law authorizing the appropriation to be made. Construing the half-and-half provision on the first page and in the first section of this bill, in connection with the item to which the point of order is made, the Chair is forced to the legal conclusion that one-half of the amount under the bill as provided would be charged to the United States and one-half to the District of Columbia. The Chair is of the opinion that under the acts of 1878 and 1879 the entire amount is chargeable to the District of Columbia, and, therefore, is of the opinion that there is no law authorizing the provision incorporated in the bill. Therefore the Chair must sustain the point of order.”

The question is, Shall the decision of the Chair stand as the judgment of the committee?

The question being taken, it was decided in the affirmative, yeas 97, noes 33; so the decision of the Chair stood as the judgment of the committee.

1455. A change of the amount of compensation received by Government employees under the law was held to be legislation.

On March 10, 1916,¹ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Rollin B. Sanford, of New York, offered an amendment changing the salary of certain inspectors from \$1,600 to \$1,800.

¹First session, Sixty-fourth Congress, Record, p. 3923.

Mr. Byrns, of Tennessee, made a point of order that this proposed a change of law.

The Chairman ¹ held:

The gentleman from Tennessee makes the point of order on the amendment offered by the gentleman from New York. In the last legislative, executive, and judicial appropriation bill the salary of some of these inspectors included in the amendment was fixed at \$1,600. Section 6 of the current legislative act contains this provision:

“SEC. 6. That all laws or parts of laws to the extent they are inconsistent with rates of salaries or compensation appropriated by this act are repealed, and the rate of salaries or compensation of officers or employees herein appropriated shall constitute the rate of salary or compensation of such officers or employees, respectively, until otherwise fixed by annual rate of appropriation or other law.”

The amendment changes existing law which is now in the appropriation bill, and the Chair is constrained to sustain the point of order.

1456. A proposition to increase the number of employees fixed by law was held to be legislation.

On December 16, 1916,² the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph appropriating for salaries of the Bureau of Labor Statistics was reached, Mr. James P. Buchanan, of Texas, offered an amendment increasing the number of statistical experts in the bureau from four to eight.

Mr. Joseph W. Byrns, of Tennessee, made the point of order that the change was not authorized by law.

In debate, Mr. William H. Stafford, of Wisconsin, said:

Mr. Chairman, this increase differs from an increase of clerks or laborers or assistant messengers or charwomen. It is to increase the official force of the bureau. The four experts that are carried are made in order by a provision in the legislative bill of last year to this effect:

“The officers and employees of the United States whose salaries are herein provided for are established and continued from year to year to the extent they shall be appropriated for by Congress.”

If it had not been for that amendment to the legislative act of last year, these statistical experts would have been subject to a point of order, but all four were authorized by this very provision. Four experts have been authorized, and there is no warrant of law that will provide for an additional number of those officials. You might as well say that if we provided for one Secretary of Labor you could provide for two when there was only one authorized. There have been four experts authorized and not eight.

Mr. John J. Fitzgerald, of New York, added:

Mr. Chairman, the only authority for statistical experts in the Bureau of Labor Statistics is a provision in the current legislative act providing for four such places. There is no authority in the organic act of the Labor Department, nor is there any authority or provision in the Revised Statutes under which it is in order to increase the number of clerks in the classified service of the various departments. These employees are established to the number of four by reason of the provision contained in the current legislative bill, which establishes to the number and extent and character the places provided for in that act. Any increase in compensation, any increase in number, is contrary to the number established by law and not in order in the bill under the rules of the House.

¹ Charles R. Crisp, of Georgia, Chairman.

² Second session Sixty-fourth Congress, Record, p. 446.

The Chair will recall that for a number of years there was considerable difficulty encountered in the consideration of the legislative bill, because a good many positions had been from time to time provided on appropriation bills, and in many instances the compensation increased above that fixed in the statute creating the place.

That situation resulted on several occasions in the legislative bill being practically emasculated by points of order being interposed. It was to correct that condition that there was inserted two years ago for the first time a provision in the legislative bill which established at the compensation and to the number the positions carried in the legislative act. That was repeated in the current law, so that every position provided for in the current legislative act is established by law to the number provided and at the compensation provided. The only authority for statistical experts in the Bureau of Labor is in the current legislative act, and that establishes four statistical experts in the Bureau of Labor at a compensation of \$2,000 a year. There is no authority for additional ones. Any proposal to increase the number is subject to a point of order.

The Chairman ¹ decided:

The law provides for four statistical experts. The amendment proposing to increase it to eight changes existing law, and therefore the Chair sustains the point of order.

1457. An amendment authorizing the President to employ an emergency fund in payment for personal services in the District of Columbia was held to be a change of existing law.

On December 22, 1916,² the diplomatic and consular appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The Clerk read the paragraph appropriating \$200,000 to enable the President to meet unforeseen emergencies arising in the Diplomatic and Consular Service. The paragraph included the following proviso:

Provided, That in his discretion the President may employ part of this fund for payment for personal services in the District of Columbia or elsewhere, notwithstanding the provisions of any existing law.

Mr. Joseph W. Byrns, of Tennessee, made the point of order that the proviso proposed a change of existing law.

Mr. William P. Borland, of Missouri, said:

Mr. Chairman, the question has been passed on by the House. The legislative bill of the current year approved May 10, 1916, has a specific provision preventing this very thing. It is not a new question. It provides that none of the money appropriated by any other act shall be used during the fiscal year 1917 for the employment or payment of personal services in the Department of State in Washington, D.C.

In other words, Congress passed on this question at the last session and specifically refused to authorize the provision. It is clearly subject to a point of order.

The Chairman ³ sustained the point of order.

Thereupon Mr. Pat Harrison, of Mississippi, offered this amendment:

Provided, That in his discretion the President may employ any such part of this fund to an amount of not more than \$5,000 for payment for personal services in the District of Columbia or elsewhere notwithstanding the provision of any existing law.

A point of order on the amendment was raised by Mr. Borland.

After debate, the Chairman sustained the point of order.

¹ Charles R. Crisp, of Georgia, Chairman.

² Second session Sixty-fourth Congress, Record, p. 711.

³ John A. M. Adair, of Indiana, Chairman.

1458. A proposition increasing rate of compensation fixed by law is legislation.

On September 18, 1917,¹ the urgent deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. Adolph J. Sabath, of Illinois, offered an amendment as follows:

That to provide, during the fiscal year 1918, for increased compensation at the rate of 20 per cent per annum to employees who receive salaries at a rate per annum less than \$1,200, for increased compensation at the rate of 10 per cent per annum to employees who receive salaries at the rate of not more than \$1,800 per annum and not less than \$1,200 per annum, and for increased compensation at the rate of 5 per cent per annum to employees who receive salaries at a rate not more than \$2,400 per annum and not less than \$1,800 per annum, so much as may be necessary is appropriated.

Mr. John J. Fitzgerald, of New York, made the point of order that the amendment proposed a change of law.

Mr. Sabath explained:

Mr. Chairman, this is really an amendment to section 7 of the act of March 3, 1917. In that act we provided an increase of 5 to 10 per cent for Government employees, and I am trying to amend it by increasing it to 20, 10, and 5 per cent.

The Chairman² ruled:

Under the statement of the gentleman from Illinois he admits that he seeks to amend existing law by adding new legislation, giving an increase to those that are not now by law entitled to it. The conclusion can not be escaped that it is legislation, and changes existing law, which is not in order on an appropriation bill. The Chair therefore sustains the point of order.

1459. Creation of a commission to investigate advisability of continuing a service formerly authorized but discontinued on expiration of statutory authorization does not authorize appropriation for continuance of the service, and an amendment providing for such appropriation is legislation.

On December 13, 1917,³ the Post Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. J. Hampton Moore, of Pennsylvania, offered this amendment:

For the transmission of mail by pneumatic tubes, or similar devices, \$1,101,000.

Mr. John A. Moon, of Tennessee, submitted a point of order against the amendment, and said:

I make a point of order against the consideration of the amendment offered by the gentleman from Pennsylvania for the reason that there is in existence no general law upon which you can base an appropriation for pneumatic tubes. The law provided a period for its expiration, and that time has passed. It provided a method by which its existence might be affected and contracts made under it, and that method was the appointment of a commission by the Post Office Department to inquire into the advisability of the continuation of the contract; and if they advised it, then the power still remains, by virtue of the law, in the Postmaster General to make new contracts. But if it was not so advised, the contract period ended with the expiration of the law. To my mind it is a very simple proposition.

¹First session Sixty-fifth Congress, Record, p. 7261.

²Charles R. Crisp, of Georgia, Chairman.

³Second session Sixty-fifth Congress, Record, p. 265.

Now, that commission was appointed, as a matter of record. It reported adversely. The law expired. There is no power to continue the contract nor to make appropriation for it. But the Congress, in order to save the situation until the 30th of June, 1918, did not reenact the law, but it provided that the terms of the existing contract might be continued until June 30, 1918, and in the meantime the commission to which I referred was to examine into the question and report to Congress. Now, that commission has until the 1st of January to report. If it makes a report at that time there will be plenty of time for Congress to make its appropriation, if it desires. If it makes an adverse report, of course, the power is in Congress to pass a new law on the subject; but to-day there is no law that authorizes an appropriation. The law in existence on the question of pneumatic tubes is the law that created the commission to look into the advisability of the continuation of the pneumatic tubes and the provision that the Postmaster General shall hold them in use until June 30. That is all there is to this question.

After further debate, the Chairman¹ sustained the point of order.

1460. Transfer of employee from lump-sum to statutory roll is not legislation, but creation of new statutory position or increase in salary in making such transfer is subject to point of order.

On January 31, 1919,² the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph was reached providing salaries for the Bureau of Markets.

Mr. J. Hampton Moore, of Pennsylvania, made a point of order on the following provision in the amendment:

One administrative assistant, \$3,000.

The Chairman³ ruled:

The gentleman from Pennsylvania made a point of order against one item of the bill, to wit, "one administrative assistant, \$3,000," on the ground that it was an increase of salary. The gentleman from South Carolina, in charge of the bill, made a statement—which, of course, is accepted as true—that that was a transfer from the lump-sum roll, without any increase in pay to this particular individual, to the statutory roll. The gentleman from Wisconsin argued with considerable force and a great deal of evident sincerity that a transfer could not be made from a lump-sum to a statutory roll in the face of a point of order. It is a novel proposition to the Chair, because in the experience of the present occupant of the Chair he does not recollect that such a point of order was ever raised before.

It was a novel proposition to the Chair, because in all his experience here he has known this kind of transfers to be made repeatedly, but he does not recall that ever before was a point of order raised against it. The Chair has taken some time in looking the matter up. The vital point of the whole proposition is whether a transfer can be made from the lump-sum roll to the statutory roll without change of salary. In the act of March 4, 1913, Thirty-seventh Statutes at Large, page 739, section 7 provides—

"That no part of any money contained herein or hereafter appropriated in lump sums shall be available for personal services at a rate of compensation in excess of that paid for the same or similar services during the preceding fiscal year, nor shall any person employed at a specific salary be hereafter transferred and hereafter paid from a lump-sum appropriation at the rate of compensation greater than such specific salary, and the heads of the departments shall cause this provision to be enforced."

That is all that it is necessary to read. The Chair finds from that an authority to transfer from the so-called statutory salary roll an employee to the lump-sum roll, provided that the salary paid under the lump sum shall not be greater than that he was receiving under the statutory roll.

¹ Scott Ferris, of Oklahoma, Chairman.

² Third session Sixty-fifth Congress, Record, p. 2476.

³ Courtney W. Hamlin, of Missouri, Chairman.

There is existing law providing for the head of a department to employ, to promote, and to fix salaries of clerks to be paid out of a lump-sum appropriation. The Chair confesses very frankly that the question of a proper holding on this proposition is not free from doubt; but here is authority to transfer from a specified salary to a lump-sum roll, and the Chair is going to hold that there is an implied authority, to say the least, to transfer back from the lump-sum roll to the specified-salary roll, provided the salary is not increased, and that can be done even in the face of a point of order. The fact being taken as true as outlined, and no doubt it is, that this transfer was made from the lump-sum roll to what we know as the statutory roll at the same figure he was drawing under the lump sum, the Chair feels impelled to overrule the point of order.

The Chair would say that he is decidedly of the opinion that no new statutory position can be created by these transfers.

If a transfer from the statutory roll to the lump sum is made it can not be made at a salary greater than that received under the statutory roll, and if a transfer is made from the lump sum back—as the Chair understands the facts are in this case—to the statutory roll, it must be made at a salary not larger than he was receiving under the lump-sum appropriation. If this party was upon the statutory roll at \$2,500 and then transferred to the lump-sum roll, he would have to be transferred at a salary of not over \$2,500 under the lump sum. That is very plain. The Chair recognizes, and may as well say it, speaking as a Member of the House now, always being opposed to this lump-sum appropriation business, he realizes that great abuses may grow up under such practices. If a man is on the roll and transferred to the lump-sum appropriation, the salary can not be increased above that he was receiving in the first place, but if he was never in the service the law gives the Secretary of Agriculture authority to make appointments, promotions, and changes in salary to be paid out of the lump sum of the several bureaus, divisions, and so forth. He has authority to employ a man and fix the salary. Now, the Chair has held that he thinks he may transfer him back to the statutory roll, providing he does not increase the salary. It is up to the House to determine whether they would reduce that salary or not. The point of order is overruled.

1461. Provision that an appropriation be expended for such purposes as an executive may deem proper was held to constitute legislation, but a provision that it should be disbursed on the approval of the executive was held to be a limitation and in order on an appropriation bill.

On February 11, 1921,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The following paragraph was read by the Clerk:

Contingent, Navy: For all emergencies and extraordinary expenses, exclusive of personal services in the Navy Department or any of its subordinate bureaus or offices at Washington, D. C., arising at home or abroad, but impossible to be anticipated or classified, to be expended on the approval and authority of the Secretary of the Navy, and for such purposes as he may deem proper, \$50,000.

Mr. Fred A. Britten, of Illinois, made a point of order on the paragraph.

The Chairman sustained the point of order on the ground that the clause “and for such purposes as he may deem proper” was legislation.

Whereupon Mr. Patrick H. Kelley, of Michigan, offered as an amendment the same paragraph with the offending words stricken out.

Mr. Britten made the point of order that the provision that the appropriation should be expended on the approval of the Secretary of the Navy was legislation.

The Chairman² held that this provision was a limitation and overruled the point of order.

¹Third session Sixty-sixth Congress, Record, p. 3015.

²Joseph Walsh, of Massachusetts, Chairman.

1462. A paragraph establishing authorized strength of Marine Corps was held to involve legislation.

On February 6, 1919,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

The authorized enlisted strength of the Marine Corps is hereby increased to 26,297 men, distribution in the various grades to be in the same proportion as is now authorized by law.

Mr. Thomas S. Butler, of Pennsylvania, having made a point of order on the paragraph, Mr. Lemuel P. Padgett, of Tennessee, explained:

Under existing law the permanent authorized strength of the Marine Corps is 17,400. Under the temporary strength the Marine Corps is 75,500. This legislation proposes to increase the permanent strength from 17,400 to 26,297 and to increase until June 30, 1920, the temporary strength to 50,000 instead of 75,000, as it now is.

Mr. Butler said:

The act of 1908 reads:

“Provided, That hereafter the number of enlisted men in the United States Marine Corps shall be such as the Congress may from time to time authorize.”

If it had said, “The number of marines that Congress shall hereafter appropriate for,” there would be no doubt about it.

The Chairman² decided:

The Chair will state that probably on an important matter like this some reason ought to be given. The general rules of the House prevent legislation upon an appropriation bill or anything that changes existing law. Here is a proviso in this act of 1908 which would appear upon the surface to undertake to make law, and it does make some sort of law, but it does not seem to be intelligent law. The Chair thinks the safest course is that we rely upon the general rules of the House in view of the uncertainty of the meaning of the language that is involved in the act of 1908 and therefore the Chair sustains the point of order. The Clerk will read.

1463. A paragraph fixing temporarily the enlisted strength of the Marine Corps and making appropriation for its support was held not to involve legislation.

On March 23, 1920,³ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was read:

The authorized enlisted strength of the active list of the Marine Corps is hereby established at 27,400, distribution in the various grades to be made in the same proportion as provided under existing law.

Mr. William R. Wood, of Indiana, made a point of order on the paragraph.

The Chairman⁴ sustained the point of order and said:

The point of order was made upon this same item, or practically the same item, in the consideration of this bill a year ago, and the point of order was sustained. There is a provision in

¹Third session Sixty-sixth Congress, Record, p. 2854.

²Finis J. Garrett, of Tennessee, Chairman.

³Second session Sixty-sixth Congress, Record, p. 4758.

⁴James R. Mann, of Illinois, Chairman.

the statute of 1908 under the head of "Marine Corps" in the naval appropriation act which provided: "That hereafter the number of enlisted men in the United States Marine Corps shall be such as the Congress may from time to time authorize."

That expression in the statute of 1908 is a very common expression in many acts providing for bureaus, departments, and so forth. The present occupant of the chair construes the statute, and construes the decision of the Chair in the past, that it does authorize the Congress to appropriate for such force here also and specify the number if it so desires. The present provision in the bill, however, goes beyond that, and the present occupant of the chair thinks it would be construed by the executive officers as constituting permanent legislation, although it does not contain that common word "hereafter," which we frequently use for that purpose. In the current law it is provided:

"That the active list of the Marine Corps is temporarily increased to 27,400."

"Temporarily increased" is left out of the provision in the pending bill, which says:

"The active list of the Marine Corps is hereby established at 27,400."

Which very likely would be construed as permanent legislation. The Chair therefore sustains the point of order.

Thereupon Mr. Thomas S. Butler, of Pennsylvania, offered the following amendment:

The number of enlisted men in the Marine Corps appropriated for by this act is authorized at 27,400.

Mr. Wood having raised a question of order on the amendment, the Chairman overruled the point of order and said:

The Chair quoted before the language of the appropriation act of 1908:

"*Provided*, That hereafter the number of enlisted men in the United States Marine Corps shall be such as the Congress may from time to time authorize."

Of course, it is quite true the rules of the House can not be changed by an act of Congress in which the House has acquiesced. But this provision in the law was put there under construction of the rules by the House and with knowledge of the construction of the rules by the House. It does not seem to the present occupant of the chair that that provision was in the act of 1908 in order to authorize Congress to legislate upon the subject thereafter, because it does not require the permission of an act of Congress to permit Congress thereafter to legislate in the matter of a legislative act, and it is quite clear to the present occupant of the chair that the purpose of putting that provision in the law was to authorize the fixing of the Marine Corps strength in the appropriation and making the appropriation for its support; and that, without apparently Congress making or fixing the enlisted force in the appropriation act or in some other way, there would be no enlisted force provided for at all, because there is no provision now for an enlisted force and strength beyond the present fiscal year. And this law requires that the enlisted force and strength shall be fixed by Congress or shall be as fixed by Congress. The Chair thinks therefore it would have been perfectly clear for the committee to have included an item making an appropriation for such and such a force of enlisted men in the Marine Corps, in the same manner as Congress and the House under the rules of the House constantly increases the number of clerks for various services, letter carriers, and so forth, in the Post Office Department, and as the legislative bill, coming into the House, constantly carries an increase in the number of clerks in the various departments at fixed salaries; and it is quite within the power of the House under the rules of the House to insert an appropriation for so many enlisted men in the Marine Corps. The Chair thinks that is substantially what this amendment does, and the Chair therefore overrules the point of order.

1464. Provision for an authorized service must be made in the exact terminology of the authorizing statute and the change of a single term in descriptive terminology is subject to a point of order.

On January 22, 1921,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

Salaries, Bureau of Farm Management and Farm Economics: Chief of bureau, \$5,000; assistant to the chief, \$2,520; executive assistant, \$2,250; clerks—2 of class 4, 4 of class 3, 7 of class 2, 2 at \$1,320 each, 18 of class 1, 3 at \$1,100 each, 4 at \$1,080 each, 15 at \$1,000 each; clerks or draftsmen—1, \$1,440, 1, \$1,020; draftsman, \$1,200; library assistants—1, \$1,440; 1, \$900; photographer, \$1,400; cartographer, \$1,500; messenger or laborer, \$720; messenger boys—1, \$600; 3 at \$480 each; charwomen—1, \$480; 5 at \$240 each; in all, \$89,830.

Mr. Gilbert N. Haugen, of Iowa, raised a question of order against the word “bureau” wherever occurring in the paragraph on the ground that the word “office” and not “bureau” was the authorized term.

After debate, the Chairman² sustained the point of order:

Whereupon, on motion of Mr. Sydney Anderson, of Minnesota, by unanimous consent, the word “bureau” was stricken from the paragraph wherever occurring and the word “office” substituted.

1465. A proposition to print Government publications outside the Government Printing Office was held to be a change of law.

On January 22, 1921,³ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For the maintenance of a printing office in the city of Washington for the printing of weather maps, bulletins, circulars, forms, and other publications, including the pay of additional employee, when necessary, \$11,450: *Provided*, That no printing shall be done by the Weather Bureau that in the judgment of the Secretary of Agriculture, can be done at the Government Printing Office without impairing the service of said bureau.

Mr. Edgar R. Kiess, of Pennsylvania, submitted:

Mr. Chairman, I make the point of order against the paragraph. It repeals existing law. I read from page 1270, volume 40, Statutes at Large:

“That on and after July 1, 1919, all printing and binding, blank-book work, for Congress, the Executive Office, the judiciary, and every executive department, independent office, and establishment of the Government shall be done at the Government Printing Office, except such classes of work as shall be deemed by the Joint Committee on Printing to be urgent or necessary to have done elsewhere than in the District of Columbia, for the exclusive use of any field service outside of said District.”

The Chairman² decided:

It seems very clear to the Chair, in view of the act approved March 1, 1919, a portion of which was just read by the gentleman from Pennsylvania, that the Chair must sustain the point of order. The Chair, therefore, sustains the point of order and the Clerk will read.

1466. A proposition to make an appropriation payable from funds already appropriated was held not to be in order on an appropriation bill.

The payment from a fund already appropriated of a sum which otherwise would be charged against the Treasury was held not to be a retrenchment of expenditure.

¹Third session Sixty-fifth Congress, Record, p. 1895.

²Frederick C. Hicks, of New York, Chairman.

³Third session Sixty-fifth Congress, Record, p. 1901.

On January 26, 1921,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

For investigations of the chemical and physical character of road materials, for conducting laboratory and field experiments, and for studies and investigations in road design, independently or in cooperation with the State highway departments and other agencies, \$148,200, payable out of the administrative fund provided by the Federal aid road act of July 11, 1916, as amended.

Mr. Gilbert N. Haugen, of Iowa, made a point of order against this provision: payable out of the administrative fund provided by the Federal aid road act of July 11, 1916, as amended.

Mr. Sydney Anderson, of Minnesota, said:

Mr. Chairman, the Federal road act carries a provision making 3 per cent of the amount appropriated under that act available for purposes of administration. That sum is already appropriated. The purpose of this amendment is to make possible the payment for the necessary experimentation carried on in connection with that road construction, payable out of the general sum for administration.

Now, inasmuch as this proviso makes the amount which has already been appropriated under that act usable for another purpose than is provided in the act, I presume that the language—

“Payable out of the administrative fund provided by the Federal aid road act of July 11, 1916, as amended”—

is legislation. Therefore the only question that remains for the Chair to determine is whether this legislation comes within the exceptions to the rule prohibiting legislation upon appropriation bills. That rule reads as follows:

“Nor shall any provision in any such bill”—

Of course, I assume that that contemplates provisions reported by a committee in an appropriation bill—

“or amendments 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.”

This question has usually arisen in connection with amendments offered from the floor. So far as I have looked through the precedents, I have not discovered any case in which the question has arisen in exactly the same form as it has here. The bill of last year carried the sum of seventy-seven thousand and some odd dollars for this purpose. The provision itself carries \$148,000. The effect of the proviso is, of course, to make this money payable out of funds already appropriated, and, therefore, the proviso does effect a reduction in expenditures.

If it had been offered as an amendment to the original paragraph it would be clearly in order, because it does effect a reduction in the amount of money carried in the bill. The only question here is whether the committee can put in such a provision because it would retrench expenditures. If it was offered from the floor as an amendment it would clearly be in order. It seems to me that it ought to be in the power of the committee to put in any provision which would be in order as an amendment.

After debate the chairman² sustained the point of order.

1467. While allocation of funds for maintenance and operation of automobiles was held to be in order on an appropriation bill, an appropriation for their purchase was held subject to a point of order.

¹Third session Sixty-sixth Congress, Record, p. 2076.

²Frederick C. Hicks, of New York, Chairman.

On January 26, 1921,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:

Passenger-carrying vehicles: That not to exceed \$90,000 of the lump-sum appropriations herein made for the Department of Agriculture shall be available for the purchase, maintenance, repair, and operation of motor-propelled and horse-drawn passenger-carrying vehicles necessary in the conduct of the field work of the Department of Agriculture outside the District of Columbia: *Provided*, That not to exceed \$15,000 of this amount shall be expended for the purchase of such vehicles, and that such vehicles shall be used only for official service outside the District of Columbia, but this shall not prevent the continued use for official service of motor trucks in the District of Columbia: *Provided further*, That the Secretary of Agriculture shall, on the first day of each regular session of Congress, make a report to Congress showing the amount expended under the provisions of this paragraph during the preceding fiscal year.

Mr. Joseph Walsh, of Massachusetts, made the point of order that the paragraph proposed legislation.

The Chairman² said:

The Chair will quote a provision enacted in the Sixty-third Congress, as follows:

“No appropriation made in this or any other act shall be available for the purchase of any horse-drawn or passenger-carrying vehicle for the service of any executive department or any Government establishment or any branch of the Government service unless specific authority is given therefor.”

Whereupon Mr. Sydney Anderson, of Minnesota, offered the following amendment:

Passenger-carrying vehicles: That not to exceed \$60,000 of the lump-sum appropriations herein made for the Department of Agriculture shall be available for the maintenance, repair, and operation of motor-propelled and horse-drawn passenger-carrying vehicles necessary in the conduct of the field work of the Department of Agriculture outside the District of Columbia.

Mr. Thomas L. Blanton, of Texas, made the point of order that the amendment proposed legislation on an appropriation bill.

The Chairman ruled:

The Chair fails to see where this amendment appropriates any money. It provides for the purchase of no vehicles. It only provides for their repair, maintenance, and operation and the Chair fails to see where this amendment is in violation of the rule. The Chair therefore overrules the point of order.

1468. A proposition to transfer a sum previously appropriated from one subhead to another in the same enactment was held not to constitute legislation.

May 23, 1921,³ the deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The following paragraph was read:

Not to exceed \$20,000 of the amount appropriated for the fiscal year 1921 under the subhead “rations” is transferred and made available for expenditure during that fiscal year under the subhead “Contingent expenses.”

¹Third session Sixty-sixth Congress, Record, p. 2095.

²Frederick C. Hicks, of New York, Chairman.

³First session Sixty-seventh Congress, Record, p. 1656.

Mr. James F. Byrnes, of South Carolina, made the point of order that the paragraph amounted to legislation.

The Chairman¹ held:

The committee having authority to appropriate \$20,000 out of the Treasury of the United States for a deficiency in rations in this bill, would it not have authority to take that \$20,000 out of a fund that is available and carry it for that purpose? The Chair thinks the item of \$20,000 could be carried in this bill as a deficiency for the purpose for which the \$20,000 is carried in this item. The difference is that it is carried from one purpose to another in this deficiency bill, and the Chair is inclined to think that the Committee on Appropriations, having control over these funds, has authority in this deficiency bill to carry the amount from one item to another as is proposed in this item. The Chair, therefore, overrules the point of order.

1469. A proposition to regulate the public service by transferring funds and activities from one department to another is not in order in an appropriation bill.

On January 28, 1927,² the House had ordered to be engrossed and read a third time the State, Justice, Commerce, and Labor appropriation bill.

The bill having been read a third time and the question being on its passage, Mr. Marvin Jones, of Texas, moved that the bill be recommitted to the Committee on Appropriations, with instructions to report the same forthwith, with the following amendment:

Which funds shall be handled and the work done by the appropriate division or divisions of the Department of Agriculture.

Mr. Frederick R. Lehlbach, of New Jersey, having raised a question of order, the Speaker³ held:

Here is a bill making appropriations for the Department of Commerce, and to an item carrying an appropriation on a certain subject the gentleman from Texas offers a motion to recommit and amend by transferring the appropriation to an entirely different department. The chair doubts very much whether the amendment is germane, in the first place, but, whether it is germane or not, he is of the opinion that it is legislation and therefore sustains the point of order.

Mr. Jones submitted that the item itself, to which the amendment was proposed, was legislation.

The Speaker agreed—

That may be true, but the point of order was not made at that time. The question is on the passage of the bill.

1470. 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.

Provision for transfer to the Bureau of Mines of funds for scientific investigations from departments unable to handle such investigations was held not to constitute legislation.

On January 10, 1928,⁴ the Committee of the Whole House on the state of the Union had under consideration the Departments of State, Justice, Commerce, and Labor appropriation bill, when this paragraph was reached.

¹ Philip P. Campbell, of Kansas, Chairman.

² Second session Sixty-ninth Congress, Record, p. 2505.

³ Nicholas Longworth, of Ohio, Speaker.

⁴ First session Seventieth Congress, Record, p. 1278.

During the fiscal year 1929 the head of any department or independent establishment of the Government having funds available for scientific investigations and requiring cooperative work by the Bureau of Mines on scientific investigations within the scope of the functions of that bureau and which it is unable to perform within the limits of its appropriations may, with the approval of the Secretary of Commerce, transfer to the Bureau of Mines such sums as may be necessary to carry on such investigations. The Secretary of the Treasury shall transfer on the books of the Treasury Department any sums which may be authorized hereunder, and such amounts shall be placed to the credit of the Bureau of Mines for the performance of work for the department or establishment from which the transfer is made: *Provided*, That any sums transferred by any department or independent establishment of the Government to the Bureau of Mines for cooperative work in connection with this appropriation may be expended in the same manner as sums appropriated herein may be expended.

Mr. Thomas L. Blanton, of Texas, made the point of order that the provision constituted legislation on an appropriation bill.

The Chairman¹ ruled:

The Chair would inquire of the gentleman from Texas whether a department or an independent establishment of the Government having funds available for scientific work has not the right to expend it for that purpose?

If they pay it to the Bureau of Mines for the work, does it not come within the appropriation?

It is not turning money over to another department to use as it sees fit. If the Navy Department was to do a certain piece of work, it would be authorized to expend the money for that purpose and they could have it done anywhere else. If it hires another department to do the work it is a lawful expenditure of the money.

In addition to what the Chair has said, this refers to money appropriated to be expended by any department or independent establishment of the Government having funds available for scientific investigation, and this is expending the money for the purposes for which it was appropriated. The money is expended by getting the Bureau of Mines to do the work. In other words, it turns over the money appropriated to the Bureau of Mines for the purpose of doing the work for which the money was appropriated. It is not in any sense legislation, but a direction by Congress as to the manner in which the money appropriated by Congress for a certain purpose should be expended by the department. The Chair overrules the point of order.

1471. Transfer of money from one department to another in exchange for materials or services is authorized by law.

An appropriation for helium to be transferred to the Bureau of Mines supplying the gas was held to be in order in the naval appropriation bill.

On February 8, 1929,² during consideration of the naval appropriation bill, the Clerk read a paragraph providing for the Bureau of Aeronautics, including the following language:

not to exceed \$160,000 for the procurement of helium of which such amounts as may be required may be transferred in advance to the Bureau of Mines.

Mr. Tom D. McKeown, of Oklahoma, made the point of order that the provision was unauthorized by law.

In debating the point of order, Mr. Burton L. French, of Idaho, said:

I think the point of order is not sound for the reason that the Bureau of Mines has been authorized to construct a helium producing plant, and such plant is now completed or practically

¹Frederick R. Lehlbach, of New Jersey, Chairman.

²Second session Seventieth Congress, Record, p. 3095.

completed, at an expenditure of something like \$1,600,000 or \$1,700,000, including money that has been paid for leases.

The plant is in such shape that in a very short time, possibly 30 days, certainly not more than 90 or 120 days, it can be in operation. The general law provides for the transfer of money from one department to another. I now direct the attention of the Chairman to Forty-first Statutes at Large, page 613, chapter 194, wherein we find the following language:

“SEC. 7. That whenever any Government bureau or department procures, by purchase or manufacture, stores or materials of any kind, or performs any service for another bureau or department, the funds of the bureau or department for which the stores or materials are to be procured or the service performed may be placed subject to the requisitions of the bureau or department making the procurement or performing the service for direct expenditure: *Provided*, That funds so placed with the procuring bureau shall remain available for a period of two years for the purposes for which the allocation was made unless sooner expended.”

It seems that there is no question that authority exists for precisely what we have provided for in the bill.

After further debate, the Chairman¹ held the provision to be authorized by the statute cited, and overruled the point of order.

1472. An affirmative provision governing contracts to be made for transmission of mail by pneumatic tubes was held to be legislation.

A limit of cost on a public work may not be made or changed in an appropriation bill.

On December 30, 1922,² the Post Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when he Clerk read this paragraph:

For the transmission of mail by pneumatic tubes or other similar devices in the city of New York, including the Borough of Brooklyn of the city of New York, at an annual rate of expenditure not in excess of \$18,500 per mile of double line of tubes, including power, labor, and all other operating expenses, \$513,911.50: *Provided*, That the provisions not inconsistent herewith of the acts of April 21, 1902, and May 27, 1908, relating to the transmission of mail by pneumatic tubes or other similar devices, shall be applicable hereto.

Mr. Arthur B. Rouse, of Kentucky, made the point of order that this was legislation on an appropriation bill.

In discussing the point of order, Mr. Eugene Black, of Texas, said:

If the Chair will hear me, the proviso is clearly legislation upon an appropriation bill. There is no act now that governs the Postmaster General in the making of these contracts. The act of 1902 existed for only four years. The act of 1908 existed for 10 years. These acts went out of existence with the expiration of that period of time. This provision provides as an affirmative fact that these acts shall be reenacted and govern the provisions of contract made under the appropriation voted in the bill, except those provisions of the acts of 1902 and 1908 which conflict with the limitation of \$18,500 a mile now carried in this bill. That would in effect be repealing the existing law of 1902 and 1908, which, if it does exist, limits the contract price to \$17,000, and to repeal a law and increase the amount for service is new legislation. There can be no question about that. If the contention is correct, that the act of 1902 and the act of 1908 still govern, containing the limitation of \$17,000, then unquestionably the proviso in this bill is new legislation, because it repeals the former limitation of \$17,000 per mile and raises it to \$18,500. In either event it seems to me the point of order will have to be sustained, because it is new legislation.

¹ Robert Luce, of Massachusetts, Chairman.

² Fourth session Sixty-seventh Congress, Record, p. 1164.

The Chairman¹ held:

The Chair doubts whether it is necessary for the Chair to express his opinion on the first part of the section. It is plain to the mind of the Chair that the act of 1902 is still in existence, still a valid enactment. The Chair believes that the language—
“and thereafter only such contracts shall be made as from time to time are provided for in a new appropriation act for the Postal Service”—
is permanent law and makes it possible at any time for the Congress to exercise its discretion as to that particular subject matter. The Chair has looked at these other acts, and while that particular act provided for four-year contracts it was evident that at that time the Congress was of the opinion this was the period for which such contracts should properly extend. In the act of 1908 first an appropriation was made and then authority was given to extend contracts for periods of 10 years, and following in the act of 1916, in a similar portion of the act, an appropriation of \$976,000 was made and the Postmaster General was authorized to extend existing contracts until March 4, 1917. There was some subsequent legislation on that subject, among other things a commission was appointed to investigate the matter and make report on or before March 4, 1918. But in every instance the Chair believes Congress was exercising a power that it still has; a power to make appropriations for the pneumatic-tube service under the original act of 1902, which has never been repealed, either expressly or by implication. But the gentleman from Texas urges the proposition that the proviso is legislation. The Chair thinks it is. The Chair can not escape the reasoning which the gentleman from Texas urges as to the proviso, and therefore the point or order is sustained.

Thereupon Mr. C. Bascom Slemp, of Virginia, offered the following amendment:

Strike out all except “For the transmission of mail by pneumatic tubes or other similar device, in the city of New York, including the Borough of Brooklyn of the city of New York, at an annual rate of expenditure not in excess of \$18,500 per mile of double line of tubes, including power, labors and all other operating expenses, \$513,911.50.”

Mr. Black again raised the question of order.

The Chairman ruled:

If the Chair is correctly advised, that the act of 1902 is permanent legislation, then the provision of that act applies. That provision is:

“No contract shall be made in any city providing for 3 miles or more of double lines of tube which shall involve an expenditure in excess of \$17,000 per mile per annum, and said compensation shall cover power, labor, and all operating expenses.”

The Chair assumes that the kind of service that is to be rendered under this bill is the same kind of service as is mentioned in the section just read. If that is true, a limitation of \$17,000 per mile is made by the substantive law. This bill makes a limit possible of \$18,500. Surely that changes the law itself and is legislation. The Chair therefore sustains the point of order.

1473. Where the law directed the award of contracts to the lowest bidder an amendment proposing to award contracts to the two lowest bidders was ruled out of order.

On December 12, 1932,² the Treasury and Post Office Departments appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read an item carrying the following proviso:

Provided further, That in order to foster competition in the manufacture of distinctive paper for United States securities, the Secretary of the Treasury is authorized, in his discretion, to split

¹William J. Graham, of Illinois, Chairman.

²Second session Seventy-second Congress, Record, p. 349.

the award for such paper for the fiscal year 1934 between the two bidders whose prices per pound are the lowest received after advertisement, but not in excess of the price fixed herein.

Mr. Edward W. Goss, of Connecticut, made the point of order that in view of the law requiring the awarding of contracts to the lowest bidder, the proviso providing for awards to the two lowest bidders involved legislation.

After debate, the Chairman¹ sustained the point of order.

1474. An appropriation for a specific method of transmitting mail, in the absence of any prior legislation providing therefor, was held to be subject to a point of order although general transmission of the mail is authorized by law.

On February 12, 1924,² the Treasury and Post Office Departments appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was read:

For the operation and maintenance of the airplane mail service between New York, N.Y., and San Francisco, Calif., via Chicago, Ill., and Omaha, Nebr., including necessary incidental expenses and employment of necessary personnel, \$1,500,000.

Mr. Louis C. Cramton, of Michigan, made the point of order that the appropriation was not authorized by law.

The Chairman³ decided

The paragraph is very plainly new legislation, and former chairmen of committees have so held. If the gentleman from New York can point to some law which authorizes the activity the Chair will overrule the point of order. The point of order is sustained.

1475. The mere increase of the amount carried by an appropriation bill is not legislation.

On February 17, 1914,⁴ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

For support and education of 325 Indian pupils at the Indian school, Mount Pleasant, Mich., including pay of superintendent, \$56,275; for general repairs and improvements, \$5,000; in all, \$61,275.

Mr. Carl E. Mapes, of Michigan, offered an amendment increasing the number of pupils from 325 to 350, involving a proportionate increase in expenditure.

Mr. John H. Stephens, of Texas, objected that the amendment provided new legislation.

The Chairman⁵ held that the amendment provided for a mere increase in the amount carried by the bill and was not subject to a point of order.

1476. Provisions in the pending bill, though read and passed by the committee, are not construed as "existing law" within the purview of clause 2 of Rule XXI.

¹Thomas S. McMillan, of South Carolina, Chairman.

²First session Sixty-eighth Congress, Record, p. 2317.

³Everett Sanders, of Indiana, Chairman.

⁴Second session Sixty-third Congress, Record, p. 3579.

⁵Joseph W. Byrns, of Tennessee, Chairman.

On January 24, 1921,¹ the Agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

For continuing the necessary improvements to establish and maintain a general experiment farm and agricultural station on the Arlington estate, in the State of Virginia, in accordance with the provisions of the act of Congress approved April 18, 1900, \$20,500: *Provided*, That the limitations in this act as to the cost of farm buildings shall not apply to this paragraph.

Mr. Thomas L. Blanton, of Texas, made the point of order that the proviso in the paragraph proposed a change in the limitation upon cost of buildings constructed by the department provided in a paragraph on page 25 of the pending bill previously read and passed by the committee.

The Chairman² ruled:

This proviso making the limitation, page 25, is not a limitation in existing law, but is only a limitation in this particular bill, which has not yet become a law. The Chair rules that this is not subject to a point of order. The Chair overrules the point of order.

1477. Appropriations provided by the supply bills are for the fiscal year and proposals to appropriate for the calendar year are not admissible.

On May 17, 1932,³ the Committee of the Whole House on the state of the Union had under consideration the War Department appropriation bill.

The Clerk read a paragraph containing this proviso:

Provided, That no part of this appropriation shall be available for the pay of any cadet appointed from enlisted men of the Army for admission to the Military Academy in the class entering in the calendar year 1933 who has not served with troops in the Regular Army for at least nine months.

Mr. Edward W. Goss, of Connecticut, made the point of order that the appropriation proposed was for the calendar year and as the general appropriation bills were limited to provisions for the fiscal year, the paragraph was not in order.

The Chairman⁴ having sustained the point of order, Mr. Collins offered the paragraph as an amendment in this form:

Provided, That no part of this appropriation shall be available for the pay of any cadet appointed from enlisted men of the Army for admission to the Military Academy in the class entering in the fiscal year 1933 who has not served with troops in the Regular Army for at least nine months.

There was no objection.

1748. A provision prescribing qualifications available only through enactment of additional legislation was held not to be in order on an appropriation bill.

On January 28, 1921,⁵ the diplomatic and consular appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

Chinese assistant secretary of embassy to China, to be appointed from the corps of student interpreters, \$4,000.

¹Third session Sixty-sixth Congress, Record, p. 1980.

²Frederick C. Hicks, of New York, Chairman.

³First session Seventy-second Congress, Record, p. 10457.

⁴Clifton A. Woodrum, of Virginia, Chairman.

⁵Third session Sixty-sixth Congress, Record, p. 2175.

Mr. Thomas L. Blanton, of Texas, raised a question of order on the provision requiring the selection of the assistant secretary from the corps of student interpreters on the ground that a corps of student interpreters was not authorized by law.

After debate, the Chairman¹ sustained the point of order.

1479. A provision for the purchase and distribution of seeds was held to be legislation and not in order on an appropriation bill.²

On January 3, 1923,³ the Agricultural appropriation bill had been ordered to be engrossed and was read a third time, when Mr. Charles D. Carter, of Oklahoma, moved to recommit the bill to the Committee on Appropriations, with instructions to that committee to report it back to the House forthwith with the following amendment:

Purchase and distribution of valuable seeds: For purchase, propagation, testing, and congressional distribution of valuable seeds, bulbs, trees, shrubs, vines, cuttings, and plants; all necessary office fixtures and supplies, fuel, transportation, paper, twine, gum, postal cards, gas, electric current, rent outside of the District of Columbia, official traveling expenses, and all necessary material and repairs for putting up and distributing the same; for repairs and the employment of local and special agents, clerks, assistants, and other labor required, in the city of Washington and elsewhere, \$360,000. And the Secretary of Agriculture is hereby directed to expend the said sum, as nearly as practicable, in the purchase, testing, and distribution of such valuable seeds, bulbs, shrubs, vines, cuttings, and plants, the best he can obtain at public or private sale, and such as shall be suitable for the respective localities to which the same are to be apportioned, and in which same are to be distributed as hereinafter stated; and such seeds so purchased shall include a variety of vegetable and flower seeds suitable for planting and culture in the various sections of the United States: *Provided*, That the Secretary of Agriculture, after due advertisement and on competitive bids, is authorized to award the contract for the supplying of printed packets and envelopes and the packeting, assembling, and mailing of the needs, bulbs, shrubs, vines, cuttings, and plants, or any part thereof, for a period of not more than five years nor less than one year, if by such action he can best protect the interests of the United States. An equal proportion of five-sixths of all seeds, bulbs, shrubs, vines, cuttings, and plants shall, upon their request, after due notification by the Secretary of Agriculture that the allotment to their respective districts is ready for distribution, be supplied to Senators, Representatives, and Delegates in Congress for distribution among their constituents, or mailed by the department upon the receipt of their addressed franks, in packages of such weight as the Secretary of Agriculture and the Postmaster General may jointly determine: *Provided, however*, That upon each envelope or wrapper containing packages of seeds the contents thereof shall be plainly indicated, and the Secretary shall not distribute to any Senator, Representative, or Delegate seeds entirely unfit for the climate and locality he represents, but shall distribute the same so that each Member may have seeds of equal value, as near as may be, and the best adapted to the locality he represents: *Provided also*, That the seeds allotted to Senators and Representatives for distribution in the districts embraced within the twenty-fifth and thirty-fourth parallels of latitude shall be ready for delivery not later than the 10th day of January: *Provided also*, That any portion of the allotments to Senators, Representatives, and Delegates in Congress remaining uncalled for on the 1st day of April shall

¹ Horace M. Towner, of Iowa, Chairman.

² Overruling decision by Committee of the Whole, second session Sixty-seventh Congress, p. 3640; decision by Chairman Frederick C. Hicks, of New York, fourth session Sixty-seventh Congress, p. 884; Hinds' Precedents, section 3895.

³ Fourth session Sixty-seventh Congress, Journal, p. 90; Record, p. 1204.

be distributed by the Secretary of Agriculture, giving preference to those persons whose names and addresses have been furnished by Senators and Representatives in Congress and who have not before during the same season been supplied by the department: *And provided also*, That the Secretary shall report, as provided in this act, the place, quantity and price of seeds purchased, and the date of purchase; but nothing in this paragraph shall be construed to prevent the Secretary of Agriculture from sending seeds to those who apply for the same. And the amount herein appropriated shall not be diverted or used for any other purpose but for the purchase, testing, propagation, and distribution of valuable seeds, bulbs, mulberry and other rare and valuable trees, shrubs, vines, cuttings, and plants.

Mr. Thomas L. Blanton, of Texas, made the point of order that the amendment proposed legislation on an appropriation bill.

The Speaker¹ said:

The Chair is aware, as all the membership of the House is probably aware, that this question has come up many times in Committee of the Whole. The Chair thinks that every Chairman of the Committee of the Whole who has given his opinion upon it as a problem of parliamentary law has ruled that it is not in order. The Chair thinks that every Member of the House who will give the matter his unbiased attention will admit that it is not in order. It seems to the Chair perfectly clear, and the gentleman from Oklahoma does not argue that it is in order under the rules of parliamentary law, but merely argues that the Committee of the Whole has several times decided by a majority vote that it is in order. He offers no other argument as to its being in order. The Chair thinks probably he is wise in that, because the Chair does not see how such an argument can be sustained.

The Chair thinks he ought to suggest that preserving the authority and binding force of parliamentary law is as much the duty of each Member of the House as it is the duty of the Chair, that the rights of every one of us here depend upon it, and that each Member ought to vote on such a question, not as his interest or desires in respect to the particular subject may sway him, but as he thinks is really the law. It is unquestionably true that several times the Committee of the Whole House has overruled the decision of the Chairman of that committee and has held that an amendment like this is in order. That, however, has never been done in the House. If the House should take that action, of course the Chair would bow to the opinion of the House and follow it; but until then the Chair thinks that he is bound to follow the rules of parliamentary law, and the Chair thinks the same duty rests upon every individual Member of the House. The Chair sustains the point of order.

Mr. John W. Langley, of Kentucky, having appealed from the decision of the Chair, Mr. Sydney Anderson, of Minnesota, moved to lay the appeal on the table.

The question being taken, on a roll call there were yeas 173, nays 85, and the appeal was laid on the table.

1480. A Senate amendment to an appropriation bill which does not propose legislation is not subject to amendments proposing legislation.

On January 28, 1927,² the House was considering the Senate amendments to the Executive Office and independent offices appropriation bill, reported back by the committee of conference without agreement.

The Clerk read Senate amendment No. 3, permitting the fixing of salaries of employees in the reporting service of the Board of Tax Appeals and proposing:

including personal services and stenographic reporting services.

¹Frederick H. Gillett, of Massachusetts, Speaker.

²Second session Sixty-ninth Congress, Record, p. 2508.

Mr. William R. Wood, of Indiana, moved that the House recede from its disagreement to the Senate amendment and agree to the same with the following amendment:

Personal services (including from the date of approval of this act, 12 employees at rates of compensation to be fixed by the board, not in excess of \$7,500 each per annum), stenographic reporting services to be obtained on and after the passage of this act by the board, in its discretion, through the civil service or by contract, or renewal of existing contract, or otherwise.

Mr. Eugene Black, of Texas, raised a question of order and said:

Mr. Speaker, I make the point of order that the amendment is not germane to the Senate amendment, and that it is legislation on an appropriation bill. I call the Speaker's attention to the fact that the revenue act of 1926 provides that the employees of the Board of Tax Appeals shall be employed under the civil service law, and that their salaries shall be fixed under the reclassification act of 1923. The Senate amendment here is in entire accord with that law, because it says, "including personal services and stenographic reporting services." That is perfectly proper. It would be all right for the House to concur in that amendment because their salaries would be fixed in accordance with the reclassification act, but now the provision that has been offered by the gentleman from Indiana would allow Congress to fix the salaries, notwithstanding the reclassification act of 1923. That is to say, it will allow the Board of Tax Appeals to fix them within the limitation of \$7,500. I contend that that would be clearly a violation of the rules of the House.

The Speaker ¹ sustained the point of order.

¹Nicholas Longworth, of Ohio, Speaker.