

Chapter CCXXVII.¹

LIMITATIONS ON GENERAL APPROPRIATIONS.

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1579. The House may by limitation on a general appropriation bill provide that an appropriation shall be available contingent on a future event. An instance in which it was held in order to provide by way of limitation that an appropriation should not become available until a day certain unless a designated bill became law prior to that time.

On June 24, 1922,² the House had agreed to the conference report on the War Department appropriation bill and Senate amendments remaining in disagreement were under consideration.

On motion of Mr. Daniel R. Anthony, jr., of Kansas, the House voted to recede from its disagreement to Senate amendment numbered 225, inserting the following provision:

For the continuation of the work on Dam No. 2 on the Tennessee River at Muscle Shoals, Ala., to be immediately available, \$7,500,000.

Whereupon Mr. George Huddleston, of Alabama, moved to concur with the following amendment:

Strike out from said Senate amendment No. 225, the following: "To be immediately available" and add after the figures "\$7,500,000" the following: "*Provided, however,* This appropriation shall not become available until such time as the Congress shall have taken final action on H.R. 11903, and not then if the subject matter of said bill is enacted into law in a manner as will result in the consummation of contracts for lease and sale of the Government Muscle Shoals property to Henry Ford: *Provided further,* That this provision shall not operate to postpone such availability later than January 1, 1923."

¹ Supplementary to Chapter XCVIII.

² Second session Sixty-seventh Congress, Record, p. 9330.

Mr. William H. Stafford, of Wisconsin, made the point of order that the amendment was legislation and was no germane.

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

This amendment provides, first, that the money shall not be available until H.R. 11903 has been enacted, and shall not be then available if a contract is authorized with Henry Ford, but still shall be available after the 1st of January. It contradicts itself in three or four places, but it is only a limitation.

The Speaker¹ said:

It seems to the Chair that this is purely a limitation on the appropriation. It does not make an appropriation available that the present law does not make available. It simply makes it contingent on a future event, and that seems to the Chair is merely a limitation. The Chair overrules the point of order.

1580. An amendment denying the use of an appropriation for a designated purpose is a simple limitation and in order on an appropriation bill.

An instance in which the Chairman recalled a decision sustaining a point of order against an amendment and submitted the amendment for consideration.

On February 4, 1925,² the independent offices appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the paragraph providing for an emergency shipping fund was reached.

Mr. Loring M. Black, jr., of New York, offered an amendment as follows:

Insert a new paragraph to read as follows:

“No part of the moneys appropriated or made available by this act shall be expended in any private shipyard.”

A point of order made against the amendment by Mr. Otis Schuyler Bland, of Virginia, on the ground that it was legislation was, after brief debate, sustained by the Chairman.³

Subsequently, at the conclusion of the reading of the bill, the Chairman addressed the committee and said:

The Chair would like to make a statement. Earlier in the afternoon the gentleman from New York offered an amendment which he had prepared, evidently, in some haste. It was read by the Clerk with even more haste, and I fear the present occupant of the Chair read it more hastily still. At any rate, without actual inspection of the amendment, the Chair ruled hurriedly upon it. While the amendment as presented is not strictly in the form of a limitation, and probably would not serve the purpose for which the gentleman from New York offered it, nevertheless, after an actual examination of the amendment the Chair finds nothing in it that in fact contravenes the rules. Therefore the Chair would like to recall the ruling he made on the subject earlier and again submit the amendment to the committee.

¹ Frederick H. Gillett, of Massachusetts, Speaker.

² Second session Sixty-eighth Congress, Record, p. 3029.

³ John Q. Tilson, of Connecticut, Chairman.

1581. An amendment proposing to defer disbursements from an appropriation until a departmental regulation has been enforced does not involve legislation and is in order as a limitation on an appropriation bill.

On March 12, 1908,¹ the post-office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

For inland transportation by railroad routes, \$44,000,000.

To this paragraph Mr. Irving P. Wanger, of Pennsylvania, offered the following amendment:

Provider further, That not exceeding six-sevenths of the amount ascertained pursuant to the weighing of the mail on any route in the year 1905 or in the year 1906 as the annual pay on such route for transporting the mail shall be paid out of the moneys hereby appropriated until such ascertainment shall have been readjusted in accordance with order of Postmaster General Meyer No. 412, or until it shall have been finally determined by law that the first recited ascertainments are binding upon the Government for the ensuing fiscal year, notwithstanding any error or wrong in the basis of such ascertainments.

Mr. Jesse Overstreet, of Indiana, made a point of order that the amendment was not a limitation but an affirmative direction providing a change of law.

The Chairman² ruled:

The point of order is made that the amendment is obnoxious to the rules of the House because effecting a change of existing law, and the question is whether the amendment is a limitation upon the appropriation merely or whether it, in fact, changes the law. If it be a limitation upon the appropriation, it is clearly within the power of the House, and the House may appropriate \$44,000,000 or it may appropriate \$22,000,000, or it may make no appropriation at all, for the carrying of the mail. It might appropriate the full sum provided by law, or it might appropriate a proportionate portion of the sum provided by law. Undoubtedly a decision upon the amendment is along very close lines.

Last year, upon the consideration of the post-office appropriation bill, the gentleman from Kansas, Mr. Murdock, offered the following amendment at this same place in the bill:

Provided, That no part of this sum shall be expended in payment for transportation of the mails by railroad routes where the average weight of mails per day has been computed by the use of the divisor less than the whole number of days such mails have been weighed."

The occupant of the chair at that time, the gentleman from New Hampshire, Mr. Currier, being one of the most distinguished parliamentarians in the House, sustained the point of order, and in the course of his decision said:

"The existing law has received a construction by the officers charged with the duty of administering it, and that construction the Chair feels bound to follow."

And then proceeded with the statement of his reasons that, in effect, the amendment when offered by the gentleman from Kansas would change the law and change the method of computing the amount due the railway companies. Undoubtedly that was the correct decision upon the proposition then before the House. To say that no part of that appropriation should be expended except upon a change of construction of the method of computation was, in effect, a change of law, though purporting to be a mere limitation.

But the present amendment is different. Since the ruling of last year the department itself, without a change of law, has made a new construction of the existing law, and the present amendment does not propose to change the law in any respect, but is, as the Chair understands it, a mere

¹First session Sixtieth Congress, Record, p. 3231.

²James R. Mann, of Illinois, Chairman.

direction to the disbursing officer of the Government that that officer shall not pay to exceed six-sevenths of the amount which otherwise he would pay until a further adjustment is ascertained either by the department or, as could be by law, through the Court of Claims. It being within the power of the House to retain the whole of the amount due to the railroad company, it is clearly within the power of the House to retain any portion of the amount pending an adjudication and decision of the question as to the correct construction of the law as now made by the department. The Chair, therefore, overrules the point of order.

1582. An amendment rendering an appropriation (included in a paragraph proposing legislation) inoperative until Congress should have made certain determinations was held to be in the nature of a limitation.

On January 8, 1915,¹ 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:

That the Secretary of the Interior be, and he is hereby, authorized to pay to the enrolled members of the Choctaw and Chickasaw Tribes of Indians of Oklahoma entitled under existing law to share in the funds of said tribes, or to their lawful heirs, out of any moneys belonging to said tribes in the United States Treasury or deposited in any bank or held by any official under the jurisdiction of the Secretary of the Interior, not to exceed \$200 per capita in the case of the Choctaws, and \$100 per capita in the case of the Chickasaws, said payment to be made under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That in cases where such enrolled members, or their heirs, are Indians who by reason of their degree of Indian blood belong to the restricted class, the Secretary of the Interior may, in his discretion, withhold such payments and use the same for the benefit of such restricted Indians: *Provided further*, That the money paid to the enrolled members as provided herein shall be exempt from any lien for attorneys' fees or other debt contracted prior to the passage of this act.

To the paragraph Mr. Pat Harrison, of Mississippi, proposed this amendment:

Provided, however, That the provisions of the preceding paragraph of this act with respect to the Choctaw Tribe shall not be operative until Congress shall have determined the rights of the Mississippi Choctaws whose names do not appear upon the final rolls of the Choctaws in Oklahoma.

Mr. John H. Stephens, of Texas, made the point of order that the amendment was not germane and was legislation on an appropriation bill.

The Chairman² ruled:

The purpose of the paragraph under consideration is to direct a per capita payment of a given sum to certain tribes of Indians, the payment to be made out of trust funds belonging to the Indians and within the control of the United States Government. It provides for an unconditional per capita payment. The fact that under existing law Congress has the right in an appropriation bill to make a per capita payment to the Indians does not, of course, carry with it the absolute requirement on the part of the Congress to make the appropriation.

In other words, it is entirely within the discretion of the Congress whether or not it will make the appropriation. It may make all or a part of the appropriation, or it may adopt a provision making the appropriation entirely nugatory, provided such provision is germane and does not change existing law. The amendment offered by the gentleman from Mississippi seeks to delay the payment of any per capita payment until Congress shall have determined the rights of the Mississippi Choctaws whose names do not now appear upon the final rolls of the Choctaws in Oklahoma. There is nothing in the amendment seeking to force the Congress or to compel the Congress to determine the rights of the Mississippi Choctaws. It simply provides that a per

¹Third session Sixty-third Congress, Record, p. 1214.

²Joseph W. Byrns, of Tennessee, Chairman.

capita tax shall not be paid until the Congress shall have determined such rights. Now, it seems to the Chair that Congress, having the right to make the appropriation in any amount it deems proper, may also adopt a provision rendering the entire appropriation nugatory. The wisdom of such a course is for the committee and not the Chair to determine. The Chair does not think the amendment open to the objection of being new legislation or that it changes existing law. The Chair has not been furnished with any treaty or statute providing specifically for an annual per capita payment. If there was any such statute, the Chair apprehends that it would not be necessary to have the provision which has been reported as a part of the pending bill. The Chair is of opinion, however, that there is ample authority for Congress to make such annual payment in an appropriation bill if it sees fit to do so. On the other hand, Congress may withhold it, as has been done in the past. The Chair therefore does not think that the amendment changes existing law, nor does it propose new legislation. It is, in the opinion of the Chair, only a condition or limitation on the appropriation, the effect of which and the advisability of which the committee and not the Chair must determine.

The Chair thinks the amendment in order, and therefore, overrules the point of order.

1583. Provision that an appropriation (carried in paragraph presenting provisions legislative in character) be not available until the Court of Claims passed on certain pending questions was held to be a limitation.

On February 5, 1916,¹ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Charles D. Carter, of Oklahoma, offered this amendment:

That the Secretary of the Interior be, and he is hereby, authorized to pay to the enrolled members of the Choctaw and Chickasaw Tribes of Indians of Oklahoma entitled under existing law to share in the funds of said tribes, or to their lawful heirs, out of any moneys belonging to said tribes in the United States Treasury, or deposited in any bank, or held by any official under the jurisdiction of the Secretary of the Interior, not to exceed \$300 per capita in the case of the Choctaws and \$200 per capita in the case of the Chickasaws, said payment to be made under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That in cases where such enrolled members or their heirs are Indians who by reason of their degree of Indian blood belong to the restricted class, the Secretary of the Interior may, in his discretion, withhold such payments and use the same for the benefit of such restricted Indians: *Provided further*, That no part of the sum appropriated by this paragraph shall be paid to attorneys.

Mr. Pat Harrison, of Mississippi, proposed the following as an amendment to the pending amendment:

Provided, however, That the provisions of this paragraph with respect to the Choctaw Tribe shall not be operative until the Court of Claims shall determine the rights of the Mississippi Choctaws who have been identified as Mississippi Choctaws by the Dawes Commission in its report of March 10, 1899, and commonly known as the McKinnon roll, and also all Mississippi Choctaws who have been identified as Mississippi Choctaws by the Dawes Commission from March 10, 1899, to March 4, 1907, whose names do not appear upon the final rolls of the Choctaw Tribe in Oklahoma.

Mr. Carter raised a question of order on the amendment.

The Chairman² ruled:

The gentleman from Oklahoma offers an amendment, to which the gentleman from Mississippi proposes an amendment, which has been read at the Clerk's desk. The original amendment provides for the payment of so much per capita of the Indians of the Five Civilized Tribes, the

¹First session Sixty-fourth Congress, Record, p. 2161.

²Martin D. Foster, of Illinois, Chairman.

Choctaws and Chickasaw Tribes of Indians in Oklahoma. The gentleman from Mississippi offers an amendment to this amendment, as follows:

“Provided, however, That the provisions of this paragraph with respect to the Choctaw Tribe shall not be operative until the Court of Claims shall determine the rights of the Mississippi Choctaws, who have been identified as Mississippi Choctaws by the Dawes Commission in its report of March 10, 1899, and commonly known as the McKinnon roll, and also all Mississippi Choctaws who have been identified as Mississippi Choctaws by the Dawes Commission from March 10, 1899, to March 4, 1907, whose names do not appear upon the final rolls of the Choctaw Tribe in Oklahoma.”

In last year’s Indian appropriation bill there was a provision to the effect that—

“The provisions of this paragraph, with respect to the Choctaw Tribe, shall not be operative until Congress shall determine the rights of the Mississippi Choctaws whose names do not appear on the official rolls of the Choctaws in Oklahoma.”

As the Chair understands, these funds are held as trust funds by the Government, not paid out annually but only as such times as Congress shall determine to do so. The Chair is not here to pass upon the motives of the gentleman from Mississippi or what he may have in his mind when he offers this amendment. He only judges of the amendment itself as it appears.

This question was argued very fully, as the Chair remembers, in 1915, when the Indian appropriation bill of that year was under consideration. The gentleman from Tennessee, Mr. Byrns, then occupied the chair—a very able man and a man who had served on the Indian Affairs Committee—and he decided that, in his judgment, this did not change existing law.

This does not at this time refer this matter to the Court of Claims. If it did, the Chair would sustain the point of order without any question. The Congress has the right, of course, to make an appropriation according to law, but before that appropriation shall be paid, Congress has the right to put any limitation that it may see fit on it. For instance, it could be provided that it should not be made until it was determined that the moon was made of green cheese; so that the Chair thinks that under these circumstances the amendment is not open to the objection that it is new legislation or that it changes existing law.

There is a volume 4 of Hinds’ Precedents, page 636, paragraph 3942, this elucidation:

“3942. While it is not in order to legislate as to qualifications of the recipients of an appropriation, the House may specify that no part of the appropriation shall go to recipients lacking certain qualifications.”

The Chair thinks that this does not change existing law, but provides that these provisions of this appropriation, which clearly is an appropriation, shall not be carried out until this matter shall be referred to the Court of Claims, and thinks it is in order, and therefore overrules the point of order.

1584. An amendment prohibiting expenditure of money appropriated for education of aliens for citizenship, until arrearage connected with granting of citizenship was disposed of, was held to be a limitation and in order on an appropriation bill.

On February 3, 1920,¹ the second deficiency appropriation bill was under consideration in the Committee on the Whole House on the state of the Union, when a paragraph providing for the naturalization service was read by the Clerk including the following proviso:

Provided, That no part of this sum shall be expended for or in connection with the training or education of aliens for citizenship until the arrearage of work connected with the granting of citizenship to aliens shall have been disposed of.

Mr. Thomas L. Blanton, of Texas, made the point of order that the proviso was not authorized by law and was legislation.

¹Second session Sixty-sixth Congress, Record, p. 2401.

The Chairman ruled:¹

The Chair believes that the authority cited is sufficient to warrant the language used in the paragraph, and therefore the point of order that the legislation is not authorized by existing law is overruled. The gentleman from Iowa states that this is an appropriation to be used during the balance of the present fiscal year to carry on activities already undertaken by the department, or at least that is the understanding of the Chair, and therefore seems to be in the form of a limitation on account of the fact that before this deficiency appropriation shall be available arrearages of work in connection with the bureau shall be brought up to date, and in the view of the Chair that is a proper limitation, and the Chair overrules the point order.

1585. Provision that no part of an appropriation be used for return of a reserve force to active duty was held to be a limitation.

On March 22, 1920,² the naval 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:

Naval Reserve Force: For expenses of organizing, administering, and recruiting the Naval Reserve Force, for the maintenance and rental of armories, including the pay of necessary janitors, and for wharfage, \$50,000.

Mr. Cassius C. Dowell, of Iowa, proposed this amendment:

Provided, That no part of any appropriation contained in this act shall be used for the return or recall of any member of the Naval Reserve Force to active duty for training or any other purpose.

Mr. Lemuel P. Padgett, of Tennessee, made a point of order against the amendment which was overruled by the Chairman³ without debate.

1586. Provision that no part of an appropriation be used in construction of ships under the cost-plus contract plan is a limitation.

On March 23, 1920,⁴ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

Increase of the Navy, construction and machinery: On account of hulls and outfits of vessels and machinery of vessels heretofore authorized, to be available until expended, \$48,000,000.

To this Mr. Martin B. Madden, of Illinois, offered as an amendment the following:

Provided, That no part of this appropriation shall be used in payment for any work done on any ships heretofore authorized where such ships are being constructed on the cost-plus contract plan.

Mr. Patrick H. Kelly, of Michigan, made a point of order against the amendment:

The Chairman³ said:

The Chair overrules the point of order. It is clearly a limitation.

¹ Joseph Walsh, of Massachusetts, Chairman.

² Second session Sixty-sixth Congress, Record, p. 4712.

³ James R. Mann, of Illinois, Chairman.

⁴ Second session Sixty-sixth Congress, Record, p. 4764.

1587. Provision that no portion of an appropriation be used for pay of reserve officers is a limitation.

A provision that an appropriation be not available for increased pay of an officer under circumstances under which increase in pay was provided by law was held to be legislation and not a limitation.

On February 3, 1921,¹ the Army 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 aviation increase, to officers of the Air Service, \$1,000,00: *Provided*, That this appropriation shall not be available for increased pay of any officer unless such officer is attached to an aeroplane unit regularly required to fly: *Provided further*, That no portion of this appropriation shall be used for pay of reserve officers.

Mr. Charles F. Curry, of California, raised a point of order on the first proviso and said:

This language was carefully drawn and inserted as a part of the Army reorganization act. The language of the law is in part, as follows:

“Flying units shall in all cases be commanded by flying officers.”

That is done—

“Officers and enlisted men of the Army shall receive an increase of 50 per cent of their pay while on duty”—

Note these words—

“while on duty requiring them to participate regularly and frequently in aerial flights.”

That provides that officers regularly and frequently required to participate in aerial flights are entitled to an increase of 50 per cent in their pay. In the bill before the committee the wording is—

“This appropriation shall not be available for increased pay of any officer unless such officer is attached to an aeroplane unit regularly required to fly.”

Under the law the officer must be regularly required to fly, and under the bill the aeroplane unit must be regularly required to fly. Neither in law nor in the War Department regulations is there a definition of an aeroplane unit or a flying unit. The word “unit” means one, and a flying unit might be one aeroplane or one balloon. This is an absolute change of law. It is not a limitation. It is legislation on an appropriation bill.

The Chairman² said:

The Chair is ready to rule. The gentleman from California makes the point of order to the first proviso to the paragraph providing for an appropriation of \$1,000,000 for aviation increase to officers in the Air Service on the ground that it is not a limitation but is in fact a change of law. The Chair is inclined to believe that the proviso is too broad to be properly considered a limitation. In the first place, the term “aeroplane unit” does not appear to be described in law, and no definite information as to what the term means has been brought to the attention of the Chair. Under the language it would seem to the Chair that it might quite widen and extend rather than limit the appropriation. Therefore in its present form the Chair sustains the point of order against the first proviso.

Thereupon Mr. Harry E. Hull, of Iowa, made the point of order against the second proviso.

The Chairman ruled:

The gentleman from Iowa makes the point of order against the second proviso, that it is not a limitation but a change of existing law. It seems clear to the Chair that this proviso is

¹ Third session Sixty-sixth Congress, Record, p. 2521.

² John Q. Tilson, of Connecticut, Chairman.

simply a denial of an appropriation, or a provision against the use of it for a certain purpose, and while the Chair is not called upon to pass upon the wisdom or lack of wisdom of this denial, that it is a limitation the Chair is quite clear, and therefore overrules the point of order.

1588. A provision that no portion of an appropriation be used for pay of reserve officers was held to be a limitation.

On April 30, 1921,¹ the Army 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 aviation increase, to officers of the Air Service, \$1,000,000: *Provided*, That no portion of this appropriation shall be used for pay of reserve officers.

Mr. Harry E. Hull, of Iowa, said:

Mr. Chairman, I make a point of order on that proviso. It changes the entire law. It does not reduce the amount at all. It simply says you shall make the payment to the Regular Army and not to the reserve officers, and that is not a limitation. The amount is not reduced at all. The money will be paid out just the same; it will be paid out to the officers of the Regular Army.

The Chairman² decided:

The Chair will call attention to the fact that Congress could make any limitation it pleases; it could say that the money should not be paid to the Regular officers of the Army. The Chair must overrule the point of order.

1589. Provision that no part of a sum appropriated should be used for soliciting reinstatement of lapsed insurance is a limitation and in order on an appropriation bill.

On January 12, 1921,³ 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 had been reached providing for the expenses of the Bureau of War Risk Insurance and including the following proviso:

Provided, That no part of this sum shall be expended for salaries or expenses in soliciting the reinstatement of lapsed insurance.

Mr. Cassius C. Dowell, of Iowa, made a point of order against this proviso. The Chairman⁴ said:

The Chair is of opinion that it is a distinct limitation upon the appropriation, and therefore the Chair overrules the point of order.

1590. A proposal to limit a class authorized to participate in disbursements from an appropriation is a limitation.

A provision that an appropriation be not available for increased pay of officers not attached to an airplane squadron regularly required to fly was held to be in order on an appropriation bill.

On February 3, 1921,⁵ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph providing an appropriation for increased pay to officers of the Air Service was read:

¹First session Sixty-seventh, Congress, Record, p. 877.

²John Q. Tilson, of Connecticut, Chairman.

³Third session Sixty-sixth Congress, Record, p. 1319.

⁴Nicholas Longworth, of Ohio, Chairman.

⁵Third session Sixty-sixth Congress, Record, p. 2524.

To this Mr. Daniel R. Anthony, jr., of Kansas, offered an amendment:

Provided, That this appropriation shall not be available for increased pay of any officer who is not attached to an airplane squadron, regularly required to fly. But this proviso shall not apply to any officer temporarily detached from such squadron.

Mr. Charles Pope Caldwell, of New York, made the point of order that the amendment was not a limitation but a change of law.

The Chairman ¹ ruled:

The bill makes an appropriation—

“For aviation increase, to officers of the Air Service, \$1,000,000.”

If left without the proviso this \$1,000,000 could be expended for increase of pay of all officers who, under the present law, are qualified to receive it; that is, those who are actual fliers. The proviso as now modified provides that this appropriation shall not be available for increased pay of any officer who is not attached to an airplane squadron regularly required to fly; but this proviso shall not apply to any officer temporarily detached from such squadron.

The appropriation is already limited by existing law to officers who actually fly. This proviso, in addition to that limitation, adds another to the effect that besides being a regular flier the officer must also be attached to an airplane squadron which is required to fly.

In the opinion of the Chair this is a limitation. It is not within the province of the Chair to pass upon the wisdom or lack of wisdom of the provision, but it is the opinion of the Chair that the proviso actually limits the class now authorized to receive this increased pay under the law. Such a limitation to an appropriation is in order under the rules. The Chair therefore overrules the point of order.

1591. A provision that no part of an appropriation be used in paying Government employees a larger wage than that paid for the same work in private industry was held to be a limitation and in order on an appropriation bill.

An amendment proposing a limitation applicable to all appropriations carried in a bill may properly come as a separate paragraph at the end of the bill.

On May 10, 1921,² the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Following the reading of the last paragraph of the bill, Mr. Robert Luce, of Massachusetts, offered this amendment:

Insert a new section, as follows:

“No part of the money appropriated in this act shall be used for paying any civilian employee of the United States Government an hourly wage or salary larger than that customarily paid by private individuals for corresponding work in the same locality.”

Mr. William H. Stafford, of Wisconsin, made the point of order that it was legislation and was not germane to the portion of the bill to which offered.

The Chairman ¹ held:

It seems to the Chair that this is purely a limitation, and that it limits all the appropriations carried in this bill. As stated by the gentleman from Massachusetts, if it is properly a limitation, it seems to the Chair that there could be no better place than at the close of the bill, since it is applicable to the entire bill. Therefore the Chair overrules the point of order.

¹ John Q. Tilson, of Connecticut, Chairman.

² First session Sixty-seventh Congress, Record, p. 1279.

1592. A provision that not part of an appropriation be used in operation of a barge line in competition with common carriers was held to be a limitation.

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, when the paragraph providing for transportation of the Army and its supplies was reached.

To this Mr. John Philip Hill, of Maryland, proposed the following amendment:

Provided, That none of the funds appropriated or made available under this act shall be used for the maintenance or operation by the War Department of any barge line or freight service between Baltimore, Md., and Newbern, N.C., carrying freight as a public carrier in competition with common carriers operated by private enterprise maintaining regular service.

A point of order reserved against the amendment by Mr. Daniel R. Anthony, jr., of Kansas, was made by Mr. Thomas L. Blanton, of Texas.

The Chairman² held:

Is it not a limitation? It simply provides that none of the funds herein appropriated shall be available for certain purposes. It seems to the Chair that it limits an appropriation which is being made here. It seems so clear to the Chair that the proposed amendment is purely a limitation that it hardly seems worth while to enlarge upon it.

1593. A provision that no part of an appropriation be used for payment of any employee not appointed through the civil service was held to be a limitation and in order on an appropriation bill.

On December 8, 1922,³ the Treasury Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. When the paragraph providing an appropriation for enforcement of the national prohibition act was reached Mr. George Holden Tinkham, of Massachusetts, proposed this amendment:

Add a new provision, as follows: "*Provided*, That no part of this appropriation shall be used for the payment of the salary of any employee who shall not have been appointed, after competitive examination and certification, by the Civil Service Commission."

Mr. Martin B. Madden, of Illinois, said:

Mr. Chairman, I make the point of order against the amendment upon the grounds that this is not a limitation but is a change of law. Section 38 of the prohibition enforcement law is as follows:

"SEC. 38. The Commissioner of Internal Revenue and the Attorney General of the United States are hereby respectively authorized to appoint and employ such assistants, experts, clerks, and other employees in the District of Columbia or elsewhere, and to purchase such supplies and equipment as they may deem necessary for the enforcement of the provisions of this act, but such assistants, experts, clerks, and other employees, except such executive officers as may be appointed by the commissioner or the Attorney General to have immediate direction of the enforcement of the provisions of this act, and persons authorized to issue permits, and agents and inspectors in the field service, shall be appointed under the rules and regulations prescribed by the civil-service act."

¹ First session Sixty-seventh Congress, Record, p. 1214.

² John Q. Tilson, of Connecticut, Chairman.

³ Fourth session Sixty-seventh Congress, Record, p. 223.

That is the act under which we are operating. The gentleman from Massachusetts is trying to amend that act, and I submit that it is legislation on an appropriation bill and under the rules of the House it is not in order:

The Chairman¹ decided:

The amendment offered by the gentleman from Massachusetts reads as follows:

“Provided further, That no part of this appropriation shall be used for the payment of a salary of any employee who shall not have been appointed after competitive examination and certification by the Civil Service Commission.”

The Committee on Appropriations, of course, have no legislative powers except such as are prescribed by the rules, and an amendment can not be offered which proposes legislation unless it comes within the rules. However, there is a very long line of decisions which permits limitations upon appropriations. An amendment may be offered which provides that no part of this appropriation shall be paid to any certain class of employees, and the Chair knows of no reason why an amendment shall be paid to any certain class of employees, and the Chair knows of no reason why an amendment which provides that no part of this appropriation shall be paid to employees unless they have certain qualifications is not a proper limitation. The Chair therefore overrules the point of order.

The amendment having been rejected by the committee and the bill having been reported to the House, ordered to be engrossed, and read a third time, Mr. Tinkham offered the following motion:²

Recommit the bill to the Committee on Appropriations with instructions to that committee to report the same back forthwith, with the following proviso:

“Provided, That no part of this appropriation shall be used for the payment of the salary of an employee who shall not have been appointed after competitive examination and certification by the Civil Service Commission.”

Mr. Thomas L. Blanton, of Texas, made the point of order that the amendment proposed in the motion to recommit changed substantive law and was not in order on an appropriation bill.

The Speaker³ said:

This is clearly a limitation and the Chair overrules the point of order.

1594. Provision that no part of an appropriation be expended in violation of a specified statute was held to be a limitation and in order on a general appropriation bill.

On February 5, 1924,⁴ the Treasury and Post Office Departments appropriation bill was under consideration in the Committee of the Whole House on the state of the Union and a paragraph providing an appropriation for the enforcement of the national prohibition law had been read.

Mr. John Philip Hill, of Maryland, offered an amendment as follows:

Provided, That none of the money here appropriated shall be expended in the commission of acts which are in violation of the national prohibition act, nor for inducing others to violate the provisions of said national prohibition act.

¹ Everett Sanders, of Indiana, Chairman.

² Journal, p. 48; Record, p. 262.

³ Frederick H. Gillett, of Massachusetts, Speaker.

⁴ First session Sixty-eighth Congress, Record, p. 1947.

Mr. William B. Bankhead, of Alabama, having raised a point of order on the amendment, the Chairman¹ said:

The gentleman from Maryland offers the following amendment to the paragraph, which, among other things, appropriates for expenses to enforce provisions of the national prohibition act:

“Provided, That none of the moneys so appropriated shall be expended in the commission of acts which are themselves violations of the national prohibition act, nor for inducing others to violate the provisions of said national prohibition act.”

The Chair is of the opinion that that is clearly a limitation and is in order. The Chair overrules the point of order.

1595. The House may by limitation decline to appropriate for one purpose authorized by law while providing for another authorized under the same enactment.

On January 31, 1925,² the independent offices appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:

For all printing and binding for the Interstate Commerce Commission, including not to exceed \$10,000 to print and furnish to the States at cost report-form blanks, \$160,000.

Mr. Walter H. Newton, of Minnesota, proposed the following amendment:

Insert a new paragraph to read as follows:

“No part of the appropriation herein made for the Interstate Commerce Commission shall be expended for investigations requested by either House of Congress except those authorized and directed by the concurrent resolution of both Houses.”

Mr. Tom Connally, of Texas, made the point of order that the amendment proposed to restrict the discretion of the Commission and was not germane.

The Chairman³ ruled:

The gentleman from Texas makes the point of order against the amendment offered by the gentleman from Minnesota. First, upon the ground that it is offered at the wrong place. The Chair understands the amendment offered seeks to place a limitation upon all of the appropriations carried in this bill under the heading of the Interstate Commerce Commission. The Chair thinks this is the only proper place for it, the limitation coming as it does after an enumeration of all purposes for which appropriations are made. Therefore the Chair overrules this point of order.

As to the point of order raised by the gentleman from Texas whether or not it is legislation it is sufficient to say that the admission of the gentleman from Texas it is now authorized by law for the commission to investigate either upon the request of either House or upon a concurrent resolution of both Houses. This being admitted, then it must follow that Congress may appropriate for one object authorized by law and refuse to appropriate for another object authorized by law. It seems to the Chair to be the purpose of this amendment to refuse to appropriate for any other purpose now authorized by law except the one designated in the amendment, to wit, an investigation authorized or directed by concurrent resolution of both Houses. Therefore the Chair overrules the second point of order.

¹ Everett Sanders of Indiana, chairman.

² Second session Sixty-eighth Congress, Record, p. 2812.

³ John Q. Tilson, of Connecticut, Chairman.

1596. An amendment failing to affect appropriations or expenditure of moneys provided in the bill, though offered as a limitation, is not in order on a general appropriation bill.

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 the Clerk read as follows:

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

Mr. Gilbert M. Hitchcock, of Nebraska, proposed the following amendment:

Provided, That no contract for armor plate provided for in this section shall be made at a price in excess of \$375 per ton of 2,240 pounds.

A point of order was lodged against the amendment by Mr. George E. Foss, of Illinois, on the ground that it was legislation in the form of a limitation.

The Chairman² ruled:

The amendment offered by the gentleman from Nebraska is:

Provided, That no contracts for armor plate provided for this section shall be made at a price in excess of \$375 per ton of 2,240 pounds.”

The Chair is not sure whether the gentleman means to have the amendment apply to the paragraph under consideration or the section. As the Chair is at present informed the bill is in one section only. The amendment does not purport to be a limitation upon the appropriation, does not purport to be a limitation upon the expenditure of money provided for in the bill. The Chair has examined with care the precedents to which the gentleman referred, having them in full upon the desk, and the Chair thinks that they are not identical, that they are not applicable in this case. The Chair feels constrained to sustain the point of order.

1597. Although a limitation may be in order as applied to appropriations in the pending bill, it may not be extended to appropriations not within the bill.

On February 15, 1919,³ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. When the paragraph providing transportation for the Army was reached Mr. Henry D. Flood, of Virginia, offered this amendment:

Provided, That no part of said appropriation or any other appropriation carried in this bill shall be used for the purchase, maintenance, or operation of any motor-propelled passenger-carrying vehicle in the District of Columbia.

To this amendment Mr. Alben W. Barkley, of Kentucky, proposed to add the following:

Add at the end of the amendment the following: “And from the after the passage of this act no part of any appropriation heretofore made for the maintenance of the Military Establishment shall be used for such purpose.”

Mr. James R. Mann, of Illinois, made the point of order that the amendment proposed to the amendment extended to other appropriations than those provided in the pending bill and was therefore not in order.

The Chairman⁴ sustained the point of order.

¹First session Sixtieth Congress, Record, p. 4832.

²James R. Mann, of Illinois, Chairman.

³Third session Sixty-fifth Congress, Record, p. 3469.

⁴Edward W. Saunders, of Virginia, Chairman.

1598. On January 6, 1932,¹ the first deficiency appropriation bill was being considered in the Committee of the Whole House on the state of the Union.

The Clerk read:

Provided, that no part of this or any other appropriation for the construction of public buildings shall be used for remodeling and reconstructing the Department of State Building under the authorization therefor contained in the act approved July 3, 1930.

Mr. Fiorello H. LaGuardia, of New York, made the point of order that the item applied to other appropriations than those carried in the pending bill, and therefore was inadmissible as a limitation.

The Chairman² sustained the point of order.

1599. On December 13, 1932,³ 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 a provision for the care and preservation of public buildings under the control of the Treasury Department was reached.

Mr. John J. Cochran, of Missouri, offered the following amendment:

Provided further, That no part of this or any other appropriation shall be used to prepare in a Government office blue prints for public buildings other than where the Supervising Architect has prepared the plans.

Mr. Joseph W. Byrns, of Tennessee, made the point of order that the scope of the amendment extended beyond the present bill.

The Chairman⁴ sustained the point of order and said:

The amendment offered by the gentleman from Missouri provides that no part of this or any other appropriation shall be used. The Chair thinks that the point of order made by the chairman of the Committee on Appropriations is well taken in that the amendment seeks to restrict funds already appropriated as well as those carried in the pending bill. The Chair is of opinion that the language in the amendment which affects other appropriations than the pending one constitutes legislation on an appropriation bill and, therefore, is not in order. The Chair sustains the point of order made by the gentleman from Tennessee.

1600. A limitation must apply solely to the pending appropriation.

Paragraphs subject to a point of order and permitted to remain in the bill may be perfected by germane amendments, but not by amendments proposing additional legislation.

On August 12, 1921,⁵ the urgent deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. this paragraph was read:

For expenses of the United States Shipping Board Emergency Fleet Corporation for losses due to the maintenance and operation of ships and for administrative purposes, \$48,500,000: *Provided*, That no part of this sum shall be used for the payment of claims other than those resulting from the current maintenance and operation of vessels: *Provided further*, That no part of this sum shall be used to pay the compensation of any attorney, regular or special, for the United States Shipping Board or the United States Shipping Board Emergency Fleet Corpora-

¹ First session Seventy-second Congress, Record, p. 1394.

² William B. Bankhead, of Alabama, Chairman.

³ Second session Seventy-second Congress, Record, p. 413.

⁴ Thomas S. McMillan of South Carolina, Chairman.

⁵ First session Sixty-seventh Congress, Record, p. 4947.

tion unless the contract of employment has been approved by the Attorney General of the United States.

Mr. Joseph W. Byrns, of Tennessee, proposed to this an amendment:

After the word "sum" insert "or of any other funds in the United States Shipping Board or Emergency Fleet Corporation"

Mr. William R. Wood, of Indiana, made the point of order that the amendment proposed a limitation upon other appropriations than those carried in the pending bill.

The Chairman¹ ruled:

The general rule, as the Chair understands it, may be found in Hinds' Precedents, section 3927: "A limitation may be attached only to the money of the appropriation under consideration and may not be made applicable to money to be appropriated in other acts."

The Chair thinks that citation is supported by many precedents. This appropriation bill appropriates the sum of \$48,500,000 for the use of the Shipping Board Emergency Fleet Corporation. The amendment seeks to place a limitation in the following words:

"Or of any other funds of the United States Shipping Board Emergency Fleet Corporation."

If this were proper it would place a limitation upon any fund that was in the control of the Shipping Board Emergency Fleet Corporation, it matters not from what source it came or from whence it was derived. The Chair does not think the amendment is in order, and therefore sustains the point of order.

1601. A limitation must apply solely to an appropriation carried in the pending bill and not to the use of property purchased with such appropriation.

On May 14, 1932², the War Department appropriation bill was being considered in the Committee of the Whole House on the state of the union, when a paragraph was read which included the following:

Provided further, That no motor-propelled vehicle procured out of appropriations for the Regular Army that is more than two years old from the date of purchase shall be transferred to the custody and maintenance of any of the civil components of the Regular Army.

Mr. Edward W. Goss, of Connecticut, made the point of order that this provision was legislation and not in order on an appropriation bill.

The Chairman³ held that while a limitation applying to the appropriation itself was admissible, a limitation proposing to affect the property purchased with such an appropriation was not in order.

Thereupon, Mr. Ross A. Collins, of Mississippi, offered this amendment:

Provided further, That no appropriation contained in this act shall be available for any expense for or incident to the maintenance, operation, or repair of any motor-propelled vehicle procured out of appropriations for the Regular Army or to any of the activities embraced by Title II of this act that is more than two years old from the date of purchase at the time of such transfer.

¹William J. Graham, of Illinois, Chairman.

²First session Seventy-second Congress, Record, p. 10219.

³Fritz G. Lanham, of Texas, Chairman.

Mr. Goss having again objected on the ground that the amendment was legislation, the Chairman overruled the point of order and said:

In the opinion of the Chair the provisions in this amendment are purely a matter of limitation and the Chair overrules the point of order.

1602. Limitations applying to funds other than those provided in the pending bill are not in order.

On January 19, 1923,¹ the War Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

None of the funds of the Panama Railroad Co. or the Panama Railroad Steamship Line shall be used for new construction pertaining to the operation of the Panama Canal.

Mr. Edward E. Denison, of Illinois, made the point of order that the paragraph related to the funds of the Panama Railroad Co. and the Panama Railroad Steamship Line and not to appropriations provided in the pending bill.

The Chairman² sustained the point of order.

1603. A limitation may be attached only to the money of the appropriation under consideration, any may not be made applicable to moneys appropriated or to be appropriated in other acts.

A limitation embodying an affirmative authorization is not in order on a general appropriation bill.

On June 4, 1924,³ the second deficiency 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 the Internal Revenue Service and including the following:

And provided further, That the sum of \$18,415 herein above authorized to be expended for the care, maintenance, and protection of such rented buildings, together with all machinery, tools, equipment, and supplies used for the use in connection therewith, shall be transferred on July 1, 1924, from the Secretary of the Treasury to the superintendent State, War, and Navy Department Buildings.

To the paragraph Mr. Burton L. French, of Idaho, offered this amendment:

Insert a new paragraph, as follows:

“No money appropriated for the enforcement of the prohibition, narcotic, or customs laws shall be expended for the hire of automobiles, boats, or other similar conveyances in any locality whenever automobiles, boats, or similar conveyances are available in the custody of the law, forfeited to the United States under the penal laws, which in the judgment of the Secretary of the Treasury are suitable for use in the enforcement of such laws; and the Secretary of the Treasury is hereby authorized to acquire, upon payment of lien and costs as provided by law, such forfeited automobiles, boats, or other conveyances as in his discretion may be suitable or requisite for such purposes, and to expend such sums from the appropriation made for the enforcement of such laws for the maintenance and operation for official use of such automobiles, boats, or other conveyances, and a report shall be submitted to Congress each year in the Budget of all sums thus expended.”

Mr. Carl R. Chindblom, of Illinois, made the point of order that the amendment carried legislation.

¹ Fourth session Sixty-seventh Congress, Record, p. 2040.

² John Q. Tilson, of Connecticut, Chairman.

³ First session Sixty-eighth Congress, Record, p. 10546.

The Chairman¹ said:

The amendment offered by the gentleman from Idaho reads as follows:

“No money appropriated for the enforcement of the prohibition, narcotic, or customs laws shall be expended for the hire of automobiles, boats, or other similar conveyances in any locality whenever automobiles, boats, or similar conveyances are available in the custody of the law forfeited to the United States under the penal laws, which in the judgment of the Secretary of the Treasury are suitable for use in the enforcement of such laws.”

It will be observed that the limitation on the use of these moneys does not relate alone to the moneys appropriated by this act, but to all moneys appropriated by all acts. Therefore it goes beyond the ordinary rule of limitation, which refers only to a limitation on the appropriation carried in the particular bill which is being amended. There might be some question of doubt about it if it was not for the latter part of the amendment, which reads as follows:

“And the Secretary of the Treasury is hereby authorized to acquire upon payment of lien and costs as provided by law such forfeited automobiles, boats, or other conveyances as in his discretion may be suitable or requisite for such purposes, and to expend such sums from the appropriation made for the enforcement of such laws for the maintenance and operation for official use of such automobiles, boats, or other conveyances, and a report shall be submitted to Congress each year in the Budget of all sums thus expended.”

This is a legislative provision giving authority to the Secretary of the Treasury to do something which heretofore he has not had authority to do. It is said that it is a retrenchment or a diminution of the amount to be expended, but the Chair can not be sure of that. It might cost more than the Secretary would otherwise expend for the purpose. The point of order must be sustained:

1604. In order to qualify as a limitation, an amendment to an appropriation bill must apply to the appropriation under consideration, and propositions to apply such limitations to funds appropriated in other acts are not in order.

On June 20, 1930,² while the second deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, Mr. Ross A. Collins, of Mississippi, offered this amendment:

Provided, That no appropriation for the fiscal years 1930 and 1931 that may be available for the purchase of wooden furniture for Army barracks, quarters, or other buildings shall be expended for such furniture not wholly constructed out of wood grown in the United States.

Mr. William R. Wood, of Indiana, having made a point of order, the Chairman³ said:

The Chair will state that the amendment as offered related to appropriations for the fiscal years ending 1930 and 1931. That might be elsewhere than in the pending bill. Therefore, the Chair will sustain the point of order.

1605. On December 5, 1930,⁴ the Committee of the Whole House on the state of the Union was considering the Treasury and Post Office appropriation bill, when the Clerk read as follows:

SEC. 4. No appropriation available during the fiscal year 1932 shall be used during fiscal year to increase the compensation of any position within the grade to which such position has been allocated under the classification act of 1923, as amended, nor to increase the compensation

¹ William J. Graham, of Illinois, Chairman.

² Second session Seventy-first Congress, Record, p. 11371.

³ Carl R. Chindblom, of Illinois, Chairman.

⁴ Third session Seventy-first Congress, Record, p. 283.

of any position in the field service the pay of which is adjustable to correspond so far as may be practicable to the rates established by such acts, as amended, for the departmental service in the District of Columbia.

Mr. Fiorello H. LaGuardia, of New York, lodged a point of order against the section on the ground that it was applicable to appropriations other than those provided in the pending bill.

The Chairman¹ sustained the point of order and held:

The Chair finds that a similar question was before the Committee of the Whole on June 4, 1924 (Cannon's Precedents, sec. 1603), and on that occasion William J. Graham, of Illinois, Chairman, decided, in substance, this:

"A limitation may be attached only to the money of the appropriation under consideration and may not be made applicable to moneys appropriated or to be appropriated in other acts."

The Chair concurs in the decision made by Chairman Graham in that instance, and thinks the ruling is applicable in this case. The Chair sustains the point of order.

1606. Whenever a purported limitation makes unlawful that which before the lawful or makes lawful that which before was unlawful it changes existing law and is not in order on an appropriation bill.

A proper limitation is negative and in the nature of a veto, and when it assumes affirmative form by direction to an executive in the discharge of his duties under existing law it ceases to be a limitation and becomes legislation.

On February 4, 1925,² the independent offices appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was read:

No part of the moneys appropriated or made available by this act for the United States Shipping Board of the United States Shipping Board Emergency Fleet Corporation shall, unless the President shall otherwise direct, be used or expended for the repair or reconditioning of any vessel owned or controlled by the Government if the expense of such repair or reconditioning is in excess of \$50,000, until a reasonable opportunity has been given to the available Government navy yards to estimate upon the cost of such repair or reconditioning if performed by such navy yards within the limit of time within which the work is to be done: *Provided*, That this limitation shall only apply to vessels while in the harbors of the United States, and all expenditures in connection with such work are to be considered in estimating the cost.

Mr. Otis Schuyler Bland, of Virginia, Mr. Thomas L. Blanton, of Texas, and Mr. Frederick R. Lehlbach, of New Jersey, made points of order against the paragraph.

After debate, the Chairman³ ruled:

The paragraph having been reached and read, the gentleman from Texas and the gentleman from New Jersey and the gentleman from Virginia have all made a point of order against it. The question now arises as to whether or not the paragraph in the bill against which the point of order has been made is a proper limitation on the appropriation.

The rules of the House provide that no appropriation shall be carried in a general appropriation bill unless the purposes for which such appropriation is made are authorized by law. In other words, it is provided that a general appropriation bill shall not be made the vehicle for

¹ Earl C. Michener, of Michigan, Chairman.

² Second session Sixty-eighth Congress, Record, p. 3019.

³ John Q. Tilson, of Connecticut, Chairman.

carrying legislation. It is a well-recognized rule that an appropriation may be made or refused for any authorized purpose. In other words, an appropriation may be made for any, all, or none of the purposes authorized by law, but the appropriation or the refusal to appropriate may not be used as a means of changing existing law. A limitation may be placed upon an appropriation, but it must be a limitation only and must not in its effect change existing law.

The reason for such restriction upon the character of limitations is a substantial one and must not be lost sight of. It has been said that the reason of the law is the life of the law. It is equally true that the reason of our rule as to limitations is the life of the rule.

In order that the Government may function it is necessary that the great supply bills be passed. The Government can not go on if they fail. Long years of experience has demonstrated that legislation on a supply bill may endanger its passage or approval. It is not fair to the other branch of Congress or to the Executive to create an alternative, necessitating either the acceptance of objectionable legislation or the rejection of a supply bill.

Another reason has recently been added why these limitations and all other matters carrying legislation should be even more carefully scrutinized. The Budget system has been established. As a part of the Budget system all the appropriating jurisdiction of this House has been conferred upon one committee. It is a committee that has no other jurisdiction except to appropriate, and the House should be careful not to confer any further jurisdiction on that committee.

In the final analysis the question is: Does the paragraph carry matter the effect of which is to change existing law, to make it unlawful to do that which before was lawful, or to make it lawful to do that which before was unlawful? This prescribes additional duties and new duties for an executive, because the effect of it is to cause him to do things that he is not required by law to do as a part of his duties. The gentleman from Texas, Mr. Connally, in an argument made to you on either this amendment, or one very similar to it, stated the rule as clearly as the Chair is able to state it, or even more so. I cite from the proceedings of January 19, 1923. Mr. Connally said:

“Now, if the Chair please, my understanding of a limitation of an appropriation is as follows: In the face of a point of order congress can only appropriate in an appropriation bill for purposes already authorized by law. The Congress can appropriate for all purposes authorized by law or appropriate for none of the purposes authorized by law. Within those limits Congress can limit an appropriation. Congress can say that no part of an appropriation shall be expended for a part of the purposes which the law authorizes. But a limitation must be absolutely negative. It must be in the nature simply of a veto. It can not direct an executive officer in the discharge of his duties under existing law. Whenever it does, it ceases to be a limitation and becomes legislation in violation of the rule.”

In passing upon a question quite similar in principle on January 18, 1923, Sixty-seventh Congress, Fourth session, the present occupant of the Chair cited a number of decisions applicable to this case and will not cite them again now. They embody the principle set out in the argument just cited.

Applying this principle to the paragraph before us we find that no part of the money appropriated, or made available, shall be used for the purposes mentioned if the expense of such repair or conditioning is in excess of \$50,000. The executive officer must first determine this fact. Perhaps this would not rise to the dignity of a new duty, but it goes further and says that until a reasonable opportunity has been given. He must determine what is a reasonable opportunity and give this reasonable opportunity to the available Government navy yards. He must find out what navy yards are available, if he is able to find out, and give them a reasonable opportunity to estimate upon the cost of the work to be done. It seems clear to the Chair that this is imposing new duties; that it is legislation on a general appropriation bill and is, therefore, repugnant to our rules. The Chair sustains the point of order.

1607. A proposition in the form of a limitation but in fact proposing affirmative legislation was held not to be in order in an appropriation bill.

On January 18, 1930,¹ during consideration of the Treasury and Post Office appropriation bill, in the Committee of the Whole House on the state of the Union, Mr. John C. Schafer, of Wisconsin, offered this amendment:

Provided further, That nothing contained in this section shall be construed to prevent the continuance of the customary established tests, such as the case examination, to determine the fitness of postal employees for continuance or promotion in the Postal Service.

Mr. William R. Wood, of Indiana, having raised a question of order against the proviso, the Chairman² held:

The gentleman from Indiana makes the point of order that the proviso is legislation. It seems to the present occupant of the Chair that unless there is law on the statute book at the present time, which provides for these customary, established tests, there is no question but that the amendment is legislation on an appropriation bill, and the point of order is sustained.

1608. A provision preventing an executive from doing what he otherwise might lawfully do, or requiring him to do what he otherwise is not required to do, is not to be construed as a limitation, and is not in order on an appropriation bill.

Debate on an appeal in the Committee of the Whole is under the five-minute rule.

On February 4, 1925,³ the independent offices appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the section providing for the United States Shipping Board Emergency Fleet Corporation was reached.

Mr. Harry E. Hull, of Iowa, offered the following amendment:

That no part of the moneys appropriated or made available for the United States Shipping Board or the United States Shipping Board Emergency Fleet Corporation shall be used or expended for the construction, purchase, acquirement, repair, or reconditioning of any vessel or part thereof or the machinery or equipment for such vessel from or by any private contractor that at the time of the proposed construction, purchase, acquirement, repair, or reconditioning can be constructed, produced, repaired, or reconditioned within the limit of time within which the work is to be done, in each or any of the navy yards or arsenals of the United States, at an actual expenditure of a sum less than that for which it can be constructed, produced, acquired, repaired, or reconditioned otherwise.

Mr. John McDuffie, of Alabama, Mr. Otis Schuyler Bland, of Virginia, Mr. Thomas L. Blanton, of Texas, and Mr. William R. Wood, of Indiana, raised questions of order on the amendment:

Mr. Blanton said:

I hope the Chair will not base his decision on the question of germaneness. It ought to be based on the question of limitation, because we ought to settle that question; and I call the Chair's attention to a decision by the present occupant of the chair where the Chair quoted former Speaker Cannon on the question of limitations, wherein Mr. Speaker Cannon held that whenever you stop

¹ Second session Seventy-first Congress, Record, p. 1920.

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

³ Second session Sixty-eighth Congress, Record, p. 3024.

an executive from doing something that he could otherwise do by law, or whenever you require an executive to do something which he does not have to do by law, it is not a proper limitation on an appropriation bill.

The Chairman¹ ruled:

The gentleman from Texas has just referred to the decision of Mr. Speaker Cannon, and the Chair has it in mind. The Chair is now satisfied that so far as the place in the bill is concerned the preceding paragraph is only a limitation of the paragraph preceding it, so that in the judgment of the Chair we have not pass beyond the place where it would be proper to offer this amendment, and therefore overrules this point of order.

As to its coming under the Holman rule, it seems to the Chair that any claim of this kind is based on a contingency entirely too remote or too chimerical to determine whether there will be a saving or a loss under such an arrangement. Therefore, the Chair will not decide the point of order on the ground of the Holman rule.

There is nothing remaining but the question of limitation. The celebrated and oft-repeated argument of the gentleman from Illinois, Mr. Mann, has been referred to, where he said that an appropriation might be limited to red-headed men. It is a well-recognized parliamentary principle that an appropriation may be limited by indicating the qualifications of the recipients of the appropriation, so the Chair will not take issue with that principle.

This amendment goes very much farther than the qualifications of the beneficiary. Its terms would require additional duties on the part of executive officers. It is, in effect, legislation, and being offered as an amendment to an appropriation bill, is not in order. The Chair, therefore, sustains the point of order.

Mr. Hull having appealed from the decision of the Chair, Mr. William R. Green, of Iowa, raised a question as to the time permitted for debate on the appeal.

The Chairman said:

The Chair will state that Chairman Crisp many years ago laid down the rule that upon an appeal in Committee of the Whole the debate is under the five-minute rule, and the Chair will follow that ruling of Chairman Crisp.

After debate, the question on the appeal being submitted to the committee was decided in the affirmative, yeas 93, noes 64. So the decision of the Chair was sustained.

1609. Conflicting decisions on amendments denying use of appropriations for payment of officers engaged in supervising stop-watch operations in Government plants.

The admissibility of amendments forbidding payment of salaries to officials while engaged in discharge of specified duties authorized by law is not conclusively established.

Provisions that no part of an appropriation be available for payment of cash reward in addition to wages have been variously incorporated in general appropriation bills without objection, ruled out on points of order, and held to be admissible as limitations.

Decisions on the "stop-watch" or "Taylor system" and "bonus" or "premium" provisions proposed on general appropriation bills.

On January 22, 1915,² the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The reading of

¹John Q. Tilson, of Connecticut, Chairman.

²Third session Sixty-third Congress, Record, p. 2133.

the bill having been concluded, Mr. Fred S. Deitrick, of Massachusetts, offered the following amendment:

Provided, That no part of the appropriations made in this bill shall be available for the salary or pay of any officer, manager, superintendent foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch or other time-measuring device, a time study of any job of any such employee between the starting and the completion thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this bill be available to pay any premium or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant; and no claim for services performed by any person while violating this proviso shall be allowed.

Mr. James Hay, of Virginia, raised a point of order on the amendment.

In discussion the point of order, Mr. James R. Mann, of Illinois, said:

Does my colleague recall the very prominent case of the limitation that was put on the bill making appropriations for National soldiers' homes and State soldiers' homes, that no part of the appropriation would be expended in the homes for the maintenance of the canteen?

As I heard the amendment read, if I got it rightly, it does not require anybody to do anything. But only requires that the appropriation shall not be made if something is done. It does not require positive action. It is not a change of law. It only says that the appropriation shall not be available if they do something which they now have the privilege of not doing. We do not have to make an appropriation in order to give a bonus. As I caught the reading, it excepts the provision we passed in a special act here a few years ago to encourage suggestions. I thought the exception covered that, so we would not change the law in that respect.

Thereupon Mr. Hay withdrew the point of order.

1610. On June 1, 1916,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

Provided, That no part of the appropriations made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch or other time-measuring device a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this act be available to pay any premium or bonus or cash reward to any employee in addition to his regular wages except for suggestions resulting in improvements or economy in the operation of any Government plant.

No point of order being raised against the paragraph, it remained in the bill.

The same amendment was subsequently offered in the same session by Mr. Clyde H. Tavenner, of Illinois, to the Army appropriation bill, the sundry civil appropriation bill, and the fortifications appropriation bill, and was incorporated in each bill.

1611. On May 31, 1918,² the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. At the end of the bill Mr. George R. Lunn, of New York, offered the following amendment:

Provided, That no part of the appropriations in this act shall be available for salary or pay of any officer, manager, superintendent, foreman, or any other person having charge of the work

¹First session Sixty-fourth Congress, Record, p. 9120.

²Second session Sixty-fifth Congress, Record, p. 7270.

of any employee of the United States Government while making or causing to be made with a stop watch or other time-saving device a time study of any such employee between the starting and competing thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this act be available to pay any premiums or bonuses or cash rewards to any employee in addition to his regular wages except for suggestions resulting in improvements or economy in the operation of any Government plant.

Mr. Hubert S. Dent, jr., of Alabama, having raised a question of order on the amendment, Mr. Lunn called attention to the fact that the same amendment had been included in every naval appropriation bill since 1915.

The Chairman¹ said:

The Chair is necessarily bound by precedent, and the precedent, and the precedent just quoted is binding. The Chair overrules the point of order.

1612. On February 18, 1919,² the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was read:

That no part of the appropriations in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch, or other time-measuring device, a time study of any such employee between the starting and completing thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this act be available to pay any premiums or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant.

Mr. Richard Wayne Parker, of New Jersey, raised a question of order on the paragraph.

The Chairman³ overruled the point of order without debate.

1613. On March 23, 1920,⁴ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union.

The last paragraph of the bill having been read, Mr. Harry E. Hull, of Iowa, offered this amendment:

That no part of the appropriations made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch, or other time-measuring device, a time study of any job of any such employee between the starting and completion thereof or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this act be available to pay any premium or bonus or cash reward to any employee, in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant; and that no part of the moneys appropriated in each or any section of this act shall be used or expended for the purchase or acquirement of any article or articles that, at the time of the proposed acquirement, can be manufactured or produced in each or any of the Government navy yards of the United States, when time and facilities permit, for a sum less than it can be purchased or acquired otherwise.

¹ Finis J. Garrett, of Tennessee, Chairman.

² Third session Sixty-fifth Congress, Record, p. 3730.

³ Edward W. Saunders, of Virginia, Chairman.

⁴ Second session Sixty-sixth Congress, Record, p. 4767.

Mr. Bertrand H. Snell, of New York, made a point of order against the amendment.

After brief debate, the Chairman ¹ overruled the point of order.

1614. On February 5, 1921,² the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was read:

No part of the moneys appropriated in this act shall be used or expended for the purchase or acquirement of any article or articles that at the time of the proposed acquirement can be manufactured or produced in each or any of the Government arsenals of the United States for a sum less than it can be purchased or procured otherwise.

To this Mr. Harry E. Hull, of Iowa, offered the following as an amendment:

After the word "otherwise" insert "that no part of the appropriations made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch or other time-measuring device a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee, while engaged upon such work. Nor shall any part of the appropriations made in this act be available to pay any premium or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant."

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

This Chairman ³ held:

Regardless of what the present occupant of the chair may think of the wisdom of this amendment, it is his duty as Chairman of the Committee of the Whole House on the state of the Union to rule in accordance with the rules of the House and the best precedents made in accord with the rules of the House. This identical amendment has been offered numerous times and ruled upon by numerous able Chairmen who have filled the chair before, and on all occasions, uniformly, so far as the present occupant of the chair now recalls, it has been held that it is a limitation on appropriations made in the act. Therefore the Chair overrules the point of order.

1615. On March 25, 1922,⁴ the War Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Expenditures for carrying out the provisions of this act shall not be made in such manner as to prevent the operation of the Government arsenals at their most economical rate of production, except when a special exigency requires the operation of a portion of an arsenal's equipment at a different rate.

Thereupon Mr. Harry E. Hull, of Iowa, offered this amendment:

After the word "rate" insert a new paragraph:

"That no part of the appropriations made in this act shall be available for the salary, or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch, or other time-measuring device, a time study of any job or of any such employee between the starting and completion thereof, or the movements of any such employee while engaged

¹ James R. Mann, of Illinois, Chairman.

² Third session Sixty-sixth Congress, Record, p. 2071.

³ John Q. Tilson, of Connecticut, Chairman.

⁴ Second session Sixty-seventh Congress, Record, p. 4585.

upon such work, nor shall any part of the appropriations made in this act be available to pay any premium or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant.”

Mr. Daniel R. Anthony, jr., of Kansas, made the point of order that the amendment was not germane and provided legislation.

The Chairman¹ said:

Whatever the opinion of the Chair might have been if this were being brought up for the first time, he feels bound by the precedents and practices in ruling upon this and similar amendments. The Chair overrules the point of order.

1616. On January 18, 1923,² the War Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Harry E. Hull, of Iowa, offered the following as a new paragraph:

No part of the appropriations made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch or other time-measuring device a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this act be available to pay any premiums or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant.

Mr. Thomas L. Blanton, of Texas, in presenting a point of order against the amendment, said:

Mr. Chairman, it is time that all these recent parliamentary cobwebs should be wiped out and that we should get back to the sane rulings that have been made in this House heretofore. They all run back to the ruling suggested the other day by the distinguished present occupant of the chair, made by Mr. Speaker Cannon, when he said that a limitation which is legislation, which directs affirmative action, which restricts the discretion of an executive, should be ruled out of order on appropriation bills; that the Members of the House have the right to expect when an appropriation bill comes on the floor in charge of a committee that it contains no legislation, and that when it does contain legislation or when legislation is offered from the floor and a point of order is made against it, it should be sustained. I am sure that the Chair is not going to be carried away by what has happened heretofore. Garden-seed amendments have been held in order time and again in the Committee of the Whole in former Congresses, and usually on committee rulings the Speaker of the House follows the decisions of the Chairman of the Committee of the Whole House on the state of the Union. Every year since I have been in Congress the Chairman of the Committee of the Whole has held the garden-seed amendment in order. Yet the other day when that proposition was put directly up to the Speaker of the House he held that it was legislation on an appropriation bill and that it ought not to be permitted. I submit to the Chair that this is not a retrenchment, but a direct additional expenditure that is called for by the amendment; and I submit that the point of order should be sustained.

Mr. Hull said, in opposition to the point of order:

Mr. Chairman, I hardly think it is necessary to argue the point of order very long with the Chairman of the committee. I think he was in the chair a year ago when the same point of order was made against identically the same amendment, and he held it in order. I do not know how anyone can claim it is not in order at the present time, when it has been held in order for eight years. I am sure the present occupant of the chair was in the chair once, and I think he has

¹ Nicholas Longworth, of Ohio, Chairman.

² Fourth session Sixty-seventh Congress, Record, p. 1970.

been in the chair several times when this identical amendment has been held in order. It has been held in order by the best parliamentarians in the House.

After further debate, the Chairman ¹ ruled:

It is my belief that nothing is ever finally settled until it is settled right. The amendment now offered by the gentleman from Iowa has been ruled upon a number of times during my experience in this House and has been decided both ways. The greater number, however, and all of the later decisions have been one way, holding that it is a limitation. The present occupant of the chair, quite probably, was one of those who, guided entirely by recent precedent, held it to be a limitation. However that may have been, he now believes in the light of a more thorough consideration that such rulings were fundamentally wrong, that it is not a limitation of an appropriation but a positive restriction upon Executive authority, and to the extent of such restriction a change of existing law.

In a decision of Mr. Speaker Cannon, to which I referred a few days ago when a somewhat similar question was pending before the Chair, the effect of the language was held to be decisive and this became the point upon which the decision in that case turned. Hinds' Precedents, section 3935.

What is the effect of the language in the case before us? It is to prohibit the officials in charge of our arsenals and other governmental establishments from doing what they might legally do if this restriction were not in force. For instance, without a restriction of this character they could make a time study with a time-measuring device. If this amendment is added to the bill, as it has been for many years past, then it will not be permissible for these time studies to be made. This is clearly and admittedly the effect and purpose of the language.

It is not the province of the Chair to say whether the time studies ought or ought not to be made. That is a question for Congress to decide by appropriate legislation. It is the duty of the Chair to determine whether this amendment is a proper limitation on an appropriation bill under the rules of the House and to say whether the proposed language simply limits the appropriation or whether as a matter of fact it changes existing law, and is, therefore, legislation. The Chair believes that it is not a mere limitation on a appropriation but in effect is legislation, and therefore sustains the point of order.

Mr. Hull appealed from the decision of the Chair.

Whereupon the Chairman called Mr. Willis C. Hawley, of Oregon, to the chair; and the question being put and tellers being ordered, it was decided in the affirmative, yeas 66, nays 26. So the decision of the Chair stood as the judgment of the committee.

1617. On March 21, 1924,² the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. James F. Byrnes, of South Carolina, offered the following to appear in the bill as a separate paragraph:

No part of the appropriations made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employees of the United States Government while making or causing to be made with a stop watch or other time-measuring device a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this act be available to pay any premiums or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant; and that no part of the moneys appropriated in each or any section of this act shall be used or expended for the purchase or acquirement of any article or articles that, at the time of the proposed acquirement,

¹ John Q. Tilson, of Connecticut, Chairman.

² First session Sixty-eighth Congress, Record, p. 4680.

can be manufactured or produced in each or any of the Government navy yards of the United States, when time and facilities permit, for a sum less than it can be purchased or acquired otherwise.

Mr. Thomas L. Blanton, of Texas, submitted a point of order on the amendment, citing in support of his contention the decision¹ on a similar point of order rendered on January 18, 1923.

The Chairman² said:

The Chair regrets very much that he has to rule on this proposition. As the Chair understands it, the rule is that where a matter of this kind has been decided by a Speaker of the House it sets a ruling precedent. Where it has been decided by a Chairman of the Committee of the Whole it does not set a precedent, and this decision need not be followed by succeeding Chairmen of the committee. This point has never been passed upon by a Speaker of this House. Therefore, we have no guide here. I hope some one in the near future acting as Speaker of the House will determine this matter. Thus far we must be guided simply by the ideas of the one who happens to be acting as presiding officer of the Committee of the Whole. Let me trace the history of this amendment for just a moment. The first time the present occupant of the chair can find that this amendment was ever passed upon was during the Sixty-third Congress, in the third session, when the gentleman from Tennessee, Mr. Garrett, was in the chair.

An amendment was offered exactly like this, a stop-watch provision, and a point of order was made against it. Mr. Mann, of Illinois, an able parliamentarian, was one of those who argued for the amendment, that it was not legislation upon an appropriation bill.

Mr. Hay had made the point of order, and soon afterwards he withdrew his point of order after this discussion, and the matter proceeded to a vote upon the amendment. The Chairman of the committee did not have to rule upon it.

Afterwards, in the Sixty-fifth Congress, second session, the gentleman from Tennessee, Mr. Garrett, was again in the chair, and the same amendment came up. On the occasion the Chair ruled after the point of order had been made:

"The Chair is necessarily bound by the precedents, and the precedent just quoted is binding. The Chair overrules the point of order."

Again, in the Sixty-fifth Congress, in the third session, the gentleman from Virginia, Mr. Saunders, a very able parliamentarian and a man whom all who served with regarded very highly, was required to rule upon this same amendment. The point of order was made by the gentleman from New Jersey, Mr. Parker. Mr. Saunders, without discussing it at all, said:

"The point of order is overruled."

Again, in the Sixty-sixth Congress, at the second session, the same amendment was before the House. The gentleman from Illinois, Mr. Mann, was in the chair. The point of order was made by the gentleman from Texas, Mr. Black. Mr. Mann said:

"The Chair overrules the point of order."

Again, in the Sixty-seventh Congress, at the second session, the gentleman from Ohio, Mr. Longworth, was in the chair, and this same amendment was before the House. The point of order was made against it. Mr. Longworth said:

"The Chair is ready to rule. Whatever the opinion of the Chair may have been if this were being brought up for the first time, he feels bound by the precedents and practices in ruling upon this and similar amendments. The Chair overrules the point of order."

On another occasion in the Sixty-sixth Congress, at the third session, the gentleman from Connecticut, Mr. Tilson, was in the chair. This amendment was before the House. The point of order was made, and this is what the Chairman said:

"This identical amendment has been offered numerous times and ruled upon by numerous able Chairmen who have filled the chair before, and on all occasions uniformly, so far as the present

¹ See section 1616 of this work.

² William J. Graham, of Illinois, Chairman.

occupant of the chair now recalls, it has been held that it is a limitation on the appropriations made in the act. Therefore, the Chair overrules the point of order."

Following that, as suggested by the gentleman from Texas, Mr. Blanton, the gentleman from Connecticut being again in the chair on January 18, 1923, held as the gentleman has suggested.

The Chair has the greatest admiration and respect for the opinion of the gentleman from Connecticut. The Chair knows of no man in this House who stands higher in his estimation than does the gentleman from Connecticut, and in saying what the Chair has to say about this, he does not want to be understood by the committee as reflecting in any way upon the ability or opinion of the gentleman from Connecticut. It is simply a question where Chairmen look at things from a different standpoint. The present occupant of the chair looks at it from the standpoint that this amendment is a proper amendment and a proper limitation. Here is an amendment that provides that no part of this money can be used for the purpose of paying the salaries of officers who make time studies in arsenals and navy yards. Suppose the amendment had read that no part of the funds appropriated by this act shall be used in making time studies?

Does anyone contend that would not be a proper limitation? Congress has the right to say whether it shall be used for that purpose or not. Now go a step further and say that no part shall be used for paying the time of the men who make such time studies. The Chair thinks that is a limitation. Following this long line of authorities by able Chairmen, without any attempt to reflect upon anyone who has ruled differently, the Chair overrules the point of order.

Mr. Blanton having appealed from the decision of the Chair, the committee, on division, sustained the decision by a vote of yeas 79, noes 1.

1618. On March 28, 1924,¹ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

No part of the appropriations made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch or other time-measuring device a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this act be available to pay any premiums or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant.

Mr. Thomas L. Blanton, of Texas, made the point of order that the paragraph provided legislation on a general appropriation bill.

Declining to entertain debate, the Chairman² said:

There is nothing else in such hopeless conflict in our rules as decisions upon the questions of limitations. This particular paragraph has been the subject of conflicting rulings only quite recently. The Chair is not disposed to add further confusion than exists at the present time. The Chair believes that the decision which he made in the Army appropriation bill a year ago was correct and that it was founded upon good reasoning. Having that ruling in mind and also having in mind the more recent decision made by the distinguished gentleman from Illinois, Mr. Graham, who is a recognized parliamentarian and who goes to the bottom of things when he considers them, the present occupant of the chair, he repeats, is not disposed to complicate the situation further by making a ruling at this time upon this point of order. It is the hope of the present occupant of the chair that the Committee on Rules, or some one else interested in the orderly procedure of the House, will at some future time attempt to draft a rule on the subject, particularly in view of that fact that all of the appropriating power is now vested in one committee.

¹ First session Sixty-eighth Congress, Record, p. 5173.

² John Q. Tilson, of Connecticut, Chairman.

A rule should be drafted which would fix the power of the Appropriations Committee in respect to limitations, defining it as clearly as is possible, and relegate the matter of legislation to where it belongs, viz, the legislative committees of the House.

The Chair declines to pass upon the question at this time as to whether the paragraph is in order or not, and will let the committee decide.

Thereupon Mr. Frederick W. Dallinger, of Massachusetts, in discussing the question thus submitted to the committee, called attention to a decision made on March 21, 1924, holding in order as a limitation a similar amendment offered to the naval appropriation bill.

After further debate, the Chairman said:

In view of the remarks of the gentleman from Massachusetts, the Chair thinks that, in justice to himself, he should make a short statement before submitting the matter to vote. The gentleman from Illinois, Mr. Graham, with his usual thoroughness, looked up all of the decisions in regard to this matter before he made his ruling the other day. The present occupant of the chair did the same thing when he made the decision he rendered a year ago. Both the gentleman from Illinois and the present occupant of the chair found that no decision had ever been rendered on this particular paragraph or amendment, as the case may be, that had had any consideration whatever as a parliamentary proposition so far as appears from the Record.

The question first rose when the gentleman from Tennessee, Mr. Garrett, was in the chair, but before a ruling was made the gentleman who had made the point of order withdrew it so that the gentleman from Tennessee made no ruling on the question. In the next Congress, I think it was, the matter again came up. The same gentleman from Tennessee was in the chair, the point was again raised, and the gentleman from Tennessee, without any argument and without stating his reasoning, said that on the precedents already made he would overrule the point of order.

Another Chairman—I think it was the gentleman from Virginia, Mr. Saunders—simply said that the precedents seemed to be against it, and overruled the point of order. Then the gentleman from Ohio, Mr. Longworth, and later the present occupant of the chair made the same kind of decision, and the question was never considered at any length, so far as the Record shows, until the present occupant of the chair, a year ago, went through the precedents, not only as to this particular paragraph but to others that might be analogous reasoning bear upon it, and ruled that the provision should be ruled out. The other day the gentleman from Illinois, Mr. Graham, in a well-considered decision, ruled the other way. So the matter stands at present. The Chair is going to leave the question with the committee to decide whether this paragraph is in order or not.

The question being taken, on a division there appeared yeas 39, nays 14, and the paragraph was held to be in order.

1619. On January 7, 1927,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the following was read:

No part of the appropriations made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch or other time-measuring device a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this act be available to pay any premiums or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant; and that no part of the moneys herein appropriated for the Naval Establishment or herein made available therefor shall be used

¹Second session Sixty-ninth Congress, Record, p. 1253.

or expended under contracts hereafter made for the repair, purchase, or acquirement, by or from any private contractor, of any naval vessel, machinery, article or articles that at the time of the proposed repair, purchase, or acquirement can be repaired, manufactured, or produced in each or any of the Government navy yards or arsenals of the United States, when time and facilities permit and when, in the judgement of the Secretary of the Navy, such repair, purchase, acquirement, or production would not involve an appreciable increase in cost to the Government.

Mr. Andrew J. Montague, Virginia, having raised a question of order, the Chairman¹ ruled:

This language has frequently been passed upon by Chairmen of the Committee of the Whole. The first part of the paragraph is the non-stop-watch provision which has been held in order by numerous chairman and upon which decisions to the contrary have been overruled by the Committee of the Whole. While the present occupant of the chair had frequently argued on the floor that the stop-watch provision was not in order, he feels it incumbent to follow the precedents thus established, and hold that portion of the paragraph is not out of order. The Chair believes the second portion prohibiting any part of the appropriation in the act to be available to pay any premiums or bonus or cash awards to any employee in addition to his regular wages is out of order, as in the opinion of the Chair it is not merely a denial of the appropriation but includes substantive legislation requiring action on the part of Government officers who are to enforce that portion of the paragraph. With reference to the last part of the paragraph mentioned by the gentleman from Virginia the precedents are conclusive that that portion of the paragraph is out of order, and the Chair without citing any further authority refers to the decision of Chairman Lehlbach, a very comprehensive and clear decision on this point rendered January 25, 1926, on the naval appropriation bill. A portion of paragraph being out of order, it is the duty of the Chair, upon an objection to the entire paragraph, to hold that the whole paragraph is out of order.

Thereupon, Mr. Frederick W. Dallinger, of Massachusetts, offered the following amendment:

No part of the appropriations made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch or other time-measuring device a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this act be available to pay any premiums or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant.

Mr. Thomas L. Blanton, of Texas, made a point of order against the amendment which was sustained by the Chairman.

Whereupon, Mr. Dallinger offered this amendment:

No part of the appropriations made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch or other time-measuring device a time study of any job of any such employee between the starting and completion thereof, or the movements of any such employee while engaged upon such work.

No question of order being raised, the Chairman put the question on the amendment.

¹ Carl R. Chindblom, of Illinois, Chairman.

1620. On February 8, 1929,¹ during consideration of the naval appropriation bill, in the Committee of the Whole House on the state of the Union, the Clerk read the following paragraph:

No part of the appropriations made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch or other time-measuring device a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work, nor shall any part of the appropriations made in this act be available to pay any premiums or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant; and that no part of the moneys appropriated and/or made available for the Naval Establishment for the fiscal year 1930 shall be used or expended under contracts hereafter made for the repair, purchase, or acquirement, by or from any private contractor, of any any naval vessel, machinery, article or articles that at time of the proposed repair, purchase, or acquirement can be repaired, manufactured, or produced in each or any of the Government navy yards or arsenals of the United States, when time and facilities permit, and when, in the judgment of the Secretary of the Navy, such repair, purchase, acquirement, or production would not involve an appreciable increase in cost to the Government.

Mr. John Taber, New York, having raised a point of order, the Chairman² ruled:

It is not necessary for the Chair to dwell upon the provision in the first part of the paragraph, inasmuch as the last part of the paragraph is clearly out of order, and therefore, the Chair sustains the point of order to the entire paragraph.

1621. On February 13, 1931,³ the Committee of the Whole House on the state of the Union was considering the naval appropriation bill, when the Clerk read:

No part of the appropriations made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person or persons having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch or other time-measuring device a time study of any job any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this act be available to pay any premiums or bonus or cash reward to any employee in addition to his regular wages except for suggestions resulting in improvements or economy in the operation of any Government plant.

Mr. John F. Miller, of Washington, offered the following amendment:

And that no part of the moneys herein appropriated for the Naval Establishment or herein made available therefore shall be used or expanded under contracts hereafter made for the repair, purchase, or acquirement, by or from any private contractor, of any naval vessel, machinery, article or articles that at the time of the proposed repair, purchase, or acquirement can be repaired, manufactured, or produced in each or any of the Government navy yards or arsenals of the United States, when time and facilities permit, and when, in the judgment of the Secretary of the Navy, such repair, purchase, acquirement, or production would not involve an appreciable increase in cost to the Government.

Mr. Burton L. French, of Idaho, made the point of order that the amendment proposed legislation by imposing new duties on the Secretary of the Navy.

¹ Second session Seventieth Congress, Record, p. 3100.

² Robert Luce, of Massachusetts, Chairman.

³ Third session Seventy-first Congress, Record, p. 4859.

The Chairman¹ ruled:

This is not a new question. Limitations in the same languages as this have been offered in the past on Navy appropriation bills. This kind of limitation does not really restrict the use of the money to certain purposes, which is characteristic of limitations, but affirmatively imposes upon the Secretary of the Navy the duty of making a comparative-cost study of manufacture, the building of vessels, the making of repairs, and so forth, as between doing the work in the navy yards and letting it out on private contracts.

Furthermore, it not only imposes upon him the duty to make the cost study but it vests in him the discretion to determine whether or not any increase in cost is appreciable. It is legislation imposing on the Secretary of the Navy a duty not imposed upon him by existing law.

The Chair calls attention to the fact that on this kind of limitation, Representative Luce, Chairman of the Committee of the Whole House on the state of the Union, on February 8, 1929,² held such an amendment not to be in order, and on the same day when the Committee rose the question came up on a motion to recommit and the ruling was sustained by Speaker Longworth. Therefore, the Chair sustains the point of order.

1622. Decisions on amendments denying use of appropriations in payment of contractors who had not established the eight-hour day.

On April 8, 1910,³ the naval appropriation bill was being considered in the Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For four submarine torpedo boats in an amount not exceeding in the aggregate \$2,000,000, and the sum of \$800,000 is hereby appropriated toward said purpose.

To this paragraph Mr. William Hughes, of New Jersey, proposed the following amendment:

Provided, That no part of the money shall be paid to any person, firm, or corporation which has not at the commencement of and during the construction of the work for which this appropriation is made established an eight-hour workday for all employees, laborers, and mechanics, engaged in doing the work for which this money is appropriated. Nothing herein shall affect any existing contract.

Mr. George E. Foss, of Illinois, having raised a question of order against the amendment, Mr. Hughes maintained that it was admissible as a limitation.

The Chairman⁴ ruled:

The Chair thinks that, although the amendment is in form a limitation, it is in fact legislation. Therefore the Chair sustains the point of order.

1623. On February 21, 1911,⁵ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:

Four submarine torpedo boats, in an amount not exceeding in the aggregate \$2,000,000, and the sum of \$800,000 is hereby appropriated for said purpose.

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

² See sec. 1620, *supra*.

³ Second session Sixty-first Congress, Record, p. 4442.

⁴ James R. Mann, of Illinois, Chairman.

⁵ Third session Sixty-first Congress, Record, p. 3085.

Mr. William Hughes, of New Jersey, proposed the following amendment:

After the word "purpose" strike out the period and insert a semicolon, and add:

Provided, That no part of this appropriation shall be expended for the construction of any boat by any person, firm, or corporation which has not at the time of the commencement and construction of said vessel established an eight-hour workday for all employees, laborers, and mechanics engaged or to be engaged in the construction of the vessels named herein."

Mr. George E. Foss, of Illinois, made a point of order against the amendment, and the Chairman¹ ruled:

When the naval bill was under consideration a year ago, April 8, 1910, this precise question was raised, and under precisely the same circumstances. The amendment is offered to the paragraph relating to the construction of torpedo boats. When that paragraph was read last year this same amendment was then offered to this same paragraph. The Chair will read the amendment offered by the gentleman from New Jersey, and the amendment which he offered last year.

Provided, That no part of the appropriation shall be expended for the construction of any boat by any person, firm, or corporation which has not at the time of the commencement and construction of said vessels established an eight-hour workday for all employees, laborers, and mechanics engaged or to be engaged in the construction of the vessels named herein."

The Chair will now read the amendment offered last year.

Provided, That no part of the money shall be paid to any person, firm, or corporation which has not at the commencement of and during the construction of the work for which this appropriation is made, established an eight-hour workday for all employees, laborers, and mechanics engaged in doing the work for which this money is appropriated. Nothing herein shall affect any existing contract."

The occupant of the chair at that time was one of the ablest parliamentarians in public life the gentleman from Illinois, Mr. Mann, and at that time he sustained the point of order, and the Chair follows that precedent and sustains the point of order now.

Mr. Hughes having appealed from the decision of the Chair, Mr. James R. Mann, of Illinois, said:

I was in the chair when the ruling was made last year on which the present occupant of the chair relies. I think no one will charge the occupant of the chair at that time with having ruled unfairly upon the proposition relating to eight-hour labor, because the parts of the proposition which he presented which were in order were held to be in order.

What is the proposition? Here is a provision for the construction of four submarine torpedo boats. If that appropriation be made in the way proposed, the Secretary of the Navy may invite proposals for the construction of those vessels, but under existing law he has no authority to say that no one can bid that has not eight-hour labor in his yard. He has no authority under the existing law to limit the bidders to those yards only which employ eight-hour labor.

What is the proposition that the gentleman from New Jersey proposes? Under the guise of a limitation he proposes that the Secretary of the Navy can not spend this money unless the bids be limited to those yards which have eight-hour labor.

What is the result? Either that the money can not be expended or that the Secretary of the Navy construes this as a change of existing law; and when he finds this provision is in the law he can not say that Congress has written in the law that which means nothing, that they had given an appropriation and forbade its expenditure, and hence he must hold that the so-called limitation is a change of law. And whereas now he can not confine bidders to those employing eight-hour labor, if this provision goes in, the law has been changed by legislation, so that he must confine the bidders to those employing eight-hour labor.

¹ Frank D. Currier, of New Hampshire, Chairman.

The question being put as to whether the decision of the Chair should stand as the judgment of the committee, it was decided in the negative, yeas 96, noes 111. So the decision of the Chair was overruled and the amendment was admitted.

1624. Decisions on admissibility of amendments withholding appropriations from departments requiring less than eight hours work.

On March 14, 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. At the conclusion of the reading of the bill Mr. William P. Borland, of Missouri, offered this amendment as a new paragraph:

No part of any amount herein appropriated shall be used to pay salaries or for personal services in any executive department of the Government in the city of Washington which does not, subject to the provisions and exceptions of section 7 of the legislative, executive, and judicial appropriation act approved March 15, 1898, require eight hours of labor each day.

Mr. Frank W. Mondell, of Wyoming, made the point of order that the amendment was legislation on an appropriation bill.

The Chairman² held that the amendment merely proposed a limitation and overruled the point of order.

1625. On December 16, 1916,³ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The reading of the bill having been concluded, Mr. William P. Borland, of Missouri, proposed the following amendment:

No part of any amount herein appropriated shall be used to pay salaries or for personal services in any executive department of the Government in the city of Washington which does not, subject to the provisions and exceptions of section 7 of the legislative, executive, and judicial appropriation act approved March 15, 1898, require eight hours of labor each day.

Mr. Joseph W. Byrns, of Tennessee, reserved a point of order on the amendment.

After brief debate, Mr. Byrns insisting on the point of order, the Chairman⁴ decided that the amendment was in order as a limitation and overruled the point of order.

1626. On December 14, 1917,⁵ the Post Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. William P. Borland, of Missouri, offered the following amendment as a new paragraph:

No part of any amount herein appropriated shall be used to pay salaries or for the personal services of any department, bureau, or office in the District of Columbia which does not, subject to the provisions and exceptions of section 7 of the legislative, executive, and judicial appropriation act approved March 15, 1898, require eight hours of labor each day.

¹First session Sixty-fourth Congress, Record, p. 4094.

²Charles R. Crisp, of Georgia, Chairman.

³Second session Sixty-fourth Congress, Record, p. 456.

⁴Pat Harrison, of Mississippi, Chairman.

⁵Second session Sixty-fifth Congress Record, p. 309.

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

The Chairman¹ said:

Of course, the Chair recognizes that he is an experienced parliamentarian, but the Chair is of the opinion that this amendment is a proper limitation and it does retrench expenses and is in order.

1627. On March 15, 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. Mr. William P. Borland, of Missouri, offered this amendment:

No increase herein shall apply to salaries or compensation for personal services in any of the executive departments or independent establishments of the Government or of the District of Columbia, or any bureau or office therein, which does not, subject to the provisions and exceptions of section 7 of the legislative, executive, and judicial appropriation act, approved March 15, 1898, require eight hours of labor each day.

For this amendment, Mr. George R. Lunn, of New York, proposed the following substitute:

No part of any amount herein appropriated shall be used to pay salaries or for personal services in any executive department, bureau, or office of the United States which does not, subject to the provisions and exceptions of section 7 of the legislative, executive, and judicial appropriation act, approved March 15, 1898, require eight hours of labor each day: *Provided*, That the foregoing limitation shall not apply to employees in any bureau or establishment where such employees are not paid time and one-half for overtime.

Mr. Borland made the point of order that the proposed substitute was legislation and not a limitation.

The Chairman³ said:

The Chair asked for a discussion of the point of order, because he was somewhat in doubt as to the ruling proper to be made. The substitute of the gentleman from New York is offered to the Borland amendment, and it is insisted that it is in order as a limitation. This matter of limitation under the rules of the House is frequently misapprehended, and amendments offered as limitations are not limitations at all, under our precedents. This substitute is presented as a limitation on a limitation, and therefore presumed to be in order. But the Borland amendment is really not a limitation on an appropriation bill. It is in substance legislation on an appropriation bill and would be out of order but for the Holman rule. It is cast in the form of a limitation, but in essence it requires the executive departments to which it relates to maintain an eight-hour system. But since the effect of the Borland amendment is to secure a larger return of work to the Government for the amount of money than would otherwise be paid for a less return of work, it effects a retrenchment of Government expenditures, and is therefore in order. The Borland amendment is something more than a negative prohibition on the use of moneys. In this connection, in order that the nature of a limitation may be more perfectly apprehended, it will be well to cite some of the precedents.

Legislation may not be proposed in the form of a limitation. (Hinds', sec. 3931.)

The House by limitation on a general appropriation bill may provide that no part of an appropriation shall be used for a certain purpose. (Hinds', 3917.)

This is upon the theory that the House may deny an appropriation for a purpose authorized by law. It is not in order to legislate as to the qualifications of the recipients of an appropriation,

¹ Scott Ferris, of Oklahoma, Chairman.

² Second session Sixty-fifth Congress, Record, p. 3503.

³ Edward W. Saunders, of Virginia, Chairman.

but the House can specify that no part of an appropriation shall go to recipients lacking certain qualifications. (Hinds', sec. 3942.)

A limitation is negative in its nature. (Hinds', sec. 3955; id., sec. 3967.)

The limitation must be upon the appropriation and not an affirmative limitation of official functions. (Hinds', sec. 3957.)

A limitation must not include positive enactments establishing rules for executive officers. (Hinds', sec. 3967.)

The limitation permitted on a general appropriation bill must in effect be a negative prohibition on the use of money, not an affirmative direction to an executive officer. (Hinds', sec. 3974.)

Now the Borland amendment provides that the salaries afforded by the committee amendment shall not be paid to the clerks in any executive department, bureau, or office of the United States which does not require eight hours of labor a day. It does not relate to recipients lacking certain qualifications, but to hours of work required by departments, bureaus, and offices of the United States. Even if the department or bureau has authority under law to work its employees less than eight hours a day, this amendment in substance says to such a department, you must work your employees for as much as eight hours a day in order to enjoy the benefit of the appropriation designed for the payment of employees. The objection that this amendment is in effect legislation is cured as noted above by the fact that the increased return in work secured by requiring the employees to work for eight hours a day, instead of seven and a half as formerly, but at the same compensation, will operate a reduction of expenditures, thereby bringing the amendment within the saving effect of the Holman rule. But what will be the effect of the substitute?

The substitute in substance provides that the Borland amendment shall not apply to any department, bureau or office, where the clerks are working for eight hours, or less than eight hours, with no provision for pay for overtime work. Hence in all such departments, bureaus, and offices the clerks will receive the compensation provided by the committee amendment. The substitute further provides that in those departments, bureaus, and offices where the clerks work eight hours, and are paid time and a half of overtime, the Borland amendment shall apply; that is, that the employees in such bureaus, departments, and offices shall also receive the compensation provided by the committee amendment. It this view the effect of the substitute which is to replace the Borland amendment, how can it be argued that the substitute which is legislation, will reduce expenditures? If it will not operate *ex proprio vigore*, to reduce expenditures, then it is not in order. The substitute must be considered with reference to its operation, meaning, and effect, as a whole. In the opinion of the Chair, the substitute is legislation. It is not shown that it will effect a retrenchment. Hence it is not within the Holman rule. Further the Chair does not think that the substitute can be regarded as a pure limitation. For the reasons given the point of order to the substitute is sustained.

1628. A provision which under the guise of limitation repeals or modifies existing law is legislation and is not in order on an appropriation bill.

On February 10, 1908,¹ the Indian appropriation bill was under consideration in the committee of the Whole House on the state of the Union, when the Clerk read as follows:

To enable the Commissioner of Indian Affairs to employ practical farmers and practical stockmen, subject only to such examination as to qualifications as the Secretary of the Interior may prescribe, in addition to the agency farmers now employed, at wages not exceeding \$75 each per month, to superintend and direct farming and stock raising among such Indians as are making effort for self-support, \$125,000: *Provided*, That the amounts paid such farmers and stockmen shall not come within the limit for employees fixed by the act of June 7, 1897: *Provided further*, That the Commissioner of Indian Affairs may employ additional farmers at any Indian school

¹First session Sixtieth Congress, Record, p. 1779.

at not exceeding \$60 per month, subject only to such examination as the Secretary of the Interior may prescribe, said farmers to be in addition to the school farmers now employed.

The clauses "subject only to such examination as to qualifications as the Secretary of the Interior may prescribe" having been ruled out on a point of order, Mr. James S. Sherman, of New York, offered this amendment:

Provided, That no part of the money herein appropriated shall be expended except only for such farmers as shall have been found to be qualified upon examination prescribed by the Secretary of the Labor.

Mr. James R. Mann, of Illinois, made the point of order that existing law provided for such appointments, through civil-service examinations, and this amendment proposed to modify the law under guise of limitation.

The Chairman¹ ruled:

The doctrine of limitation is an interesting and elusive one. Limitations can be imposed by Congress, but still we must be careful that under the form of limitations we do not have the reality of legislation. Where there is the result, then that principle can not be availed of to evade and escape the rule that no legislation shall be contained in an appropriation bill. In this case, as the Chair understands the law to be, there is a stature by which persons who are to be farmers and stockmen, persons provided for by this paragraph, shall be appointed under the rules of the civil services.

The amendment that is offered provides that no part of this money—in other words, none of the employees who, being employed under the terms of this provision, shall be paid—that no money shall be expended unless they shall be found to be qualified upon an examination prescribed by the Secretary of the Interior.

Now, the result would be, as it seems to the Chair, either that no one could be appointed, or, if appointments were made, they must be made in a way not now authorized by law. If this amendment was adopted, if it was put into effect, the necessary result would be, as it seems to the Chair, that these employees, instead of being appointed as the law now requires they should be appointed, would be appointed by a new process, by qualifications that would be regarded as satisfactory to the Secretary of the Interior.

The Chair is unable to see that such a result as that does not amount to a repeal of existing law, and must, therefore, sustain the point or order. The Clerk will read.

1629. An amendment to a general appropriation bill may not under form of limitation change existing law.

A provision conferring additional authority upon an official of the Government is legislation and is not in order on an appropriation bill.

On March 13, 1908,² the Post Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was read:

Supplies for the city delivery service, including letter boxes, letter-box fasteners, package boxes, posts, furniture, satchels, straps, baskets, time cards, time-card frames, time-recorder supplies, maps, transfer designs, and stencils, \$90,000.

To this paragraph Mr. Michael E. Driscoll, of New York, offered as an amendment:

Provided, That no part of this appropriation of \$90,000 shall be expended for straps unless letter carriers are permitted to use other straps than those supplied by the Government if they

¹ James D. Perkins, of New York, Chairman.

² First session Sixtieth Congress, Record, p. 3282.

prefer them, and buy and pay for them out of their own money and at no expense to the Government.

Mr. Jesse Overstreet, of Indiana, made a point of order against the amendment on the ground that it sought to legislate under the guise of a limitation.

The Chairman¹ ruled:

The question is a fairly close one; but it seems to the Chair that there is this distinction between this case and the one which has been cited concerning the lettering of vehicles. In that instance there was no law requiring that vehicles should be lettered or prohibiting it; but it was in the discretion of the Department having charge of the vehicles. The proposition which in that case was sustained as in order, as a limitation upon the appropriation, did not control that discretion or change the law. It simply withheld the appropriation for vehicles that were not lettered.

The Chair understands that there is a law on the subject, which vests in the Postmaster General the authority to provide the paraphernalia which shall be worn by letter carriers. The Chair thinks that this provision, if enacted into law, would be held, and quite properly be construed, by the Postmaster General, as requiring him to permit the use of straps in the discretion of the carriers themselves, which he is not now required to do. If so, it would not be merely a limitation, but would give him a legal authority, which he does not now possess. The Chair therefore sustains the point of order.

1630. Where a limitation requires the violation of existing law in order to make an appropriation available, it constitutes legislation and is not in order on an appropriation bill.

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 Mr. William Hughes, of New Jersey, offered the following amendment as a separate paragraph in the bill:

Provided, That none of the amount herein appropriated for such construction shall be expended where any laborer or mechanic doing any part of the work contemplated by the contract, in the employ of the contractor or subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work except upon permission granted by the Secretary of the Navy during time of war or a time where war is imminent, or where any great national emergency exists: *And provided further*, That the contractor contracting with the United States shall, in the event of the violation of said covenant as to hours of labor, forfeit to the United States the sum of \$5 for each laborer or mechanic for every calendar day for which he shall have been required or permitted to labor more than eight hours upon the work under such contract.

Mr. George E. Foss, of Illinois, made a point of order that the amendment proposed legislation.

The Chairman³ held:

While the point possibly might be made as to the form of the amendment as a separate paragraph, that question has not been raised.

In form the amendment is somewhat, at least, in the form of a limitation upon the appropriation.

The Chair desires to state a word in reference to the matter of limitations upon appropriations. An amendment very similar to this was ruled in order, as the Chair remembers, two years ago, and ruled out of order one year ago by different chairmen. Under the rules of the

¹ Marlin E. Olmsted, of Pennsylvania, Chairman.

² First session Sixtieth Congress, Record, p. 4815.

³ James R. Mann, of Illinois, Chairman.

House legislation upon an appropriation bill is not in order, but under the rules of the House, the House, having the power to make or refuse an appropriation, may make an appropriation with a limitation upon it. It was at one time construed, or the tendency was at one time to construe, any amendment offered in the form of a limitation as a mere limitation upon an appropriation. But the committee will readily see that if an amendment in the guise of a limitation be offered in such form that the department must consider the appropriation futile or must consider that the limitation is itself a change of law, the executive officers would undoubtedly hold, should the limitation become law, that Congress had not intended a vain thing, but had meant to make a change of law. In other words, if in order to put the appropriation into effect the executive department must violate an existing law in order to comply with the limitation in the appropriation, then the executive officer has the right to presume that Congress by the limitation intended to change the existing legislation, did not intend to make an appropriation which could not be used, because in violation of the existing law. Now, no one will contend that the pending amendment does not change the existing law. If it be considered effective and binding upon the department so that the pending amendment should be agreed to and become a law, the department would either be required to consider that the appropriation was futile or that the law was changed by the limitation.

Even though it should be a direction to the Secretary of the Navy to enforce the law, that of itself is legislation and subject to the point of order. It matters not what the existing law may be, unless this be an exact repetition of it in quotation, because any change in the law would be a change of existing law, and if this changes in any way the discretion which the Secretary of that Navy has, and he should consider that this limitation bound him to change his discretion, that would be a change of law and hence would be obnoxious to the rule. And the Chair feels bound, both as to the last precedent and as to the theory of the rule itself, to sustain the point of order.

1631. A limitation on the amount of liability which a department may incur under existing law is legislation and not a limitation and is not in order on an appropriation bill.

On March 3, 1910,¹ the Post Office 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 sum herein appropriated shall also be subject to the following limitation: That the allowance of salaries for the several grades in the various first and second class post offices shall be made, so far as practicable, in proportion to the amount of the business transacted at the several offices.

To this Mr. William H. Stafford, of Wisconsin, proposed the following:

Add after the amendment the following:

“And the appointment and assignment of clerks hereunder shall be so made during the fiscal year as not to involve a greater aggregate expenditure than this sum.”

Mr. William Hughes, of New Jersey, presented a point of order on the amendment.

Mr. James R. Mann, in debating the point of order referred to decision cited by Mr. Stafford and said:

Mr. Chairman, just a word. It seems to me that the decisions cited by the gentleman from Wisconsin had no application to the proposition now pending. Those decisions are simply to the effect that Congress may, in making an appropriation, put a limitation upon the uses of an appropriation; and there can be no question about that; no one controverts it. But here is a limitation, not upon an appropriation, but a limitation upon the amount which may be expended by a department under existing law where the law warrants that expenditure. The department

¹Second session Sixty-first Congress, Record, p. 2687.

has certain discretion. This is a limitation, not on the appropriation—it does not pretend to limit this appropriation at all—but is a limitation upon the amount of liability which the department may incur under existing law.

The Chairman¹ sustained the point of order.

1632. An amendment forbidding expenditure of an appropriation “unless” action contrary to existing law is taken is legislation and is not in order as a limitation.

An amendment may not, under guise of limitation, provide affirmative legislation on an appropriation bill.

On June 4, 1910,² the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. N. E. Kendall, of Iowa, offered an amendment providing a new section as follows:

No money appropriated herein shall be expended for any work performed under contract unless such contract shall contain a stipulation that no laborer or mechanic doing any part of the same, under the employ of any contractor or subcontractor contracting for the performance of any part of said work, shall be required or permitted to labor more than eight hours on said work in any one calendar day.

Mr. James A. Tawney, of Minnesota, made the point of order that the amendment was not a limitation but a change of existing law.

The Chairman³ ruled:

The rule is well settled that a limitation on an appropriation is in order. It is also well settled that an amendment in the form of limitation which changes existing law is not in order. The amendment offered by the gentleman from Iowa is that—

“No money appropriated herein shall be expended for any work performed under contract unless such contract shall contain a stipulation that no laborer or mechanic doing any part of the same under the employ of any contractor or subcontractor contracting for the performance of any part of said work shall be required or permitted to labor more than eight hours on said work in any one calendar day.”

In the first place, there are various appropriations in this bill for the purpose of carrying out contracts. These contracts under existing law do not and can not contain the stipulation named in the amendment offered by the gentleman from Iowa. And if this amendment should prevail, no portion of the money appropriated under this bill for the carrying out of contracts could be expended for that purpose, because those contracts do not contain the stipulation which the gentleman proposes, unless it be held that this law writes into these contracts the stipulation not contained in the contracts themselves. If it be held that the law writes into the contract a stipulation not now in the contract, that would be clearly not only a change of law, but a change, possibly, of the contract.

Under the existing law, also the department has the authority in reference to making these contracts to leave out such a stipulation as is now provided; and the test, after all, in reference to limitation is whether, when the provision is made under limitation, the officers intrusted with the expenditure of the appropriation may refuse to expend it, or whether they are required to expend it under changed conditions; whether they must construe the limitation as a change of law, and it is perfectly clear that if this amendment prevails that, at least as to all contracts hereafter, the department of the Government expending this appropriation would take this as legislative declaration that this stipulation must be in the contract and not a mere limitation of discretion on their part for the expenditure of the money. For both reasons the Chair sustains the point of order.

¹ George P. Lawrence, of Massachusetts, Chairman.

² Second session Sixty-first Congress, Record, p. 7418.

³ James R. Mann, of Illinois, Chairman.

1633. Provision that no part of an appropriation be used in payment of salary of any clerk required to work longer than a specified number of hours per month was held to be a limitation, but amendment providing that no part of the appropriation be so expended “unless” such clerks receive additional compensation was ruled out as legislation.

On January 23, 1911,¹ the Post Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the paragraph relating to raitling to railway postal service was reached.

Mr. James W. Good, of Iowa, offered this amendment:

Provided, That no part thereof shall be expended for paying salaries of any railway postal clerk who is required to perform is excess of 156 hours of service in any four weeks.

Mr. John W. Weeks, of Massachusetts, having raised a point of order on the amendment, the Chairman² ruled:

The gentleman from Iowa offered an amendment in the form of a provision, as follows:

Provided, That no part thereof shall be expended in paying the salary of any railway postal clerk who is required to perform in excess of 156 hours of service in any four weeks.”

To this amendment the gentleman from Massachusetts, chairman of the committee, makes the point of order. The Chair is not informed as to any provision of limitation whatever on the number of hours which a railway mail postal clerk is required by law to work. It is claimed that this amendment in fact makes a limitation of those hours by prescribing under what circumstances an employee may or may not be paid. The Chair is unable to conceive of any limitation scarcely which does not to some extent restrict an executive officer in the expenditure of an appropriation and this amendment does not to some extent restrict an executive officer in the expenditure of an appropriation and this amendment does restrict the executive officer in making an expenditure, but it does not require the railway postal clerk to work this number of hours or a less or a greater number. It does not make any requirement upon the executive official except that he shall not expend any part of this appropriation in paying the salary of any railway postal clerk who shall work more than this number of hours. It is clear to the Chair that the amendment is only a limitation on an appropriation and not a change of existing law. Therefore the Chair overrules the point of order.

Whereupon Mr. Eben W. Martin, of South Dakota, proposed the following:

Add to the amendment, “unless such clerks shall be paid additional compensation for the services performed in excess of the said period.”

Mr. Weeks again submitted a point of order, and the Chairman said:

The Chair is ready to rule. To the amendment offered by the gentleman from Iowa the gentleman from South Dakota offers the following amendment:

“Unless such clerk shall be paid additional compensation for the service performed in excess of said period.”

It is claimed by the gentleman from South Dakota, in opposition to the point of order, that the amendment offered by him only creates an exception, and he cites two other cases in which exceptions were made.

The Chair has examined both those exceptions, and is of the opinion that they are not analogous to the present case, because this exception brings the amendment into direct conflict with the law itself.

Paragraph 2 of Rule XXI, with which we are all familiar, closes with these words:

“Nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.”

¹Third session Sixty-first Congress, Record, p. 1321.

²John Q. Tilson, of Connecticut, Chairman.

Section 1402 of the Postal Laws and Regulations is the section providing for railway postal clerks and giving the salaries which they shall be paid. To that is added a provision stating specifically that—
 “the Postmaster General, in fixing the salaries of clerks in the different classes, may fix different salaries for clerks of the same class, according to the amount of work done and the responsibility incurred by each, but shall not, in any case, allow a higher salary to any clerk of any class than the maximum fixed by this act for the class to which such clerk belongs”—

The salaries for the different classes of clerks being specifically fixed by the statute itself the amendment offered by the gentleman from South Dakota, while in the form of an exception, means, if it means anything at all, that these clerks in case they shall work more than the number of hours specified shall receive additional compensation; and if it provides for additional compensation, then it is in direct conflict with section 1402 of the Postal Laws and Regulations, and consequently in violation of paragraph 2 of Rule XXI, which forbids an amendment changing existing law. The Chair therefore sustains the point of order.

1634. Professed limitations not to become effective “unless” or “until” affirmative action was taken were held to be out of order in an appropriation bill.

An amendment withholding expenditure of appropriations “unless” and “until” certain books were supplied free to the National Library for the Blind was ruled out of order.

On February 15, 1928,¹ during consideration of the Treasury and Post Office Departments appropriation bill, in the Committee of the Whole House on the state of the Union, the Clerk read as follows:

To enable the American Printing House for the Blind more adequately to provide books and apparatus for the education of the blind in accordance with the provisions of the act approved August 4, 1919, \$65,000.

Mr. Joseph W. Byrns, of Tennessee, proposed this amendment:

Provided, That the sum herein appropriated shall not be expended unless two copies of each publication printed by the American Printing House for the Blind during the fiscal year 1929 shall be furnished free of charge to the National Library for the Blind, located in Washington, D.C.

Mr. Maurice H. Thatcher, of Kentucky, made the point of order that the amendment proposed legislation.

After extensive debate, the Chairman² ruled:

This amendment is clearly a limitation with an affirmative direction. A limitation simply provides that money shall not be spent for a specific purpose. This amendment goes further and says that this money shall not be spent unless or until certain things are done.

One particular decision has been called to the attention of the Chair, rendered in the Committee of the Whole, on February 20, 1926. At that time the following amendment was offered:

“Provided further, That not more than one-half of this sum shall be expended unless or until plans and estimates are proposed and approved by said commission for the erection near Sechault, France”—
 And so on. In passing upon a point of order made against the amendment the Chairman said:

“From a careful reading it seems to the Chair that the amendment directs the commission to do a specific thing, actually changing the basic law creating the commission, and that the amendment does not restrict in any sense the appropriation.”

¹ First session Seventieth Congress, Record, p. 3063.

² Earl C. Michener, of Michigan, Chairman.

Now, the Chair after examining these two amendments finds that in intent they are very similar. It can not be said that this amendment restricts the appropriation alone, but goes further and directs that certain things shall be done. Therefore the Chair sustains the point of order.

1635. To an amendment providing a limitation a substitute amendment providing in addition to the limitation a method of enforcement was held to be legislation and not in order.

On May 24, 1912,¹ the House was considering the joint resolution (H. J. Res. 319) making appropriations to supply deficiencies, and this amendment had offered by Mr. John J. Fitzgerald, of New York:

House of Representatives: 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 paid for telegrams hereafter sent by Representatives, Delegates, and Commissioners in Congress.

For the pending amendment Mr. Richard W. Austin, of Tennessee, proposed the following substitute:

House of Representatives: For miscellaneous items and expenses of special and select committees, exclusive of salaries and labor, unless specifically ordered by the House or Representatives, \$55,000: *Provided*, That no part of this sum shall be paid for personal or private telegrams hereafter sent, and that it is made the duty of the Clerk of the House to enforce this provision.

A point of order raised by Mr. Fitzgerald against the substitute was sustained by the Speaker.²

1636. Legislation may not be proposed under the form of a limitation. No limitation of expenditure is possible upon a paragraph which does not propose an appropriation.

On February 26, 1916,³ the Post Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Closed-pouch mail service shall be the transportation and handling by railroad employees of mails on trains on which full or apartment railway post-office cars are not authorized, except as hereinbefore provided.

The rates of payment for the services authorized in accordance with this act shall be as follows, namely.

To this Mr. William S. Bennet, of New York, proposed the following amendment:

Provided, however, That no pay shall be made for any car carrying any letter, postal care, circular, newspaper, pamphlet, or publication of any kind containing any advertisement of spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind, or containing a solicitation of an order or orders for said liquors, or any of them, in the mails of the United States when addressed or directed to any person, firm, corporation, or association, or other addressee, at any place or point in any State or Territory of the United States at which it is by the law in force in the State or Territory at that time unlawful to sell, barter, exchange, keep for sale, or otherwise dispose of such liquors, or any of them, or at which point or place it is unlawful by the law then in

¹ Second session Sixty-second Congress, Record, p. 7107; Journal, p. 1047.

² Champ Clark, of Missouri, Speaker.

³ First session Sixty-fourth Congress, Record, p. 3214.

force in the State or Territory to advertise or solicit orders for such liquors, or any of them, respectively.

Mr. John A. Moon, of Tennessee, made the point of order that no appropriation was involved and the amendment could not be a limitation.

The Chairman¹ held:

There is no appropriation proposed in the paragraph we are considering now, and for that reason this could not be a limitation and it is not germane to this particular section. The point of order is sustained.

1637. An affirmative direction may not be coupled with a limitation.

On December 14, 1917,² the Post Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was read:

For village delivery service in towns and villages having post offices of the second or third class, \$600,000.

To this paragraph Mr. Harry E. Hull, of Iowa, proposed the following amendment:

After the numerals "\$600,000" insert: "No part of this money shall be used in any town, place, or village until a majority of the patrons of the post office in such town, place, or village shall request village delivery, and upon the failure to so request the Post Office Department, shall not exact from said patrons of such office any box rentals in excess of 10 per cent of original cost of construction of such box: *Provided, however,* That a minimum charge of 20 cents per annum may be made."

A point of order by Mr. John A. Moon, of Tennessee, was sustained by the Chairman³ after brief debate.

1638. A provision that no part of an appropriation be expended for salary in connection with suit to enjoin labor unions from striking was held to be in order as a limitation.

On April 7, 1922,⁴ the State and Justice Departments appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. When the paragraph appropriating for salaries of personnel in the office of the Attorney General was reached Mr. Edward E. Dension, of Illinois, offered this amendment:

No part of the amounts appropriated in this paragraph shall be expended for the payment of any salary or compensation for legal services in connection with any suit or other proceeding brought in any court to enjoin any officers or members of a labor organization or labor union from suspending or quitting their employment.

Mr. James W. Husted, of New York, having reserved a point of order on the amendment, Mr. James R. Mann, of Illinois, said:

Mr. Chairman, it provides that money appropriated here shall not be paid to those who do certain things. I do not see why it is not germane, and I do not see why it is not in order.

¹ Henry T. Rainey, of Illinois, Chairman.

² Second session Sixty-fifth Congress, Record, p. 315.

³ Scott Ferris, of Oklahoma, Chairman.

⁴ Second session Sixty-seventh Congress, Record, p. 5210.

The Chairman¹ held the amendment to be a limitation and overruled the point of order.

1639. A provision restricting the purpose for which an appropriation was made was held to be legislation, but an amendment providing that no part of the appropriation should be used to achieve the same purpose was admitted as a limitation.

Provision that no part of an appropriation be used to prohibit use of peyote for religious purposes was held to be in order on an appropriation bill.

On January 24, 1924,² the Interior Department 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 the suppression of the traffic in intoxicating liquors and deleterious drugs, including peyote, among Indians, \$25,000.

Mr. Elmer Thomas, of Oklahoma, proposed this amendment:

After the word "peyote" insert "when not to be used for sacramental purposes in connection with established religious services."

The Chairman³ having ruled the amendment out of order on a point of order raised by Mr. Thomas L. Blanton, of Texas, Mr. Tom D. McKeown, of Oklahoma, offered the following:

After the word "peyote," insert "*Provided*, That no part of said fund shall be used to prohibit the use of peyote when used by Indians for sacramental or religious purposes in organized churches."

The Chairman held:

The paragraph in the bill provides that the sum to be appropriated may be expended for the suppression of the traffic in deleterious drugs, including peyote. The amendment of the gentleman from Oklahoma now offered in the form of a limitation is to the effect that any portion of this appropriation which without such a limitation might be expended for the suppression of the traffic in peyote to be used for any purpose shall not be expended for the suppression of the traffic in peyote to be used by the Indians for sacramental or religious purposes. The amendment as now offered is a limitation on an appropriation carried in the bill and as such is in order under the rules. The Chair overrules the point of order.

1640. Provision that no appropriation provided in the bill be available for any national park "unless" park concessions were granted to highest bidder therefore was held to be legislation and not in order on an appropriation bill.

In January 29, 1924,⁴ the Interior Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

Appropriations herein made for construction of physical improvements in national parks shall be immediately available.

¹Cassius C. Dowell, of Iowa, Chairman.

²First session Sixty-eighth Congress, Record, p. 1423.

³John Q. Tilson, of Connecticut, Chairman.

⁴First session Sixty-eighth Congress, Record, p. 1656.

Mr. Tom D. McKeown, of Oklahoma, offered this amendment:

After the word "available" insert a new paragraph, as follows:

"No appropriation herein made for national parks shall be available for any national park wherein any person, copartnership, or corporation enjoys any exclusive privilege or concession unless such concession or privilege is granted the highest and best bidder for same after due advertisement of the time and place to receive bids under rules and regulations of the commissioner of parks."

Mr. Louis C. Cramton, of Michigan, made the point of order that the amendment proposed legislation on an appropriation bill.

The Chairman¹ ruled:

The Chair is of the opinion this is not a proper limitation. It is close to the border line, but it does more than limit the appropriation. It goes outside of the realm of limitation and purports to legislate how certain privileges shall be obtained, and also to provide that regulations shall be made by the commissioner of parks, and the Chair sustains the point of order.

1641. A proposal that no part of an appropriation be used for transportation of troops "except" by the cheapest route was construed as legislation.

On March 27, 1928,² during consideration of the Naval appropriation bill, in the Committee of the Whole House on the state of the Union, a paragraph making provision for pay of the Marine Corps was read.

Mr. Butler Hare, of South Carolina, offered this amendment:

Provided, That none of such amount shall be used in transporting troops or marines to an from marine barracks and other points except by the cheapest and most direct route.

Mr. Burton L. French, of Idaho, made the point of order that under guise of limitation the amendment sought affirmatively to direct an executive officer.

The Chairman³ sustained the point of order and said:

If the amendment had stopped at the conclusion of the words—

Provided, That none of such amount shall be used in transporting troops or marines to and from marine barracks and other points"—

it would be clearly a limitation. It would have forbidden the use of any of the money for the transportation of troops, but it does not entirely prohibit the transportation of troops. It says that such prohibition is to apply except when the transportation is by the cheapest and most direct route. That directs the manner in which the troops or marines shall be transported. It seems to the Chair that it is a direction as to the manner in which certain governmental functions are to be performed rather than a limitation or diminution of the amount that is to be expended.

In this connection the Chair calls attention to a case referred to in section 1640 of a new volume of Cannon's Precedents, where the caption reads as follows:

"Provision that no appropriation provided in the bill be available for any national park "unless" park concessions were granted to highest bidder therefor was held to be legislation and not in order on an appropriation bill."

It seems to the Chair that the pending amendment would not only legislate as to the manner in which the Commander in Chief—the President himself—should employ appropriations in this bill for the transportation of marines but also would necessitate accounting by the Comptroller General of the United States, who would have to determine in every case whether the money had been properly expended under this provision, thus producing conditions and further expenditures which, in the opinion of the Chair, render it impossible to say that this amendment would reduce

¹ Everett Sanders, of Indiana, Chairman.

² First session Seventieth Congress, Record, p. 5467.

³ Carl R. Chindblom, of Illinois, Chairman.

or limit the expenditure of money for the transportation of marines. There are many elements besides distance which enter into the cost of transportation, especially by water. The Chair sustains the point of order.

1642. A provision repealing an existing limit of salary was held to be legislation and not a limitation.

On February 9, 1924,¹ 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 a paragraph providing an appropriation for suppression of counterfeiting and other crimes, concluding with the following proviso:

Provided further, That no person shall be employed hereunder at a compensation greater than that allowed by law, except not exceeding three persons, who may be paid not exceeding \$12 per day.

Mr. Thomas L. Blanton, of Texas, submitted that the limitation proposed by the proviso was so coupled with legislation as to render it subject to a point of order.

The Chairman² held

The proviso reads:

Provided further, That no person shall be employed hereunder at a compensation greater than that allowed by law, except not exceeding three persons who may be paid not exceeding \$12 per day."

The point of order is made against the exception. The limitation upon the payments of salaries by law is legislation. Any appropriation which purports to do away with such limitation is legislation, and the point of order is sustained.

1643. Provision that no part of an appropriation be used for construction of vessel at a cost exceeding \$900,000 was held to be a limitation.

On January 22, 1909,³ 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:

Construction and machinery: On account of hulls and outfits of vessels and steam machinery of vessels heretofore authorized, \$22,766,823.

To the paragraph Mr. Henry C. Loudenslager, of New Jersey, proposed this amendment:

Provided, That no part of the appropriation shall be used for the payment or construction of any collier the total cost of which shall exceed \$900,000.

Mr. John J. Fitzgerald, of New York, made the point of order that the amendment proposed to change existing law, as a greater limit of cost was authorized on some vessels for which the appropriation was made, and this was in effect a change of limit of cost.

The Chairman⁴ ruled:

The item in the bill is on account of hulls and outfits of vessels and steam machinery of vessels heretofore authorized, \$22,766,823, to which the gentleman from New Jersey offers an

¹First session Sixty-eighth Congress, Record, p. 2196.

²Everett Sanders, of Indiana, Chairman.

³Second session Sixtieth Congress, Record, p. 1321.

⁴James R. Mann, of Illinois, Chairman.

amendment providing that no part of the above appropriation shall be used for the payment or construction of any collier, the total cost of which shall exceed \$900,000. It is quite within the province of the committee or of Congress to appropriate or not to appropriate for colliers heretofore authorized, or to provide that they will not appropriate except under certain limitations. The amendment is a pure limitation on the appropriation carried in the bill, and the Chair therefore overrules the point of order.

1644. Provision that no part of an appropriation be used for education of any Indian whose father is a taxpayer in any State or Territory was held to be a limitation.

On February 18, 1910,¹ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was read;

For support of Indian day and industrial schools, not otherwise provided for, and for other educational and industrial purposes, \$1,420,000.

Mr. John H. Stephens, of Texas, proposed as an amendment:

Provided, That no part of this appropriation shall be used for the purpose of educating the children of any Indian whose father is a taxpayer, citizen, and voter of any State or Territory in the United States.

Mr. Charles H. Burke, of South Dakota, raised a point of order on the amendment.

The Chairman² held the amendment to be in the nature of a limitation and overruled the point of order.

1645. Denial of an appropriation for compensation of employees whose appointment lacked final approval was admitted as a limitation.

A provision that no part of an appropriation be used to pay salaries of commissioners whose confirmation was being reconsidered by the Senate was held to be in order as a limitation on an appropriation bill.

On January 27, 1931,³ during consideration of the independent offices appropriation bill, in the Committee of the Whole House on the state of the Union, the provision for the Federal Power Commission was read.

Mr. Fiorello H. LaGuardia, of New York, offered the following amendment:

Provided, That none of the money herein appropriated shall be used to pay the salary of a commissioner whose confirmation has been or is being reconsidered by the Senate or against whom ouster or removal proceedings have been instituted or authorized.

Mr. John W. Summers, of Washington, made the point of order that the amendment proposed legislation.

The Chairman⁴ ruled:

It seems to the Chair that the amendment offered by the gentleman from New York is simply a limitation upon the expenditure. It provides, as the Chair reads it, certain limitations as to the qualifications of commissioners who might be paid a salary out of this appropriation.

The Chair overrules the point of order.

¹ Second session Sixty-first Congress, Record, p. 2110.

² Marlin E. Olmsted, of Pennsylvania, Chairman.

³ Third session Seventy-first Congress, Record, p. 3320.

⁴ Homer Hoch, of Kansas, Chairman.

1646. Provision that no part of an appropriation be used for work on which naval prisoners were employed in preference to registered laborers and mechanics was held to be a limitation.

On April 5, 1910,¹ 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:

Navy yard, Boston, Mass.: Dredging, \$5,000; improvements to water front, \$65,000; improvements to yard buildings, \$15,000; railroad extension, \$10,000; paving and grading, \$10,000; in all, navy yard, Boston, \$105,000.

To this paragraph Mr. John A. Keliher, of Massachusetts, offered the following amendment:

Provided, That no part of this appropriation shall be expended for any work upon which naval prisoners are employed in preference to laborers and mechanics who are registered for such work in the board of labor employment.

Mr. George E. Foss, of Illinois, having reserved a point of order on the amendment, the Chairman² ruled:

The gentleman from Massachusetts proposes an amendment to the paragraph providing for navy yard at Boston, Mass., covering various improvements and the care of the improvements at that point, with a total appropriation of \$105,000, and the amendment which he offers provides that no part of this appropriation shall be expended for any work upon which naval prisoners are employed in preference to laborers and mechanics who are registered for such work in the board of labor employ. Undoubtedly the amendment would relate only to the expenditure of the \$105,000 carried by the item, and, following the ruling which the Chair made this morning, or yesterday, the Chair overrules the point of order.

1647. An amendment denying the use of an appropriation for the payment of wages except such as are paid in accordance with existing law was held in order as a limitation.

On May 19, 1932,³ the War Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

For prosecuting work of flood control in accordance with the provisions of the flood control act, approved May 15, 1928,⁴ \$31,773,775.

Mr. Edward W. Goss, of Connecticut offered an amendment as follows:

Provided, That no part of this appropriation shall be available for payment of wages except such as are determined and paid in accordance with Public Act No. 798, Seventy-first Congress.

Mr. Ross A. Collins, of Mississippi, made the point of order that the amendment was a legislative provision.

The Chairman⁵ ruled:

In the opinion of the Chair, the amendment is a negative restriction upon the appropriation and for that reason is a limitation and would be in order. The Chair overrules the point of order.

¹ Second session Sixty-first Congress, Record, p. 4299.

² James R. Mann, of Illinois, Chairman.

³ First session Seventy-second Congress, Record, p. 10697.

⁴ 46 Stat., L., p. 1494.

⁵ Fritz G. Lanham, of Texas, Chairman.

1648. Provision that no part of an appropriation be expended in maintenance of more than a single approach to any national cemetery held to be in order as limitation.

On May 26, 1910,¹ 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 the following paragraph:

Repairing roadways to national cemeteries: For repairs to roadways to national cemeteries which have been constructed by special authority of Congress, \$12,000: *Provided*, That no railroad shall be permitted upon the right of way which may have been acquired by the United States to a national cemetery, or to encroach upon any roads or walks constructed thereon and maintained by the United States: *Provided further*, That no part of this sum shall be used for repairing any roadway within the corporate limits of any city, town, or village.

Mr. John J. Fitzgerald, of New York, offered an amendment:

No part of any appropriation herein for national cemeteries or the repair of roadways thereto shall be expended in the maintenance of more than a single approach to any national cemetery.

Mr. Martin D. Foster, of Illinois, made the point of order on the amendment.

The Chairman² ruled that the amendment merely proposed a limitation on the appropriation in the bill and was in order.

1649. An amendment providing that no part of an appropriation be used for benefit of persons lacking certain qualifications is a limitation.

A provision denying use of an appropriation for education of pupils not residing in the District of Columbia or owning property in the District the taxes on which were in excess of cost of tuition was held to be in order on a general 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, when a section making provision for support of public schools in the District of Columbia was reached.

Mr. Albert S. Burlison, of Texas, proposed the following amendment:

No part of any money appropriated in this act for public schools shall be used for tutelage or otherwise in pupils in the public schools in the District of Columbia who do not reside in said District, or who during such tutelage do not own property in or 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, except 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, cost of textbooks and school supplies used by such pupils, 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 the point of order that the amendment, while proposing a limitation, was accompanied by provisions carrying legislation.

Mr. Martin E. Olmsted, in debating the point of order, said:

Mr. Chairman, there is no doubt that Congress may refuse to appropriate at all, and it has been held over and over again that as it may refuse to appropriate at all it may refuse to appro-

¹ Second session Sixty-first Congress, Record, p. 6933.

² James R. Mann, of Illinois, Chairman.

³ Second session Sixty-second Congress, Record, p. 1237.

appropriate except for a certain purpose or subject to certain limitations, but those limitations must be limitations pure and simple upon the purpose for which the money may be expended. No one knows better than the distinguished Chairman himself, who is doing excellent work in the chair, that we have a provision in the rule against changing existing law in a general appropriation bill. A limitation, to be a limitation within the rulings, must be purely negative and not attempt any affirmative legislation.

Now, this amendment provides that no part of any money appropriated by the bill shall be used for the tutelage of pupils without certain qualifications. Thus far that is a limitation pure and simple upon the appropriation, and is within the rulings; but in the concluding portion of the amendment we find what seems to be positive, affirmative legislation. It says:

“Except on the payment of such amount, to be fixed by the board of education with approval of the commissioners of said District.”

There is a provision which would be construed by those officials as imposing positive duties upon them. And then:

“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.”

These are positive, affirmative directions of law. They change existing law by making law where none at present exists.

I will only take up the time of the Chair to call attention to the precedents referred to in the Manual, on the subject of limitations:

“The limitation may not be applied directly to the official functions of executive officers, but it may restrict executive discretion, so far as this may be done by a simple negative on the use of the appropriation, which does not give affirmative directions.”

That is the very last line on the page, and there are numerous precedents cited. “Which does not give affirmative directions.”

This amendment appears to me to give affirmative directions.

I am rather in favor of the purpose of the amendment, and my object in rising is merely because of the interest I have in keeping the parliamentary situation straight and because I wish to call these matters to the attention of the Chair.

The Chairman¹ concurred in the views expressed by Mr. Olmsted and sustained the point of order.

Subsequently,² Mr. Albert S. Burleson, of Texas, offered the amendment in this form:

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.

Mr. Carlin having again raised a question of order on the amendment, the Chairman ruled:

The amendment proposed by the gentleman from Texas is as follows:

“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.”

To that the gentleman from Virginia makes the point of order. On behalf of the amendment it is insisted that it is a limitation upon the appropriation such as is proper under the rules

¹ Finis J. Garrett, of Tennessee, Chairman.

² Second session Sixty-second Congress, Record, p. 1308.

and precedents. That has been pretty elaborately argued. The Chair will not go into any long analysis of it. There was a provision in the bill as it was reported from the committee, that changed existing law. It was insisted that that was in order under what was called the Holman rule, and it was under the Holman rule, measuring it by the Holman rule, that the occupant of the chair at that time, Mr. Pou, of North Carolina, passed upon the question. The gentleman from North Carolina passed on the question in precisely the same manner as would have the present occupant of the chair if he had been in the chair at that time—that it was not in order under the Holman rule.

Then it was proposed as an amendment by way of limitation, and, as then proposed, it carried affirmative legislation. It 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 pupils.” And provided further, that “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.”

At first the present occupant of the chair overruled the point of order which was made to that amendment. But, upon that order being vacated by unanimous consent, and being argued, the Chair reversed the ruling and sustained the point of order.

The most serious objection to it suggested by the gentleman from Illinois, Mr. Mann, and by the gentleman from Pennsylvania, Mr. Olmsted, was that there were two provisions, one which would be construed by the District officials as imposing positive duties—the language “by the payment of such amount with the approval of the Commissioners of said District,” and again, that provision that “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,” are positive affirmative directions of law; as stated by the gentleman from Pennsylvania, that they change existing law by making law where none before existed.

Then the attention of the Chair was called to certain expressions in the Manual and Digest, and the Chair reversed himself and sustained the point of order. Now it is presented again in the form in which it has just been read. The decisions on the matter of limitations are not uniform so far as the Chair has been able to find. There has been considerable variation in the line of ruling on the question of limitation, but the Chair has examined in the last two days the precedents with considerable care and arrived at the conclusion that this is in order now as a limitation on the appropriation, and the Chair overrules the point of order.

1650. The restriction of an appropriation to expenditures for the benefit of a class of recipients who have complied with certain requirements is in order as a limitation.

A provision prohibiting the use of an appropriation in paying midshipmen appointed from the Navy who have not served nine months aboard a vessel was admitted on an appropriation bill.

On February 12, 1931,¹ the naval appropriation bill was under consideration in the Committee on the Whole House on the state of the Union.

The Clerk read a paragraph providing for pay of naval personnel and which included the following:

Provided further, That no part of this appropriation shall be available for the pay of any midshipman appointed from enlisted men of the Navy for admission to the Naval Academy in the class entering in the calendar year 1932 who has not served aboard a vessel of the Navy for at least nine months prior to such admission.

¹Third session Seventy-first Congress, Record, p. 4747.

Mr. William R. Coyle, of Pennsylvania, made the point of order that the provision was legislation in the guise of a restriction.

The Chairman¹ quoted the proviso and said:

This proviso merely limits the appropriation carried in this act or in this paragraph—it makes no difference; it limits it so that it may not be used to pay a midshipman appointed from the enlisted personnel who has not served nine months on a vessel of the Navy. It is purely a limitation and the point of order is overruled.

1651. A provision that no part of an appropriation should be allotted to a beneficiary failing to comply with certain requirements was held in order as a limitation on an appropriation bill.

An amendment prohibiting the use of any part of an appropriation for the enforcement of prohibition in States which failed to provide an equal amount for the purpose was admitted as a limitation.

On February 23, 1932,² the State, Justice, Commerce, and Labor Departments appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. William L. Tierney, of Connecticut, offered the following amendment:

Provided, That no moneys appropriated in this act for the enforcement of the prohibition amendment shall be expended in any State the legislature of which declines to directly appropriate a sum equal to the amount appropriated of the Federal appropriation estimated to be expended in said State for the enforcement of the prohibition amendment and laws applicable thereto.

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

The Chairman³ overruled the point of order and said:

The Chair holds that the point of order is not well taken; that the amendment is a limitation. The question is on the amendment offered by the gentleman from Connecticut.

1652. A provision prohibiting expenditure of an appropriation for a certain purpose is merely a limitation and is not subject to a point of order.

Provision that no part of the sum appropriated be used for maintenance of warehouses was held to be a limitation.

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 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, storage, and transportation of Indian goods and supplies, \$300,000: *Provided*, That after July 1, 1914, no part of the sum hereby appropriated shall be used for the maintenance of warehouses in the Indian Service.

Mr. L. C. Dyer, of Missouri, made the point of order that the proviso involved legislation.

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

²First session Seventy-second Congress, Record, p. 4560.

³S. D. McReynolds, of Tennessee, Chairman.

⁴Second session Sixty-third Congress, Record, p. 3563.

After debate, the Chairman ¹ held that the provision did not constitute a change of existing law but was a simple limitation and therefore in order.

1653. Provision that no part of an appropriation be used for a designated purpose except upon certain contingency was held to be a limitation.

An amendment providing that no part of an appropriation be used for motor mail routes unless petitioned for by patrons was held in order as a limitation on an appropriation bill.

On February 24, 1916,² the Post Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. When the paragraph appropriating for rural free delivery service was reached Mr. Frank Clark, of Florida, offered this amendment:

Provided, That no part of the money herein appropriated for Rural Delivery Service shall be used to cover any expense on any motor vehicle route until a majority of the patrons to be served by such motor vehicle route shall by written petition ask the Post Office Department to establish such motor vehicle route.

Mr. John A. Moon, of Tennessee, made the point of order that the amendment changed existing law and was obnoxious to clause 2 of Rule XXI.

Mr. Edward W. Saunders, of Virginia, argued:

There is a great body of decision on the question of whether amendments are in order as limitations, or out of order as being legislation. Many of these decisions seem to be impossible of reconciliation, so shadowy is the dividing line in many instances between limitation and legislation. In other words a real twilight zone exists in this field.

Under existing law the department is authorized to convert a horse-drawn route into a motor-vehicle route, without any limitation on its authority, but under the amendment this action can not be taken until there is filed in the department a petition signed by a majority of the patrons on the route requesting the change. This is a clear limitation on the authority of the department. It is a condition which must be complied with, before the authority of the department can be set in motion.

The Chairman ³ ruled:

The law on this subject is found in the proviso to the act of March 4, 1915, fixing the pay of rural carriers, page 1227, Statutes at Large, volume 38, and reads as follows:

“Provided, That in the discretion of the Postmaster General the pay of carriers who furnish and maintain their own motor vehicles, and who serve routes not less than 50 miles in length, may be fixed at not exceeding \$1,800 per annum.”

The law does not limit motor-vehicle routes to 50 miles in length; does not require that these routes shall be at least 50 miles in length; but authorizes the Postmaster General to fix the compensation of carriers who operate motor vehicles on routes at least 50 miles in length at a sum not exceeding \$1,800 per annum.

The amendment which we are considering, offered by the gentleman from Florida, provides that no part of the money appropriated for rural-delivery service shall be available to cover any expenses upon any motor-vehicle route unless a majority of the patrons to be served on that route have requested by written petition the Post Office Department to establish such motor-vehicle route.

¹ Joseph W. Byrns, of Tennessee, Chairman.

² First session Sixty-fourth Congress, Record, p. 3094.

³ Henry T. Rainey, of Illinois, Chairman.

Examining the precedents, the Chair finds that on January 11, 1905, while the Army appropriation bill was under consideration in Committee of the Whole, an amendment was proposed to the enacting paragraph—

“That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the support of the Army for the year ending June 30, 1906”—to this effect: That no part of the moneys appropriated in the act should be expended for the support and maintenance of more than 30,000 men, including officers and enlisted men. That amendment was offered by Mr. John S. Little, of Arkansas. A point of order was made to this amendment, and, after the matter was debated, the Chairman held that the amendment appeared to be drawn in conformity with a large number of precedents in the form of limitations.

“The amendment,” the Chairman held, “discloses the fact that it does not in terms cut down the number of officers or enlisted men in the army, but limits the appropriation in the bill to a certain number of officers and enlisted men, to wit, to 30,000,” and the Chair held that the amendment seemed to be in strict conformity with a number of other amendments to which points of order had been overruled, and that this merely placed a limitation on the use of money appropriated in that act, and overruled the point of order.

The Chair has listened to the reading of these numerous other authorities to which attention has been called, and it seems to the Chair that the authorities are in perfect harmony on this question. The amendment offered by the gentleman from Florida is a limitation. It prevents the expenditure of the moneys appropriated for Rural Delivery Service upon motor-vehicle routes which have not been established to compliance with a petition signed by a majority of the patrons of the route. The Chair thinks the amendment is in order and overrules the point of order.

1654. An amendment forbidding payments from appropriation to recipients lacking specified qualifications is a limitation.

Provision that no part of an appropriation be paid for messenger service unless to messenger submitting lowest bid, was held in order on an appropriation bill.

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. The Clerk read this paragraph:

For mail-messenger service, \$2,243,000.

Mr. Harry E. Hull, of Iowa, offered the following amendment:

After the figures “\$2,243,000” inset “No part of this money shall be paid for any messenger service unless it be to the mail messenger who was the lowest qualified bidder at the time the contract was first called for.”

Mr. John A. Moon, of Tennessee, made a point of order on the amendment, and Mr. James R. Mann, of Illinois, said:

I submit, Mr. Chairman, that the amendment is not subject to a point of order. We can make appropriations and even say no part of it can be expended unless to a red-headed man.

That is a pure limitation that is within our power under the rules of the House. We have that authority. We can not require the department to exercise additional authority, or to exercise authority in the way we want it exercised, but we can say that the department can not spend the money unless they do it in the way we say.

¹Second session Sixty-fourth Congress, Record, p. 1336.

The Chairman¹ held:

The Chair has read the amendment carefully, and is constrained to reach the conclusion that it is a limitation, and that under the unbroken precedents of the House a mere limitation upon an appropriation is in order.

1655. An amendment denying use of an appropriation to States lacking certain qualifications was held to be a limitation.

On February 24, 1919,² the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph reappropriating unexpended balances for the use of the Interdepartmental Social Hygiene Board was read:

Miss Jeannette Rankin, of Montana, proposed this amendment:

Provided, That no part of the unexpended balance shall be made available for any State which permits the examination of females suspected of venereal disease to be made by a male physician.

Mr. James F. Byrnes, of South Carolina, having reserved a point of order on the amendment, Mr. James R. Mann, of Illinois, said:

It is a mere limitation upon the expenditure of the money, precisely on all fours with the proposition about the appropriation for the benefit of soldiers' homes controlled by States. That is probably the leading case on the subject where a proposition was made that no portion of the money appropriated for the benefit of soldiers' homes owned by State should be given to the States if they permitted the sale of intoxicating liquor of any kind, including wine, beer, and so forth. Now, here is a provision appropriating the unexpended balance and a limitation upon the unexpended balance. It is clearly a limitation.

Mr. Charles R. Crisp, of Georgia, added:

I think it is clearly a limitation; but if the Chair has his mind made up, I do not care to say anything.

The Chairman³ ruled:

The Chair thinks that the point made by the gentleman from South Carolina that this is not an appropriation is not well taken. It does reappropriate the balance for the year 1920. So far as the amendment being a limitation, the Chair is justified in overruling the point of order. The Chair overrules the point of order.

1656. Prohibition of use of funds from an appropriation for a purpose authorized by law was held to be a limitation.

A limitation establishing a maximum as to number and salary of employees otherwise without statutory limitation under a lump-sum appropriation was held to be in order on an appropriation bill.

The law creating a governmental agency was held to be sufficient authorization for purchase of periodicals, maps, and books of reference essential to the discharge of its legitimate functions.

A proposition to define and establish the duties of Government employees was held to involve legislation.

¹ Charles R. Crisp, of Georgia, Chairman.

² Third session Sixty-fifth Congress, Record, p. 4163.

³ Martin D. Foster, of Illinois, Chairman.

The fact that a provision has been carried in appropriation bills or many years does not exempt it from a point of order if otherwise unauthorized.

On January 23, 1992,¹ the independent offices appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Henry Allen Cooper, of Wisconsin, made a point of order against the following paragraph:

For expenses made necessary by the act entitled "An act establishing a Commission of Fine Arts," approved May 17, 1910, including the purchase of periodicals, maps and books of reference, to be disbursed on vouchers approved by the commission by the officer in charge of public buildings and grounds, who shall be the secretary and shall act as the executive officer of said commission, \$6,000: *Provided*, That no person shall receive compensation hereunder at a rate exceeding \$1,800 per annum and only one person shall be employed at that rate: *Provided further*, That no part of this sum shall be expended for traveling expenses other than those incurred by members of the commission for actual travel only in going to and returning from Washington to attend the meetings of the commission.

Mr. Ben Johnson, of Kentucky, also raised a question of order against provisions in the paragraph.

It was contended in opposition to the points of order that the provisions objected to had been carried in the appropriation bills for many years.

After debate, the Chairman² ruled:

The act providing for this commission provides that the traveling expenses of the commission shall be paid to and from the city of Washington. The second proviso, to which the gentleman from Wisconsin makes a point of order, provides:

"That no part of this sum shall be expended for traveling expenses other than those incurred by members of the commission for actual travel only going to and returning from Washington to attend the meetings of the commission."

The Chair thinks that is a limitation on the appropriation and is within the right of the Committee on Appropriations in making up the bill.

The gentleman from Kentucky makes the point of order that maps, books, and so forth, may not be purchased under the general authority creating this commission.

It has been the practice throughout the history of Congress for appropriating committees to provide for books, maps, and such other necessities as the agencies created by the Government might need. The Chair thinks that the authorization for the purchase of these is within the general scope of the authority of the act.

As to the designation of the secretary, that is clearly legislative.

That portion of the provision of the bill which seems to the Chair to go outside of the act is that the secretary shall be the officer in charge of Public Buildings and Grounds. It seems to the Chair that that is an extension of the act.

The Chair overrules the point of order as to the second and third paragraphs and overrules the point of order as to the purchase of books and maps and sustains the point of order as to the designation of the secretary. The language that will go out will be—by the officer in charge of public buildings and grounds who shall be the secretary and shall act as the executive officer of said commission."

1657. A provision that no part of an appropriation be used for payment of troops stationed in certain geographical locations was held to be a limitation and in order on an appropriation bill.

¹ Second session Sixty-seventh Congress, Record, p. 1598.

² Philip P. Campbell, of Kansas, Chairman.

On March 22, 1922,¹ the War Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:

No part of the appropriations made herein for pay of the Army shall be used, except in time of emergency, for the payment of troops garrisoned in China or for payment of more than 500 officers and enlisted men on the Continent of Europe; nor shall such appropriations be used, except in time of emergency, for the payment of more than 5,000 enlisted men in the Panama Canal Zone or more than 5,000 enlisted men in the Hawaiian Islands.

Mr. Thomas S. Crago, of Pennsylvania, made the point of order that the paragraph was legislation in the form of a limitation.

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

Mr. Chairman, the power to do a thing and the exercise of the power are two entirely different things. We could provide in this bill that no part of this money should be paid to anybody in the Army but red-headed men or blue-eyed men. Having the power to make an appropriation, we can put a limitation in as to whom it may be paid to and whom it may not be paid to. That is the appropriation. That does not interfere with the power of the President. He can not maintain any troops unless we appropriate the money for it unless he paid it out of his own pocket. We have the power to say that we will not appropriate a dollar for any purpose. There is no power in the world except our constituency which can reverse our action. Having the power to appropriate, having the power to refuse to appropriate, we can appropriate on conditions with limitations. That is all this is. I question the advisability of exercising the power. That, however, would be a matter for the Congress to determine. I do not see how there can be any question as to the power to put a limitation on the appropriation as far as the rules are concerned.

The Chairman² ruled:

The Chair will be very frank in saying that he is so much opposed to this proposition that he has tried to find some way of holding it out of order. But the Chair does not see how that is possible in any way in compliance with the rules of the House.

Congress has the power to limit or decrease executive discretion by withholding an appropriation. It has not the power to affirmatively direct the doing of a particular act, but it has the power, through its control of the purse strings of the Nation to prevent an appropriation being made under certain conditions. There are a number of precedents on this point which are not worth while to cite, because the merits of the question here involved seem to the Chair entirely clear. The Chair recollects a notable case³ where the decision was made by the House itself. It was in a case where the gentleman from Ohio, Mr. Burton, offered an amendment to the sundry civil bill providing that no part of the appropriation to erect a certain building in the city of Cleveland could be used unless it were built of granite. Under the law the Secretary of the Treasury had the discretion of building it either of granite or sandstone. The Chairman of the Committee of the Whole ruled the amendment out of order because he held it to be affirmative legislation, but the Committee of the Whole on an appeal by a very large vote refused to sustain the decision of the Chair.

Congress has the complete and exclusive power to appropriate for the pay of the Army. It may grant or withhold appropriation to any extent it pleases. It has not the power to direct the President to do or not to do a particular thing with reference to the assignment of the Army to this country or that, but having the power to entirely withhold the appropriations that go for the pay of the Army it unquestionably has the power to direct that no part of the appropriation shall be used to pay that portion of the Army that is in a certain country or countries, as this provision does. The Chair therefore feels compelled to overrule the point of order.

¹ Second session Sixty-seventh Congress, Record, p. 4295.

² Nicholas Longworth, of Ohio, Chairman.

³ Section 3958 of Hinds' Precedents.

1658. In the absence of any statutory limitation on per diem subsistence payable from a lump sum appropriation, an amendment providing a maximum amount was held to be a limitation and in order.

On April 6, 1922,¹ the State and Justice 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 actual and necessary traveling and subsistence expenses of consular inspectors while traveling and inspecting under instructions from the Secretary of State, \$25,000: *Provided*, That inspectors shall be allowed actual and necessary expenses for subsistence, itemized, not exceeding an average of \$8 per day.

A point of order made against the proviso by Mr. Thomas L. Blanton, of Texas, being sustained, Mr. James R. Mann, of Illinois, offered the following amendment:

After the figures "\$25,000" insert: "*Provided*, That inspectors shall not be allowed actual and necessary expenses for subsistence, itemized, exceeding an average of \$8 per day."

Mr. Blanton made a point of order against the amendment on the ground that it was legislation and unauthorized by law.

Mr. Mann, in reply, maintained that as there was no legislation fixing the amount which might be expended for subsistence, an amendment establishing a maximum amount which might be so expended was a simple limitation.

The Chairman² held that the amendment was not legislation but a limitation and overruled the point of order.

1659. In the absence of law fixing maximum compensation of employees, a provision establishing a maximum was held to be in order as a limitation.

Where no limit of salary was provided by statute, a provision limiting the amount of compensation of employees in the Attorney General's office to be paid from an appropriation was admitted as a limitation on an appropriation bill.

On January 23, 1931,³ during consideration of the State, Justice, Commerce, and Labor Departments appropriation bill, the Clerk read:

For compensation and traveling expenses of special attorneys and assistants to the Attorney General and to United States district attorneys employed by the Attorney General to aid in special cases, and for payment of foreign counsel employed by the Attorney General in special cases, \$450,000: *Provided*, That the amount paid as compensation out of the funds herein appropriated to any person employed hereunder shall not exceed \$10,000.

Mr. Thomas L. Blanton, of Texas, made the point of order that the provision interfered with executive discretion and was not in order on an appropriation bill.

The Chairman⁴ held:

The paragraph provides for compensation and traveling expenses for special attorneys and assistants to the Attorney General and to United States district attorneys employed by the Attorney General to aid in special cases, and payment of foreign counsel, and so forth, and there follows the

¹ Second session Sixty-seventh Congress, Record, p. 5132.

² Cassius C. Dowell, of Iowa, Chairman.

³ Third session Seventy-first Congress, Record, p. 2978.

⁴ C. William Ramseyer, of Iowa, Chairman.

proviso that the amount paid as compensation to any person employed hereunder shall not exceed \$10,000. Section 312, title 5, of the United States Code, provides:

“The Attorney General shall, whenever in his opinion the public interest requires it, employ and retain, in the name of the United States, such attorneys and counselors at law as he may think necessary to assist the district attorneys in the discharge of their duties, and shall stipulate with such assistant attorneys and counsel the amount of compensation, and shall have supervision of their conduct and proceedings.”

The law does not stipulate the amount of pay for such service. The law does not limit the pay that the Attorney General is authorized to pay special attorneys and assistants to the Attorney General referred to in this paragraph. The form of the proviso against which the point of order is directed is purely a limitation upon the appropriation, and but for the limitation this pay might exceed \$10,000. The Chair therefore overrules the point of order.

1660. A provision excepting a designated bureau from the objects for which an appropriation might be expended was held to be a limitation.

On December 8, 1922,¹ the Treasury Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the paragraph providing for expense of enforcing the national prohibition act was read.

Mr. John Philip Hill, of Maryland, offered an amendment as follows:

Insert: “(not authorizing, however, any expenditures for the alleged publicity or information bureau now conducted under the supervision of one Sherman A. Cuneo, or for any similar bureau).”

A question of order having been raised against the amendment by Mr. Martin B. Madden, of Illinois, the Chairman² held that it was a limitation and overruled the point of order.

1661. A provision that no part of an appropriation be paid any employee failing to perform duties delegated to him in connection with the enforcement of a certain law was held to be a limitation and in order on an appropriation bill.

On December 8, 1922,³ the Treasury Department 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 expenses to enforce the provisions of the national prohibition act and the act entitled “An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon, all persons who produce, import, manufacture, compound, deal in, dispense sell, distribute, or give away opium or cocoa leaves, their salts, derivatives, or preparations, and for other purposes,” approved December 17, 1914, as amended by the revenue act of 1918, including the employment of executive officers, agents, inspectors, chemists, assistant chemists, supervisors, clerks, and messengers in the field and in the Bureau of Internal Revenue in the District of Columbia, to be appointed as authorized by law; the securing of evidence of violations of the acts, and for the purchase of such supplies, equipment, mechanical devices, laboratory supplies, books, and such other expenditures as may be necessary in the District of Columbia and several field offices, and for rental of necessary quarters, \$9,000,000: *Provided*, That not to exceed \$750,000 of the foregoing sum shall be expended for enforcement of the provisions of the said act of December 17, 1914: *Provided further*, That not to exceed \$25,000 of the total amount appropriated shall be available for advances to be made by special disbursing agents when authorized

¹ Fourth session Sixty-seventh Congress, Record, p. 218.

² Everett Sanders, of Indiana, Chairman.

³ Fourth session Sixty-seventh Congress, Record, p. 221.

by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, the provisions of section 3648 of the Revised Statutes to the contrary notwithstanding.

Mr. Thomas L. Blanton, of Texas, proposed the following amendment:

And Provided further, That no part of this \$9,000,000 shall be paid in salary or expenses to any employee of the Internal Revenue Service who willfully fails or refuses to perform his duties connected with the enforcement of the laws mentioned in this paragraph.

Mr. Martin B. Madden, of Illinois, having lodged a point of order against the amendment, the Chairman ¹ held that it was a limitation and in order.

1622. On December 12, 1922,² the State and Justice Departments appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was read:

DISTRICT COURTS.

Salaries: One hundred and twenty-five district judges, at \$7,500 each, \$937,500: *Provided,* That this appropriation shall be available for the salaries of all United States district judges lawfully entitled thereto for the fiscal year 1924.

To this Mr. Thomas L. Blanton, of Texas, offered the following:

After the figures "1924" strike out the period, insert a colon, and add the following: "Provided, That no part of this \$937,500 shall be paid in salary to any district judge who willfully fails or refuses to enforce any Federal law under his jurisdiction."

Mr. Martin B. Madden, of Illinois, made the point of order that the amendment proposed legislation on a general appropriation bill.

The Chairman ³ held:

The Chair is of opinion that this is a limitation. It is true that if it were followed it might change the law to some extent, but it is a limitation nevertheless. The point of order is overruled.

1663. Denial of use of an appropriation for payment of salaries of employees of the Department of Agriculture who forecast the price of agricultural products was construed as a proper limitation and in order on an appropriation bill.

On March 2, 1928,⁴ the Committee of the Whole House on the state of the Union had under consideration the Department of Agriculture appropriation bill.

When the paragraph making appropriations for the payment of salaries of personnel in the Department of Agriculture was read, Mr. Marvin Jones, of Texas, offered this amendment:

Provided further, That no part of the funds appropriated by this act shall be used for the payment of any officer or employee of the Department of Agriculture who, as such officer or employee, or on behalf of the department or any division, commission, or bureau thereof, issues or causes to be issued, any prediction, oral or written, or forecast with respect to future prices of agricultural products or the trend of same.

¹ Everett Sanders, of Indiana, Chairman.

² Fourth session Sixty-seventh Congress, Record, p. 376.

³ Willaim J. Graham, of Illinois, Chairman.

⁴ First session Seventieth Congress, Record, p. 4011.

Mr. L. J. Dickinson, of Iowa, having raised a question of order, the Chairman¹ ruled:

The gentlemen from Texas offers an amendment making provision that none of the funds appropriated by this act shall be used for the payment of the salary of any employee of the Department of Agriculture who makes a forecast as to the future price of agricultural products or the trend of the same.

The gentleman from Iowa regards this as not germane to the paragraph and in the nature of a penalty rather than in the nature of a limitation. The gentleman from Texas made reference to language similar to this in the naval bill in March, 1924. On that occasion there appears to have been a series of amendments offered by the gentleman from Texas, Mr. Connally, and a point of order was made against the amendments by the gentleman from Ohio, Mr. Begg. After argument the Chairman of the Committee of the Whole, the gentleman from Illinois, Mr. Graham, after quoting a decision made the previous year by the gentleman from Ohio, Mr. Longworth, held that it was a proper amendment, that it was a limitation, and overruled the point of order. In view of the decisions of these high authorities the Chair feels constrained to hold that the amendment offered by the gentleman from Texas is in order and overrules the point of order.

1664. An instance in which the committee, overruling the Chairman, held in order as a limitation a provision indirectly changing existing law through restrictions upon executive discretion.

Discussion of effect upon the Holman rule of concentrating jurisdiction over appropriations in one committee.

Provision that no part of an appropriation be available for pay of officers recruiting boys under age was held in order as a limitation.

On March 26, 1924,² the War Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Pay of officers: For pay of officers of the line and staff, \$30,338,000.

Mr. Tom Connally, of Texas, proposed this amendment:

Provided, That no part of the funds appropriated herein shall be utilized for the pay of any officer who may recruit or enlist any boy under the age of 21 years without the written consent of the parent or guardian, if any, of such boy for such enlistment.

Mr. Daniel R. Anthony, jr., of Kansas, raised the question of order that the amendment by restricting executive discretion proposed to change existing law.

After debate, the Chairman³ ruled:

As the membership of the House knows, the present occupant of the Chair during his long service here has given some attention to parliamentary precedents. The Chair wishes to state in that connection that there has not been any one parliamentary question arising in this House to which the present occupant of the Chair has given so much attention as to this particular matter of limitation. The Chair should add that it is the most difficult of all the questions with which we have to deal here, even more so than germaneness itself.

The Chair wishes first to state his attitude toward rider legislation in general, which is one of distinct opposition to that form of legislation, and to state at least three reasons:

First, such legislation, hampered by parliamentary restrictions under which it must be made, is apt to be faulty. It is not the place for legislation. Legislation ought to be considered by a legislative committee and considered in the House as legislation. Therefore any consideration

¹ Allen T. Treadway, of Massachusetts, Chairman.

² First session Sixty-eighth Congress, Record, p. 5024.

³ John Q. Tilson, of Connecticut, Chairman.

tion given to a rider on an appropriation bill must of necessity be superficial and unsatisfactory on account of such restrictions.

In the next place, rider legislation when enacted is tucked away in large appropriation bills, mostly concerning something else, and the law becomes a maze through which it is difficult for one to find his way. That of itself is one good reason why every opportunity to prevent rider legislation should be taken advantage of.

Third, and a much more important reason, is that it is antagonistic to one of the fundamental principles of constitutional government, which is that supply bills should be separated so far as possible from legislation. When supply bills are filled with matters of legislation differences between the two Houses are apt to arise, differences difficult of settlement, oftentimes prolonging the consideration and endangering the passage of such bills which are necessary for running the Government. Another reason more important than these is that when the bill has passed the two Houses and goes to the Executive, the Executive can not exercise his constitutional right of vetoing a matter of legislation to which he may seriously object without at the same time striking down a great appropriation bill necessary for the carrying on of the functions of the Government.

There are some of the reasons that cause the Chair to be one of those ready at all times to limit, as far as can be properly done under the parliamentary procedure of the House, legislation by way of riders on appropriation bills.

The Chair has stated that he has given consideration to this subject in times past. There are literally hundreds of decisions, and the present occupant of the Chair has read every one of them so far as they have been collected in the volume of precedents, trying to decide what is the proper line of parliamentary procedure through this inconsistent mass of precedents.

The precedents being, as they are, decisions of former Chairmen become really of little consequence on account of their conflicting character. The Chair will not attempt to bolster the ruling that he will make by any preceding ruling as such, but will simply refer to the reasoning supporting a number of such rulings.

The Chair will first ask the attention of the House to a ruling made by Speaker Cannon, found in section 3935 of Hinds' Precedents. The Chair will read only the reasons:

"The merits of the proposition are not involved in the point of order. What is the object of the motion and of the instruction? If it does not change existing law, then it is not necessary. If it does change existing law then it is subject to the point of order. Much has been said about limitation, and the doctrine of limitation is sustained upon the proposition under the rule that as Congress has the power to withhold every appropriation it may withhold the appropriation upon limitation. Now, that is correct. But there is another rule, another phase of that question. If the limitation, whether it be affirmative or negative, operates to change the law or to enact a new law in effect, then it is subject to the rule that prohibits legislation upon a general appropriation bill."

A second reference I would make is to a statement of principle by Mr. Asher Hinds in his work, section 3974:

"It has generally been held that provisions giving a new construction of law or limiting the discretion which has been exercised by officers charged with the duties of administration are changes of law within the meaning of the rule."

Another statement of the same principle by Mr. Asher Hinds reads as follows, being section 3976:

"The language of limitation prescribing the conditions under which the appropriation may be used may not be such as, when fairly construed, would change existing law."

Another reference to Hinds' Precedents, section 3973, is a decision by Mr. James S. Sherman:

"The Chair is perfectly clear on the subject.

"Rulings upon the subject of limitation have not been consistent by any manner of means; they have gone through something of an evolution. The later decisions have tended toward the point indicated, that where the proposed limitation might be construed by the executive or administrative officer as a modification of statute, a change of existing law, it could not be held to be a limitation. The Chair's belief is that the rulings along that line are correct, and so the Chair is constrained to sustain the point of order."

Just one more citation, and that is a statement in a ruling made by our distinguished colleague the gentleman from Ohio. It is to be found in section 3983, of Hinds' Precedents.

Mr. Chairman Burton in his ruling used the following language:

"The limitation seems to be such when by its terms, whether expressed in affirmative or negative language, it necessarily changes existing law. When there is expressed in the amendment a prohibition, as here, and details as to the manner of the performance of the duties of the office, it clearly points out the intention of the provision to impose new duties upon the Government officials. It is evident that the provision would be purposeless unless the effect was to change existing law. Now, if it is the duty of the United States district attorneys to act in the line directed by this amendment, the amendment is unnecessary. If it seeks to impose upon them other and further duties, it is contrary to existing law, and that is true whether it is expressed in affirmative or negative language. The Chair, therefore, sustains the point of order."

A reference was made by the gentleman from Texas, Mr. Blanton, to what is the existing law. The law as carried in the current War Department appropriation act has no reference whatsoever to this point of order. The existing law with which we are dealing is as follows, and I quote from section 1560 of Barnes' Federal Code:

"Who may enlist: Recruits enlisting in the Army must be effective and able-bodied men between the ages of 16 and 35 years at the time of their enlistment. This limitation as to age shall not apply to soldiers reenlisting. No person under the age of 18 years shall be enlisted or mustered into the military service of the United States without the written consent of his parents or guardians, provided that such minor has such parents or guardians entitled to his custody and control."

This is the existing law, so far as we are concerned, in dealing with this proposition. What does this amendment provide? It provides that—

"No part of the funds appropriated in this paragraph shall be utilized for the pay of any officer who may recruit or enlist any boy under the age of 21 years without the written consent of the parent or guardian, if any, of such boy for such enlistment."

What is the effect of the provision? The effect is that whereas it is provided by law that the recruiting officer may recruit certain young men, and makes it his duty to enlist them, still he can not be paid under this appropriation bill with this alleged limitation if he enlists such boys or men as it is his duty to enlist. This is the effect of the proposed amendment. A recruiting officer has the right, and in fact it is his duty under the law, to recruit men over 18 years of age. This provision makes it so that he can not do it. What is the effect? The effect is to change the law so far as recruiting is concerned.

The Chair desires now to call attention to one precedent which has not been cited this morning but which is valuable here. The Chair refers to a reasoning by Mr. James R. Mann, who said that an appropriation might be restricted to red-headed men only or exclude such men only from receiving any part of an appropriation. Such a limitation relates only to the qualifications of the persons paid, and the gentleman from Illinois, Mr. Mann, was correct in so stating. The amendment now under consideration, however, does not go simply to the qualifications of the persons paid. It prohibits the recruiting officer from performing a service which is legal, which it is his duty to perform, if this amendment were not inserted. The decisions are not at all consistent with each other. They are not uniform. Therefore, the Chair must be guided by the best reasoning he can find in all of these decisions, and he is entirely clear that the best and soundest reasoning is antagonistic to this amendment. The Chair sustains the point of order.

Mr. Connally having appealed from the decision of the Chair, Mr. Nicholas Longworth, of Ohio, said:

Mr. Chairman, I merely wanted to make one observation before the committee votes on this question, and I sincerely hope the committee will not take into consideration the merits one way or other of the amendment of the gentleman from Texas. I realize very well the difficulties that surround the Chair in interpreting these limitations. I have been in the Chair myself a number of times when this particular bill, the Army bill, was before the committee. The line of demarcation is very close indeed in all these propositions, but it seems to me that now we ought to realize that

it is wise on the part of the Chair to construe all these questions as strictly as possible. Most of these precedents applied before the creation of this new Committee on Appropriations, when the committees that had charge of the legislation for the Army and the Navy and various other departments also had the power of appropriating. But I think we all realize that now, when the Committee on Appropriations has taken over all of the appropriating functions of the various committees of the House, it is the part of wisdom to confine bills reported by it as closely as possible to appropriations and as little as possible to legislation.

In reply, Mr. Charles R. Crisp, of Georgia, argued:

Gentlemen of the committee, in common with you all I have great respect for the ability and fairness of the present occupant of the chair. I know that he is sincere in his rulings. But it seems to me that under the rules of the House there can be no question but that the ruling of the Chair is erroneous, for this amendment is a pure limitation and as such undoubtedly it is in order as an amendment. As to whether or not the House desires to adopt it, that is a different thing. But as to whether it comes within the limitation rule, I do not see how it is open to controversy. My friend the distinguished leader, Mr. Longworth, was presenting to the House, as the reason we should not adopt it, the fact that under the consolidation of appropriations in the Committee on Appropriations we should restrict the power of that committee. But the rules of the House placing all of the appropriations in the Committee on Appropriations affected only one rule of the House, and that rule was the Holman rule, and under that rule where the committee had jurisdiction of legislative matters as well as the authority to make appropriations the committee could report legislation in an appropriation bill if the legislation retrenched expenditures. The Committee on Appropriations never had that authority or power, and the change of the rules in no wise affected the Committee on Appropriations so far as legislating on an appropriation bill. Now, we all agree that the Committee on Appropriations is not a legislative committee. But this proposition is not suggested by the Committee on Appropriations. The Committee on Appropriations did not bring in the limitation proposed in this amendment. It is offered from the floor of the House.

But I go further, gentlemen. The Committee on Appropriations, under the decisions and precedents of the House, can bring in limitations, and the Committee on Appropriations to-day, in nearly every bill it reports, does propose some limitations. It has always been recognized that a committee can bring in limitations, and surely if the House committees can, then this great committee, composed of every Member of the House, is clothed with the same authority.

I can not see how gentlemen can doubt that this is a limitation. I think that if there were a provision in this bill which provided for the purchase of black horses that the House, if it wanted to do a silly thing, could say that no part of the funds should be used for the purpose of purchasing bay horses or white horses. I think that is a limitation which would be in order under our rules. This amendment provides that no part of the funds in the paragraph to which it is offered shall be used for this purpose. Now, if the paragraph to which it is offered is not used to pay these salaries, then the amendment will be inoperative. As a parliamentary proposition this amendment is proposed as a limitation to a particular paragraph in the bill, saying that none of the money appropriated in that paragraph can be used for this purpose. Now, if that is not a limitation I can not conceive of one.

Mr. Anthony J. Griffin, of New York, here interposed:

I am in doubt about this question, and it seems to me the main point to be considered is whether or not the proposed amendment involves new legislation or a change of existing law. The existing law, as I understand it, is that recruiting is only permitted between the ages of 16 and 35, and this proposed amendment, which seems to me to change that law, prevents the recruiting of soldiers under the age of 21. I would be glad to have the gentleman's opinion as to that.

To which Mr. Crisp replied:

This amendment, if adopted, indirectly, to a limited extent, does change existing law, but it does not permanently change existing law; in other words, this amendment can not create

any affirmative permanent legislation; it can not apply to any other funds that the department may have available; it only applies to the funds appropriated in a certain paragraph of this bill; it does not create affirmative legislation, but it says that none of the money appropriated can be used in violation of the limitation. In my judgment, the amendment is in order and the decision of the Chair should be reversed.

The Chairman, in submitting the question to the committee, said;

Before submitting the matter to the vote of the House the Chair will make a very brief statement. In ruling that this is in effect legislation on an appropriation bill the Chair is far from having any idea of depriving the House of any of its rights. he is, in fact, simply suggesting the proper tribunal to which these matters should be submitted, which is the legislative committee having jurisdiction of the subject matter and not the Appropriations Committee.

The Chair thinks that in considering this subject we should look through the form and to the substance of the matter. It has the effect of changing the law so far as the enlistment of recruits is concerned, and the Chair submits that we should look through the form and consider the effect of the proposed amendment.

In so considering this matter the Chair has arrived at a conclusion which seems unescapable in the light of the reasoning in the premises regardless of what may have been decided by himself or others in the past. As the Chair has already stated, those decisions and all the precedents on this point are conflicting; but whatever that may be the Chair has arrived at the conclusion which he has stated, believing that this is not a limitation upon the appropriation but is, in effect, a limitation upon the discretion of the executive authority, and for this reason the Chair made his ruling.

The question is, Shall the decision of the Chair stand as the judgment of the committee? The Chair will ask the gentlemen from New Jersey to assume the chair and take the vote.

Mr. Frederick R. Lehlbach, of New Jersey, having taken the chair, put the question:

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

On a division demanded by Mr. James T. Begg, of Ohio, the yeas were 76, noes 128, and the decision of the Chair was rejected as the judgment of the committee.

1665. On December 16, 1922,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. When the paragraph providing pay for the Navy was reached Mr. Tom Connolly, of Texas, offered this amendment:

Provided, That no part of the funds herein appropriated shall be available for the pay of any enlisted man or officer who may be assigned to recruiting men or boys under 21 years of age without the written consent of the parent or guardian of such minor or minors.

Mr. Carl R. Chindblom, of Illinois, raised the question of order that under form of limitation the amendment proposed legislation restricting official discretion.

The Chairman² decided:

The Chair is quite clear that the amendment is a limitation, especially in view of recent ruling by several chairmen.

I recall that the first time the question was discussed in my hearing an amendment was offered on the Army appropriation bill, depriving certain Army officers of pay if they did certain acts in social relations with regard to privates and other officers, and the Speaker sustained the amendment. The point of order is overruled.

¹ Fourth session Sixty-seventh Congress, Record, p. 587.

² Nicholas Longworth, of Ohio, Chairman.

1666. A provision that in disbursement of an appropriation in accordance with an existing law the average of salaries for any grade shall not exceed the average of rates specified by the law for the grade was held to be in order as a limitation.

On February 5, 1924,¹ the Treasury and Post Office Departments appropriation bill was under consideration in the Committee of the Whole House on the state of the Union and a point of order presented by Mr. Thomas L. Blanton, of Texas, was pending on the following provisos read on the preceding day:

Provided, That is expending appropriations or portions of appropriations, contained in this act, for the payment for personal services in the District of Columbia in accordance with "the classification act of 1923," the average of the salaries of the total number of persons under any grade or class thereof in any bureau, office, or other appropriation unit, shall not at any time exceed the average of the compensation rates specified for the grade by such act: *Provided*, That this restriction shall not apply (1) to grades 1, 2, 3, and 4 of the clerical-mechanical service, or (2) to require the reduction in salary of any person whose compensation is fixed, as of July 1, 1924, in accordance with the rules of section 6 of such act, or (3) to prevent the payment of a salary under any grade at a rate higher than the maximum rate of the grade when such higher rate is permitted by "the classification act of 1923," and is specifically authorized by other law.

In support of the point of order, Mr. Blanton argued:

If the Chair pleases, here is an appropriation of \$175,780 for certain salaries. The law now provides that these employees shall be in certain classes and that the class shall draw certain salaries. What do these two provisos do? They permit the Secretary of the Treasury, without authority of law, to shift these employees in any manner he sees fit from class to class. In other words, with these two provisos, employees who are permitted to draw under the law \$1,800, apiece, could be so shifted by the Secretary of the Treasury from first one grade to another, so that they would draw \$3,000 apiece or \$4,000, provided the employees of certain other grades who were permitted to draw under the law \$1,400 apiece were likewise shifted down the other way by the Secretary of the Treasury, who would slowly demote them to the lowest grades, so as to maintain the average as provided under the proviso. That is a change of law; that is an authorization that is beyond the present classification act.

The Chairman² decided:

The Committee on Appropriations has the right to place any proper limitation on an appropriation. The Committee on Appropriations can not legislate. The effect of the proviso, in the opinion of the Chair, is not properly interpreted by the gentleman from Texas. In the opinion of the Chair, the present law respecting salaries and respecting maximum salaries would prevail notwithstanding this limitation. This is clearly a limitation upon this particular appropriation, and the limitation provides that out of this appropriation the payments shall not at any time exceed the amount of the appropriation. That is within the rights of the Committee on Appropriations, and the Chair overrules the point of order.

1667. An Amendment providing that no part of an appropriation be expended in payment of officers detailed as instructors at the Naval Academy to supersede civilian instructors under specified conditions was ruled out when coupled with amendments carrying provisos embodying affirmative legislation but admitted when reoffered without the provisos.

¹First session Sixty-eighth Congress, Record, p. 1943.

²Everett Sanders, of Indiana, Chairman.

On March 21, 1924,¹ 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:

Pay, Naval Academy: Pay of professors and others, Naval Academy: Pay of professors and instructors, including one professor as librarian, \$275,000: *Provided*, That not more than \$36,500 shall be paid for masters and instructors in swordsmanship and physical training.

To the pending paragraph Mr. James T. Begg, of Ohio, offered this amendment:

No part of any sum in this act appropriated shall be expended in the pay or allowances of any commissioned officer of the Navy detailed for duty as professor or instructor in academic subjects at the United States Naval Academy to perform the duties which were performed by civilian professors or instructors on January 1, 1922, whenever the number of civilian professors or instructors employed in such duties shall be less than 80: *Provided*, That in reducing the number of civilian professors no existing contract shall be violated: *Provided further*, That no civilian professor, associate or assistant professor, or instructor shall be dismissed, except for sufficient cause, without six months' notice to him that his services will be no longer needed.

A point of order raised against the amendment by Mr. Burton L. French, of Idaho, on the grounds that the provisos imposed duties and therefore comprised legislation, was sustained by the Chairman.²

Thereupon, on suggestion of the Chairman, Mr. Begg offered the amendment without the provisos, in which form it was entertained without objection.

1668. Provision that no funds appropriated by a bill be expended for pay of any retired officer of the United States assigned to duty as a military attaché at any legation abroad was held to be a limitation.

On March 25, 1924,³ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The paragraph providing for contingent expenses of the Military Intelligence Division, General Staff Corps, being read, Mr. Fiorello H. LaGuardia, of New York, offered this amendment:

Provided, That no funds herein appropriated shall be expended for the pay, allowance, or expense of any retired officer of the United States Army assigned to duty as a military attaché at any United States embassy or legation abroad.

Mr. Martin B. Madden, of Illinois, reserved a point of order on the amendment. After debate, the Chairman⁴ said:

The Chair thinks this is a limitation on the qualifications of the person receiving the appointment and therefore the Chair overrules the point of order.

1669. An amendment denying compensation to veterans of the military service receiving pay in excess of a specified amount was held to be in order as a limitation.

On January 8, 1929,⁵ the House resolved itself into the Committee of the Whole House on the state of the Union for further consideration of the War Department

¹ First session Sixty-eighth Congress, Record, p. 4663.

² William J. Graham, of Illinois, Chairman.

³ First session Sixty-eighth Congress, Record, p. 4986.

⁴ John Q. Tilson, of Connecticut, Chairman.

⁵ Second session Seventieth Congress, Record, p. 1383.

appropriation bill, and Mr. Fiorello H. LaGuardia, of New York, offered this amendment:

Provided further, That none of the money appropriated in this act shall be used to pay any officer or enlisted man on the retired list of the Army who is in the employ of the United States and whose salary for such employment exceeds \$2,500 per annum.

Mr. Henry E. Barbour, of California, having made a point of order that the amendment proposed legislation, the Chairman¹ held:

The amendment offered by the gentleman from New York seems to the Chair clearly a limitation, and a proper limitation from a parliamentary standpoint. It refers only to the money appropriated in this bill and limits the purposes for which this money may be expended. The Chair overrules the point of order.

1670. An amendment forbidding payment of salary authorized by law from any part of an appropriation to a designated individual was held to be a limitation and in order on an appropriation bill.

On March 26, 1924,² the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Pay of persons with retired status: For pay of the officers on the retired list, \$7,032,337: *Provided*, That no part of this sum shall be paid to Col. John E. Hunt, United States Army, retired.

Mr. L. J. Dickinson, of Iowa, in making a point of order against the proviso in the paragraph said:

Mr. Chairman, it is my contention that a limitation can not in effect repeal existing law. Under the present existing law it is the duty of the proper officials of the Government to pay to Colonel Hunt the retired pay of a colonel under the pay bill of the Army. That is entirely an executive function. In effect, this proviso repeals that law in that it deprives Colonel Hunt of his pay in this appropriation bill. He could go to the Court of Claims and have a decision rendered and receive his pay. It is an interference with an executive function. It is not a proper limitation on an appropriation bill.

The Chairman³ ruled:

If the gentleman's argument were addressed to the merits of the question, what the gentleman from Iowa had said would be persuasive, but it has been pretty thoroughly established that Congress may refuse to appropriate for a perfectly legitimate purpose. In the mind of the Chair it is purely a limitation. It does not restrict the discretion of any executive officer. It simply declines to appropriate for a perfectly legal object. The Chair overrules the point of order.

1671. It is not in order to offer on a general appropriation bill under guise of limitation an amendment providing affirmative direction to an executive.

On February 17, 1908,⁴ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The following paragraph was read:

¹ John Q. Tilson, of Connecticut, Chairman.

² First session Sixty-eight Congress, Record, p. 5041.

³ George P. Lawrence, of Massachusetts, Chairman.

⁴ First session Sixtieth Congress, Record, p. 2100.

SEC. 3. The appropriations herein made for the officers, clerks, and persons employed in the public service shall not be available for the compensation of any persons incapacitated for performing the service for which such person has been employed, and the heads of departments shall cause this provision to be enforced either by the demotion or removal or such person from the public service.

Mr. Joseph A. Goulden, of New York, made the point of order against the paragraph that while purporting to be a limitation it was in effect legislation imposing affirmative restrictions on legislative discretion.

The Chairman¹ held:

The gentleman from New York makes the point of order against section 3. That section provides: "SEC. 3. The appropriations herein made for the officers, clerks, and persons employed in the public service shall not be available for the compensation of any persons incapacitated for performing the service for which such person has been employed, and the heads of departments shall cause this provision to be enforced either by the demotion or removal or such person from the public service."

The House, of course, has a right to withhold an appropriation in whole or in part. It also has a right to specify in what way an appropriation shall be expended, by what is called a limitation. But a limitation may not be such as when fairly construed is an affirmative change of existing law. It seems clear to the Chair that this paragraph limits the discretion of heads of the departments in that it requires them to do certain things which they would otherwise not be required under the law to do. The Chair, therefore, sustains the point of order.

1672. An amendment may not under guise of limitation provide affirmative directions which impose new duties.

A provision withholding appropriations for payment of tax refunds not approved by the Joint Committee of Internal Revenue Taxation was held not to be admissible as a limitation.

On January 7, 1928,² during consideration of the first deficiency appropriation bill, in the Committee of the Whole House on the state of the Union, a section appropriating for tax refunds in the Treasury Department was reached.

Mr. Joseph W. Byrns, of Tennessee, offered an amendment as follows:

Provided, That no part of the appropriation herein made shall be available for paying any tax refund in excess of \$75,000 which has not been approved by the Joint Committee on Internal Revenue Taxation.

Mr. Daniel R. Anthony, of Kansas, made the point of order that the amendment, while in the form of a limitation, required affirmative action and was in the nature of new legislation.

The Chairman³ ruled:

It is a well-known rule of the House that amendments which limit expenditures of money appropriated for a general purpose by excluding some specific purpose embraced in the general purpose are in order, but the rule is clear that such limitation to be in order must simply forbid the use of the money for a certain given purpose. It is the rule that anything carrying an affirmative, substantive change in existing law, that limits the functions or jurisdiction of an executive officer so drastically as to constitute a change of policy, or that imposes upon a governmental

¹ George P. Lawrence, of Massachusetts, Chairman.

² Second session Seventieth Congress, Record, p. 1315.

³ Frederick R. Lehlbach, of New Jersey, Chairman.

agency new duties not imposed upon it by law, is beyond the definition of a limitation, and is therefore, not in order.

The amendment under consideration provides that no tax refunds shall be paid by the Treasury Department in excess of \$75,000 which have not been approved by the Joint Committee on Internal Revenue Taxation. In the first place, ever since the existing income tax law has been in force the Treasury Department has had full discretion in making refunds where it was found that taxes had been improperly paid. To subject that function to the review of another body which has not a present that function is new legislation, involving an important change of policy, and is such a limitation on existing rights and powers of the Secretary of the Treasury as the constitute new legislation.

The point that remains, which is governing, in the mind of the Chair, is that it imposes upon the Joint Committee on Internal Revenue Taxation a function that is not now imposed upon it by law, and this incumbent of the Chair has repeatedly held that such imposition of new duties, in the guise of a limitation, is not in order. The Chair will cite one precedent rendered on March 11, 1916¹

“But such limitations must not give affirmative directions and must not impose new duties upon an executive officer of the Government.”

Now, whether it is an executive officer or a legislative body, an agency of the Government must not, in the form of a limitation, have imposed new duties. Therefore the amendment is held out of order.

1673. A limitation must be on the appropriation and not on the functions of an executive.

Where discretion as to the number of clerks to be employed was vested in an executive a proposal to limit that number rather than the appropriation was held not to be admissible as a limitation.

On March 1, 1910,² the Post Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

And the appointment and assignment of clerks hereunder shall be so made during the fiscal year as not to involve a greater aggregate expenditure than this sum, and the assignment of the several grades of compensation to the various offices shall be made, so far as practicable, in proportion to the amount of business transacted through such offices and the respective divisions thereof, and that the total number of clerks and employees in the service June 30, 1911, shall not exceed 33,200.

Mr. James R. Mann, of Illinois, having raised a point of order on the paragraph Mr. William Hughes, of New Jersey, said:

Mr. Chairman, I understand the Postmaster General has the authority to employ clerks and carriers and other officials. If he has the right now at this time to employ more than 33,200, and I think he has, then this attempt in an appropriation bill to limit his authority to employ more than 33,200 is clearly new legislation and subject to the point of order.

The Chairman³ held:

This provision, in the opinion of the Chair, is not a limit on the appropriation, but a limit on the official functions of an executive officer, and it has been ruled over and over again that that is not proper in a general appropriation bill. The Chair therefore sustains the point of order.

¹ Sec. 1676 of this work.

² Second session Sixty-first Congress, Record, p. 2590.

³ George P. Lawrence, of Massachusetts, Chairman.

1674. An amendment limiting the discretion of an executive is not in order as a limitation.

Provision that no contract for clerks be made for any amount in excess of the sum appropriated for the purpose was held to be legislation, but provision that no part of the appropriation be applied to payment of clerks in excess of a stated number was admitted as a limitation.

On March 3, 1910,¹ the Post Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union and a paragraph providing an appropriation for clerks in post offices had been read.

Mr. John J. Gardner, of New Jersey, offered an amendment:

No liability for any amount in excess of this sum shall be contracted for salaries of clerks and employees at first and second class post offices for services rendered during the fiscal year for which this appropriation is made.

Mr. James R. Mann, of Illinois, made the point of order that the amendment involved legislation.

The Chairman² ruled:

The gentleman from New Jersey offers the following amendment:

"No liability for any amount in excess of this sum shall be contracted for salaries of clerks and employees at first and second class post offices for services rendered during the fiscal year for which this appropriation is made."

He claims that this amendment is in order, on the ground that it is a limitation. In the opinion of the Chair the House can not, on a general appropriation bill, authorize a contract; neither can it forbid one.

"Where an amendment places a limitation which would not otherwise exist upon the discretion of one of the executive departments of the Government, forcing the head of that department to do certain things which otherwise he would not be required to do, that is more than a limitation upon an appropriation. It is substantially a positive enactment."

It seems to the Chair that this amendment is legislation, and not in order under our rule on a general appropriation bill. He therefore sustains the point of order.

Thereupon Mr. Gardner proposed the amendment in form as follows:

No part of this appropriation shall be applied to the force of clerks of the classes herein appropriated for exceeding in number 33,200.

Mr. William Hughes, of New Jersey, having raised a point of order on the amendment as modified, the Chairman said:

The Chair thinks that under the precedents the amendment as now offered by the gentleman from New Jersey should be held to be a limitation. It has been held that an amendment providing that no part of an appropriation for the army shall be available for any army over a certain size was in order on the ground that it was a limitation. The Chair, following this precedent, overrules the point of order.

1675. An amendment to an appropriation bill proposing a limitation of authority exercised by an executive rather than a limitation on expenditure was held not to be in order.

¹ Second session Sixty-first Congress, Record, p. 2686.

² George P. Lawrence, of Massachusetts, Chairman.

On February 13, 1912,¹ the Army 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 as a new paragraph the following:

That from and after the passage of this act it shall not be lawful for any department or bureau of the United States to sell any arms of any kind, manufactured or acquired by such department or bureau, for naval or military purposes, except as hereinafter provided: *And provided further*, That whenever any arms of any kind intended for naval or military purposes shall be condemned by any department or bureau of the United States, or shall become unfit for official use by such department or bureau, they shall be so broken or otherwise mutilated as to render them harmless as instruments of warfare or violence, and only when so broken or mutilated shall they be sold or disposed of by any such department or bureau.

Mr. James Hay, of Virginia, made the point of order that the amendment proposed legislation rather than a limitation upon expenditures.

The Chairman² sustained the point of order and said:

The point of order is sustained. It is not a limitation on expenditures, but a limitation of authority, and is an affirmative direction. The point of order is sustained.

1676. A proper limitation does not interfere with executive discretion or require affirmative action on the part of Government officials.

On March 11, 1916,³ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Joseph W. Byrns, of Tennessee, offered this amendment as a new section:

SEC. 4. That appropriations in this act shall not be used during the fiscal year 1917 for the purchase of any typewriting machine at a price in excess of the lowest price paid by the Government of the United States for the same make and substantially the same model of machine during the fiscal year 1915; such price shall include the value of any typewriting machine or machines given in exchange, but shall not apply to special prices granted on typewriting machines used in schools of the District of Columbia or of the Indian Service, the lowest of which special prices paid for typewriting machines shall not be exceeded in future purchases for such schools: *Provided*, That in construing this section the Commissioner of Patents shall advise the Comptroller of the Treasury as to whether the changes in any typewriter are of such structural character as to constitute a new machine not within the limitations of this section.

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

The Chairman⁴ ruled:

The Chair, without taking time to cite specifically the precedents, recognizes the proposition that a limitation can be placed on an appropriation bill, but the rulings of the House are that the limitation, when fairly construed, shall not be such as to interfere with any executive discretion or to require any affirmative act on the part of any of the Government officials. In the amendment in question, the proviso, the Chair thinks, falls within one of these classes, and part of the amendment being subject to a point of order, the whole amendment is tainted, and the Chair therefore sustains the point of order.

¹ Second session Sixty-second Congress, Record, p. 2029.

² Edward W. Saunders, of Virginia, Chairman.

³ First session Sixty-fourth Congress, Record, p. 3970.

⁴ Charles R. Crisp, of Georgia, Chairman.

1677. An amendment affirmatively interfering with executive discretion is not in order as a limitation.

On March 11, 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. Edward Keating, of Colorado, proposed the following amendment as a new section:

That appropriations herein made shall not be available for the compensation of any administrative officer who shall, after the passage of this act, demote or dismiss, or cause the demotion or dismissal, of any employee in the classified civil service of the United States without giving said employee an opportunity for an oral hearing with the privilege of counsel and witnesses.

Mr. Joseph W. Byrns, of Tennessee, made the point of order that the amendment was in effect legislation.

After debate, the Chairman² held that the amendment proposed interference with executive discretion, and was therefore not in order.

1678. A limitation to be in order must be upon the appropriation and not an affirmative limitation of official functions.

On June 26, 1916,³ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph appropriating for regular supplies of the Quartermaster Corps was read.

Mr. William P. Borland, of Missouri, proposed this amendment:

Provided, That no money shall be expended out of the appropriations in this bill for supplies for the Army except under contracts which specify delivery either at the place where the supplies are to be used or at some convenient point on a land-grant railroad for shipment to the place of consumption, at the option of the contractor.

Mr. James Hay, of Virginia, made the point that while in the form of a limitation the amendment proposed a requirement on the department changing substantive law.

The Chairman⁴ held:

The amendment submitted by the gentleman from Missouri is as follows:

“Provided further, That no money shall be expended out of the appropriation in this bill for supplies for the Army, except under contracts which specify delivery either at the place where the supplies are to be used or at some convenient point on a land-grant railroad for shipment to the place of consumption, at the option of the contractor.”

The point of order is made that this amendment is not a limitation, but a provision making new law.

A limitation to be sustained must be upon the appropriation, and not an affirmation limitation of official functions.

A long line of decisions on the subject of limitations holds that the limitation to be in order must be in effect simply a negative bar pressing upon the appropriation of the money, and that any amendment which, directly or indirectly, imposes upon any officer a duty in the expenditure of the money is obnoxious to a point of order. (Hinds⁵, p. 655.)

Rulings upon the subject of limitations have not been consistent by any means; they have gone through something like an evolution. The decisions have tended, however, to establish and

¹ First session Sixty-fourth Congress, Record, p. 3972.

² Charles R. Crisp, of Georgia, Chairman.

³ First session Sixty-fourth Congress, Record, p. 10003.

⁴ Edward W. Saunders, of Virginia, Chairman.

make clear that were the proposition submitted as a limitation might be construed by the executive or administrative officer as a modification of statute, a change of existing law, or new law, it can not be sustained as a limitation.

A few precedents in this connection may be appropriately cited.

On March 24, 1904, the following amendment was offered to the Post Office bill:

“Provided further, That no money hereby appropriated shall be expended in the payment of salaries to rural delivery carriers, at a less sum for their services, than \$720 per annum.”

A point of order to this amendment was sustained. (Hinds', p. 667.)

On January 23, 1906, the following amendment was offered to the urgent deficiency bill:

“Provided, That no part of the sum herein appropriated shall be used for the payment of transportation charges upon American vessels where said charges are more than 20 per cent in excess of similar transportation charges upon foreign vessels.”

A point of order to this amendment was sustained. (Hinds' p. 669.)

In December, 1906, the following amendment was offered to the legislative appropriation bill:

“Provided, That no part of the compensation provided by this act shall be paid to the Public Printer unless he shall, in printing documents, authorized by law, or ordered by Congress, or either branch thereof, conform in the spelling thereof to the rules of orthography recognized and used by accepted dictionaries of the English language.”

A point of order was sustained. (Hinds', p. 673.)

The following amendment was made to the Agricultural bill in February, 1896:

“Provided, That no part of the \$8,000, for compensation of the Secretary of Agriculture provided for by this bill, shall be available or payable until the said Secretary shall have expended for seeds the amount appropriated in said act approved March, 1895, and shall have purchased and distributed the seeds provided for in said act.”

A point of order was sustained. (Hinds' p. 675.)

In February, 1907, the following amendment was offered to the Post Office appropriation bill:

“Provided, That no part of this sum shall be expended in payment for transportation of the mails by railroad routes where the average weight of mails per day has been computed by the use of a divisor less than the whole number of days such mails have been weighed.”

A point of order was sustained. (Hinds' p. 672.)

The following amendment was offered to the Post Office appropriation bill on April 13, 1906:

“Provided, That not to exceed \$4,200,000 of said sum so appropriated shall be expended for horse hire and wagon equipment for rural mail service.”

A point of order was sustained. (Hinds', p. 653.)

This amendment provides that no payment shall be made out of the appropriations for supplies except under contracts of a certain indicated character.

Now, if there are no such present contracts, and existing law does not require them, then it is perfectly clear that no supplies for the Army could be purchased by the appropriations provided by this bill until all the contracts relating to the same were conformed to the Borland amendment. In other words, the substantial effect of the Borland amendment is to provide in this respect a more of affirmative requirement than of limitation in this amendment.

The Chair, therefore, is of opinion that the amendment is subject to the point of order and sustains the same.

1679. A limitation must be on the appropriation and not on executive discretion.

While formerly construed as limitations, the latest decisions hold amendments prohibiting expenditures from appropriations in purchasing commodities at prices in excess of estimated cost of manufacture in Government plants to involve legislation.

On February 18, 1919,¹ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Harry E. Hull, of Iowa, offered the following as a new paragraph:

Insert a as a new paragraph:

“Provided, That no part of the moneys appropriated in each or any section of this act shall be used or expended for the purchase or acquirement of any article or articles that at the time of the proposed acquirement can be manufactured or produced in each or any of the Government arsenals of the United States for a sum less than they can be purchased or procured otherwise.”

Mr. William H. Stafford, of Wisconsin, raised a point of order on the paragraph. After brief debate, the Chairman² overruled the point of order.

1680. On January 18, 1923,³ the War Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Harry E. Hull, of Iowa, proposed to insert in the bill as a new paragraph the following amendment:

No part of the moneys appropriated in each or any section of this act shall be used or expended for the purchase or acquirement of any article or articles that at the time of the proposed acquirement can be manufactured or produced in each or any Government navy yard of the United States for a sum less than it can be purchased or acquired otherwise.

Mr. Homer P. Snyder, of New York, in making a point of order on the amendment contended that it was legislation and that it was not apparent that even if enacted it would limit expenditure.

In reply, Mr. Finis J. Garrett, of Tennessee, submitted that the question as to whether it would limit expenditure if placed in operation was not germane to the point of order and did not affect the parliamentary status of the proposition.

Mr. Eugene Black, of Texas, in debating the point of order, said:

Mr. Chairman, it seems to me that the gentleman from Iowa has offered an amendment very similar in character to the following provision already carried in the bill:

“No part of the moneys appropriated in this act shall be used for paying to any civilian employee of the United States Government an average daily wage or salary larger than that customarily paid by private individuals for corresponding work in the same locality.”

I recall that when the provision which I have just read was offered as an amendment to this same Army appropriation bill in the session of Congress in which the appropriation bill for the fiscal year 1923 was passed a point of order was made against it upon the ground that it was new legislation. The Chair overruled the point of order upon the ground that it is a limitation, and therefore in order. I can see but very little difference, if any, between the language which I have just read and the amendment offered by the gentleman from Iowa.

The Chairman⁴ held:

The point of the gentleman from Texas seems to be well taken. The same principle that would apply to the paragraph already in the bill would also apply to this amendment. It is a limitation because it is simply a description of a class of articles that may be purchased, if the articles to be purchased can be brought under the classification made. It seems to the Chair that it is a proper limitation upon an appropriation bill. It prescribes no new duties for any official, and it does not restrict any official except in a negative way by preventing him from expending

¹Third session Sixty-fifth Congress, Record, p. 3731.

²Edward W. Saunders, of Virginia, Chairman.

³Fourth session Sixty-seventh Congress, Record, p. 1970.

⁴John Q. Tilson, of Connecticut, Chairman.

appropriations. It seems to the Chair that it is only a limitation, and therefore is in order. The Chair overrules the point of order.

1681. On February 26, 1923,¹ the third deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph was read appropriating for alterations in the armament of certain capital battleships.

To this paragraph Mr. Frederick W. Dallinger, of Massachusetts, proposed the following amendment:

Provided, That no part of the moneys appropriated in this paragraph shall be used or expended for making such changes in private establishments or for the purchase of acquirement of any article or articles that at the time of the proposed changes, purchase, or acquirement can be made, manufactured, or produced in each or any of the Government navy yards of the United States, if time and facilities permit, for a sum less than they can be made, purchased, or acquired otherwise.

Mr. Martin B. Madden, of Illinois, made the point of order that the amendment proposed legislation.

The Chairman² said:

This is clearly a limitation as to an executive discretion and not a limitation as to an expenditure in the interest of economy. It does not come within the purview of the rule, and the point of order is sustained.

1682. On March 28, 1924,³ the War Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Alfred J. Taylor, of West Virginia, offered the following amendment to the bill:

Provided, That no part of the money herein appropriated for military purposes shall be expended in the purchase from private manufacturers of ordnance and ordnance supplies at a price in excess of the cost of manufacturing such material by the Government, or where such material is not or has not been manufactured by the Government at a price in excess of the estimated cost of manufacture by the Government.

Mr. L.J. Dickinson, of Iowa, made the point of order that the amendment was legislation.

The Chairman⁴ said:

The Chair would call attention to this language in the amendment:

“Provided, That no part of the money herein appropriated for military purposes shall be expended in the purchase from private manufacturers of ordnance and ordnance supplies at a price in excess of the cost of manufacturing such material by the Government, at a price in excess of the estimated cost of manufacture by the Government.”

The limitation is merely that no part of the appropriation shall be expended to purchase from private manufacturers at a price in excess of the cost of manufacturing such material by the Government. There is no saving in that. If the price is equal, of course there will be no saving.

In the view of the present occupant of the chair it is a limitation as to executive discretion rather than as to expenditure or as to the use of the appropriation.

¹ Fourth session Sixty-seventh Congress, Record, p. 4695.

² Clifton N. McArthur, of Oregon, Chairman.

³ First session Sixty-eighth Congress, Record, p. 5176.

⁴ Carl R. Chindblom, of Illinois, Chairman.

In the opinion of the Chair this amendment is subject to objection and the Chair sustains the point of order.

1683. Making an appropriation available upon condition that affirmative action be taken is legislation and not limitation.

Provision that no part of an appropriation be used until certain employees were reinstated in positions from which discharged was held not to be in order on an appropriation bill.¹

¹This decision overruled a long line of previous decisions under which provisions that appropriations be not available “unless” or “until” certain conditions precedent were complied with were held in order.

Illustrative of a line of decisions no longer approved, the following (January 16, 1919, third session Sixty-fifth Congress, Record, p. 1564) is typical:

The House was considering the bill H.R. 14078 (the legislative, executive, and judicial appropriation bill) when Mr. Dyer offered the following amendment:

“*Provided*, That no part of any appropriation herein shall be used unless all former Government employees who resigned to enter the military service in the war with Germany shall be reinstated on application to their former positions appropriated for herein if they have receive an honorable discharge and are qualified to perform the duties of the position.”

Mr. Byrns, of Tennessee, made the point of order that it was legislation.

Chairman (Mr. Joshua W. Alexander, of Missouri) overruled the point of order and said:

“The question, of course, is whether or not this is a limitation, or whether in addition to being a limitation it proposes legislation. Now, the rule, as the Chair understands it, is that while it is not in order to legislate as to the qualifications of the recipients of an appropriation, the House may specify that no part of an appropriation shall be paid to persons lacking certain qualifications.”

On January 30, 1901, the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read the paragraph relating to agricultural colleges, when Mr. Charles B. Landis, of Indiana, proposed this amendment:

“*Provided*, That no part of the appropriation shall be available for the agricultural college of Utah until the Secretary of Agriculture shall be satisfied and shall so certify to the Secretary of the Treasury that no trustee, officer, instructor, or employee of said college is engaged in the practice of polygamy or polygamous relations.”

Some debate having taken place, and Mr. William H. King, of Utah, having suggested a point of order, the Chairman said:

“There are two reasons why the Chair would be inclined to overrule the point. In the first place, it comes rather late, and, in the second place, the amendment seems to be a limitation upon this appropriation.”

The amendment having been agreed to, Mr. King offered the following amendment:

“And that no person shall be appointed a teacher or trustee in any of said colleges who has been engaged in any lynching, and until proof shall have been furnished, to the satisfaction of the Secretary of Agriculture, that such teacher or trustee has not been guilty of adultery or fornication.”

Mr. Charles H. Grosvenor, of Ohio, made the point of order that the amendment was not in order.

The Chairman said:

“Let the Chair state to the gentleman that the ruling on the other amendment was that that was a limitation upon the appropriation—providing that no part of this appropriation shall be paid to the agricultural college, in general terms, until it was ascertained that no teacher or trustee was a polygamist. That is a general statement of that amendment. That was a limitation upon the appropriation. Then comes this independent proposition involving legislation. * * * The Chair sustains the point of order.”

On June 11, 1919,² the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read a paragraph making appropriation for Army flying schools, and including the following proviso:

That no part of any appropriations herein shall be used unless all former civilian flying instructors who were dismissed on or about December 31, 1918, shall be reinstated on application to their former positions as from the date of such dismissal up to and including June 30, 1919.

Mr. Eugene Black, of Texas, made a point of order against this proviso.

After debate, the Chairman³ ruled:

This is a limitation on the appropriation, but it is a limitation that also calls for affirmative action on the part of the executive. Therefore, it is subject to a point of order, and the Chair sustains the point of order.

1684. An amendment denying use of an appropriation until an executive should take affirmative action was held to constitute legislation.

Provision withholding an appropriation until the Secretary of the Navy ordered an annual inventory was ruled out of order.

On May 13, 1930,⁴ during consideration of the naval appropriation bill, in the Committee of the Whole House on the state of the Union, a paragraph making appropriation for the Bureau of Supplies and Accounts was read.

Mr. James V. McClintic, of Oklahoma, offered an amendment as follows:

Provided, That no part of this appropriation shall be expended until the Secretary of the Navy shall order an inventory taken annually for the purpose of establishing a complete check on all necessary articles and supplies, and put into effect such rules and regulations as will be necessary to carry out this proviso.

Mr. Burton L. French, of Idaho, submitted that the amendment was affirmative legislation.

¹(Continued from page 675.)

Thereupon Mr. King offered the following:

“Provided, That no part of this appropriation shall be available for the agricultural college of Indiana, or any other State or Territory, until the Secretary of Agriculture shall be satisfied, and shall so certify to the Secretary of the Treasury, that no trustee, officer, instructor, or employee of said college is engaged in the practice of polygamy or polygamous relations or is guilty of adultery or fornication.”

Mr. Grosvenor made the point of order against the amendment.

The Chairman overruled the point of order, and held that the amendment was in order saying:

“The Chair has read from Hinds’ Precedents of the House of representatives, section 3942.

“The Chair is of the opinion that the question presented by the amendment is on all fours with the one presented in the precedent cited by the Chair. The point of order is overruled. The question is on agreeing to the amendment.”

(This ruling was reaffirmed by specific reference in decisions by chairman Garner, Jan. 29, 1919, p. 2394; Chairman Saunders, Feb. 18, 1919, p. 3891; Chairman Foster, Feb. 24, 1919, p. 4342; and Chairman Caraway, Feb. 24, 1919, p. 4360.)

²First session Sixty-sixth Congress, Record, p. 993.

³Philip P. Campbell, of Kansas, Chairman.

⁴Second session Seventy-first Congress, Records, p. 8885.

The Chairman¹ sustained the point of order and said:

The amendment offered by the gentleman from Oklahoma provides:

“That no part of this appropriation shall be expended until the Secretary of the Navy shall order an inventory taken annually”—

And so forth. The amendment does not on its face bring about any reduction or retrenchment in expenditures. The Chair does not regard it as a limitation, and in any event it imposes a new duty upon the Secretary of the Navy, which can not be done under the guise of a limitation. Therefore the Chair sustains the point of order.

1685. A limitation to be admissible must be a limitation upon the appropriation and not an affirmative limitation upon official discretion.

On February 10, 1920,² the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the section providing for the Forestry Service was reached.

Mr. Gilbert N. Haugen, of Iowa, proposed this amendment:

Provided further, That no part of any appropriation in this act for Forest Service shall be expended on any national forest in which the fees charged for grazing shall be at a rate less than 300 per cent of the existing rate.

Mr. Carl Hayden, of Arizona, submitted a point of order that the amendment sought to enact legislation under guise of limitation.

The Chairman³ ruled:

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

“*Provided further*, That no part of any appropriation in this act for the Forest Service shall be expended on any national forest in which the fees charged for grazing shall be at a rate less than 300 per cent of the existing rates.”

To which amendment the gentleman from Arizona makes the point of order that it is legislation changing existing law and is not proper to be placed on the bill.

The Chair has examined the precedents cited by gentlemen who have discussed the point of order, and the Chair believes that as a general proposition an amendment proposed as a limitation must be a limitation upon the appropriation, and should not be an affirmative limitation upon the official who may be vested with discretion or specific authority under existing law. In the view of the Chair, this limitation does not come within the rule laid down in the case of the public vehicles where the appropriation was withheld for a certain class of public vehicles.

The Chair understands, as he referred to the authority yesterday, that the Secretary of Agriculture under existing law is vested with certain discretionary power. It is sought by this amendment to so modify that law, which gives him the general discretion or wide discretion, as to limit his discretion in the matter of the regulation of fees for grazing on national forests. In the opinion of the Chair this is a limitation which would forbid the whole of the appropriation made for the national forests from being expended, except upon the condition that an executive officer should take a certain specified course which he is not now required to take under existing law, and it is a limitation upon the discretion and authority of the executive officer rather than a limitation upon the appropriation. The Chair does not think that the amendment comes within the provisions of the rule, and is therefore constrained to sustain the point of order.

Whereupon Mr. Sydney Anderson, of Minnesota, offered the amendment in modified form:

Provided further, That no part of any appropriation in this act for the Forest Service shall be expended on or in connection with any national forest in which the fees charged for grazing

¹ Homer Hoch, of Kansas, Chairman.

² Second session Sixty-sixth Congress, Record, p. 2720.

³ Joseph Walsh, of Massachusetts, Chairman.

shall be less than the appraised value of such grazing as determined by the Secretary of Agriculture.

Mr. Hayden having renewed the point of order, the Chairman ¹ said:

The gentleman from Minnesota offers an amendment which provides—
“that no part of any appropriation in this act for the Forest Service shall be expended on or in connection with any national forest in which the fees charged for grazing shall be less than the appraised value of such grazing as determined by the Secretary of Agriculture.”

To which amendment the gentleman from Arizona makes the point of order that that is not a proper limitation, in that it is legislation which changes existing law.

The Chair is advised by the memorandum submitted by the gentleman from Iowa, Mr. Haugen, chairman of the Committee on Agriculture, that the Supreme Court has held that the provisions of the act of June 4, 1897, give the Secretary of the Interior authority and discretion in making provisions for the protection of forests against destruction by fire, and against depredations, to make rules and regulations for such service as will insure the object of the reservation and permit the Secretary to fix the charge for such use.

The Chair thinks the authority conferred by that act is very broad and general in its terms, and that it confers wide discretion on the Secretary of Agriculture. In the view of the Chair the limitation offered to the provision of the bill with reference to the Forest Service, making appropriations for that service, which might be construed as modifying the existing law limiting the wide discretion given by that law, must necessarily be held to be a change of existing law. And while the amendment does not positively establish the fee as the amendment offered by the gentleman from Iowa did, still it directs the Secretary to act in a particular manner in arriving at the fee which he shall charge, and in that respect it limits his discretion and modifies the general provisions of the law contained in the act of 1897. For this reason the Chair feels constrained to sustain the point of order.

1686. A limitation upon an appropriation must not be accompanied by provisions requiring affirmative action by an executive in order to render the appropriation available.

On May 11, 1920,² the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union and a paragraph providing an appropriation for the Immigration Service had been read, when Mr. C.B. Hudspeth, of Texas, offered the following:

Provided, That no part of the money herein appropriated for the Immigration Service shall be expended until the Secretary of Labor has allotted to the Director General of Immigration a sufficient sum to enable the Director General of Immigration to adequately equip the border patrol guard along the border of the United States and Mexico, so that said border patrol guard shall be in sufficient numbers to prevent the entry into the United States of undesirable aliens and undesirable persons prohibited from entering this country by law.

Mr. James W. Good, of Iowa, made the point of order that the amendment proposed a change of existing law.

The Chairman ³ ruled:

The amendment proposed by the gentleman from Texas is in the form of a limitation. While consideration must be given to the form of the amendment proposed as a limitation for the purpose of determining whether it is in fact a limitation, still the question whether it is a limitation or not must in the last analysis be determined by whether it is a negative upon the appropriation or an affirmative direction addressed to the discretion of the officer for whose department the appropriations are made.

¹ Joseph Walsh, of Massachusetts, Chairman.

² Second session Sixty-sixth Congress, Record, p. 6872.

³ Sydney Anderson, of Minnesota, Chairman.

While the pending amendment is in the form of a limitation applying to the entire appropriation, it in fact undertakes to direct the discretion of the Secretary of Labor in a matter in which he now has full discretion.

The Chair thinks that the question involved in this limitation is similar to the question decided under paragraph 3957 of Hinds' Precedents, which is stated as follows:

"The limitation must be upon the appropriation and not an affirmative limitation of official functions."

The present occupant of the chair thinks that the precedent which he has just cited is applicable to the amendment proposed by the gentleman from Texas and therefore sustains the point of order.

1687. On January 14, 1997,¹ during consideration of the independent offices appropriation bill, in the Committee of the Whole House on the state of the Union, Mr. William R. Wood, of Indiana, offered an amendment proposing a new paragraph:

To enable the United States Shipping Board Emergency Fleet Corporation to operate ships or lines of ships which have been or may be taken back from purchasers by reason of competition or other methods employed by foreign shipowners or operators, there is hereby reappropriated the unexpended balances of the appropriation of \$10,000,000 made for similar purposes in the independent offices appropriation act for the fiscal year 1927: *Provided*, That no expenditures shall be made from this sum without the prior approval of the President of the United States.

A question of order being raised by Mr. Finis J. Garrett, of Tennessee, Mr. Wood cited, as authorizing the amendment, section 3 of the merchant marine act of 1920, as follows:

Whenever the head of any department, board, bureau, or agency of the Government refuses to suspend, modify, or annul any rule or regulation or make a new rule or regulation upon the request of the board as provided in subdivision (c) of paragraph 1 of this act or objects to the decision of the board with respect to the approval of any rule or regulation as provided in paragraph 2 of this act, either the board or the head of the department, board, bureau, or agency which has establish or attempted to establish the rule or regulation in question may submit the facts to the President, who is hereby authorized to establish or suspend, modify, or annual such rule or regulation.

The Chairman² ruled:

The gentleman from Indian contends that the statute cited carries with it the power to compel the President to pass on the question of expenditures. The Chair believes that there is nothing in the act cited carrying authority to warrant any party, either the Shipping Board or the contesting party, in carrying a question of dispute as to expenditure of any particular amount of money to the President of the United States. Therefore the Chair is forced to the conclusion that if the proviso is attached to the appropriation it will add to the duties of the Chief Executive, to wit, he must investigate every time there is a request for expenditure out of the \$5,000,000, and his investigation must go into the question of whether it is wise to expend this amount of the appropriation. Therefore, it would add new duties to the Executive and devolve added burdens on him. The Chair therefore holds that the proviso is out of order, and is compelled to sustain the objection of the gentleman from Tennessee.

1688. An amendment incorporating with a limitation on an appropriation an affirmative direction to an executive is not in order on an appropriation bill.

A paragraph proposing legislation but permitted to remain in an appropriation bill may be perfected by germane amendments, but an amendment providing additional legislation is not in order.

¹ Second Session, Sixty-ninth Congress, Record, p. 1675.

² James T. Begg, of Ohio, Chairman.

On December 12, 1922,¹ the State and Justice Departments appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Investigation and prosecution of war frauds: For the investigation and prosecution of alleged frauds, either civil or criminal, or other crimes or offenses against the United States, growing out of or arising in connection with the preparation for or prosecution of the late war, including the institution and prosecution of suits for the recovery of moneys which contains no element of fraud but arose incident to the investigation of alleged frauds, to be available for the employment of counsel and other assistants, rent, and all other purposes in connection therewith, whether in the District of Columbia or elsewhere, including not to exceed \$100,000 for communications service, the purchase of furniture, law books of reference, and other necessary equipment and supplies at the seat of government, \$500,000, to be expended in the discretion of the Attorney General: *Provided*, That this appropriation shall not be available for rent of building in the District of Columbia if suitable space is provided by the Public Buildings Commission: *Provided further*, That not more than one person shall be employed hereunder at a rate of compensation exceeding \$10,000 per annum.

To the paragraph Mr. Eugene Black, of Texas, offered the following amendment:

Provided further, That the Attorney General shall report to Congress on or before the first day of its regular session, December, 1924, how the amount appropriated in this paragraph has been expended, specifying the names of person to whom paid and the amount paid to each. A similar report shall be made of the \$500,000 appropriated at the second session of the Sixty-seventh Congress for the purposes named in this paragraph, except the names of special agents and detectives.

Mr. Robert Evans, of Nebraska, made the point of order that the amendment proposed legislation on an appropriation bill.

The Chairman² said:

The paragraph in question appropriates certain sums of money for the investigation and prosecution of war frauds. It has a proviso that the appropriation shall not be available for rent, and so forth, and it is further provided that not more than one person shall be employed at a rate of compensation exceeding \$10,000 per annum.

To that section the gentleman from Texas offers an amendment, as follows:

“Provided further, That the Attorney General shall report to Congress on or before the first day of the regular session in December, 1924, how the amount appropriated in this paragraph has been expended, specifying the names of the persons to whom paid and the amounts paid to each. A similar report shall be made of the \$500,000 appropriated at the second session of the Sixty-seventh Congress, for the purposes named in this paragraph, except the names of the special agents and detectives.”

It has grown into a rule of the House, although the Chair believes it is not specifically stated in any rule, that limitations on appropriations may be made, the theory being, of course, that the body which makes an appropriation can make any proper limitation on its use.

The Chair can see in this particular language no limitation on the use of the money that it appropriates. How does it limit it? How does it in any way say now the money shall be spent or for what purpose or to what extent? It is not a limitation. The proviso in question are plainly provisos made as to some duties imposed on the Attorney General.

The point of order is made to it which I assume is made under the provision of clause 2 of Rule XXI, which provides:

¹ Fourth session Sixty-seventh Congress, Record, p. 375.

² William J. Graham, of Illinois, Chairman.

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

This proposed amendment does not do any of the things mentioned in clause 2 of Rule XXI. There is no retrenchment sought to be made by it or any reduction in the amount to be expended.

The thing that is required by the amendment is this: The Attorney General shall report to the Congress on or before the first day of its regular session certain things—that is, how the money appropriated by this section shall be expended, and, second, the Attorney General shall make a report about the \$500,000 that was appropriated by a former act. These are reports not required by existing law. The Attorney General is not required to make reports on these matters except by the amendment, and therefore this amendment imposes substantive duties upon the Attorney General, and, of course, is new legislation.

Now, to meet that point the gentleman from Texas argues, and argues very well, that the original paragraph under which this amendment is offered was not in order if a point of order had been made against it because it contained new legislation, and therefore this particular amendment which he claims is germane, although it contains new legislation, would also be in order to that section.

The rule invoked by the gentleman from Texas is that in an appropriation bill a paragraph embodying legislation may be perfected by a germane amendment, even though the germane amendment itself contains legislation. It is conceded this is the law. However, it has been held on numerous occasions that this exception to the general rule does not permit an amendment which adds additional legislation—that is, legislation not comprehended by, or embraced within, the subject matter of the paragraph sought to be amended. To illustrate this principle the Chair cites Hinds' Precedents, paragraph 3836. In that case the Chair held—

“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.”

Again, in the same volume of Hinds, paragraph 3862, where a provision in the naval appropriations bill which provided for the construction of new battleships, one to be named the *Maine*, was under consideration, where an amendment was proposed to name one of the said battleships the *Missouri*, it was held that while it would have been permissible to strike out the word *Maine* and insert any other name, it was not permissible to so change the law as to name more than one ship. To a similar effect is a decision made by Chairman Dalzell, found in the same volume of Hinds, paragraph 3838:

“The substance of these rulings is that in an appropriation bill a paragraph embodying legislation may be perfected by a germane amendment, but that this does not permit an amendment which adds additional legislation.”

If this is the parliamentary law there can be little doubt about what the ruling ought to be on this amendment. If the amendment were confined to requiring a report on the various items of appropriations contained in this paragraph it might be held to be in order, although that depends upon the question as to whether the original paragraph contains legislation, a point which has not been urged upon the Chair and upon which the Chair does not now express an opinion. But the amendment goes further and requires the Attorney General to report as to his expenditure of sums of money appropriated by a former act of Congress, and thus introduces new matter not covered by this pending bill in any way. It therefore does not come within the exception to the general rule forbidding legislation, and the Chair sustains the point of order.

1689. The limitation must be upon the appropriation and not an affirmative limitation of official functions.

The House may by limitation on a general appropriation bill provide that no part of an appropriation shall be used for a certain purpose.

An amendment forbidding use of an appropriation in dissemination of propaganda and ruled out of order because coupled with affirmative directions to officials was held to be in order when reoffered without the accompanying directions.

On January 12, 1923,¹ the independent offices 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:

No part of the funds appropriated or made available in this act for the United States Shipping Board or the United States Shipping Board Emergency Fleet Corporation shall be expended for the preparation, printing, publication, or distribution of any newspapers, magazines, journals, or other periodicals, or for services in connection therewith, not including, however, the preparation and printing of documents and reports authorized and required to be issued by law.

To this paragraph Mr. Ewin L. Davis, of Tennessee offered an amendment:

After the word "law," insert a new paragraph, as follows:

"No part of the sums appropriated in this act shall be used for the preparation or dissemination of any propaganda, arguments, or statements in favor of or in opposition to the passage of proposed legislation, and no official or employee of the United States Shipping Board or United States Shipping Board Emergency Fleet Corporation shall, during office hours, engage in such work unless it be solely for the preparation of statements to be presented to a congressional committee or in response to requests from Members of Congress."

Mr. William R. Wood, of Indiana, made the point of order that the proposal was not a limitation but legislation.

The Chairman² ruled:

The language of the amendment is that—

"No part of the sums appropriated in this act shall be used for the preparation or dissemination of any propaganda, arguments, or statements in favor of or in opposition to the passage of proposed legislation; and no official or employee of the United States Shipping Board or United States Shipping Board Emergency Fleet Corporation shall, during office hours, engage in such work unless it be solely for the preparation of statements to be presented to a congressional committee or in response to requests from Members of Congress."

Now, if the amendment offered by the gentleman from Tennessee had been limited to the first proposition, namely: "No part of the sums appropriated in this act shall be used for the preparation or dissemination of any propaganda, arguments, or statements in favor of or in opposition to the passage of proposed legislation," it would be clearly in order under the rule. But a limitation on an appropriation bill must be to the appropriation and not an affirmative limitation to an official function. Such affirmative limitations of official function are proposed in the second part of the amendment. A part being obnoxious to the rule, the whole amendment must be declared out of order by the Chair, and therefore the Chair sustains the point of order.

The Committee of the whole having arisen and reported the bill back to the House with favorable recommendation, the bill was ordered to be engrossed and read a third time.

¹ Fourth session Sixty-seventh Congress, Record, p. 1656.

² Clifton N. McArthur, of Oregon, Chairman.

Thereupon Mr. Davis proposed a motion to recommit as follows:

Mr. Davis, of Tennessee, moves to recommit the bill, H. R. 13696, to the Committee on Appropriations with instructions to report the same forthwith with the following amendment: At the end of the last paragraph insert a new paragraph, as follows:

“No part of the sums appropriated in this act shall be used in the preparation or dissemination of any propaganda, arguments, or statements in favor of or in opposition to the passage of legislation: *Provided*, That nothing herein contained shall prevent the preparation of data and statements solely for presentation at hearings of congressional committees or to Members of Congress in response to requests for such information.”

Mr. Carl R. Chindblom, of Illinois, Having again raised the point of order, the Speaker pro tempore¹ held it to be a limitation and overruled the point of order.

1690. An amendment proposing an affirmative direction through use of a double negative, though in the form of a limitation, we held not to be in order on a general appropriation bill.

On May 29, 1924,² the legislative appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Salaries: Public Printer, \$6,000; Deputy Public Printer, \$4,500; for personal services in accordance with the classification act of 1923, \$147,380; in all, \$156,880.

Mr. Charles I. Stengle, of New York, proposed an amendment as follows:

Provided, That no part of this sum shall be paid to any individual who is not proven by a proper certificate that he is a practical printer with a knowledge of the art of bookbinding.

Mr. L. J. Dickinson, of Iowa, made the point of order that the amendment proposed legislation on an appropriation bill.

The Chairman³ held:

The question is not by any means free from doubt; in fact, the previous decisions leave the Chair very much in doubt, and in many respects are conflicting. The gentleman from Tennessee has suggested that the fact that this is a limitation made it in order. There are, however, numerous decisions holding that in certain instances limitations are not in order, and those decisions have been based largely upon the fact that accompanying the limitation was an affirmative direction to be exercised by some officer, and that affirmative direction was a necessary part of the limitation. There are, however, other decisions which are not entirely in accord with that principle, holding that in such cases the amendment is not in order. The Chair, on the whole, thinks that the better rule is that where the limitation is accompanied by an affirmative direction which changes the existing law—and there can be no question but what this affirmative direction in this case does—the amendment is not in order. The Chair, therefore, sustains the point of order.

1691. The purpose rather than the form of a proposed limitation is the proper criterion by which its admissibility should be judged, and if its purpose appears to be a restriction of executive discretion to a degree that may be fairly termed a change in policy rather than a matter of administrative detail it is not in order.

¹ Philip P. Campbell, of Kansas, Speaker pro tempore.

² First session Sixty-eighth Congress, Record, p. 9908.

³ William R. Green, of Iowa, Chairman.

On January 8, 1925,¹ the War Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Harry E. Hull, of Iowa, offered the following as a new paragraph:

No part of the moneys appropriated in this act shall be used to pay any officer to recruit the Army beyond the limit of 100,000 three-year enlisted strength.

Mr. Henry E. Barbour, of California, made the point of order that the amendment proposed a limitation on enlistments and not on appropriations and was therefore legislation.

The Chairman² said:

In the judgment of the chair, there is no adequate proof embodied in the amendment, or any necessary conclusion from the amendment, that there will be a reduction of expenditure. Therefore the Chair is unable to see that it complies in this regard with the second paragraph of Rule XXI, commonly known as the Holman rule. In the judgment of the Chair the amendment is submitted in the proper place, inasmuch as it immediately follows a paragraph of limitation, and as it has the form of an amendment of limitation.

The Chair hoped that he would not be confronted with this question of limitation, for he has never been able to satisfy himself that many of the limitations which have met the approval of presiding officers did really comply with the spirit and purpose of the Holman rule. The Chair wanted to avoid the appearance of presumption in taking issue with many of the able and learned gentlemen who have previously occupied this position. However, if anyone will examine the rulings on the subject he will find that various Chairmen have intimated that if they were coming to the question de novo they might not take the position that has prevailed. Therefore it may be fairly said that opinions differ and that if the question of limitation were to rise now for the first time another policy might be established.

However, the Chair is compelled to face one aspect of the issue at once and he feels that he could not satisfy his own judgment in the matter of limitations if he took the ground that a limitation of this sort is necessarily within the contemplation of the second paragraph of Rule XXI, or is of the class that has been so often permitted under the customary extension of its application. He believes he should look through the form to the purpose. So doing, he finds the purpose to be legislative, in that the intent is to restrict executive discretion to a degree that may be fairly termed a change in policy rather than a matter of administrative detail. For this reason he feels it incumbent on himself to sustain the point of order.

1692. While the House may by limitation deny an appropriation to recipients lacking certain qualifications, a professed limitation which by interdiction of certain qualifications restricts lawful executive action is not in order.

On January 31, 1925,³ The independent offices 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 salaries and expenses of the United States Tariff Commission, including purchase and exchange of labor-saving devices, the purchase of professional and scientific books, law books, books of reference, newspapers and periodicals as may be necessary, as authorized under Title VII of the act entitled "An act to increase the revenue, and for other purposes," approved September 8, 1916, and under sections 315, 316, 317, and 318 of the act entitled "An act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, and

¹ Second session Sixty-eighth Congress, Record, p. 1497.

² Robert Luce, of Massachusetts, Chairman.

³ Second session Sixty-eighth Congress, Record, p. 2818.

for other purposes," approved September 21, 1922, \$712,000, of which amount not to exceed \$569,980 may be expended for personal services in the District of Columbia: *Provided*, That no part of this appropriation shall be used to pay the salary of any member of the United States Tariff Commission who shall hereafter participate in any proceedings under said sections 315, 316, 317, and 318, of said act, approved September 21, 1922, wherein he or any member of his family has any special, direct, and pecuniary interest, or in which he has acted as attorney or special representative.

Mr. Carl R. Chindblom, of Illinois, made the point of order that the proviso was neither a limitation nor an exception coming within the Holman rule, and was therefore legislation not in order in an appropriation bill.

The Chairman¹ rules:

Having been informed in advance that a point of order would probably be made on this paragraph, the Chair took occasion to examine such of the precedents as he could find readily, and found only one that was directly in point, and that was the one last year,² when this provision was the subject of a point of order.

The Chair has taken occasion to read all the arguments pro and con in that case, and has come to the conclusion that the ruling of last year was made without opportunity for a thorough consideration of all the points that should have been covered in the discussion of the matter.

The first point that appeals to the Chair is that this is not a limitation upon an appropriation touching the qualifications of the members of the Tariff Commission, but is a restrictive limitation upon their participation in the proceedings of that commission.

If the limitation were simply as to the qualifications of the members of the commission providing that no member who owned any stock in any corporation which was being investigated could be a member of the commission it would be in accord with a long line of precedents in this House, but it is not directed to the qualifications of those who are to receive the appropriation. It says:

"That no part of this appropriation shall be used to pay the salary of any member of the United States Tariff Commission who shall hereafter participate in any proceedings under said section"—enumerating them—

"* * * wherein he or any member of his family has any special, direct, and pecuniary interest, or in which he has acted as attorney or special representative."

It seems to the Chair that instead of being a limitation of the appropriation it in effect limits the participation of a commissioner in the lawful proceedings of the commission, under the penalty of losing his salary.

There is this additional point that appeals to the Chair, namely, the additional duties that are imposed upon an executive officer, the Comptroller General. As was pointed out in the discussion the Comptroller General, before he can safely pay the salary of any one of these commissioners, must find out and satisfy himself that such member has no interest and that no member of his family has any special, direct, and pecuniary interest in, or that he has acted as attorney or special representative for any of the corporations investigated. The imposition of additional duties upon an executive is in effect legislation.

The Chair expresses no opinion as to the legislation itself. The legislative committees of this House are open at all times for the consideration of proper legislation in regard to these matters. It seems to the Chair that it would be a dangerous precedent, and one that would tend to involve us in the mazes of rider legislation on appropriation bills, to admit over a point of order language of this kind on an appropriation bill. Therefore, the Chair sustains the point of order.

¹ John Q. Tilson, of Connecticut, Chairman.

² See sec. 1701 of this work.

1693. While a limitation may negative an activity, limitation on the discretion of an executive charged with duties of administration is legislation.

Provision that pneumatic-mail service be not extended to cities other than those under contract was held to limit the discretion of the Postmaster General and to be legislation within the meaning of the rule.

On March 12, 1908,¹ the Post Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a provision was read relating to the pneumatic-tube service.

To this provision Mr. Joseph T. Johnston, of South Carolina, made a point of order.

The Chairman² inquired:

The Chair would ask if the Postmaster General now has authority to institute pneumatic-tube service in any city under the provision of law the gentleman has just quoted—whether this bill does not change his authority and limit him to certain cities? The item in the bill does not purport to be a limitation on the appropriation.

Mr. Jesse Overstreet, of Indiana, replied:

The first proviso does undoubtedly prohibit him from installing the service in any other cities than those named.

The Chairman said:

That would be a limitation upon his authority. It seems to the Chair if he has authority now, that would be a change of law, because it does not purport to be a limitation on this appropriation. The paragraph under consideration to which a point of order has been made is the provision relating to the pneumatic-tube service.

“Provided, That said service shall not be extended in any cities other than those in which the service is now under contract under authority of Congress, except the borough of Brooklyn, of the city of New York, and the cities of Baltimore, Md., Cincinnati, Ohio, Kansas city, Mo., Pittsburgh, Pa., and San Francisco, Calif.”

If that proviso is subject to the point of order, the paragraph containing it is subject to the point of order. If the Postmaster General does not now have authority, the item would probably be subject to the point of order.

The gentleman from Indiana informs the chair, quoting the statute, that the Postmaster General now has authority to extend the pneumatic-tube service anywhere in the country under certain conditions and regulations. This item would limit and affect the Postmaster General's authority, and does not purport to be a limitation upon the appropriation, but purports to change the existing authority, if any, which the Postmaster General now has to extend the pneumatic-tube service, and hence is a change of the existing law. For that reason the Chair must sustain the point of order.

1694. While a limitation may not involve change of existing law or affirmatively restrict executive discretion, it may properly effect a change of administrative policy and still be in order.

An amendment denying funds for the support of any compulsory military course or for the pay of officers at any school where such course was maintained was held to be a proper limitation.

¹First session Sixtieth Congress, Record, p. 3219.

²James R. Mann, of Illinois, Chairman.

On January 15, 1931,¹ the Army appropriation bill was being considered in the Committee of the Whole House on the state of Union, when Mr. Fiorello H. LaGuardia, of New York, offered the following amendment:

Provided further, That none of the funds appropriated in this act shall be used for or toward the support of any compulsory military course or military training in any civil school or college, or for the pay of any officer, enlisted man, or employee at any civil school or college where a military course or military training is compulsory, but nothing herein shall be construed as applying to essentially military schools or colleges.

Mr. Henry E. Barbour, of California, made the point of order that the amendment, while in the form of a limitation, proposed to restrict executive discretion. The Chairman² ruled

The amendment offered by the gentleman from New York is in the form of a negative limitation. It is assumed that it is now authorized by law to appropriate for compulsory military courses or military training in civil schools or colleges. It is also authorized by law to pay an officer, an enlisted man, or an employee at a civil school or college where military training or courses are compulsory. The Chair is unable to find any affirmative direction in this amendment. In effect, it simply refuses to appropriate for purposes which are authorized by law and for which Congress may or may not appropriate as it may see fit. The Chair is constrained to overrule the point of order, because he is unable to find any affirmative direction or any limitation of authority of an executive officer other than a refusal to appropriate for certain purposes for which there is authority of law and for which Congress has heretofore appropriated. It does to a certain extent change a policy of the War Department, but the Chair believes that a change of policy can be made by the failure of Congress to appropriate for an authorized object. The Chair therefore overrules the point of order.

1695. Provision that no money appropriated in the pending bill be used in purchase of American goods when known to the Secretary that they were sold abroad at a lower price than in America was held to be a limitation and not legislation.

On March 21, 1908,³ the fortifications appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

That all material purchased under the foregoing 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 temporarily abroad, which material shall be admitted free of duty, as shall other similar material furnished without charge.

Mr. Gilbert M. Hitchcock, of Nebraska, offered an amendment:

Provided, No money appropriated in this bill shall be used in payment of goods of American manufacture when it shall be made known to the Secretary of War that the same are sold abroad for lower prices than in America.

Mr. James A. Tawney, of Minnesota, made the point of order that the amendment, while in the form of a limitation, in fact proposed a change of law.

¹Third session Seventy-first Congress, Record, p. 2262.

²John Q. Tilson, of Connecticut, Chairman.

³First session Sixtieth Congress, Record, p. 3732.

The Chairman¹ ruled:

The Chair, after examining the amendment carefully and receiving advice² which no one can dispute is ready to rule. The amendment provides that no money appropriated in this bill shall be used in the payment for goods of American manufacture when it shall be made known to the Secretary of War that the same are sold abroad for lower prices. It seems to the Chair that that can be construed in no other way than a limitation, and consequently the Chair will overrule the point of order.

1696. A proposition to restrict administrative functions vested in an executive by law is legislation and is not in order as a limitation.

Contravening a statute directing the purchase of supplies from the lowest bidder, an amendment prohibiting purchase of such supplies produced outside of the United States was rule out of order.

On January 14, 1929,³ during consideration of the War Department appropriation bill, in the Committee of the Whole House on the state of the Union, Mr. Charles L. Gifford, of Massachusetts, offered the following amendment:

No appropriation contained in this act shall be available for the purchase of materials or supplies manufactured or assembled without the territorial limits of the United States, its Territories or possessions, except (1) supplies or materials purchased in foreign countries for use locally; (2) patented articles or models and devices purchased in foreign countries for experimental and research purposes; (3) foreign aircraft, parts, and accessories as authorized by the act of July 2, 1926; and (4) supplies and materials not produced or manufactured within the United States, its Territories and possessions; or such supplies and materials as are not produced there in sufficient quantity to meet domestic requirements.

Mr. Henry E. Barbour, of California, raised a question of order and cited the act of March 2, 1901,⁴ as follows:

That hereafter, except in cases of emergency or where it is impracticable to secure competition, the purchase 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 advertising and shall be purchased where the same can be purchased the cheapest, quality and cost of transportation and the interests of the Government considered

The Chairman⁵ said:

The Chair is influenced by the argument made by the gentleman from California that this imposes new obligations or duties upon an executive officer.

Mr. Gifford interrupted:

Will the Chair permit to make just one further remark? In my amendment we take off or subtract from his duties. He does not have to determine quality or price. There is less for him to determine than before, and it does not add anything.

The Chairman concluded:

The gentleman from Massachusetts has given away the strongest point in his case. The gentleman makes the very point the Chair has been diligently searching for.

¹ Adin B. Capron, of Rhode Island, Chairman.

² Asher C. Hinds, clerk at the Speaker's table.

³ Second session Seventieth Congress, Record, p. 1696.

⁴ Sec. 201, p. 214, U.S. Code.

⁵ John Q. Tilson, of Connecticut, Chairman.

As a matter of fact, the amendment does seem to liberalize the law and, as the Chair sees it, the effect of the amendment offered in the form of a limitation would be to require on the part of executives of the Government something which would not be required of them if this were not passed. It therefore changes their duties and the law to that extent and therefore, in the opinion of the Chair, is a change of existing law.

The Chair sustains the point of order.

1697. An amendment inhibiting the use of an appropriation for the purchase of commodities not produced in the United States was held in order as a limitation.

On January 18, 1930,¹ during consideration of the Treasury and Post Office appropriation bill, in the Committee of the Whole House on the state of the Union, a paragraph providing for the transportation of foreign mails was read.

Mr. Wright Patman, of Texas, offered the following amendment:

Provided however, That no part of this appropriation shall be used to purchase twine made of jute or any other commodity not produced in the United States of America.

Mr. William H. Stafford, of Wisconsin, made the point of order that the amendment proposed legislation.

The Chairman² ruled:

The Chair desires to call the attention of the committee to a decision which was rendered by Chairman Dingley in 1896:

“The House in Committee of the Whole has the right to refuse to appropriate for any object, either in whole or in part, even though that object may be authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole.”

When we were considering the Army appropriation bill in January, 1929, the gentleman from New York, Mr. LaGuardia, offered an amendment to the appropriation bill providing that no money should be paid to any officer or enlisted men on the retired list of the Army who was in the employ of the United States and whose salary exceeded \$2,500 per annum. That amendment was held in order as a limitation. The gentleman from Connecticut, Mr. Tilson, was in the chair, and his decision³ is as follows:

“The amendment offered by the gentleman from New York seems to the Chair clearly a limitation, and a proper limitation from a parliamentary standpoint. It refers only to the money appropriated in this bill and limits the purposes for which this money may be expended. The Chair overrules the point of order.”

The present occupant of the chair thinks that amendment before the committee at the present time is entirely “on all fours” with the amendment which was offered last year to the Army appropriation bill, and the Chair overrules the point of order.

1698. Provision that an appropriation be not available for any naval district unless its commandant be also commandant of a navy year was held to be a negative prohibition on the use of money and not an affirmative direction to an executive.

On April 26, 1921,⁴ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph

¹ Second session Seventy-first Congress, Record, p. 1917.

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

³ See sec. 1669 of this work.

⁴ First session Sixty-seventh Congress, Record, p. 667.

was reached providing appropriation for miscellaneous pay and including the following proviso:

Provided, That no part of this appropriation shall be available for the expense of any naval district unless the commandant thereof shall be also the commandant of a navy yard, naval training station, or naval operating base.

Mr. John I. Nolan, of California, made a point of order against this proviso on the ground that it was legislation and not a limitation.

The Chairman¹ said:

The gentleman from California makes the point of order on the proviso reading as follows:

“Provided, That no part of this appropriation shall be available for the expense of any naval district unless the commandant thereof shall be also the commandant of a navy yard, naval training station, or naval operating base.”

He submits that that language is legislation upon an appropriation bill, and therefore in violation of the rule of the House inhibiting that.

The language seeks to limit the appropriation contained in the paragraph for the expenses of naval districts, and provides a negative prohibition against the use of money for naval districts in that the money shall not be available unless the commandant of the district shall also be the commandant of a navy yard, naval training station, or naval operating base.

It is well settled by precedent that a limitation upon an appropriation must be in effect a negative prohibition on the use of the money, and not an affirmative direction to the executive officer. It seems to the Chair that the language contained in this proviso is a negative prohibition against the use of this appropriation, in that it is not to be available unless the commandant of the district in which the money is to be expended is also the commandant of a navy yard, naval training station, or naval operating base, and that it is not an affirmative direction to the officer, and, because the matter of naval districts is a matter of naval regulation and not of specific statute it is not a change of existing law, although in apparent conflict with a matter covered by regulations of the Navy. The Chair, therefore, overrules the point of order.

1699. The House may provide that no part of an appropriation shall be used in a certain way, even though executive discretion by thereby negatively restricted.

In the absence of statutory provision to the contrary, an amendment prohibiting use of an appropriation for the purchase of headstones other than stones of a specified design was held to be in order as a limitation.

On March 14, 1924,² the deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

For furnishing and erecting headstones for the graves of American soldiers in Europe, \$548,550, to remain available until expended.

Mr. John Philip Hill, of Maryland, offered this amendment:

After the word “expended,” insert: *Provided*, That none of the money so appropriated shall be expended except for headstones or markers to be placed upon the graves in the American military cemeteries overseas, which shall be of the same general form and design and having the same general effect as the existing wooden markers.”

Mr. Martin B. Madden, of Illinois, raised a point of order against the amendment on the ground that it proposed legislation.

¹Joseph Walsh, of Massachusetts, Chairman.

²First session Sixty-eighth Congress, Record, p. 4224.

The Chairman¹ held:

The Chair has examined the amendment submitted by the gentleman from Maryland and finds it is a limitation. There is an appropriation here in this item of \$548,550 for erecting headstones upon the graves of American soldiers in Europe. Now, this amendment limits the expenditure of this appropriation to headstones of a certain general description, and consequently it is only a limitation upon the appropriation, provided if with the limitation added it does not alter existing law. The national cemetery act is not the act under which cemeteries in Europe are established, and its provisions do not pertain to these cemeteries, but the act which is chapter 120, second session, Sixty-seventh Congress, the act read by the chairman of the committee, is the act that applies. That act contains no provision whatsoever on the character of headstones or markers to be used. Consequently the point of order is overruled.

1700. A limitation negatively restricting executive discretion was held to be in order on an appropriation bill.

A point of order having been made and overruled, it is in order thereupon to submit a further point of order.

To a paragraph providing pay for the Navy, an amendment relating to expenses of recruiting was held not germane.

On March 20, 1924,² the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the paragraph providing an appropriation for pay of the Navy.

To the pending paragraph Mr. Tom Connally, of Texas, offered this amendment:

Provided, That no part of the funds appropriated by this act shall be utilized for the recruiting or enlistment of boys under 21 years without the written consent of the parents or guardians if any, of such boys to their enlistment.

Mr. Burton L. French, of Idaho, made the point of order that the amendment proposed to limit executive discretion and was therefore not in order as a limitation.

The Chairman ruled:³

It covers the expenses of men who do the recruiting and, therefore, it seems to the Chair it would not be germane to this particular section. That point, however, is not raised thus far and the question is whether this is a limitation or is not a limitation.

What does it do? It provides that no part of the funds appropriated by this act shall be utilized for recruiting or enlistment of boys under the age of 21 years, without the written consent of the parent or guardian. It provides that no part of this money shall be used for that purpose. Suppose the amendment had provided that no part of it should be used for the support of men or officers in Porto Rico or anywhere else. Suppose it provided that no part of the funds might be used in paying for certain specified services. Such amendments would be concededly proper limitations. The Congress can place any necessary limitations on the expenditures of money that it desires as long as it does not create new administrative duties on the part of executive officers. That is the rule, as the Chair understands it. What new duty does this create? The officer can do this or not do it as he pleases. He has no additional duties imposed upon him. Therefore, it seems to the Chair that under a reasonable construction it is a limitation.

The gentleman from Ohio, Mr. Longworth, while Chairman of the Committee of the Whole House on the state of the Union on the Army bill of 1922, in ruling on practically the same amendment, used the following language:

"The Chair is quite clear that the amendment is a limitation, especially in view of recent rulings by several chairmen. I recall that the first time question was discussed in my hearing

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

² First session Sixty-eighth Congress, Record, p. 4603.

³ William J. Graham, of Illinois, Chairman.

an amendment was offered by the gentleman from Kentucky, Mr. Fields, on the Army appropriation bill, depriving certain Army officers of pay if they did certain acts in social relation with regard to privates and other officers, and the Speaker sustained the amendment. The point of order is overruled."

The Chair, both on principle and following precedent, overrules the point of order.

Whereupon Mr. French made the point of order that the amendment was not germane to the paragraph.

Mr. Cassius C. Dowell, of Iowa, submitted that the second point of order came too late.

Pending a decision on the question raised by Mr. Dowell, the committee rose and the Chairman reported that the committee had come to no resolution.

On the following day, the committee having resumed its session, the Chairman said:

When the committee rose on yesterday a point of order had been made to an amendment offered by the gentleman from Texas; a point of order had been made by the gentleman from Idaho, and also one by the gentleman from Ohio, Mr. Begg, the ground in each case being that the amendment was not germane to the section. The question then arose whether a point of order could be made at that time after the former point of order made by the gentleman from Idaho had been overruled.

The Chair has looked into the precedents a little about the matter, and while he announced tentatively yesterday that he thought the point of order could be made, he was not entirely sure of his ground. He has looked somewhat at the authorities. In the fifth volume of Hinds' Precedents, page 935, is a decision made by the Hon. Harry S. Boutell, of Illinois, the Chairman of the Committee of the Whole. It seems to be the only decision in point on that particular subject.

I will read the decision as it appears in Hinds' Precedents:

"The Chair will state that he considers the better practice for all points of order to be made at one time. The Chair thinks that if one makes the point of order against an amendment which should be overruled that other gentleman have the right to raise points of order against the pending amendment. * * * The Chair stated that the gentleman making the point of order should, according to the best usage, include all the reasons for making his point of order, but that other gentlemen could make other points of order if the Chair overruled the point first made."

In view of that decision, which the Chair thinks is sound, the Chair will entertain the point of order made by the gentleman from Ohio, Mr. Begg, that the amendment is not germane.

After further debate, the Chairman ruled:

The amendment offered by the gentleman from Texas is as follows:

"*Provided*, That no part of the funds appropriated by this act shall be utilized for the recruiting or enlistment of boys under the age of 21 years without the written consent of the parents or guardians, if any, of such boys for such enlistment."

The particular language to which the Chair desires to call attention is this: "For the recruiting or enlistment." The question is whether that is germane to the paragraph just read. The paragraph which has been read provides for the pay of officers and men some of whom, doubtless, are engaged in the business of recruiting. The amendment, however, does not allude specifically to the pay of officers and men but to the expenses of recruiting. The paragraph beginning on page 9, headed "Bureau of Navigation, transportation and recruiting," contains the following language, which appears on page 10:

"Expenses of recruiting for the naval service."

Now, manifestly, this amendment alludes to that same thing, namely, the expenses of recruiting. The Chair is of the opinion that if this amendment is germane it should have been offered to that paragraph. It does not refer to the pay of officers and men, but refers to the expenses of recruiting, which are expressly carried in the paragraph. For the reason the Chair sustains the point of order.

1701. By a decision subsequently overruled¹ a provision denying use of an appropriation in payment of salary of members of Tariff Commission participating in proceedings preliminary to establishing duties in which they have a personal interest, thereby indirectly restricting executive functions, was held to be in order.

On April 3, 1924,² the independent offices 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 salaries and expenses of the United States Tariff Commission, including purchase and exchange of labor-saving devices, the purchase of professional and scientific books, law books, books of reference, newspapers, and periodicals as may be necessary, as authorized under Title VII of the act entitled "An act to increase the revenue, and for other purposes," approved September 8, 1916, and under sections 315, 316, 317, and 318 of the act entitled "An act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, and for other purposes," approved September 21, 1922, \$671,980.

Mr. Homer Hock, of Kansas, offered this amendment:

Provided, That no part of this appropriation shall be used to pay the salary of any member of the United States Tariff Commission who shall hereafter participate in any proceedings under said sections 315, 316, 317, and 318 of said act approved September 21, 1922, wherein he or any member of his family has any special, direct, and pecuniary interest or in respect to the subject matter of which he has acted as attorney, legislative agent, or special representative.

Mr. William R. Wood, of Indiana, made the point of order that the amendment proposed by restriction of executive action.

The Chairman³ ruled:

It seems to the Chair that this amendment is similar to other amendments which have been offered to appropriation bills. It appears to him that it is a limitation and that the amendment does not change organic law. He has listened with interest to what the gentleman from Indiana has said in connection with the phrase "who shall hereafter participate in any proceeding under said section," and the Chair thinks that it does not change existing law but refers particularly to the appropriation carried in this bill. If some expression similar to the word "hereafter" should not be inserted, it might be considered to be retroactive; that is, prevent some one who has already served under such conditions from receiving his salary. The Chair has examined a number of precedents, and they seem to substantiate his view. The Chair therefore overrules the point of order.

1702. A limitation must apply solely to the current appropriation and may not be admitted as a permanent provision of law.

A proposition to limit range of materials purchasable under an enactment is not a limitation on an appropriation and involves legislation, but may be admitted in the form of a provision denying use of an appropriation for purchase of specified materials.

¹ See sec. 1692 of this work.

² First session Sixty-eighth Congress, Record, p. 5529.

³ Carroll B. Reece, of Tennessee, Chairman.

On February 19, 1909,¹ the fortification appropriation bill was under consideration in the Committee of the Whole House of the State of the Union. At the conclusion of the reading of the bill, Mr. Walter I. Smith, of Iowa, offered the following amendment:

That all material purchased under the foregoing 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 in limited quantities abroad.

Mr. Robert B. Macon, of Arkansas, made the point of order that the amendment provided legislation.

The Chairman² decided:

It seems to the Chair that the intent of the amendment is clearly to be a limitation, but that it is not in the usual form for such purpose. Therefore it occurs to the Chair that the gentleman should put his amendment in such a form as to state no part of the appropriation should be so used, and so forth. The Chair sustains the point of order.

Thereupon Mr. Smith proposed the amendment in this form:

Provided, That no money appropriated by this act shall be expended except for goods of American manufacture, save in cases where, in the judgment of the Secretary of War, it is to the manifest interest of the United States to make purchases in limited quantities abroad.

Mr. Macon having again interposed a point of order, the Chairman held:

The Chair is of the opinion that is clearly a limitation on the power of the President to expend money which the House might withhold entirely. Therefore, the Chair overrules the point of order.

1703. A proposition designating the object or manner of an expenditure is legislation and not in order on an appropriation bill, but a proposal to deny use of such appropriation for a designated purpose is a proper limitation.

An amendment providing that 50 per cent of an appropriation should not be available except for repairs of vessels at Government shipyards was ruled out of order, but an amendment denying the use of more than 50 per cent of the appropriation for repair of vessels in private shipyards was admitted as a limitation.

On January 12, 1927,³ the Committee of the Whole House on the state of the Union was considering the independent offices appropriation bill.

During consideration of the paragraph providing for activities of the United States Shipping Board Emergency Fleet Corporation, Mr. Henry A. Cooper, of Wisconsin, offered an amendment in this form:

Provided, That 50 per cent of the moneys appropriated or made available in this act for the United States Shipping Board Emergency Fleet Corporation for the conditioning or repair of vessels shall not be available except for the reconditioning or repair of such vessels at Government navy yards.

¹ Second session Sixtieth Congress, Record, p. 2753.

² Charles E. Townsend, of Michigan, Chairman.

³ Second session Sixth-ninth Congress, Record, p. 1530.

Mr. Schuyler Otis Bland, of Virginia, having made a point of order against the amendment, the Chairman ¹ sustained the point of order and said:

This is a positive direction as to the disposition of 50 per cent of the proceeds of this appropriation, and hence it is legislation, and the Chair will sustain the point of order.

Whereupon, Mr. Cooper offered the proposition in the following form:

Provided, That not more than 50 per cent of the moneys appropriated or made available in this act for the United States Shipping Board Emergency Fleet Corporation for the reconditioning or repair of vessels shall be available for the reconditioning or repair of such vessels in private shipyards.

Mr. Bland having again raised a point of order, the chairman overruled the point of order and said:

In the last amendment the gentleman provides that no more than 50 per cent of the total appropriation shall be expended in a private shipyard. The present occupant of the chair can see no legislation in that. It is entirely within the discretion of the committee to direct where it will be expended. The Chair therefore overrules the point of order.

1704. An amendment couched in the language of a limitation but controlling executive discretion is legislation and is not in order on a general appropriation bill.

Provision that no part of an appropriation be used in payment of employees receiving less than a specified salary was held not to be a limitation on the appropriation but a restriction on discretion vested in those authorized to fix salaries and therefore not in order.

On February 24, 1911,² the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:

Pay of assistant custodians and janitors: For pay of assistant custodians and janitors, including all personal services for the care of all public buildings under control of the Treasury Department outside of the District of Columbia, and washing towels, sprinkling streets, and removing rubbish in connection with said buildings, exclusive of marine hospitals, mints, branch mints, and assay offices, \$2,500,000; and the Secretary of the Treasury shall so apportion this sum as to prevent a deficiency therein.

To the paragraph Mr. James H. Davidson, of Wisconsin, offered the following amendment:

Provided, That no part of this appropriation shall be paid to the janitors of public buildings who receive a salary of less than \$65 per month.

Mr. Walter I. Smith, of Iowa, raised a question of order against the amendment. The Chairman ³ ruled:

It seems to the Chair that the manifest purpose of this amendment is to control the discretion at present vested in the officer who fixes the salaries of janitors by fixing the minimum amount of the salary at \$65 per month. If enacted into law, it would be construed naturally as requiring the payment of that salary, which is higher than is now required by law, thus

¹ James T. Begg, of Ohio, Chairman.

² Third session Sixty-first Congress, Record, p. 3343.

³ Marlin E. Olmsted, of Pennsylvania, Chairman.

changing existing law. It is therefore in violation of the provision of section 2 of Rule XXI, which says: "Nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto."

The Chair sustains the point of order.

1705. The language of limitation prescribing the conditions under which the appropriation may be used may not be such as, when fairly construed, would change existing law.

On December 29, 1922,² the Interior Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The section relating to Indian schools having been reached, Mr. Bill G. Lowey, of Mississippi, offered this amendment:

Except in fulfillment of treaty obligations, no money appropriated by this bill shall be used to improve, enlarge, or in any way maintain any school owned or controlled by any religious denomination or organization. This, however, shall not be construed to forbid to any Indian to right to have his pro rata of tribal funds used to pay expense of a pupil in a school of his choice.

Mr. Louis C. Cramton, of Michigan, raised a question of order on the amendment.

The Chairman³ ruled:

As has been well stated by the gentlemen who have spoken regarding the point of order, the first part of this amendment is practically a limitation and within the rule. The difficulty in the mind of the Chair arises with regard to the last sentence, as follows:

"This, however, shall not be construed to forbid to any Indian the right to have his pro rata of tribal funds used to pay expense of a pupil in a school of his choice."

That proposition, attached to the statement of the amendment, in the judgment of the Chair raises a question as to its being in order, and I think the Chair should rule that an amendment of that sort should not be held in order. I think it would establish a dangerous precedent if the Chair should do so, because while it is stated here by gentlemen that this is not a change of existing law, the Chair does not know that, and the committee does not know that. As it is evident that the form of the amendment as a whole is very obscure, the Chair sustains the point of order.

1706. Where a proposition might reasonably be construed by an executive as a change of law it is not in order as a limitation on an appropriation bill.

To be admissible on an appropriation bill a limitation may not include affirmative directions imposing additional duties on executives.

A limitation may not give affirmative directions, impose new duties, or be accompanied by language not directly limiting the appropriation.

Discussion of professed limitations accompanied by the words "unless," "except," "until," "if," and "however."

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. This paragraph was read:

¹ Fourth session Sixty-seventh Congress, Record, p. 1071.

² Horace M. Towner, of Iowa, Chairman.

³ Fourth session Sixty-seventh Congress, Record, p. 1385.

For compensation of jurors, \$10,000: *Provided*, That none of the money appropriated by this act for the payment of jurors' fees in any of the courts shall be available or used for that purpose unless the actual cost of the trial jury in each case first be ascertained and fixed by the court and taxed as part of the costs and judgment rendered therefor against the defendant in a criminal case against whom a verdict of guilty has been rendered; nor shall any such money be available or used for that purpose until execution has been issued and a return of nulla bona thereon has been made by the proper officer. Neither shall any of the money appropriated by this act for the payment of juror's fees be disbursed or used to pay any jurors' fees whatsoever unless the actual cost of the trial jury be ascertained and fixed by the court and taxed as costs and judgment rendered therefor against the defendant where either the United States or the District of Columbia is plaintiff, and the defendant is unsuccessful in the suit. However, no person shall be imprisoned because of the nonpayment of the aforementioned costs.

Thereupon Mr. John Philip Hill, of Maryland, raised a question of order against the proviso incorporated in the paragraph.

After debate on the point of order and before a decision had been announced by the chairman, the committee rose and reported that no resolution had been reached on the pending bill.

On January 8,¹ the House again resolved into the Committee of the Whole for the consideration of the bill and, after further debate, the Chairman² rules:

The Chair, realizing the importance of this ruling due to the precedent it may establish, has given no little thought to it. The Chair is cognizant of confusion in the rulings in cases somewhat akin to this one, and realizes that in considering questions of limitations as in determining questions of germaneness there is considerable latitude between what is clearly permissible and what is as clearly repugnant to the rule. The Chair feels that in traversing this twilight zone he is justified in leaning toward the side of conservatism in regard to admission of legislation on appropriation bills. In the last few years there has been a very perceptible increase in the amount of legislative provisions incorporated in bills reported by the Appropriations Committee. The growth of this practice, in the opinion of the Chair, is unwise and is not warranted by the rules or procedure of the House. It is probably due to the fact that, as formerly many of the standing committees had jurisdiction over both appropriations and legislation, a clear distinction of these separate functions was not made in the bills reported, which left the Appropriations Committee in the position of finding that many of the items for which it desired to appropriate were unauthorized. This made it incumbent upon the Appropriations Committee, in order to carry on its work, to devise these legislative limitations.

Under our rules the Committee on Appropriations can consider only questions of appropriations, the subjects of legislation and authorization being confined to the jurisdiction of standing committees constituted for that very purpose and equipped with facilities to conduct investigations. Feeling that each committee should be held strictly to the consideration of its own particular work, the Chair is of the opinion that too much latitude has been given in the employment of limitations, and that the practice of resorting to this method of securing, in an indirect way, legislation on appropriation bills has been abused, and extended beyond the intention of the rule. The Chair is therefore constrained to take the view that we should restrict rather than enlarge, limit rather than expand, the power of the Appropriations Committee in placing legislation upon appropriation bills.

The Chair asks the indulgence of the committee in making some observations on this mooted subject of limitations, and in doing so desires to thank the able parliamentarian for his assistance and suggestions.

Since Congress has the right to appropriate, Congress has the right to refuse to appropriate, even though the appropriation is authorized, and this may be done in two ways: First, by not appropriating for a certain purpose at all, and second, by denying the use of a part of an appropria-

¹ Record, p. 1422.

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

tion for a certain purpose. This is the principle on which the theory of limitations is grounded and should always be kept in mind in construing a limitation.

To use the illustration of the late James R. Mann, of honored memory, Congress, having the right to appropriate for red-headed men, may specifically deny the use of an appropriation for the payment of red-headed men. Therefore, while it is not in order to require the employment of red-headed men or even the payment of red-headed men, it is in order to deny the use of an appropriation for the payment of red-headed men, even though existing law permits the employment and payment of red-headed men.

But the misapplication and the difficulty in construing the rule has occurred when a limitation is accompanied by something additional in the nature of a further limitation or restriction.

For example, there is no difficulty in the following provision: "No part of this appropriation may be expended in the payment of red-headed men."

But take the following proposition: "No part of this appropriation may be used for the payment of any persons except red-headed men."

In construing the last example it is necessary for the Chair to look to the effect rather than to the form. Does the language merely deny the use of the appropriation or does it go further and require the employment of red-headed men? If existing law does not authorize the employment of red-headed men, or expressly prohibits the employment of red-headed men, the language clearly becomes not a limitation but becomes legislation making an appropriation for an unauthorized purpose and in addition proposes legislation permitting the employment of red-headed men contrary to existing law. But if the law authorizes the employment of red-headed men the language merely becomes explanatory of the recipient of the appropriation, and is in fact merely an appropriation for a certain purpose. Therefore, as a test in determining the legality of such language, the Chair may properly ask himself this question: "Would it be in order to make a direct appropriation for this purpose instead of denying the use of this appropriation except for the specified purpose?" If the question could be answered in the affirmative this particular class of limitations would be in order.

Approaching the point of order now before us, in the consideration of which the merits of the propositions are not under review, the Chair will cite a number of precedents that bear on the subject of limitations, quoting from Hinds' Precedents:

"No. 3931. Legislation may not be proposed under the form of a limitation.

"No. 3976. The language of limitation prescribing the conditions under which the appropriation may be used may not be such as, when fairly construed, would change existing law.

"No. 3812. The enactment of positive law where none exists is constructed as a 'provision changing existing law,' such as is forbidden in an appropriation bill.

"No. 3967. A limitation is negative in its nature and may not include positive enactments establishing rules for executive officers.

"No. 3854. A proposition to establish affirmative directions for an executive officer constitutes legislation and is not in order on a general appropriation bill. Also a ruling of Chairman Towner, April 15, 1920

"Chairman Crisp, March 11, 1916: Limitations must not impose new duties upon an executive officer.

"No. 3984. Where a proposition might be construed by the executive officer as a modification of a statute, it may not be held as such a limitation of appropriation as is permissible on a general appropriation bill.

"No. 3927. A limitation may be attached only to the money of the appropriation under consideration and may not be made applicable to moneys appropriated in other acts.

"No. 3957. The limitation must be upon the appropriation and not an affirmative limitation of official functions.

"No. 3966. Limitations which directly, or indirectly, vest in any executive officer any discretion, or impose any duty upon the officer, or indirectly, in the expenditure of money, would be obnoxious. But (No. 3968) the House may provide that no part of an appropriation shall be used in a certain way even though executive discretion be thereby negatively restricted.

“No. 3936. A provision proposing to construe existing law is in itself a proposition of legislation and, therefore, not in order on an appropriation bill as a limitation.

“No. 3936. The fact that a paragraph on an appropriation bill would constitute legislation for only a year does not make it admissible as a limitation.

“No. 3936. As an appropriation bill may deny an appropriation for a purpose authorized by law, so it may by limitation prohibit the use of money for part of the purpose while appropriating for the remainder of it.

“No. 3929. A limitation must apply solely to the present appropriation and may not be made as a permanent provision of law.

“No. 3942. While it is not in order to legislate as to qualifications of the recipients of an appropriation, the House may specify that no part of the appropriation shall go to recipients lacking certain qualifications.”

In section 3935 of Hinds' Precedents is a ruling by Speaker Cannon, which has been referred to and which the Chair feels covers the point under consideration. The language is clear and specific, and in view of Mr. Cannon's approaching retirement from Congress after a long and distinguished career, the Chair is glad to refer to it in this instance:

“The merits of the proposition are not involved in the point of order. What is the object of the motion and of the instruction? If it does not change existing law, then it is not necessary. If it does change existing law, then it is subject to the point of order. Much has been said about limitation; and the doctrine of limitation is sustained upon the proposition under the rule that, as Congress has the power to withhold every appropriation, it may withhold the appropriation upon limitation. Now, that is correct. But there is another rule, another phase of that question. If the limitation, whether it be affirmative or negative, operates to change the law or to enact new law in effect, then it is subject to the rule that prohibits legislation upon a general appropriation bill; and the Chair, in view of the fact that the amendment would impose upon officials new duties as to purchasing canal supplies, has no difficulty in arriving at the conclusion that the instructions are subject to the point of order for the reasons stated.”

In viewing propositions of a legislative character the Chair feels we should look to the substance and not to the form in which it is presented. In the case before us what does the proviso propose? Does it impose a simple restriction on the expenditure of funds? No. Does it stipulate that the use of the funds is conditional upon the possession by the recipients of certain qualifications or distinctions? No. It goes much further, for by the use of the words “until” and “unless,” in connection with certain things to be done, it implies—yes, asserts—that these activities must be undertaken before the appropriation becomes available. This is a direction to officers and imposes new duties upon them which is repugnant to our practice. By requiring the court to perform functions which are not required, it clearly implies a change of law, otherwise it would be futile to suggest it. This is legislation under the guise of a limitation which is contrary to our procedure.

As a general proposition the Chair feels that whenever a limitation is accompanied by the words “unless,” “except,” “until,” “if,” “however,” there is ground to view the so-called limitation with suspicion, and in case of doubt as to its ultimate effect the doubt should be resolved on the conservative side. By doing so appropriation bills will be relieved of much of the legislation which is being constantly grafted upon them and a check given a practice which seems to the Chair both unwise and in violation of the spirit, as well as the substance, of our rules. Without endeavoring to law down any hard and fast rule, the Chair feels that the following tests may be helpful in deciding a question of order directed against a limitation, first having determined the powers granted or the duties imposed by existing laws:

Does the limitation apply solely to the appropriation under consideration?

Does it operate beyond the fiscal year for which the appropriation is made?

Is the limitation accompanied or coupled with a phrase applying to official functions, and if so, does the phrase give affirmative directions in fact or in effect, although not in form?

Is it accompanied by a phrase which might be construed to impose additional duties or permit an official to assume an intent to change existing law?

Does the limitation curtail or extend, modify, or alter existing powers or duties, or terminate old or confer new ones? If it does, then it must be conceded that legislation is involved, for without legislation these results could not be accomplished.

If the limitation will not fairly stand these tests then in my opinion the point of order should be sustained. Applying in the present instance the standards set forth, the judgment of the Chair is that the point of order is well taken and the Chair sustains it.

1707. The language of a limitation may not be such as, when fairly construed, would justify an executive officer in assuming an intent to change existing law.

Questions of order relating to limitations are construed strictly and any doubt as to whether legislation is involved will be construed in favor of the point of order.

On January 8, 1923,¹ the District of Columbia 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 board and care of all children committed to the guardianship of said board by the courts of the District, and for temporary care of children pending investigation or while being transferred from place to place, with authority to pay not more than \$1,500 each to institution under sectarian control and more than \$400 for burial of children dying while under charge of the board, \$120,000: *Provided*, That no portion of this appropriation shall be used by said board for the board and care of any child in a boarding home unless the Industrial Home School, to which it is eligible for admission, is unable to receive it.

Mr. Frederick N. Zihlman, of Maryland, made the point of order that the language of the paragraph would be construed as an affirmative direction to an executive officer.

The Chairman² held:

This is an extremely close case, but the Chair in deciding it is going to adhere to the general proposition laid down this morning, that when doubt arises as to the effect of a limitation that doubt should be resolved on the conservative side in the interpretation of the rules. The Chair will agree that this committee can make appropriations for any of these homes or deny them in whole or in part, but the Chair does not feel that the Committee on Appropriations has the right to say that the appropriation will not be available until certain things transpire; this would restrict action of the authorities and limit their functions. The Chair also feels that the provision alters the powers conferred by law upon the board and that therefore it changes existing law, which is contrary to our rules. Without taking the time of the committee to recite precedents, the Chair refers to the ruling rendered a few minutes ago, which the Chair feels embraces the principles involved here. For these reasons the Chair sustains the point of order.

1708. While curtailment of expenditure from an appropriation is limitation, curtailment of authorized expenditure from such appropriation at the discretion of an executive couples legislation with limitation and is not in order.

On February 19, 1910,³ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the section of the bill relating to purchase and storage of supplies was reached.

¹ Fourth session Sixty-seventh Congress, Record, p. 1429.

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

³ Second session Sixty-first Congress, Record, p. 2135.

Mr. Charles H. Burke, of South Dakota, offered the following amendment:

Provided, That no part of this appropriation shall be used to pay for rent of warehouses at New York, Chicago, St. Louis, Omaha, or San Francisco, unless the Secretary of the Interior shall deem it advisable to maintain warehouses at such places or any of them.

Mr. Gilbert M. Hitchcock, of Nebraska, in making a point of order said by way of explanation:

The point of order is that two years ago in the appropriation bill for Indian affairs the following proviso was inserted:

“Provided, That hereafter warehouses for the receipt, storage, and shipment of goods for the Indian Service shall be maintained at the following places: New York, Chicago, Omaha, St. Louis, and San Francisco.”

Now, Mr. Chairman, this is a plain attempt to nullify that provision for the maintenance and support of Indian warehouses at those five cities.

The Chairman ¹ ruled:

The act of Congress approved April 30, 1908, provides:

“That hereafter warehouses for the receipt, storage, and shipment of goods for the Indian Service shall be maintained at the following places: New York, Chicago, Omaha, St. Louis, and San Francisco.”

That, although appearing in an appropriation bill, was legislation, and permanent legislation, until repealed or altered by act of Congress. The declaration of the statute that they shall be maintained at those places authorizes an appropriation, but is ineffective without one. Congress can either appropriate or withhold an appropriation. This proviso, so far as it reads, thus—

“Provided, That no part of this appropriation shall be used to pay for rent of warehouses at New York, Chicago, St. Louis, Omaha, or San Francisco”—

would, in the opinion of the Chair, be a pure limitation upon the appropriation. The rule, however, provides against changing existing law upon an appropriation bill. These additional words—“unless the Secretary of the Interior shall deem it advisable to maintain warehouses at said places or at any of them”—

vest in the Secretary a discretion which he does not have under the existing law. To that extent it changes existing law. The Chair sustains the point of order.

1709. To a limiting proviso denying use of any part of an appropriation to any soldiers’ home maintaining a canteen, an amendment adding “unless located within 5 miles of a city where sale of liquor is permitted” was held to be a limitation upon the limitation and in order.

On May 27, 1910,² 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:

Provided, That no part of the foregoing appropriations shall be expended for any purpose at any branch of the National Home for Disabled Volunteers that maintains or permits to be maintained on its premises a bar, canteen, or other place where beer, wine, or other intoxicating liquors are sold.

Mr. John A. Keliher, of Massachusetts, offered this amendment:

After the word “sold” add “Unless such branch is located in or within 5 miles of a city or town in which the sale of intoxicating liquors is permitted by law.”

¹Marlin E. Olmsted, of Pennsylvania, Chairman.

²Second session Sixty-first Congress, Record, p. 7008.

Mr. James A. Tawney, of Minnesota, reserved a question of order on the amendment.

The Chairman¹ decided:

The proviso in the bill is: That no part of the foregoing appropriations shall be expended for any purpose at any branch of the National Home for Disabled Volunteers that maintains or permits to be maintained on its premises a bar, canteen, or other place, where beer, wines, or other liquors are sold. The present occupant of the Chair does not personally remember whether that proviso in the exact language has been ruled upon, but substantially, if not exactly, it has been ruled in order. The gentleman's amendment proposes to insert, after the language just read, the following as a part of the paragraph:

"Unless such branch is located in or within 5 miles of a city or town in which the sale of intoxicating liquors is permitted by law."

The present limitation in the bill is an absolute limitation or prohibition, but if amended by the gentleman's amendment would be simply a limitation as to certain branch soldiers' homes, those which were not located within or within 5 miles of a city or town in which the sale of intoxicating liquors is permitted by law. The amendment offered by the gentleman seems to the Chair to carry out the purpose of the limitation, maintaining entirely the form of the limitation. It does not affect the legislation in any way. The Chair therefore overrules the point of order.

1710. A limitation may deny an appropriation for a purpose authorized by law.

A provision that no part of an appropriation be expended for a reformatory within a radius of 10 miles of Mount Vernon except the one now located at Occoquan, was held to be a limitation and in order on an appropriation bill.

On January 28, 1911,² the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Charles C. Carlin, of Virginia, offered the following as a new paragraph:

Provided, That no part of any appropriation contained in this act shall be expended for any purpose whatsoever for a reformatory or asylum or workhouse in the State of Virginia, within a radius of 10 miles of Mount Vernon, except the one now located at Occoquan, Va.

Mr. Washington Gardner, of Michigan, having raised a question of order on the amendment, Mr. James A. Tawney, of Minnesota, said:

Mr. Chairman, I just wish to make this observation: It is of the nature of a legislative limitation which changes existing law, the law now expressly authorizing the construction of a workhouse in the State of Virginia on a site which has heretofore been purchased with money appropriated by Congress.

Mr. Chairman, the amendment offered by the gentleman from Virginia reads as follows:

Provided, That no part of any appropriation contained in this bill shall be expended for any purpose whatsoever for a reformatory or asylum or workhouse in the State of Virginia within a radius of 10 miles of Mount Vernon."

Now, the gentleman who have discussed this admit that the purpose is to prevent the expenditure of money for the construction of the workhouse which is being constructed now on a site previously authorized by Congress with money appropriated by Congress. That site has been located there by authority of law. The purpose of this is to change that location, and to that extent to change the law under which this site has been selected.

¹James P. Mann, of Illinois, Chairman.

²Third session Sixty-first Congress, Record, p. 1613.

If the gentleman wishes to stop work on this workhouse, then he should make his limitation apply to the appropriation under which this particular work is being conducted, or is to be conducted, in the next fiscal year. The appropriation has been made for this year, and the work is going on and will go on until the end of this fiscal year. The District of Columbia appropriation bill for this year contains this provision:

“Reformatory and workhouse: For the following purposes in connection with the removal of jail and workhouse prisoners from the District of Columbia to the sites acquired or to be acquired for a workhouse and reformatory in the State of Maryland or Virginia, in accordance with the provisions of existing law, including superintendence, etc., \$120,000.”

That is carried in the current District of Columbia appropriation act for the work that is now going on, and will continue to go on, on this site between now and the 1st of next July.

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

Does not the law and the Constitution also vest in Congress the discretion as to whether it will or will not make an appropriation for any purpose under the sun? They can go out and locate it where they please; we say that we will not pay the money for it.

The Chairman¹ ruled:

The gentleman from Virginia offers an amendment which the Chair will read, so that it may appear in its proper place in connection with the ruling on the point of order:

“*Provided*, That no part of any appropriation contained in this act shall be expended for any purpose whatsoever for a reformatory or asylum or workhouse in the State of Virginia within a radius of 10 miles of Mount Vernon, except the one now located at Occoquan, Va.”

To this a point or order is made that it is a change of existing law, or that it has the effect of changing existing law. This point has been the subject of so many rulings that the Chair is at a loss just which one to cite. The most famous ruling, perhaps, on the subject is the one made in the Fifty-fourth Congress by Mr. Nelson Dingley, of Maine, as Chairman, in which he laid down as the governing principle the following:

“The reason for that rule of limitation is simply this: The House in Committee of the Whole has the right to refuse to appropriate for any object which it may deem improper, although the object may be authorized by law; and it has been contended, and on various occasions sustained by the Committee of the Whole, that if the committee has the right to refuse to appropriate anything for a particular purpose authorized by law it can appropriate for only a part of that purpose and prohibit the use of the money for the rest of the purpose authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole.”

The present amendment seems to the Chair to come clearly within that principle and to be simply a limitation on an appropriation. Such a limitation is clearly in order under the rules and practice of the House, even though it forbade the expenditure of any part of the appropriation for purposes heretofore specifically authorized by law. The Chair therefore overrules the point of order.

1711. An amendment prohibiting the use of any part of an appropriation in the construction of a public building for which stone was quarried outside of the section in which the building was to be erected was admitted as a limitation.

On December 13, 1932,² the Committee of the Whole House on the state of the Union had under consideration of Treasury and Post Office Departments appropriation bill.

¹ John Q. Tilson, of Connecticut, Chairman.

² Second session Seventy-second Congress, Record, p. 408.

The Clerk having read a paragraph providing for public buildings under the control of the Treasury Department, Mr. William P. Connery, jr., of Massachusetts, offered this amendment:

Provided further, That no part of the moneys appropriated in this bill shall be used to pay contractors for public buildings to be erected or remodeled where the stone is specified to be quarried outside of the section where such public building is to be erected or remodeled.

Mr. Joseph W. Byrns, of Tennessee, presented the point of order that the proposed amendment changed existing law.

The Chairman¹ overruled the point of order:

1712. A provision that no part of an appropriation be available unless a certain proclamation should have been issued was admitted as a limitation.

An instance in which the Chairman expressed himself as being in doubt as to the admissibility of an amendment and would resolve that doubt in favor of the amendment.

On May 21, 1918,² the bill H.R. 11945, the food production bill, was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Fourth. For increasing food production and eliminating waste and promoting conservation of food by educational and demonstrational methods, through county, district, and urban agents and others, \$6,100,000.

To this paragraph Mr. Charles H. Randall, of California, offered the following amendment:

After the figures "\$6,100,000" insert: "No part of this appropriation shall be available for any purpose unless there shall have been previously issued the proclamation authorized by section 15 of the act of August 10, 1917, entitled 'An act to provide further for the national security and defense by stimulating agriculture and facilitating the transportation of agricultural products,' such proclamation being the prohibition of the use of foods, fruits, food materials, or feeds in the production of malt or vinous liquors for beverage purposes."

Mr. William H. Stafford, of Wisconsin, made the point of order that the amendment was legislation and was germane neither to the paragraph nor to the bill.

The Chairman³ held:

A different principle from that of germaneness is involved in the point of order to this amendment. If the Chair understands the amendment it is intended as a limitation on the payment of any money under this paragraph until the President has issued a certain indicated proclamation which in his discretion he may or may not issue. This amendment does not compel him to issue it, but so long as it is unissued the House does not propose, if the amendment is adopted, to allow the Agricultural Department to have the benefit of the appropriation in this paragraph. In other words the amendment proposes to utilize the right of the House to appropriate, or not to appropriate, in its discretion, to an object authorized by law. This, of course, is the fundamental principle upon which this amendment must depend.

¹ Thomas S. McMillan, of South Carolina, Chairman.

² Second session Sixty-fifth Congress, Record, p. 6368.

³ Edward W. Saunders, of Virginia, Chairman.

This amendment does not compel the President to issue the proclamation referred to. He may issue it or refuse to issue it in his discretion. But the amendment in substance says to the Department of Agriculture: We propose to withhold from you the benefit of this appropriation during the full period of time during which this proclamation is unissued. That may be a very unreasonable ground for the House to take, but after all is not this question merely one of competency or power resting upon our authority to refuse or award an appropriation? If we choose to withhold it, who is to say nay to us? We can be unreasonable if we choose to be unreasonable.

The matter proposed to be dealt with is an appropriation of money, and this body has the absolute power to determine whether it will or will not appropriate. In the exercise of that power we may do unreasonable things, arbitrary things, whimsical and absurd things, but after all the question is whether, with respect to the action proposed, we are within our powers and within our rules—in a work, whether this is a limitation, in a parliamentary sense, on an appropriation bill. The Chair is not altogether certain, in his own mind, that the amendment, in the form submitted, is strictly and technically a limitation, and being in doubt he resolves that doubt in favor of the amendment and remits the same to the determination of the committee.

1713. Provision that no part of an appropriation be used in purchase of typewriters at price in excess of certain standard is a limitation and in order on appropriation bill.

On February 13, 1919,¹ 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. Otis Wingo, of Arkansas, offered this amendment:

That no part of any money appropriated by this act shall be used during the fiscal year 1920 for the purchase of any typewriting machine at a price in excess of the lowest price paid by the Government of the United States for the same make and substantially the same model of machine during the fiscal year 1918; such price shall include the value of any typewriting machine or machines given in exchange, but shall not apply to special prices granted on typewriting machines used in schools of the District of Columbia or of the Indian Service, the lowest of which special prices paid for typewriting machines shall not be exceeded in future purchases for such schools: *Provided*, That in construing this section the Commissioner of Patents shall advise the Comptroller of the Treasury as to whether the changes in any typewriter are of such structural character as to constitute a new machine not within the limitations of this section.

Mr. Hubert S. Dent, jr., of Alabama, having raised a point of order on the amendment, the Chairman,² after debate, held it to be in order as a limitation.

1714. Provision that no part of an appropriation be used in payment of salaries of Army officers who prohibit social intercourse between officers and enlisted men is a limitation and in order on an appropriation bill.

On February 14, 1919,³ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

All the money hereinbefore appropriated for pay of the Army and miscellaneous, except the appropriation for mileage to commissioned officers, contract surgeons, expert accountant, Inspector General's Department, Army field clerks, and field clerks of the Quartermaster Corps, when authorized by law, shall be disbursed and accounted for as pay of the Army, and for that purpose shall constitute one fund.

¹Third session Sixty-fifth Congress, Record, p. 3315.

²Edward W. Saunders, of Virginia, Chairman.

³Third session Sixty-fifth Congress, Record, p. 3394.

Mr. William J. Fields, Kentucky, offered an amendment as follows:

Provided, That no part of the funds herein appropriated shall be applied in payment of the salary of any officer of the Army of the United States who shall promulgate or cause to be promulgated any order prohibiting social intercourse between officers and enlisted men of the United States Army while not on military duty or that will in any way establish or attempt to establish social or class distinction between officers and men or between officers of different ranks while not on military duty: *Provided*, That this limitation shall not apply to officers whose only connection herewith is in obedience to an order of a superior officer.

Mr. Hubert S. Dent, jr., of Alabama, made the point of order that the amendment was legislation and was not germane.

The Chairman ¹ ruled:

The Chair does not understand what offense is created by this amendment, or what punishment is fixed. A limitation, as has been often stated, deals negatively with the application of money which the House may, or may not appropriate, at its pleasure. It matters not how meritorious the subject matter may be, the House can decline to appropriate for the same. It can put a negative restriction upon the use of the money which is appropriated. We can not prescribe that money shall be used in some particular fashion, but we can provide how it may not be used. A few days ago an amendment was under consideration in the Committee of the Whole which on appeal was held to be a limitation. This amendment was as follows:

“Provided, That no part of the appropriation herein shall be used unless all former ex-employees who have been drafted or enlisted in the military service of the United States in the war with Germany shall be reinstated on application to their former positions, provided they have received an honorable discharge.”

A point of order to this amendment was fully argued, and on appeal it was decided, as stated above, that the amendment was a limitation although apparently it was more affirmative than negative in its character.

The amendment under consideration deals entirely with money. One of the most interesting illustrations of a limitation, pure and simple, is found in the Canteen Case. The language used in that amendment was as follows:

“No part of this appropriation shall be apportioned to any National Home for Disabled Volunteer Soldiers which contains a canteen where intoxicating liquors are sold.”

The amendment did not undertake to say that the trustees should abolish the canteen before they secured the benefit of the appropriation. The amendment did not require the trustees to do anything affirmatively, but simply contented itself with saying that in those homes where the canteen was found the appropriation should not be expended.

What are the provisions of this amendment? It does not impose any duty upon the officers referred to. It merely declares that when an officer has done any one of the things mentioned, no part of the money appropriated shall be paid to that officer. It may or may not be a wise act on the part of the committee to agree to this amendment, but the Chair is not concerned with that phase of the situation. This amendment is simply a negative inhibition upon the use of the money appropriated. It provides that it shall not be applied under certain indicated conditions.

It does not deal with anything but money. If it is not a pure limitation, the Chair is unable to apprehend what a limitation is. Certainly if this amendment does not come within the Canteen Case, not to speak of the case that was decided a few days ago, the Chair would be at a loss to prepare a limitation that would be in order. In the judgment of the Chair this is a limitation, conforming to the requirements of the precedents, and the point of order is overruled.

¹ Edward W. Saunders, of Virginia, Chairman.

1715. On February 18, 1919,¹ the House had passed the Army appropriation bill to be engrossed, and the bill had been read a third time, when Mr. William J. Fields, of Kentucky, moved to recommit with instructions to insert the following:

Provided, That no part of the funds herein appropriated shall be expended in the payment of the salary of any officer of the Army of the United States who shall issue or cause to be issued any written order prohibiting social intercourse between officers and enlisted men of the same regiment while not on military duty: *Provided further*, That the limitation herein imposed shall not apply to officers whose only connection therewith is in obedience to an order of a superior officer.

Mr. Hubert S. Dent, jr., of Alabama raised a question of order on the amendment proposed in the instructions.

The Speaker² overruled the point of order on the ground that the amendment proposed a limitation.

1716. A provision that an emergency fund for maintenance of the Navy be expended on the approval of the Secretary of the Navy was held to be a limitation, but provision that it be disbursed for such purposes as he might deem proper was held to be legislation and not in order on an appropriation bill.

On February 11, 1921,³ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was read:

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 against the paragraph, which was sustained by the Chairman.⁴

Whereupon Mr. Patrick H. Kelley, of Michigan, offered the following amendment:

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, in the District of Columbia, 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, \$50,000.

Mr. Britten, having again submitted a point of order, Mr. Kelley said:

I understood the Chair to object to the language "and for such other purposes as he may deem proper," but not to the language "to be expended under the direction of the Secretary," because that has been sustained under former rulings, so that I sent up an amendment with the objectionable language stricken out.

The Chairman overruled the point of order.

¹Third session Sixty-fifth Congress, Record, p. 3735.

²Champ Clark, of Missouri, Speaker.

³Third session Sixty-sixth Congress, Record, p. 3016.

⁴Joseph Walsh, of Massachusetts, Chairman.

1717. Authorization to an executive to reduce expenditures within his discretion is not in order as a limitation, nor does it come within the Holman rule.

On April 26, 1921,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. When a provision for armor and armament for the Navy was reached Mr. R. Walton Moore, of Virginia, proposed this amendment:

The President is authorized in his discretion to suspend wholly or partially the expenditure of the sums aggregating \$90,000,000 specified in this and the two next preceding paragraphs if and when under his direction an agreement approved by him is reached or about to be reached for the curtailment of naval construction by the Government of the United States, Great Britain, and Japan.

Mr. Patrick H. Kelley, of Michigan, made the point of order that the amendment was legislation and did not reduce expenditures.

The Chairman² held:

To the amendment just reported the gentleman from Michigan makes the point of order.

It is clear to the Chair that the amendment offered by the gentleman from Virginia is not in order under any interpretation or provision of the Holman rule. If it be in order at all, it is because it is a limitation upon an appropriation or appropriations in the bill to which the amendment refers.

In order for a limitation to be in order, in the view of the Chair, it must be clear and definite, and must deny the use of the appropriation or the expenditure of the money to which the amendment refers. In this amendment, however, it is not a specific denial or withholding of the expenditure, but it is in a sense speculative. There is no clear denial of the appropriation, and in the view of the Chair it does not come within that class of provisions which are in order on appropriation bills, and the Chair therefore sustains the point of order.

1718. The President being authorized by law to call an international conference, an amendment denying use of an appropriation until such conference was called was held in order as a limitation, while an amendment making the appropriation available until the calling of such conference was ruled out of order.

On April 26, 1921,³ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Increase of the Navy, armor and armament: Toward the armor and armament for vessels heretofore authorized, to be available until expended, \$33,000,000.

Mr. Tom Connally, of Texas, offered this amendment:

After the figures "\$33,000,000" insert "*Provided, however,* That this appropriation shall only be available until the President, on behalf of the United States, reaches an agreement with the Governments of Great Britain and Japan for the curtailment or limitation of naval construction or armament."

Mr. Patrick H. Kelley, of Michigan, made the point of order that the amendment was a limitation in form only and was in effect a legislative proposition.

¹First session Sixty-seventh Congress, Record, p. 683.

²Joseph Walsh, of Massachusetts, Chairman.

³First session Sixty-seventh Congress, Record, p. 684.

The Chairman¹ said:

The gentleman from Texas offers an amendment to the paragraph, the effect of which is that the appropriation shall only be available until the President, on behalf of the United States, reaches an agreement with the Governments of Great Britain and Japan for the curtailment or limitation of naval construction or armament. In the opinion of the Chair that does not come within the rule as to limitations on an appropriation, and the Chair sustains the point order.

Thereupon Mr. Connally proposes the following:

After the figures "\$33,000,000," insert "*Provided*, That no part of this sum shall be expended until the president of the United States shall have invited the Governments of all nations to send accredited delegates to an international convention to be held in the United States to consider ways and means of bringing about joint disarmament."

Mr. Frank W. Mondell, of Wyoming, having submitted a further point of order, the Chairman ruled:

As the gentleman from Wyoming states, a similar amendment was offered on a previous occasion when the present occupant of the Chair was presiding in committee, and after considerable discussion the point of order was overruled. The amendment which is offered, in the view of the Chair, is a limitation upon the appropriation and withholds or denies the expenditure until the president shall have called a conference which, under a fair interpretation in the naval bill of 1916, he is authorized to do. And while it is very close to being a directory provision in the law the Chair is of the opinion now, as he was on a former occasion, that it is within the power, and he overrules the point of order.

1719. Provision that no part of an appropriation be available for pay of any midshipman whose appointment would result in exceeding an allowance of three for each member was held to be a limitation and in order in an appropriation bill.

On December 16, 1922,² the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph providing for pay of the Navy was reached which contained the following proviso:

Provided further, That no part of this appropriation shall be available for the pay of any midshipman whose admission, subsequent to the class entering the Naval Academy next after the approval of this act, would result in exceeding at any time an allowance of three midshipmen for each Senator, Representative, and Delegate in Congress; of one midshipman for Porto Rico a native of the island, appointed on nomination of the governor, and of one midshipman from Porto Rico, appointed on nomination of the Resident Commissioner; and of two midshipmen for the District of Columbia.

Mr. Fred A. Britten, of Illinois, made the point of order that the proviso carried law and was not in order on an appropriation bill.

The Chairman ruled:³

Even if the Chair was not called upon to consider the question of the applicability of the Holman rule, if there were any doubt on the face of it that it reduced expenditures, the Chair is inclined to think this is distinctly a limitation of an appropriation. The present occupant of the chair has ruled a number of times that where an appropriation was within the law it was within the power of the committee to limit that appropriation as to the precise direction in which

¹ Joseph Walsh, of Massachusetts, Chairman.

² Fourth session Sixty-seventh Congress, Record, p. 579.

³ Nicholas Longworth, of Ohio, Chairman.

it should be expended. this is unquestionably a limitation of an appropriation, and the Chair thinks that on that ground it is in order; and the Chair overrules the point of order.

1720. A limitation must apply solely to the money of the appropriation under consideration and may not be made applicable to money appropriated in other acts.

In construing an amendment offered as a limitation the practice of the House relating thereto should be construed strictly in order to avoid incorporation of legislation in appropriation bills under guise of limitations.

An amendment providing certain conditions precedent of an affirmative character upon which an appropriation should be available was held to be legislation and not in order on an appropriation bill.

Part of an amendment being out of order, the entire amendment is subject to a point of order.

On January 29, 1904,¹ the Interior Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The paragraph providing an appropriation of \$380,000 for the Minidoka project was read, when Mr. Louis C. Cramton, of Michigan, proposed the following:

Provided, That no part of the appropriation for the Minidoka project herein and no part of any unexpended balance of the 1924 appropriation for this project shall be expended on the American Falls Reservoir until (1) all acts have been performed that are necessary precedent to the conveyance of the title in fee to the Secretary of the Interior of such Indian lands as are essential to the construction of the said reservoir; (2) all the companies and districts which have contracted to cooperate with the United States in the construction of the said reservoir shall have paid to the United States their due proportionate share of all moneys advanced by the United States to the benefit of said districts or companies prior to the date of said payment, including interest at the rate of 6 per cent per annum from the time such moneys were advanced by the United States; (3) the American Falls Reservoir district shall have filed with the Secretary of the Interior an agreement binding said district to the elimination of section 46 of its contract of June 15, 1923, with the United States; (4) the companies and districts which have contracted to cooperate with the United States in the construction of said reservoir shall have paid to or deposited with the United States cash or United States Government securities amounting to at least \$1,500,000 as security as provided in section 27 of the contract of June 15, 1923: *Provided further*, That no other company or district shall hereafter be permitted the use of water from said reservoir except under a contract requiring and insuring its contribution to the United States of its fair proportionate cost of the reservoir, including interest at the rate of 6 percent per annum upon all moneys advanced by the United States for its benefit from the time such moneys were so advanced.

Mr. Thomas L. Blanton, of Texas, raised a point of order against the amendment on the ground that it was legislation and provided for the expenditure of money unauthorized by law.

The Chairman² held:

The point of order being directed to the entire amendment, if there is any part of the amendment subject to a point of order the point of order is sustained as to the entire amendment.

The Chair is of the opinion that this is not a proper limitation for the following reasons: That it deals with an unexpended balance of another appropriation.

¹First session Sixty-eighth Congress, Record, p. 1637.

²John Q. Tilson, of Connecticut, Chairman.

The Chair is ruling on an amendment offered by way of limitation to a certain appropriation but it can not be a limitation on that appropriation if it deals with appropriations under other laws. The amendment offered by the gentleman from Michigan stands upon the same footing as an amendment offered by any other gentleman on the floor. The provisions of No. 3 are clearly not within the realm of proper limitation. The proviso, which deals with general law by containing this language, "that no other company or district shall hereafter be permitted the use of water from said reservoir except under a contract requiring and insuring its contribution to the United States of its fair proportionate cost of the reservoir," and so forth, is clearly permanent legislation.

The Chair calls attention to the following authority on the question raised by the gentleman from Michigan:

"The limitation must apply solely to the money of the appropriation under consideration and may not be made applicable to money appropriated in other acts."

That is contained in the Manual and Digest, paragraph 825. The Chair does not hold that the balance of the amendment is in order, but he will pass upon that question if presented to him. For the reasons stated by the Chair, the point of order is sustained.

Thereupon Mr. Cramton proposed to reoffer the amendment omitting the reference to the 1924 appropriation, reading:

"And no part of any unexpended balance of the 1924 appropriation for this project."
Also strike out clause 3 and strike out clause 5.

Mr. Blanton made the point of order that the amendment as modified was legislation and not a limitation.

The Chairman ruled:

The Chair thinks the amendment is subject to a point of order. The proviso on the paragraph in the bill sought to be amended is a clear limitation in itself; the proviso reads that no part of this appropriation shall be expended on the so-called American Falls Reservoir. This amendment offered by the gentleman from Michigan purports to modify the straight-out limitation by enumerating a great many things which must be done as a condition precedent to the expenditure of the moneys appropriated. There may be some precedents which would justify the amendment. The rulings on what is a limitation and what may be embraced in a so-called limitation are not uniform. It seems to me that the better interpretation of our rule is to be strict in the ruling with reference to limitations in order that legislation may not creep into amendments and appropriation bills under the guise of limitations. This amendment contains many details of a more or less legislative character and makes them a condition precedent to the expenditure of this appropriation, and it occurs to the Chair that it is clearly subject to a point of order, and the Chair sustains the point of order.