

order that the language as it appears on page 3, line 1, through line 6, is legislation on an appropriation bill. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: . . . This is what is sometimes referred to as the "hold harmless" provision, and the effect, of course, of this language is simply to prevent the reductions in State grants from last year. I will make that very clear. I will say the formula for making these distributions will certainly change under that new consolidated program enacted last year, and there are about 20 States now that will receive less under the so-called new consolidated program than they received under the previous program.

The language in the bill was an attempt to remedy that very situation. This is the effect of the language.

Of course, unfortunately, under title IV, part C, of the Elementary and Secondary Education Act it does not specifically authorize a "hold harmless" provision. We will have to concede the point of order, but this is just so the Members will know.

THE CHAIRMAN:<sup>(3)</sup> The gentleman from Pennsylvania concedes the point of order, and the Chair sustains the point of order. Therefore, the language appearing on page 3, lines 1 through 6, is stricken from the bill.

### § 37. Grant or Restriction of Contract Authority

The precedents in this section, for the most part, pre-date the Congressional Budget Act of 1974. Section 401(a) of that act (Pub. L.

3. James C. Wright, Jr. (Tex.).

No. 93-344) prohibits the inclusion of new contract, spending or borrowing authority in legislative bills unless such authority is limited to the extent or in amounts provided in appropriation acts. Therefore, since the enactment of that law, the inclusion of proper limiting language in a general appropriation bill, if specifically permitted by law, would not render that language subject to a point of order under Rule XXI clause 2, since it would no longer "change existing law."

### *Grant of Contract Authority*

#### § 37.1 Language in a general appropriation bill authorizing a governmental agency to enter into contracts was held to be legislation and not in order.

On Jan. 18, 1940,<sup>(4)</sup> during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7922), a point of order was raised against the following provision:

The Clerk read as follows:

In addition to the contract authorizations of \$115,000,000 contained in the Third Deficiency Appropriation Act, fiscal year 1937, and

4. 86 CONG. REC. 508, 509, 76th Cong. 3d Sess.

\$230,000,000 in the Independent Offices Appropriation Act, 1940, the Commission is authorized to enter into contract for further carrying out the provisions of the Merchant Marine Act, 1936, as amended, in an amount not to exceed \$150,000,000.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph on the ground that it is legislation on an appropriation bill. I refer to the paragraph beginning in line 22, page 71, and ending in line 3, page 72.

MR. [SCHUYLER OTIS] BLAND [of Virginia]: Mr. Chairman, I desire to be heard upon the point of order. . . .

MR. TABER: Mr. Chairman, there is something to say on the point of order. Almost every one of the sections that has been read specifically says "out of available funds." The general situation is that these contracts cannot be entered into without specific authority, and those things are not provided for in the general legislation.

THE CHAIRMAN:<sup>(5)</sup> The Chair is ready to rule.

The gentleman from New York [Mr. Taber] makes the point of order that the paragraph now under consideration is legislation on an appropriation bill. Of course, it is well known that the United States Maritime Commission has authority under the law to enter into contracts. Assuming that to be true, what would be the purpose in that Commission having authority under an appropriation bill to enter into contracts, unless it was for some new purpose?

An almost similar proposition of this kind came up on the second deficiency

bill on April 28, 1937, at which time the Committee of the Whole was presided over by Mr. Vinson, of Kentucky, when an amendment was offered dealing with the Tennessee Valley Authority. The Chair, at that time, construed it to be legislation on an appropriation bill. The present occupant of the chair so construes it, and sustains the point of order.

**§ 37.2 Language in the District of Columbia appropriation bill authorizing the commissioners to enter into contracts for the construction of the first unit of an extensible library building at a cost not exceeding \$1,118,000 and re-appropriating balance of \$60,000 previously appropriated for preparation of plans and specifications, to be available without regard to the Classification Act of 1923 or section 3709 of the Revised Statutes was conceded and held to be legislation on an appropriation bill.**

On Apr. 6, 1939,<sup>(6)</sup> during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 5610), a point of order was raised against the following provision:

The Clerk read as follows:

Not to exceed \$350,000 of the unexpended balance of the appropria-

<sup>5</sup> Lindsay C. Warren (N.C.).

<sup>6</sup> 84 CONG. REC. 3923, 76th Cong. 1st Sess.

tion of \$500,000 contained in the District of Columbia Appropriation Act for the fiscal year 1939 for beginning the construction in square 533 of the first unit of an extensible building for the government in the District of Columbia is hereby re-appropriated and made available for beginning the construction in square 491 of the first unit of an extensible library building, including quarters for the administrative offices of the Board of Education, [and the Commissioners are authorized to enter into contract or contracts for the construction of such first unit at a total cost, including improvement of grounds and all necessary furniture and equipment, not to exceed \$1,118,000: *Provided*, That the unexpended balance of the appropriation of \$60,000, contained in such act for the preparation of plans and specifications for a library building to be constructed on square 491 is continued available for the same purpose during the fiscal year 1940, and shall be available for the employment of professional and other services, without reference to the Classification Act of 1923, as amended, civil-service requirements, or section 3709 of the Revised Statutes.]

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make the point of order against the language beginning on line 23, page 18, after the word "education", down to the end of the paragraph on page 19, ending in line 10. It is legislation on an appropriation bill.

THE CHAIRMAN:<sup>(7)</sup> Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [ROSS A.] COLLINS [of Mississippi]: The gentleman makes his point of order to the language beginning with the word "and", in line 23, and ending with line 10 on page 19?

7. Claude V. Parsons (Ill.).

MR. RICH: Yes.

MR. COLLINS: And not to the entire paragraph?

MR. RICH: Not to the entire paragraph.

MR. COLLINS: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

### *Grant of Contract and Obligational Authority, Tennessee Valley Authority*

#### **§ 37.3 Although under existing law it may be in order to appropriate money for a certain object, it is not in order to grant authority to incur obligations and enter into contracts for the acquisition of such objects on an appropriation bill.**

On Apr. 28, 1937,<sup>(8)</sup> during consideration in the Committee of the Whole of the second deficiency appropriation bill, a point of order was raised against the following provision:

The Clerk read as follows:

#### TENNESSEE VALLEY AUTHORITY

For the purpose of carrying out the provisions of the act entitled "The Tennessee Valley Authority Act of 1933", approved May 18, 1933 (U.S.C., title 16, ch. 12a), as amended by the act approved August 31, 1935 (49 Stat. 1075-1081), including

8. 81 CONG. REC. 3909-11, 75th Cong. 1st Sess.

the continued construction of Pickwick Landing Dam, Gunterville Dam, Chickamauga Dam, and Hiwassee Dam, and the continuation of preliminary investigations as to the appropriate location and type of a dam on the lower Tennessee River, and the acquisition of necessary land, the clearing of such land, relocation of highways, and the construction or purchase of transmission lines and other facilities, and all other necessary works authorized by such acts, and for printing and binding, law books, books of reference, newspapers, periodicals, purchase, maintenance, and operation of passenger-carrying vehicles, rents in the District of Columbia and elsewhere, and all necessary salaries and expenses connected with the organization, operation, and investigations of the Tennessee Valley Authority, and for examination of estimates of appropriations and activities in the field, fiscal year 1938, \$40,166,270: *Provided*, That this appropriation and any unexpended balance on June 30, 1937, in the "Tennessee Valley Authority fund, 1937", and the receipts of the Tennessee Valley Authority from all sources during the fiscal year 1938 (except as limited by sec. 26 of the Tennessee Valley Authority Act of 1933, as amended), shall be covered into and accounted for as one fund to be known as the "Tennessee Valley Authority fund, 1938", to remain available until June 30, 1938, and to be available for the payment of obligations chargeable against the "Tennessee Valley Authority fund, 1937": [*Provided further*, That in addition to the amount herein appropriated, the Tennessee Valley Authority is hereby authorized to incur obligations and enter into contracts for the procurement of equipment to be installed in dams and power-houses in an amount not in excess of \$4,000,000, and this action shall be deemed a contractual obligation of

the Tennessee Valley Authority and the United States for payment of the cost thereof.]

MR. [BERTRAND H.] SNELL [of New York]: Mr. Chairman, I make a point of order against the proviso on page 9, beginning with line 7, down to the end of line 14, on the ground it is legislation on an appropriation bill.

THE CHAIRMAN:<sup>(9)</sup> Does the gentleman from Virginia desire to be heard?

MR. [Clifton A.] WOODRUM [of Virginia]: Mr. Chairman, there may be merit in the gentleman's point of order, but I call his attention to the fact if the point of order is sustained and that fund is cut out, the gross amount of the bill, \$40,000,000, will have to be increased by \$4,000,000 if the Tennessee Valley Authority is to buy equipment and machinery for these dams under construction. Of course, I am frank to admit I am speaking to the merits of the proposition and not to the point of order. This \$4,000,000 is not an appropriation. It is an authorization for them to enter into contracts for equipment in connection with these dams that will be constructed in the future. They are long-time contracts for machinery that has to be built ahead of time. If we cut out this item, they cannot buy the equipment for the dams which we have spent millions of dollars to construct, or else we have to appropriate the money and make it available to them. . . .

THE CHAIRMAN: The Chair is ready to rule. . . .

The Tennessee Valley Authority Act provides authority for the appropria-

9. Fred M. Vinson (Ky.).

tion contained in this paragraph. However, the language in the proviso authorizes the Tennessee Valley Authority to enter into certain contracts and to incur certain obligations. The Chair rules that the proviso is legislation upon an appropriation bill, and therefore sustains the point of order made by the gentleman from New York.

**§ 37.4 Although under existing law it may be in order to appropriate money for a certain object it is not in order to grant authority to incur obligations and enter into contracts for the acquisition of such object on an appropriation bill: language in a general appropriation bill authorizing the Tennessee Valley Authority to incur obligations and enter into contracts was held to constitute legislation and therefore not in order.**

On Feb. 8, 1939,<sup>(10)</sup> during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 3743), a point of order was raised against the following provision:

The Clerk read as follows:

TENNESSEE VALLEY AUTHORITY

For the purposes of carrying out the provisions of the act entitled "The Tennessee Valley Authority Act

of 1933," approved May 18, 1933, as amended by the act approved August 31, 1935 (16 U.S.C., ch. 12a) . . . and the acquisition of necessary land . . . and all other necessary works authorized by such acts . . . and for examination of estimates of appropriations and activities in the field, fiscal year 1940, \$39,000,000: *Provided*, That this appropriation and any unexpended balance on June 30, 1939, in the "Tennessee Valley Authority fund, 1939," and the receipts of the Tennessee Valley Authority from all sources during the fiscal year 1940 (except as limited by sec. 26 of the Tennessee Valley Authority Act of 1933, as amended), shall be covered into and accounted for as one fund to be known as the "Tennessee Valley Authority fund, 1940", to remain available until June 30, 1940, and to be available for the payment of obligations chargeable against the "Tennessee Valley Authority fund, 1939," and for contractual obligations for the procurement of equipment as authorized in the Independent Offices Appropriation Act, fiscal year 1939: *Provided further*, That in addition to the amount herein appropriated, the Tennessee Valley Authority is hereby authorized to incur obligations and enter into contracts for the procurement of equipment to be installed in dams and powerhouses in an amount not in excess of \$4,000,000, and this action shall be deemed a contractual obligation of the Tennessee Valley Authority and the United States for payment of the cost thereof. . . .

MR. [J. WILLIAM] DITTER [of Pennsylvania]: Mr. Chairman, I make the point of order that, starting with line 17, page 48, legislation is provided for granting authority to the Tennessee Valley Authority in excess of that which it presently has by statutory law. There is no existing law providing for the authority that would be exer-

10. 84 CONG. REC. 1239, 76th Cong. 1st Sess.

cised by the T.V.A. under this provision, and since it is legislation attached to an appropriation bill I make a point of order against the entire paragraph.

MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, this language was carried in the appropriation act last year, but the gentleman is correct. It is subject to a point of order, and I concede the point of order. I offer the paragraph with that portion eliminated.

THE CHAIRMAN:<sup>(11)</sup> The Chair is ready to rule.

A similar point of order as indicated by the gentleman from Virginia [Mr. Woodrum] was passed upon by Chairman Vinson, of Kentucky, on the 28th of April 1937, to the effect that language in a general appropriation bill authorizing the T.V.A. to incur obligations and enter into contracts was held to be legislation and not in order.

In accordance with that ruling, the Chair sustains the point of order made by the gentleman from Pennsylvania [Mr. Ditter].

### ***Contract Authority Preceding Appropriation***

#### **§ 37.5 Language in a general appropriation bill authorizing an executive officer to enter into contracts where the money for such contracts has not been appropriated was held to be legislation and not in order.**

On May 14, 1937,<sup>(12)</sup> during consideration in the Committee of the

11. Fritz G. Lanham (Tex.).

12. 81 CONG. REC. 4595, 75th Cong. 1st Sess.

Whole of the Interior Department appropriation bill (H.R. 6958), a point of order was raised against the following provision:

The Clerk read as follows:

For the acquisition of lands, interest in lands, water rights and surface rights to lands, and for expenses incident to such acquisition, in accordance with the provisions of the act of June 18, 1934 (48 Stat., p. 985), including personal services, purchase of equipment and supplies, and other necessary expenses, \$900,000, together with the unexpended balance of the appropriation for this purpose for the fiscal year 1937, of which not to exceed \$20,000 shall be available for personal services in the District of Columbia: *Provided*, That within the States of Arizona, New Mexico, and Wyoming no part of said sum shall be used for the acquisition of lands outside of the boundaries of existing Indian reservations: *Provided further*, That in addition to the amount herein appropriated the Secretary of the Interior may also incur obligations, and enter into contracts for the acquisition of additional land, not exceeding a total of \$500,000, and his action in so doing shall be deemed a contractual obligation of the Federal Government for the payment of the cost thereof, and appropriations hereafter made for the acquisition of land pursuant to the authorization contained in the act of June 18, 1934, shall be available for the purpose of discharging the obligation or obligations so created.

Mr. [J. William] Ditter [of Pennsylvania] and Mr. [Cassius C.] Dowell [of Iowa] rose.

MR. DITTER: Mr. Chairman, a point of order.

THE CHAIRMAN:<sup>(13)</sup> The gentleman will state it.

MR. DITTER: Mr. Chairman, I make the point of order against the entire paragraph that it is legislation on an appropriation bill. The particular portion starting with the words "*Provided further*" is distinctly legislative in character, and, being legislation, it kills the paragraph. . . .

THE CHAIRMAN: The gentleman from Pennsylvania makes a point of order against the paragraph appearing on page 21, beginning in line 9.

Under existing law executive officers of the Government have the authority to enter into contracts where money has already been appropriated. Obviously, this is for the purpose of allowing executive officers to enter into contracts where the money has not been appropriated.

Therefore this is legislation on an appropriation bill, not authorized under the rules of the House, and the Chair sustains the point of order against the entire paragraph.

***Authority to Make Binding Grants and Contracts as Obligations on Future Appropriations***

**§ 37.6 An appropriation to permit the Surgeon General, upon the recommendation of the National Advisory Council, to approve applications for research and training grants, including grants for drawing plans, erection of**

**buildings, and acquisition of land therefor, not to exceed a total of \$3 million was held to be authorized by section 405 of the Public Health Service Act, but the inclusion of a provision for contract authorization beyond the current fiscal year was held to constitute legislation.**

On Apr. 26, 1950,<sup>(14)</sup> the Committee of the Whole was considering H.R. 7786, the Labor Department and Federal Security Agency chapter of the general appropriation bill for 1951. At one point the Clerk read as follows:

Amendment offered by Mr. [Frank B.] Keefe [of Wisconsin]: On page 139, line 18, strike out the period at the end of the paragraph and insert in lieu thereof the following: "; and in addition to the amount appropriated herein, the Surgeon General is authorized, upon the recommendation of the National Advisory Cancer Council, to approve applications for research and training grants, including grants for drawing plans, erection of buildings, and acquisition of land therefor, not to exceed a total of \$3,000,000 for periods beyond the current fiscal year, and such grants shall, if approved during the current fiscal year, constitute a contractual obligation of the Federal Government."

MR. [CHRISTOPHER C.] McGRATH [of New York]: Mr. Chairman, I make a

13. Jere Cooper (Tenn.).

14. 96 CONG. REC. 5799, 81st Cong. 2d Sess.

point of order. I raise the point of order that this is legislation on an appropriation bill; and, further, that the basic legislation does not authorize contract authorizations. . . .

MR. KEEFE: Mr. Chairman, the purpose of the amendment is to give contractual authority for cancer research construction grants. The basic authorization for construction grants is found in section 405 of the Public Health Service Act, as amended, which reads as follows:

Appropriations to carry out the purposes of this title, cancer, shall be available for acquisition of land, or the erection of buildings only if so specified.

Under that language, Mr. Chairman, the Congress has, in identical language as in the amendment submitted by the gentleman from Wisconsin, accepted appropriations, and appropriations have been made with the identical language in fiscal years 1948 and 1949 appropriation bills. I think the language is certainly broad enough to authorize this amendment.

THE CHAIRMAN:<sup>(15)</sup> Does the gentleman from Rhode Island desire to be heard on the point of order?

MR. [JOHN E.] FOGARTY [of Rhode Island]: Yes, I do, Mr. Chairman.

The appropriation bill passed a year ago, on page 175, included practically the same language, it seems to me, when we said at that time:

And in addition to the amount herein, the Surgeon General is authorized, upon the recommendation of the National Advisory Cancer Council, to approve applications for research and training grants, includ-

ing grants for drawing plans, erection of buildings, and acquisition of land therefor, not to exceed a total of \$6,000,000, for periods beyond the current fiscal year, and such grants shall, if approved during the current fiscal year, constitute a contractual obligation on the Federal Government.

It seems to me that this language and similar language having been in the bill in past years, it would be in order at this time.

I go along with the views expressed by the gentleman from Wisconsin [Mr. Keefe] that this is in order at this time.

MR. KEEFE: May I say further, Mr. Chairman, it seems to me the basic act, under which this national cancer program was set up in the bill to which I have referred, constitutes basic authority for this proposal.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Wisconsin [Mr. Keefe] has offered an amendment which has been reported. The gentleman from New York [Mr. McGrath] has made a point of order against the amendment on the ground that it contains legislation on an appropriation bill, in violation of the rules of the House.

The Chair has examined the amendment and section 405 of the Public Health Service Act referred to by the gentleman from Wisconsin.

The Chair might comment on the statement made by the gentleman from Rhode Island to the extent of saying that although a provision of this nature may have been included in previous acts there may not have been any point of order made against it; so

15. Jere Cooper (Tenn.).

that could not be decisive in considering the question now presented.

The Chair is of the opinion that section 405 cited by the gentleman from Wisconsin does constitute legislative authority for the appropriation. The Chair invites attention to the fact that the pending amendment includes a provision for contract authorization beyond the present fiscal year, which, in the opinion of the Chair, would constitute legislation on an appropriation bill and would be in violation of the rules of the House. For that reason the Chair is compelled to sustain the point of order.

***Restriction on Contract Authority Contained in Bill***

**§ 37.7 To a section of an Agriculture Department appropriation bill containing legislation authorizing the Secretary of Agriculture to make such additional commitments as may be necessary in order to provide full parity payments, an amendment providing that the payments shall not exceed an amount necessary to equal parity "when added to the market price and the payment made . . . for conservation . . . of agricultural land resources," was held a proper limitation restricting the availability of funds which did not add further legislation to that already contained in the bill.**

On Mar. 9, 1942,<sup>(16)</sup> during consideration in the Committee of the Whole of the Agriculture Department appropriation bill, the Clerk read the following provisions:

PARITY PAYMENTS

To enable the Secretary of Agriculture to make parity payments to producers of wheat, cotton, corn (in the commercial corn-producing area), rice, and tobacco pursuant to the provisions of section 303 of the Agricultural Adjustment Act of 1938, there are hereby reappropriated the unobligated balances of the appropriations made under this head by the Department of Agriculture Appropriation Acts for the fiscal years 1941 and 1942, to remain available until June 30, 1945, and the Secretary is authorized and directed to make such additional commitments or incur such additional obligations as may be necessary in order to provide for full parity payments: . . . *Provided further*, That such payments with respect to any such commodity shall be made with respect to a farm in full amount only in the event that the acreage planted to the commodity for harvest on the farm in 1943 is not in excess of the farm acreage allotment established for the commodity under the agricultural conservation program, and, if such allotment has been exceeded, the parity payment with respect to the commodity shall be reduced by not more than 10 percent for each 1 percent, or fraction thereof, by which the acreage planted to the commodity is in excess of such allotment. The Secretary

16. 88 CONG. REC. 2124, 2125, 77th Cong. 2d Sess.

may also provide by regulations for similar deductions for planting in excess of the acreage allotment for the commodity on other farms or for planting in excess of the acreage allotment or limit for any other commodity for which allotments or limits are established under the agricultural conservation program on the same or any other farm.

An amendment was offered, as follows:

Amendment offered by Mr. Taber [as subsequently modified by unanimous consent]: On page 77, line 5, after the word "farm," strike out the period, insert a colon and a proviso as follows: "*Provided further*, That parity payments, under the authority of this paragraph, shall not exceed such amount as is necessary to equal parity when added to the market price and the payment made or to be made for conservation and use of agricultural land resources under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act approved February 29, 1936, as amended; and the provisions of the Agricultural Adjustment Act of 1938 as amended; *Provided further*, That the total expenditures made and the contracts entered into in pursuance of this paragraph shall not exceed in all \$212,000,000.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I submit a point of order against the amendment proposed by the gentleman from New York [Mr. Taber]. . . .

MR. [JOHN] TABER: . . . The bill, on page 75, provides that the Secretary is authorized and directed to make such additional commitments or incur such

additional obligations as may be necessary in order to provide for full parity payments.

That is legislation. It is brought in order under the rule. The language that I have submitted is clearly germane to that provision because it provides a method. It is purely a limitation to the payments that shall be made for parity under the authority of this paragraph. For this reason it is clearly germane and it is clearly in order.

It would be in order if there was no legislation in the paragraph because it is a pure limitation.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, may I be heard?

THE CHAIRMAN:<sup>(17)</sup> The Chair will hear the gentleman from South Dakota.

MR. CASE of South Dakota: Mr. Chairman, may I make the observation that if the proposal is clearly a limitation, even though it embraces some legislation, it is in order under the Holman rule.

THE CHAIRMAN: The Chair would like to ask the gentleman from New York [Mr. Taber] if there are any funds other than those appropriated in this bill to be used for parity payments?

MR. TABER: None.

THE CHAIRMAN: Just the funds in this bill?

MR. TABER: That is correct.

THE CHAIRMAN: The amendment the gentleman is offering is to limit the funds offered in this bill?

MR. TABER: That is my intention. I think perhaps I ought to insert after the word "payments" in the third line

17. Robert Ramspeck (Ga.).

the words "under the authority of this paragraph." With that in, it would clearly be in order.

THE CHAIRMAN: Does the gentleman from New York [Mr. Taber] ask to modify his amendment?

MR. TABER: I do, Mr. Chairman.

THE CHAIRMAN: The gentleman from New York asks unanimous consent to modify his amendment by inserting after the word "payments" "under the authority of this paragraph." Is there objection to the request of the gentleman from New York [Mr. Taber]?

There was no objection.

THE CHAIRMAN: The gentleman from New York [Mr. Taber] has offered an amendment, on page 77, line 5, undertaking to provide further limitations on the payment and the administration of parity payments, to which the gentleman from Georgia has made a point of order.

It seems to the Chair that the language of the amendment offered by the gentleman from New York constitutes a limitation upon the funds appropriated by this paragraph or proposed to be appropriated by this paragraph and does not constitute legislation.

The Chair therefore overrules the point of order.

***Secretary of the Interior—Contracts to Acquire Land Before Appropriation Therefor***

**§ 37.8 Language in a general appropriation bill authorizing the Secretary of the Interior to enter into contracts for the acquisition of additional land and making fu-**

**ture appropriations available to liquidate those obligations was held legislation on an appropriation bill and not in order.**

On Mar. 1, 1938,<sup>(18)</sup> during consideration in the Committee of the Whole of the Interior Department appropriation bill, a point of order was raised against the following provision:

The Clerk read as follows:

For the acquisition of lands, interest in lands, water rights and surface rights to lands, and for expenses incident to such acquisition, in accordance with the provisions of the act of June 18, 1934 (48 Stat. 985), including personal services, purchase of equipment and supplies, and other necessary expenses, \$500,000, together with the unexpended balance of the appropriation for this purpose for the fiscal year 1938, of which not to exceed \$20,000 shall be available for personal services in the District of Columbia: *Provided*, That within the States of Arizona, Colorado, New Mexico, and Wyoming no part of said sum shall be used for the acquisition of land outside of the boundaries of existing Indian reservations: *Provided further*, That in addition to the amount herein appropriated the Secretary of the Interior may also incur obligations and enter into contracts for the acquisition of additional land, not exceeding a total of \$500,000, and his action in so doing shall be deemed a contractual obligation of the Federal Government for the payment of the cost thereof, and appropriations hereafter made for the acquisition of land pursuant to the au-

18. 83 CONG. REC. 2636, 75th Cong. 3d Sess.

thorization contained in the act of June 18, 1934, shall be available for the purpose of discharging the obligation or obligations so created.

MR. [John] TABER [of New York]: Mr. Chairman, I make the point of order against the language contained in the proviso on page 24, line 23, on the ground that it is legislation on an appropriation bill and is not authorized by law. . . .

THE CHAIRMAN:<sup>(19)</sup> The Chair is ready to rule.

This proviso, beginning in line 23, on page 24, and extending through line 8, on page 25, authorizes the Secretary of the Interior to incur obligations and to enter into contracts for the acquisition of additional land not exceeding a total of \$500,000.

Practically the same language was ruled upon last year when the Interior Department bill was before the Committee of the Whole and the bill contained a similar proviso. This proviso at that time was held to be subject to the point of order that it was legislation on an appropriation bill.

The Chair, therefore, sustains the point of order to this proviso.

***—Authority to Incur Obligations and Complete Construction***

**§ 37.9 To an appropriation bill an amendment authorizing the Secretary of the Interior to incur obligations and enter into contracts for certain construction work was held to be legislation.**

19. Marvin Jones (Tex.).

On Apr. 6, 1954,<sup>(20)</sup> during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 8680), a point of order was raised against the following amendment:

MR. [ANTONIO M.] FERNANDEZ [of New Mexico]: Mr. Chairman, I offer an amendment which is at the desk.

The Clerk read as follows:

Amendment offered by Mr. Fernandez: On page 24, line 21, strike out "\$8,056,099" and insert "\$8,556,099 and, in addition, the Secretary is hereby authorized to incur obligations and enter into contracts, not exceeding \$950,000, to complete the construction of a public-use building and appurtenant facilities in Carlsbad Cavern National Park, N. Mex."

MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, I make a point of order against the amendment: That it is legislation on an appropriation bill. . . .

THE CHAIRMAN:<sup>(1)</sup> The Chair is ready to rule.

The Chair calls the attention of the gentleman from New Mexico to the following language in his proposed amendment: "and, in addition, the Secretary is hereby authorized to incur obligations and enter into contracts, not exceeding \$950,000 to complete the construction of a public use building and appurtenant facilities in Carlsbad Caverns National Park, N. Mex.," which is clearly legislation upon an appropriation bill.

The Chair sustains the point of order.

20. 100 CONG. REC. 4721, 4722, 83d Cong. 2d Sess.

1. Charles B. Hoeven (Iowa).

**—Limitation on Funds to Pay Contract Approved Pursuant to Law**

**§ 37.10 An appropriation in the Interior Department appropriation bill for the payment of an Indian agent employed under a contract approved by the Secretary was held to be authorized by the Snyder Act and to be merely descriptive of contract authority contained in existing law and therefore not legislative in character.**

On May 14, 1937,<sup>(2)</sup> the Committee of the Whole was considering H.R. 6958. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Utah: Uintah and Ouray, \$7,100, of which amount not to exceed \$3,000 shall be available for the payment of an agent employed under a contract, approved by the Secretary of the Interior.

MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I make the point of order on the paragraph beginning in line 11 and ending in line 14 of page 57 that there is no authorization in law for the appropriation recommended. . . .

THE CHAIRMAN:<sup>(3)</sup> The Chair is prepared to rule.

2. 81 CONG. REC. 4605, 75th Cong. 1st Sess.

3. Jere Cooper (Tenn.).

The gentleman from Massachusetts [Mr. Wigglesworth] makes a point of order against the language appearing on page 57, lines 11 to 14, inclusive, on the ground it is legislation on an appropriation bill and not authorized by existing law.

The Chair has examined the statement in the hearings to which the gentleman from Massachusetts has invited attention, and especially is impressed by the following statement contained in the hearings:

The contract was approved on March 2, 1937, by the Commissioner of Indian Affairs and the Secretary of the Interior in accordance with sections 2103 and 2106 of the Revised Statutes of the United States.

This would clearly indicate to the Chair that the law to which reference is here made would be authority for the contract. It appears that the contract was made and the discharge of the duty entered upon under the provisions of the contract.

Attention is also invited again to the so-called Snyder Act which, among other things, provides for the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees. The language of the bill to which the point of order is directed provides for the sum of \$7,100, of which amount not to exceed \$3,000 shall be available for the payment of an agent employed under a contract approved by the Secretary of the Interior.

The Chair is of the opinion that this provision is clearly within the scope of existing law to which attention has been invited, and therefore is not legislation on an appropriation bill in viola-

tion of the rules of the House. The Chair overrules the point of order.

**—Granting Authority to Compromise Claims and Negotiate Health Contracts for Employees**

**§ 37.11 Language in a general appropriation bill providing in part an appropriation for payment of damages caused to the owners of lands by reason of the operations of the United States in the construction of irrigation works which may be “compromised by agreement between the claimants and the Secretary of the Interior, or such officers as he may designate,” was held to constitute legislation.**

On Mar. 1, 1938,<sup>(4)</sup> the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. At one point, points of order were directed to portions of the following paragraph:

Administrative provisions and limitations: For all expenditures authorized by the act of June 17, 1902, and acts amendatory thereof or supplementary thereto, known as the reclamation law, and all other acts under which expenditures from said fund are

authorized, including . . . payment of damages caused to the owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of irrigation works, and which may be compromised by agreement between claimant and the Secretary of the Interior, or such officers as he may designate . . . *Provided*, That the Secretary of the Interior in his administration of the Bureau of Reclamation is authorized to contract for medical attention and service for employees and to make necessary pay-roll deductions agreed to by the employees therefor. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph that it is legislation on an appropriation bill and contains items not authorized by law.

I call the attention of the Chair to the language on page 72, line 22, “examination of estimates for appropriations in the field,” and at the bottom of the page, “for lithographing, engraving, printing, and binding,” and in line 20 of the same page, “for photographing and making photographic prints,” and then at the top of page 73, “purchase of rubber boots for official use by employees,” and in the middle of the page, at line 12, “and which may be compromised by agreement between the claimant and the Secretary of the Interior or such officers as he may designate,” giving him authority to do things that the law does not authorize. . . .

THE CHAIRMAN:<sup>(5)</sup> The Chair is of opinion that the paragraph is subject

4. 83 CONG. REC. 2655, 75th Cong. 3d Sess.

5. Marvin Jones (Tex.).

to the point of order for two reasons. First, page 73, line 12, after the word "works", the language—

and which may be compromised by agreement between the claimant and the Secretary of the Interior, or such officers as he may designate.

Then, going down to the last line on page 73, after the colon, the language:

*Provided*, That the Secretary of the Interior in his administration of the Bureau of Reclamation is authorized to contract for medical attention and services for employees and to make necessary pay-roll deductions agreed to by the employees therefor.

For these reasons the Chair sustains the point of order.

***Institute for Inter-American Affairs; Contract Authority***

**§ 37.12 Language in a general appropriation bill authorizing the Institute of Inter-American Affairs, prior to June 30, 1953, to enter into contracts for the purposes of the Institute for Inter-American Affairs Act in an amount not to exceed \$7 million was conceded to be legislation on an appropriation bill and was ruled out absent citation to the existing law authorizing inclusion of such limitation on contract authority in appropriation acts.**

On Apr. 20, 1950,<sup>(6)</sup> during consideration in the Committee of the Whole of a general appropriation bill (H.R. 7786), a point of order was raised against the following provision:

The Clerk read as follows:

THE INSTITUTE OF INTER-AMERICAN  
AFFAIRS

For necessary expenses in carrying out the provisions of the Institute of Inter-American Affairs Act of August 5, 1947 [61 Stat. 780] as amended by the act of September 3, 1949 (Public Law 283), including purchase (not to exceed 18 for replacement only) and hire of passenger motor vehicles, \$5,500,000, to remain available until expended; and in addition, the Institute is authorized, prior to June 30, 1953, to enter into contracts for the purposes of such act, as amended, in an amount not to exceed \$7,000,000.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the language beginning on line 1, page 46, "and in addition, the Institute is authorized, prior to June 30, 1953, to enter into contracts for the purposes of such act, as amended, in an amount not to exceed \$7,000,000," on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN:<sup>(7)</sup> Does the gentleman from New York [Mr. Rooney] desire to be heard on the point of order?

MR. [JOHN J.] ROONEY: Mr. Chairman, I regret that the gentleman from New York [Mr. Taber] made the point

6. 96 CONG. REC. 5480, 81st Cong. 2d Sess.

7. Jere Cooper (Tenn.).

of order against the language beginning in line 1, page 46. However, there is nothing that the Committee can do about it, because I feel that the Chair must sustain his point of order. However, there will be nothing gained insofar as economy is concerned, because this amount will be added to the bill either in cash or in contract authority when it gets to the Senate.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from New York [Mr. Taber] makes the point of order against the language quoted by him, and the gentleman from New York [Mr. Rooney] concedes the point of order; therefore, the Chair sustains the point of order.<sup>(8)</sup>

### ***Authority to Contract Without Advertising***

**§ 37.13 While 41 USC § 5 provides that “unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time**

8. Note: Pub. L. No. 81-283 gave the Institute authority within the limits of funds approved or specific contract authorizations thereafter granted, to make contracts for periods not to exceed five years. The inclusion of contract authority in an appropriation bill would probably be allowed today, given such a provision in an authorization bill.

**previously for proposals”, language in a general appropriation bill authorizing the Congressional Budget Office to contract without regard to that provision was held to constitute legislation in violation of Rule XXI clause 2, based upon a prior ruling of the Chair and also upon the language of the statute itself permitting an appropriation or other law, but not a bill, to waive its provisions.**

On Nov. 13, 1975,<sup>(9)</sup> during consideration in the Committee of the Whole of H.R. 10647 (a supplemental appropriation bill), a point of order was sustained against the following provision:

The Clerk read as follows:

For salaries and expenses necessary to carry out the provisions of the Congressional Budget Act of 1974 (Public Law 93-344), \$4,736,340: *Provided*, That none of these funds shall be available for the purchase or hire of a passenger motor vehicle: *Provided further*, That the Congressional Budget Office shall have the authority to contract without regard to the provisions of 41 U.S.C. 5. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I make a point of order against the language appearing on page 10, lines 20 through 22 which read:

*Provided further*, That the Congressional Budget Office shall have

9. 121 CONG. REC. 36271, 94th Cong. 1st Sess.

the authority to contract without regard to the provisions of 41 U.S.C. 5.

Mr. Chairman, 41 United States Code 5 is a statutory requirement that requires all governmental agencies, in excess of \$10,000 to publish and seek bids on the contract or purchase of goods and services. I submit that this is a statutory waiver written into an appropriation bill and is therefore legislation on an appropriation. . . .

MR. [BOB] CASEY [of Texas]: . . . Mr. Chairman, with reference to the point of order raised by the gentleman from Maryland (Mr. Bauman) let me state that unless this language is in this bill this agency cannot contract for computer services. I think it is entirely in order for the purposes of carrying out the duties of the office. It is not requiring any additional effort on anybody else's part. In other words, it is not legislation as I consider it at all. It is existing law, and it requires this language in order for them to contract for services that they must have in the operation of their office.

THE CHAIRMAN:<sup>(10)</sup> The Chair is prepared to rule.

The Chair perceives that the gentleman from Maryland (Mr. Bauman) has made a point of order as to the language appearing in lines 20 through 22 on page 10 beginning with the words "Provided further." The same issue was before the committee and decided in 1940, on February 7—Record pages H1192–H1193—where Chairman Beam held that—

The language in a general appropriation bill which says "without regard to the Classification Act of

1923, as amended, and without regard to Section 3709, revised statutes, 41 U.S.C. 5," is legislation and is not in order on appropriation bill.

Accordingly, the point of order is sustained and the proviso will be stricken.

***Environmental Protection Agency; Contract Authority for Review by National Academy of Sciences***

**§ 37.14 A paragraph in a general appropriation bill containing funds to enable the Environmental Protection Agency to contract with the National Academy of Sciences to evaluate the performance of the EPA was conceded to contain new contract authority not in existing law and to violate Rule XXI clause 2.**

On June 15, 1973,<sup>(11)</sup> during consideration in the Committee of the Whole of H.R. 8619 (the agriculture-environmental and consumer protection appropriation bill) a point of order was raised against the following provision:

The Clerk read as follows:

For an amount to provide for a complete and thorough review, analysis, and evaluation of the Environmental Protection Agency, its programs, its accomplishments and its

10. William L. Hungate (Mo.).

11. 119 CONG. REC. 19852, 93d Cong. 1st Sess.

failures, and to recommend such changes, cancellations, or additions as necessary, to be conducted under contract with the National Academy of Sciences, \$5,000,000, to remain available until expended.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, at this point I make a point of order against the language appearing at lines 20 through 24 on page 32, and on through the first two lines of page 33.

The reason for my point of order, Mr. Chairman, is twofold. First, this is legislation in an appropriation bill; and it constitutes an appropriation of funds not previously authorized by law.

So that the language referred to is again violative of rule XXI, clause 2, and I would point out again, Mr. Chairman, that the rule should be so interpreted as to require strict compliance.

Mr. Chairman, I am quoting from page 466 of the Manual of the Rules of the House of Representatives, as follows:

In the administration of the rule, it is the practice that those upholding an item of appropriation should have the burden of showing the law authorizing it.

Mr. Chairman, I would point out that neither the statute setting up the National Academy of Sciences affords the National Academy of Sciences the duty, responsibility, or power to investigate or to study EPA. For that reason, Mr. Chairman, I make this point of order.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make the additional point of order that the language in the paragraph appearing at the top of page 33, containing the words, "to remain

available until expended," is also subject to a point of order. . . .

THE CHAIRMAN:<sup>(12)</sup> Does the Chair understand that the gentleman from Mississippi concedes the point of order?

MR. [JAMIE L.] WHITTEN [of Mississippi]: I do. And I beg the indulgence of the Chair that we may write an amendment to replace the section. . . .

THE CHAIRMAN: The point of order is sustained, and the language is stricken.

## § 38. Reimbursements

As used in this section, the term "reimbursements" refers to the use of generated proceeds to repay funds.<sup>(13)</sup> This section also addresses the consequences of provisions requiring repayments, refunds and other mechanisms generating funds from other than direct appropriations.

### *Refunds Credited to Current Appropriation*

#### § 38.1 Language in an appropriation bill for emergencies arising in the Diplomatic and

12. James C. Wright, Jr. (Tex.).

13. See also § 30 (Transfer of Funds Not Limited to Same Bill), *supra*. And see Ch. 25 § 3, *supra*, for discussion of reappropriations.