itures was ruled out as legislation.

On July 1, 1964,[14] during consideration in the Committee of the Whole of the foreign aid appropriation bill (H.R. 11812), a point of order was raised against the following amendment:

MR. [EDGAR F.] FOREMAN [of New Mexico]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Foreman: On page 18, immediately after line 24, insert the following:

"Sec. 404. Limitation on Appropriations for Economic Assistance.—Notwithstanding any provision of this or any other Act, no provision of this Act appropriating funds to carry out any program of assistance under this Act (other than a provision for military assistance as described in this Act and in the amount of $1,055,000,000) shall become effective until the tax receipts of the United States Government for the preceding fiscal year are equal to or greater than the expenditures of the Government for such fiscal year."

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Chairman, I make a point of order against the bill on the ground that it is legislation on an appropriation bill. . . .

MR. FOREMAN: Mr. Chairman, I feel like any time we are appropriating the taxpayers' dollars, we certainly should take into consideration the question as to whether or not we are putting the people further in debt. This is a very important question. It is a legal question, a legislative question, and even more importantly, a moral question.

Mr. Chairman, my amendment goes to the question of spending or not spending of these funds, the limiting of making funds available.

It does not legislate as to how they are going to be spent, or not be spent, the bill itself does not even do that.

But as suggested earlier in our debate, perhaps this amendment is indeed too sensible and entirely too practical to be applied to our foreign aid giveaway program. Yes, Mr. Chairman, perhaps fiscal responsibility, at this point and in this day in time, may be out of order.

THE CHAIRMAN:[15] The Chair is ready to rule.

On the face of it, this amendment appears to go far beyond the scope of the bill.

The subject of the amendment is not covered or referred to in the proposed legislation and, therefore, the Chair sustains the point of order.

§ 49. Spending Conditioned on Congressional Approval

Subsequent Congressional Finding of Impact on Public Debt

§ 49.1 To a bill appropriating funds for the Mutual Secu-

14. 110 CONG. REC. 15582, 88th Cong. 2d Sess. See also § 49.1, infra, in which the Chair ruled out of order an amendment making the availability of funds conditional on a congressional finding that expenditures would not increase the public debt.

15. Charles M. Price (Ill.).

rity Act program, an amendment providing that none of the funds therein should be available for expenditure until Congress, in a concurrent resolution, makes a finding that the expenditure will not increase the public debt, was held to be legislation.

On July 28, 1959,[16] during consideration in the Committee of the Whole of the mutual security appropriation bill (H.R. 8385), a point of order was raised against the following amendment:

MR. [JOHN JAMES] FLYNT [Jr., of Georgia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Flynt: On page 5, after line 21, insert the following:

"Sec. 101. None of the funds appropriated by this title shall be available for expenditure until the Congress has adopted a concurrent resolution (1) which states in substance that the Congress finds that the aggregate of the estimated net budget receipts of the Government of the United States for the fiscal year 1960 will exceed the aggregate of the estimated expenditures for that fiscal year which will be made by the Government of the United States for purposes other than those contained in the Mutual Security Act of 1954, as amended, and (2) which specifies the amount of such excess. Upon the adoption of such a concurrent resolution, then each item of appropriation contained in this title is automatically reduced to an amount which bears the same ratio to such item as the excess specified in such concurrent resolution bears to $3,186,500,000."

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I reserve a point of order against the amendment on the ground that it is legislation on an appropriation bill. . . .

[After remarks by Mr. Flynt, the point of order was made by Mr. Passman.]

THE CHAIRMAN:[17] The Chair is prepared to rule.

The gentleman from Georgia [Mr. Flynt] has offered an amendment to which the gentleman from Louisiana makes a point of order.

The Chair has had an opportunity to examine the amendment offered by the gentleman from Georgia and is of the opinion that the amendment itself is beyond the usual limitation on an appropriation bill, in that the amendment would place additional responsibility and duties on the Congress and require additional action by the Congress, which constitutes legislation.[18]

16. 105 CONG. REC. 14520, 14521, 86th Cong. 1st Sess.

17. Wilbur D. Mills (Ark.).

18. The ruling above, insofar as it requires future express congressional action, is in conformity with the more recent trend in the Chair's treatment of provisions such as that at issue here. There have been rulings that have permitted appropriations related to public debt levels without explicitly requiring congressional action. See the ruling at 101 CONG. REC. 10246, 84th Cong. 1st Sess., July 11, 1955, wherein an

By Concurrent Resolution

§ 49.2 An amendment offered in the form of a limitation on an appropriation bill providing that no part of the funds shall be used for the enforcement of any order restricting sale of any article or commodity, unless such order shall have been approved by a concurrent resolution of the Congress, was held to be legislation and not in order on an appropriation bill.

On June 30, 1942,[19] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7319), a point of order was raised against the following amendment:

MR. [W. STERLING] COLE of New York: Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. Cole of New York: Page 23, line 2, after "appropriation", strike out the period and insert semicolon, and add the following: ": *Provided further*, That on and after 60 days after enactment of this act, no part of the funds herein appropriated shall be used for the administration or enforcement of any order prohibiting, restricting, rationing, or limiting by way of amount or number, the sale in retail trade of any article or commodity unless such order shall have been approved by a concurrent resolution of the Congress."

MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, I make the point of order that that is legislation on an appropriation bill. This changes the basic principles of the Price Control Act. Under that act we set up a certain policy, and gave discretion to an agency, and this seeks definitely to change the basic act.

THE CHAIRMAN:[20] Does the gentleman from New York desire to be heard on the point of order?

MR. COLE of New York: Mr. Chairman, I submit that this is definitely a limitation on the use of funds contained in this appropriation bill.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from New York offers an amendment which has been reported by the Clerk. The

amendment denying funds if the effect of spending is to increase public debt was held in order as a limitation. And see 105 CONG. REC. 14521, 14522, 86th Cong. 1st Sess., July 28, 1959, where the Chair ruled that, to a bill appropriating funds for the mutual security program, an amendment providing that no part of any appropriation in the bill shall be used in the event the expenditure will increase the public debt was held to be a limitation and in order. See, generally, §§ 48.9 et seq., supra, for discussion of provisions that seek to make expenditures conditional upon a determination that aggregate spending levels are not in excess of a certain amount.

19. 88 CONG. REC. 5826, 77th Cong. 2d Sess.

20. Jere Cooper (Tenn.).

gentleman from Virginia [Mr. Woodrum] makes the point of order against the amendment on the ground that it is legislation on an appropriation bill and goes further than a limitation. The Chair has endeavored to analyze the amendment, and is of opinion that the gentleman from Virginia has correctly stated the situation. The amendment appears to go much further than a mere limitation and provides that the existing law be in effect amended, and imposes certain requirements as to further legislation. The Chair, therefore, sustains the point of order.

Parliamentarian's Note: It has been held in order, by way of a limitation on an appropriation bill, to make an appropriation contingent upon a future event, such as congressional action, so long as the contingency is germane to the appropriation and the restriction does not change existing law. But such a provision does change existing law if its effect is to require a subsequent authorization which, when enacted, will automatically make funds available for expenditure without further appropriations. Such a result is contrary to the process contemplated in Rule XXI whereby appropriations are dependent on prior authorization. While two recent rulings have upheld the admissibility of amendments making the availability of funds in a general appropriation bill contingent upon subsequent congressional action, where the contingency is germane and is not shown to change existing law (114 CONG. REC. 16692, 90th Cong. 2d Sess., June 11, 1968 [H.R. 17734]; 125 CONG. REC. 23360, 23361, 96th Cong. 1st Sess., Sept. 6, 1979 [H.R. 4473]), the Chair in the latter ruling indicated he was following the earlier precedent only because there had been no argument advanced that the contingency changed existing law. In the ruling on June 11, 1968, it was held that, to a bill making supplemental appropriations for various government departments, including the Department of Defense, an amendment providing that no part of the appropriations therein shall be available, without the express authorization of Congress, for maintenance of more than 525,000 troops in Vietnam or for an invasion of North Vietnam was in order as a limitation. More recent rulings indicate that such an amendment would probably be ruled out in the current practice. On Nov. 18, 1981,[1] a provision making the availability of certain funds contingent upon subsequent congressional action on legislative proposals resolving the policy issue was held to constitute legis-

1. 127 CONG. REC. 28064, 97th Cong. 1st Sess.

lation. More recently,[2] an amendment to a general appropriation bill making the availability of funds therein contingent upon subsequent congressional enactment of legislation containing specified findings was ruled out as legislation requiring new legislative and executive branch policy determinations not required by law. And, in an earlier precedent not cited on Sept. 6, 1979, the Chair did rule (88 CONG. REC. 5826, 77th Cong. 2d Sess., June 30, 1942 [H.R. 7319]) that an amendment prohibiting the availability of funds to enforce certain executive orders, unless those orders were approved by a concurrent resolution of the Congress, could be viewed as legislation, imposing new requirements as to further legislative action. In any case, when a point of order is raised, the burden is on the proponent of the amendment to show that the contingency on which the availability of funds depends is one authorized by existing law.

Some statutes expressly provide that there may be appropriated to carry out the functions of certain agencies only such sums as Congress may thereafter authorize by law, thus requiring specific subsequently enacted authorizations for the operations of such agencies and not permitting appropriations to be authorized by the "organic statute" creating the agency. (See, for example, 15 USC § 57c). In the situation where a paragraph of a general appropriation bill is under consideration which contains an unauthorized appropriation, a perfecting amendment delaying availability of the unauthorized appropriation and making it contingent upon enactment of authorizing legislation may be germane (since existing law already links the authorization and appropriations processes and the contingency is therefore not unrelated), and may not add legislation, since it merely recites conditions already imposed by existing law and does not explicitly make the availability of appropriations contingent upon enactment of new policies.

Subsequent Approval of Congress

§ 49.3 To a section of an appropriation bill providing an appropriation for the federal aid airport program, an amendment providing that the appropriation "does not grant authority to the Administrator of Civil Aeronautics to undertake [during a specified period] any specific projects for the develop-

2. 129 Cong. Rec. ——, 98th Cong. 1st Sess., Nov. 2, 1983.

ment of . . . airports, unless express approval of Congress is hereafter granted," was held to be legislation not in the form of a limitation on the use of funds and not in order.

On May 15, 1947,[3] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 3311), a point of order was raised against the following amendment:

Amendment offered by Mr. [Kenneth B.] Keating [of New York]: On page 49, line 2, after "appropriation", insert the following: "*Provided further,* That the appropriation made herein does not grant the authority to the Administrator of Civil Aeronautics to undertake during the fiscal year beginning July 1, 1947, any specific projects for the development of class 4 and larger airports, unless express approval of Congress is hereafter granted."

MR. [OREN] HARRIS [of Arkansas]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill.

THE CHAIRMAN:[4] Does the gentleman from New York desire to be heard on the point of order?

MR. KEATING: I do, Mr. Chairman.

Mr. Chairman, it strikes me that this is a limitation upon the appropriation, which is in order. The law as it is today provides that the making of an appropriation shall be an approval of certain specific projects, unless a contrary intent of Congress is manifested. The purpose of this amendment is to manifest the contrary intent of Congress.

MR. HARRIS: Mr. Chairman, under the Federal Airport Act passed by the Seventy-ninth Congress and approved on May 13, 1946, the authority under which this appropriation is being considered today, it is specifically provided in section 5(d) for the annual appropriation of projects in the States.

In section 6 it is specifically provided how the fund shall be apportioned to the various States and it is also provided how the Administrator shall proceed in making an annual report to the Congress 60 days prior to the fiscal year under which the appropriation would be made for class 4 and larger airports.

In section 9(d) it is provided how the approval of these airport projects may be made.

I should like to read wherein that authorization provides: "that all such projects"—meaning class 4 and larger airports—"shall be subject to the approval of the Administrator, which approval shall be given only if at the time of the approval funds are available for payment of the United States share of the allowable cost and only if he is satisfied that the project will contribute to the accomplishment of the purposes of the act," and so forth.

Under the authorization of this act the Administrator is given certain authority, and if I understand the amendment offered by the gentleman it will change the specific authorization as provided in those sections just referred to.

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3. 93 CONG. REC. 5378, 80th Cong. 1st Sess.

4. Carl T. Curtis (Nebr.).

THE CHAIRMAN: What is the basis of the point of order made by the gentleman from Arkansas?

MR. HARRIS: It is legislation on an appropriation bill. It changes the authorization of the Airport Act of May 13, 1946.

THE CHAIRMAN: Does the gentleman from New York wish to be heard further on the point of order?

MR. KEATING: I do, Mr. Chairman.

Mr. Chairman, the gentleman has failed to read section 8 of the act which provides for the filing with the Congress 2 months in advance of the beginning of the fiscal year of the list of projects. Then, in the last sentence thereof, it says:

> In granting any funds that thereafter may be appropriated to pay the United States' share of allowable project cost during the next fiscal year, the Administrator may consider such appropriation as granting the authority requested by law unless a contrary intent shall have been manifested by the Congress by law.

This is the only time that the Congress can manifest its intent, and if it passes this appropriation bill simply appropriating the money and does not manifest the intent that is there stated then they have approved of the action of the Administrator.

THE CHAIRMAN: For what purpose does the gentleman from South Dakota rise?

MR. [FRANCIS H.] CASE of South Dakota: To make a brief observation, if the Chairman will indulge me.

Mr. Chairman, I have briefly examined the text of the amendment offered by the gentleman from New York (Mr. Keating). While the language submitted is not in the form of the customary limitation on funds, it occurs to me that it is the equivalent of saying that no part of the funds appropriated in this act shall be used for the construction of class 4 airports. If it were stated in that way it would clearly be a limitation.

THE CHAIRMAN: The Chair is ready to rule.

The Chair is of the opinion that this is not merely a limitation but that it is legislation on an appropriation bill. The point of order is sustained.

§ 49.4 To a section of an appropriation bill providing an appropriation for the federal-aid airport program, an amendment providing that "no part of the appropriation . . . shall be used for the development of class 4 and larger airports unless approval of Congress is hereafter granted" was held to be a limitation on an appropriation bill restricting the availability of funds and in order where the Chair apparently took the view that existing law permitted inclusion of language making the appropriation contingent upon subsequent congressional approval.

On May 15, 1947,[5] the Committee of the Whole was consid-

5. 93 CONG. REC. 5379, 80th Cong. 1st Sess.

ering H.R. 3311, a Departments of State, Justice, Commerce, and the Judiciary appropriation bill. The Clerk read as follows:

> Amendment offered by Mr. [Kenneth B.] Keating (of New York): On page 49, line 2, after the word "appropriation", insert the following: *Provided further*, That no part of the appropriation made herein shall be used for the development of class 4 and larger airports unless approval of Congress is hereafter granted." . . .
>
> MR. [J. PERCY] PRIEST [of Tennessee]: Mr. Chairman, I make a point of order against this amendment as being legislation on an appropriation bill. . . .
>
> . . . It seems to me that the argument with reference to the other point of order would apply here. The Administrator, on February 19, 1947, has complied with the requirement of law and has made the required report to Congress.
>
> In reading section 8 of the act, the distinguished gentleman from New York [Mr. Keating], in commenting on the point of order made against the other amendment, it seems to me did not properly interpret the last part of section 8 of the act, and that the amendment actually would change the law by action on an appropriation bill, when the act specifically says:
>
> > In granting any funds that thereafter may be appropriated to pay the United States' share of allowable project costs during the next fiscal year, the Administrator may consider such appropriation as granting the authority requested, unless a contrary intent shall have been manifested by the Congress by a law or by concurrent resolution.
>
> This, it would seem to me, would be by amendment to an appropriation bill rather than by a law or by a concurrent resolution, and it would appear that the amendment is legislation on an appropriation bill.
>
> MR. KEATING: Mr. Chairman, as indicated by the gentleman from South Dakota [Mr. Case], this is clearly simply a limitation upon the amount of an appropriation, and it seems to me to be clearly in order.
>
> THE CHAIRMAN:[6] The Chair is of the opinion that the amendment is a limitation, and the point of order is overruled.

Parliamentarian's Note: The Chair apparently took the view that existing law [60 Stat. 174, § 8 of which was referred to by Mr. Priest, above] permitted inclusion of the language making the appropriation contingent upon subsequent congressional approval. But the implication of the two precedents above, considered together, is that where a law can be read to permit contingent restriction or approval of the use of funds, the appropriation language still must be phrased as a traditional limitation. A more fundamental question for future application of these precedents, particularly § 49.4, is whether the authorizing law in fact permitted the type of restriction stated in the amendment, or whether the language in the amendment departed from the

6. Carl T. Curtis (Nebr.)

course authorized by the statute. The law (cited above) stated:

> In granting any funds that thereafter may be appropriated to pay the United States share of allowable project costs during the next fiscal year, the Administrator may consider such appropriation as granting the authority requested (to develop class 4 airports) unless a contrary intent shall have been manifested by the Congress by law or by concurrent resolution, and no such grants shall be made unless so authorized.

A proper limitation pursuant to such law would bar the use of funds in accordance with whatever "law" or "concurrent resolution" "shall have" manifested the intent of Congress. The language in the amendment does something quite different: it bars the use of funds for the purposes described unless Congress *subsequently* gives its approval.

Such law as that cited should not be read as generally permitting appropriations to be made contingent upon future authorization or congressional approval. The precedent in § 49.4 can be justified only in the context of the provisions of 60 Stat. 174, and even then only if the statute can be read as giving flexibility to the process of congressional approval or disapproval so as to permit Congress to withhold availability of funds pending future release of the funds upon adoption of a concurrent resolution.

Prior Approval by Congressional Committees

§ 49.5 Language in an appropriation bill providing that "he contracts about to be entered into shall have been authorized by the appropriate legislative committees and in amount by the Committees on Appropriations of the Senate and House of Representatives," was held to be legislation and not in order.

On Mar. 20, 1957,[7] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 6070), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Payments, public buildings purchase contracts: For payments of principal, interest, taxes, and any other obligations under contracts entered into pursuant to the Public Buildings Purchase Contract Act of 1954 (40 U.S.C. 356), $1,331,100: *Provided*, That the Administrator of General Services may enter into contracts during the fiscal year 1958 for which the aggregate of annual payments for amortization of principal and interest thereon shall not exceed $9,000,000, in addition to the unused portion of the $12,000,000 limitation applicable prior to July 1, 1957,

7. 103 CONG. REC. 4048, 85th Cong. 1st Sess.

under the Independent Offices Appropriation Act, 1957 (70 Stat. 343): *Provided further,* That the contracts about to be entered into shall have been authorized by the appropriate legislative committees and in amount by the Committees on Appropriations of the Senate and House of Representatives.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language in the bill beginning on page 10, line 21, which reads as follows:

Provided further, That the contracts about to be entered into shall have been authorized by the appropriate legislative committees and in amount by the Committees on Appropriations of the Senate and House of Representatives.

Mr. Chairman, I make the point of order that this is legislation on an appropriation bill, therefore in violation of the rules of the House.

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make the point of order against the entire paragraph.

THE CHAIRMAN:[8] The point of order is well taken. The Chair sustains the point of order of the gentleman from Texas.

§ 49.6 To an appropriation bill, an amendment providing that no funds in the bill shall be used to meet any obligation under any contract for certain material, if the contract exceeds $1 million, unless the contract is approved by the Committees on Armed Services of the two Houses, was conceded to be legislation and held not in order.

On Apr. 9, 1952,[9] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 7391), a point of order was raised against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. (Dwight L.) Rogers of Florida: Page 33, after line 23, insert the following new section:

"Sec. 601. No funds appropriated by this act shall be used to meet any obligation incurred under any contract for procurement, maintenance, or production of supplies or equipment for any of the military departments, if the contract exceeds $1,000,000 in total amount and is entered into after the date of enactment of this act, unless, before the contract is entered into, the Secretary of the military department concerned or his designee comes into agreement with the Committees on Armed Services of the Senate and of the House of Representatives with respect to the terms of the contract.". . .

MR. [CARL] VINSON [of Georgia]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[10] Does the gentleman from Florida (Mr. Rogers) care to be heard on the point of order?

MR. ROGERS of Florida: Mr. Chairman, perhaps there is phraseology in

8. Frank N. Ikard (Tex.).

9. 98 CONG. REC. 3888, 3889, 82d Cong. 2d Sess.

10. Aime J. Forand (R.I.)

there that would possibly be legislation.

THE CHAIRMAN: The gentleman concedes the point of order?

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

THE CHAIRMAN: The point of order is sustained.

§ 49.7 In a paragraph in a general appropriation bill containing funds for the Commission on Government Procurement, a proviso withholding a portion of those funds until submission of a program and financial plan by the commission and approval thereof by the Committees on Appropriations of the House and Senate was conceded to be legislation and was ruled out on a point of order.

On May 12, 1970,[11] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 17548), a point of order was raised against the following provision:

COMMISSION ON GOVERNMENT PROCUREMENT

SALARIES AND EXPENSES

For necessary expenses of the Commission on Government Procurement, $1,500,000, to remain available until June 30, 1972: *Provided,* That $1,250,000 of the foregoing amount shall not become available without submission of a program and financial plan by the Commission and approval thereof by the Committees on Appropriations of the Senate and House of Representatives. . . .

MR. [JAMES G.] O'HARA [of Michigan]: Mr. Chairman, I make a point of order against the proviso beginning on line 19, page 5 and extending through line 23 on page 5 on the ground that it is legislation in a general appropriation bill.

THE CHAIRMAN:[12] Does the gentleman from Tennessee (Mr. Evins) desire to be heard?

MR. [JOSEPH L.] EVINS of Tennessee: Mr. Chairman, we recognize the point that the gentleman has raised.

We only wanted the Commission to advise us as to how they were to use the funds for this program. We have been assured by the distinguished chairman, the gentleman from California (Mr. Holifield) and other members of the Commission, members in whom we have great confidence, that they will keep the committee and the Congress informed as they proceed with this new commission.

So, Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is conceded.

The Chair sustains the point of order.

§ 49.8 Language in an appropriation bill, making the availability of a portion of

11. 116 CONG. REC. 15174, 91st Cong. 2d Sess.

12. Frank Annunzio (Ill.).

the funds appropriated therein contingent upon submission of plans by a commission and approval thereof by the Committees on Appropriations of both Houses, was ruled out as legislation imposing additional duties on an executive officer notwithstanding the fact that the law establishing the commission required it to submit periodic reports to the President and Congress.

On May 7, 1970,[13] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 17399), a point of order was raised against the following provision:

COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

SALARIES AND EXPENSES

For expenses necessary for the Commission on Population Growth and the American Future, including services as authorized by 5 U.S. 3109, and hire of passenger motor vehicles, $965,000, to remain available until expended: *Provided,* That $700,000 of the foregoing amount shall not become available without submission of a program and financial plan by the Commission and approval thereof by the Committees on Appropriations of the Senate and House of Representatives. . . .

MR. [GEORGE H.W.] BUSH [of Texas]: Mr. Chairman, I make a point of order against the language contained in lines 8 through 12 on page 5 of the pending legislation on the ground that it fails to comply with the provisions of clause 2 rule XXI of the Rules of the House of Representatives, wherein paragraph 2 states:

> Nor shall any provision in any such bill or amendment thereto changing existing law be in order. . . .

I realize, Mr. Chairman, that substantive legislation can in practice be added to an appropriation bill if it fits within the applicable framework of the Holman Rule but does not impose any additional or affirmative duties. The language—submission of a program and financial plan by the Commission—does in fact impose additional duties on the Commission.

THE CHAIRMAN:[14] Does the gentleman from Texas wish to be heard on the point of order?

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the gentleman from Tennessee (Mr. Evins) will speak to the point of order. . . .

MR. [JOSEPH L.] EVINS of Tennessee: This is a limitation on expenditures and we think it is acceptable.

THE CHAIRMAN: The Chair is ready to rule.

The Chair finds that the language cited on page 5, lines 8 through 12, in the opinion of the Chair constitutes legislation in an appropriation bill and the point of order is therefore sustained and the proviso is stricken from the bill.

Parliamentarian's Note: Public Law No. 91–213, Mar. 16, 1970, 84 Stat. 67, relating to the Com-

13. 116 CONG. REC. 14561, 91st Cong. 2d Sess.

mission on Population Growth and the American Future, provided (in section 8):

> In order that the President and the Congress may be kept advised of the progress of its work, the Commission shall, from time to time, report to the President and the Congress such significant findings and recommendations as it deems advisable. The Commission shall submit an interim report to the President and the Congress one year after it is established and shall submit its final report two years after the enactment of this Act (Mar. 16, 1970). The Commission shall cease to exist sixty days after the date of the submission of its final report.

If the language had said, in effect, that no funds would be expended unless and until the interim report required by law during this fiscal year is submitted, an argument might have been advanced that the provision was in order, under the theory that a mere reiteration of existing law, without change, is not precluded. However, the requirement of submission of a "program and financial plan" was regarded as an impermissible departure from the existing law, and the requirement of subsequent committee approval made the provision in the bill subject to a point of order.

§ 49.9 To a general appropriation bill making appropriations for public works, and including funds for the Panama Canal Corporation, an amendment prohibiting the corporation from disposing of real property unless approved by the appropriate legislative committees of the House and Senate was ruled out as legislation.

On June 16, 1964,[15] during consideration in the Committee of the Whole of the public works appropriation bill (H.R. 11579), a point of order was raised against the following amendment:

> MRS. [LEONOR KRETZER] SULLIVAN [of Missouri]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mrs. Sullivan: Page 9, line 5. After the word "use", change the period to a colon and add:
>
> "*Provided*, That no real property or rights to the use of real property, or activity shall be disposed of or transferred by license, lease, or otherwise except to another agency of the United States Government unless specifically approved by the appropriate legislative committees of the House and Senate."
>
> MR. [MICHAEL J.] KIRWAN [of Ohio]: Mr. Chairman, I make a point of order against the amendment that it is legislation on an appropriation bill. . . .
>
> THE CHAIRMAN:[16] The Chair is prepared to rule. From the reading of the amendment, the Chair feels that the

15. 110 CONG. REC. 13973, 88th Cong. 2d Sess.

16. Hale Boggs (La.).

language is purely legislation. It has no bearing upon the appropriation and falls within the prohibition of legislating on an appropriation bill.

The point of order is sustained.

Adoption of Joint Resolution in Prescribed Form

§ 49.10 An amendment to the Defense Department appropriation (general) bill denying the use of funds therein for continued deployment of land-based U.S. Armed Forces participating in the multinational force in Lebanon after Mar. 1, 1984, unless the Congress adopts a joint resolution containing certain findings (requiring the President to define the mission of U.S. forces in Lebanon and to establish a set of achievable policy goals there as well as upgrading security arrangements in the area) was ruled out as legislation in violation of Rule XXI clause 2, requiring new duties to be imposed on both the Congress (to pass the joint resolution) and on the President (to make certain findings and to sign the joint resolution) not presently required by law.

On Nov. 2, 1983,[17] During consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 4185), a point of order was sustained against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [Clarence D.] Long of Maryland:

Page 80, after line 2, insert the following:

TITLE IX

UNITED STATES ARMED FORCES IN LEBANON

Sec. 901. None of the funds appropriated by this Act may be obligated or expended for the continued deployment of land-based United States Armed Forces participating in the Multinational Force in Lebanon after March 1, 1984, unless the Congress of the United States adopts a joint resolution which contains the following findings:

(a) That the President of the United States has defined a clear and realistic mission for U.S. forces in Lebanon.

(b) That the President has established a set of policy goals in Lebanon that are achievable and has a clear agenda for achieving those goals.

(c) That security arrangements for American forces in the area have been upgraded to the maximum extent possible. . . .

MR. [JACK] EDWARDS of Alabama: Mr. Chairman, I make a point of order against the gentleman's amendment because it constitutes legislation in an

17. 129 CONG. REC. ——, 98th Cong. 1st Sess.

appropriation bill, which is in violation of clause 2, rule XXI.

The gentleman's amendment prohibits the use of funds to support U.S. Armed Forces in Lebanon after March 1, 1984, unless Congress adopts a concurrent resolution which contains certain Presidential findings. Not only is this a contingent event which in itself is legislation, but substantial additional duties will be required to have the President submit findings to the Congress regarding definition of mission establishment of policy goals, and upgrading of security arrangements in Lebanon. Currently, the President is not required to submit such findings to the Congress, and this amendment will institute a new requirement on the President to submit such findings prior to March 1, 1984, or face a cutoff of funds. . . .

MR. [DAVID R.] Obey [of Wisconsin]: Mr. Chairman, I would like, if I could, to contest the point of order on at least the one ground raised by the gentleman because the gentleman indicated that this amendment requires the President to establish a number of additional findings.

That is not what the amendment does. The amendment says, and I would repeat, the amendment says that:

> None of the funds . . . may be obligated or expended for the continued deployment of land-based Armed Forces participating in Lebanon after March 1 unless the Congress of the United States adopts a joint resolution containing the following:

So we are not asking an administrative agency of the Government to establish findings. Those duties would fall on the Congress itself. . . .

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: . . . I do want to associate myself with the point of order that was made by the gentleman from Alabama.

Also, I would add that section 842 of the House Rules and Manual states that:

> An amendment making an appropriation contingent upon a recommendation or action not specifically required by law is legislation. . . .

THE CHAIRMAN PRO TEMPORE:[18] The Chair is ready to rule.

The amendment clearly requires that additional duties will be imposed upon the Congress and upon the President since a joint resolution would have to be signed by the President and there must be some findings made by the President.

For all of these reasons, the point of order is sustained.

Consideration of Legislative Proposal Regarding Schools for Military Dependents

§ 49.11 A provision in an appropriation bill making the availability of certain funds contingent upon subsequent congressional action on legislative proposals was conceded to constitute legislation and was ruled out on a point of order.

On Nov. 18, 1981,[19] during consideration in the Committee of

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18. Daniel D. Rostenkowski (Ill.).

19. 127 CONG. REC. 28064, 97th Cong. 1st Sess.

the Whole of the Department of Defense appropriation bill (H.R. 4995), a point of order was sustained against the following provision:

> THE CHAIRMAN:[20] The Chair will inquire, are there any points of order against any portion of the bill?
>
> MR. [DAVID E.] BENIOR of Michigan: Mr. Chairman, I make a point of order against section 784 . . . which legislate[s] under an appropriation bill. . . .
>
> The portion of the bill to which the [point] of order relate[s] is as follows:
>
> > Sec. 784. None of the funds provided in this Act may be obligated or expended to transfer the Defense Departments' Schools to the Department of Education, or to fund the activities of the Advisory Council on Dependents' Education until legislative proposals to repeal such transfer of the dependents' schools are considered and acted upon by Congress.

MR. JOSEPH P. Addabbo, of New York, conceded and the Chair sustained the point of order.

§ 50. Conditions Imposing Additional Duties

Where a provision in an appropriation bill or amendment thereto seeks to impose on a federal official substantial duties that are different from or in addition to those already contemplated in law, the provision is frequently ruled out as legislative in nature. This difficult area is discussed more fully in Sec. 51 through 63, infra. The present section focuses largely on those instances where such new duties result from the imposition of certain types of conditions. Such conditions, it will be seen, are generally those which must be determined by some official to have been met, before the appropriation in question can become effective.

Generally, an amendment forbidding expenditure of an appropriation unless action contrary to existing law is taken is legislation and is not in order as a limitation.[1]

Thus, while it is in order on a general appropriation bill to prohibit the availability of funds therein for a certain activity, that prohibition may not be made contingent upon the performance of a new affirmative duty on the part of a federal official.

Attached to Otherwise Valid Limitation

§ 50.1 A provision in a paragraph of the legislative ap-

20. Daniel D. Rostenkowski (Ill.).

1. See, for example, Sec. 50.4, infra.

The same would be true of an amendment conditioning expenditure on actions for which no authority in law exists.