who violates the law that has been the law since 1912. The only determination that is necessary to be made by anybody is not to violate the law. . . .

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

The Chair finds that this amendment does not impose additional duties to the extent that is objectionable under the precedents relating to limitations on appropriation bills. However, the Chair also finds that the amendment does seek to cover matters beyond those which are in the purview of this bill since it provides that no part of any appropriation contained in this or any other act shall be available for certain purposes with respect to officers or employees of the Government whether inside or outside the U.S. Postal Service or agencies covered by this bill.

Therefore, this constitutes legislation on the pending appropriation bill and the Chair sustains the point of order.

F. PERMISSIBLE LIMITATIONS ON USE OF FUNDS

§ 64. Generally

When points of order are made under the rule prohibiting legislation on appropriation bills, rulings thereon will frequently turn on whether the proposition in question is in fact one of legislation, or whether it is merely a permissible "limitation" on the funds sought to be appropriated. The basic theory of limitations is that, just as the House may decline to appropriate for a purpose authorized by law, it may by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it. The limitation cannot change existing law, but may negatively restrict the use of funds for an authorized purpose or project. A limitation may furthermore serve the purpose of foreclosing possible interpretations of language in an appropriation bill that otherwise might be administratively construed to include matters other than those actually contemplated by the bill.(10)

A useful discussion and a list of tests to be applied in determining whether language in an appropriation bill or amendment thereto constitutes a permissible limitation can be found in a ruling made on Jan. 8, 1923.(11) The Chairman,(12) in the course of rul-

10. See the statement of the Chair at 83 CONG. REC. 2655, 75th Cong. 3d Sess., Mar. 1, 1938, in the course of ruling on a point of order against language contained in H.R. 9621, an Interior Department appropriation bill.

11. 64 CONG. REC. 1422, 67th Cong. 4th Sess.

12. Frederick C. Hicks (N.Y.).

ing on a point of order against provisions of a District of Columbia appropriation bill, set forth a series of tests for determining the validity of a purported limitation under the rules. The checklist is reproduced here for quick reference:

1. Does the limitation apply solely to the appropriation under consideration?

2. Does it operate beyond the fiscal year for which the appropriation is made?

3. 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?

4. 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?

5. 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.

The statement of the Chair was as follows:

> 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. . . .

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 appropriation 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 proposition 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, directly 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 now 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 lay 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.

The following sections contain illustrations of limitations deemed by the Chair to be permissible under the rule.

The rule prohibiting unauthorized appropriations and legislation on general appropriation bills, and the broad qualifications on the application of the rule, are discussed in more detail at the beginning of the chapter.[13]

General Rule

§ 64.1 An amendment prohibiting the use of funds in a general appropriation bill for a certain purpose is in order, although the availability of funds for that purpose is authorized by law.

On June 22, 1973,[14] uring consideration in the Committee of the Whole of a general appropriation bill (H.R. 8825), a point of order was raised against the following amendment:

The Clerk read as follows:

Amendment offered by Ms. [Bella S.] Abzug [of New York]: Page 9, lines 2 and 3, strike out "$2,194,000,000, to remain available until expended." and insert in lieu thereof "$1,719,000,000, to remain available until expended: *Provided*, That none of the funds appropriated in this Act shall be used to further in any way the research, development or construction of any reusable space transportation system or space shuttle or facilities therefor."

And on page 10, lines 2 through 19, strike out all of subparagraph (12) and redesignate the succeeding subparagraphs accordingly.

MR. [BURT L.] TALCOTT [of California]: Mr. Chairman, I reserve a point of order against the amendment. . . .

THE CHAIRMAN:[15] The Chair will hear the gentleman from California.

MR. TALCOTT: Mr. Chairman, my point of order is quick and clean. This is more than just a reduction of funds. It is legislation on an appropriation bill when it says:

> none of the funds appropriated in this act shall be used to further in any way the research, development or construction of any reusable space transportation system or space shuttle or facilities therefor.

This is completely changing the authorization by the Committee on Science and Astronautics.

THE CHAIRMAN: The Chair is prepared to rule on the point of order.

It seems to the Chair that the provision in the gentlewoman's amendment is pretty clearly a limitation on an appropriation. It does not impose any affirmative obligation on the administration, nor does it provide any legislative direction. It is simply a limitation on the use of the funds to be appropriated.

The Chair therefore overrules the point of order.

§ 64.2 An amendment denying use of funds for purposes otherwise authorized by law may be in order as a limitation.

13. See § 1, supra.

14. 119 CONG. REC. 20998, 20999, 93d Cong. 1st Sess.

15. James G. O'Hara (Mich.).

On May 19, 1964,[16] during consideration in the Committee of the Whole of the Department of Agriculture appropriation bill for fiscal 1965 (H.R. 11202), a point of order was raised against the following amendment:

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Findley: On page 14, line 12, after the figure "$39,389,000" strike the period, insert a colon and the following: "*Provided,* That no part of the funds appropriated by this Act shall be used for any expenses incident to the assembly or preparation of information for transmission over Government-leased wires directly serving privately-owned radio or television stations or newspapers of general circulation, or for transmission over Government-leased wires which are subject to direct interconnection with wires leased by nongovernmental persons, firms or associations.". . .

THE CHAIRMAN:[17] The gentleman from Mississippi will state his point of order.

MR. [JAMIE L.] WHITTEN [of Mississippi]: The law requires, in subsection k of section 1622 of the Agricultural Marketing Act of 1946, 7 U.S.C. 1621–27, as follows:

> To collect, tabulate, and disseminate statistics of marketing agricultural products, including, but not restricted to statistics on market supplies, storage stocks, quantity, quality, and condition of such products in various positions in the marketing channel, utilization of such products, and shipments and unloads thereof.

That statute is absolutely mandatory and requires the Department to bring together that information. The gentleman's amendment does not limit funds for the discharge of the duties under that section. It attempts to deprive the Secretary of authority conferred by law which was determined in an earlier ruling (IV, 3846) to be legislation. Further, I respectfully submit it will require additional duties of folks in the Department of Agriculture, which is also legislation.

May I point out again, Mr. Chairman, in the last part of it, it says the information cannot be collected for the purpose of being disseminated. I respectfully submit it is legislation on an appropriation bill calling for new duties and responsibilities on the one hand, and limiting executive authority on the other. . . .

THE CHAIRMAN: . . . The Chairman would call the attention of the Committee to the fact that the existence of substantive law and the provisions thereof are quite obviously not necessarily binding on the Appropriations Committee. The Chair feels, therefore, that where that committee seeks to appropriate funds and an amendment is offered that seeks to deny the use of those funds even for functions otherwise required by law, that that amendment is in the nature of a limitation of appropriations and therefore overrules the point of order.

Must Apply Only to Funds in Bill

§ 64.3 To qualify as a limitation, restrictive language in

16. 110 CONG. REC. 11391, 11392, 88th Cong. 2d Sess.

17. Eugene J. Keogh (N.Y.).

a general appropriation bill must apply solely to the funds carried in the bill and not to all funds which might otherwise be available for that purpose.

On Apr. 26, 1972,[18] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 14582), a point of order was raised against the following provision of the bill:

FEDERAL HOME LOAN BANK BOARD

Increases of $177,000 in the limitation on the amount available for administrative expenses and of $351,000 in the limitation on the amount available for nonadministrative expenses: *Provided,* That none of the funds available for administrative or nonadministrative expenses of the Federal Home Loan Bank Board shall be used to finance the relocation of all or any part of the Federal Home Loan Bank from Greensboro, North Carolina, nor for the supervision, direction or operation of any district bank for the fourth district other than at such location;

MR. (JOHN J.) FLYNT (Jr., of Georgia): Mr. Chairman, I make a point of order against the language in the bill beginning after the colon on line 25 of page 42, and which continues through line 6 on page 43, which reads as follows:

"*Provided—*"

And so forth, down through "at such location."

I make the point of order on the ground that the language goes beyond the scope of the time frame covered by this appropriation bill, by the pending legislation. . . .

THE CHAIRMAN:[19] The gentleman from Texas (Mr. Mahon) is recognized.

MR. [GEORGE H.] MAHON: Mr. Chairman, under the government corporation control law, we are entitled to enact an annual budget involving the handling of corporate funds. That is what this goes to, and it is a limit on those funds.

It would appear to be clearly in order. So I trust, Mr. Chairman, that the point of order will not be sustained.

MR. [EDWARD P.] BOLAND [of Massachusetts]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The gentleman from Massachusetts is recognized.

MR. BOLAND: Mr. Chairman, I am reading from page 8455, United States Code, under title 31.

Paragraph 849 reads as follows:

§ 849. Consideration of programs by Congress; enactment of necessary legislation; effect of section on certain existing authority of corporations.

The Budget programs transmitted by the President to the Congress shall be considered and legislation shall be enacted making necessary appropriations as may be authorized by law, making available for expenditure for operating and administrative expenses such corporate funds or other financial resources or limiting the use thereof as the Congress may determine. . . .

Mr. Chairman, that is precisely what the language of the bill does. It limits the funds of the corporation, and it is

18. 118 CONG. REC. 14456, 14457, 92d Cong. 2d Sess.

19. Jack B. Brooks (Tex.).

my contention that the point of order is out of order.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Georgia (Mr. Flynt) makes a point of order against the language in the bill on page 42, line 25 to page 43, line 6.

The proviso in this paragraph goes to all of the expense funds that might be available to the Federal Home Loan Bank Board. It does not merely restrict the funds in this bill.

The Chair finds the restriction is not limited to funds in the bill and must be construed as legislation.

The Chair therefore sustains the point of order made by the gentleman from Georgia (Mr. Flynt).

§ 64.4 To qualify as a "limitation," the restrictive language must apply to the appropriations carried in the bill and not to all funds which may have been provided under the authorizing legislation or to the provisions of the authorization itself.

On June 4, 1970,[20] during consideration in the Committee of the Whole of the foreign assistance appropriation bill for fiscal 1971 (H.R. 17867), a point of order was raised against the following provision of the bill:

(b) No economic assistance shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry items of economic assistance to Cuba, so long as it is governed by the Castro regime, or to North Vietnam.

MR. [PETER H. B.] FRELINGHUYSEN [of New Jersey]: Mr. Chairman, I make a point of order that the language on lines 13 through 17, page 9, section 107(b) constitutes legislation on an appropriation bill and therefore should be stricken.

I should like to point out, also, there is comparable language, but stronger language, already in the Foreign Assistance Act. I refer to section 620(a)(3) with respect to the prohibition against trade with Cuba, and section 620(n), the language with respect to North Vietnam.

THE CHAIRMAN:[1] Does the gentleman from Louisiana desire to be heard on the point of order?

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, the committee believes now, as we have believed for many years, that this was a limitation on expenditures. It says:

> No economic assistance—
>
> Referring first to U.S. dollars—
>
> shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry items of economic assistance to Cuba, so long as it is governed by the Castro regime, or to North Vietnam.

According to the committee's interpretation, this is a limitation, and I ask for a ruling.

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20. 116 CONG. REC. 18404, 18405, 91st Cong. 2d Sess.

1. Hale Boggs (La.).

THE CHAIRMAN: The Chair is prepared to rule.

The first two lines read:

> No economic assistance shall be furnished under the Foreign Assistance Act of 1961—

It is entirely possible that there is a variety of programs under the Foreign Assistance Act of 1961. Therefore, this is clearly a limitation upon the Act and not on the bill and comes within the prohibition of rule XXI, clause 2, and the point of order is sustained.

§ 64.5 A limitation to be in order must relate specifically to the appropriation to which it is offered and not contain language so broad as to cover other appropriations.

On Mar. 28, 1939,[2] the Committee of the Whole was considering H.R. 5269, an Agriculture Department appropriation bill. The Clerk read as follows:

> Amendment offered by Mr. [Edward H.] Rees of Kansas to the amendment offered by Mr. Cannon of Missouri: At the end of Mr. Cannon's amendment add the following: "*Provided*, That total payments to any person, firm, or corporation under soil conservation and parity payments shall not exceed $2,500."
>
> MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill.
>
> THE CHAIRMAN:[3] Does the gentleman from Kansas desire to be heard on the point of order?
>
> MR. REES of Kansas: No, I do not believe I do, Mr. Chairman, although I do not believe it is legislation.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, this is a pure limitation, as I understand it, limiting the amount that can be paid out under the bill to any one person and therefore is clearly in order.
>
> THE CHAIRMAN: The Chair is of the opinion that the amendment is entirely too broad in that it would not only include this appropriation but other appropriations as well and the point of order is therefore sustained.

Restricting Funds for Purpose Not Funded in Bill

§ 64.6 To a bill appropriating funds for defense procurement, an amendment providing that none of the funds therein shall be available for paying the cost of a conventional powerplant for a designated ship was held to be a proper limitation and in order even though it was apparent that there were no funds in the bill for the ship in question.

On Apr. 22, 1964,[4] the Committee of the Whole was considering H.R. 10939, a Department of

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2. 84 CONG. REC. 3446, 76th Cong. 1st Sess.

3. Wright Patman (Tex.).

4. 110 CONG. REC. 8802, 88th Cong. 2d Sess.

Defense appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Craig] Hosmer [of California]: On page 42, line 18, after line 18 insert a new section 540—and renumber the following sections—to read as follows:

"None of the funds appropriated herein shall be available for paying the cost of a conventional powerplant for CVA–67."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make the point of order that there are no funds in this bill for an aircraft carrier.

THE CHAIRMAN:[5] Does the gentleman desire to be heard on the point of order?

MR. HOSMER: Yes, I do.

THE CHAIRMAN: The Chair will be pleased to hear him.

MR. HOSMER: My point is, it is irrelevant whether or not there are any funds in this bill. An amendment of this nature will lie irrespective.

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

. . . Apparently the only basis for that point of order is that there are no funds in the pending bill to accomplish that which is sought to be accomplished by the amendment. As futile, therefore, as the amendment might be, it is in fact a limitation of the funds herein appropriated and the Chair therefore overrules the point of order.

§ 64.7 To a section of the legislative branch appropriation bill making appropriations for the Government Printing Office, an amendment providing that no part of the appropriation shall be used to pay the salary of any person who shall perform any service or authorize any expenditure in connection with the printing and binding of the Yearbook of Agriculture was held as a valid limitation and in order.

On Mar. 18, 1942,[6] the Committee of the Whole was considering H.R. 6802. The Clerk read as follows:

Amendment offered by Mr. [Everett M.] Dirksen [of Illinois]: On page 45, line 3, after "1942", insert "*Provided further*, That no part of this appropriation shall be used to pay the salary of any person who shall perform any service or authorize any expenditure in connection with the printing and binding of part 2 of the annual report of the Secretary of Agriculture (known as the Year Book of Agriculture) for 1942."

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I make a point of order against the amendment. There are no funds carried in this bill for the purposes which are inhibited by the gentleman's amendment. It would be nugatory and of no effect, and I can conceive of no rule under which it might be in order.

5. Eugene J. Keogh (N.Y.).

6. 88 CONG. REC. 2681, 77th Cong. 2d Sess.

MR. DIRKSEN: I think the amendment will speak for itself. I think it is a limitation and would be germane and in order, irrespective of whether any funds are carried, but the fact of the matter is that the yearbook is not printed ordinarily until after the first of the year. Consequently the personnel and salaries for clerical work and mechanical work in the Government Printing Office is done after the beginning of the fiscal year 1943. I therefore regard it as a proper limitation and in order. . . .

THE CHAIRMAN:[7] The Chair thinks that the limitation is a valid one, and, therefore, the point of order is overruled.

§ 64.8 To a section of a supplemental appropriation bill making appropriations for the Air Force, an amendment providing that none of the funds appropriated therein shall be used in the branches of the Department of the Air Force in which there exists racial segregation was held germane and a proper limitation.

On Apr. 15, 1948,[8] the Committee of the Whole was considering H.R. 6226, a supplemental appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Adam C.] Powell [Jr., of New York]: On page 2, line 25, insert "*Provided further,* That none of the funds herein appropriated shall be used in the branches of the Department of the Air Force in which there exists racial segregation."

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, a point of order.

THE CHAIRMAN:[9] The gentleman will state it.

MR. RANKIN: Mr. Chairman, I make the point of order that this amendment is not germane and it is, therefore, not in order on this bill; that it is legislation on an appropriation bill; that imposes additional burdens and restrictions that are entirely out of place.

This is an aircraft procurement bill. This is not a labor bill. I submit that the amendment is out of order from practically every standpoint.

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

MR. POWELL: Yes, Mr. Chairman. This is an amendment which has limitations; it is negative; it is the type that has been ruled in order on previous appropriation bills.

THE CHAIRMAN: The Chair is ready to rule. The gentleman from New York has offered an amendment against which the gentleman from Mississippi has made a point of order. The Chair is constrained to rule that the amendment is germane and is in order and consequently overrules the point of order.

Committee Report as Containing Limitations

§ 64.9 The Chair does not pass on the question as to wheth-

7. William R. Thom (Ohio).

8. 94 CONG. REC. 4543, 89th Cong. 2d Sess.

9. James G. O'Hara (Mich.).

er "limitations" written in a committee report on an appropriation bill but not written into the wording of the bill are binding; that is a matter for the Committee of the Whole to consider during its deliberation on the bill.

On Apr. 14, 1955,[10] the Committee of the Whole was considering H.R. 5502, a bill making appropriations for the Departments of State, Justice, the Judiciary, and related agencies. The following occurred:

MR. [ROBERT C.] WILSON of California: I have a question relative to the United States Information Agency as it affects the report of the committee. As printed I notice there are several limitations written into the report. For instance, not to exceed $300,000 is provided for the "presentation" program; not to exceed $200,000 is provided for exhibits for which $334,000 was requested, and other limitations of that type.

I am wondering if the fact that these limitations appear in the report make them actual limitations in law. I notice they are not mentioned in the bill itself, and I wonder if the committee regards them as binding on the agency, because there are many serious limitations, particularly in regard to exhibits, for example. I would just like to hear the opinion of the chairman.

MR. [JOHN J.] ROONEY [of New York]: I may say to the gentleman from California that it is expected that they will be the law; and that they are binding. The fact that they have not been inserted in the bill is not important. They represent the considered judgment of the committee and we expect the language of the report to be followed.

MR. WILSON of California: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN:[11] The gentleman will state it.

MR. WILSON of California: Are limitations written in a committee report such as this, but not written into the wording of the legislation, binding?

THE CHAIRMAN: That is not a parliamentary inquiry. That is a matter to be settled by the members of the Committee of the Whole.

MR. WILSON of California: I merely wanted it for my own understanding and information, for I am fairly new here. It seems to me rather unusual to consider matter written into a report of the same binding effect on an administrator as though written into the law itself.

THE CHAIRMAN: It is not the prerogative of the Chair to pass upon the sufficiency or insufficiency of a committee report.

Condition Subsequent—Obligation Terminated on Occurrence of Future Event

§ 64.10 An amendment to an appropriation bill, terminating the use of funds therein after the passage of

10. 101 CONG. REC. 4463, 4464, 84th Cong. 1st Sess.

11. Jere Cooper [Tenn.].

certain legislation pending before the Congress, is a valid limitation and in order.

On May 19, 1964,[12] during consideration in the Committee of the Whole of the Department of Agriculture appropriation bill (H.R. 11202), a point of order was raised against the following amendment:

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Findley: On page 12, line 24, after the word "consumer" change the colon to a comma and insert the following: "except that no part of the funds appropriated herein may be obligated for this special study subsequent to the enactment of legislation establishing a National Commission on Food Marketing:".

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I reserve a point of order. . . .

THE CHAIRMAN:[13] The gentleman from Mississippi will state his point of order.

MR. WHITTEN: The language provides:

> Except that no part of the funds appropriated herein may be obligated for this special study subsequent to the enactment of legislation establishing a national commission.

The point of order I make is that this is not a limitation on an appropriation bill as such but is entirely dependent on a contingency that may never occur. For that reason the point of order should be sustained.

THE CHAIRMAN: Does the gentleman from Illinois desire to be heard on the point of order?

MR. FINDLEY: Yes. My amendment shows retrenchment on the face of it, and in my opinion is within the rules.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Illinois offers an amendment, which has been fully reported, and provides that no part of the funds appropriated in the pending section may be obligated for the special study provided therein subsequent to the enactment of legislation establishing a National Commission on Food Marketing, to which amendment the gentleman from Mississippi made his point of order that it was, in effect, legislation on an appropriation bill. The Chair, however, is of the opinion that this amendment constitutes a limitation on the funds herein appropriated even though that limitation may be conditioned upon a condition subsequent which may never come into existence and, therefore, overrules the point of order.

Obligation Triggered by Future Event

§ 64.11 To a bill appropriating funds for NASA [which had, under its authorizing legislation, authority to use appropriations for capital expenditures providing that the Committee on Science and Astronautics of the House

12. 110 CONG. REC. 11388, 11389, 88th Cong. 2d Sess.

13. Eugene J. Keogh (N.Y.).

was notified of the proposed expenditure], an amendment specifying that no funds therein appropriated could be used for capital items until 14 days after the notification required by law, was held to be a limitation upon the expenditure of funds and in order.

On June 29, 1959,[14] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7978), a point of order was raised against the following amendment:

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Thomas: On page 4, line 16, after "expended" insert: "*Provided,* That no part of the foregoing appropriation shall be available for other items of a capital nature which exceed $250,000 until 14 days have elapsed after notification as required by law to the Committee on Science and Astronautics of the House of Representatives and the Committee on Aeronautical and Space Sciences of the Senate."

MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[15] The gentleman will state it.

MR. TABER: Mr. Chairman, I make the point of order against the amendment on the ground that it changes existing law and requires additional duties on the part of the Space Agency. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Texas [Mr. Thomas] has offered an amendment which has been reported. The gentleman from New York [Mr. Taber] has made a point of order that it is legislation on an appropriation bill.

The Chair calls attention to that portion of subsection (b) of Public Law 86–45 approved June 15, 1959, with reference to expenditures in excess of $250,000 and notice to the legislative committees. In addition thereto, the amendment contains a period of notice of 14 days. However, this does not impose a new duty, because it is a limitation upon the expenditure of the funds within a period of 14 days.

The Chair therefore overrules the point of order.

Exception From Limitation Carried in Same Bill

§ 64.12 Where an appropriation bill carried a provision limiting certain administrative expenses in various accounts therein, a paragraph subsequently reached in the reading was held in order where it carried a provision excepting an authorized appropriation project from those limitations.

On May 17, 1937,[16] the Committee of the Whole was consid-

14. 105 CONG. REC. 12125, 12126, 86th Cong. 1st Sess.

15. Paul J. Kilday (Tex.).

16. 81 CONG. REC. 4685, 4686, 75th Cong. 1st Sess.

ering H.R. 6958, an Interior Department appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Boulder Canyon project: For the continuation of construction of the Boulder Canyon Dam and incidental works in the main stream of the Colorado River at Black Canyon, to create a storage reservoir, and of a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from such reservoir $2,550,000, to be immediately available and there shall also be available from power and other revenues not to exceed $500,000 for operation and maintenance of the Boulder Canyon Dam, power plant, and other facilities; which amounts of $2,550,000 and $500,000 shall be available for personal services in the District of Columbia . . . and for all other objects of expenditure that are specified for projects hereinbefore included in this act, under the caption "Bureau of Reclamation, Administrative provisions and limitations", without regard to the amounts of the limitations therein set forth.

MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I reserve a point of order for the purpose of asking the chairman of the subcommittee the effect of the language in lines 19 and 20 of the paragraph under consideration, "without regard to the amounts of the limitations therein set forth." . . .

MR. [JAMES G.] SCRUGHAM [of Nevada]: Mr. Chairman, the paragraph applies to limitations on appropriations, and I hold it to be clearly in order.

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

The gentleman from Massachusetts makes the point of order against the language appearing in lines 19 and 20.

There is no point made here that the provisions referred to are not covered by authorization of law. It is apparent from examining this provision, and referring back to the provisions contained on page 68, that the purpose here is to remove certain limitations imposed by the language on page 68 under the heading "Administrative provisions and limitations." Therefore the Chair is of the opinion that this language is not subject to a point of order and overrules the point of order.

Exceptions From Limitations

§ 64.13 To an amendment prohibiting the expenditure of any government funds during fiscal 1971 for American ground forces in Cambodia, offered to a legislative provision in a general appropriation bill prescribing an overall limitation on budget outlays for that fiscal year, an amendment excepting from such prohibition those expenditures which protect the lives of American troops re-

See 83 CONG. REC. 2707, 75th Cong. 3d Sess., Mar. 2, 1938, for a similar ruling.

17. Jere Cooper (Tenn.).

maining within South Vietnam was held in order as a germane exception to the prohibition merely descriptive of a Presidential duty as Commander in Chief to protect U.S. troops, and as not adding legislation to the provision permitted to remain in the bill.

On May 7, 1970,[18] the Committee of the Whole was considering H.R. 17399, a supplemental appropriation bill. A point of order against an amendment to an amendment was overruled as indicated below:

The Clerk read as follows:

TITLE V

LIMITATION ON FISCAL YEAR 1971 BUDGET OUTLAYS

Sec. 501. (a) Expenditures and net lending (budget outlays) of the Federal Government during the fiscal year ending June 30, 1971, shall not exceed $200,771,000,000: *Provided,* That whenever action, or inaction, by the Congress on requests for appropriations and other budgetary proposals varies from the President's recommendations reflected in the Budget for 1971 (H. Doc. 91–240, part 1), the Director of the Bureau of the Budget shall report to the President and to the Congress his estimate of the effect of such action or inaction on budget outlays, and the limitation set forth herein shall be correspondingly adjusted: *Provided further,* That the Director of the Bureau of the Budget shall report to the President and to the Congress his estimate of the effect on budget outlays of other actions by the Congress (whether initiated by the President or the Congress) and the limitation set forth herein shall be correspondingly adjusted, and reports, so far as practicable, shall indicate whether such other actions were initiated by the President or by the Congress.

MR. [EDWARD P.] BOLAND [of Massachusetts]: Mr. Chairman I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Boland: On page 53 on line 25 after the amount [$200,771,000,000], insert the following: ", of which expenditures none shall be available for use for American ground combat forces in Cambodia.". . .

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I offer an amendment to the amendment offered by the gentleman from Massachusetts (Mr. Boland).

The Clerk read as follows:

Amendment offered by Mr. Findley to the amendment offered by Mr. Boland: In front of the period insert the following: "except those which protect the lives of American troops remaining within South Vietnam."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment. . . .

I make a point of order on the ground that the amendment requires particular and special duties. . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make the further point of order that it is legislation on an appropriation bill.

THE CHAIRMAN:[19] The Chair has examined the proposed amendment to

18. 116 CONG. REC. 14569–71, 91st Cong. 2d Sess.

19. James G. O'Hara (Mich.).

the amendment. In the opinion of the Chair the proposed amendment to the amendment constitutes an exception to the limitation that was offered by the gentleman from Massachusetts, does not constitute additional legislation, and is germane. Therefore the Chair overrules the point of order.

During ensuing debate, Mr. Findley stated:

Mr. Chairman, I would hope that no Member of this body would wish to leave the impression, by supporting any amendment today, that subsequent to July 1 he would wish the President of the United States as Commander in Chief to fail to do what he feels is necessary to protect the lives of American troops remaining in South Vietnam.

That is why I propose this amendment.

§ 64.14 An exception to a valid limitation in a general appropriation bill is in order, providing the exception does not add language legislative in effect. Thus, an amendment inserting "Except as required by the Constitution" in provisions in a general appropriation bill prohibiting the use of funds therein to force a school district to take action involving the busing of students, was held in order as providing an exception from valid limitations in the bill.

On Feb. 19, 1970,[20] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill for fiscal 1970 (H.R. 15931), a point of order was raised against the following amendments:

MR. [JEFFERY] COHELAN [of California]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Cohelan: On page 60, strike out line 19 and all that follows through line 25, and substitute in lieu thereof the following:

"Sec. 408. Except as required by the Constitution no part of the funds contained in the Act may be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of any student attending any elementary or secondary school to a particular school against the choice of his or her parent or parents."

MR. COHELAN: Mr. Chairman, I ask unanimous consent that my amendments on sections 408 and 409 be considered en bloc.

THE CHAIRMAN:[1] The Clerk will report the amendment to section 409.

The Clerk read as follows:

Amendment offered by Mr. Cohelan: On page 61, strike out line 1 and all that follows through line 6 and substitute in lieu thereof the following:

"Sec. 409. Except as required by the Constitution no part of the funds

20. 116 CONG. REC. 4019, 91st Cong. 2d Sess.

1. Chet Holifield (Calif.).

contained in this Act shall be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of students to a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.''

THE CHAIRMAN: Is there objection to the request of the gentleman from California (Mr. Cohelan) that the amendments be considered en bloc?

There was no objection.

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I make a point of order against the amendments.

THE CHAIRMAN: The gentleman will state his point of order.

MR. BOW: Mr. Chairman, the point of order is that the language puts additional duties upon the Secretary of Health, Education, and Welfare to make a determination of the constitutionality of the provisions.

THE CHAIRMAN: Does the gentleman from California (Mr. Cohelan) desire to be heard on the point of order?

MR. COHELAN: Mr. Chairman, obviously all that my amendments will do is to restore the language of the original bill.

Prior to my presenting these amendments I checked with the parliamentarian. It is my understanding that they are perfectly proper amendments. I ask that they be considered so.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from California (Mr. Cohelan) has offered amendments en bloc to insert the provision ''Except as required by the Constitution'' at the beginning of sections 408 and 409 of the bill. The gentleman from Ohio (Mr. Bow) has raised a point of order against the amendments on the ground that they constitute legislation on an appropriation bill in violation of clause 2, rule XXI.

The precedents of the House establish that it is in order in a general appropriation bill to include, along with a valid limitation, an exception therefrom. On April 27, 1950, a provision limiting the use of an appropriation and specifying certain exceptions to the limitation was held in order—Chairman Cooper, Tennessee, 81st Congress, Record, page 5910.

For the reason stated the Chair overrules the point of order.

§ 64.15 An exception from a valid limitation may be included in an amendment to an appropriation bill so long as it does not contain provisions which are legislative in effect; in an amendment prohibiting the use of funds for food stamp assistance for households that need such assistance solely because a member therein is a member of a striking union, language stating that such limitation shall not apply to a household eligible for general assistance directly payable by a local government was held to constitute a valid exception not imposing additional duties on federal administrators.

On June 29, 1972,[2] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 15690), a point of order was raised against the following amendment:

MR. [GARRY E.] BROWN of Michigan: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Brown of Michigan: On page 43, line 9, delete the period after the figure "$2,341,146,000" and insert the following: "Provided that no part of the funds appropriated by this Act shall be used during the fiscal year ending June 30, 1973 to make food stamps available to a household where the necessity and eligibility of such household for assistance stems solely from the unemployment of a member of such household who is a member of an employee unit which has voluntarily terminated employment due to a labor dispute or controversy, except that such limitation shall not apply to a household eligible for general assistance directly payable by such household's local union of government."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make a point of order against the amendment. It is legislation on an appropriation bill and, for all practical purposes, it is a perfecting amendment and identical to the one we have already voted on. . . .

THE CHAIRMAN:[3] Does the gentleman from Michigan desire to be heard on the point of order?

MR. BROWN of Michigan: I do, Mr. Chairman.

In the first place, it is not legislation on an appropriation bill because it only further limits the thrust of the appropriation, and establishes a further standard, that standard to be applied for the eligibility, to be determined by the State and local agencies, and under various appropriations to the food stamp program, eligibility standards which are determined by these State and local agencies.

Second, it is not the same amendment as the Michel amendment because it is not an absolute prohibition on food stamps to strikers, so called. It says that eligibility for food stamps shall be based upon eligibility for general assistance, not the food stamp program itself.

MR. WHITTEN: Mr. Chairman, in view of the statement made by the gentleman from Michigan, and having seen the amendment and having read it and understood it, I state that it calls for new duties to determine new regulations for eligibility, therefore it is definitely legislation on an appropriation bill.

THE CHAIRMAN: The Chair is ready to rule.

The Chair has carefully read the amendment.

In the first place, it is not identical to the amendment previously offered, nor is it subject to the interpretation that it would simply do exactly the same thing as the amendment previously offered and rejected. It is clearly distinguishable in its provisions.

As to the second question, that of its being rendered out of order because it supposedly requires affirmative actions on the part of an administrator, the Chair believes that the latter part of

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2. 118 CONG. REC. 23378, 23379, 92d Cong. 2d Sess.

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

the amendment—to which the gentleman from Mississippi has referred—simply provides an exception to the application of the limitation imposed by the first part of the amendment. It does not impose additional duties. The Chair holds that the amendment offered by the gentleman from Michigan (Mr. Brown), is in order and overrules the point of order.

Prohibiting Funds for Salaries for Carrying out Certain Programs

§ 64.16 An amendment to a general appropriation bill which is negative in character and which prohibits the use of funds therein for salaries of persons carrying out certain programs which extend in duration beyond that fiscal year is in order as a limitation on the funds in that bill.

On June 15, 1973,[4] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 8619), the following occurred:

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Conte: Page 3 after line 12, insert the following: ": *Provided further,* That none of the funds appropriated by this Act shall be used during the fiscal year ending June 30, 1974, to formulate or carry out any single 1974 crop year price support program (other than for sugar and wool) under which the total amount of payments to any person or State government would be more than $20,000". . . .

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I offer a substitute amendment for the amendment offered by the gentleman from Massachusetts (Mr. Conte).

The Clerk read as follows:

Substitute amendment offered by Mr. Findley for the amendment offered by Mr. Conte: None of the funds provided by this Act shall be used to pay the salaries of personnel who formulate or carry out:

(1) programs for the 1974 crop year under which the aggregate payments for the wheat, feed grains and upland cotton programs for price support, set-aside, diversion and resource adjustment to one person exceed $20,000, or

(2) a program effective after December 31, 1973 which sanctions the sale or lease of cotton acreage allotments.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I reserve a point of order.

THE CHAIRMAN:[5] The gentleman reserves a point of order.

MR. WHITTEN: Mr. Chairman, the Commodity Credit Corporation of the Department of Agriculture has some $3 or $4 billion; it has certain obligations and authority under its charter, and that money they now have is not in this bill.

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4. 119 CONG. REC. 19836, 19837, 93d Cong. 1st Sess.

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

This amendment, if passed, would in no way affect the Corporation. It has 3 or 4 billions of dollars which in turn it already had with obligations under the charter under which it is formulated.

The amendment at this point would not reach funds already available with existing authority and under a charter.

THE CHAIRMAN: Does the gentleman from Mississippi make a point of order against the substitute?

MR. WHITTEN: Yes, I will make the point of order at this point, that if it be held that this goes to the action of a corporation that presently has $3 to $4 billion, that presently has a charter which directs it to carry out what is prohibited by this provision; that if this amendment attempts to reach that corporation which has a corporation charter, it is legislation on an appropriations bill and, therefore, subject to a point of order. . . .

THE CHAIRMAN: Does the gentleman from Illinois desire to be heard?

MR. FINDLEY: Yes. . . .

The amendment which I have offered as a substitute to the Conte amendment is a limitation of salaries of personnel. Personnel, of course, includes the Secretary of Agriculture, all of his lieutenants right down to the CCC level. Even if, as the gentleman argues, the limitation could not apply to the salaries of CCC personnel, which I do not concede, nevertheless this amendment would be effective in establishing the limitation it seeks to effect, because it would go to the salary of the Secretary. All of the authority that is in the draft bill now before the Committee on Agriculture dealing with continuing farm legislation goes to the Secretary as a person.

This is a limitation on the expenditure of funds, a limitation that goes to the expenditure of salaries, and therefore entirely within the rules of the House as being germane. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Massachusetts (Mr. Conte) has offered an amendment, for which the gentleman from Illinois (Mr. Findley) has offered a substitute.

The gentleman from Mississippi has raised a point of order against the substitute amendment offered by the gentleman from Illinois on the ground that it constitutes legislation in an appropriation bill.

The Chair has listened to the arguments and has carefully read the text of the proposed substitute. The Chair notes that the substitute would restrict funds provided by this act, providing that none of such funds should be used to pay salaries of personnel to carry out certain programs. As such, insofar as it applies to the funds provided in this act, the substitute would be a limitation on the appropriation bill and would not be legislation, and is therefore in order.

The Chair would point out that nothing in such substitute could act officially or affirmatively to inhibit payment of funds that are not provided in this act. As the Chair reads the proposed substitute, there is no language which would affect, limit, or inhibit funds other than those provided in this act.

Therefore, the Chair overrules the point of order.

Limiting Funds "In Any Fiscal Year"

§ 64.17 Where a limitation seeks to provide that "funds

appropriated by this Act" shall not be used "in any fiscal year" for a certain purpose, the addition of the phrase "in any fiscal year" has no effect, because the measure can apply only to the fiscal year for which funds are being appropriated; thus the phrase does not destroy the character of the limitation.

On May 26, 1965,[6] during consideration of an Agriculture Department appropriation bill (H.R. 8370), it was held that an amendment, specifying that no part of the funds therein shall be used "in any fiscal year" for farm program payments aggregating more than $50,000 to any person or corporation, was a proper limitation. The proceedings were as follows:

Sec. 506. Not less than $1,500,000 of the appropriations of the Department for research and service work authorized by the Acts of August 14, 1946, July 28, 1954, and September 6, 1958 (7 U.S.C. 427, 1621–1629; 42 U.S.C. 1891–1893), shall be available for contracting in accordance with said Acts.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Dingell: Page 37, after line 2, insert the following section:

"Sec. 507. No part of any funds appropriated by this Act may, in any fiscal year, be used, directly or indirectly, to make payments to any person, partnership, or corporation in an aggregate amount in excess of $50,000 in connection with any price-support program or combination of programs for price support or stabilization, irrespective of whether such payments are on account of loans, purchases, or subsidies or are otherwise authorized.". . .

[A point of order was made, as follows:]

MR. [JAMIE L.] WHITTEN [of Mississippi]: This amendment would require the keeping of books, it would require substantive additional duties on many people because many producers produce many different crops. This would be legislation on an appropriation bill.

THE CHAIRMAN:[7] The gentleman from Michigan [Mr. Dingell] offered an amendment to page 37, line 2, which is a new section. . . .

To which amendment the gentleman from Mississippi makes the point of order that it is legislation on an appropriation bill.

The Chair is of the opinion that since the amendment is directed to funds appropriated by the pending act, the phrase "in any fiscal year" is not applicable, nor in fact is it necessary. But the Chair is further of the opinion that this is an express limitation on the funds appropriated by the pending bill, and holds that the amendment is in order, and overrules the point of order.

6. 111 CONG. REC. 11660–62, 89th Cong. 1st Sess.

7. Eugene J. Keogh (N.Y.).

When Amendment May Be Offered

§ 64.18 To an appropriation bill, an amendment in the form of a new section limiting the use of all appropriations in the bill may be offered after sufficiently diverse parts of the bill have been read and is not required to come at the end of the bill.

On June 28, 1952,[8] the Committee of the Whole was considering H.R. 8370, a supplemental appropriation bill. The Clerk read as follows:

Amendment offered by Mr. [Ben F.] Jensen [of Iowa]: Page 37, after line 2 insert a new section as follows:

"Sec.—. (a) No part of any appropriation made by this act for any purpose shall be used for the payment of personal services in excess of an amount equal to 85 percent of the amount requested for personal services for such purpose in budget estimates heretofore submitted to the Congress for the fiscal year 1953; and the total amount of each appropriation, any part of which is available for the payment of personal services for any purpose, is hereby reduced by an amount equal to 15 percent of the amount requested in such budget estimates for personal services for such purpose less an amount representing the reduction, if any, between the amount requested for personal services in the budget estimates and the amount appropriated herein for such services.

"(b) This section shall not apply to—

"(1) not to exceed 25 percent of all vacancies;

"(2) positions filled from within the Mutual Security Agency and related Government functions provided for in this act;

"(3) offices or positions required by law to be filled by appointment of the President by and with the advice and consent of the Senate;

Provided further, That subsection (1) of paragraph (b) shall operate to accomplish the provisions of paragraph (a), and the said 85 percent shall not be exceeded at any time during fiscal year 1953; and *Provided further,* each agency shall impound and deposit in the general fund of the Treasury as soon as practicable, but not less frequently than quarterly an amount equivalent to the savings resulting from the vacant positions which are prohibited from being filled by this section, based on the salaries of the prior incumbents of the positions."

MR. [J. VAUGHAN] GARY of Virginia: Mr. Chairman, I make a point of order against the amendment. The amendment applies to the act and should be placed at the end of the act, rather than at the end of the chapter which we are now considering. I wonder if the gentleman will not withdraw the amendment at this time, and offer it at the conclusion of the act.

THE CHAIRMAN:[9] The Chair is ready to rule.

8. 98 CONG. REC. 8502, 8503, 82d Cong. 2d Sess.

9. Francis E. Walter (Pa.).

The language contained in this amendment might well appear at any part of the act. It is not of such a nature that it must come at the conclusion of the measure now under consideration. The Chair overrules the point of order.

Legislation Permitted by Special Rule

§ 64.19 The House, by resolution, has given the Committee on Appropriations authority to incorporate in any appropriation measure legislative recommendations emanating from the investigation authorized to be conducted by that committee in that resolution, as, for example, a prohibition of expenditures in other acts for salary or compensation to certain persons found by the committee to be subversive, notwithstanding Rule XXI clause 2.

On May 17, 1943,[10] H.R. 2714, an urgent deficiency appropriation, was being considered in the Committee of the Whole. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. (John H.) Kerr (of North Carolina): On page 36, after line 23, insert as a new section the following:

"Sec. 304. No part of any appropriation, allocation, or fund (1) which is made available under or pursuant to this act, or (2) which is now, or which is hereafter made, available under or pursuant to any other act, to any department, agency, or instrumentality of the United States, shall be used to pay any part of the salary, or other compensation for the personal services, of Goodwin B. Watson, William E. Dodd, Jr., and Robert Morss Lovett: *Provided*, That this section shall not operate to deprive any such person of payment for leaves of absence or salary, or of any refund or reimbursement, which have accrued prior to the date of the enactment of this act."

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[11] The gentleman will state the point of order.

MR. MARCANTONIO: I make a point of order against the language in line 3 of the amendment just offered, as follows:

Which is now, or which is hereafter made, available under or pursuant to any other act, to any department, agency, or instrumentality of the United States—

And so forth. This amendment seeks to limit an appropriation in some other appropriation bill. It goes beyond this bill.

THE CHAIRMAN: Does the gentleman from Missouri desire to be heard on the point of order?

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, this amendment is made in order by House Resolution 105, authorizing the investigation, providing—as shown on page 2 of the re-

10. 89 CONG. REC. 4558, 78th Cong. 1st Sess.

11. Wright Patman (Tex.).

port, House Report No. 448—as follows:

> Any legislation approved by the committee as a result of this resolution may be incorporated in any general or special appropriation measure emanating from such committee or may be offered as a committee amendment to any such measure notwithstanding the provisions of clause 2 of rule XXI.

Under that provision, the amendment is in order.

MR. MARCANTONIO: May I say in reply, Mr. Chairman, that would be true if the amendment offered were limited to this appropriation, but the amendment offered extends to appropriations not made by this bill.

THE CHAIRMAN: The language appears to be rather plain and specific to the Chair, "any legislation approved by the Committee as a result of this resolution may be incorporated in any general or special appropriation measure."

Therefore the point of order is overruled.

Note: The text of House Resolution 105 was as follows: (12)

Resolved, That the Committee on Appropriations, acting through a special subcommittee thereof appointed by the chairman of such committee for the purposes of this resolution, is authorized and directed to examine into any and all allegations or charges that certain persons in the employ of the several executive departments and other executive agencies are unfit to continue in such employment by reason of their present association or membership or past association or membership in or with organizations whose aims or purposes are or have been subversive to the Government of the United States. Such examination shall be pursued with the view of obtaining all available evidence bearing upon each particular case and reporting to the House the conclusions of the committee with respect to each such case in the light of the factual evidence obtained. Any legislation approved by the committee as a result of this resolution may be incorporated in any general or special appropriation measure emanating from such committee or may be offered as a committee amendment to any such measure notwithstanding the provisions of clause 2 of rule XXI.

For the purposes of this resolution, such committee or any subcommittee thereof is hereby authorized to sit and act during the present Congress at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses, and the production of such books or papers or documents or vouchers by subpena or otherwise, and to take such testimony and records as it deems necessary. Subpenas may be issued over the signature of the chairman of the committee or subcommittee, or by any person designated by him, and shall be served by such person or persons as the chairman of the committee or subcommittee may designate. The chairman of the committee or subcommittee, or any member thereof, may administer oaths to witnesses.

Restriction on Transfer of Funds to Activities Funded in Paragraph

§ 64.20 A provision in a paragraph of a general appro-

12. 89 CONG. REC. 734, 78th Cong. 1st Sess., Feb. 9, 1943.

priation bill prohibiting the transfer of funds therein to any other account or activity unless specifically authorized was held to be a proper limitation on the use of funds in the paragraph.

On Aug. 1, 1973,[13] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9590), the following occurred:

MR. [TOM] STEED [of Oklahoma]: Mr. Chairman, the points of order made against the language are conceded down to line 7, page 23, but the language of that "*Provided further,*" is a simple limitation on an appropriation bill and is not subject to a point of order.

THE CHAIRMAN:[14] The Chair agrees with the gentleman from Oklahoma.

The various points of order that are conceded are sustained, and that language is stricken. The language:

> *Provided further,* That none of the funds available under this heading shall be available for transfer to any other account nor for the funding of any activities other than those specifically authorized under this heading.

Which is a proper limitation and appears beginning in line 7, page 23, through line 10, remains in the bill, since the point of order has not been made against the entire paragraph.

13. 119 CONG. REC. 27289, 93d Cong. 1st Sess.

14. Richard Bolling (Mo.).

Permanent Legislation; Use of "Hereafter"

§ 64.21 An amendment to an appropriation bill in the form of a limitation but containing the word "hereafter" was held to be legislation and not in order.

On Jan. 31, 1936,[15] during consideration in the Committee of the Whole of the Department of the Interior appropriation bill (H.R. 10630), a point of order was raised against the following amendment:

Amendment offered by Mr. (Byron N.) Scott (of California): On page 48, line 13, after the word "Interior", add: "*Provided,* That hereafter no part of any appropriation for these Indian schools shall be available for the salary of any person teaching or advocating the legislative program of the American Liberty League."

MR. [EDWARD T.] TAYLOR OF Colorado: Mr. Chairman, I make a point of order against the amendment. It is legislation on an appropriation bill. . . .

THE CHAIRMAN:[16] The Chair is ready to rule. The word "hereafter" in the amendment makes the provision permanent legislation. Permanent legislation on an appropriation bill would not be in order. The language of the amendment here offered not only applies to the appropriations of this bill but it would apply to subsequent ap-

15. 80 CONG. REC. 1300, 1305, 1306, 74th Cong. 2d Sess.

16. Robert L. Doughton (N.C.).

propriations. Therefore, the amendment contains legislation; and the point of order is sustained.

Change in Administrative Policy by Negative Restriction on Use of Funds

§ 64.22 While a limitation may not involve a permanent change of existing law, the allegation that it may result in a change of administrative policy would not itself render it subject to a point of order if only a negative limitation on use of funds.

On May 11, 1960,[17] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 12117), a point of order was raised against the following section:

> Sec. 408. No part of the funds appropriated by this Act shall be used to pay the compensation of any employee or officer of the Department, except the Secretary of Agriculture, who, in addition to other regularly assigned responsibilities, serves as a member of the Board of Directors or as an officer of the Commodity Credit Corporation after February 1, 1961.
>
> MR. [PAUL] BROWN of Georgia: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[18] The gentleman will state it.

MR. BROWN of Georgia: Mr. Chairman, section 408 provides that none of the funds appropriated by H.R. 12117, making appropriations for the Department of Agriculture and Farm Credit Administration, shall be used to pay the salary of any officer or employee of the Department—except the Secretary—who serves as a member of the Board of Directors of CCC, or as an officer of CCC, in addition to other regular duties with the Department.

This reverses a decision made by the Banking and Currency Committee and the Congress in 1949, when the CCC Charter Act was amended to strike out a similar restriction which had been enacted in 1948. It is, therefore, legislation, and the mere fact it is put in the form of a limitation on the use of funds appropriated by the bill does not save it. As paragraph 1691, volume 7, of Cannon's Precedents of the House of Representatives puts it:

> 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 of policy rather than a matter of administrative detail it is not in order.

Again in paragraph 1606 of the same volume, the following is found:

> Whenever a purported limitation makes unlawful that which before was 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

17. 106 CONG. REC. 10053, 10054, 86th Cong. 2d Sess.

18. Paul J. Kilday (Tex.).

ceases to be a limitation and becomes legislation.

Section 408 in effect requires the Secretary to take affirmative action. To carry out the farm programs financed by CCC, the Secretary would have to appoint new Board members, recruited from private life, to replace the six Department officers other than himself who now serve on the Board. He would also have to recruit and appoint new personnel to serve as officers of the Corporation. This not only means the section constitutes legislation, but also means it is not entitled to the protection of the Holman rule, because it would not save the Government money. On the contrary, it would require hiring new employees at additional expense to the Government.

THE CHAIRMAN: Does the gentleman from Mississippi [Mr. Whitten] desire to be heard on the point of order?

MR. [JAMIE L.] WHITTEN: Mr. Chairman, the section clearly provides a limitation on the use of funds that are appropriated in this bill. It does not change the Commodity Credit Corporation charter. It does not change any basic law. It just simply limits what the money in this bill can be used for. It has been my experience and observation during the years here that the Chair has many times said that it is a negative limitation on the use of money and that it is clearly in order, and on that I rest the committee's position.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Georgia [Mr. Brown] makes a point of order against the language in section 408 of the bill on the ground that it constitutes legislation on an appropriation bill.

The Chair has had an opportunity to examine the precedents in this connection, including the precedents to which the gentleman from Georgia has referred and from which he has read. The Chair would also refer to paragraph 1694 of Cannon's Precedents, volume 7, the language being:

> While a limitation may not involve change of existing law or affirmatively restrict executive direction, it may properly effect a change of administrative policy and still be in order.

The Chair has examined additional precedents bearing on this question. The Chair is constrained to hold that section 408 is a restriction on a manner in which the funds can be used, and constitutes a negative limitation, and, therefore, overrules the point of order.

Parliamentarian's Note: There are other recent rulings in which the Chair has chosen to rely on 7 Cannon's Precedents § 1694 rather than on § 1691 in permitting limitations on use of funds. See 118 CONG. REC. 30749, 30750, 92d Cong. 2d Sess., Sept. 14, 1972; 120 CONG. REC. 20601, 20602, 93d Cong. 2d Sess., June 21, 1974; 120 CONG. REC. 34716, 93d Cong. 2d Sess., Oct. 9, 1974. The two rulings noted above, found at 7 Cannon's Precedents §§ 1691 and 1694, are discussed in more detail in § 5s1, supra.

Burden of Proof as to Whether Language "Changes Existing Law"

§ 64.23 The Chair strictly interprets the provisions of

Rule XXI clause 2 prohibiting amendments to general appropriation bills which change existing law; and if a proposed limitation on the use of funds goes beyond the traditionally permissible objects of a limitation, as for example restricting discretion in the timing of expenditure of funds rather than restricting their use for a specific object or purpose, the Chair is constrained to rule that the amendment is legislation failing a convincing argument by the proponent showing that the amendment does not change existing law.

On July 28, 1980,[19] the Committee of the Whole having under consideration the Department of Housing and Urban Development, and independent agencies appropriation bill (H.R. 7631), an amendment was offered and ruled upon as follows:

MR. [HERBERT E.] HARRIS [II, of Virginia): Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Harris: Page 45, after line 23, insert the following:

Sec. 413. No more than an amount equal to 20 percent of the total funds appropriated under this Act for any agency for any fiscal year and apportioned to such agency pursuant to section 3679 of the Revised Statutes of the United States (31 U.S.C. 665) may be obligated during the last two months of such fiscal year. . . .

THE CHAIRMAN:[20] Does the gentleman from Indiana (Mr. Myers) insist on his point of order?

MR. [JOHN T.] MYERS of Indiana: I do, Mr. Chairman.

Mr. Chairman, the gentleman has offered an amendment to limit the appropriations to a specific time; but I respectfully suggest that the fact the gentleman has added the words, "No more than" is still not, in fact, a limitation. . . .

Mr. Chairman, the fact that you are limiting here, not directing, but limiting the authority to the last 2 months how much may be spent takes away the discretionary authority of the Executive which might be needed in this case. It clearly is more than an administrative detail when you limit and you take away the right of the Executive to use the funds prudently, to take advantage of saving money for the Executive, which we all should be interested in, and I certainly am, too; but Mr. Chairman, rule 843 provides that you cannot take away that discretionary authority of the Executive.

This attempt in this amendment does take that discretionary authority to save money, to wisely allocate money prudently and it takes away, I think, authority that we rightfully should keep with the Executive, that you can accumulate funds and spend them in the last quarter if it is to the advantage of the taxpayer and the Executive. . . .

19. 126 CONG. REC. 19924, 19925, 96th Cong. 2d Sess.

20. Elliott H. Levitas (Ga.).

MR. HARRIS: . . . Mr. Chairman, let me first address the last point, probably because it is the weakest that the gentleman has made with respect to his point of order.

With respect to the discretion that we are in any way limiting the President, we cannot limit the discretion which we have not given the President directly through legislation. There is no discretion with regard to legislation that we have overtly legislated and given to the President.

Mr. Chairman, section 665(c)(3) of title 31 of the United States Code, which states the following:

> Any appropriation subject to apportionment shall be distributed as may be deemed appropriate by the officers designated in subsection (d) of this section to make apportionments and reapportionments.

Clearly grants agency budget officers the discretionary authority to apportion the funds in a manner they deem appropriate. My amendment would not interfere with this authority to apportion funds. On the contrary, my amendment reaffirms this section of the United States Code, as Deschler's Procedures, in the U.S. House of Representatives, chapter 26, section 1.8, states:

> The provision of the rule forbidding in any general appropriation bill a "provision changing existing law" is construed to mean the enactment of law where none exists, or a proposition for repeal of existing law. Existing law may be repeated verbatim in an appropriation bill, but the slightest change of the text causes it to be ruled out.

My amendment, Mr. Chairman, as the Chair will note, specifically restates by reference the existing law, which in no way gives discretion as to spending, but gives discretion as to apportionment.

Mr. Chairman, as the Chair knows, the budget execution cycle has many steps. Whereas the Chair's earlier ruling related to the executive branch authority to apportion, my amendment addresses the obligation rate of funds appropriated under the fact. As OMB circular No. A–34 (July 15, 1976) titled "Budget Execution" explains:

> Apportionment is a distribution made by OMB.
>
> Obligations are amounts of orders placed, contracts awarded, services received, and similar transactions.

Mr. Chairman, my amendment proposes some additional duties, but only a very minimal additional duty upon the executive branch.

Deschler's chapter 26, section 11.1 says:

> The application of any limitation on an appropriation bill places some minimal extra duties on Federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation. . . .

THE CHAIRMAN: . . . In the first instance, the Chair would observe that it is not the duty of the Chair or the authority of the Chair to rule on the wisdom or the legislative effect of amendments.

Second, the Chair will observe that the gentleman from Virginia, in the way in which his amendment has been drafted, satisfies the requirements of the Apportionment Act, which was the subject of a prior ruling of the Chair in connection with another piece of legislation.

The Chair agrees with the basic characterization made by the gentleman from Indiana that the precedents of the House relating to limitations on general appropriation bills stand for the proposition that a limitation to be in order must apply to a specific purpose, or object, or amount of appropriation. The doctrine of limitations on a general appropriation bill has emerged over the years from rulings of Chairmen of the Committee of the Whole, and is not stated in clause 2, rule XXI itself as an exception from the prohibition against inclusion of provisions which "change existing law." Thus the Chair must be guided by the most persuasive body of precedent made known to him in determining whether the amendment offered by the gentleman from Virginia (Mr. Harris) "changes existing law." Under the precedents in Deschler's Procedure, chapter 26, section 1.12, the proponent of an amendment has the burden of proving that the amendment does not change existing law.

The Chair feels that the basic question addressed by the point of order is as follows: Does the absence in the precedents of the House of any ruling holding in order an amendment which attempts to restrict not the purpose or object or amount of appropriation, but to limit the timing of the availability of funds within the period otherwise covered by the bill, require the Chair to conclude that such an amendment is not within the permissible class of amendments held in order as limitations? The precedents require the Chair to strictly interpret clause 2, rule XXI, and where language is susceptible to more than one interpretation, it is incumbent upon proponent of the language to show that it is not in violation of the rule (Deschler's chapter 25, section 6.3).

In essence, the Chair is reluctant, based upon arguments submitted to him, to expand the doctrine of limitations on general appropriation bills to permit negative restrictions on the use of funds which go beyond the amount, purpose, or object of an appropriation, and the Chair therefore and accordingly sustains the point of order.

Limiting Commingled Funds

§ 64.24 As long as a limitation on the use of funds in a general appropriation bill restricts the expenditure of federal funds carried in the bill without changing existing law, the limitation is in order, even if those federal funds are under the program in question commingled with nonfederal funds which would have to be accounted for separately in carrying out the limitation.

On Aug. 20, 1980,[1] the Chair ruled that an amendment to a general appropriation bill denying the use of funds therein to pay for an abortion, or administrative expenses in connection with any federal employees' health benefits plan which provides any benefits or coverage for abortions after the

1. 126 CONG. REC. 22171, 22172, 96th Cong. 2d Sess.

last day of contracts currently in force, did not constitute legislation, since the amendment did not directly interfere with executive discretion (in contracting to establish such plans). (It is permissible by limitation to negatively deny the availability of funds although discretionary authority may be indirectly curtailed and contracts may be left unsatisfied.) The proceedings are discussed in § 74.5, infra. See § 51, supra, for discussion of provisions affecting the discretionary authority of officials.

Limitation Resulting in Unsatisfied Contracts

§ 64.25 An appropriation may be withheld from a designated object by a negative limitation on the use of funds in a general appropriation bill, although contracts may be left unsatisfied thereby.

On July 10, 1975,[2] an amendment to a general appropriation bill prohibiting the use of Interstate Highway System funds in the bill by any state which permits the Interstate System to be used by vehicles in excess of certain sizes and weights but not interfering with contractual obligations entered into prior to enactment was held in order as a negative limitation on the use of funds in the bill which did not impose new duties on federal officials (who were already under an obligation to determine vehicle weights and widths in each state) and which did not directly change an allocation formula in existing law. The proceedings are discussed in detail in § 69.8, infra.

Limitation Interfering With Discretion

§ 64.26 A negative restriction on the availability of funds in a general appropriation bill may be a proper limitation, although it indirectly interferes with an executive official's discretionary authority by denying the use of funds, as long as it does not directly amend existing law and is merely descriptive of functions and findings already required to be undertaken by existing law.

On June 24, 1976,[3] it was held that, where existing law prohibited the implementation by any court, department, or agency of a plan to transport students to a school other than the school nearest or next nearest their homes

2. 121 CONG. REC. 22006, 22007, 94th Cong. 1st Sess.

3. 122 CONG. REC. 20408–10, 94th Cong. 2d Sess.

which offers the appropriate grade level and type of education for each student (thus requiring determinations of school proximity and curriculum to be made by federal officials), a paragraph in a general appropriation bill prohibiting the use of funds therein for the transportation of students to a school other than the school nearest their homes and offering the courses of study pursued by such students was in order as a negative limitation on the use of funds in that bill which did not directly amend existing law and which did not impose new determinations on federal officials which they were not already required by law to make. The proceedings were as indicated below:

The Clerk read as follows:

> Sec. 208. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, and which offers the courses of study pursued by such student, in order to comply with title VI of the Civil Rights Act of 1964. . . .

MR. [LOUIS] STOKES [of Ohio]: Mr. Chairman, I make the point of order that the language set forth in section 208 of this bill constitutes legislation in an appropriation bill, in clear violation of rule XXI, section 2. . . .

Under existing law, that is, section 215(a) of the Equal Educational Opportunity Act of 1974 (title II of P.L. 93–380, enacted August 21, 1974), the transportation of students as part of a school desegregation plan or effort under mandate of Federal authorities is permitted or authorized, but only within prescribed distances from a student's home.

Section 215(a) prescribes that:

> No court, department, or agency of the United States shall, pursuant to Section 214, order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

Mr. Chairman, this is the standard of existing law, governing the ordering of transportation of a student for purposes of school desegregation, that is, not beyond the school closest or next closest to his place of residence. . . .

On its face, section 208, the so-called Byrd amendment, changes existing law (section 215(a) cited above) in the following particulars:

First: Whereas existing law permits the transportation of a student to the closest or "next closest" school, section 208 restricts such transportation to the "nearest" school, only, thereby changing existing law;

Secondly: Whereas existing law is silent on the point, section 208 forbids student transportation "directly or indirectly" beyond the "closest" school, thereby creating new law on that point;

Third: Whereas existing law only forbids HEW's implementation of a school desegregation plan requiring transportation beyond the "next closest" school, section 208 forbids transportation be-

yond the "closest" school, plan or no plan, thereby changing existing law; and

Fourth: Whereas existing law prohibits transportation to a school other than one "which provides the appropriate grade level and type of education for such student", section 208 of this appropriation bill changes existing law by restricting such transportation to a school "which offers the courses of study pursued by such student", only. While section 208 would be in order if it merely repeated, verbatim, the provisions of existing law (that is, section 215(a) described above), it clearly differs from, goes beyond, and changes section 215(a) in the several ways that I have indicated.

That, Mr. Chairman, is a fatal defect, for subsection 842 of rule XXI declares existing law may be repeated verbatim in an appropriation bill (IV Hinds' precedents, 3814, 3815) but the slightest change of the text causes it to be ruled out (IV Hinds' precedents 3817; Cannon's precedents 1391, 1394; Cong. Record, June 4, 1970, p. 18405). . . .

Mr. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, very simply, and very clearly, and the legal minds will understand the terminology, this provision is in the form of a limitation, period. It is strictly limited to the funds appropriated in this bill. The clear intent here is to impose what is known as a negative prohibition—a negative prohibition—of the use of the funds contained in this bill. It would not under any circumstances impose any additional duties or any additional burdens on the executive branch other than those already required in the enforcement of existing law. . . .

THE CHAIRMAN:[4] May the Chair inquire of the chairman of the Appropriations Subcommittee with respect to whether or not the terms of section 208 would require additional determinations by the administrator. The Chair would ask the gentleman from Pennsylvania for his response as to whether the standard of an appropriate grade level and type of education for such students, which is stipulated in the Equal Educational Opportunity Act of 1974, is a different standard from that set forth in section 208 of the bill pending before us—that is, courses of study pursued by such student.

The question that the Chair is attempting to arrive at basically is whether or not the requirement of a determination with respect to courses of study pursued by such student would in any substantial way differ from the requirement in the statute of a determination of the appropriate grade level and type of education offered by the schools.

MR. FLOOD: No, Mr. Chairman, the direct answer is this does not require different standards. It is merely an expression in a different way. It is not a requirement of any different standards. It is an expression in a different way.

THE CHAIRMAN: The Chair thanks the gentleman from Pennsylvania. The Chair is prepared to rule.

The gentleman from Ohio (Mr. Stokes) makes the point of order against section 208 of the present bill and supports his point of order with a well documented brief and very persuasive verbal argument on the subject.

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

Basically, three questions seem to be involved. The first question is whether or not section 208 repeals or changes existing law.

It seems to the Chair that that question is answered satisfactorily by the chairman of the subcommittee when he declares that it does not directly amend existing law, but rather imposes a negative restriction only with respect to moneys contained in this present appropriation bill and that it is written as a limitation upon funds in this bill.

The second question occurs, of course, as to whether or not it imposes additional duties upon a Federal official.

That divides itself into two basic subquestions in the opinion of the Chair.

The first is whether the requirement in section 208 referring only to the school nearest the student's residence requires an additional duty over and above that required under the Equal Education Opportunity Act of 1974. That law proscribes a court or department or agency from ordering the transportation of students to schools other than those either closest or next closest to their homes. The Chair believes that no additional duties would be imposed upon the Administrator by section 208 of the bill since the Administrator already is required under existing law to make determinations to ascertain the existence and location of the comparable schools nearest and next nearest to the students' homes. Therefore the Chair feels that the determination of the existence of the school nearest the student's home would not be an additional burden in that the law already compels the Administrator to make that finding.

The second subquestion involved is that of whether or not an additional burden would be imposed by reason of the reference under section 208 to "the courses of study pursued by such student" in the schools involved. And the Chair, relying primarily upon the information provided in response to its inquiry by the gentleman from Pennsylvania and relying upon his own impression as well believes that "the courses of study pursued by such student" are essentially the same tests as that required in the Equal Education Opportunity Act, the appropriate grade level and type of education.

Now only one other question was addressed, it seems to the Chair, and that was the question bearing upon a fairly well established rule to the effect that existing law may be repeated verbatim in an appropriation bill but the slightest change of the text causes it to be ruled out. The Chair does not believe that section 208 purports to be a statement of existing law. For each of these reasons, and based upon the precedent cited by the gentleman from Pennsylvania and recognizing that the committee could have refused to appropriate any funds for implementation of transportation plans, the Chair believes that section 208 is properly in order as a limitation on an appropriation bill and overrules the point of order.

Prohibiting Use of Funds to Enforce Particular Internal Revenue Service Ruling

§ 64.27 An amendment to a general appropriation bill

prohibiting the use of funds therein to carry out any ruling of the Internal Revenue Service which rules that taxpayers are not entitled to certain charitable deductions was held in order as a limitation, since the amendment was merely descriptive of an existing ruling already promulgated by that agency and did not require new determinations as to the applicability of the limitation to other categories of taxpayers.

On July 16, 1979,[5] during consideration in the Committee of the Whole of H.R. 4393 (Treasury Department, Postal Service, and general government appropriation bill), a point of order against an amendment was overruled, as follows:

The Clerk read as follows:

Amendment offered by Mr. [Robert K.] Dornan [of California]: Page 39, after line 18, add the following new section:

Sec. 613. None of the funds available under this Act may be used to carry out any revenue ruling of the Internal Revenue Service which rules that a taxpayer is not entitled to a charitable deduction for general purpose contributions which are used for educational purposes by a religious organization which is an exempt organization as described in section 170(c)(2) of the Internal Revenue Code of 1954. . . .

MR. [TOM] STEED [of Oklahoma]: Mr. Chairman, I want to insist upon my point of order.

Regardless of the merit of the subject matter here, this obviously is not a limitation on an appropriation. It is evident by the author's own statement that many things will be involved if this amendment is adopted, that would be forced upon the agency, that are not otherwise involved. It is in direct violation of clause 2, rule XXI, because it does create legislative action.

This is obviously a matter that only the legislative committee can cope with, and so because it is a violation of that rule I insist that the point of order be sustained. . . .

MR. DORNAN: . . . I can assure the gentleman from Oklahoma (Mr. Steed) that I checked out this amendment with the Parliamentarian's Office, and I was told that the amendment was in order as a limitation on an appropriations bill. There is no additional burden imposed on Federal executive offices. IRS officials already perform the simple ministerial requirement of analyzing our tax returns. The amendment is negative in nature. It shows retrenchment on its face. It is germane. Nevertheless, for the benefit of the gentleman, if he desires, I will read some relevant excerpts from Cannon's Precedents which demonstrate that the amendment is in order. . . .

[I]n section 1515:

An amendment prohibiting payment of fees to officials under certain contingencies was held to retrench expenditures and to come within the exception to the rule against admis-

5. 125 CONG. REC. 18808–10, 96th Cong. 1st Sess.

sion of legislation on appropriation bills. . . .

Section 1491:

> If the obvious effect of an amendment is to reduce expenditures, it is not necessary that it provide for such reduction in definite terms and amount in order to come within the exception.

Section 1493, and I will conclude with this one—

> A cessation of Government activities was held to involve a retrenchment of expenditures. . . .

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, this amendment obviously adds a burden to the IRS to establish a different standard from that which would be applicable under existing law. If it did not, the amendment would be of no effect. What is attempted to be done here is to provide a different rule of law and impose that on the IRS by what is called a retrenchment in an appropriations bill. If this may be done in the name of retrenchment of expenditures, then any law of this Nation may be changed. Funds may not be permitted to go to any agency which makes a determination of an administrative sort unless that determination is different from that which the law would permit to apply under the circumstances. . . .

THE CHAIRMAN:[6] The Chair is prepared to rule on the point of order. The Chair is of the opinion that retrenchment precedents under the Holman rule, do not apply in this situation since no certain reduction in funds is involved. The Chair is of the opinion that there are no precedents directly in point and the Chair is not aware that the gentleman has sought the advice of the Chair's advisers on this particular amendment but on a somewhat similar amendment.

The Chair is of the opinion that what is involved in the amendment is a particular ruling which applied to a single case and that, therefore, no new determination has to be made by the IRS. It does not require the IRS to make new rulings or determinations. The amendment does not describe a situation where the IRS must look at every religious contribution to determine if it applies. The amendment is somewhat analogous to that in Deschler's [Procedure], chapter 25, section 10.16, which was held in order.

Therefore, the Chair thinks the amendment is in order, and the point of order is overruled.

Parliamentarian's Note: A different result might now be required under clause 5(b) of the present Rule XXI, which provides:[7]

> No bill or joint resolution carrying a tax or tariff measure shall be reported by any committee not having jurisdiction to report tax and tariff measures, nor shall an amendment in the House or proposed by the Senate carrying a tax or tariff measure be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A question of order on a tax or tariff measure in any such bill, joint resolution, or amendment thereto may be raised at any time.

6. Richardson Preyer (N.C.).

7. *House Rules and Manual* § 846b, 99th Cong. (1985).

In a ruling under this provision on Sept. 12, 1984,[8] a Senate amendment to a general appropriation bill prohibiting the use of funds in that or any other act by the Internal Revenue Service to impose or assess any tax due under a designated provision of the Internal Revenue Code was held to be a tax measure within the meaning of Rule XXI clause 5(b), as it had the effect of repealing a tax by rendering it uncollectable through the use of all funds available to the collecting agency. Of course, the amendment in question in the 1984 ruling was not a proper limitation. The extent to which any and all proper limitations on Internal Revenue Service funds are to be construed as tax or tariff measures under Rule XXI clause 5(b) is a matter to be spelled out in subsequent rulings. For example, on Aug. 1, 1986, during consideration of H.R. 5294 (Treasury Department and Postal Service appropriation bill for fiscal 1987), it was held that a proposed limitation on the use of funds may violate Rule XXI clause 5(b) where it is shown that the imposition of the restriction on Internal Revenue Service funding for the fiscal year would effectively and inevitably preclude the IRS from collecting revenues otherwise due and owing by law, or require collection of revenue not legally due or owing.

Restricting Use of Funds—to Carry Out Particular Regulation

§ 64.28 It is in order on a general appropriation bill to deny the use of funds to carry out an existing regulation, and the fact that the regulation for which funds are denied may have been promulgated pursuant to court order and pursuant to constitutional provisions is an argument on the merits of the amendment and does not render it legislative in nature.

On Aug. 19, 1980,[9] the Chair held that an amendment to a general appropriation bill denying the use of funds therein for the Internal Revenue Service to carry out certain published tax procedures did not impose new duties or determinations on the executive branch and did not constitute leg-

8. 130 CONG. REC. ——, 98th Cong. 2d Sess. Under consideration was H.R. 5798, Treasury Department and Postal Service appropriations for fiscal 1985.

9. 126 CONG. REC. 21981, 21983, 21984, 96th Cong. 2d Sess.

islation. The proceedings were as indicated below:

The Clerk read as follows:

Amendment offered by Mr. [Robert K.] Dornan [of California]: Page 8, after line 22, insert the following new sections:

Sec. 104. None of the funds appropriated by this title may be used to carry out the proposed revenue procedure 4830–01–M of the Internal Revenue Service entitled "Proposed Revenue Procedure on Private Tax-Exempt Schools" (44 F.R. 9451 through 9455, February 13, 1979, F.R. Document 79–4801), or the proposed revenue procedure 4830–01 of the Internal Revenue Service entitled "Proposed Revenue Procedure on Private Tax-Exempt Schools" (43 F.R. 37296 through 37298, August 22, 1978, F.R. Document 78–23515); or parts thereof. . . .

MR. [CHARLES B.] RANGEL [of New York]: Mr. Chairman, I join in a reservation of a point of order. . . .

Mr. Chairman, I think what we are doing is that we are attempting again to legislate on an appropriation bill. It is clear that the proponents of this type of amendment on previous occasions were saying that the IRS has attempted to legislate and to go beyond the scope that the Congress wanted to go and that they were waiting for a court to review the jurisdiction of the IRS to make certain that they would not be doing acts which this Congress has the responsibility to perform.

Now we find that the courts have responded, and they responded specifically not only to the proposed regulations but to the constitutional obligations that we not fund schools that involved themselves in racial discrimination; and certainly no Member of the House, including the proponents of this amendment, would support that. But they have specifically given guidelines. They have directed what the Commissioner of the Internal Revenue would have to do, and the Commissioner would indeed be guilty of contempt if he did not follow those court directions.

It would seem to me that that is one argument as to why my point of order should be sustained; but my second argument would be that certainly it would not be equal protection under the law if what the proponent of this amendment is really saying that if, indeed, a teaching institution found itself losing its tax exemption in Mississippi because of the Green case and then right across the Mississippi River we found a different standard that had been enacted by the IRS, I do not believe that this is what our constitutional fathers really thought was equal protection under the law. . . .

MR. DORNAN: . . . I refer again to Deschler's Procedure, chapter 25, section 10.16:

§ 10.16 To a paragraph of a general appropriation bill containing funds for expenses of the Internal Revenue Service, an amendment prohibiting the use of any funds in the bill for financing revenue rulings, letters, or advice not made available to the general public was held in order as a negative limitation which did not affirmatively impose new duties on that agency. 120 CONG. REC. 21029, 21030, 93d Cong. 2d Sess., June 25, 1974 [H.R. 15544].

Under section 10.18:

§ 10.18 While language in a general appropriation bill may not by its terms directly curtail a discretionary authority conferred by law, the Committee on Appropriations may, by re-

fusing to recommend funds for all or part of an authorized executive function, thereby effect a change in policy to the extent of its denial of availability of funds. 120 CONG. REC. 34716, 34717, 93d Cong. 2d Sess., Oct. 8, 1974 [H.R. 16901], where a section in a general appropriation bill prohibiting the use of any funds therein by the Environmental Protection Agency—

As a case example—

"to administer any program to tax, limit or otherwise regulate parking facilities" was held in order as a negative limitation on the use of funds in the bill.

Also, I think section 10.19 supports my amendment:

§ 10.19 It is in order on a general appropriation bill to provide that no part, or only a specified amount, of an appropriation shall be used in a certain way, even though executive discretion be thereby negatively restricted. 118 CONG. REC. 30749, 92d Cong. 2d Sess., Sept. 14, 1972 [H.R. 16593]—

They gave as an example:

where an amendment to a defense appropriation bill providing that not more than a certain amount of funds therein for alteration, overhaul, and repair of naval vessels shall be available for such work in Navy shipyards was held in order as a limitation on the use of funds in the bill. . . .

MR. [LOUIS] STOKES [of Ohio]: Mr. Chairman, the word "charitable" is used in its common law sense in the Internal Revenue Code. . . .

In the case of education, the . . . public policy of nondiscrimination in both public and private schools [is well established, being] derived from the 14th amendment to the Constitution and its application in the case of Brown versus Board of Education, subsequent judicial decisions and certain provisions of the Civil Rights Act of 1964. Thus, schools which follow discriminatory admission policies fail to qualify as charitable and, therefore, are not tax exempt.

Under the amendment proposed by the gentleman from California, Mr. Chairman, new duties are imposed upon the Internal Revenue Service. Obviously, we are then legislating upon an appropriations bill. . . .

Obviously, once again we are referring back to the previous law of 1978, while in the interim period we have now had new Federal judicial determinations relative to 501(C).

As the gentleman from New York (Mr. Rangel) made a very salient point, is the fact that you cannot have Internal Revenue in the posture where they must apply one set of rules and regulations to the State of Mississippi and another set of rules and regulations to the other 49 States.

Obviously, the amendment proposed by the gentleman would create confusion and also would impose new duties and regulations upon the Internal Revenue Service not previously imposed upon them, either by the law or their own regulations. . . .

THE CHAIRMAN PRO TEMPORE:[10] . . . [T]he Chair is prepared to rule.

In a similar instance on July 16, 1979, an amendment to this general appropriations bill last year prohibiting the use of funds therein to carry out any ruling of the Internal Revenue Service, which rules that taxpayers are

10. Richardson Preyer (N.C.).

not entitled to certain charitable deductions, was held in order as a limitation, since the amendment was merely descriptive of an existing ruling already promulgated by that agency and did not require a new determination as to the applicability of the limitation to other categories of taxpayers.

In essence, the wording of this amendment is similar to the wording of the amendment which was found in order. The Chair does not see any new duties in any way imposed by the amendment.

With reference to the court order issue, the language of the amendment does not in any way speak to the question of court orders or address the viability of court orders with regard to the agency's actions.

Lastly, with regard to the equal protection clause argument, although those may be constitutional arguments which go to the substance of the amendment, they do not go to the merits of the parliamentary argument.

Therefore, the point of order is overruled.

—*For Changing an Existing Regulation*

§ 64.29 While an agency may have authority to promulgate new regulations which would change existing regulations, it is in order in a general appropriation bill to deny the use of funds therein for agency proceedings relating to changes in regulations.

The ruling of the Chair on June 27, 1984,[11] was that language in a general appropriation bill prohibiting the use of funds therein to eliminate an existing legal requirement for sureties on customs bonds was in order as a valid limitation merely denying funds to change existing law and regulations. The point of order was as follows:

MR. [BILL] FRENZEL [of Minnesota]: Mr. Chairman, I make a point of order against section 513 on page 38.

The portion of the bill to which the point of order relates is as follows:

> Sec. 513. None of the funds made available by this Act for the Department of Treasury may be used for the purpose of eliminating any existing requirement for sureties on customs bonds. . . .

[This provision] violates rule XXI, clause 2. The section prohibits the use of funds for the continuation of customs rulemaking with respect to existing requirements for sureties on customs bonds.

The Customs Service has broad administrative authority to establish guidelines for posting bonds for the payment of customs duties.

The rulemaking process is now underway to determine whether existing requirements for sureties on customs bonds should be modified or replaced altogether.

Section 513 goes beyond the limitations of funds which are the subject of this appropriation and constitutes an effort to change existing law under the guise of a limitation. . . .

THE CHAIRMAN:[12] The Chair is ready to rule. . . .

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11. 130 CONG. REC. ——, 98th Cong. 2d Sess.

12. Anthony C. Beilenson (Calif.).

The Chair would rule that in fact this section does constitute a proper limitation consistent with the existing law and overrules the gentleman's point of order.

New Duties Required to Invalidate Limitation

§ 64.30 While all limitations on funds on appropriation bills require federal officials to construe the language of that law in administering those funds, that duty of statutory construction, absent a further imposition of an affirmative direction not required by law, does not destroy the validity of the limitation.

On June 27, 1974,[13] an amendment restricting the use of funds in an appropriation bill for abortions or abortion referral services, abortifacient drugs or devices, and the promotion or encouragement of abortion, was held to be a negative limitation on funds in the bill imposing no new duties on federal officials other than to construe the language of the limitation in administering the funds. The proceedings are discussed in § 73.8, infra.

13. 120 CONG. REC. 21687, 93d Cong. 2d Sess.

§ 65. Imposing "Incidental" Duties

Duties Already Required by Law

§ 65.1 The fact that a limitation on the use of funds in a general appropriation bill will impose certain incidental burdens on executive officials will not destroy the character of the limitation so long as those duties—such as statistical comparisons and findings of residence and employment status—are already mandated by law.

On Aug. 25, 1976,[14] the Chair held that, where existing law authorizing public works employment programs required a federal official to consider the severity and duration of unemployment in project areas and to make grants to local governments to be administered for the direct benefit and employment of unemployed residents of the affected community, language in a general appropriation bill prohibiting the use of funds therein where less than a certain percentage of the prospec-

14. 122 CONG. REC. 27737–39, 94th Cong. 2d Sess. See also § 52, supra, for general discussion of provisions imposing new duties on executive officials. And see § 73.8, infra.