

gress,” was construed to have voided all previous authorizations for appropriations to that agency; hence an appropriation was held not to be in order since not authorized by law enacted after the repeal.

On June 29, 1959,⁽⁶⁾ during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7978), a point of order was raised against certain provisions of the bill:

The Clerk read as follows:

RESEARCH AND DEVELOPMENT

For an additional amount for “Research and development,” fiscal year 1959, \$18,675,000, to remain available until expended.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a point of order.

THE CHAIRMAN:⁽⁷⁾ The gentleman will state his point of order.

MR. GROSS: Mr. Chairman, I make the point [of] order against the language on page 4, lines 2, 3, and 4, on the ground that there is no authorization in basic law for this appropriation to be made.

In connection with that, I send a copy of Public Law 86-45 of the 86th Congress to the Chair. I make the point of order on the ground that there is no authorization in basic law for this appropriation to be made. The author-

6. 105 CONG. REC. 12125, 86th Cong. 1st Sess.

7. Paul J. Kilday (Tex.).

ization for this appropriation did exist at one time, but it was repealed by the act of June 15, 1959, Public Law 86-45, section 4, which reads as follows:

Sec. 4. Notwithstanding the provisions of any other law, no appropriation may be made to the National Aeronautics and Space Administration unless previously authorized by legislation hereafter enacted by the Congress.

This law, Mr. Chairman, was approved on June 15, 1959. This language clearly indicates, Mr. Chairman, that appropriations can be made for items authorized by legislation which is hereafter enacted, meaning after June 15, 1959. Section 4 clearly states that appropriations can be made only for items authorized after June 15, 1959, hence all previous authorizations are voided. . . .

THE CHAIRMAN: The gentleman from Iowa has made a point of order against that portion of the bill appearing in lines 2, 3, and 4, page 4, and has called the attention of the Chair to section 4 of Public Law 86-45. In view of the language cited, the Chair sustains the point of order.

§ 3. Reappropriations

A House rule states:

No general appropriation bill or amendment thereto shall be received or considered if it contains a provision reappropriating unexpended balances of appropriations; except that this provision shall not apply to appropriations in continuation of appropriations for public works on which work has commenced.⁽⁸⁾

8. Rule XXI clause 5 (renumbered as clause 6 beginning with the 94th

The rule is not applicable when the reappropriation language is identical to legislative authorization language enacted subsequent to the adoption of the rule, since the law is a more recent expression of the will of the House.⁽⁹⁾

The precedents in this section must be compared with those carried in Chapter 26, *infra*, discussing transfer of funds affecting other appropriations, wherein provisions which sought to authorize the transfer of previously appropriated funds into new accounts for a different purpose have been ruled out as legislation changing existing law in violation of clause 2 Rule XXI. Section 139(c) of the Legislative Reorganization Act of 1946, later incorporated into the standing rules as clause 5 (now clause 6) of Rule XXI in 1953, sought to preclude reappropriations of unexpended balances, which were understood to be legislative methods (1) for making an appropriation available after the period in which it may be obligated has expired, or (2) for transferring to a given appropriation an amount not needed in another appropriation.⁽¹⁰⁾ Prior to 1946,

provisions which reappropriated in a direct manner unexpended balances and continued their availability for the same purpose for an extended period of time were not prohibited by Rule XXI because those provisions did not contain direct language changing existing law by conferring new authority (see, e.g., 4 Hinds' Precedents §3592; 7 Cannon's Precedents §1152), and this doctrine was extended even to include reappropriations for different purposes than those for which originally appropriated, if the new purposes were authorized by law (see, e.g., 7 Cannon's Precedents §1158; §3.14, *infra*). Other precedents, however, indicate that prior to 1946, propositions to make an appropriation payable from funds already appropriated for a different purpose have been ruled out as legislation (see e.g., 7 Cannon's Precedents §1466). Indeed, on Dec. 14, 1921, Speaker Frederick H. Gillett, of Massachusetts, stated that "there are several decisions in print which are contradictory. There are decisions both ways." (7 Cannon's Precedents §1158). In light of more recent precedents contained in

Congress), *House Rules and Manual* §847 (1981).

9. See §3.7, *infra*.

10. See, e.g., summary of hearings, Joint Committee on the Organization of

Congress, 79th Cong. 1st Sess., p. 824, June 19, 1945 (hearing on the Legislative Reorganization Act of 1946).

Chapter 26, *infra*, however, it would appear that the Chair may properly rule out as legislation in violation of clause 2 Rule XXI provisions on a general appropriation bill which confer new authority to expend previously appropriated funds for a new purpose or for unauthorized projects by inclusion of language permitting or mandating transfers between accounts. Both that chapter and this section indicate that the Chair has on occasion relied upon both clause 2 and clause 5 of Rule XXI to rule out provisions which sought to authorize the transfer of previously appropriated funds into new accounts. Despite the conferral of Rule X clause 1(b)(3) in the 93d Congress of jurisdiction over "transfers of unexpended balances" upon the Committee on Appropriations, that committee remains restricted by clause 5 (now clause 6) of Rule XXI from including reappropriations of unexpended balances of appropriations in general appropriation bills, and only transfers between accounts in the same general appropriation bill are permitted (see Ch. 26, *infra*, discussion of transfer of funds within the same bill).

The return of an unexpended balance to the Treasury is in order.⁽¹¹⁾

11. See 4 Hinds' precedents § 3594.

Generally

§ 3.1 An amendment to an appropriation bill proposing reappropriation of unexpended balances of appropriations is in violation of Rule XXI clause 5 (now clause 6), and therefore not in order.

On July 11, 1955,⁽¹²⁾ the Committee of the Whole was considering H.R. 7224, a mutual security appropriation bill. The following provision of the bill was read:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1956. . . .

An amendment was offered as indicated below:

Amendment offered by Mr. Whitten:

On page 1, line 3, strike out the word "appropriated" and substitute the word "reappropriated."

Page 1, line 4, strike out the words "not otherwise" and substitute the word "heretofore."

The effect of which was to change the text of the bill to read:

That the following sums are reappropriated, out of any money in the Treas-

12. 101 CONG. REC. 10232, 84th Cong. 1st Sess. See also, for example, 106 Cong. Rec. 6862, 86th Cong. 2d Sess., Mar. 29, 1960; 101 Cong. Rec. 8534, 84th Cong. 1st Sess., June 16, 1955.

ury heretofore appropriated, for the fiscal year ending June 30, 1956.

A point of order was made as follows:

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I make a point of order against the amendment that it is legislation on an appropriation bill. He attempts to appropriate money heretofore appropriated . . . and it goes beyond the scope of the present legislation.

MR. [JAMES L.] WHITTEN [of Mississippi]: Mr. Chairman, it is my understanding that a rule was had on this bill on legislation included in it. It is my understanding that money now in the Treasury to the credit of the foreign-aid program is not all expended.

THE CHAIRMAN:⁽¹³⁾ The legislation under consideration is not here under a special rule. If the gentleman does not care to be heard, the Chair is ready to rule on the point of order.

MR. WHITTEN: I have nothing further to add, Mr. Chairman.

THE CHAIRMAN: Rule XXI, clause 5, is very plain. It provides that—

No general appropriation or amendment thereto shall be received or considered if it contains a provision reappropriating unexpended balances of appropriations.

It seems to the Chair that this language very plainly deals with the amendment that has just been offered, and the Chair sustains the point of order.

§ Sec. 3.2 An amendment to an appropriation bill reappro-

13. Francis E. Walter (Pa.).

priating unexpended balances of funds previously appropriated was held in violation of the Legislative Reorganization Act of 1946, and not in order for certain monitoring activities.

On Aug. 20, 1951,⁽¹⁴⁾ the Committee of the Whole was considering H.R. 5215, a supplemental appropriation bill. An amendment was offered and a point of order was raised as indicated below:

Amendment offered by Mr. Phillips: On page 9, strike out lines 22 and 23 and insert in lieu thereof the following: "For an additional amount, for monitoring activities, to be derived from funds previously appropriated, \$1,000,000."

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, a point of order.

The appropriation is from "funds previously appropriated" and therefore is tantamount to a reappropriation. Under amendments to the rules of the House enacted in the Legislative Reorganization Act of 1946, reappropriations are not in order on general appropriation bills. . . .

THE CHAIRMAN:⁽¹⁵⁾ The Chair is ready to rule.

The provision in the gentleman's amendment providing that the funds for monitoring activities are to be derived from funds previously appropriated is a violation of the Reorga-

14. 97 CONG. REC. 10393, 10394, 82d Cong. 1st Sess.

15. Edward J. Hart (N.J.).

nization Act, and therefore the Chair sustains the point of order.

§ 3.3 In an appropriation bill a provision that “the unexpended balance of appropriations heretofore reserved for moving the International Broadcasting Service to the District of Columbia or its environs shall remain available for such purpose until December 31, 1954,” was ruled out, being a reappropriation in violation of Rule XXI clause 5 (now clause 6), the Chair also construing the language to be legislation in violation of clause 2 of Rule XXI.

On Mar. 3, 1954,⁽¹⁶⁾ the Committee of the Whole was considering H.R. 8067, a State, Justice, and Commerce Department appropriation. Proceedings were as follows:

MR. [JOHN J.] ROONEY [of New York]: Yes, Mr. Chairman. On page 49, lines 11 to 14, I make a point of order against that language.

THE CHAIRMAN:⁽¹⁷⁾ Will the gentleman explain his point of order?

MR. ROONEY: This would make available into another fiscal year funds appropriated in the current year. There is no authority in law for this.

16. 100 CONG. REC. 2600, 83d Cong. 2d Sess.

17. Leroy Johnson (Calif.).

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

MR. [CLIFF] CLEVINGER [of Ohio]: I concede the point of order, Mr. Chairman.

THE CHAIRMAN: The Chair thinks this is legislation on an appropriation bill. Therefore, the point of order is sustained.

§ 3.4 A provision in an appropriation bill permitting an appropriation previously made in another act to be used for a new purpose was conceded to be legislation.

On Dec. 11, 1969,⁽¹⁸⁾ during consideration in the Committee of the Whole of a bill (H.R. 15209) making supplemental appropriations for fiscal year 1970, Mr. H. R. Gross, of Iowa, raised a point of order against certain language in the bill:

MEMBERS' CLERK HIRE

After June 1, 1970, but without increasing the aggregate basic clerk hire monetary allowance to which each Member and the Resident Commissioner from Puerto Rico is otherwise entitled by law, the appropriation for “Members’ clerk hire” may be used for employment of a “student congressional intern” in accord with the provisions of House Resolution 416, Eighty-ninth Congress.

POINT OF ORDER

MR. GROSS: Mr. Chairman, I make a point of order against the language on

18. 115 CONG. REC. 38541, 38542, 91st Cong. 1st Sess.

page 6, beginning with line 11 and through line 18, as being legislation on an appropriation bill.

THE CHAIRMAN:⁽¹⁹⁾ Does the gentleman desire to be heard in support of the point of order?

MR. GROSS: I thought I made the point of order, Mr. Chairman.

The Chairman: Does the gentleman from Texas desire to be heard on the point of order?

MR. [George H.] MAHON [of Texas]: Mr. Chairman, the Committee on Appropriations put this legislation in the bill for the purpose of accommodating Members. It is subject to a point of order, and the point of order is conceded.

THE CHAIRMAN: The gentleman from Texas has conceded the point of order, and the Chair sustains the point of order.

§ 3.5 Where the bill providing an annual authorization for the Coast Guard Reserve had not yet been enacted into law, an amendment to a general appropriation bill containing funds for Coast Guard Reserve training and providing that amounts equal to prior year appropriations for that purpose should be transferred to that appropriation was held to contain an unauthorized appropriation in violation of Rule XXI clause 2, and a re-appropriation of unexpended

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

balances in violation of Rule XXI clause 5 (now clause 6).

On June 20, 1973,⁽²⁰⁾ during consideration in the Committee of the Whole of the Department of Transportation appropriation bill for fiscal 1974 (H.R. 8760), Mr. George H. Mahon, of Texas, raised a point of order against an amendment offered by Mr. Silvio O. Conte, of Massachusetts. Proceedings were as follows:

Amendment offered by Mr. Conte: Page 4, after line 23, insert:

RESERVE TRAINING

For all necessary expenses for the Coast Guard Reserve, as authorized by law; maintenance and operation of facilities; and supplies, equipment, and services; \$25,000,000: *Provided*, That amounts equal to the obligated balances against appropriations for "Reserve training" for the two preceding years shall be transferred to and merged with this appropriation, and such merged appropriation shall be available as one fund, except for accounting purposes of the Coast Guard, for payment of obligations properly incurred against such prior year appropriations and against this appropriation. . . .

MR. MAHON: Mr. Chairman, I insist on my point of order against the amendment. The amendment, in my opinion, is legislation on an appropriation bill and the funds are not authorized by law, so I make the point of order against the amendment. . . .

THE CHAIRMAN:⁽¹⁾ The Chair is prepared to rule.

20. 119 CONG. REC. 20538, 20539, 93d Cong. 1st Sess.

1. John M. Murphy (N.Y.).

Clause 2, rule XXI, prohibits unauthorized items from being included in amendments to a general appropriation bill, and also clause 5, rule XXI, has a prohibition against the reappropriation of unexpended balances of sums appropriated in prior years. The amendment is subject to a point of order for these reasons and the Chair sustains the point of order.

Later Rule as Superseding Statute

§ 3.6 A provision in the mutual security appropriation bill reappropriating unexpended balances was conceded to be a reappropriation proscribed by Rule XXI clause 5 (now clause 6), notwithstanding a provision in the Mutual Security Act of 1955 (§548, adopted July 8, 1955, 22 USC Sec. 1767a) providing that “unexpended balances are authorized to be continued available,” since the rules of the House readopted in 1959 contained a later expression of Congress to the contrary.

On June 17, 1960,⁽²⁾ during consideration in the Committee of the Whole of the bill (H.R. 12619) making appropriations for the mutual security program and related agencies for fiscal 1961, Mr. H. R. Gross, of Iowa, made a point of

2. 106 CONG. REC. 13138, 86th Cong. 2d Sess.

order against certain language in the bill:

MR. GROSS: Mr. Chairman, I make a point of order against the language on page 5, lines 1 through 8, inclusive, on the grounds it is not in order on a general appropriation bill under clause 5 of rule XXI. This language provides for the reappropriation of funds previously made available and is not permitted under the rules of the House—paragraph 5 of rule XXI which reads, in pertinent part, as follows:

No general appropriation bill or amendment thereto shall be received or considered if it contains a provision reappropriating unexpended balances of appropriations.

It is true that the mutual security authorization law authorizes reappropriation of unexpended balances, but that authority was last contained in section 548 enacted in calendar year 1956. Subsequent to that time, and at the beginning of the 86th Congress, the House adopted rules from which I have just read. Inasmuch as this rule-making action occurred subsequent to the latest action by law, and there has been no enactment by statute on the particular matter during the present Congress, the rules of the House govern in this situation. Furthermore, it is well settled in the precedents that the power of the House to make its own rules may not be impaired by a law passed by a prior Congress. Therefore, I ask that my point of order be sustained.

MR. [Otto E.] PASSMAN [of Louisiana]: Mr. Chairman, the gentleman from Iowa [Mr. Gross] was considerate enough to advise us in advance of his intention to make this point of order.

He has stated the facts of the matter accurately. I have discussed this point of order with other Members and we have carefully reviewed the situation. Most regretfully I must concede that the point of order is well taken.

THE CHAIRMAN:⁽³⁾ The Chair sustains the point of order.

Later Statute as Superseding Rule

§ 3.7 Rule XXI clause 5 (now clause 6), relating to the reappropriation of unexpended balances of appropriations, is not applicable when the reappropriation language is identical to the authorization language enacted subsequent to adoption of the rule; thus, where the Foreign Assistance Act of 1961 (Pub. L. No. 87-195) specifically provided that "unexpended balances of funds made available under the Mutual Security Act of 1954 . . . are hereby authorized to be continued available for general purposes for which appropriated," the Speaker pro tempore held that a provision in an appropriation bill reappropriating the unexpended balances of such funds was in order, notwithstanding Rule XXI clause 5

3. Wilbur D. Mills (Ark.).

(now clause 6), since the legislative authorization bill was a more recent expression of the will of the House.

On Sept. 5, 1961,⁽⁴⁾ Mr. H. R. Gross, of Iowa, raised a point of order against consideration of a bill (H.R. 9033) making appropriations for foreign assistance and related agencies for fiscal year 1962. The proceedings were as follows:

MR. GROSS: Mr. Speaker, I make a point of order against consideration of the bill.

Mr. Speaker, I call the attention of the Chair to the Rules of the House of Representatives, 87th Congress, rule XXI, paragraph 5, which reads as follows:

No general appropriation bill or amendment thereto shall be received or considered if it contains a provision reappropriating unexpended balances of appropriations; except that this provision shall not apply to appropriations in continuation of appropriations for public works on which work has commenced.

Mr. Speaker, the language is explicit and there is only one exception; that is for public works bills. I submit that this is not a public works bill.

Mr. Speaker, I call attention of the Chair to the language contained in H.R. 9033 for which consideration is asked, on page 3 of that bill, lines 8 through 24.

Unobligated balances (not to exceed \$50,000,000) as of June 30,

4. 107 CONG. REC. 18133, 87th Cong. 1st Sess.

1961, of funds heretofore made available for military assistance under the authority of the Mutual Security Act of 1954, as amended, are, except as otherwise provided by law, hereby continued available for the fiscal year 1962 for the same general purposes for which appropriated.

Further, Mr. Speaker, section 101 on the same page reads:

Amounts certified pursuant to section 1311 of the Supplemental Appropriation Act, 1955, as having been obligated against appropriations heretofore made under the authority of the Mutual Security Act of 1954, as amended, for the same general purpose as any of the subparagraphs under "Economic assistance" except the subparagraph of this title for "Administrative expenses," are hereby continued available for the same period as the respective appropriations in such subparagraphs for the same general purpose.

Mr. Speaker, the language which I have read relates to funds not in the bill and clearly reappropriates unexpended balances of appropriations in violation of the rules of the House. . . .

THE SPEAKER PRO TEMPORE:⁽⁵⁾ The Chair is prepared to rule.

Section 645 of the Foreign Assistance Act of 1961, which was passed by both Houses of Congress and signed by the President yesterday, and is now Public Law 87-195, specifically authorizes:

Unexpended balances of funds made available pursuant to the Mutual Security Act of 1954, as amended, are hereby authorized to be continued available for the general purposes for which appropriated, and

may at any time be consolidated, and, in addition, may be consolidated with appropriations made available for the same general purposes under the authority of this act.

That is the will of both branches of the Congress as expressed very recently. The language in the pending appropriation bill is identical and consistent with the authority contained in section 645.

The Chair overrules the point of order, for the reason that the recent act of the Congress makes the actions of the Committee on Appropriations pursuant to law.⁽⁶⁾

§ 3.8 Language in an appropriation bill continuing the availability of unobligated balances of prior appropriations was held in order where provisions of the original authorizing legislation still in effect had provided for such a reappropriation, and a dollar limitation in the current authorization bill was interpreted to be a limitation on new appropriations only and not to restrict

6. *Parliamentarian's Note:* The rules of the House, 87th Congress (including Rule XXI clause 5) were adopted on Jan. 3, 1961 (H. Res. 8). The foreign-aid authorization bill (S. 1983) was signed by the President on Sept. 4, 1961 (becoming Pub. L. No. 87-195). Section 645 of this law contained a specific authorization for the reappropriation of certain unexpended balances of mutual security funds.

5. John W. McCormack (Mass.).

the reappropriation of unexpended balances of prior year funds.

On Sept. 8, 1965,⁽⁷⁾ the Committee of the Whole was considering H.R. 10871, a foreign-aid appropriation bill for fiscal 1966. The Clerk read the following portion of the bill:

Page 3, line 19:

Unobligated balances as of June 30, 1965, of funds heretofore made available under the authority of the Foreign Assistance Act of 1961, as amended, except as otherwise provided by law, are hereby continued available for the fiscal year 1966, for the same general purposes for which appropriated and amounts certified pursuant to section 1311 of the Supplemental Appropriation Act, 1955, as having been obligated against appropriations heretofore made under the authority of the Mutual Security Act of 1954, as amended, and the Foreign Assistance Act of 1961, as amended, for the same general purpose as any of the subparagraphs under "Economic Assistance" are hereby continued available for the same period as the respective appropriations in such subparagraphs for the same general purpose: *Provided*, That such purpose relates to a project or program previously justified to Congress and the Committees on Appropriations of the House of Representatives and the Senate are notified prior to the reobligation of funds for such projects or programs.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language appearing on page 3, beginning with line 19 and

running through the remainder of that page to and through line 13 on page 4.

I made the point of order on the basis that the authorization bill contains section 649, which reads as follows:

Sec. 649. Limitation on aggregate authorization for use in fiscal year 1966.—Notwithstanding any other provision of this Act, the aggregate of the total amounts authorized to be appropriated for use during the fiscal year 1966, for furnishing assistance and for administrative expenses under this Act shall not exceed \$3,360,000,000.

Mr. Chairman, I point out that listed at the top of page 3 of the committee report is the "carryover from prior year appropriations," in the amount of \$158,352,000, which is a part of the unobligated carryover that is controlled under the language which I seek to strike under the point of order. There is further "deobligations of prior-year obligations" listed in the report at the top of page 3. This is also controlled under the language that I seek to have stricken under the point of order.

Mr. Chairman, it is difficult to find the total amounts of all appropriations contained in the language to be found on pages 3 and 4, to which I have referred, but in order that this bill to be made to conform to the new section that was written into the authorization bill, which has been signed by the President of the United States and is now law, I submit that the language in the bill to which I have referred must be stricken.

THE CHAIRMAN:⁽⁸⁾ Does the gentleman from Louisiana desire to be heard on the point of order?

7. 111 CONG. REC. 23181, 23182, 89th Cong. 1st Sess.

8. Charles M. Price (Ill.).

MR. [OTTO E.] PASSMAN [of Louisiana]: Yes, Mr. Chairman.

It appears to me that we are dealing with two different acts.

Under the authorizing legislation there was a ceiling of \$3,360 million of new appropriations. The bill before the House calls for only \$3,285 million in new appropriations. Some part of the previous money appropriated is 1-year funds and does not necessarily carry over, and we are following the language in the authorizing legislation itself.

I refer to section 645 of the Foreign Assistance Act of 1961 as amended:

Unexpended balances of funds made available pursuant to this Act, the Mutual Security Act of 1954, as amended or Public Law 86-735 are hereby authorized to be continued available for the general purposes for which appropriated, and may at any time be consolidated, and, in addition, may be consolidated with appropriations made available for the same general purposes under the authority of this Act.

Mr. Passman further made the argument, apparently accepted by the Chair, that since section 645 of the Foreign Assistance Act of 1961 had not been deleted from the current bill in conference, it appeared the conference intended that the right to continue unobligated funds should remain in the authorization.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Iowa made his point of order against the language on line 19, page 3, and through line 13 on page 4.

The Chair, after careful examination of the sections in the conference report referred to by the various Members who have commented on this point of order, is constrained to agree that the language found in the conference report on page 25 referred to authorizations contained in that particular bill and pertains only to new money.

There is a definite feeling on the part of the Chair that it did not pertain to carryover funds or to the making available of funds which under section 645 would remain and continue to be available.

The Chair feels that section 645 is sufficient to make these carryover funds in order and the Chair, therefore, overrules the point of order.

Transfer of Funds

§ 3.9 A section in a general appropriation bill requiring the availability of funds available in other acts for employment of guards for government buildings and conferring certain powers on those guards and on the Postmaster General was conceded to be subject to a point of order and was ruled out as in violation of Rule XXI clauses 2 and 5 (clause 5 is now clause 6).

On Aug. 1, 1973,⁽⁹⁾ during consideration in the Committee of the Whole of the Treasury, postal

⁹ 119 CONG. REC. 27291, 93d Cong. 1st Sess.

service, and executive office appropriations bill (H.R. 9590) for fiscal 1974, Mr. John D. Dingell, of Michigan, raised a point of order against certain language in the bill:

Sec. 610. Funds made available by this or any other Act to the "Building management fund" (40 U.S.C. 490(f)), and the "Postal service fund" (39 U.S.C. 2003), shall be available for employment of guards for all buildings and areas owned or occupied by the United States or the Postal Service and under the charge and control of the General Services Administration or the Postal Service, and such guards shall have, with respect to such property, the powers of special policemen provided by the first section of the Act of June 1, 1948 (62 Stat. 281; 40 U.S.C. 318), but shall not be restricted to certain Federal property as otherwise required by the proviso contained in said section, and, as to property owned or occupied by the Postal Service, the Postmaster General may take the same actions as the Administrator of General Services may take under the provisions of sections 2 and 3 of the Act of June 1, 1948 (62 Stat. 281; 40 U.S.C. 318a, 318b) attaching thereto penal consequences under the authority and within the limits provided in section 4 of the Act of June 1, 1948 (62 Stat. 281; 40 U.S.C. 318c).

MR. DINGELL: Mr. Chairman, I make, again, the same point of order against the entirety of section 610, beginning with line 4 on page 36.

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN:⁽¹⁰⁾ The point of order is conceded and sustained.

Holman Rule Not Applicable

§ 3.10 A reappropriation of unexpended balances, prohibited by Rule XXI clause 5 (now clause 6), is not in order on a general appropriation bill under the guise of a Holman rule exception to Rule XXI clause 2.

On Oct. 18, 1966,⁽¹¹⁾ the Committee of the Whole was considering H.R. 18381, a supplemental appropriation bill. Proceedings were as follows:

Amendment offered by Mr. Bow: On page 16 after line 3 add a new section as follows:

Sec. 803. Notwithstanding any other provision, appropriations herein, as the President shall determine, shall, not later than 120 days after the date of enactment of this Act, be reduced in the aggregate by not less than \$1,500,000,000 through substitution by reduction and transfer of funds previously appropriated for governmental activities that the President, within the aforementioned 120 days, shall have determined to be excess to the necessities of the services and objects for which appropriated.

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

10. Richard Bolling (Mo.).

11. 112 CONG. REC. 27425, 89th Cong. 2d Sess.

THE CHAIRMAN:⁽¹²⁾ The gentleman will state his point of order.

MR. MAHON: The point of order is that the amendment goes far beyond the scope of this bill and applies to funds made available by other laws for which appropriations are not provided in the pending measure.

I make the further point of order that the amendment would obviously impose additional duties on the President.

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

MR. [FRANK T.] BOW [of Ohio]: Yes, I do wish to be heard, Mr. Chairman.

With respect to this amendment I shall not repeat the provisions of the Holman rule.

I believe we have changed the Holman rule today by making it relate to this bill. The previous precedents of the House have been it must not necessarily apply to this particular bill when there is a retrenchment so, we are making new precedents today.

This is a general appropriation bill affecting various agencies. Since the amendment also deals with and affects various appropriations of various agencies, it is germane.

Again, there can be no speculation as to its retrenching Federal expenditures because it reduces appropriations in this bill—in this bill by \$1.5 billion and requires the President to fund activities in this bill from previously appropriated funds that are excess to the necessities of the services and objects for which appropriated.

I point out again that the Holman rule does not go along with the deci-

sion suggested by the distinguished chairman of the committee that additional duties are involved.

Under the Holman rule it is a question of retrenchment of expenditures.

The legislation in this amendment is not unrelated to the retrenchment of expenditures. Instead, it is directly instrumental in accomplishing the reduction of expenditures. Thus, the proposed retrenchment and the legislation are inseparable and must be considered together.

“Cannon’s Precedents”, in volume VII, 1550 and 1551, holds that an amendment may include such legislation as is directly instrumental in accomplishing the reduction of expenditures proposed. That is the precise situation with respect to this pending amendment.

Again I cite “Cannon’s Precedents,” volume VII, 1511, which holds that language admitted under the Holman rule is not restricted in its application to the pending bill, and to the June 1, 1892, decision, to which I referred before, of the Committee of the Whole and its Chairman, that an amendment was in order under the Holman rule even though it changed existing law.

I say, Mr. Chairman, I believe if this is held to be out of order we will be changing the precedents and the rules of the House, and we will be destroying the Holman rule.

I urge the Chair to overrule the point of order.

THE CHAIRMAN: The Chair is prepared to rule.

The amendment offered by the gentleman from Ohio specifies that appropriations herein, as the President shall determine, shall be reduced in the ag-

12. James G. O’Hara (Mich.).

gregate by not less than \$1.5 billion. This reduction would be achieved by authorizing and directing the President to utilize previously appropriated funds for the activities carried in this bill.

The Chair feels that the amendment is clearly legislation. It places additional determinations and duties on the President and involves funds other than those carried in this bill.

Therefore, if the amendment were to be permitted it would have to qualify, as the gentleman has attempted to qualify it, under the Holman exception, under the Holman rule, rule XXI, clause 2.

In the opinion of the Chair, the Holman exception is inapplicable in this instance for three reasons.

First, the payment from a fund already appropriated of a sum which otherwise would be charged against the Treasury has been held not to be a retrenchment of expenditures under the Holman rule.

Chairman Hicks, of New York, ruled to the same effect when a proposition involving the Holman rule was before the House on January 26, 1921.

Second, it seems to the Chair that the language proposed by the gentleman from Ohio (Mr. Bow) authorizes the reappropriation of unexpended balances, a practice prohibited by clause 5 of rule XXI.

Third, the amendment goes to funds other than those carried in this bill and is not germane.

With respect to the latter point and the citation that has been given by the gentleman from Ohio, which is found in the precedents of the House, volume VII, 1511, the Chair will note that the

proposition reduced the number of Army officers and provided the method by which the reduction should be accomplished. It was an amendment, as it appears in the citation, to a War Department appropriation bill and was therefore germane in spite of whatever the general proposition in the heading may have stated.

For the reasons given, the Chair will sustain the point of order made by the gentleman from Texas.

Limitation of Funds in Bill so Long as Previously Appropriated Funds Remain Unexpended

§ 3.11 To an appropriation bill, an amendment providing that no part of the funds therein should be available for expenditure so long as the funds theretofore appropriated for such purpose and unexpended exceeded three billion dollars, was held to be a proper limitation and not an affirmative reappropriation of unexpended balances.

On July 11, 1955,⁽¹³⁾ the Committee of the Whole was considering H.R. 7224, a mutual security appropriation bill. The following proceedings took place:

Provided further, That no part of any appropriation contained in this act

13. 101 CONG. REC. 10235, 84th Cong. 1st Sess.

shall be available for expense of transportation . . . and unpacking of household goods and personal effects in excess of an average of 5,000 pounds net but not exceeding 9,000 pounds net in any one shipment, but the limitations imposed herein shall not be applicable in the case of employees transferred to or serving in stations outside the continental United States under orders relieving them from a duty station within the United States prior to August 1, 1953.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Whitten: On page 9, after line 9, add the following: "Provided, That no part of the funds herein appropriated shall be available for expenditure so long as the funds heretofore appropriated for such purposes and unexpended by the Mutual Security Administration exceed \$3 billion."

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill and that it attempts to reappropriate money previously appropriated. . . .

THE CHAIRMAN:⁽¹⁴⁾ As the Chair understands it, the amendment provides a very definite limitation to this appropriation. In the opinion of the Chair it is merely a limitation and therefore overrules the point of order.

Reappropriations Permitted Prior to Legislative Reorganization Act of 1946

§ 3.12 Prior to the Legislative Reorganization Act of 1946

14. Francis E. Walter (Pa.).

which prohibited it,⁽¹⁵⁾ the reappropriation of funds carried in a prior appropriation bill for purposes authorized by law was held in order on an appropriation bill.

On Dec. 6, 1944,⁽¹⁶⁾ the Committee of the Whole was considering H.R. 5587, a supplemental appropriation bill. An amendment was offered and a point of order raised as indicated below:

Amendment offered by Mr. Tarver: On page 19, line 3, insert:

“CONSERVATION AND USE OF AGRICULTURAL LAND RESOURCES

“The funds appropriated in the Department of Agriculture Appropriation Act, 1945, under the head ‘Conservation and Use of Agricultural Land Resources,’ notwithstanding any allocation thereof heretofore made by departmental order, may be used to discharge in full payments and grants earned by farmers in carrying out authorized soil and water conservation practices.”

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill and that it changes existing law.

15. Act of Aug. 2, 1946, Ch. 753, § 139(c), 60 Stat. 833; Rule XXI clause 6, *House Rules and Manual* § 847 (1981).

16. 90 CONG. REC. 8941, 8942, 78th Cong. 2d Sess. See also 89 CONG. REC. 1068-70, 78th Cong. 1st Sess., Feb. 17, 1943; 81 CONG. REC. 3799, 3800, 75th Cong. 1st Sess., Apr. 23, 1937.

It is apparent from the reading of it that if it were not legislation, there would be no occasion for offering it, that if it did not require legislation to permit the reallocation of these funds there is no reason why the Department would not have done it before. There would be nothing to stop it. So it is perfectly apparent that this is legislation. . . .

THE CHAIRMAN:⁽¹⁷⁾ The Chair holds that this is a reappropriation of formerly appropriated money, so as to carry out existing law and, therefore, overrules the point of order.

§ 3.13 Prior to the Legislative Reorganization Act of 1946 which prohibited reappropriations,⁽¹⁸⁾ the reappropriation of unobligated or unexpended balances for purposes authorized by law was in order, even though for different purposes than those for which originally appropriated.

On Feb. 28, 1936,⁽¹⁾ the Committee of the Whole was considering H.R. 11418, an Agriculture Department appropriation bill. The following portion of the bill was under consideration:

FEDERAL-AID HIGHWAY SYSTEM

For carrying out the provisions of the act entitled "An act to provide that

17. Herbert C. Bonner (N.C.).

18. Act of Aug. 2, 1946, Ch. 753, § 139(c), 60 Stat. 833; Rule XXI clause 6, *House Rules and Manual* § 847 (1981).

1. 80 CONG. REC. 2987, 74th Cong. 2d Sess.

the United States shall aid the States in the construction of rural post roads, and for other purposes", approved July 11, 1916 (39 Stat., pp. 355-359), and all acts amendatory thereof and supplementary thereto, to be expended in accordance with the provisions of said act, as amended, including not to exceed \$556,000 for departmental personal services in the District of Columbia, \$60,000,000 to be immediately available and to remain available until expended, which sum is part of the sum of \$125,000,000 authorized to be appropriated for the fiscal year 1936, by section 4 of the act approved June 18, 1934 (48 Stat. 994). . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I offer an amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. Taber: On page 70, line 24, after "\$60,000,000", insert the following: "of the unobligated balances of funds allocated for other purposes than road and grade-crossing eliminations appropriated by Public Resolution No. 11, Seventy-fourth Congress, approved April 8, 1935."

MR. [WILLIAM M.] WHITTINGTON [of Mississippi]: Mr. Chairman, I make a point of order that it is legislation upon an appropriation. . . .

MR. TABER: Mr. Chairman, the gentleman is clearly in error, because this is a pure reappropriation of funds that were appropriated under the act of April 8, 1935, out of unobligated balances other than those providing for the elimination of grade crossings and roads. It involves a reappropriation only. . . .

THE CHAIRMAN:⁽²⁾ The Chair is ready to rule.

2. Jere Cooper (Tenn.).

The amendment offered by the gentleman from New York [Mr. Taber] seeks to reappropriate certain unobligated funds heretofore appropriated. The Chair has before him a syllabus which is directly applicable to the point raised. It may be found in Cannon's Precedents, section 1158, and is as follows:

The reappropriation of unexpended balances for purposes authorized by law is in order, even though for different purposes than those for which originally appropriated.

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

§ 3.14 Prior to the Legislative Reorganization Act of 1946 which prohibited it,⁽³⁾ the reappropriation of an unexpended balance could be made in a general appropriation bill; but a reappropriation of an unexpended balance, to be applied to projects unauthorized by law, was not in order.

On May 17, 1937,⁽⁴⁾ the Committee of the Whole was considering for amendment a paragraph

3. Act of Aug. 2, 1946, Ch. 753, § 139(c), 60 Stat. 833; Rule XXI clause 6, *House Rules and Manual* § 847 (1981).
4. 81 CONG. REC. 4684, 4685, 75th Cong. 1st Sess. See also 91 CONG. REC. 2370, 79th Cong. 1st Sess., Mar. 16, 1945.

of the bill H.R. 6958, an Interior Department appropriation.

For administrative expenses on account of the above projects, including personal services and other expenses in the District of Columbia and in the field, \$750,000, in addition to and for the same objects of expenditure as are hereinbefore enumerated in paragraphs 2 and 3 under the caption "Bureau of Reclamation"; in all, \$9,500,000, to be immediately available: *Provided*, That of this amount not to exceed \$75,000 may be expended for personal services in the District of Columbia: *Provided further*, That the unexpended balances of the amounts appropriated from the Reclamation Fund, Special Fund, under the caption "Bureau of Reclamation, Construction," in the Interior Department Appropriation Act, fiscal year 1937, shall remain available for the same purposes for the fiscal year 1938.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the language on page 79, line 4, beginning with the word "Provided" down to the end of the paragraph.

Mr. Chairman, this includes a lot of allotments to irrigation projects, which would expire on the 30th of June, amounting to \$33,000,000. As I understand, a great many of them have not been authorized by law. There is included, amongst others, the Gila project that was ruled out on a point of order previously. . . .

THE CHAIRMAN:⁽⁵⁾ The Chair is ready to rule. . . .

The Chair invites attention to the fact it is obvious that quite a number

5. Jere Cooper (Tenn.).

of projects are sought to be covered by the provision here contained. The Chair feels that under the rule cited by the gentleman from Nevada there can be no question but what unappropriated balances may be reappropriated, but the Chair is unable to see how this rule meets the situation here presented, because the question here is whether or not these various projects have been authorized by law. The Chair feels the burden of proof is on those supporting the projects and the provision contained in the bill to make some satisfactory showing, to the effect that the projects have been authorized. The Chair invites attention to the fact that such a showing has not been made. It follows, therefore, that the language to which the point of order has been made, in the opinion of the Chair, would be legislation on an appropriation bill, a proper showing not having been made that these items have been authorized by law.

The Chair is of the opinion this provision is not in order and, therefore, sustains the point of order.

Works in Progress

§ 3.15 Language in an appropriation bill providing that the Public Works Administration allotments (made available to the Bureau of Reclamation, pursuant to the National Industrial Recovery Act, either by direct allotments or by transfer of allotments originally made from the Emergency Relief Appropriation Act of 1937) should

remain available for the purpose for which allotted during the fiscal year 1939 was held in order under the principle relating to “works in progress.”

On Mar. 2, 1938,⁽⁶⁾ the Committee of the Whole was considering the following paragraph of H.R. 9621, an Interior Department appropriation:

The Public Works Administration allotments made available to the Department of the Interior, Bureau of Reclamation, pursuant to the National Industrial Recovery Act of June 16, 1933, either by direct allotments or by transfer of allotments originally made to another Department or agency, and the allocations made to the Department of the Interior, Bureau of Reclamation, from the appropriation contained in the Emergency Relief Appropriation Act of 1935 and the Emergency Relief Appropriation Act of 1937, shall remain available for the purposes for which allotted during the fiscal year 1939.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph upon the ground that it is not authorized by law.

THE CHAIRMAN:⁽⁷⁾ Does the gentleman from Nevada desire to be heard on the point of order?

MR. [JAMES G.] SCRUGHAM [of Nevada]: Mr. Chairman, the unexpended

6. 83 CONG. REC. 2706, 2707, 75th Cong. 3d Sess.

7. Marvin Jones (Tex.).

balances proposed to be appropriated by this paragraph are lawful projects which have qualified as being in order under the rules of the House for one or more of the following reasons:

First. That they are for improvements of existing projects.

Second. That the work on them is in progress.

Third. That there has been a finding of feasibility by the President, which automatically authorizes appropriations, as provided by the reclamation law, title 43, sections 412, 413, and 414.

THE CHAIRMAN: The gentleman from Nevada states that all of these projects are already under way and that this paragraph simply reappropriates money already available.

MR. TABER: These allotments have been made for all sorts of projects not authorized by law, and yet the adoption of this provision would authorize every project that has not yet been authorized for which an allotment has been made.

THE CHAIRMAN: The gentleman states that these projects are already under way.

MR. TABER: That would not authorize them.

THE CHAIRMAN: It authorizes reappropriation of appropriations heretofore made if the work is in progress. The Chair, therefore, overrules the point of order.

Parliamentarian's Note: While this decision predates the enactment of clause 5 (now clause 6) of Rule XXI as part of the Legislative Reorganization Act of 1946 (which rule prohibits the reappropriation of unexpended balances

except with respect to appropriations in connection with appropriations for public works on which work has commenced), clause 2 of Rule XXI, in effect on the date of this decision, likewise precluded appropriations for purposes not authorized by law unless in continuation of appropriations for public works and objects already in progress. Thus this decision stands for the proposition that reappropriations of unexpended balances may be included on general appropriation bills at least if made for the same unauthorized public works in progress for which originally made. For a discussion of precedents involving public works in progress, see Chapter 26, *infra* (including a similar ruling made on May 13, 1941, discussed in that chapter).

§ 4. Appropriations in Legislative Bills

A House rule provides:

No bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations, nor shall an amendment proposing an appropriation 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 an