

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included on general appropriation bills at least if made for the same unauthorized public works in progress for which originally made.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

appropriation in any such bill, joint resolution, or amendment thereto may be raised at any time.⁽⁸⁾

Rulings on points of order under the above provision have frequently depended on whether language allegedly making an appropriation was in fact merely language authorizing an appropriation.⁽⁹⁾ For example, language in a bill authorizing an appropriation of not less than a certain amount for a specified purpose has been held not to be an appropriation.⁽¹⁰⁾

Points of order under this rule, while in order "at any time," are received at any time while the amendment or provision of the bill is pending under the five-minute rule. See discussion in notes at *House Rules and Manual* §846 (1981), citing decision of Mar. 18, 1946.

Points of order based on the above rule have sometimes been waived by resolution.⁽¹¹⁾

Generally

§ 4.1 Language in a bill reported by a legislative committee reappropriating, making available or diverting an appropriation or a portion of

8. Rule XXI clause 5, *House Rules and Manual* §846 (1981).

9. See §§ 4.34 et seq., *infra*.

10. See § 4.34, *infra*.

11. See § 4.3, *infra*.

an appropriation already made for one purpose to another is not in order.

On Apr. 7, 1936,⁽¹²⁾ the House was considering H.R. 12037, the tobacco compact bill. A point of order was raised and, after debate, Speaker Joseph W. Byrns, of Tennessee, ruled as follows:

THE SPEAKER: The Chair is ready to rule.

The gentleman from Michigan [Mr. Mapes] makes a point of order against section 7(a), which reads as follows:

For the purpose of administering this act the Secretary of Agriculture is hereby authorized to expend \$300,000, or so much thereof as may be necessary for that purpose, out of funds appropriated by section 12(a) of the Agricultural Adjustment Act, as amended.

The gentleman from Michigan calls attention to clause 4 of rule XXI, which 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 appropriation in any such bill, joint resolution, or amendment thereto may be raised at any time.

The question, of course, arises as to whether or not an appropriation made by a preceding Congress or by this

12. 80 CONG. REC. 5108, 5109, 74th Cong. 2d Sess.

Congress for a particular purpose may be diverted for another purpose not contemplated at the time the appropriation was made, under the rule which the Chair has just read.

The gentleman from Michigan has read rulings which were made in the Seventy-third Congress, first session, in which it is said—

Language reappropriating, making available or diverting an appropriation or a portion of an appropriation already made for one purpose to another is not in order.

Of course, we all know that the Committee on Agriculture is not authorized under the rules to report appropriations. In the opinion of the Chair it is very clear, in a reading of the section referred to, that the language constitutes a diversion of funds heretofore made by the Congress for an entirely different purpose and, therefore, sustains the point of order of the gentleman from Michigan [Mr. Mapes] against section 7(a).

Portion of Bill Subject to Point of Order

§ 4.2 Rule XXI clause 4 (subsequently clause 5) is limited in application to the objectionable language in a bill and not to the bill in its entirety.

The rule cited above has been held to disallow the following language in a bill reported by a legislative committee, without at the same time disallowing the remainder of the bill:

Provided further, That out of revenues from and appropriations for the Alaska Railroad, there is authorized to be used such amount thereon as may be necessary for the purchase of property of the Mount McKinley Tourist & Transportation Company, and the purchase, construction, operation and maintenance of the facilities for the public as herein authorized.

Thus, on Mar. 6, 1940,⁽¹³⁾ a Member raised a point of order against the language quoted above during consideration of H.R. 4868, a bill concerning Mount McKinley National Park. The following exchange took place:

MR. [EVERETT M.] DIRKSEN [of Illinois]: Mr. Chairman, I rise to a point of order.

THE CHAIRMAN:⁽¹⁴⁾ The gentleman will state it.

MR. DIRKSEN: I make the point of order against the entire bill on the ground that the provisions beginning in line 23, on page 2, are in contravention of the rule prohibiting appropriations in a bill for legislative purposes.

MR. [ROBERT A.] GREEN [of Florida]: Mr. Chairman, I concede the point of order and desire to offer an amendment.

MR. [JOHN] TABER [of New York]: But, Mr. Chairman, under the point of order the bill goes out.

MR. [SAM] RAYBURN [of Texas]: Oh, no; it does not go out. The enacting clause is still there, and anyone has

13. 86 CONG. REC. 2457, 76th Cong. 3d Sess.

14. A. Willis Robertson (Va.).

authority to offer any amendment that he desires under the rules of the House.

THE CHAIRMAN: The Chair is prepared to rule.

This provision comes under clause 4 of rule XXI, which, in effect, prohibits appropriations being made by committees not having jurisdiction over appropriations. Beginning with line 23 on page 2 of the bill provision is made for an appropriation. Therefore, the point of order is sustained.

Waiver of Points of Order

§ 4.3 Consideration of a legislative bill has sometimes taken place pursuant to a resolution waiving points of order against the bill, when a provision in the bill could constitute an appropriation in violation of Rule XXI clause 4 (now clause 5).

On Apr. 12, 1967,⁽¹⁵⁾ a Member addressed Speaker John W. McCormack, of Massachusetts, as follows:

MR. [CLAUDE D.] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 411 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 411

Resolved, That upon the adoption of this resolution it shall be in order

15. 113 CONG. REC. 9121-23, 9134, 90th Cong. 1st Sess.

to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5404) to amend the National Science Foundation Act of 1950 to make changes and improvements in the organization and operation of the Foundation, and for other purposes, and all points of order against said bill are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Science and Astronautics, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit. . . .

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker. . . .

I wonder if the gentleman can explain to the House why in line 7, page 1, House Resolution 411, all points of order against the bill are waived in the wisdom of the committee?

MR. PEPPER: I will ask the distinguished author of the bill, the gentleman from Connecticut [Mr. Daddario], if he will make the response to the able gentleman from Missouri, and I yield to him for that purpose.

MR. [EMILIO Q.] DADDARIO: Mr. Speaker, I thank the gentleman for yielding. I would advise the gentleman from Missouri that on page 17, line 12, section (g), there is reference to the transfer of funds from one department to another.

[Note: the language referred to sought to permit funds available to any department of the government for scientific research to be transferred to the National Science Foundation under certain conditions.]

Transfer or Diversion of Funds to New Purposes

§ 4.4 The diversion or reappropriation of funds to a new purpose is an appropriation and is therefore not in order on a rivers and harbors bill.

On Apr. 8, 1935,⁽¹⁶⁾ the Committee of the Whole was considering H.R. 6732, a bill dealing with the construction, repair, and preservation of public works on rivers and harbors. An amendment was offered and a point of order raised as indicated below:

MR. [JAMES W.] MOTT [of Oregon]: Mr. Chairman, I offer an amendment, which is on the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. Mott: On page 1, line 9, after the word "documents", change the colon to a period and add the following: "The Administrator of Public Works is hereby directed to allot and make available for the prosecution of said authorized works of improvement of rivers and harbors and other waterways, such sum or sums out of the funds provided in House Joint Reso-

lution 117 as may be necessary to prosecute and complete such works or improvements."

MR. [JOSEPH J.] MANSFIELD [of Texas]: Mr. Chairman, I desire to make a point of order to the amendment. As I understand the amendment, it is the equivalent of an appropriation. It applies to a matter not within the jurisdiction of this committee. We have no jurisdiction over legislation of the Public Works Administration. Furthermore, I consider that amendment as an appropriation. . . .

MR. [JOHN J.] O'CONNOR [of New York]: Mr. Chairman, as I heard the amendment read, it makes an appropriation, because it directs the Administrator of Public Works to allocate part of the funds already appropriated for these specific purposes. This is at least a reappropriation and comes within the rule forbidding appropriations coming from legislative committees. . . .

THE CHAIRMAN:⁽¹⁷⁾ . . . This bill, of course, cannot carry an appropriation. The gentleman offers an amendment to the effect that the Administrator of Public Works is hereby directed to allot and make available for the prosecution of such authorized works of improvement on rivers and harbors and other waterways such sum or sums from the funds provided in House Joint Resolution 117.

This, clearly, is a diversion of funds already appropriated, which is tantamount, in the opinion of the Chair, to an appropriation.

The Chair, therefore, sustains the point of order.

16. 79 CONG. REC. 5277, 5278, 74th Cong. 1st Sess.

17. William W. Arnold (Ill.).

§ 4.5 Language in a legislative bill to reorganize the government, providing for the transfer of unexpended balances of appropriations and making such funds available for expenditure, was held to be an appropriation in violation of Rule XXI clause 4 (now clause 5).

On Apr. 8, 1938,⁽¹⁸⁾ the Committee of the Whole was considering S. 3331, a government reorganization bill. At different points the Clerk read two sections as follows, and proceedings ensued as indicated below:

Sec. 410. Such of the personnel of the General Accounting Office employed in connection with the functions exercised by the General Accounting Office through the Audit Division of that Office, and such of the unexpended balances of appropriations available to the General Accounting Office for the exercise of such functions, as the President shall deem to be necessary to enable the Auditor General to exercise the functions vested in and imposed upon him by this title, are transferred to the office of the Auditor General, and any unexpended balances of appropriations so transferred shall hereafter be available to the Auditor General for the purpose of exercising the functions of his office and for otherwise carrying out the provisions of this title: *Provided*, That the

transfer of personnel under this section shall be without change in classification or compensation . . . *Provided further*, That such of the personnel so transferred who do not already possess a classified civil-service status shall not acquire such status by reason of such transfer. . . .

Sec. 307. There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated such sums as may be necessary to carry out the provisions of this title.

Sec. 308. The provisions of this title shall become effective 60 days after its enactment.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the words beginning in line 4, of page 57, "and such of the unexpended balances of appropriations available to the General Accounting Office for the exercise of such functions"; and then, beginning in line 10, "and any unexpended balances of appropriations so transferred shall hereafter be available to the auditor general for the purpose of exercising the functions of his office and for otherwise carrying out the provisions of this title."

MR. FRED M. VINSON [of Kentucky]: Mr. Chairman, I concede the point of order.

THE CHAIRMAN:⁽¹⁹⁾ The Chair sustains the point of order on the ground that it is in conflict with clause 4 of Rule XXI and the language to which the point of order is addressed is stricken from the title.

Subsequently in the proceedings, a point of order based on

18. 83 CONG. REC. 5083-98, 75th Cong. 3d Sess.

19. John W. McCormack (Mass.).

the same grounds was sustained against the following language:

Sec. 420. Such portions of the unexpended balances of appropriations or other funds available for the United States Civil Service Commission, the offices of the Civil Service Commissioners, and all other offices of such Commission, as the President shall deem necessary, are transferred to the Administration. Unexpended balances of appropriations or other funds available for such Commission or offices, not so transferred pursuant to the President's determination under this section, shall be impounded and returned to the Treasury.

§ 4.6 A provision in a bill reported by a legislative committee providing that such part as the President might determine of the unexpended balances of appropriations, allocations, or other funds available for expenditure in connection with the Manhattan Engineer District were transferred to the commission and were to be available for expenditure for carrying out the provisions of the act was held to be an appropriation in violation of Rule XXI clause 4 (now clause 5), and not in order.

On July 20, 1946,⁽²⁰⁾ the Committee of the Whole was consid-

²⁰. 92 CONG. REC. 9554, 9555, 79th Cong. 2d Sess.

ering S. 1717, the Atomic Energy Act of 1946. At one point the Clerk read as follows, and proceedings ensued as indicated below:

APPROPRIATIONS

Sec. 18. (a) There are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this act. The acts appropriating such sums may appropriate specified portions thereof to be accounted for upon the certification of the Commission only. Funds appropriated to the Commission shall, if obligated by contract during the fiscal year for which appropriated, remain available for expenditure for 4 years following the expiration of the fiscal year for which appropriated. After such 4-year period, the unexpended balances of appropriations shall be carried to the surplus fund and covered into the Treasury.

(b) Such part as the President may determine of the unexpended balances of appropriations, allocations, or other funds available for expenditure in connection with the Manhattan Engineer District are hereby transferred to the Commission and shall be available for expenditure for the purpose of carrying out the provisions of this act.

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Chairman, I make a point of order against subparagraph (b) on page 52, lines 18 to 23, inclusive, on the ground that it constitutes an appropriation and may not be reported by the Committee on Military Affairs, which is without jurisdiction to report appropriations. I am constrained to make this point of order, Mr. Chair-

man, for two or three reasons. The appropriations now carried in the War Department appropriation bill for \$375,000,000 were made in a larger amount than would have been made for 1 year only because the Budget request was for only \$200,000,000. The additional \$175,000,000 was added in place of contractual authorizations for obligations to mature in fiscal 1948. The total appropriation was made for the military features of the atomic service. It is now proposed that these appropriations be transferred for the purpose of carrying out the provisions of this act, which is much broader, providing for loans, providing for the development of civilian production and licensing, and many other features not contemplated in the appropriations for the Military Establishment. Consequently, this paragraph constitutes an appropriation, and I make the point of order that it may not be reported in this bill.

THE CHAIRMAN:⁽¹⁾ Does the gentleman from Kentucky desire to be heard on the point of order?

MR. [ANDREW J.] MAY [of Kentucky]: I do not, Mr. Chairman.

THE CHAIRMAN: The Chair is ready to rule. In the opinion of the Chair, the language referred to by the gentleman from South Dakota, beginning on line 18, page 52, and extending through line 23, is in violation of clause 4 of rule 21. Therefore, the Chair sustains the point of order.

§ 4.7 To a bill establishing an Airways Modernization Board and providing for

1. Wilbur D. Mills (Ark.).

transfer of personnel, records, and the like, authority to transfer “unexpended balances of appropriations, allocations, and other funds available,” was ruled out as an appropriation reported from a legislative committee in violation of Rule XXI clause 4 (now clause 5).

On July 30, 1957,⁽²⁾ the Committee of the Whole was considering S. 1865, a bill providing for the development and modernization of the national system of navigation and traffic control facilities to serve present and future needs of civil and military aviation. At one point the Clerk read as follows:

TRANSFER OF RELATED FUNCTIONS

Sec. 4. The Board, upon unanimous decision and with approval of the President, may transfer to itself any functions (including powers, duties, activities, facilities, and parts of functions) of the Departments of Defense or Commerce or of any officer or organizational entity thereof which relate primarily to selecting, developing, testing, or evaluating systems, procedures, facilities, or devices for safe and efficient air navigation and air traffic control. In connection with any such transfer, the President may provide for appropriate transfers of records, property, necessary civilian personnel, and unex-

2. 103 CONG. REC. 13056, 85th Cong. 1st Sess.

pending balances of appropriations, allocations, and other funds available or to be made available of the officers, department, or other agency from which the transfer is made.

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, a point of order.

THE CHAIRMAN:⁽³⁾ The gentleman will state it.

MR. BOW: Mr. Chairman, I make the point of order against the language in section 4, page 7, beginning on line 12, reading "and unexpended balances of appropriations, allocations, and other funds available or" as being an appropriation on a legislative bill.

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

MR. [OREN] HARRIS [of Arkansas]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The Chair is prepared to rule. The Chair has examined the language to which the point of order has been made, and after consideration finds that the language is obnoxious to clause 4 of rule 21 of the House and therefore sustains the point of order.

§ 4.8 In a bill reported from the Committee on Banking and Currency, providing inter alia, a revolving fund in the Treasury for higher education facility loans, a provision authorizing the Commissioner of Education to "transfer to the fund available appropriations under

3. George H. Mahon (Tex.).

§ 303(c) [of the Higher Education Act] to provide capital for the fund," was held to constitute an appropriation and was ruled out as a violation of Rule XXI clause 4 (now clause 5).

On May 18, 1966,⁽⁴⁾ during consideration in the Committee of the Whole of the Participation Sales Act of 1966 (H.R. 14544) a point of order was raised against a provision thereof, as follows:

REVOLVING LOAN FUND

"Sec. 305. (a) There is hereby created within the Treasury a separate fund for higher education academic facilities loans (hereafter in this section called "the fund") which shall be available to the Commissioner without fiscal year limitation as a revolving fund for the purposes of this title. The total of any loans made from the fund in any fiscal year shall not exceed limitations specified in appropriation Acts.

"(b)(1) The Commissioner is authorized to transfer to the fund available appropriations provided under section 303(c) to provide capital for the fund. All amounts received by the Commissioner as interest payments or repayments of principal on loans, and any other moneys, property, or assets derived by him from his operations in connection with this title, including any moneys derived directly or indirectly from the sale of assets, or beneficial interests or participations in as-

4. 112 CONG. REC. 10913, 10918, 89th Cong. 2d Sess.

sets of the fund, shall be deposited in the fund. . . .”

MR. [CHARLES R.] JONAS [of North Carolina]: Mr. Chairman, I make a point of order against the language on page 8 of the bill, lines 5, 6, and 7 through the word “fund.” The point is based upon my feeling that the language violates rule XXI, clause 4, of the Rules of the House of Representatives.

MR. [WRIGHT] PATMAN [of Texas]: Mr. Chairman, I desire to be heard on the point of order.

The appropriations referred to are future appropriations authorized and to be made for the specific purpose of making the transfers here authorized. This is not a case of changing the object of past appropriations, and the point of order should be overruled.

That refers to section 303(c), which I have before me now. It provides:

For the purpose of making payments into the fund established under section 305, there is hereby authorized to be appropriated

It is not making the appropriation; it is authorizing the appropriation.

I respectfully submit, Mr. Chairman, that this is not subject to the point of order.

THE CHAIRMAN:⁽⁵⁾ . . . The gentleman from North Carolina [Mr. Jonas] makes a point of order to the language appearing on page 8, lines 5 through 7, to the end of the sentence on that line, on the ground that it is in violation of rule XXI of the Rules of the House of Representatives.

The Chair has examined the language and has listened attentively to

the gentleman from Texas, but is of the opinion that since this language directs a transfer of available appropriations it is in fact in violation of rule XXI; and therefore sustains the point of order.

§ 4.9 Where a legislative bill (reported from the Committee on Banking and Currency) authorized certain government agencies that extend credit to individuals to use any appropriated funds or other amounts available to them for certain new purposes specified in the bill, the provision was conceded to be in violation of Rule XXI clause 4 (now clause 5).

On May 18, 1966,⁽⁶⁾ the Committee of the Whole was considering H.R. 14544, the Participation Sales Act of 1966. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Sec. 2. (a) Section 302(c) of the Federal National Mortgage Association Charter Act is amended [by inserting at a designated point]:

. . . Any trustor creating a trust or trusts hereunder is authorized to purchase, through the facilities of the trustee, outstanding beneficial interests or participations to the extent of the amount of his responsibility to the trustee on beneficial interests or par-

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

6. 112 CONG. REC. 10893, 10894, 89th Cong. 2d Sess.

ticipations outstanding, and to pay his proper share of the costs and expenses incurred by the Federal National Mortgage Association as trustee pursuant to the trust instrument, and for these purposes may use any appropriated funds or other amounts available to him for the general purposes or programs to which the obligations subjected to the trust are related.

(3) If any trustor shall guarantee to the trustee the timely payment of obligations he subjects to a trust pursuant to this subsection, and it becomes necessary for such trustor to meet his responsibilities under such guaranty, he is authorized to fulfill such guaranty by using any appropriated funds or other amounts available to him for the general purposes or programs to which the obligations subjected to the trust are related. . . .

MR. [CHARLES R.] JONAS [of North Carolina]: Mr. Chairman, a point of order.

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

MR. JONAS: Mr. Chairman, I make a point of order against the language appearing on page 4, line 22, beginning with the word "and", which language is as follows: "and for these purposes may use any appropriated funds or other amounts available to him for the general purposes or programs to which the obligations subjected to the trust are related."

Mr. Chairman, I make the point of order against this language in the bill on the ground that it violates clause 4, rule XXI, of the rules of the House of Representatives, which requires that bills making appropriations may not

originate in committees other than the Committee on Appropriations.

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

MR. [WRIGHT] PATMAN [of Texas]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The Chair sustains the point of order.

MR. JONAS: Mr. Chairman, I make a point of order against the language appearing on page 5, line 5, beginning with the word "he" and continuing through lines 5, 6, 7, and 8 to the word "related," which language is as follows: "he is authorized to fulfill such guaranty by using any appropriated funds or other amounts available to him for the general purposes or programs to which the obligations subjected to the trust are related."

Mr. Chairman, I make the point of order against this language on the ground that it violates clause 4, rule XXI of the House of Representatives.

MR. PATMAN: Mr. Chairman, I wonder if the gentleman from North Carolina has added some language which he does not really intend to include in his point of order? As I understand, the gentleman intended to make a point of order against the language on page 5, line 5, starting with the word "by" down to and including the word "related" on line 8. In other words, as I understand, the gentleman intends to make a point of order against the language reading as follows: "by using any appropriated funds or other amounts available to him for the general purposes or programs to which the obligations subjected to the trust are related."

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

MR. JONAS: Mr. Chairman, the gentleman from Texas is correct and it was my purpose to have the point of order lie against the language on page 5, line 5, beginning with the word "by" down to and including the word "related" on line 8.

As I said, Mr. Chairman, I make the point of order against this language on the ground that it violates clause 4, rule XXI, of the House of Representatives.

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

THE CHAIRMAN: The Chair sustains the point of order.

Unobligated Funds Previously Appropriated for Same or Related Purposes

§ 4.10 Language in a legislative bill providing that the cost of surveys therein authorized would be paid from the appropriation theretofore or thereafter made for such purposes was held to be an appropriation and therefore in violation of Rule XXI clause 4 (now clause 5).

On July 29, 1937,⁽⁸⁾ the Committee of the Whole was considering House Joint Resolution 175, a bill to authorize the submission to Congress of a comprehensive national plan for the prevention and control of floods of all the

8. 81 CONG. REC. 7838-40, 75th Cong. 1st Sess.

major rivers of the United States. The following proceedings took place:

The Clerk read as follows:

Sec. 2. There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this resolution.

With the following committee amendment:

Strike out all of section 2 and insert: "The cost of surveys and preparing plans as herein authorized shall be paid from appropriations heretofore or hereafter made for such purposes."

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I regret to have to make a point of order against the committee amendment. The amendment changes the authorization to a direct appropriation, and, of course, an appropriation is not in order on a legislative bill. . . .

THE CHAIRMAN:⁽⁹⁾ The language against which the point of order is raised reads as follow:

The cost of surveys and preparing plans as herein authorized shall be paid from the appropriations heretofore or hereafter made for such purposes. . . .

It seems clear to the Chair that the language of the amendment is prohibited by rule XXI, section 4, and, therefore, the Chair sustains the point of order.

§ 4.11 Language in a legislative bill making available unobligated balances of appropria-

9. Emmet O'Neal (Ky.).

tions “heretofore” made to carry out the provisions of the bill was held to be an appropriation in violation of Rule XXI clause 4 (now clause 5) and therefore not in order.

On Mar. 18, 1946,⁽¹⁰⁾ the Committee of the Whole was considering H.R. 5407, a bill granting certain powers to the Federal Works Administrator. The Clerk read as follows, and proceedings ensued as indicated below:

Be it enacted, etc., That the Federal Works Administrator is hereby authorized under the provisions of the Public Buildings Act of May 25, 1926, as amended (40 U.S.C. 341-347), and as hereby further amended—

(a) For projects outside of the District of Columbia: To construct extensions to the marine hospitals at Seattle, Wash., and San Francisco, Calif. . . . and design new building projects where the sites are in Government ownership, notwithstanding the fact that appropriations for construction work shall not have been made. The total limit of cost for the foregoing shall be \$13,000,000 and the unobligated balances of appropriations heretofore made for the construction of projects outside the District of Columbia are hereby made available for this purpose.

(b) To construct an additional building for the General Accounting Office. . . . The unobligated balances of appropriations heretofore made for the

building are hereby made available for the enlarged project, including the acquisition of addition land, and contracts may be entered into for construction work within the full limit of cost pending additional appropriations.

(c) To acquire additional land in and contiguous to the area in the District of Columbia defined in the act of March 31, 1938 (52 Stat. 149), under a limit of cost of \$2,000,000. Funds for this purpose are hereby made available from the unobligated balances of appropriations heretofore made for the construction of buildings outside the District of Columbia.

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

THE CHAIRMAN:⁽¹¹⁾ The gentleman will state it.

MR. TABER: I make a point of order against the words beginning on page 2, line 4: “and the unobligated balances of appropriations heretofore made for the construction of projects outside the District of Columbia are hereby made available for this purpose”; on the ground that it is an appropriation and coming from a committee not authorized to report appropriation bills to the House. . . .

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Chairman, I desire to make a point of order against the language in paragraph (b) and paragraph (c), and in paragraph (b) I make the point of order against the language beginning in line 15 which reads:

The unobligated balances of appropriations heretofore made for the building are hereby made available for the enlarged project, including the acquisition of additional land,

10. 92 CONG. REC. 2371, 2372, 79th Cong. 2d Sess.

11. Fadjo Cravens (Ark.).

and contracts may be entered into for construction work within the full limit of cost pending additional appropriations. . . .

MR. [FRITZ G.] LANHAM [of Texas]: I call the gentleman's attention to the fact that there is a committee amendment striking out section (b).

MR. CASE of South Dakota: But the committee amendment has not been made. Consequently, I am making a point of order lest, by some slip, the amendment might not be accepted. I make the point of order that that would make appropriations for an unauthorized project by means of an appropriation reported by a committee without jurisdiction. . . .

MR. LANHAM: Mr. Chairman, I must reluctantly concede the points of order. I do it reluctantly because I had hoped they would not be made.

THE CHAIRMAN: Does the Chair understand that the gentleman from Texas concedes each point of order?

MR. LANHAM: The gentleman from Texas does reluctantly concede the points of order.

THE CHAIRMAN: The Chair is ready to rule.

The point of order made by the gentleman from New York [Mr. Taber] and the two points of order made by the gentleman from South Dakota [Mr. Case] are sustained by reason of the fact the language against which they are made is tantamount to new appropriations; and the language is stricken from the bill in each instance.

§ 4.12 Provisions in a bill reported from a legislative committee that funds appropriated and made available

under specified items in the Agricultural Appropriation Act of 1946, to the extent that such funds have been validly obligated, should be continued available for use by the Farmers' Home Corporation established in the bill, and that certain appropriated funds should be transferred from one agency to another agency created in the bill, were held to be appropriations in violation of Rule XXI clause 4 (now clause 5), and therefore not in order.

On Apr. 9, 1946,⁽¹²⁾ the Committee of the Whole was considering H.R. 5991, a bill creating the Farmers' Home Corporation. The following proceedings took place:

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I have several points of order to submit.

My first point of order is against the language contained on page 5, lines 4 to 15, inclusive, on the ground that it constitutes an appropriation upon a legislative bill and is out of order for that reason. That language reads as follows:

(c) The funds appropriated, authorized to be borrowed, and made available under the items "Farmers' crop production and harvesting loans" (under the heading "Farm Credit Administration"), "Loans,

12. 92 CONG. REC. 3375, 79th Cong. 2d Sess.

grants, and rural rehabilitation”, and “Farm tenancy”, in the Department of Agriculture Appropriation Act, 1946, to the extent that such funds are validly obligated or committed by the Secretary of Agriculture, the Governor of the Farm Credit Administration, or their delegates, shall not lapse on June 30, 1946, but shall be continued available for use by the Corporation in fulfilling such obligations or commitments, subject to the limitations set forth in the acts appropriating or authorizing such funds.

I make the same point of order against the language contained on page 6, lines 4 to 18, inclusive, as follows:

(e) All funds made available by appropriation or authorization to the Secretary of Agriculture for the fiscal year 1947 for loans and administrative expenses for carrying on the farm tenancy program shall be available to the Corporation for loans under the provisions of section 40(d)(13)(A) hereof and for administrative expenses incident thereto. All such appropriations and authorizations for loans, grants, and rural rehabilitation and farmers’ crop production and harvesting loans shall be available to the Corporation for loans for the purposes of section 40(d)(13)(B) hereof and for administrative expenses incident thereto. The limitations on the amounts of each such appropriations and authorization for loans and administrative expenses for each such purpose shall be observed by the Corporation.

I make the same point of order against the language contained on page 6, lines 19 to 25, inclusive, and on page 7, lines 1 to 5, as follows:

(f) There is hereby transferred to the Corporation from the revolving fund established for the purpose of

increasing the capital of the regional agricultural credit corporations, pursuant to section 84 of the Farm Credit Act of 1933, approved June 16, 1933, as amended (U.S.C., 1940 ed., title 12, sec. 1148a), \$10,001,000. \$1,000 of the funds so transferred shall be used for capital of the Corporation, as provided in section 40(b)(1) of the Bankhead-Jones Farm Tenant Act, as amended, and \$10,000,000 of such funds shall be covered into the farm tenant mortgage insurance fund, pursuant to section 11(a) of the Bankhead-Jones Farm Tenant Act, as amended.

MR. [JOHN W.] FLANNAGAN [Jr., of Virginia]: Mr. Chairman, while I am not certain, I am afraid the points of order are well taken.

THE CHAIRMAN:⁽¹³⁾ The points of order are well taken. The Chair sustains the points of order.

§ 4.13 Language in a bill authorizing participation by the United States in the International Development Association (which prohibited further United States subscription to the fund “except that loans or other financing may be provided by [an] agency . . . which is authorized . . . to make loans or provide other financing to international organizations,” which would have included funds theretofore appropriated) was held to be in violation of Rule XXI clause 4 (now clause 5), and ruled out

13. Philip A. Traynor (Del.).

on a point of order where it was not clear that the exception merely restated existing authority in law to make loans to this particular organization.

On June 28, 1960,⁽¹⁴⁾ the Committee of the Whole was considering H.R. 11001, a bill providing for U.S. participation in the International Development Association. At one point, the Clerk read as follows, and proceedings ensued as indicated below:

Sec. 5. Unless Congress by law authorizes such action, neither the President nor any person or agency shall, on behalf of the United States, (a) subscribe to additional funds under article III, section 1, of the articles; (b) accept any amendment under article IX of the articles; or (c) make a loan or provide other financing to the Association, except that loans or other financing may be provided to the Association by a U.S. agency created pursuant to an act of Congress which is authorized by law to make loans or provide other financing to international organizations.

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, a point of order.

THE CHAIRMAN:⁽¹⁵⁾ The gentleman will state it.

MR. BOW: Mr. Chairman, I make the point of order against the language on page 3, beginning at the end of line 4 down through line 8, "except that loans

or other financing may be provided to the Association by a United States agency created pursuant to an act of Congress which is authorized by law to make loans or provide other financing to international organizations."

I will say to the Chair that I have made inquiry of the committee here on the floor and the committee says that these are organizations already in existence, with the possibility of transfers being made under Public Law 480 or by other organizations now authorized to make loans to these various countries. I make the point of order that this is a transfer of appropriated funds and is an appropriation on a legislative bill. . . .

MR. [ABRAHAM J.] MULTER [of New York]: . . . I suggest that the point of order should be overruled. I do not think I said anything to indicate that there was any attempt to transfer any appropriated funds or any authorized funds.

May I read from page 11 of the report which refers precisely to the language now under attack by the point of order?

The excepting clause does not confer upon any U.S. agency any authority it would not otherwise have and is intended to make clear that the prohibitory language does not in any way narrow, or preclude the use of, authority which any agency of the U.S. Government, including the President, possesses under other legislation to make loans or provide other financing to international organizations, including the International Development Association.

I suggest the point of order is not well taken.

MR. BOW: Mr. Chairman, may I reply to that and say that the one I am

14. 106 CONG. REC. 14789, 14790, 86th Cong. 2d Sess.

15. B.F. Sisk (Calif.).

referring to is the exception to what the gentleman from New York has just stated.

MR. MULTER: I have referred only to the language which begins with the words against which the point of order is made. It is that exception to which the report from which I have read is directed.

THE CHAIRMAN: The Chair would like to inquire of the gentleman from New York whether or not he interprets this to be that the U.S. agencies could use funds heretofore appropriated for the purposes of this section?

MR. MULTER: Only if so authorized by the enabling or enacting legislation and the appropriation making the funds available to such other agencies.

THE CHAIRMAN: The Chair is ready to rule. Under the interpretation of the gentleman from New York, the point of order would lie; and therefore the Chair sustains the point of order.

Directing Treasury to Make Funds Available

§ 4.14 Language directing the Secretary of the Treasury to make a certain fund available for the payment of adjusted-service certificates was held to be an appropriation and not in order on a legislative bill.

On Jan. 9, 1936,⁽¹⁶⁾ the Committee of the Whole was considering H.R. 9870, a bill dealing

16. 80 CONG. REC. 273, 274, 74th Cong. 2d Sess.

with payment of adjusted-service certificates (bonus bill). The Clerk read an amendment as follows and proceedings ensued as indicated below:

Amendment offered by Mr. Fish: Page 7, line 13, add section 6A, as follows:

“The Secretary of the Treasury is hereby directed to make the exchange stabilization fund of \$2,000,000,000 that expires on January 30, 1936, available on that date for payment of the adjusted-service certificates.”

MR. [JERE] COOPER of Tennessee: Mr. Chairman, I make the point of order against the amendment that it is not germane to this section or to any part of the bill.

THE CHAIRMAN:⁽¹⁷⁾ The Chair will hear the gentleman from New York on the point of order.

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Chairman, the bill reads, “To provide for the immediate payment of World War adjusted-service certificates”, and my amendment offers a method for the payment of these certificates. This is one of the many means that may be proposed for the payment of these certificates, and I should think there would be the greatest amount of latitude by the Chair for any Member to offer a specific way of paying the certificates.

THE CHAIRMAN: The bill is merely an authorization for an appropriation. The Chair thinks that a reading of the amendment offered by the gentleman from New York clearly shows that the amendment is an appropriation, and

17. Thomas L. Blanton (Tex.).

not proper on this bill, and the Chair, therefore, sustains the point of order.

§ 4.15 Language in a bill reported by a legislative committee authorizing the Treasurer of the United States to honor requisitions of the Archivist in such manner and in accordance with such regulations as the Treasurer might prescribe was held an appropriation and not in order under Rule XXI clause 4 (now clause 5).

On July 13, 1939,⁽¹⁸⁾ the Committee of the Whole was considering Senate Joint Resolution 118, a bill to provide for the establishment and maintenance of the Franklin D. Roosevelt Library. The following proceedings took place:

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the section on the ground that it contains an appropriation of public funds and that it is reported by a committee not having jurisdiction to bring into the House an appropriation bill.

I call the attention of the Chair to the following language on page 6, in line 7:

The Treasurer of the United States is hereby authorized to honor the requisitions of the Archivist made in such manner and in accordance with such regulations as the

Treasurer may from time to time prescribe.

Those words take money directly from the Treasury of the United States without any limitation and are in violation of the provisions of clause 4 of rule XXI of the House. . . .

Now, this is a permanent appropriation which will go on forever of whatever amount the Archivist cares to draw for upon the Treasurer under such rules and regulations as the Treasurer may from time to time prescribe. I make the point of order against the section.

THE CHAIRMAN:⁽¹⁹⁾ The Chair desires to direct a question to the gentleman from New York. In line 8, on page 6, is the gentleman of the opinion that the authorization there takes money from the United States Treasury or merely honors requisitions?

MR. TABER: It authorizes the Treasurer of the United States, without any further legislation, to take money right out of the United States Treasury. It is a permanent appropriation.

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

MR. [KENT E.] KELLER [of Illinois]: Yes, Mr. Chairman, it seems to me that the point of order is ill taken for this reason: This is not an appropriation. There is no appropriation provided in this at all. It is simply and solely for the purpose of accepting the requisitions of the proper authority in charge of all archives of all kinds and character, because this bill provides that the expense shall be appropriated for as a part of the Archivist's expenses to the Government as a whole.

18. 84 CONG. REC. 9060, 9061, 76th Cong. 1st Sess.

19. John W. Boehne, Jr. (Ind.).

MR. [JOHN J.] COCHRAN [of Missouri]: Mr. Chairman, I call attention to the fact that the language in the section provides for the creation of a trust fund to be deposited in the Treasury of the United States. It provides for the raising of a trust fund to be placed in the Treasury, and the language does not take appropriated money out of the Treasury. It is not out of Government funds, but out of the trust fund. It is not in itself a direct appropriation, but more of an authorization for those in charge to draw on the trust fund.

MR. TABER: Mr. Chairman, I call the attention of the Chair to the fact that there is no limitation on the funds that this should be taken out of. The way it reads it would be taken directly out of the Treasury and not out of any trust fund whatever. It does not say that it shall be taken out of a trust fund, nor is it implied in any way.

THE CHAIRMAN: Does the gentleman from New York limit his point of order to the sentence which he read?

MR. TABER: Mr. Chairman, I made the point of order against the section.

MR. KELLER: Have you read what is at the bottom of page 5 as to the method of depositing the money in the Treasury first?

MR. TABER: Yes; I have read that. There is nothing whatever that limits the amount that can be taken out to the amount that is put in, nor is there anything whatever that limits it to being taken out of that fund. It is direct authority to the Treasury to pay it.

MR. KELLER: Well, what is a requisition, then?

MR. TABER: A requisition is a draft upon the Treasurer. This constitutes a permanent appropriation.

MR. KELLER: Only where the money is already provided, not where it is not provided.

MR. TABER: No; there is no such limitation.

THE CHAIRMAN: The Chair is ready to rule.

The Chair is of the opinion that the point of order made by the gentleman from New York against the section is well taken, and therefore sustains the point of order.

MR. [SAM] RAYBURN [of Texas]: Mr. Chairman, I offer an amendment. . . .

THE CHAIRMAN: The gentleman from Texas is recognized for 5 minutes on his amendment.

MR. TABER: Mr. Chairman, will the gentleman yield?

MR. RAYBURN: I yield.

MR. TABER: Will the gentleman tell us briefly what his amendment does?

MR. RAYBURN: I may say to the gentleman from New York that I conceded that his point of order was good.

The amendment I offer leaves out the language objected to by the gentleman from New York in lines 7, 8, 9, and 10 on page 6, reading:

The Treasurer of the United States is hereby authorized to honor the requisitions of the Archivist made in such manner and in accordance with such regulations as the Treasurer may from time to time prescribe.

This undoubtedly meets the objection raised by the gentleman from New York, and I contend that the amendment is in order.

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Texas.

The amendment was agreed to.

Allocation of Agency's Receipts**§ 4.16 Language in a legislative bill providing for the collection of certain fees and authorizing the use of the fees so collected for the purchase of certain installations was construed to be an appropriation and not in order under Rule XXI clause 4 (now clause 5).**

On June 17, 1937,⁽²⁰⁾ the Committee of the Whole was considering H.R. 7472, the District of Columbia tax bill. At one point, the Clerk read as follows, and proceedings ensued as indicated below:

The Commissioners of the District of Columbia are hereby authorized and empowered, in their discretion, to fix, prescribe, and collect fees for the parking of automobiles in or upon any street, avenue, road, highway, or other public space within the District of Columbia under their jurisdiction and control, and to make and enforce regulations to provide for the collection of such fees. Any person violating any such regulation shall be punished by a fine of not more than \$100 or imprisonment not to exceed 10 days.

The Commissioners of the District of Columbia are further authorized and empowered, in their discretion, to purchase, rent, and install such mechanical parking meters or devices as the

Commissioners may deem necessary or advisable to insure the collection of such fees as may be prescribed for the parking of vehicles as aforesaid, and to pay the purchase price or rental and cost of installation of the same from the fees collected, the remainder of such fees to be paid to the collector of taxes for deposit in the Treasury of the United States to the credit of the revenues of said District. . . .

MR. [THOMAS] O'MALLEY [of Wisconsin]: I make the point of order that this section appropriates money out of fees to be collected, and therefore it is appropriation on a legislative bill. Line 24 provides that the purchase price of these machines shall be paid from the fees collected and the remainder of the fee shall be paid into the Treasury.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make the point of order that the point of order comes too late. The section has been debated and amendments have been offered, and an amendment to strike out the section has been offered.

MR. O'MALLEY: I was attempting to get recognition from the very beginning.

THE CHAIRMAN:⁽²¹⁾ The Chair is ready to rule. The last sentence of section 4, rule 21, provides as follows:

A question of order on an appropriation in any such bill, joint resolution, or amendment thereto may be raised at any time.

It is the opinion of the Chair that the point of order is properly raised at this time⁽¹⁾ and that this is purely an

20. 81 CONG. REC. 5915-18, 75th Cong. 1st Sess.

21. James M. Mead (N.Y.).

1. Points of order against appropriations in legislative bills may be

appropriation, and, therefore, that language, as indicated in the gentleman's point of order, is ruled out of order.

The Chair sustains the point of order.

§ 4.17 A provision in a legislative bill authorizing the Director of the Census to use funds collected for issuance of birth certificates in administering the provisions of the bill until expended was held to be an appropriation not in order under Rule XXI clause 4 (now clause 5).

On July 15, 1942,⁽²⁾ the Committee of the Whole was considering H.R. 7239, a bill authorizing the Director of the Census to issue birth records. The following proceedings took place:

MR. [FRANCIS H.] CASE of [South Dakota]: Mr. Chairman, I make the point of order against the last sentence of the section just read that the language creates a revolving fund, constitutes an appropriation, and is reported in the bill by a committee which is without authority to report appropriations.

MR. [JOHN E.] RANKIN of Mississippi rose.

THE CHAIRMAN:⁽³⁾ Does the gentleman from Mississippi desire to be heard on the point of order?

raised even after debate on the merits has taken place. See §12.15, *infra*.

2. 88 CONG. REC. 6209, 77th Cong. 2d Sess.
3. Wright Patman (Tex.).

MR. RANKIN of [Mississippi]: I wish to say that this is not an appropriation. This money never goes into the Federal Treasury. Therefore it does not come under the rule on which the gentleman from South Dakota relies.

MR. CASE of South Dakota: I pointed out that this creates a revolving fund.

THE CHAIRMAN: Where does this money go if it does not go into the Treasury?

MR. RANKIN of Mississippi: The money is used by the Director of the Census to pay for the copying of these records.

THE CHAIRMAN: What happens to the money?

MR. RANKIN of Mississippi: It is held in the Bureau of the Census just exactly as the Tennessee Valley Authority holds the money that is paid in there, and that is used in a revolving fund for the construction of dams, transmission lines, and so forth.

THE CHAIRMAN: The question seems to be whether or not the language is equivalent to appropriating this money. The language is:

All amounts collected in payment of such fees may be used by the Director in administering only the provisions of this act and shall be available until expended.

There are certain precedents which indicate that that language is equivalent to the phrase 'is hereby appropriated,' which would be in violation of the rule. The Chair cites Cannon's Precedents, volume VII, section 2152, page 896:

Provision for establishment of a special fund, to be available with other funds appropriated for the purpose in payment of refunds, was

ruled to be an appropriation and subject to a point of order under section 4 of rule XXI.

On January 12, 1933, in the course of the consideration of the bill (H.R. 13991), the Farm Relief Bill, in the Committee of the Whole House on the state of the Union, this paragraph was read:

“(b) The proceeds of all taxes collected under this section, less 2½ percent for the payment of administrative expenses under this act, shall be covered into the Treasury into a special fund to be available, together with any other funds hereafter appropriated for the purpose, for the payment of any refunds under this section.”

Mr. Carl R. Chindblom, of Illinois, raised the question of order that the paragraph was in violation of section 4 of rule XXI prohibiting committees other than the Committee on Appropriations from reporting appropriations.

The Chairman, Mr. Lindsay C. Warren, of North Carolina, sustained the point of order.

The Chair believes that the language objected to is in violation of section 4 of rule XXI, and sustains the point of order.

§ 4.18 Language in a bill reported from a legislative committee providing that all moneys received by the Maritime Commission under the act would be deposited in the construction fund of the commission, and all disbursements made by the commission in carrying out the act would be paid from such fund, was held to be an appropriation and not in order.

On Oct. 2, 1945,⁽⁴⁾ the Committee of the Whole was considering H.R. 3603, a bill concerning the sale of surplus war vessels. At one point the Clerk read as follows and proceedings ensued as indicated below:

Sec. 13. (a) The Commission is authorized to reconvert or restore for normal operation in commercial services, including removal of national defense or war service features, any vessel authorized to be sold or chartered under this act. The Commission is authorized to make such replacements, alterations, or modifications with respect to any vessel authorized to be sold or chartered under this act . . . as may be necessary or advisable to make such vessel suitable for commercial operation on trade routes or services or comparable as to commercial utility to other such vessels of the same general type. . . .

(d) All moneys received by the Commission under this act shall be deposited in the construction fund of the Commission, and all disbursements made by the Commission in carrying out this act shall be paid from such fund. The provisions of sections 201(d), 204(b), 207, 209(a), and 905(c) of the Merchant Marine Act, 1936, as amended, shall apply to all activities and functions which the Commission is authorized to perform under this act. . . .

MR. [HERBERT C.] BONNER [of North Carolina]: Mr. Chairman, a point of order.

4. 91 CONG. REC. 9288, 9289, 79th Cong. 1st Sess.

THE CHAIRMAN:⁽⁵⁾ The gentleman will state it.

MR. BONNER: Mr. Chairman, I make the point of order against the language on page 21, line 6, first sentence, on the ground that it is an appropriation.

THE CHAIRMAN: Does the gentleman from Virginia care to be heard on the point of order?

MR. [SCHUYLER OTIS] BLAND [of Virginia]: Reluctantly, upon advice from the parliamentarian on the point of order that I would be foolish to argue otherwise, I concede the point of order.

THE CHAIRMAN: The point of order is conceded; the point of order is sustained.

Use of Proceeds From User Charges

§ 4.19 An amendment establishing a user charge and making the revenues collected therefrom available without further appropriation is not in order to a bill reported by a committee not having the jurisdiction to report appropriations.

On Mar. 29, 1972,⁽⁶⁾ during consideration in the Committee of the Whole of the bill (H.R. 11896) to amend the Federal Water Pollution Control Act, the following proceedings took place:

MR. [JOHN] HEINZ [of Pennsylvania]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

- 5. William G. Stigler (Okla.).
- 6. 118 CONG. REC. 10749-51, 92d Cong. 2d Sess.

Amendment offered by Mr. Heinz: On page 350 following line 6:

“Sec. 319(a) It is the purpose of this Section to supplement the enforcement procedures of this Act by providing for desirable economic incentives to water users to conserve water and to minimize pollution through reduction in the quantity of waste products dumped into these waterways. It is also the purpose of this Section to encourage the formation of regional waste treatment management organizations pursuant to section 208(a) of this Act.

“(b)(1) In furtherance of the purpose of this Section, the Administrator and the Secretary of the Treasury shall prescribe such regulations as are necessary to establish and put into effect two years after the enactment of this Act a schedule of national effluent charges for all those discharges including municipal sewage which detract from the quality of the water for municipal agricultural, industrial, recreational, sport, wildlife, and commercial fish uses. These discharges shall include, but not be limited to, biochemical oxygen demand (BOD), suspended solids, thermal discharges, and toxic wastes. The charges shall be set at a level which will provide for the attainment of the standards and goals of this Act. Such regulations shall also provide for making available as public information all amounts collected pursuant to such charges.

“(2) Any person who willfully fails to pay any charge as required by regulations established pursuant to this Section or who willfully fails to make any return, keep any records, supply any information, or to do any other act required by such regulations shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than one year or both, together with costs of prosecution. . . .

“(c) Revenues collected by the Secretary of the Treasury pursuant to such charges shall be deposited in a trust fund (hereinafter referred to as the ‘fund’) in the Treasury to be available without further appropriation to the Administrator for use as prescribed in subsection (d).

“(d) Money from the fund shall be available for distribution by the Administrator in each year for the purpose of funding Section 106 of this Act (to assist water pollution control programs of States and interstate agencies)”

THE CHAIRMAN:⁽⁷⁾ The Chair will hear the gentleman from Ohio.

MR. [WILLIAM N.] HARSHA [of Ohio]: Mr. Chairman, my point of order is as follows: . . . [T]his amendment is not within the jurisdiction of the Committee on Public Works. It proposes a tax on effluents, and raises revenues, and therefore violates rule XI, which places jurisdiction of revenue raising in the Committee on Ways and Means.

Section 319(c), Mr. Chairman, categorically refers to revenues collected by the Secretary of the Treasury pursuant to such charges.

. . . [T]he amendment violates rule XXI, clause 4 prohibiting appropriations in legislative bills. Section 319(c) and (d) of the amendment directs the action to be taken with the revenues raised in accordance with the amendment. In addition to the clear language of the amendment, the stated purpose of the amendment in the proponent's March 22, 1972, letter demonstrates the intent that these funds be used for a specific purpose in violation of rule XXI, clause 4.

Therefore, Mr. Chairman, I insist upon my point of order. . . .

7. Neal Smith (Iowa).

MR. HEINZ: Mr. Chairman, I would argue, in response to the statement of the distinguished gentleman from Ohio (Mr. Harsha) in urging his point of order, that effluent charges are basically user charges, and user charges are fundamental to the bill. The bill would not work without them; they are the primary means of financing the operation and construction of the water treatment works herein.

And I would add further that this in itself is an important consideration in ruling on this.

Also I would hasten to add that clearly under sections 204(b)(2) and 204(b)(3) that in fact the purpose of this bill is to raise revenues for the purposes of the bill, and without this we could not possibly construct any water treatment facilities.

Finally—and to be brief—there are two historical precedents that I believe are important that establish the principle that user charges are germane to the legislation.

Volume IV, section 4119 of Hinds' Precedents of the House of Representatives—no relation, I would add—state that on February 23, 1905, the River and Harbor Appropriations Bill was under consideration, and included in such bill was a section permitting the collection of tolls on freight and passengers. A point of order was made to that. The point of order was not sustained.

Similarly, at a later date, in Volume VII, section 1929 of the same precedents, a bill that included a provision calling for fines and penalties for offenses on lands of the public domain was reported from the Committee on Public Lands, now called the Depart-

ment of the Interior, and it was determined that those charges might properly be considered by the Committee of the House as a Whole.

Mr. Chairman, I respectfully request that the Chair consider these precedents in ruling on the point of order raised by the gentleman from Ohio. . . .

THE CHAIRMAN: . . . The Chair has examined the amendment.

The gentleman from Pennsylvania states that the bill contains similar provisions. However, the rule under which we are operating specifically waives all points of order against sections 2, 8, and 12 of the committee amendment, but it does not waive such points of order against an amendment to the committee amendment.

So far as nongermaneness is concerned, the Chair finds in clause 3(c) of the amendment submitted a provision for collecting revenues or taxes. Also in section 3(d) it provides for money collected from the fund shall be available for distribution—in other words, an appropriation.

So the Chair finds it is not germane for the reason that it provides for raising revenue, or a tax, and appropriates money. Therefore, the amendment is in violation of clause 7, rule XVI and also it is in violation of clause 4, rule XXI, prohibiting appropriations on legislative bills.

The Chair sustains the point of order.

Parliamentarian's Note: Points of order had been waived against appropriations contained in the committee amendment in the nature of a substitute, but not

against amendments offered from the floor containing such provision. Hence, the amendment was subject to a point of order under Rule XXI clause 4 (clause 5 of Rule XXI in the 1981 *House Rules and Manual*).

Allocation of Proceeds of Sale

§ 4.20 In a bill providing, in part, authority to construct certain facilities at military reservations, a provision permitting immediate use of funds derived from the sale of the San Jacinto Depot for purchase of a site and construction of a depot at Point-Aux-Pins, Alabama, was ruled out as an appropriation reported from a legislative committee in violation of Rule XXI clause 4 (now clause 5).

On July 9, 1958,⁽⁸⁾ the Committee of the Whole was considering H.R. 13015. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Sec. 110. The Secretary of the Army is authorized and directed to enter into a contract or contracts for the sale of the San Jacinto Ordnance Depot, Texas. . . . The Secretary of the Army is directed to act as follows:

8. 104 CONG. REC. 13277, 13284, 13285, 85th Cong. 2d Sess.

(1) The depot shall be moved to, and integrated with, the ammunition out-loading terminal previously authorized for construction at Point-Aux-Pins, Ala., and, notwithstanding any other provisions of this or any other act, the authority contained in the act of July 27, 1954 (68 Stat. 536), for the acquisition of land and initiation of construction for the Point-Aux-Pins facility shall continue in effect until specifically superseded, modified, or repealed.

(2) The sale of the San Jacinto Depot property shall be offered by the Chief of Engineers, United States Army, on behalf of and under the supervision of the Secretary of the Army within 18 months from the date of this act. No part of the land herein shall be sold, transferred, or occupied, by virtue of this transaction, by any Government agency or department.

(3) A contract or contracts for the sale of the San Jacinto Depot shall be consummated as expeditiously as possible thereafter. . . .

(4) All proceeds from the sale shall be available to administer the provisions of this section and to pay any and all expenses, including land acquisition, in connection with the relocation, exchange, or sale of the San Jacinto Depot or the establishment of a fully integrated depot at Point-Aux-Pins, Ala., or all proceeds deposited into the Treasury of the United States for obligation by the Army. . . .

MR. [HARRY R.] SHEPPARD [of California]: Mr. Chairman, a point of order.

THE CHAIRMAN:⁽⁹⁾ The gentleman will state it.

MR. SHEPPARD: Mr. Chairman, I make a point of order against para-

graph 4 of section 110 which appears on page 18 of the bill. This paragraph is on appropriation in a bill from a committee not having jurisdiction to report appropriations, and is in violation of rule 21, paragraph 4.

Specifically, this provides that funds from the sale of the San Jacinto Ammunition Depot shall be available to the Secretary of the Army to pay any and all expenses, including land acquisition, in connection with the relocation, change, or sale of the San Jacinto Depot or for the establishment of a fully integrated depot at a specified location in Alabama.

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

MR. [CARL] VINSON [of Georgia]: I do not desire to be heard on the point of order, Mr. Chairman. I concede the point of order. Therefore, paragraph 4, if the Chair sustains the point of order, will be eliminated.

THE CHAIRMAN: The gentleman from Georgia concedes the point of order. The Chair sustains the point of order.

Allocating Money Repaid From Loans

§ 4.21 A provision in a bill reported by a legislative committee making available for administrative purposes money repaid from advances and loans was held to be an appropriation and not in order.

On Apr. 8, 1936,⁽¹⁰⁾ the Committee of the Whole was consid-

¹⁰ 80 CONG. REC. 5207, 74th Cong. 2d Sess.

⁹ James J. Delaney (N.Y.).

ering H.R. 12037, the tobacco compact bill. At one point the Clerk read a provision of the bill and proceedings ensued as indicated below:

Sec. 7. (b) Any advances or loans which are repaid to the Secretary by any commission pursuant to section 3 of this act shall be held in a special fund in the Treasury of the United States and shall be available until expended for the purpose of administering this act or until such time as the Secretary shall determine that all or any part of such funds will not be needed for such purpose, whereupon all or any part of such funds shall, upon approval by the Secretary, revert to the general fund of the Treasury of the United States.

MR. [CARL E.] MAPES [of Michigan]: Mr. Chairman, a point of order. I desire to make a point of order against that paragraph.

MR. [MARVIN] JONES [of Texas]: We intend to offer an amendment striking out the appropriation.

MR. MAPES: Mr. Chairman, I make a point of order against the paragraph. I do not care to argue it. It is conceded by the chairman of the committee, I think.

MR. JONES: It is subject to a point of order.

THE CHAIRMAN:⁽¹¹⁾ The Chair sustains the point of order.

Use of Excess Foreign Currency

§ 4.22 Language in a bill authorizing funds for the For-

11. John R. Mitchell (Tenn.).

eign Assistance Act and making excess foreign currencies available to stimulate private enterprise abroad was conceded to be an appropriation and in violation of Rule XXI clause 4 (now clause 5).

On Aug. 24, 1967,⁽¹²⁾ the Committee of the Whole was considering H.R. 12048, the Foreign Assistance Act for 1967. A provision was read, and a point of order was raised as indicated below:

On page 35, line 1: . . .

“Sec. 301. Chapter 1 of part III of the Foreign Assistance Act of 1961, as amended, which relates to general provisions, is amended as follows: . . .

“(d) Section 612, which relates to the use of foreign currencies, is amended by adding at end thereof the following new subsection:

“(d) Notwithstanding section 1415 of the Supplemental Appropriation Act, 1953, excess foreign currencies, as defined in subsection (b) may be made available, in addition to funds otherwise available, to encourage the establishment, improvement, or expansion of private enterprises in friendly less developed countries. . . . The President may make loans or guaranties with such currencies on such terms and conditions as he may deem appropriate in the circumstances. To the maximum extent practicable in making such loans or guaranties, the President shall utilize the services of private financing institutions, including inter-

12. 113 CONG. REC. 23974, 23975, 90th Cong. 1st Sess.

mediate credit institutions which finance private business activity even though there may be a governmental interest in such institutions. . . .”

MR. [THOMAS E.] MORGAN [of Pennsylvania]: . . . Mr. Chairman, I ask unanimous consent that the portion of the bill starting on page 35, line 1, to the bottom of page 37, be considered as read and printed in the Record, and open to amendment at any point.

THE CHAIRMAN:⁽¹³⁾ Is there objection to the request of the gentleman from Pennsylvania? The Chair hears none, and it is so ordered.

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

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

MR. ROONEY of New York: Mr. Chairman, I make a point of order against the language on page 36, beginning on line 3 and running through line 23, on the grounds that it makes an appropriation and is therefore in violation of paragraph 4 of rule XXI.

. . .

MR. MORGAN: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is conceded. The Chair sustains the point of order.

Additional Use of Existing Foreign Credits

§ 4.23 To a law authorizing, for certain purposes, use of foreign credits already generated from sale of agricultural products abroad, a sec-

tion of a bill reported by the Committee on Agriculture to authorize use of such funds for an additional purpose, was ruled out as an appropriation in violation of Rule XXI clause 4 (now clause 5).

On July 18, 1956,⁽¹⁴⁾ during consideration in the Committee of the Whole of H.R. 11708, a bill to amend the Agricultural Trade Development and Assistance Act of 1954 the following proceedings occurred:

Sec. 2. Section 104 (h) of the act is amended by inserting the following language immediately before the period at the end of the section: “and for the providing of assistance to activities and projects authorized by section 203 of the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1448)”.

MR. [THOMAS B.] CURTIS [of Missouri]: Mr. Chairman, I make the point of order against all of section 2 that it is an appropriation on a bill by a committee not authorized to deal with appropriations.

In support of that statement, may I say that this is exceedingly technical and very difficult to follow. Nonetheless, by referring to the basic act, Public Law 480, with which this deals, we find that it refers to foreign currencies and I quote, “which accrue to the United States under this act.” Then refer to the specific section which states, “to use the foreign currencies

13. Charles M. Price (Ill.).

14. 102 CONG. REC. 13393, 84th Cong. 2d Sess.

which accrue." Then go right on down to section (h), to which this is an amendment. It states, "for the financing of." I submit this is obviously an appropriation. I might say that if this were only an authorization I would have no objection to it at all, but I do not believe this is a proper place to appropriate. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, This currency unquestionably belonging to the Government of the United States, which it receives under the provisions of section 2 of Public Law 480, 83d Congress, and being turned over by the terms of section 104 for specific purposes is for other things or for anything that they desire to purchase.

Paragraph (a) provides for providing new markets for United States agricultural commodities.

Paragraph (b) to purchase strategic and critical materials. . . .

Paragraph (e) for promoting balanced economic trade among nations.

Paragraph (f) to pay United States obligations abroad.

Paragraph (g) for loans to promote multilateral trade.

Mr. Chairman, the adding of one more item for which the funds can be used constitutes an additional appropriation of these currencies which belong to the Government of the United States as a result of the operations under paragraph (a) section 2. . . .

MR. [HAROLD D.] COOLEY [of North Carolina]: Mr. Chairman, all of the money that goes into the financing of these programs have already been appropriated and turned over to the President to be used by the President. In the original act, he is given the

right to barter. He is given the right to sell for local currencies. He is given the right to give away. This only provides that he can barter just as has been pointed out heretofore in the debate; one of the rights he now has is to barter. We say he cannot barter with the U.S.S.R. or North Korea or China, but that he can barter with all other countries in the world. So it is not an appropriation on legislation at all. The moneys have already been appropriated and now are in the hands of the President. Mr. Chairman, without unduly delaying the matter, may I point out the language. It says:

The President may use or enter into agreements with friendly nations or organizations of nations and use the foreign currencies which accrue under this title for one or more of the following purposes.

And following that is barter, which is one of those purposes.

THE CHAIRMAN: ⁽¹⁵⁾ The Chair would like the gentleman from North Carolina to comment on this question. Do we not acquire foreign currencies which belong to this Government, which we receive for selling commodities?

MR. COOLEY: Certainly, we are acquiring foreign currencies, and the act provides for the use of those currencies by the President of the United States. One of the uses that he can use them for is (c) to produce military equipment, materials and so forth and services for the common defense.

THE CHAIRMAN: The point at issue is whether the funds can be used without a further appropriation by the Congress.

15. Prince H. Preston, Jr. (Ga.).

MR. COOLEY: Yes, Mr. Chairman, that is the question. But the point is, as I have pointed out, that the funds have already been appropriated and have already been used largely, and this act itself authorizes the increase of the authorization, but it does not authorize the President to use the foreign currencies or commodities for any purpose foreign to or in addition to the enumerated uses set forth in the act, one of which is to barter.

THE CHAIRMAN: The Chair would like to inquire of the gentleman from North Carolina [Mr. Cooley] if all the currencies previously acquired have been used by this Government.

MR. COOLEY: They have been obligated. To the exact extent, I am not sure, but practically all of them have been obligated but not actually used. They are covered by gentlemen's agreements, some of which have not been fully consummated.

I would like to emphasize one point, if I may. The point of order is to the effect that we are adding to the enumeration of uses that the President could employ. We are not doing anything of the kind. Under the act we have a right to barter. That is what this provision authorizes him to do. We are only saying that he can barter with this money. The fact of the business is it might be considered a limitation because we limit the use of the money, in that he cannot use it in North Korea or China.

MR. TABER. If the Chair will permit, this is not barter at all. It is the use of funds. The appropriations having already been established in section 104, that of course can be continued. But to add new money and appropriate money

for other purposes that were not allowed in the first bill is beyond the rule, and it constitutes a new appropriation. Therefore, it is subject to a point of order because it comes from a committee other than the Committee on Appropriations.

MR. CURTIS [of Missouri]: Mr. Chairman, might I add also that in the committee hearings witnesses testifying on the part of the executive department used as one of their arguments that this would give them additional funds.

MR. COOLEY: Mr. Chairman, may I add one comment? The gentleman from New York [Mr. Taber] points out that we are adding something to the authority of the President by this amendment in the bill. Actually, I think some of these funds are now used in connection with the school lunch program in Japan. They are being used in other countries in connection with the education of the children of those countries. Certainly we are not adding to the authority of the President. It is rather strange that an objection to giving authority to the President should come from that side of the aisle. I do not think this is subject to a point of order.

THE CHIRMAN: The Chair is ready to rule. The gentleman from Missouri [Mr. Curtis] has made a point of order against section 2 of the bill, that this constitutes an appropriation. The bill under consideration by the Committee seeks to amend existing law known as Public Law 480 of the 83d Congress. In the pending bill it is clearly evident that a new activity is being created by the legislation. New authority is being granted in the handling of the foreign credit derived from the sale of commodities. Therefore, in the opinion of

the Chair, it constitutes an appropriation. The Chair therefore feels constrained to sustain the point of order.

Parliamentarian's Note: See § 4.44, *infra*, where language authorizing use only of future foreign currency proceeds was held not to be an appropriation.

Amendment to Legislative Bills—Generally

§ 4.24 An amendment appropriating money is not in order on a bill reported by a committee not having jurisdiction over appropriations.

On May 22, 1936,⁽¹⁶⁾ the Committee of the Whole was considering S. 3531, a bill to amend an act relating to Mississippi River flood control. The following proceedings took place:

MR. [ARTHUR P.] LAMNECK [of Ohio]: Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 2, line 7, after the word "Engineers", add the following: "*Provided*, That the Chief of Engineers, under the supervision of the Secretary of War, shall at the expense of the United States Government, construct a system of levees and reservoirs to adequately control the floodwaters of the Scioto, Olentangy, and Sandusky River Valleys in Ohio: *And provided further*, There is hereby appropriated the sum of

\$40,000,000 for the carrying out of the above project."

MR. [RILEY J.] WILSON [of Louisiana]: Mr. Chairman, I make the point of order against the amendment that it makes a direct appropriation.

THE CHAIRMAN:⁽¹⁷⁾ The amendment proposes to appropriate \$40,000,000. Rule XXI provides that 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 consideration of a bill or joint resolution reported by a committee not having that jurisdiction.

Inasmuch as the amendment appropriates money in violation of the rule, the Chair sustains the point of order.

Emergency Fund

§ 4.25 An amendment to a legislative bill proposing to make available not to exceed \$120,000 of appropriations for rivers and harbors work as an emergency fund to be expended for repairing damage to and checking erosion on the Bayocean Peninsula in Oregon was held in violation of Rule XXI clause 4 (now clause 5).

On May 17, 1939,⁽¹⁸⁾ the Committee of the Whole was consid-

16. 80 CONG. REC. 7777, 74th Cong. 2d Sess.

17. John W. Flannagan, Jr. (Va.).

18. 84 CONG. REC. 5679, 76th Cong. 1st Sess.

ering H.R. 6264, a bill dealing with public works on rivers and harbors. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. Mott: Page 9, after line 6, insert a new paragraph, as follows:

"The sum of not to exceed \$120,000 of appropriations available for river and harbor work shall be immediately available as an emergency fund to be expended under the direction of the Secretary of War and the supervision of the Chief of Engineers for repairing damage to and checking erosion on the Bayocean Peninsula in Oregon, caused by storm in January 1939, in order to provide adequate protection to property on such peninsula and in Tillamook, Oreg."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it is an appropriation on a legislative bill.

THE CHAIRMAN:⁽¹⁹⁾ Does the gentleman from Oregon desire to be heard on the point of order made by the gentleman from New York?

MR. [JAMES W.] MOTT [of Oregon]: Mr. Chairman, I think the gentleman from New York did not hear the amendment correctly, because it is not an appropriation but an authorization for the engineers to use river and harbor money.

Mr. Chairman, there is no language in this amendment which is appropriating language. The amendment authorizes the use by the Army engineers of money available for river and harbor

work to be used in emergency work on this project.

THE CHAIRMAN: Does the gentleman from New York insist on his point of order?

MR. TABER: Mr. Chairman, I think I shall have to insist on the point of order. If we are to have an appropriation, it should come in an appropriation bill after a hearing, and then it would go through quicker, if the need were shown, than this bill.

THE CHAIRMAN: The Chair is ready to rule.

The Chair is of the opinion that the amendment of the gentleman from Oregon contains language which proposes to divert an appropriation heretofore made to a new purpose and is therefore in violation of clause 4 of rule XXI of the House of Representatives. The Chair sustains the point of order.

Unemployment Benefits

§ 4.26 To a bill amending the Social Security Act to provide a national program for war mobilization and reconversion, an amendment directing payments to states on account of unemployment benefits was held to be an appropriation in violation of Rule XXI clause 4 (now clause 5), and not in order.

On Aug. 31, 1944, the Committee of the Whole was considering S. 2051, the war mobilization and reconversion bill of 1944. The following proceedings took place:⁽²⁰⁾

20. 90 CONG. REC. 7464, 78th Cong. 2d Sess.

19. Orville Zimmerman (Mo.).

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the [committee] amendment that it is an appropriation of funds in violation of clause 4 of rule XXI of the House. I call the attention of the Chair particularly to this language. I refer to the page and line of the Senate bill rather than the amendment, because I have that in front of me and I assume the Chair can refer to it readily. It begins on page 21, line 6:

(c) Each State shall be entitled to receive from the Federal unemployment account for each quarter, beginning with the first quarter commencing after enactment of this act, an amount equal to the total of all payments of unemployment compensation made by such State during such quarter, pursuant to an agreement under this section.

(d) In the event that any State does not agree to make such payments to such persons, the Civil Service Commission is hereby authorized and directed to make such payments. . . .

(f) In case of an agreement under this section that a State agency will make payments as agent of the United States, there shall be paid in advance to the State such sum as the Board estimates the State will be entitled to receive for each quarter under such section. All money paid to a State under this subsection shall be used solely for the payment of unemployment compensation. Any money so paid to a State which is not used for the purpose for which it was paid shall, upon termination of the agreement, be returned to the Treasury. . . .

THE CHAIRMAN:⁽¹⁾ The Chair will state to the gentleman from Rhode Is-

1. Fritz G. Lanham (Tex.).

land that the rule under which we are considering this measure, waives points of order against the committee substitute, but not against the amendments which would be offered to that substitute. The rule cited by the gentleman from New York is very clear and specific:

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 appropriation in any such bills, joint resolution, or amendment thereto may be raised at any time.

In the opinion of the Chair, the language cited by the Chair and other language cited by the gentleman from New York, clearly provides for an appropriation.

MR. [AIME J.] FORAND [of Rhode Island]: Mr. Chairman, if the committee amendment, which is an entire new bill, had not been brought to the floor of the House as it is now, we would be considering the George [Senate] bill, and that would be in the George bill. Would not the rule given to us by the Committee on Rules clear that? We understood this was a broad rule.

THE CHAIRMAN: Yes; the rule would clear the Senate bill, but we are not considering the Senate bill; we are considering the committee substitute amendment to the Senate bill. This is offered as an amendment to the committee amendment. In the opinion of the Chair the point of order is well taken.

The Chair sustains the point of order on the authorities cited.

Guaranteeing Agencies' Use of Previously Appropriated Funds

§ 4.27 Language in an amendment to a bill reported by the Committee on Banking and Currency providing that certain guaranteeing agencies were thereby authorized to use for the purposes of the section any funds "heretofore" appropriated was held to be an appropriation in violation of Rule XXI clause 4 (now clause 5), and not in order.

On Aug. 2, 1950,⁽²⁾ the Committee of the Whole was considering H.R. 9176, the Defense Production Act of 1950. At one point, a Member raised a point of order against an amendment. The proceedings were as follows:

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:⁽³⁾ The gentleman will state it.

MR. TABER: I make the point of order that the amendment violates the provisions of section 4 of rule 21. . . .

THE CHAIRMAN: Will the gentleman from New York point out the specific language in the bill to which he objects?

2. 96 CONG. REC. 11599, 11600, 81st Cong. 2d Sess.

3. Howard W. Smith (Va.).

MR. TABER: I call the Chair's attention to page 7, lines 18 to 23:

(d) Each guaranteeing agency is hereby authorized to use for the purposes of this section any funds which have heretofore been appropriated or allocated or which hereafter may be appropriated or allocated to it, or which are or may become available to it, for such purposes or for the purpose of meeting the necessities of the national defense. . . .

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

. . . . [T]he Chair is of the opinion that the language there does constitute an appropriation in violation of the rule cited by the gentleman from New York, and accordingly sustains the point of order against the amendment on account of that objectionable language.

Use of Foreign Interest Payments

§ 4.28 To a bill authorizing the furnishing of emergency food relief assistance to India on specified credit terms, an amendment providing that interest on the principal of any debt incurred pursuant to such relief program be deposited in a special account in the Treasury, to be immediately available for certain types of expenditures by the Department of State was held to be an appropriation in violation of Rule XXI clause 4 (now clause 5).

On May 24, 1951,⁽⁴⁾ the Committee of the Whole was considering H.R. 3791, a bill to furnish emergency food relief assistance to India. An amendment was offered and a point of order raised as indicated below:

MR. [WILLIAM G.] BRAY [of Indiana]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Bray: On page 3, at line 20, add a new section reading as follows:

“Sec. 4 (a) any sums payable by the Government of India, under the interest terms agreed to between the Government of the United States and the Government of India, on or before January 1, 1957 . . . as interest on the principal of any debt incurred under this act shall, when paid, be placed in a special deposit account in the Treasury of the United States, notwithstanding any other provisions of law, to remain available until expended. This account shall be available to the Department of State for the following uses:

“(1) Allocation, for designated educational, agricultural, experimental, scientific, medical, or philanthropic activities, to American institutions engaged in such activities in India. . . .

MR. [JOHN M.] VORYS [of Ohio]: Mr. Chairman, because of my admiration for the gentleman I dislike to press the point of order, but I think the rules of the House keep our thinking straight. I therefore make the point of order. I submit the gentleman's amendment goes far beyond the scope of the legis-

lation. It introduces a great deal of new matter and provides for an appropriation in a legislative act, and is therefore not in order. . . .

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

The gentleman from Indiana offers an amendment, which the Clerk has reported, providing certain conditions relating to the assistance proposed to be granted under the pending bill; in addition it proposes the creation of a fund and makes available those funds for certain specific purposes.

The gentleman from Ohio makes a point of order against the amendment on two grounds: One, that it is not germane; two, that it seeks to make an appropriation.

The Chair would call attention to page 88 of Cannon's Precedents where the following statement is made:

The mere fact that an amendment proposes to attain the same end sought to be attained by the bill to which offered—

Which is the contention of the gentleman from Indiana—

does not render it germane.

Though the proposed amendment seeks accomplishment of ends undoubtedly worthy and somewhat related to the aims of the pending bill, it does provide conditions separate and apart from the pending bill.

Clause 4 of rule 21 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 amendment be in order during the

4. 97 CONG. REC. 5837, 5838, 82d Cong. 1st Sess.

5. Albert A. Gore (Tenn.).

consideration of a bill or joint resolution reported by a committee not having that jurisdiction.

The proposed amendment would in the opinion of the Chair, violate this rule.

The Chair, therefore, sustains the point of order made by the gentleman from Ohio in both respects.

Appropriations to Another Government Agency

§ 4.29 To a bill to amend the Agriculture Act of 1949 to permit the importation of Mexican agricultural workers, an amendment relating to the detention of Mexican aliens, generally, in the United States and providing that appropriations made heretofore shall be available for expenditures to carry out the purposes of the provision was held to be an appropriation in violation of Rule XXI clause 4 (subsequently clause 5).

On June 27, 1951,⁽⁶⁾ during consideration in the Committee of the Whole of H.R. 3283, a bill to amend the Agricultural Act of 1949, the following proceedings occurred:

MR. [EMANUEL] CELLER [of New York]: Mr. Chairman, I offer an amendment.

6. 97 CONG. REC. 7274, 7275, 82d Cong. 1st Sess.

The Clerk read as follows:

Amendment offered by Mr. Celler:
Add a new section:

"Sec. 512. Notwithstanding any other provision of law to the contrary and without regard to section 3709 of the revised statutes, the Attorney General is authorized to purchase, construct, lease, equip, operate, and maintain on either Government-leased or Government-owned land such detention facilities as may be necessary for the apprehension and removal to Mexico of Mexican aliens illegally in the United States Appropriations made to the Immigration and Naturalization Service shall be available for expenditures to carry out the purposes of this act."

MR. [HAROLD D.] COOLEY [of North Carolina]: Mr. Chairman, I reserve a point of order against the amendment offered by the gentleman from New York (Mr. Celler). . . .

MR. COOLEY: Mr. Chairman, I renew my point of order.

THE CHAIRMAN:⁽⁷⁾ Will the gentleman please state the grounds of his point of order?

MR. COOLEY: First, that it broadens the scope of the legislation under consideration. It is not germane, and it actually constitutes an appropriation. . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York offers an amendment to the bill before the committee and the gentleman from North Carolina makes the point of order against the amendment on the ground that it is not germane and that it contains an appropriation.

The Chair has had an opportunity to study the amendment offered by the

7. Albert A. Gore (Tenn.).

gentleman from New York. As the Chair understands the bill before the committee, H.R. 3283, it applies to certain Mexican aliens as a class and as described in the bill. The amendment offered by the gentleman from New York broadens the group to include Mexican aliens illegally in the United States, beyond the class described in the bill. The amendment also proposes to appropriate funds for a certain purpose described in the amendment.

For these two reasons, the Chair is constrained to sustain the point of order.

Funds Previously Appropriated for Mutual Security Agency

§ 4.30 To a bill reported by the Committee on Agriculture, an amendment authorizing the use of funds “heretofore appropriated for the use of the Mutual Security Agency” was ruled out as an appropriation in violation of Rule XXI clause 4 (now clause 5).

On July 29, 1953,⁽⁸⁾ the Committee of the Whole was considering H.R. 6016, a bill concerned with emergency famine relief. An amendment was offered and the following proceedings occurred:

MR. [PAUL C.] JONES [of Missouri]: Mr. Chairman, I offer an amendment to the committee amendment.

The Clerk read as follows:

8. 99 CONG. REC. 10392, 83d Cong. 1st Sess.

Amendment offered by Mr. Jones of Missouri: Page 2, lines 10 and 11, strike out the words “(including the Corporation’s investment in the commodities)” and insert in lieu thereof “of funds heretofore appropriated for the use of the Mutual Security Agency.”

MR. [CLIFFORD R.] HOPE [of Kansas]: Mr. Chairman, a point of order.

THE CHAIRMAN:⁽⁹⁾ The gentleman will state it.

MR. HOPE: I make the point of order against the amendment that it is not germane and that it constitutes an appropriation. . . .

THE CHAIRMAN: The Chair is ready to rule. This amendment as drafted, would divert previously appropriated funds to a new purpose. Therefore the Chair sustains the point of order.

Foreign Credits for New Purpose

§ 4.31 To a bill providing for extension of a law authorizing, for certain purposes, use of foreign credits generated from the sale of surplus agricultural products abroad, an amendment proposing use of a limited percentage of the generated funds for an additional purpose, was ruled out as an appropriation in violation of Rule XXI clause 4 (now clause 5).

9. Glenn R. Davis (Wisc.).

On June 4, 1957,⁽¹⁰⁾ the Committee of the Whole was considering H.R. 6974, a bill to extend the Agricultural Trade Development and Assistance Act of 1954, among other things. At one point a Member offered the following amendment, and proceedings ensued as indicated below:

The Clerk read as follows:

Amendment offered by Mr. Cooley: On page 2, following line 3, add the following new paragraph No. 4:

"Section 104(e) of such act is amended by striking out the semicolon at the end thereof and adding a comma and the following: 'for which purposes not more than 25 percent of the currencies received pursuant to each such agreement shall be available through and under the procedures established by the Export-Import Bank for loans mutually agreeable to said bank and the country with which the agreement is made to United States business firms and branches, subsidiaries, or affiliates of such firms for business development and trade expansion in such countries for the establishment of facilities for aiding in the utilization, distribution, or otherwise increasing the consumption of, and markets for, United States agricultural products. Foreign currencies may be accepted in repayment of such loans.'"

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

THE CHAIRMAN:⁽¹¹⁾ The gentleman will state his point of order.

MR. TABER: Mr. Chairman, this is an appropriation on a bill coming from a

committee which has no authority to report appropriations to this body. . . .

MR. [HAROLD D.] COOLEY [of North Carolina]: As I understand it, the President now has the authority in existing law to make these agreements and to use the money as provided by law. This is in effect saying he shall not use more than 25 percent of it for these purposes.

THE CHAIRMAN: The Chair is ready to rule. The Parliamentarian has directed the Chair's attention to the fact that on July 18, 1956, in the consideration of a similar measure, the gentleman from Georgia [Mr. Preston], being Chairman of the Committee of the Whole, ruled on a point of order similar to that made by the gentleman from New York.

This is the ruling, and the reasons for it in the language of Chairman Preston, which the Chair adopts:

The gentleman has made a point of order against section 2 of the bill. The bill under consideration by the Committee seeks to amend existing law known as Public Law 480 of the 83d Congress. In the pending bill it is clearly evident that a new activity is being created by the legislation. New authority is being granted in the handling of the foreign credit derived from the sale of commodities. Therefore, in the opinion of the Chair, it constitutes an appropriation. The Chair, therefore, feels constrained to sustain the point of order.

The Chair sustains the point of order made by the gentleman from New York [Mr. Taber].

Use of Tax Receipts for School Construction

§ 4.32 An amendment (to a bill reported from the Committee

10. 103 CONG. REC. 8298, 85th Cong. 1st Sess.

11. Brooks Hays (Ark.).

on Education and Labor) providing that the District Director of Internal Revenue shall, under a formula, pay an allotment to each state out of tax funds for school construction has been ruled out as an appropriation in violation of Rule XXI clause 4 (subsequently clause 5).

On July 25, 1957,⁽¹²⁾ the Committee of the Whole was considering H.R. 1, a bill to authorize federal assistance to the states and local communities in financing an expanded program of school construction so as to eliminate the national shortage of classrooms. The following proceedings took place:

MR. [EDWIN H.] MAY [Jr., of Connecticut]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. May: Page 31, beginning with line 19, strike out everything down through line 11, page 46, and insert the following:

“TITLE I—PAYMENTS TO STATE
EDUCATIONAL AGENCIES

“Authorization of appropriations

“Sec. 101. There are hereby authorized to be appropriated for the fiscal year beginning July 1, 1957, and the four succeeding fiscal years, such amounts, not to exceed \$300

million in any fiscal year, as may be necessary for making payments to State educational agencies as provided in section 104.

“Allotments to States

“Sec. 102(a)(1) The sums appropriated for any fiscal year pursuant to section 101 shall be allotted among the States on the basis of the income per child of school age, the school-age population, and effort for school purposes, of the respective States. Subject to the provisions of section 103, such allotments shall be made as follows: The Commissioner shall allot to each State an amount which bears the same ratio to the sums appropriated pursuant to section 101 for such year as the product of—

“(A) the school-age population of the State, and

“(B) the state’s allotment ratio (as determined under paragraph (2)), bears to the sum of the corresponding products for all the States.

“Payments to States

“Sec. 104. When he has computed a State’s allotment for a year, the Commissioner shall certify the amount thereof to the District Director of Internal Revenue for the Internal Revenue District of which the State is a part (or, if the State lies in more than one such District, to the District Director designated by the Secretary of the Treasury). From the collections made from such State from taxes levied under part I of subchapter A of chapter 1 of subtitle A of the Internal Revenue Code of 1954 (relating to income tax on individuals), the District Director of Internal Revenue shall retain an amount equal to the State’s allotment. He shall then pay the State’s allotment for the year, in equal monthly installments, to the State educational agency. . . .”

12. 103 CONG. REC. 12728, 12729, 12733, 85th Cong. 1st Sess.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the amendment on the ground that section 104 of the amendment constitutes an appropriation and it is on a bill coming from a committee not authorized to report appropriations.

That motion is in order at any time before the bill is enacted.

MR. [Charles A.] HALLECK [of Indiana]: Mr. Chairman, I would like to be heard on the point of order.

THE CHAIRMAN:⁽¹³⁾ The gentleman is recognized.

MR. HALLECK: In my opinion, the point of order comes too late. The amendment has been offered and reported and debate has begun on the amendment.

MR. TABER: Mr. Chairman, it is specifically specified in the rules that that point of order is available at any time during the progress of the bill.

MR. [H. R.] GROSS [of Iowa]: Under rule XXI

MR. TABER: Under rule XXI.

THE CHAIRMAN: As to the question of timeliness of the point of order, there is no question but that it can be made at this time.

The Chair feels that this language "shall pay the State's allotment for the year, in equal monthly installments, to the State educational agency" makes the amendment subject to the point of order.

The Chair sustains the point of order.

Corps of Engineers—Use of Prior Appropriations

§ 4.33 Where a committee amendment to a rivers and

13. Francis E. Walter (Pa.).

harbors authorization bill contained language which permitted the Chief of Engineers to use, for certain purposes, appropriations heretofore or hereinafter made for civil works, the amendment was conceded to contain an appropriation and was ruled out as in violation of Rule XXI clause 4 (subsequently clause 5).

On Oct. 3, 1962,⁽¹⁴⁾ the Committee of the Whole was considering H.R. 13273, the rivers and harbors authorization bill for 1962. At one point the Clerk read a committee amendment as follows, and proceedings ensued as indicated below:

The Clerk read as follows:

Committee amendment: Page 13, line 15, insert:

"Sec. 102. (a) The Act approved August 13, 1946, as amended by the Act approved July 28, 1956 (33 U.S.C. 426e-h), pertaining to shore protection, is hereby further amended as follows: . . .

"(4) Sections 2 and 3 are amended to read as follows:

"Sec. 2. The Secretary of the Army is hereby authorized to reimburse local interests for work done by them . . . *Provided*, That the work which may have been done on the projects is approved by the Chief of Engineers as being in accordance with the authorized projects: *Provided further*, That such reimburse-

14. 108 CONG. REC. 21883, 21884, 87th Cong. 2d Sess.

ment shall be subject to appropriations applicable thereto or funds available therefor and shall not take precedence over other pending projects of higher priority for improvements.

“Sec. 3. The Chief of Engineers is hereby authorized to undertake construction of small shore and beach restoration and protection projects not specifically authorized by Congress, which otherwise comply with section 1 of this Act, when he finds that such work is advisable, and he is further authorized to allot from any appropriations heretofore or hereinafter made for civil works, not to exceed \$3,000,000 for any one fiscal year for the Federal share of the costs of construction of such projects. . . .”

MR. [WILLIAM C.] CRAMER [of Florida]: Mr. Chairman, I raise a point of order against the amendment in that it appears clearly in the amendment that it is an appropriation on an authorization bill.

THE CHAIRMAN:⁽¹⁵⁾ Does the gentleman from Minnesota desire to be heard?

MR. [JOHN A.] BLATNIK [of Minnesota]: Mr. Chairman, the committee concedes the point of order.

THE CHAIRMAN: The Chair sustains the point of order.

The Chair will state, this applies to the entire amendment from page 13, line 15, down to and including line 19 on page 16.

MR. BLATNIK: Mr. Chairman, am I correct, then, that this applies to the entire section 102, it deletes that section?

THE CHAIRMAN: That is correct.

15. Francis E. Walter (Pa.).

Language Held To Be “Authorization”

§ 4.34 Language in a bill authorizing an appropriation of not less than a certain amount for a specified purpose has been held not to be an appropriation.

On May 11, 1934,⁽¹⁶⁾ the Committee of the Whole was considering a bill⁽¹⁷⁾ which stated in part as follows:

Be it enacted, etc., That for the purpose of increasing employment by providing for emergency construction of public highways and other related projects there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of not less than \$400,000,000 for allocation under the provisions of section 204 of the National Industrial Recovery Act.

A point of order was raised against the provision, as follows, and proceedings ensued as indicated below:

MR. [JOHN] TABER [of New York]: The language of this section provides that there is authorized to be appropriated the sum of not less than \$400,000,000. That is, in effect, a mandatory piece of legislation, and must result in an appropriation. This bill does not come from the Committee on Appropriations and therefore this sec-

16. 78 CONG. REC. 8640, 73d Cong. 2d Sess.

17. H.R. 8781.

tion, with that language in it, is out of order. . . .

THE CHAIRMAN:⁽¹⁸⁾ . . . This is simply an authorization, and the point of order is overruled.

Reappropriation

§ 4.35 Language of an amendment providing that an appropriation when made should come out of any unexpended balances heretofore appropriated or made available for emergency purposes was held to be in order on a legislative bill since such language did not constitute an appropriation.

On Jan. 9, 1936,⁽¹⁾ the Committee of the Whole was considering H.R. 9870, a bill dealing with payment of adjusted service certificates. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Sec. 7. There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this act. . . .

MR. [ALLEN T.] TREADWAY [of Massachusetts]: Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

Amendment by Mr. Treadway: Page 7, line 13, after the word "ap-

propriated", insert "out of any unexpended balances heretofore appropriated or made available for emergency purposes."

MR. [WILLIAM M.] WHITTINGTON [of Mississippi]: Mr. Chairman, I make the point of order against the amendment that it is not definite enough. It does not specify what law or what appropriation is intended to be covered by the proposed amendment.

MR. TREADWAY: Mr. Chairman, I should like to be heard on the point of order.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Chairman, I make the further point of order that it is an appropriation. . . .

THE CHAIRMAN:⁽²⁾ The Chair does not think it necessary to hear the gentleman from Massachusetts unless the gentleman seeks to convince the Chair that the Chair would be in error in holding his amendment in order.

While it is restrictive and limits Congress to just one source in making its appropriation, while the bill in no way limits, the amendment is merely an authorization. It will require action on the part of Congress later to appropriate the money, and the Chair, therefore, overrules the point of order.⁽³⁾

Funds Made Available to Other Agencies

§ 4.36 Language in a bill reported by a legislative committee providing that all

18. David D. Glover (Ark.).

1. 80 CONG REC. 274, 74th Cong. 2d Sess.

2. Thomas L. Blanton (Tex.).

3. Reappropriations are no longer permitted. See §3, supra.

funds available for carrying out the act would be available for allotment to other bureaus and offices for a similar purpose was held not to be an appropriation, inasmuch as the bill permitted no use of existing funds but merely authorized new funds, when appropriated, to be so allocated.

On Apr. 8, 1936,⁽⁴⁾ during consideration in the Committee of the Whole of H.R. 12037, the tobacco compact bill, the Clerk read as follows, and a point of order was made as indicated below:

Sec. 8. All funds available for carrying out this act shall be available for allotment to the bureaus and offices of the Department of Agriculture and for transfer to such other agencies of the Federal or State governments as the Secretary may request to cooperate or assist in carrying out this act.

MR. [CARL E.] MAPES [of Michigan]: Mr. Chairman, I desire to make a point of order against section 8 for the same reason as applied to section 7. The section makes available and transfers funds in the Treasury for a different purpose than that for which they have been appropriated, and I think under the precedents and decision of the Speaker and of the Chair it is subject to the same point of order as was raised to section 7. . . .

I call the Chair's attention to the fact that the fees paid by the handlers

of tobacco for so-called marketing agreements under section 3 go into the Treasury of the United States and are a part of the funds referred to in this section. They would remain in the Treasury and not be available to the Secretary of Agriculture or to anyone except for the language in section 8.

MR. [MARVIN] JONES [of Texas]: Mr. Chairman, I submit the suggestion that by the provisions of the amendment to the previous section any advance or loans repaid to the Secretary by any commission, and so forth, shall revert to the Treasury of the United States; so the point of order made by the gentleman is not applicable. Section 7(a) is where provision is made with reference to the funds mentioned in section 3. All that is involved in section 8 is the amount appropriated to the Secretary of Agriculture for administrative purposes, and this is merely a matter of allowing him to permit some other bureau assisting him to use the same fund. It is not a new appropriation, it is the same appropriation and it is for the same function, that of administration. It does not involve a new appropriation if a man's assistant spends the man's money helping do the job. In fact, this involves no appropriation at all. It only refers to the use of funds authorized to be appropriated in a previous section—if and when such appropriation is made.

If the gentleman from Michigan will look at the previous section, he will find the funds mentioned in section 3, and the collections thereof revert to the Treasury automatically, under the amendment which we just adopted and which takes the place of the provision which was stricken out. . . .

4. 80 CONG. REC. 5207, 5208, 74th Cong. 2d Sess.

MR. MAPES: Will not the gentleman from Texas admit that section 8 might divert some of the funds which may be appropriated under the committee's substitute for section 7, which would not be so diverted except for section 8?

MR. JONES: That would be true for any part of the funds that are appropriated there for administrative purposes but not for advances and loans, because subdivision (b) of section 7 specifically eliminates all loans and advances and puts them back into the Treasury when they are repaid. So, by virtue of the limitation in section (b) this can apply only to administrative funds.

THE CHAIRMAN:⁽⁵⁾ . . . As the Chair understands, this bill does not carry any appropriation—that part of the bill was stricken out on a point of order—and therefore there are no funds available so far as the bill stands at the present time.

The Chair therefore overrules the point of order.

Farm Loans

§ 4.37 An amendment authorizing the making of farm loans was held not to be an appropriation under Rule XXI clause 4 (now clause 5).

On Jan. 25, 1937,⁽⁶⁾ the Committee of the Whole was considering H.R. 1545. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Sec. 2. (a) No loan shall be made under this act to any applicant who

5. John R. Mitchell (Tenn.).

6. 81 CONG. REC. 394-98, 75th Cong. 1st Sess.

shall not have first established to the satisfaction of the proper officer or employee of the Farm Credit Administration, under such regulations as the Governor may prescribe, that such applicant is unable to procure from other sources a loan in an amount reasonably adequate to meet his needs for the purposes for which loans may be made under this act; and preference shall be given to the applications of farmers whose cash requirements are small.

. . .

Amendment offered by Mr. Massingale: Amend paragraph C of section 2, page 3, by striking out the period after the word "prescribe", on line 5 of said paragraph, inserting a comma, and adding the following: "and loans for seed oats shall be immediately available in localities where it is customary that sowing or planting shall be done in the late winter or early spring months." . . .⁽⁷⁾

MR. [MARVIN] JONES [of Texas]: Mr. Chairman, I am sorry to have to disagree with the gentleman from Oklahoma [Mr. Massingale].

Mr. Chairman, I make the point of order that the gentleman's amendment would amount to inserting an appropriation in a legislative bill. . . .

THE CHAIRMAN:⁽⁸⁾ The Chair overrules the gentleman's point of order insofar as the point of order is based on the ground that the amendment involves an appropriation.

Advances From Treasury

§ 4.38 Language authorizing and directing an executive

7. Note: Loans are not considered charges against the Treasury.

8. Edward E. Cox (Ga.).

officer to advance, when appropriated, sums of money out of the Treasury was held not to constitute an appropriation on a legislative bill.

On June 17, 1937,⁽⁹⁾ the Committee of the Whole was considering H.R. 7472. At one point an amendment was offered and proceedings ensued as indicated below:

The Clerk read as follows:

Amendment offered by Mr. Nichols: Page 1, after line 4, insert the following:

“TITLE I—AUTHORIZATION FOR
ADVANCE OF FUNDS

“Until and including June 30, 1938, the Secretary of the Treasury, notwithstanding the provisions of the District of Columbia Appropriation Act approved June 29, 1922, is authorized and directed, when appropriated, to advance, on the requisition of the Commissioners of the District of Columbia, made in the manner now prescribed by law, out of any money in the Treasury of the United States not otherwise appropriated, such sums as may be necessary from time to time during said fiscal year to meet the general expenses of said District, as provided by law, and such amounts so advanced shall be reimbursed by the said Commissioners to the Treasury out of the taxes and revenue collected for the support of the government of the said District of Columbia.”

MR. [THOMAS] O'MALLEY [of Wisconsin]: Mr. Chairman, a point of order. . . .

9. 81 CONG. REC. 5914, 75th Cong. 1st Sess.

. . . I make the same point of order against the amendment as was raised by the gentleman from New York [Mr. Taber] and upon which the Chair just ruled. The language of the District of Columbia Appropriation Act makes this amendment an exception to the appropriation act. The amendment states “out of any money in the Treasury of the United States not otherwise appropriated.” It seems to me the amendment seeks to have Congress authorize and appropriate a certain amount of money which the Congress would have to reimburse the Treasury for if the District itself was not able to reimburse the Treasury out of the revenues to be obtained under this bill.

THE CHAIRMAN:⁽¹⁰⁾ The Chair is ready to rule. It is the opinion of the Chair that the language included in the amendment offered by the gentleman from Oklahoma [Mr. Nichols], which indicates that the money cannot become available until and when appropriated, is proper, and therefore overrules the point of order.

Parliamentarian's Note: The language objected to by Mr. John Taber, and subsequently referred to by Mr. O'Malley in his point of order, was substantially the same as that in the Nichols amendment, but did not include the phrase “when appropriated.”⁽¹¹⁾

Special Accounts for Specified Purposes

§ 4.39 Language directing that the proceeds of taxes shall be

10. James M. Mead (N.Y.).

11. 81 CONG. REC. 5910, 75th Cong. 1st Sess.

deposited in a special account in the Treasury entirely to the credit of the District of Columbia and would thereafter be appropriated and used solely and exclusively for certain enumerated purposes was held merely a direction to appropriate in the future and not in violation of Rule XXI clause 4 (subsequently clause 5), as being an appropriation on a legislative bill.

On June 17, 1937,⁽¹²⁾ the Committee of the Whole was considering H.R. 7472. At one point the Clerk read as follows, and proceedings ensued as indicated below:

"All proceeds of the taxes imposed under this act . . . shall be deposited in a special account in the Treasury of the United States entirely to the credit of the District of Columbia, and shall be appropriated and used solely and exclusively for the following purposes:

"(1) For the construction, reconstruction, improvement, and maintenance of public highways, including the necessary administrative expenses in connection therewith . . ."

MR. [ALBERT J.] ENGEL [of Michigan]: Mr. Chairman, I make a point of order against that part of section 2 on page 12, line 2, beginning with the words "and shall", through and including line 24 on page 12, on the ground

that it is an appropriation and violates the rule which requires that appropriations shall come from the Committee on Appropriations.

THE CHAIRMAN:⁽¹³⁾ Will the gentleman advise the Chair of the language to which he makes the point of order.

MR. ENGEL: On page 12, line 2, commencing with the words "and shall be appropriated", continuing through the remainder of the section.

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

MR. [EVERETT M.] DIRKSEN [of Illinois]: Yes, Mr. Chairman. I do not believe the point of order will lie. This section first does not appropriate any money. It is only an affirmative direction for the expenditure of money or an indication of how the money shall be expended, but it does not undertake, either by language or implication, to appropriate money.

THE CHAIRMAN: The Chair is ready to rule. The Chair will state that the gentleman from Illinois [Mr. Dirksen] has stated the matter correctly. The point of order is overruled.

"Appropriation" Defined as "Payment of Funds From the Treasury"

§ 4.40 A bill to regulate barbers in the District of Columbia containing language providing that fees and charges payable under the act would be paid to the secretary-

12. 81 CONG. REC. 5924, 5925, 75th Cong. 1st Sess.

13. James M. Mead (N.Y.).

treasurer of a board to carry out these regulations and providing compensation of members of the board from such funds was held not to be an appropriation of funds from the Treasury where it was stated that expenses under the bill were not chargeable against the United States or the District of Columbia.

On Jan. 24, 1938,⁽¹⁴⁾ the House was considering H.R. 7085. At one point the Clerk read as follows, and a point of order was raised as indicated below:

Sec. 11. All fees and charges payable under the provisions of this act shall be paid to the secretary-treasurer of the Board. The Board is hereby authorized to refund any license fee or tax, or portion thereof, erroneously paid or collected under this act.

(a) For the examination of an applicant for a certificate as a registered barber, \$5. . . .

Sec. 12. The Commissioners are authorized and directed to provide suitable quarters for examinations and equipment to the Board and for the compensation of the members of the Board at the rate of \$9 per day . . . *Provided*, That payments under this section shall not exceed the amount received from the fees provided for in this act; and if at the close of each fiscal year any funds unexpended in ex-

cess of the sum of \$1,000 shall be paid into the Treasury of the United States to the credit of the District of Columbia: *Provided*, That no expense incurred under this act shall be a charge against the funds of the United States or the District of Columbia. . . .

MR. [THOMAS] O'MALLEY [of Wisconsin]: Mr. Speaker, I make the point of order that sections 11 and 12 provide for an appropriation which the Committee on the District of Columbia, as a legislative committee, is not authorized to do. Section 11 sets up a schedule of fees and section 12 appropriates such fees to the use of the Commissioners, stating that any sums unexpended in excess of a thousand dollars shall revert to the Treasury. . . .

THE SPEAKER:⁽¹⁵⁾ The Chair is ready to rule on the point of order raised by the gentleman from Wisconsin.

The gentleman from Wisconsin makes the point of order against section 12 of the bill that under the terms of the section there is an appropriation of funds out of the Public Treasury.

If, in the opinion of the Chair, the language of the section sustained that position, clearly the point of order of the gentleman from Wisconsin would be good. However, the Chair calls attention to the fact it is stated in a precedent which will be found in the Congressional Record, Sixty-seventh Congress, first session, page 3388:

The term "appropriation" in the rule means the payment of funds from the Treasury.

As far as the Chair is able to read the language of section 12, it provides

14. 83 CONG. REC. 1008, 1009, 75th Cong. 3d Sess.

15. William B. Bankhead (Ala.)

only the payment of funds into the Treasury under certain contingencies, and does not provide for the payment of funds out of the Treasury.

For the reasons stated, the Chair overrules the point of order made by the gentleman from Wisconsin.

Unused Appropriations Paid Into Treasury Account

§ 4.41 A provision in a legislative bill providing that sums already appropriated and not used for making parity payments would be covered into the Treasury to offset the subsequent appropriations made pursuant to the authority of the bill under consideration was held not in violation of Rule XXI clause 4 (subsequently clause 5), inasmuch as further action would be required to appropriate such sums authorized.

On Jan. 29, 1942,⁽¹⁶⁾ the Committee of the Whole was considering H.R. 6350, a bill dealing with relief for certain agricultural producers. The following proceedings took place:

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Chairman, I wish to make a point of order against paragraph (b), on the ground that it violates clause 4 of rule XXI.

16. 88 CONG. REC. 851, 852, 77th Cong. 2d Sess.

Paragraph (b) reads as follows:

The Congress further determines that substantial amounts of the sums which have heretofore been appropriated for making parity payments will not be needed for making such payments; and it hereby directs that so much of the money appropriated in the Department of Agriculture Appropriation Act, 1942, for the purpose of making parity payments as is not used for such purpose shall be covered into the Treasury to offset the appropriations made pursuant to the authority of this act. . . .

My contention is that paragraph (b) diverts an appropriation already made to a different purpose, therefore is a violation of the rule. If there should be any doubt in the mind of the Chair, I should like to be heard further on the point of order.

THE CHAIRMAN:⁽¹⁷⁾ Does the gentleman from South Carolina [Mr. Fulmer] desire to be heard on the point of order?

MR. [HAMPTON P.] FULMER: Mr. Chairman, I do not care to comment on the point of order except to state I do not believe that the point of order is germane; therefore, it should not be sustained. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair has examined this paragraph very carefully. The Chair calls attention to the fact that the paragraph provides that the sum of money, whatever sum it may be, appropriated for the purpose of making parity payments and not used for such purpose shall be covered into the Treasury to offset the appropriations made pursuant to the authority of this act.

17. Alfred L. Bulwinkle (N.C.).

The paragraph contemplates that there will be further action by the Congress before any appropriation is made available. Therefore, the Chair overrules the point of order.

MR. CASE of South Dakota: Mr. Chairman, a parliamentary inquiry

THE CHAIRMAN: The gentleman will state it.

MR. CASE of South Dakota: Is the holding of the Chair in the language the Chair just used to the effect that further action is necessary, that under the legislative history of this bill it would not be possible for the proponents of this legislation to come before the Committee on Appropriations and maintain that the hands of the Committee on Appropriations had already been tied by the action on this bill?

THE CHAIRMAN: Before there could be any activity under the provisions of this bill, there must be appropriate action by the Congress making money available for the purposes therein set forth.

Membership in International Organization

§ 4.42 Language in a bill reported by a legislative committee providing “that the President is hereby authorized to accept membership for the United States in the United Nations Educational, Scientific, and Cultural Organization, the Constitution of which was approved in London on November 16,

1945, by the United Nations Conference for the establishment of an Educational, Scientific, and Cultural Organization, and deposited in the Archives of the Government of the United Kingdom” was held not to involve an appropriation in violation of Rule XXI clause 4 (subsequently clause 5) merely because the constitution of the organization provided that “the general conference shall approve and give final effect to the budget and to the apportionment of financial responsibility among the states members of the organization” since a subsequent appropriation was authorized by the bill.

On May 21, 1946,⁽¹⁸⁾ the Committee of the Whole was considering House Joint Resolution 305, relating to United States participation in the United Nations Educational, Scientific, and Cultural Organization. The following proceedings took place as the joint resolution was considered for amendment:

Resolved, etc., That the President is hereby authorized to accept membership for the United States in the United Nations Educational, Scientific,

18. 92 CONG. REC. 5388-95, 79th Cong. 2d Sess

and Cultural Organization (hereinafter referred to as the "Organization"), the constitution of which was approved in London on November 16, 1945. . . .

MR. [JOHN] TABER (of New York): Mr. Chairman, I make a point of order against section 1 of the bill, beginning in line 3 on page 1, and ending in line 2 on page 2. . . .

I make the point of order, Mr. Chairman, on the ground that it is an appropriation coming from a committee not authorized to report appropriations to the House. That kind of a point of order can be made at any time during the consideration of the bill.

I call the attention of the Chair to article IX of the constitution of this Organization which appears in the report of the committee on page 9.

It says:

The General Conference shall approve and give final effect to the budget and to the apportionment of financial responsibility among the states members of the Organization subject to such arrangement with the United Nations as may be provided in the agreement to be entered into pursuant to article X.

Let me call attention to the fact that this authorizes the validation of that article. . . .

THE CHAIRMAN:⁽¹⁹⁾ The Chair is prepared to rule. The gentleman from New York makes a point of order against section 1 of the resolution on the ground that it appropriates money and comes from a committee not authorized to make appropriations.

No appropriation is made in section 1 of the bill.

Section 4 of the joint resolution would authorize an appropriation at a

later date to be appropriated by the appropriate committee.⁽²⁰⁾

The Chair overrules the point of order.

MR. [FRANK A.] MATHEWS [Jr., of New Jersey]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. MATHEWS: The point of order is as follows: As I understand, upon the adoption of this resolution the United States of America authorizes the President to make it, the United States, a member of this Organization whose constitution is set forth in the report of the committee.

Under article IX of that constitution headed "Budget" the following appears:

Sec. 1. The budget shall be administered by the Organization.

2. The General Conference shall approve and give final effect to the budget and to the apportionment of financial responsibility among the states members of the Organization—

20. Sec. 4 stated in part:

There is hereby authorized to be appropriated annually to the Department of State, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment by the United States of its share of the expenses of the Organization as apportioned by the General Conference of the Organization in accordance with article IX of the constitution of the Organization, and such additional sums as may be necessary to pay the expenses of participation by the United States in the activities of the Organization.

19. William M. Colmer (Miss.)

And so forth. I contend, Mr. Chairman, that that in effect practically delegates the power of appropriation of this body to an organization or a part of an organization which is not composed of Members of this body and not acting officially. I contend further, therefore, that we have no right constitutionally to so delegate liability for those appropriations or expenditures.

MR. [KARL E.] MUNDT [of South Dakota]: May I suggest to the gentleman from New Jersey that the Chair has already ruled on practically an identical point of order.

MR. MATHEWS: That was not the same point.

THE CHAIRMAN: The Chair is prepared to rule. The Chair, in construing a point of order raised by the gentleman from New York (Mr. Taber) on a similar proposition, ruled that it was not an appropriation and, therefore, the point of order did not lie. The Chair calls the attention of the gentleman from New Jersey to the fact that section 4, page 5, is the authorization section of the joint resolution, and that money could not be appropriated until it was authorized by that section.

The point of order is overruled.

Loans From Public Debt Proceeds

§ 4.43 A discussion of the nature of an "appropriation" took place in the House when language in a housing bill authorizing the Secretary of the Treasury to use proceeds of public-debt

issues for the purpose of making loans was held not to be an appropriation and not in violation of Rule XXI clause 4 (subsequently clause 5).

On June 27, 1949,⁽²¹⁾ the House resolved itself into the Committee of the Whole to consider the Housing Act of 1949.⁽²²⁾ During the committee's consideration, the following language was read: ⁽¹⁾

(e) To obtain funds for loans under this title, the Administrator, on and after July 1, 1949, may, with the approval of the President, issue and have outstanding at any one time notes and obligations for purchase by the Secretary of the Treasury in an amount not to exceed \$25,000,000. . . .

(f) Notes or other obligations issued by the Administrator under this title shall be in such forms and denominations, have such maturities, and be subject to such terms and conditions as may be prescribed by the Administrator, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of such notes or other obligations. The Sec-

21. 95 CONG. REC. 8451, 81st Cong. 1st Sess.

22. H.R. 4009.

1. 95 CONG. REC. 8480, 81st Cong. 1st Sess.

retary of the Treasury is authorized and directed to purchase any notes and other obligations of the Administrator issued under this title and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such act, as amended, are extended to include any purchases of such notes and other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

On the next day, Members discussed the effect of such language:⁽²⁾

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Chairman, the point of order I make is that subparagraphs (e) and (f) of section 102 in title I constitute the appropriation of funds from the Federal Treasury, and that the Committee on Banking and Currency is without jurisdiction to report a bill carrying appropriations under clause 4, rule 21, which says that no bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations.

This is no casual point of order made as a tactical maneuver in consideration of the bill. I make this point of order because this proposes to expand and

develop a device or mechanism for getting funds out of the Federal Treasury in an unprecedented degree.

The Constitution has said that no money shall be drawn from the Treasury but in consequence of appropriations made by law. It must follow that the mechanism which gets the money out of the Treasury is an appropriation.

I invite the attention of the Chairman to the fact that subparagraph (e) states:

To obtain funds for loans under this title, the Administrator may issue and have outstanding at any one time notes and obligations for purchase by the Secretary of the Treasury in an amount not to exceed \$25,000,000, which limit on such outstanding amount shall be increased by \$225,000,000 on July 1, 1950, and by further amounts of \$250,000,000 on July 1 in each of the years 1951, 1952, and 1953, respectively—

Within the total authorization of \$1,000,000,000.

Further that subparagraph (f) provides that—

The Secretary of the Treasury is authorized and directed—

And I call particular attention to the use of the words “and directed”—to purchase any notes and other obligations of the Administrator issued under this title and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended—

And so forth. The way in which this particular language extends this device of giving the Secretary authority to subscribe for notes by some authority

2. *Id.* at pp. 8536–38.

is this: It includes the words "and directed."

In other words, the Secretary of the Treasury has no alternative when the Administrator presents to him some of these securities for purchase but to purchase them. The Secretary of the Treasury is not limited to purchasing them by proceeds from the sale of bonds or securities. He is directed to purchase these notes and obligations issued by the Administrator. That means he might use funds obtained from taxes, that he might use funds obtained through the assignment of miscellaneous receipts to the Treasury, that he might use funds obtained through the proceeds of bonds. . . .

Mr. Chairman, this is not, as I said earlier, a casual point of order; we are here dealing with the fundamental power of the Congress to control appropriations. No such device has ever before, so far as I can find out, been presented to the Congress for getting money in the guise of a legislative bill without its having been considered by the Committee on Appropriations. It is a mandatory extraction of funds from the Public Treasury, and, consequently, constitutes an appropriation and is beyond the authority or the jurisdiction of the Committee on Banking and Currency to report in this bill.

MR. [BRENT] SPENCE [of Kentucky]: Mr. Chairman, the raising of funds by public debt transaction has been frequently authorized by the Congress: The Export-Import Bank raises funds by that method; the Bretton Woods Agreement, in my recollection, is carried out by that method; the British loan was financed by that method, and the Federal Deposit Insurance Cor-

poration was also financed by that method. It does not seem to me that this is a seasonable objection. This has been the policy of the Congress for years.

Mr. Chairman, this is not raising money to be appropriated for the purposes that ordinary appropriation bills carry. All of this money is to be used as loans.

The gentleman says that in other acts the Secretary of the Treasury is "authorized" but not "directed". I contend that the meaning of "authorized" and "directed" in this act is absolutely the same.

Do you think when you authorize the Secretary of the Treasury to raise funds to carry out a great public purpose it is in his discretion whether he shall raise those funds and that that shall depend on the discretion of the Secretary of the Treasury? I say "authorized" in this sense means "directed." It could not mean anything else, otherwise you would be delegating to an officer of the Government entire discretion as to whether or not great national acts should be carried out and the purposes of Congress should be subserved.

MR. CASE of South Dakota: Mr. Chairman, in most of the acts which the gentleman has suggested, points of order were waived, and I refer to Bretton Woods and some of the other bills. But as to the particular point here in issue, the question whether the words "and directed" have any meaning, if they do not have any meaning why are they there? The present housing act merely authorizes the Secretary of the Treasury to purchase. It does not say "and directed." The very inclu-

sion of the words "and directed" is evidence of the fact they have a special meaning. They create a mandatory extraction of funds from the Public Treasury.

MR. SPENCE: Mr. Chairman, I still contend unless you would make our acts a nullity "authorized" and "directed" have exactly the same meaning when applied to a public official charged with carrying out a great national act. I do not think there can be any reasonable construction that would hold otherwise. . . .

MR. [JOHN W.] McCORMACK [of Massachusetts]: Mr. Chairman, I agree with my friend who has raised the point of order that this is not a casual one, but, on the contrary, is a very sincere one. It presents a new question from a legislative angle to be passed upon in the direct question raised by the point of order.

The gentleman from South Dakota has referred to the Constitution. The Constitution says:

No money shall be drawn from the Treasury but in consequence of appropriations made by law.

The word "appropriations" is used.

The rule referred to, clause 4, rule 21, says:

No bill or resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations.

You will note the word "appropriations" is used. Now, let us see what "appropriations" means.

I have before me Funk & Wagnalls Standard Dictionary and "appropriations" is defined as follows: To set apart for a particular use. To take for one's own use.

The provisions of this bill are not taking for one's own use, because this is a loan designed purely for loan purposes. It is not a definite appropriation. It is giving authority to utilize for loan purposes and the money comes back into the Treasury of the United States with interest.

Again, the word "appropriations" is defined:

Something, as money, appropriated—

I call particular attention to those words "something, as money, appropriated"—

or set apart, as by a legislature, for a special use.

I repeat "something, as money."

The provision in paragraph (f) that my friend has raised a point of order against relates entirely to loans. As we read section 102 of title I it starts out with loans. Throughout the bill, a number of times, there is reference to loans.

Paragraph (e) says:

To obtain funds for loans under this title.

It is a loan.

The meat of the two paragraphs, as I see it, is this:

Paragraph (f), line 23, page 8, says:

The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Administrator issued under this title and for such purpose is authorized to use as a public-debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such act, as amended, are extended to include any purchases of such notes and other obligations.

It seems to me that that is the meat. Certainly, the language there does not amount to an appropriation. It is entirely for loan purposes. . . .

MR. [RALPH E.] CHURCH [of Illinois]: The gentleman has discussed the point—the difference between the word “authorized” and “directed.” Does not the gentleman realize that he is “authorized” to appear on the floor and “authorized” to make statements? The gentleman is not “directed” to. Now, following further, the Committee on Appropriations of this House is “authorized” to do certain things, but the gentleman must realize that the Committee on Appropriations is not “directed” to do certain things. There is a real difference, a constitutional difference between the words “authorized” and “directed.” The gentleman is “authorized” to walk down the street and “authorized” to do many things. But the gentleman would fight for his right not to be “directed” to do what he is “authorized” to do. The gentleman’s argument is farfetched. This is a serious situation.

MR. MCCORMACK: There is nothing the gentleman has said that I can disagree with except that everything the gentleman has said has no application to the matter pending now. The basic question here is whether or not this is an appropriation within the meaning of the rules or money that is going to be utilized for loan purposes and recovered back into the General Treasury. So the gentleman’s observations, as I see it, respecting the gentleman as I do, have no application at all to the basic and pertinent question presented to the Chair by the point of order raised by the gentleman from South Dakota. . . .

MR. [JOHN] PHILLIPS of California: The question has to do with the meaning of “authorized and directed.” Within the past 6 weeks I have had a bill before one of the major committees of this House. The county counsel of my home county raised the question of whether the wording should be “authorized” or “authorized and directed” in four different places in the bill. It was taken up with the attorneys for the Interior Department. The attorneys recognized the distinction between “authorized” and “authorized and directed,” and agreed upon the inclusion in certain instances and not in others. There is a recognized distinction, Mr Chairman.

THE CHAIRMAN: ⁽³⁾ The Chair is prepared to rule.

The Chair agrees with the gentleman from South Dakota that the point which has been raised is not a casual point of order. As a matter of fact, as far as the Chair has been able to ascertain, this is the first time a point of order has been raised on this issue as violative of clause 4 of rule XXI.

As the Chair sees the point of order, the issue involved turns on the meaning of the word “appropriation.” “Appropriation,” in its usual and customary interpretation, means taking money out of the Treasury by appropriate legislative language for the support of the general functions of Government. The language before us does not do that. This language authorizes the Secretary of the Treasury to use proceeds of public-debt issues for the purpose of making loans. Under the language, the Treasury of the United

3. Hale Boggs (La.).

States makes advances which will be repaid in full with interest over a period of years without cost to the taxpayers.

Therefore, the Chair rules that this language does not constitute an appropriation, and overrules the point of order. . . .

MR. CASE of South Dakota: Would the Chair hold then that that language restricts the Secretary of the Treasury to using the proceeds of the securities issued under the Second Liberty Bond Act and prevents him from using the proceeds from miscellaneous receipts or tax revenues?

THE CHAIRMAN: The Chair does not have authority to draw that distinction. The Chair is passing on the particular point which has been raised. . . . The Chair can make a distinction between the general funds of the Treasury and money raised for a specific purpose by the issuance of securities. That is the point involved here.

Future Foreign Currency Proceeds From Exports

§ 4.44 To a bill reported by the Committee on Foreign Affairs, an amendment earmarking a specified amount of the funds authorized by the bill to be used specifically for the purchase and export of surplus agricultural commodities and providing that future foreign currency proceeds therefrom would be used for the purposes of the act was held not

to be an appropriation in violation of Rule XXI clause 4 (now clause 5).

On June 29, 1954,⁽⁴⁾ the Committee of the Whole was considering H.R. 9678, the Mutual Security Act of 1954. An amendment was offered and a point of order raised as indicated below:

The Clerk read as follows:

Amendment offered by Mr. Judd:

Page 29, line 15, strike out all on lines 15 through 23 and insert in lieu thereof the following:

"Sec. 402. Earmarking of funds: Of the funds authorized to be made available pursuant to this act, not less than \$500 million shall be used to finance the purchase and export of surplus agricultural commodities or products thereof produced in the United States and foreign currency proceeds therefrom shall be used for the purposes of this act pursuant to section 104 of the Agricultural Trade and Development Act of 1954."

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

THE CHAIRMAN:⁽⁵⁾ The gentleman will state it.

MR. TABER: Mr. Chairman, I make the . . . point of order that it involves an appropriation of funds, and I call attention to the fact that the language says that these funds that are realized from the sale of these products can be used for a particular purpose. That makes an appropriation out of it.

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

MR. [WALTER H.] JUDD [of Minnesota]: Yes, Mr. Chairman.

4. 100 CONG. REC. 9238, 9239, 83d Cong. 2d Sess.

5. Clarence J. Brown (Ohio).

This is not an appropriation. The total bill authorizes the appropriation of about \$3.4 billion. This section is a limitation or earmarking of funds that may be appropriated under the authorization. It says that of the \$3.4 billion, if and when it is appropriated, not less than \$500 million shall be used for a given purpose. This is language that is almost word for word the same as section 550 of the act last year, except the act last year said not less than \$100 million and not to exceed \$250 million should be used for this purpose of purchasing surplus agricultural commodities to be used as aid instead of dollars. . . .

THE CHAIRMAN: The Chair is prepared to rule.

On a careful reading of the amendment as modified—and I wish to read the wording of it—“of the funds authorized to be made available pursuant to this act not less than,” and so forth—it is the ruling of the Chair that this amendment should be interpreted to mean that unless the appropriation is first authorized, the amendment has no effect whatsoever and therefore the Chair overrules the point of order.

Parliamentarian's Note: See Sec. 4.23, supra, where language authorizing new use of existing foreign currency proceeds already available for a different purpose under existing law was ruled out as an appropriation.

Reconstituted Area Redevelopment Fund

§ 4.45 Language in an amendment to a bill reported by the

Committee on Banking and Currency repealing the public-debt financing provisions of the Area Redevelopment (revolving) Fund, and, in lieu thereof, authorizing appropriations for a reconstituted Area Redevelopment Fund, was held not to be an appropriation within the purview of Rule XXI clause 4 (subsequently clause 5) where another section of the bill authorized subsequent appropriations for the fund.

On June 12, 1963,⁽⁶⁾ the Committee of the Whole was considering H.R. 4996, a bill amending the Area Redevelopment Act. At one point the Clerk read as follows, and a point of order was raised as indicated below:

Sec. 6. (a) Subsection (a) of section 9 of the Area Redevelopment Act is repealed.

(b) Subsection (b) of section 9 of such Act is redesignated as subsection (a), and the first sentence of such subsection as so redesignated is amended to read as follows: “There shall be in the Treasury of the United States an area redevelopment fund (hereinafter referred to as the ‘fund’) which shall be available to the Secretary for the purpose of extending financial assistance under sections 6 and 7 and for repayment of all obligations and expenditures arising therefrom.”. . .

6. 109 CONG. REC. 10721, 10722, 88th Cong. 1st Sess

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

THE CHAIRMAN:⁽⁷⁾ The gentleman from Iowa will state it.

MR. GROSS: Mr. Chairman, I make a point of order against the language on page 5, line 18, beginning with the words "and the first sentence of such subsection as so redesignated is amended to read as follows:". . .

Mr. Chairman, I make the point of order that this constitutes, in fact, an appropriation in a legislative bill

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

MR. [WRIGHT] PATMAN [of Texas]: Mr. Chairman, this just merely restates existing law. It just creates a fund which already exists, really, and the fund will be supplemented by the amount appropriated through regular channels. . . .

THE CHAIRMAN: The Chair would like to inquire of the gentleman whether or not additional appropriations are required for this fund?

MR. PATMAN: Yes, sir; they are required.

THE CHAIRMAN: They are required?

MR. PATMAN: Yes; section 10 says:

Funds appropriated for the purpose of extending financial assistance under sections 6 and 7 shall be deposited in the Area Redevelopment Fund in the Treasury of the United States.

THE CHAIRMAN: Additional legislation would be necessary to appropriate funds. The Chair holds this is an authorization and overrules the point of order.

7. Frank M. Karsten (Mo.).

Use of Loan Repayments

§ 4.46 Language in an amendment to a bill reported by the Committee on Banking and Currency repealing the public debt financing provisions of the Area Redevelopment Act fund, in lieu thereof authorizing appropriations for a reconstituted fund, and applying receipts from the repayments of loans to the credit of available appropriations was held not to be an appropriation within the purview of Rule XXI clause 4 (subsequently clause 5) upon assurances that such receipts could not be reused without a subsequent appropriation.

On June 12, 1963,⁽⁸⁾ during consideration in the Committee of the Whole of the Area Redevelopment Act amendments (H.R. 4996) a point of order was raised against the following language, and proceedings ensued as indicated below:

Sec. 7. Section 11 of the Area Redevelopment Act is amended—

(1) by striking out "\$4,500,000" and inserting in lieu thereof "\$10,000,000"; and

(2) by inserting before the last sentence the following: "The Secretary, in

8. 109 CONG. REC. 10722, 88th Cong. 1st Sess.

his discretion, may require repayment of the assistance provided under this section and prescribe the terms and conditions of such repayment. Receipts from such repayments shall be credited to the appropriation available for assistance under this section which is current at the time of repayment.” . . .

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

THE CHAIRMAN:⁽⁹⁾ The gentleman will state it.

MR. GROSS: Mr. Chairman, I make a point of order against the language found on page 6 of the bill, line 23, which reads as follows:

Receipts from such repayments shall be credited to the appropriation available for assistance under this section which is current at the time of repayment.

I again make the point of order that this constitutes in fact an appropriation in a legislative act.

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

MR. [WRIGHT] PATMAN [of Texas]: Mr. Chairman, this concerns repayment and disposal of it after it has been repaid from which it was originally appropriated. I do not believe the gentleman's point of order is well taken.

THE CHAIRMAN: May the Chair inquire whether these funds can be reused?

MR. PATMAN: I am sure they have to be reappropriated. The funds received cannot be reused, they have to be reappropriated.

THE CHAIRMAN: Relying upon that assurance, the Chair overrules the

9. Frank M. Karsten (Mo.).

point of order because additional legislation would be necessary.

Senate Ruling on Public Debt Transaction Financing

§ 4.47 The Presiding Officer of the Senate ruled that a provision in a bill authorizing use of proceeds of public debt transactions for financing loans to the Development Loan Fund did not constitute an appropriation in a legislative bill in contravention of Senate Rule XVI.

On July 1, 1959,⁽¹⁰⁾ the following point of order was raised, and the proceedings were as indicated below:

MR. [FRANCIS H.] CASE of South Dakota: Mr. President, I desire to make a point of order regarding the language which appears on page 16, beginning in line 13, and through line 13 on page 17. That part of the bill is section 203; and I make the point of order against it. . . .

The point of order is that that provision constitutes an appropriation, and that an appropriation cannot be made in a legislative bill reported by the Foreign Relations Committee. . . .

I invite the attention of the Chair to the language of the provision itself:

(b) For purposes of the loans provided for in this section, the Sec-

10. 105 CONG. REC. 12435-37, 86th Cong. 1st Sess.

See also § 4.43, supra, for a similar ruling under the rules of the House.

retary of the Treasury is authorized to use the proceeds of the sale of any securities issued under the Second Liberty Bond Act as now in force or as hereafter amended, and the purposes for which securities may be issued under the Second Liberty Bond Act are hereby extended to include this purpose. The President shall determine the terms and conditions of any advances or loans made to the Fund pursuant to this section. . . .

The amount of such obligations also may not exceed the limitations specified in section 203(a) of this Act except that, to the extent that assets of the Fund other than capitalization provided pursuant to section 203(a) are available, obligations may be incurred beyond such limitations. . . .

THE PRESIDING OFFICER:⁽¹¹⁾ The Chair has not had an opportunity to study the point of order. After discussion with the Parliamentarian, the Chair believes it may be necessary to examine the precedents in connection with this matter.

The Chair wonders whether the chairman of the Foreign Relations Committee has any comment to make in connection with this matter.

MR. [J. WILLIAM] FULBRIGHT [of Arkansas]: Mr. President, I think the precedents are so clear that the Chair would not need to study the matter. There have been many precedents. The form of this provision is precisely the same as the language used 2 years ago when the Senate voted to approve this very operation of borrowing through the public debt transactions. . . .

THE PRESIDING OFFICER: In view of the precedents of other legislation which has passed this body, including

11. Frank E. Moss (Utah).

revolving funds created thereunder, even though the point of order was not squarely raised before, the Chair feels disposed to follow the precedents, and overrules the point of order.

§ 5. Contingent Fund Expenditures

Money appropriated for the contingent fund of the House is used for such miscellaneous purposes as employees salaries or salary increases, including those of committee investigative personnel; certain allowances⁽¹²⁾ house-keeping actions⁽¹³⁾ and the like. Simple House resolutions, which provide for expenditures from the contingent fund, are reported by the Committee on House Administration and called up as privileged.⁽¹⁴⁾

On occasion, a resolution not formally reported by the Committee on House Administration, providing for payment from the contingent fund of salaries of in-

12. On one occasion, expenses incident to a special session of Congress, including mileage for the Vice President, Senators, and Representatives, and payments to pages, were provided for by appropriations made in a joint resolution. See §8.21, *infra*.

13. See *Procedure in the U.S. House of Representatives*, Ch. 6 §§10–13 (4th ed.).

14. See §5.1, *infra*.