In rare instances, the Chair has reversed a decision on his own initiative; for example, the Chairman of the Committee of the Whole in 1927, as cited in volume 8 of Cannon's Precedents section 3435, held that a provision in a general appropriation bill constituted legislation after reviewing a statute he was not previously aware of when he had rendered a contrary decision.

For the reasons stated, and in view of the unique and compelling circumstances, the Chair holds that the language in the bill on page 5, lines 14 through 17, appropriating funds for the Bureau of the Mint, is unauthorized and, therefore, rules the paragraph out of order.

Parliamentarian's Note: The Chairman of the Committee of the Whole may in his discretion entertain (or initiate himself) a request for further argument on a point of order previously ruled upon, even where the paragraph has been passed unamended in the reading of the bill for amendment (and unanimous consent is not required),[16] where existing law not previously called to the Chair's attention would require the ruling to be reversed.

As indicated by the Chair's reservations, such authority should be exercised in only the most compelling circumstances, such as where the state of the law has been completely altered and not made known to the Chair; it should not be exercised in order to further interpret laws already cited. Although the committee in the instant case had clearly met the burden of proof on the previous ruling, their position and statutory authority had not been communicated to the Parliamentarian or Chair before that ruling, and the Chair had been forced to rule without the full benefit of arguments on the point of order.

§ 10 Evidence of Authorization

Citation of Statute

§ 10.1 Language in a general appropriation bill permitting funds in that paragraph to remain available until expended was held in order upon citation by the Committee on Appropriations of statutory authority therefor.

On Nov. 30, 1973,[17] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 11576), a point of order was raised against the following provision and proceedings ensued as indicated below:

16. See 8 Cannon's Precedents § 3435.

17. 119 CONG. REC. 38845, 93d Cong. 1st Sess.

TERRITORIAL AFFAIRS

TRUST TERRITORY OF THE PACIFIC ISLANDS

For an additional amount for "Trust Territory of the Pacific Islands", $8,410,000, to remain available until expended.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I raise a point of order to the language at page 3, line 4, beginning with the word "to," and reading as follows: "to remain available until expended."

I cite as authority for this, Mr. Chairman, rule XXI, clause 2, constituting legislation in an appropriation bill and exceeding the authority of the Committee on Appropriations, essentially appropriating for a period beyond 1 year. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the basic law states that the Congress is authorized to make the funds available as expended. This authorization is amply fortified in law. The point of order is not valid, in the judgment of the Committee on Appropriations.

THE CHAIRMAN:[18] Does the gentlewoman from Washington (Mrs. Hansen) or the gentleman from Texas (Mr. Mahon) have a copy of the authorization referred to that could be sent to the desk?

MR. MAHON: Mr. Chairman, we have the citation here. It is 68 Stat. 330. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The Chair has examined the statute in question and finds that it does indeed authorize appropriations providing funds for the trust territories and specifies that they may remain available until expended.

The Chair, therefore, overrules the point of order.

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

Letter From Executive Officer

§ 10.2 In ascertaining whether existing law has been complied with by executive officials in order to justify an appropriation (a condition stated in the law), the Chair has held that a letter written by an executive officer charged with the duty of furthering a certain program was sufficient documentary evidence of authorization of an appropriation in the manner prescribed by law.

On May 17, 1937,[19] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Provo River project, Utah, $750,000.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against this paragraph that the appropriation is not authorized by law. No construction has been started and no law is in force authorizing the

19. 81 CONG. REC. 4680, 4681, 75th Cong. 1st Sess.

project. I call the attention of the Chairman to the latter part of page 245 of the record of the hearings and to the following words:

> Construction program through fiscal year 1937. The starting of actual construction work has been delayed by the necessity of organization and negotiating repayment and water-subscription contracts.
>
> It is expected that bids will be received for the construction—

And so forth. This means there has been no actual construction on this job and that it has not been authorized by specific legislation. Therefore, I make the point of order against it that it is legislation on an appropriation bill, and has not been authorized by law.

THE CHAIRMAN:[20] The Chair invites attention to the provision of the United States Code in title 43, section 413, which reads as follows:

> Approval of projects by President. No irrigation project shall be begun unless and until the same shall have been recommended by the Secretary of the Interior and approved by direct order of the President of the United States.

This is the act of June 25, 1910, commonly referred to as the Reclamation Act.

The Chair would like to inquire of the gentleman from Utah, or someone else in position to give the information, whether or not this item against which a point of order has been made has been recommended by the Secretary of the Interior and approved by the direct order of the President of the United States, and the Chair would like to have some evidence on this point.

MR. [J. W.] ROBINSON of Utah: Mr. Chairman, I hold in my hand, in answer to the statement of the Chair, a letter——

MR. [JAMES G.] SCRUGHAM [of Nevada]: Mr. Chairman, I offer such documentary evidence.

MR. ROBINSON of Utah: I am submitting, Mr. Chairman, a letter from Secretary Ickes, together with the approval of this project by the President.

MR. [CASSIUS C.] DOWELL [of Iowa]: Mr. Chairman, if documentary evidence is offered for the purpose of showing compliance with the law, it seems to me it should be presented to the committee.

THE CHAIRMAN: The Chair has in mind referring to the document in passing upon the question here presented.

The Chair feels he has examined sufficient evidence to supply the information requested. . . .

The Chair is prepared to rule.

There has been presented to the Chair a letter from the Secretary of the Interior, under date of November 13, 1935, which consists of three pages, and the Chair will only refer to the pertinent part of the letter which applies to the particular item under consideration. The letter is addressed to the President of the United States by the Secretary of the Interior. Among other things, it is stated in the letter:

> I recommend that the Provo River project, consisting of the Deer Creek division and the Utah Lake division, be approved and that authority be issued to this Department to proceed with the work and to make contracts and to take any necessary action for the construction of said projects or either division thereof.

20. Jere Cooper (Tenn.).

Sincerely yours,
HAROLD L. ICKES,
Secretary of the Interior.

There appears on this letter, "Approved November 16, 1935, Franklin D. Roosevelt, President."

Therefore the Chair is of the opinion that the evidence is sufficient to meet the requirements in that this item in the pending bill has been recommended by the Secretary of the Interior and approved by the President of the United States, in accordance with the provisions of existing law, as cited by the Chair, appearing in section 413, title 43, of the United States Code. The Chair therefore overrules the point of order.

Letter from Official Given Authority in Law

§ 610.3 In deciding whether an appropriation for housing and technical facilities at an Air Corps intermediate station in Connellsville, Pennsylvania, was authorized by law, the Chair accepted as evidence a letter from the Chief of Staff of the Army; and the committee fulfilled its burden of showing authorization where the Secretary's letter stated that the procedure for authorization had been complied with.

On Mar. 28, 1938,[1] the Committee of the Whole was considering H.R. 9995, a military appropriation bill. A point of order was raised against the following paragraph in the bill:

> For construction and installation of buildings . . . including interior facilities . . . to remain available until expended and to be applied as follows: For . . . housing and technical facilities, Air Corps intermediate station, Connellsville, Pa., $50,000. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the language, beginning with the word "housing," in line 24, page 26, and ending with the figures "$50,000" on page 27, line 1:

> Housing and technical facilities, Air Corps intermediate station, Connellsville, Pa., $50,000.

I do this because it is not authorized by law. . . .

THE CHAIRMAN:[2] The Chair is ready to rule.

The act of August 12, 1936, confers upon the Secretary of War authority to establish intermediate stations in compliance with the terms of that act. The chairman of the subcommittee has furnished the Chair with a letter dated March 22, 1938, from the War Department advising that the Secretary of War under this authority has designated Connellsville, Pa., as an intermediate station and that it had been so designated by the Secretary of War.

The gentleman from New York makes the point of order that before the Secretary of War could make such a designation he must comply with certain provisions of the act. The Chair

1. 83 CONG. REC. 4244, 4245, 75th Cong. 3d Sess.

2. Luther A. Johnson (Tex.).

would not be warranted in assuming that the Secretary of War disregarded the provisions of the law. Since the Secretary of War has made the designation, the Chair thinks it is proper to assume that the Secretary has carried out the provisions of the law giving him that authority; in other words, the Chair does not think that it is necessary for the Chair to assume that the Secretary of War would violate the act. The proper assumption would be that he had complied with the law.

MR. TABER: Mr. Chairman, it seems to me that the burden is upon the gentleman from Pennsylvania, inserting this item in the bill, to show that the Secretary of War has legally made a designation of this place as an intermediate air station in accordance with the provisions of law and that he has met the four requirements that are set forth in the statute. I do not think a mere letter from the Secretary of War stating that he has made some designation would meet the situation unless the Secretary of War set forth that he has determined that this airport complies with the four requirements outlined in the statute. Has the Chair a copy of the statute available?

THE CHAIRMAN: The Chair has a copy of the act and is familiar with the act.

MR. TABER: It would seem to me that the Secretary of War must make a finding with reference to these four requirements specifically and that evidence of it must accompany the request for an authorization.

MR. [J. BUELL] SNYDER of Pennsylvania: Mr. Chairman, will the gentleman yield?

MR. TABER: I yield.

MR. SNYDER of Pennsylvania: He did make that finding with reference to the four specific points.

MR. TABER: But the evidence is not here to support that.

MR. SNYDER of Pennsylvania: The letter should be sufficient evidence.

THE CHAIRMAN: The Chair takes it that the evidence is in the War Department files. The Chair does not think it should be necessary to require that that evidence be sent here. When the House is advised that the Secretary of War has followed the act and has made the designation, the Chair thinks it would be unnecessary to require that the evidence be set forth. In the Chair's opinion the Chair has the right to assume that the Secretary of War has followed the provisions of law and that the records of the War Department would so show.

The point of order is overruled.

Press Reports Relating to Project

§ 10.4 Statements contained in the Official Information Digest issued by the Office of Government Reports, to the effect that Engineer Corps troops were on their way to a specified construction project were held insufficient evidence that the project was authorized, or that it was a "work in progress," for which an appropriation could be made.

On Mar. 10, 1942,[3] the Committee of the Whole was considering H.R. 6736, a bill concerned with civil functions of the War Department. The following proceedings took place:

MR. [FRANCIS H.] CASE of South Dakota. Mr. Chairman, I offer an amendment, which is at the desk.

The Clerk read as follows:

> Amendment offered by Mr. Case of South Dakota: On page 4, after line 10, insert "Alaskan Highway: For prosecuting the construction of a connecting highway from the States to and into Alaska, $5,000,000.". . .

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

MR. CASE of South Dakota: . . . Even if this project were one which required authorization by law the rules of the House provide that where a project is under construction and an appropriation is made for continuing construction, the appropriation is in order and is not subject to a point of order.

I call the Chair's attention to an Associated Press dispatch . . . in which this statement was made:

> An advance crew of American engineers is at Dawson Creek, and dozens of freight cars carrying construction equipment are expected to pass through Alberta in the next few weeks.

I also call attention to a statement on page 4 of the Offical Information Digest issued by the Office of Government Reports on March 5, in which it is stated that War Secretary Stimson announced that Engineer Corps troops were already on their way to work on roads for this Alaskan highway. In other words, construction has already begun. . . .

THE CHAIRMAN:[4] The Chair is ready to rule.

The mere fact that press reports show that certain groups are in Alaska does not constitute in the mind of the Chair that there is really a working performance going on in this project at all.

The Chair, therefore, sustains 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: Did the Chair understand that I quoted also from the Information Digest issued by the Office of Government Reports?

THE CHAIRMAN: The mere information does not constitute an authorization, or does not show the work has actually begun, and is in course of construction.

Public Knowledge

§ 10.5 The law authorizing an appropriation, conditioned upon submission of a balanced budget, was held to have been complied with, on the basis of public knowledge that the fiscal 1957

3. 88 CONG. REC. 2223, 2224, 77th Cong. 2d Sess.

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

budget submitted by the President (and printed as a House document) was balanced.

On Mar. 20, 1956,[5] the Committee of the Whole was considering H.R. 10004, a supplemental appropriation bill. The following proceedings took place:

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Mahon: On page 16, line 9, insert the following:

"National Park Service: Construction: For an additional amount for construction $3 million.". . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order that the wording of the amendment does not comply with Public Law 361 of the 83d Congress (requiring a balanced budget as a condition to the appropriation).

THE CHAIRMAN:[6] The Chair is ready to rule.

It is a matter of public knowledge that the budget submitted by the President is a balanced budget; therefore, the Chair feels that subsection 2(b) of section 4, Public Law 361, has been complied with.

The point of order is overruled.

Parliamentarian's Note: Public Law No. 83–361, § 4, stated in part:

§ 4(a) There is hereby authorized to be appropriated not to exceed $5,000,000 to complete (certain described) elements of the (Jefferson National Expansion) Memorial as authorized by this Act. . . .

(b) The authorization for an appropriation contained in subsection (a) shall not be effective until such time as

(1) the receipts of the Government for the preceding fiscal year have exceeded the expenditures of the Government for such year, as determined by the Director of the Bureau of the Budget; or

(2) the budget submitted to the Congress by the President . . . reveals that the estimated receipts of the Government for the fiscal year . . . are in excess of the estimated expenditures of the Government for such fiscal year.

Item Carried in Past Appropriation Bills

§ 10.6 The fact that an item has been carried in appropriation bills for many years does not preclude the point of order that it is legislation on an appropriation bill.

On Mar. 24, 1939,[7] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 5269), the following proceedings took place:

The Clerk read as follows:

5. 102 CONG. REC. 5200, 84th Cong. 2d Sess.

6. Francis E. Walter (Pa.).

7. 84 CONG. REC. 3272, 76th Cong. 1st Sess. See also 96 CONG. REC. 5799, 81st Cong. 2d Sess., Apr. 26, 1950 (proceedings relating to H.R. 7786).

Mexican fruitfly control: For the control and prevention of spread of the Mexican fruitfly, including necessary surveys and control operations in Mexico in cooperation with the Mexican Government or local Mexican authorities, $160,460.

MR. [J. WILLIAM] DITTER [of Pennsylvania]: Mr. Chairman, I make the point of order that the paragraph on page 54 which the Clerk has just read, being lines 1 to 4, inclusive, is legislation on an appropriation bill and not authorized by law. . . .

THE CHAIRMAN:[8] Can the gentleman from Missouri, the chairman of the subcommittee, cite any legislative enactment authorizing this provision?

Mr. [CLARENCE] CANNON of Missouri: Mr. Chairman, this provision has been carried in the bill for many years, but there is no law under which an appropriation is authorized for carrying on these activities.

THE CHAIRMAN: Of course, the provision was retained in previous bills by reason of the fact that no point of order was made against it.

If the gentleman has no citation of law authorizing this provision in the bill, the Chair sustains the point of order.

Executive Assurance That Authorization Formula Was Followed

§ 10.7 Where the law authorizing funds for the Postal Service required the calculation of the appropriation to be the difference between revenues received under certain rates and revenues which would have been received under certain other conditions, a lump-sum appropriation was held to be authorized as required by Rule XXI clause 2 upon assurance from the Committee on Appropriations that that amount was based upon estimates properly submitted pursuant to that law.

On Nov. 30, 1973,[9] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 11576), a point of order was raised against the following provision:

For an additional amount for "Payment to the postal service fund", $110,000,000.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order on the matter contained in chapter IX of the bill, H.R. 11576.

THE CHAIRMAN:[10] The gentleman will state his point of order.

MR. GROSS: . . . Mr. Chairman, chapter IX of the bill proposes to appropriate an additional amount for payment to the Postal Service fund in the sum of $110,000,000, for which there is no authorization in the law, and in clear violation of the House rule. . . .

MR. [TOM] STEED [of Oklahoma]: . . . The purpose of the act on the

8. Fritz G. Lanham (Tex.).

9. 119 CONG. REC. 38851–53, 93d Cong. 1st Sess.

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

Postal Corporation is quite clear. It provides that the Congress shall make appropriations to the Postal Corporation for two purposes; one, 10 percent of the 1970 budget, the other, for revenues foregone on certain classes of mail.

When the budget came out this year, those two items totaled $1,373,000,000. The committee, when it reported the bill in the House and Congress approved the bill, carried these two items of $1,373,000,000, but there was another matter that was involved, because the legislative committees have not finished their work. They have had to fund the Postal Corporation for the Government's portion of contributions to the retirement fund for postal pay raises. The House has passed the bill saying that the government had to make these payments. The other body has not seen fit to take any action. The retirement fund was in desperate circumstances, and the committee, in its wisdom, biding time to wait for the legislative committee to act, put in the original bill to transfer out of this $1,373,000,000 to the retirement fund of $142 million. The $110 million involved here is $32 million under the original budget request based upon these two items provided in the act. The revenue foregone is covered in section (c), paragraph 2401:

> There are authorized to be appropriated to the Postal Service each year a sum determined by the Postal Service to be equal to the difference between the revenues the Postal Service would have received if sections 3217, 3403–3405, and 3626 of this title and the Federal Voting Assistance Act of 1955 had not been enacted and the estimated revenues to be received on mail carried under such sections and Act.

What we are faced with here is going back to the beginning. We are actually $32 million under what the original estimates were, and also this is perfectly within the law and perfectly within the original budget estimates of the committee, and it is under the amount that they originally set, and I do not think there is any way on earth that we can begin to say that this could be subject to a point of order. . . .

THE CHAIRMAN: The Chair is prepared to rule.

Section 2401(b)(1) authorizes certain sums for appropriations, as the gentleman from Oklahoma points out, and the gentleman from Iowa has recognized that with respect to this matter further sums are authorized to be appropriated under section 2401(c) which authorizes the appropriation "to the Postal Service each year of a sum determined by the Postal Service to be equal to the difference between the revenues the Postal Service would have received" under certain circumstances and "estimated revenues to be received on mail carried under such sections and act."

The provision carried in the bill is to cover the estimate that was transmitted by the Postal Service.

The gentleman from Iowa makes the point that the estimate transmitted by the Postal Service was not properly arrived at.

The Chair does not believe it is his responsibility or privilege to go beyond the provisions printed in the bill and the authorizing statute. As far as a reading of the bill and the authorizing statute reveals to the Chair, the appropriation is authorized, and the Chair overrules the point of order.

Citation of Generic Law

§ 10.8 A paragraph in a general appropriation bill purportedly containing some funds not yet specifically authorized by separate legislation was held not to violate Rule XXI clause 2 where it was shown that all of the funds in the paragraph were authorized by more general provisions of law currently applicable to the programs in question.

On June 8, 1978,[11] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 12929), a point of order was overruled against the following provision:

> The Clerk read as follows:
>
> STUDENT ASSISTANCE
>
> For carrying out subparts 1 ($3,373,100,000), 2 ($340,100,000), and 3 ($86,750,000) of part A, and parts C ($520,000,000) and E ($328,900,000) of Title IV of the Higher Education Act, and, to the extent not otherwise provided, the General Education Provisions Act, $4,675,750,000, of which $4,651,350,000 shall remain available until September 30, 1980: *Provided,* That amounts appropriated for basic opportunity grants shall be available first to meet any insufficiencies in entitlements resulting from the payment schedule for basic opportunity grants published by the Commissioner of Education during the prior fiscal year: *Provided further,* That pursuant to section 411(b)(4)(A) of the Higher Education Act, amounts appropriated herein for basic opportunity grants which exceed the amounts required to meet the payment schedule published for any fiscal year by 15 per centum or less shall be carried forward and merged with amounts appropriated the next fiscal year.

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: Mr. Chairman, I have a point of order. . . .

[D]uring the discussion of the rule on this bill, I asked if there was money in this portion of the bill for the so-called Middle Income Student Assistance Act. The distinguished chairman of the subcommittee informed me that there indeed was money in the bill for that act.

I indicated at that time that the Middle Income Student Assistance Act was not authorized. In fact, the House specifically refused to consider that act and has subsequently passed the Tuition Tax Credit Act. I was informed that was not necessary because this could be done under current law.

Mr. Chairman, the Middle Income Student Assistance Act is not current law. If the Middle Income Student Assistance Act is current law, why did the President propose it as a new program?

Mr. Chairman, the committee report says that this appropriation is based on the House version of the Middle Income Student Assistance Act and will expand student aid for middle income students. It will not expand aid for

11. 124 CONG. REC. 16778, 95th Cong. 2d Sess.

middle income students without increasing the middle income student limitation, and there is no authorization for that.

Mr. Chairman, I would like to know whether the Middle Income Student Assistance Act is or is not in existence and whether it is or is not necessary, and I make the point of order that the $1.4 billion in this section that is for expanded aid to middle income students is not authorized. . . .

MR. [DAVID R.] OBEY [of Wisconsin]: . . . Mr. Chairman, let me just point out that the Middle Income Student Assistance Act, which has not yet passed, simply gives direction and makes certain changes in an already existing program. The bill before us today funds programs which are in existing law, and the gentleman's point of order is, therefore, not well taken.

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

The gentleman stated quite accurately that the report of the committee on this appropriation bill indicated that the Middle Income Student Assistance Act H.R. 11274 had not become law. It also says, and I quote, on page 74:

> Even though this legislation is still pending, appropriations can be made under existing authority to expand student aid for middle income students, as expressed in the bill and accompanying report.

The Chair has had an opportunity to examine the report on H.R. 11274 and the basic law. This is Public Law 94–482, 94th Congress, the Education Amendment of 1976.

Section 121, Part D, Student Assistance Basic Educational Opportunity Grants, extends the authorizations of the basic act to September 30, 1979.

Considering all of the authorizations for fiscal 1979 under part D—Student Assistance—together, it would appear that the funds in the paragraph in question are authorized.

Therefore, the Chair believes that the Committee is correct in its view that there is extant authorization justifying this appropriation, and he overrules the point of order.

Reorganization Plan

§ 10.9 While an Executive order creating a federal office cannot, standing alone, be considered authority in law for appropriations for that office, a reorganization plan from which that office derives may be cited by the Committee on Appropriations to support such an appropriation.

On June 21, 1974,[13] during consideration in the Committee of the Whole of the Department of Agriculture and environment and consumer protection appropriation bill (H.R. 15472), a point of order was overruled as indicated below:

> MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I have a point of order pertaining to title IV on page 45, lines 9 through 14, under the title "Consumer Programs, Department of

12. Richard Bolling (Mo.).

13. 120 CONG. REC. 20595, 20596, 93d Cong. 2d Sess.

Health, Education, and Welfare, Office of Consumer Affairs" on the ground that it violates rule XXI, clause 2, in that there is no existing statutory authority for this office, and I cite as authority the fact that last year this same point of order was made and the Chair ruled that there was no existing authority. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: . . . It is pointed out on page 967 of the hearings that we had submitted the report from the Department of HEW, dated March 21, 1974, in which they cite:

> Reorganization Plan No. 1 of 1953 provides in pertinent part: "In the interest of economy and efficiency the Secretary may from time to time establish central . . . services and activities common to the several agencies of the Department . . ." (section 7).

Later this report says:

> The office of Consumer Affairs, they include policy guidance responsibility respecting the relationship of all of the statutes of the Department to the consumer interest.

So this agency is in line with the Reorganization Plan No. 1 of 1953 which was approved and authorized by the Congress, and for that reason it is within the authorization of the law.

THE CHAIRMAN:[14] Could the gentleman from Mississippi give us the statutory citation for this office?

MR. WHITTEN: It is Reorganization Plan No. 1 of 1953.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I would point out that the Appropriations Committee only has authority, and I would say my good friend, the gentleman from Mississippi, is one of the most wise and able Members of this body and he is well aware of the fact that the reorganization plans are not statutory in effect and do not confer the authority on the executive branch to procure and expend appropriated funds. They do not constitute an authorization and, therefore, even though there is a reorganization plan in being it does not constitute the basis upon which the committee may predicate appropriations.

THE CHAIRMAN: Last year when this same point was raised, the authority that was cited was an Executive order. The Chair will state that a reorganization plan—which was not cited as authority on June 15, 1973—once it has become effective, has the effect of law and of statute and, therefore, the point of order would have to be overruled.

MR. DINGELL: Mr. Chairman, if the Chair will permit me further, the gentleman does not cite the Reorganization Act. He recites a reorganization plan which is very different from a Reorganization Act.

THE CHAIRMAN: The Chair understands that if the reorganization plan has become effective, if it was not rejected by the Congress within the time provided, it has the effect of a statute. . . .

The Chair overrules the point of order. The Chair has examined the law and is citing from title V, United States Code, section 906, which prescribes the procedure by which a reorganization plan does become effective. It is clear to the Chair that Reorganization Plan No. 1 of 1953 has the effect of law, and therefore, the point of order is overruled.

14. Sam Gibbons (Fla.).

Executive Order

§ 10.10 Pursuant to Rule XXI clause 2 and 36 USC § 673, commissions and councils must have been established by law—and not merely by Executive order—prior to the expenditure of federal funds therefor.

On June 25, 1974,[15] during consideration in the Committee of the Whole of the Department of Treasury, Postal Service, and Executive Office appropriation bill (H.R. 15544), a point of order was sustained as indicated below:

> THE CHAIRMAN:[16] The Clerk will read.
>
> The Clerk read as follows:
>
> For necessary expenses, including services as authorized by 5 U.S.C. 3109 . . . not to exceed $2,500 for official reception and representation expenses; and advances or reimbursements to applicable funds of the Commission and the Federal Bureau of Investigation for expenses incurred under Executive Order 10422 of January 9, 1953, as amended; $90,000,000 together with not to exceed $18,698,000 for current fiscal year administrative expenses for the retirement and insurance programs to be transferred from the appropriate trust funds of the Commission in amounts determined by the Commission without regard to other statutes: Provided, That the provisions of this appropriation shall not affect the authority to use applicable trust funds for administrative expenses of effecting statutory annuity adjustments. . . .
>
> MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I make a point of order on the language beginning at line 12 on page 12 of this bill with the figures "$90,000,000" through line 20 ending in the word "adjustments.". . .
>
> Mr. Chairman, it is my understanding that there is in fact no authorization for the President's Commission on Personnel interchange for which $353,000 is herein requested. It was created solely by Executive Order 11451 on January 19, 1969.
>
> This House rule is supported in this regard by title 36 of the United States Code, section 673, which also indicates that no funds should be expended by this body without authorization. The full section of the law reads as follows:
>
> TITLE 36, SECTION 673
>
> No part of the public monies, or of any appropriation made by Congress, shall be used for the payment of compensation or expenses of any commission, council or other similar body, or any members thereof, or for expenses in connection with any work or the results of any work or action of commission, council, board, or similar body, unless the creation of the same shall be or shall have been authorized by law; nor shall there be employed any detail hereafter or heretofore made or otherwise personal services from any Executive Department or other Government establishment in connection with any such commission, council, board, or similar body. . . .
>
> THE CHAIRMAN: Does the gentleman from Oklahoma desire to be heard on the point of order?

15. 120 CONG. REC. 21036, 21037, 93d Cong. 2d Sess.

16. B. F. Sisk (Calif.).

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

THE CHAIRMAN: The gentleman from Oklahoma (Mr. Steed) concedes the point of order.

The point of order is sustained.

Requirement of Annual Authorization Superceding Organic Law

§ 10.11 Pursuant to law (22 USC § 2680(a)(1)), no funds shall be available to the Department of State for obligation or expenditure unless the appropriation thereof has been authorized by law enacted after February 1972 (thus requiring specific subsequently enacted authorizations for both the direct operations of that Department and related functions delegated to it by laws enacted prior to that date, and not permitting appropriations under Rule XXI clause 2 to be authorized by the "organic statute" or other laws earlier authorizing appropriations for related activities); accordingly several appropriations not specifically authorized as required were conceded to be subject to a point of order.

On June 14, 1978,[17] appropriations in a general appropriation bill for the Department of State, including salaries and expenses, representation allowances, expenses under the Foreign Services Buildings Act, special foreign currency program, emergencies in the diplomatic and consular service, retirement and disability fund, international conferences, international peacekeeping activities, missions to international organizations, international conferences and contingencies, international trade negotiations, international commissions, construction, and general provisions, no authorizations for such appropriations having been enacted for the fiscal year in question as specifically required by law, were conceded to be unauthorized and were ruled out as in violation of Rule XXI clause 2. The proceedings are discussed further in § 17.21, infra. See also § 17.19, infra, discussing unauthorized funds for the Board for International Broadcasting. The Board, having been established independently of the Department of State, was not subject to the provisions of 22 USC § 2680(a).

Parliamentarian's Note: Similarly, pursuant to law (Public Law

17. 124 CONG. REC. 17616, 17617, 17620, 95th Cong. 2d Sess.

No. 94–503, § 204) all appropriations for the Department of Justice and related agencies and bureaus are deemed unauthorized for fiscal 1979 and subsequent fiscal years unless specifically authorized for each fiscal year, and the creation of any subdivision in that department or the authorization of any activity therein, absent language specifically authorizing appropriations for a fiscal year, is not deemed sufficient authorization. Accordingly, on June 14, 1978,[18] appropriations for the Department of Justice and related agencies for fiscal 1979 were conceded to be unauthorized (except for certain agencies for which appropriations had been authorized by separate law).

§ 11 Subject Matter: Agriculture

Language of Permanence in Prior Appropriation Act

Consumption of Domestic Farm Commodities

§ 11.1 An appropriation of $25 million to be used to increase domestic consumption of farm commodities was held authorized by permanent legislation contained in a prior appropriation law providing that "hereafter such sums shall be available as approved by Congress."

On May 20, 1964,[19] the Committee of the Whole was considering H.R. 11202, an Agriculture Department appropriation bill. At one point the Clerk read as follows and proceedings ensued as indicated below:

REMOVAL OF SURPLUS AGRICULTURAL COMMODITIES (SECTION 32)

No funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612C) shall be used for any purpose other than commodity program expenses as authorized therein, and other related operating expenses, except for . . . (5) not in excess of $25,000,000 to be used to increase domestic consumption of farm commodities pursuant to authority contained in Public Law 88–250, the Department of Agriculture and Related Agencies Appropriation Act, 1964, of which amount $2,000,000 shall remain available until expended for construction, alteration and modification of research facilities.

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I make a point of order against the language in this section headed "Removal of Surplus Agricultural Commodities (sec. 32).". . .

My point of order is that the proposition is not in compliance with clause

18. 124 CONG. REC. 17622–24, 95th Cong. 2d Sess.

19. 110 CONG. REC. 11422, 11423, 88th Cong. 2d Sess.