

tion or betterment of barracks for enlisted men, and so forth, as the other amendment provided. In the law regarding the construction or improvements of barracks, the Chair finds the following language in title 10, section 1339, of the United States Code:

Permanent barracks or quarters and buildings and structures of a permanent nature shall not be constructed unless detailed estimates shall have been previously submitted to Congress, and approved by a special appropriation for the same, except when constructed by the troops; and no such structures, the cost of which shall exceed \$20,000, shall be erected unless by special authority of Congress.

That special authority the Chair thinks has not been granted and, therefore, sustains the point of order, because it is legislation on an appropriation bill.

*Parliamentarian's Note:* The Chair evidently construed the cited provision in title 10 to require, for structures over \$20,000, a separate authorization in law. For structures under that amount, approval by a special appropriation would have been adequate.

***Substituting Conventional for Nuclear Naval Vessel; Both Unauthorized***

**§ 13.6 For an item in a general appropriation bill containing funds for a nuclear aircraft carrier program, against which points of order had been waived for failure of**

**the authorization bill to be enacted into law, a substitute amendment striking out those funds and inserting unauthorized funds for a conventional-powered aircraft carrier program was ruled out under Rule XXI clause 2, as unprotected by the waiver against the bill.**

On Aug. 7, 1978,<sup>(3)</sup> the Chair ruled that, an unauthorized item in a general appropriation bill being permitted to remain by a special rule waiving points of order, figures in such item may be perfected but the provision may not be changed by an amendment substituting funds for a different and specified unauthorized purpose. The proceedings are discussed in § 3.45, supra.

**§ 14. District of Columbia**

***Office of Corporation Counsel***

**§ 14.1 A paragraph in a general appropriation bill for the District of Columbia permitting the use of funds in the bill by the Office of the Corporation Counsel to retain professional experts at rates fixed by the commissioner**

3. 124 CONG. REC. 24710-12, 95th Cong. 2d Sess.

**was conceded to be legislation and was ruled out in violation of Rule XXI clause 2.**

On June 18, 1973,<sup>(4)</sup> during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 8685), the following point of order was raised:

MR. [H.R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language to be found on page 11, lines 5 through 10, as not being a limitation upon an appropriation bill, and not authorized.

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

Sec. 5. Appropriations in this Act shall be available for services as authorized by 5 U.S.C. 3109 and shall be available to the Office of the Corporation Counsel to retain the services of consultants including physicians, diagnosticians, therapists, engineers, and meteorologists at rates to be fixed by the Commissioner.

THE CHAIRMAN:<sup>(5)</sup> Does the gentleman from Kentucky desire to be heard on the point of order raised by the gentleman from Iowa (Mr. Gross)?

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Chairman, I should like to say to the members of the Committee that this is a new provision that is carried in the bill at this time. This was sent up from downtown. We at this time, Mr. Chairman, concede the point of order.

4. 119 CONG. REC. 20068, 93d Cong. 1st Sess.

5. Dante B. Fascell (Fla.).

THE CHAIRMAN: The point of order is sustained.

***Metropolitan Washington Board of Trade***

**§ 14.2 Language in an appropriation bill providing funds for aid in support of the Greater National Capital Committee of the Metropolitan Washington Board of Trade was not authorized by law.**

On July 12, 1961,<sup>(6)</sup> during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 8072), a point of order was raised against the following provision:

The Clerk read as follows:

GENERAL OPERATING EXPENSES

General operating expenses, plus so much as may be necessary to compensate the Engineer Commissioner at a rate equal to each civilian member of the Board of Commissioners of the District of Columbia, hereafter in this Act referred to as the Commissioners; aid in the support of the Greater National Capital Committee of the Metropolitan Washington Board of Trade; \$15,356,600. . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 3, line 16, "aid in the support of the Greater National Capital Committee of the Metropolitan Board of Trade." I make

6. 107 CONG. REC. 12404, 87th Cong. 1st Sess.

the point of order that the language is legislation on an appropriation bill.

THE CHAIRMAN:<sup>(7)</sup> Does the gentleman from Michigan desire to be heard on the point of order?

MR. [Louis C.] RABAUT [of Michigan]: I concede the point of order, Mr. Chairman. . . .

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

### ***American Legion Convention Expenses***

#### **§ 14.3 To the District of Columbia appropriation bill, an amendment making funds available for expenditure by the American Legion in connection with its national convention was held not to be authorized by law.**

On June 14, 1954,<sup>(8)</sup> the Committee of the Whole was considering H.R. 9517. A point of order was raised against the following amendment:

Amendment offered by Mr. Norrell. On page 4, line 1, strike out "\$258,215" and insert "\$283,215 of which \$25,000 shall be available for expenditure by the American Legion Convention 1954 Corporation in connection with the 1954 National Convention of the American Legion, subject to reimbursement

7. Charles M. Price (Ill.).

8. 100 CONG. REC. 8190, 8191, 83d Cong. 2d Sess.

from the American Legion if receipts exceed expenses."

MR. [GERALD R.] FORD [Jr., of Michigan]: Mr. Chairman, I make the point of order against the amendment inasmuch as the proposed expenditure is not authorized by law and that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:<sup>(9)</sup> The Chair would like to make inquiry of the gentleman from Arkansas if he can furnish the Chair with an authorization covering the language in his amendment.

MR. [WILLIAM F.] NORRELL [of Arkansas]: Mr. Chairman, I frankly say there is no authorization in law covering this item. . . .

THE CHAIRMAN: The Chair is ready to rule.

Upon the statement of the gentleman from Arkansas just made to the Chair that there is no authorization for the amendment, the Chair sustains the point of order.

### ***Schools***

#### **§ 14.4 An appropriation for public schools in the District of Columbia was held not subject to the point of order that it was without authorization, where the point of order was based on the contention that funds were not authorized for segregated schools.**

On Mar. 2, 1949,<sup>(10)</sup> the Committee of the Whole was consid-

9. J. Harry McGregor (Ohio).

10. 95 CONG. REC. 1741, 1742, 81st Cong. 1st Sess.

ering H.R. 3082, a District of Columbia appropriation bill. The following proceedings took place:

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, I make a point of order against the language beginning on page 8, concerning all appropriations for public schools, on the general ground that there is no authorization. To be more specific, I mean the following:

The public schools in the District of Columbia are segregated schools. Nowhere in the law is there any authorization for appropriations for general administration, supervision, operation of, and instruction in segregated schools. Since this section of the bill makes appropriations for segregated schools, and since there is no authorization in the law for segregated schools, I submit that this is an appropriation without authorization and these appropriations for segregated schools are not in order.

THE CHAIRMAN:<sup>(11)</sup> Does the gentleman from Kentucky desire to be heard on the point of order?

MR. [JOE B.] BATES of [Kentucky]: Mr. Chairman, I cannot find anything in this bill which provides that segregation must be practiced in the District of Columbia. As a matter of fact, I look on that as an administrative matter which is handled by the superintendent of schools in the District of Columbia. . . .

THE CHAIRMAN: The Chair is ready to rule. It is the opinion of the Chair that the appropriations provided in this section of the bill are appropriations which are authorized by law; and

since, in the language of the bill before us, there is no reference to the basis upon which the gentleman from New York has predicated his point of order, the Chair, therefore, overrules the point of order.

### *School Playgrounds*

#### **§ 14.5 An appropriation for expenses of keeping school playgrounds open during the summer months was held authorized by law, and in order.**

On Jan. 31, 1938,<sup>(12)</sup> the Committee of the Whole was considering H.R. 9181, the District of Columbia appropriation bill for 1939. At one point Chairman William J. Driver, of Arkansas, ruled on a point of order as follows:

THE CHAIRMAN: The Chair is ready to rule. On page 26, beginning on line 1, the following language appears in the pending bill:

For the maintenance and contingent expenses of keeping open during the summer months the public-school playgrounds; for special and temporary services, directors, assistants, and janitor service during the summer vacation, and, in the larger yards, daily after school hours during the school term, \$25,000.

To this paragraph the gentleman from Maryland addresses a point of order upon the ground that there is no authority under the law justifying the

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

12. 83 CONG. REC. 1316, 75th Cong. 3d Sess.

appropriation, and that it is an effort to change by law the jurisdiction of the agency in charge of the particular activities dealt with under this paragraph. The Chair must confess that he is unable to find in this language any change whatever in the jurisdiction over the property of the school institutions of the District and the Chair must necessarily presume that any money appropriated will go into the regular channels the law directs it should follow and be expended by the agency charged under the law with jurisdiction over these grounds. The Chair, therefore, is compelled to reach the conclusion that the point of order is not well taken, and it is therefore overruled.

The gentleman from Virginia [Mr. Smith] also stresses the point of order that is directed to the matter contained in the point raised by the gentleman from Maryland, with this further point, that there is no specific law authorizing an appropriation with respect to the maintenance of the school grounds during the vacation period. The Chair is compelled to reach the conclusion that when jurisdiction is placed for the operation of these institutions, necessarily the agency that is created and given control over the institution continues it at all seasons of the year and therefore the language that authorizes these institutions necessarily is broad enough to cover every activity that the language in this particular paragraph here indicates as the purpose of the appropriation. Again, the Chair is compelled to overrule the point of order made by the gentleman from Virginia.

### ***Claims of Prison Employees***

#### **§ 14.6 An amendment to the District of Columbia appro-**

**priation bill providing for refunds to certain individuals for meals not taken by employees of a penal institution was held to be unauthorized by law.**

On Apr. 5, 1946,<sup>(13)</sup> the Committee of the Whole was considering H.R. 5990, a District of Columbia appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. Smith of Virginia: On page 31, line 22, after the period, insert a new paragraph, as follows:

“Refunding erroneous deductions: To enable the Commissioners in cases where deductions were made for meals not taken by employees in the penal institutions, Lorton, Va., and has been covered into the Treasury for personal services: *Provided*, That this appropriation shall be available for refunding to employees such deductions made from salaries for meals not taken as follows, not to exceed \$1,040:

“Hospital Supervisor T. T. Grimsley, from November 1, 1938, through April 30, 1945, at rate of \$80 per annum, \$560.

“Special Disbursing Agent Kenneth Dove, from July 1, 1939, through June 30, 1945, at rate of \$80 per annum, \$480.” . . .

MR. [JOHN M.] COFFEE [of Washington]: Mr. Chairman, I make the point of order that this amendment is

13. 92 CONG. REC. 3226, 79th Cong. 2d Sess.

out of order because it is legislation on an appropriation bill. It has to do with claims with reference to employees in a certain institution operated by the District government and should properly come from the Committee on Claims.

THE CHAIRMAN:<sup>(14)</sup> the Chair is prepared to rule.

It would appear from the information already given to the Committee by both the gentleman from Virginia and the gentleman from Washington that the authorization is nonexistent. Under those circumstances it would seem the advisable course would be to file a claim for this money to be refunded.

The Chair therefore sustains the point of order.

### *Street Lighting*

#### **§ 14.7 An appropriation for street lighting installation and maintenance of public lamps and lampposts, out of the special fund created by the District of Columbia Gasoline Tax Act, was held in order inasmuch as that act authorized appropriations for improvement and maintenance of public highways and protective structures in connection therewith.**

On Feb. 1, 1938,<sup>(15)</sup> the Committee of the Whole was consid-

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

15. 83 CONG. REC. 1375, 75th Cong. 3d Sess.

ering H.R. 9181, the District of Columbia appropriation bill for 1939. At one point Chairman William J. Driver, of Arkansas, made the following ruling:

The CHAIRMAN: The Chair is ready to rule.

The gentleman from Mississippi [Mr. Collins] offers an amendment in the following language:

Street lighting: For purchase, installation, and maintenance of public lamps, lampposts, street designations, lanterns, and fixtures of all kinds on streets, avenues, roads, alleys, and for all necessary expenses in connection therewith, including rental of storerooms, extra labor, operation, maintenance, and repair of motor trucks, this sum to be expended in accordance with the provisions of existing law: *Provided*, That this appropriation shall not be available for the payment of rates for electric street lighting in excess of those authorized to be paid in the fiscal year 1927, and payment for electric current for new forms of street lighting shall not exceed 2 cents per kilowatt-hour for current consumed.

To this amendment the gentleman from Oklahoma [Mr. Nichols] directs a point of order on the ground it is not an appropriation authorized under existing law. It, therefore, becomes necessary for the Chair to look for authority in existing law to justify the amendment.

The law authorizing appropriation out of the gas-tax fund and setting forth the purposes for which appropriations may be made is found in volume 50, Part I, United States Statutes at Large, at page 677, and is as follows:

For the construction, reconstruction, improvement, and maintenance

of public highways, including the necessary administrative expenses in connection therewith;

(2) For the expenses of the office of the Director of Vehicles and Traffic incident to the regulation and control of traffic and the administration of the same, and

(3) For the expenses necessarily involved in police control, regulation, and administration of traffic upon the highways. . . .

The very language employed with respect to street lighting necessarily leads us to the conclusion that street lighting is regarded as an essential feature necessary in order to establish such safeguards as would maintain these avenues and streets for the benefit, the convenience, and the facility of the people using the same.

The language in the section of the law which the Chair read that imposes a duty and responsibility upon the police force in connection with these highways necessarily pre-supposes that lighting is one of the necessary and essential features to the safety element in the use of the streets and, therefore, is an incident to and is necessarily included in the item of expense for streets, street improvement, and maintenance.

However, the Chair may say to the Committee that he is saved considerable trouble and the necessity of dealing thoroughly with this subject from the standpoint of reasoning by one of the precedents of the House. A similar question to the one now under consideration was raised during consideration of a District appropriation bill in the first session of the Seventy-fifth Congress, at which time the very distinguished gentleman from Tennessee [Mr. Cooper] was Chairman of the

Committee of the Whole House on the state of the Union having under consideration that measure. In a very sound opinion, which will be found on page 3111 of the Congressional Record of April 2, 1937, I find this language was used by the then Chairman of the Committee:

The Chair has pointed out in ruling on a previous point of order that the so-called Gasoline Tax Act provides—

“That the proceeds of the tax, except as provided in section 840 of this title, shall be paid into the Treasury of the United States entirely to the credit of the District of Columbia and shall be available for appropriation by the Congress exclusively for road and street improvement and repair.” . . .

The word “improvement,” defined to mean “betterment,” makes the word broad and general enough to include all of the various activities mentioned in this amendment. They are, therefore, authorized by existing law. For this reason the Chair feels that the amendment offered by the gentleman from Mississippi is in order.

The point of order is overruled.

The Chair feels that the decision as made by the Chairman of the Committee then . . . should be followed in construing the present law.

The Chair is of the opinion that the provision of law pertaining to appropriations from the gas-tax fund is sufficiently broad to authorize appropriations for the purposes set out in the amendment and therefore overrules the point of order.

### *Airport Lighting*

#### **§ 14.8 Language in the District of Columbia appropriation**

**bill appropriating for street lighting for "public spaces" and "part cost of maintenance of airport and airway lights necessary for operation of the air mail" was held unauthorized by law.**

On Feb. 1, 1938,<sup>(16)</sup> the Committee of the Whole was considering H.R. 9181, a District of Columbia appropriation bill. At one point, a point of order was raised against the following paragraph:

Street lighting: For purchase, installation, and maintenance of public lamps, lampposts, street designations, lanterns, and fixtures of all kinds on streets, avenues, roads, alleys, and public spaces, part cost of maintenance of airport and airway lights necessary for operation of the air mail, and for all necessary expenses in connection therewith . . . \$765,000. . . .

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, my point of order was directed at the paragraph beginning on page 68, line 21, down to and inclusive of line 19 on page 69, for the reason that it is legislation on an appropriation bill, contrary to existing law, and not authorized by law.

In the interest of time, Mr. Chairman, I shall not argue this point of order at great length at this juncture. It will suffice at this time to point out to the Chair the language contained in lines 24 and 25 of page 68, and ask the Chair to remember that this paragraph proposes to charge \$765,000, the cost

of street lighting in the District of Columbia, to the highway fund of the District of Columbia. Surely there can be no argument but that the following language is legislation and not authorized by existing law:

And public spaces, part cost of maintenance of airport and airway lights necessary for operation of the air mail. . . .

THE CHAIRMAN:<sup>(17)</sup> The gentleman from Mississippi concedes the point of order is well taken. All of the paragraph goes out, for if any part of the paragraph is subject to a point of order necessarily the whole paragraph must be eliminated, which will be the ruling in this particular case.

***Juvenile Detention Center***

**§14.9 An appropriation for maintenance of a suitable place for the reception and detention of girls and women, and of boys under 17 years of age, arrested by the police or held as witnesses in the District of Columbia, was held authorized by law.**

On Feb. 1, 1938,<sup>(18)</sup> the Committee of the Whole was considering H.R. 9181, the District of Columbia appropriation for 1939. At one point the Clerk read as follows, and proceedings ensued as indicated below:

For maintenance of a suitable place for the reception and detention of girls

17. William J. Driver (Ark.).

18. 83 CONG. REC. 1359, 1360, 75th Cong. 3d Sess.

16. 83 CONG. REC. 1371, 1372, 75th Cong. 3d Sess.

and women, and of boys under 17 years of age, arrested by the police on charge of offense against any laws in force in the District of Columbia, or held as witnesses or held pending final investigation or examination, or otherwise, or committed to the guardianship of the Board of Public Welfare, including transportation, clinic supplies, food, clothing, upkeep and repair of buildings, fuel, gas, ice, laundry, supplies and equipment, electricity, and other necessary expenses, \$18,500; for personal services, \$9,240; in all, \$27,740. . . .

MR. [HERBERT S.] BIGELOW [of Ohio]: Mr. Chairman, I make the point of order that the language beginning in line 19 on page 37, and ending at the end of line 4 on page 38, is legislation in an appropriation bill.

In 1929, Public Law 804, Seventieth Congress, provided that children picked up from the streets and held for disposition by the courts should be separated from adult prisoners; and it provided a receiving home of their own. Throughout all the years intervening this receiving home has been maintained and is now in operation, some 40 or 50 children being residents of the home, held there for a period of a day, a week, or a month, or until they are otherwise disposed of.

Conditions at the receiving home admittedly are bad, and something should be done about it; but what should be done is, it seems to me, a matter for the consideration of the legislative committee and not for an appropriations subcommittee. I, therefore, make the point of order against the language in this section and ask that the language be stricken from the bill.

THE CHAIRMAN:<sup>(19)</sup> does the gentleman from Mississippi desire to be heard on the point of order? And in this connection the Chair will ask the gentleman from Mississippi to indicate the authority for the appropriation to maintain the house of detention.

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, I would like to know the grounds of the gentleman's point of order. The house of detention is merely a police precinct.

THE CHAIRMAN: The gentleman interposes a point of order on the ground that it is an appropriation without authority of law.

MR. COLLINS: The house of detention is a police precinct owned by the District of Columbia.

We may not have specific statutory authority to appropriate for this particular precinct and, as a matter of fact, we may not have specific statutory authority to appropriate for any particular police precinct.

The fact remains, however, that the house of detention has existed since 1901 and appropriations have been made for that purpose since that time. The section against which the point of order is directed proposes appropriations for maintenance of an existing institution. It is a going concern, and under the rule laid down in section 1280 of Cannon's Precedents the Congress has the power to appropriate for the maintenance thereof.

MR. [VINCENT L.] PALMISANO [of Maryland]: Mr. Chairman, I should like to be heard on the point of order.

As I understand it, the point of order is to the effect that under the appro-

19. William J. Driver (Ark.).

priation they are merging, under the act of 1929, as the gentleman stated, the detention home for children into a prison. The children will be placed in a prison.

Merging the two is legislation in an appropriation bill and if they are merging the two in violation of the act of 1929 then I say the appropriation should be taken out. I think that is what my colleague is contending.

MR. [MILLARD F.] CALDWELL [of Florida]: Mr. Chairman, may I speak briefly on the point of order?

The provision complained of here is not legislation in the sense it creates some new activity which is required to be authorized by law. Perhaps it expands one already created. This activity, however, has been on the statute books and has been appropriated for during the past 30 years or more.

MR. BIGELOW: Mr. Chairman, I am not challenging the statement that it may be proper for the Appropriations Committee to appropriate funds for the repair of the detention home. But what that committee is doing by this paragraph is abolishing the receiving home for children. It is abolishing an institution that was established by law for the purpose of segregating children from adult prisoners and I submit it is clearly legislation. If the point of order is sustained I have an amendment that will cure the situation.

THE CHAIRMAN: The Chair is ready to rule.

To the paragraph found on page 37 of the bill, beginning with line 19, the gentleman from Ohio [MR. BIGELOW] directs a point of order on the ground it is legislation in an appropriation bill and attempts to appropriate without

legislative authority. The gentleman from Ohio concedes the fact that there is authority under the provisions of an act of 1929 and therefore this is an appropriation based on the authority of that statute. The matter is further clarified for the Chair by the gentleman from Maryland, who states that his fear is the purpose of the paragraph is to eliminate the use of certain quarters or to merge two of the activities conducted with reference to matters dealt with in this paragraph.

There is nothing in the paragraph to indicate that there is the purpose of either abandoning or merging and, of course, the Chair is bound by the language and is unable to indulge in a presumption that there is any such underlying purpose. Furthermore, the purpose of this appropriation in express terms is maintenance, and by maintenance I mean the maintenance of an existing institution or institutions; therefore it would come clearly within the rules to appropriate for that purpose.

The point of order made by the gentleman from Ohio [Mr. Bigelow] is overruled.

### ***Personal Services for Public Buildings***

#### **§ 14.10 Language in the District of Columbia appropriation bill appropriating for personal services for the care of the District buildings was held authorized by law and in order.**

On Jan. 31, 1938,<sup>(20)</sup> the Committee of the Whole was consid-

<sup>20</sup> 83 CONG. REC. 1303, 1304, 75th Cong. 3d Sess.

ering H.R. 9181, the District of Columbia appropriation bill for 1939. At one point the Clerk read as follows:

For personal services, including temporary labor, and service of cleaners as necessary at not to exceed 48 cents per hour, \$129,000: Provided, That no other appropriation made in this act shall be available for the employment of additional assistant engineers or watchmen for the care of the District buildings.

MR. [BYRON B.] HARLAN [of Ohio]: Mr. Chairman, I wish to make a point of order against the proviso in this paragraph, but first I wish to raise a point of order as to the entire paragraph. . . .

THE CHAIRMAN:<sup>(1)</sup> The authority for making appropriations for the care of District buildings is found in Fiftieth Statutes at Large, page 377, in this language:

*Provided*, That all buildings belonging to the District of Columbia shall be under the jurisdiction and control of the Commissioners of the District. . . .

The gentleman from Ohio also directed the point of order against the paragraph the first portion of which includes this language:

For personal services, including temporary labor, and service of cleaners as necessary at not to exceed 48 cents per hour, \$129,000.

Standing alone, as a matter of course, this language is immune from a point of order because it is solely an appropriation for personal services,

and so forth. If, therefore, the argument directed to the proviso goes down, necessarily the point of order against the paragraph as a whole must go down.

The Chair overrules the point of order directed against the paragraph.

### *Employment of People's Counsel*

#### **§ 14.11 Employment of a secretary to the People's Counsel before the Public Utilities Commission, and employment of expert aid to such counsel, were found to be authorized by law (though the amendment in question was ruled out on other grounds).**

On Jan. 31, 1938,<sup>(2)</sup> the Committee of the Whole was considering H.R. 9181, the District of Columbia appropriation bill for 1939. At one point the Clerk read the following amendment:

Amendment by Mr. [Alfred N.] Phillips [Jr., of Connecticut]: On page 11, line 13, after the period, insert two new paragraphs, as follows:

"For the employment of a secretary to the People's Counsel before the public utilities commission, \$1,620.

"For the employment of expert aid to the People's Counsel, \$5,000." . . .

MR. [VINCENT L.] PALMISANO [of Maryland]: Mr. Chairman, I made a point of order against the language on

1. William J. Driver (Ark.).

2. 83 CONG. REC. 1308, 1309, 75th Cong. 3d Sess.

page 7, line 13, after the figures "\$76,000" to the end of the paragraph, which point of order was sustained on the ground that it was legislation in an appropriation bill. The amendment offered by the gentleman from Connecticut would restore the language that was stricken out on the point of order; not only that, but we have passed that particular section and the amendment comes too late. . . .

THE CHAIRMAN:<sup>(3)</sup> the gentleman from Maryland bases his point of order on two grounds. The first ground, that the amendment is not authorized by law, the Chair will be forced to overrule, because in section 121 of the Public Utilities Act of the District of Columbia under the District Code this language is found:

The Commission shall have the power in each instance to employ and to prescribe the duties of such officers, clerks, stenographers, typewriters, inspectors, experts, and employees as it may deem necessary to carry out the provisions of this act.

The Chair finds, therefore, that the amendment does seek to provide funds for a purpose authorized by law.

The second ground raised by the gentleman from Maryland, that the amendment comes too late, and the point of order raised by the gentleman from Oklahoma, that the amendment is not germane to the paragraph offered, the Chair will be forced to sustain.

The Chair sustains the point of order that the amendment is not germane to the paragraph offered.

3. William J. Driver (Ark.).

### ***Main Library Building Unauthorized***

#### **§ 14.12 An appropriation for the preparation of plans and specifications for a new main library building in the District of Columbia was held unauthorized by law.**

On Jan. 31, 1938,<sup>(4)</sup> the Committee of the Whole was considering H.R. 9181, a District of Columbia appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

For the preparation of plans and specifications for a new main library building to be constructed on square 491 in the District of Columbia, \$60,000.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order against the language found on page 18, beginning in line 14, and including all of the language in lines 14, 15, and 16, because it is legislation on an appropriation bill and is without authority of existing law.

I may say, Mr. Chairman, that the purpose for making this point of order is that there is now pending before the Committee on the District of Columbia a bill which proposes to authorize an appropriation of two and one-half million dollars for the construction of a library in the District of Columbia. The committee before which the bill is pending has had hearings in the past

4. 83 CONG. REC. 1313, 1314, 75th Cong. 3d Sess.

and will no doubt hold hearings in the future in order to determine whether or not there is a need in the District of Columbia for the construction of this library building. Mr. Chairman, until that committee does decide such a building is necessary, and until that committee authorizes an appropriation for the construction of the building, certainly there is no need for the expenditure of \$60,000 to prepare the plans for a building, the authorization of which could only be made by the District of Columbia Committee. I may say there has been no authorization by the District of Columbia Committee for an appropriation of \$60,000 for this purpose. . . .

THE CHAIRMAN:<sup>(5)</sup> the point of order made by the gentleman from Oklahoma (Mr. Nichols) is sustained, and accordingly the provision will be stricken.

### ***Branch Library Building Authorized***

#### **§ 14.13 An appropriation for the preparation of plans and specifications for a branch library building in the District of Columbia was held authorized by law.**

On Jan. 31, 1938,<sup>(6)</sup> the Committee of the Whole was considering H.R. 9181, the District of Columbia appropriation bill for 1939. The following ruling was made by the Chairman:<sup>(7)</sup>

5. William J. Driver (Ark.).

6. 83 CONG. REC. 1314, 75th Cong. 3d Sess.

7. William J. Driver (Ark.).

To a clause in the pending appropriation bill to be found beginning on line 14 on page 18, in the following language—

For the preparation of plans and specifications for a new main library building to be constructed on square 491 in the District of Columbia, \$60,000—

the gentleman from Oklahoma [Mr. Nichols] directed a point of order which was sustained by virtue of the language found in section 1421 of the Code of Laws of the District of Columbia, which provided for the construction of a central library and branch libraries. The word "central" as found in this particular law necessarily precludes any legislation for the construction of another main library, as we can well consider it to be the act and intent of Congress to provide for such only in the form of one library. Within this definition and direction of the law the Chair necessarily sustained the point of order.

The gentleman from Mississippi then offered an amendment which provides for the preparation of plans and specifications for the construction of a branch library. The Chair turns again to section 1421 of the code and finds this language:

Said library shall consist of a central library and such number of branch libraries so located and so supported as to furnish books and other printed matter and information service convenient to the homes and offices of all residents of the said District.

Clearly, this amendment, providing for the plans and specifications for a branch library, comes squarely within the authority of the law the Chair has

just read and, therefore, the point of order is overruled.

***Use of Gasoline Tax Fund—for Salaries***

**§ 14.14 An appropriation for the salary and expenses of the office of Director of Vehicles and Traffic out of the District Gasoline Tax Fund was held unauthorized by law, since the Gasoline Tax Act provided that revenue raised through its operation could only be appropriated by Congress for road and street improvements and repairs.**

On Apr. 2, 1937,<sup>(8)</sup> H.R. 5996, the District of Columbia appropriation for 1938, was being considered in the Committee of the Whole. At one point the Clerk read as follows:

For paving, repaving, grading, and otherwise improving streets, avenues, and roads, including temporary per diem services, surveying instruments and implements, and drawing materials, and the maintenance of motor vehicles used in this work, including curbing and gutters and replacement of curb-line trees where necessary, and including trees and parkings, assessment and permit work and the several purposes provided for in that paragraph, and salaries and expenses of

**8.** 81 CONG. REC. 3110, 3111, 75th Cong. 1st Sess.

the office of the Director of Vehicles and Traffic, as follows, to be paid from the special fund created by section 1 of the act entitled "An act to provide for a tax on motor-vehicle fuels sold within the District of Columbia, and for other purposes", approved April 23, 1924 (43 Stat., p. 106), and accretions by repayment of assessments.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make the point of order against the portion beginning in line 11 on page 71 after the word "work", and beginning with the word "including," going through lines 11, 12, and 13, on down to and inclusive of line 21, on the ground that it is legislation and changes existing law. . . .

If there is any provision in the rules of the House which would permit this language to stay in the bill as against the point of order, that it is legislation, it would have to be held under the provisions of the Holman rule. . . .

The organic law which provided for the expenditure of funds derived from the collection of the gasoline tax in the District of Columbia, stating where those funds might be expended, reads as follows:

A tax of 2 cents per gallon on all motor-vehicle fuels within the District of Columbia sold or otherwise disposed of by an importer or used by him in a motor vehicle operated for hire or for commercial purposes, shall be levied, collected, and paid in the manner hereinafter provided.

I ask the Chair to listen carefully to the reading of the following portion of the law:

The proceeds of the tax, except as provided in section 840 of this title—

And for the benefit of the Chair let me say that section 840 of this title

simply provides certain exemptions of certain classes of motor vehicles from the provisions of this tax law—

shall be paid into the Treasury of the United States entirely to the credit of the District of Columbia, and shall be available for appropriation by the Congress exclusively for road and street improvements and repair.

In Hinds' Precedents, volume 7, page 411, section 1395, this is stated:

A provision construing or interpreting existing law is legislation and is not in order on an appropriation bill.

And there follows the ruling where a similar objection to this was made, and it was sustained. My point is this: In answer to this point of order the chairman of the Subcommittee on Appropriations can only say, I believe, that this language is justified because curbs, gutters, parkways, streets, motor vehicles, and other things related thereto are parts of a street and a roadway. If that is the contention, then that is an attempt on the part of this subcommittee to do the thing that section 1394 says cannot be done, to wit:

A provision construing or interpreting existing law is legislation not in order on an appropriation bill.

In other words, if the District of Columbia up to this time has been using these funds only for a particular purpose, that is an administrative discretion of theirs and this rule provides that if an Appropriations Committee attempts to direct that executive officer that he must use the funds for some other purpose than that for which he is using it, that that is legislation, and I

submit, Mr. Chairman, that this under that rule is clearly legislation. . . .

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, the law merely says that the gasoline-tax fund shall be available for road and street improvement and repair. Trees are just as much a part of the street as the center of the street. Assessment and curbing work simply means the paving of sidewalks and gutters. Certainly operation and maintenance of traffic lights is a part of street improvements. . . .

MR. NICHOLS: [Clearly] this is legislation, because that thing cannot be done by an appropriations committee. I will read from volume 7 of Cannon's Precedents, at page 444, section 1438, as follows:

A provision limiting discretion vested in an executive officer is legislation and not in order on an appropriation bill.

Which goes back to the very thing I stated before. If these gentlemen whose duty it is to spend the funds derived from this gasoline tax are not spending it for the things provided for here, then if you direct them what they shall spend the money for, that makes it legislation, beyond question. Under the admission of the chairman of the subcommittee, certainly it cannot be construed as anything else.

THE CHAIRMAN:<sup>(9)</sup> The Chair is prepared to rule. The gentleman from Oklahoma [Mr. Nichols] makes a point of order against certain language appearing on page 71, beginning with the word "including", in line 11, and extending to the end of the paragraph.

The gentleman from Mississippi [Mr. Collins] in speaking in opposition to

9. Jere Cooper (Tenn.).

the point of order, has called attention to certain improvements that are provided for by the language included in this part of the bill. The Chair would be inclined to agree with the gentleman in the contention that he presents in all respects except that relating to the question of salaries and expenses of the office of director of vehicles and traffic. The Chair observes that the office of director of vehicles and traffic is provided for in the act to regulate traffic in the District of Columbia, and so forth. An examination of this law clearly shows that the director of vehicles and traffic has rather broad general duties to perform, and it is not related alone to what might be imposed upon him in connection with the Gasoline Tax Act. The Gasoline Tax Act provides, as was pointed out by the gentleman from Oklahoma, that—

The proceeds of the tax, except as provided in section 840 of this title, shall be paid into the Treasury of the United States entirely to the credit of the District of Columbia and shall be available for appropriations by the Congress exclusively for road and street improvements and repairs.

The Chair is unable to see how that language would be broad enough to authorize the payment of salaries for the director of vehicles and traffic. The Gasoline Tax Act does not make provision for the payment of the salaries to which the Chair has directed attention. Therefore, salaries paid out of this fund would not be authorized by law. For that reason the provision to which the point of order is made would, in the opinion of the Chair, be legislation on a general appropriation bill and would be subject to a point of order

Therefore the Chair sustains the point of order

— *For Street Repair and Improvement*

**§ 14.15 An appropriation for paving, grading, and otherwise improving streets, including curbing and gutters, and replacement of curb-line trees where necessary, out of the special fund created by the District of Columbia Gasoline Tax Act, was held to be in order inasmuch as that act authorized appropriations for “road and street improvement and repair.”**

On Apr. 2, 1937,<sup>(10)</sup> The Committee of the Whole was considering H.R. 5996, the District of Columbia appropriation bill for 1938. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Ross A.] Collins [of Mississippi]: Page 71, line 7, insert a new paragraph, as follows:

“For paving, repaving, grading, and otherwise improving streets, avenues, and roads, including temporary per diem services, surveying instruments and implements, and drawing materials, and the maintenance of motor vehicles used in this work, including curbing and gutters and replacement of curb-line trees where necessary, and

10. 81 CONG. REC. 3111, 75th Cong. 1st Sess.

including trees and parkings, assessment and permit work and the several purposes provided for in that paragraph, as follows, to be paid from the special fund created by section 1 of the act entitled 'An act to provide for a tax on motor-vehicle fuels sold within the District of Columbia, and for other purposes', approved April 23, 1924 (43 Stat., p. 106), and accretions by repayment of assessments."

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order against the amendment. . . . If I properly interpret the amendment, it is the exact language that was heretofore in the bill, with the exception that that portion has been stricken which provides for the payment of the salary of a supervisor of traffic Am I correct in that understanding?

THE CHAIRMAN:<sup>(11)</sup> The gentleman is correct. . . .

The gentleman from Oklahoma makes the point of order against the amendment offered by the gentleman from Mississippi, the wording of which, as pointed out by the gentleman from Oklahoma, is the same as the wording of the bill excluding the portion to which the Chair invited attention in the ruling made on the previous point of order. It will be remembered that the Chair pointed out in ruling on the previous point of order that the so-called Gasoline Tax Act provides:

That the proceeds of the tax, except as provided in section 840 of this title, shall be paid into the Treasury of the United States entirely to the credit of the District of Columbia and shall be available for appropriation by the Congress exclu-

sively for road and street improvement and repair.

The Chair has consulted the dictionary and finds that the word "improvement" is there defined to be—

An act or process of improving, as profitable employment or use, cultivation, development, enhancement, or increase; especially betterment—

And so forth. The word "improvement" appears in the so-called Gasoline Tax Act, and this word is defined in the dictionary as meaning, among other things, "especially betterment." The Chair, therefore, is of the opinion that the various functions mentioned in the language of the amendment and the various things to be provided—trees, parking, curbing, guttering, and so forth—certainly are proper to be included as betterment or improvement of the streets.

The word "improvement", defined to mean "betterment", makes the word broad and general enough to include all of the various activities mentioned in this amendment. They are, therefore, authorized by existing law. For this reason the Chair feels that the amendment offered by the gentleman from Mississippi is in order.

The point of order is overruled.

### — *For Personal Services*

**§ 14.16 An appropriation for personal services for the Department of Vehicles and Traffic, out of the special fund created by the District of Columbia Gasoline Tax Act, was held not to be authorized by the act**

11. Jere Cooper (Tenn.).

On Apr. 2, 1937,<sup>(12)</sup> the Committee of the Whole was considering H.R. 5996, a District of Columbia appropriation bill. A point of order was raised against the following paragraph:

For personal services, department of vehicles and traffic, \$76,440.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I interpose a point of order against the language appearing in line 13, page 80, reading as follows:

For personal services, department of vehicles and traffic, \$76,440.

That this is legislation and contrary to existing law.

THE CHAIRMAN:<sup>(13)</sup> Does the gentleman from Mississippi desire to be heard?

MR. [ROSS A.] COLLINS [of Mississippi]: I do not.

THE CHAIRMAN: The gentleman from Oklahoma makes the point of order against the language appearing in lines 13 and 14, on page 80, which reads as follows:

"For personal services, department of vehicles and traffic, \$76,440."

It will be remembered that on page 71 of the bill a point of order was made against language appearing in lines 15 and 16.<sup>(14)</sup> For the reasons indicated at the time that point of order was under consideration, the Chair is of opinion that this is an appropriation not au-

thorized by law and therefore sustains the point of order.

— *For Sidewalks and Curbing*

**§ 14.17 An appropriation for the construction and repair of sidewalks and curbs around public reservations and municipal and federal buildings, out of a special fund created by the District of Columbia Gasoline Tax Act, was held to be authorized by the language of that act specifying in general terms the purposes of the fund.**

On Apr. 2, 1937,<sup>(15)</sup> the Committee of the Whole was considering H.R. 5996, the District of Columbia appropriation bill for 1938. The following proceedings took place:

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order to the language in line 22, page 79, after the comma, as follows:

And construction and repair of sidewalks and curbs around public reservations and municipal and United States buildings, including purchase or condemnation of streets, roads, and alleys, and of areas less than 250 square feet at the intersection of streets, avenues, or roads in the District of Columbia, to be selected by the Commissioners, and including maintenance of non-pas-

12. 81 CONG. REC. 3112, 75th Cong. 1st Sess.

13. Jere Cooper (Tenn.).

14. See the discussion in § 14.14, supra.

15. 81 CONG. REC. 3112, 75th Cong. 1st Sess.

senger-carrying motor vehicles,  
\$150,000

Mr. Chairman, there might be a portion of that language which may conform to existing law, but I make the point of order because it is legislation and does not conform to existing law. Certainly that portion which provides for the construction of sidewalks around public reservations and municipal and United States buildings cannot be according to existing law. . . .

THE CHAIRMAN:<sup>(16)</sup> The gentleman from Oklahoma makes a point of order to the language beginning in line 22, page 79, down to and including line 4, on page 80

The Chair has had occasion in several instances during the course of the consideration of this bill to invite attention to the so-called Gas Tax Act and the provisions therein relating to the improvement and betterment of the streets and roads. The Chair feels for the reasons heretofore stated in passing upon several other points of order very similar in application to the pending question that these improvements, such as paving, sidewalk improvement, and all of those various activities, come within the scope of this act to which reference has been made; therefore these activities are authorized by existing law, and the Chair overrules the point of order.

— *For Motor Vehicles Licenses*

**§ 14.18 An appropriation for the purchase of motor vehicle identification plates out of the special fund created**

16. Jere Cooper (Tenn.).

**by the District of Columbia Gasoline Tax Act was held not to be authorized by the act.**

On Apr. 2, 1937,<sup>(17)</sup> the Committee of the Whole was considering H.R. 5996, a District of Columbia appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

For the purchase of motor-vehicle identification number plates, \$20,000.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I desire to interpose a point of order against the language beginning in line 16, page 81, "For the purchase of motor-vehicle identification number plates, \$20,000", for the reason it is legislation on an appropriation bill, which is contrary to the rules of the House. . . .

THE CHAIRMAN:<sup>(18)</sup> The gentleman from Oklahoma makes a point of order against the language appearing in lines 16 and 17 on page 81. The Chair is of the opinion the so-called Gas Tax Act, to which reference has been made on several occasions during the consideration of this bill, does not authorize appropriation out of that fund to provide for these identification plates, and so forth. The Chair therefore sustains the point of order.

***Purchase of Municipal Asphalt Plant.***

**§ 14.19 Language in the District of Columbia appropria-**

17. 81 CONG. REC. 3112, 3113, 75th Cong. 1st Sess.

18. Jere Cooper (Tenn.).

**tion bill authorizing the Commissioners to purchase a municipal asphalt plant for which no authorization was cited was ruled out as unauthorized and not in order on a general appropriation bill.**

On Apr. 2, 1937,<sup>(19)</sup> during consideration in the Committee of the Whole of the District of Columbia appropriation bill, a point of order was raised against the following provision:

The Clerk read as follows:

For current work of repairs to streets, avenues, roads, and alleys, including the reconditioning of existing gravel streets and roads; for cleaning snow and ice from streets, sidewalks, cross walks, and gutters in the discretion of the Commissioners; and including the purchase, exchange, maintenance, and operation of non-passenger-carrying motor vehicles used in this work, \$800,000: *Provided*, That the Commissioners of the District of Columbia, should they deem such action to be to the advantage of the District of Columbia, are hereby authorized to purchase a municipal asphalt plant at a cost not to exceed \$30,000: *Provided further*, That appropriations contained in this act for highways, sewers, city refuse, and the water department shall be available for snow removal when specifically and in writing ordered by the Commissioners.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order against the paragraph on page 77, be-

ginning in line 9 after the semicolon, the following language:

And including the purchase, exchange, maintenance, and operation of non-passenger-carrying motor vehicles used in this work, \$800,000.

I might make this in sections, Mr. Chairman, but I will make it all at once. I make a point of order against the following language on page 77, line 11:

*Provided*, That the Commissioners of the District of Columbia, should they deem such action to be to the advantage of the District of Columbia, are hereby authorized to purchase a municipal asphalt plant at a cost not to exceed \$30,000: *Provided further*, that appropriations contained in this act for highways, sewers, city refuse, and the water department shall be available for snow removal when specifically and in writing ordered by the Commissioners.

I make a point of order against these provisions on the ground that they are legislation and change existing law.

. . .

THE CHAIRMAN:<sup>(20)</sup> While the Chair is constrained to agree with many of the observations made by the gentleman from Mississippi, yet the Chair is of the opinion that the inclusion of the words in lines 14 and 15, as follows: "and hereby authorized to purchase a municipal asphalt plant", and so forth, together with the failure to point out to the Chair the provision of existing law authorizing such an activity, makes this legislation on an appropriation bill, and therefore sustains the point of order.

19. 81 CONG. REC. 3111, 3112, 75th Cong. 1st Sess.

20. Jere Cooper (Tenn.).