

tions without authorization, and constitutes legislation on an appropriation bill, which I believe to be in violation of clause 2 of rule XXI. . . .

MR. [JOSEPH P.] ADDABBO [of New York]: . . . Mr. Chairman, the section is subject to a point of order, but this is a special case. These are children of men and women at West Point who are attending the public schools. If these funds are not allocated, the school will close and there will be no school for these young people to attend. . . .

THE CHAIRMAN PRO TEMPORE:²⁰ The gentleman insists on his point of order, and the Chair is ready to rule.

The Chair will have to rule that, for the reasons conceded, the point of order to section 793 as stated by the gentleman from Alabama (Mr. Nichols) is sustained.

§ 31. Transfers or Disposition of Property

Transfer of Federal Property From One Agency to Another Without Exchange of Funds

§ 31.1 A provision of a general appropriation bill authorizing the transfer of title to power facilities from one agency of government to another without exchange of funds was conceded and held to constitute legislation in violation of Rule XXI clause 2.

²⁰ Don Bailey (Pa.).

On Apr. 24, 1951,⁽¹⁾ during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3790), a point of order was raised against the following provision:

The Clerk read as follows:

TRANSFER OF CERTAIN FACILITIES, DENISON DAM PROJECT

The Secretary of the Army is hereby authorized to transfer to the Secretary of the Interior under arrangements satisfactory to said Secretaries, without exchange of funds, all right, title, and interest, including rights-of-way, of the Department of the Army in and to the Denison-Payne 132-kilovolt transmission line.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the language appearing in the bill beginning line 20, page 4, over to line 2, page 5, on the ground that it is legislation in an appropriation bill.

THE CHAIRMAN:⁽²⁾ Does the gentleman from Washington (Mr. Jackson) desire to be heard on the point of order?

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Excess Property to Department of the Interior

§ 31.2 A provision in a general appropriation bill author-

1. 97 CONG. REC. 4301, 82d Cong. 1st Sess.
2. Wilbur D. Mills (Ark.).

izing transfers of excess property by federal agencies to the Department of the Interior at the request of the Secretary of the Interior without reimbursement or transfer of funds when required by the Interior Department for operations conducted in territories and island possessions was conceded to constitute legislation and ruled out of order.

On May 2, 1951,⁽³⁾ during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3790), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 111. Transfers to the Department of the Interior, pursuant to the Federal Property and Administrative Services Act of 1949, of equipment, material and supplies, excess to the needs of Federal agencies may be made at the request of the Secretary without reimbursement or transfer of funds when required by the Department for operations conducted in Territories and island possessions.

MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make a point of order against section 111 on the ground that it is legislation on an appropriation bill.

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I concede the point of order.

3. 97 CONG. REC. 4739, 82d Cong. 1st Sess.

THE CHAIRMAN: ⁽⁴⁾The point of order is sustained.

Federal Property Transferred to Territory

§ 31.3 A provision in an appropriation bill authorizing property of the Public Health Service to be transferred to the Territory of Alaska without reimbursement in the discretion of the Surgeon General was conceded to be legislation and held not in order.

On Mar. 25, 1952,⁽⁵⁾ during consideration in the Committee of the Whole of the federal security appropriation bill (H.R. 7151), a point of order was raised against the following amendment:

The Clerk read as follows:

Disease and sanitation investigations and control, Territory of Alaska: To enable the Surgeon General to conduct, in the Service, and to cooperate with and assist the Territory of Alaska in the conduct of, activities necessary in the investigation, prevention, treatment, and control of diseases, and the establishment and maintenance of health and sanitation services pursuant to and for the purposes specified in sections 301, 311, 314 (without regard to the provisions of subsections (d), (f), (h), and (j) and the limitations set forth in subsection (c) of such section), 361,

4. Wilbur D. Mills (Ark.).

5. 98 CONG. REC. 2859, 82d Cong. 2d Sess.

363, and 704 of the Act, including the purchase of one passenger motor vehicle, and hire, operation, and maintenance of aircraft, \$1,200,000: *Provided*, That property of the Public Health Service located in Alaska and used in carrying out the activities herein authorized may be transferred, without reimbursement, to the Territory of Alaska at the discretion of the Surgeon General.

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, I wish to make a point of order against the proviso appearing on page 21, beginning with line 9; but pending the Chairman's ruling, I would like to ask a question.

May I ask the chairman of the subcommittee, or the ranking minority member, if either one can explain the provision which gives the Surgeon General, at his own discretion, the right to transfer property of the United States to the Territory of Alaska. It seems to me a delegation of authority of the Congress, especially when there is no indication of the value of the property, might be dangerous. I cannot find anything in the report, nor can I recall that there was anything in the bill of the preceding session.

I make the point of order this is legislation on an appropriation bill, and a delegation of authority. May I ask the chairman what this is all about?

MR. [JOHN E.] FOGARTY [of Rhode Island]: As far as the committee is concerned, I may say that a point of order lies there and we are willing to accept it. I cannot give the gentleman the figures. . . .

THE CHAIRMAN:⁽⁶⁾ The gentleman from California [Mr. Phillips] makes a point of order against the language on

page 21, line 9 through 13, beginning with the word "*Provided*." The gentleman from Rhode Island [Mr. Fogarty] concedes the point of order. The point of order is sustained.

Appropriation of Property

§ 31.4 Existing law authorizing the appropriation of funds for a certain purpose "including U.S. contributions in funds or otherwise" does not permit inclusion in an amendment to a general appropriation bill of language directly appropriating property in lieu of funds, such a matter being within the legislative jurisdiction of another committee of the House and not being an appropriation of revenue.

On June 3, 1944,⁽⁷⁾ during consideration in the Committee of the Whole of a general appropriation bill (H.R. 4937), a point of order was raised against the following amendment:

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Case:
Page 5, line 11, strike out "\$450,000,000" and insert "\$428,300,000 in funds and 61,740,000 pounds of raw wool from

7. 90 CONG. REC. 5246, 5247, 78th Cong. 2d Sess.

6. William M. Colmer (Miss.).

stocks owned by the Commodity Credit Corporation.”

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I desire to make a point of order against the amendment. It is not germane, and is legislation on an appropriation bill. It involves legislation pertaining to the appropriation of wool whereas the pending bill relates exclusively to the appropriation of money.

MR. CASE: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN:⁽⁸⁾ The Chair will hear the gentleman.

MR. CASE: Mr. Chairman, I have in my hand Public Law 267 of the Seventy-eighth Congress, which is the U.N.R.R.A. Act, under which the appropriation in this section is proposed. The first paragraph of that Act reads as follows:

Resolved, etc., That there is hereby authorized to be appropriated to the President such sums, not to exceed \$1,350,000,000 in the aggregate, as the Congress may determine from time to time to be appropriate for participation by the United States (including contributions in funds or otherwise and all necessary expenses related thereto) in the work of the United Nations Relief and Rehabilitation Administration.

Further, section 6 of the act specifically sets forth that Congress may determine the character of our contributions as well as the amount by using this language:

In adopting this joint resolution the Congress does so with the following reservation:

“That in the case of the United States the appropriate constitutional

body to determine the amount and character and time of the contributions of the United States is the Congress of the United States.”

I submit to the Chair that the basic act under which this entire appropriation is authorized specifically, in the first paragraph, uses the words “including contributions in funds or otherwise.” Unless something like raw wool or something else might be offered as part of the aggregate of the \$1,350,000,000, the words “or otherwise” as contrasted with “funds” would have no meaning.

That is buttressed by the language in section 6, which provides that the Congress may determine the amount, which relates to the aggregate, and the character. Obviously the word “character” is intended to include contributions of character other than money.

MR. CANNON of Missouri: The authorization for this appropriation is Public Law 267 of the Seventy-eighth Congress, an act which authorizes the appropriation of sums of money. We are authorized under this law to appropriate money and nothing else. Later on, after the money is appropriated then, as the gentleman suggests, if you want to substitute commodities, that is permissible, but the authorization is to appropriate money, and money only.

Any proposition to appropriate commodities is not authorized by law and is not germane to the bill.

MR. CASE: Mr. Chairman, I agree that the basic authorization for this appropriation is Public Law 267, which is what I cited, but the gentleman from Missouri read only a part of the first paragraph and ignored the last part of it to which I called the gentleman’s at-

8. William M. Whittington (Miss.).

tion, where it specifically provides for "funds or otherwise"; and he certainly ignored section 6, which reserved for Congress the right to determine not only the amount but the character of the contribution.

THE CHAIRMAN: The authorization, as has been stated, is under Public Law 267, Seventy-eighth Congress. The first paragraph of that law reads:

That there is hereby authorized to be appropriated to the President such sums, not to exceed \$1,350,000,000 in the aggregate as the Congress may determine from time to time to be appropriate for participation by the United States (including contributions in funds or otherwise).

The Chair is of the opinion that inasmuch as this is an appropriation, and inasmuch as the Committee on Appropriations is limited to making appropriations of money, this bill could provide only for an appropriation of money, and that if Congress should determine to make other property owned by the Government available, it would have to be under legislation submitted to the Congress by an appropriate committee.

In view of that interpretation, the Chair is constrained to sustain the point of order.

Transfer of Facilities and Property Rights

§ 31.5 Language in an appropriation bill transferring certain facilities of the Fort Peck Project, Montana, from the Department of the Army to the Department of the In-

terior was conceded to be legislation on an appropriation bill and held not in order.

On May 1, 1951,⁽⁹⁾ during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3790), the following point of order was raised:

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the language on page 18, lines 7 to 21, on the ground that it is legislation on an appropriation bill.

The language is as follows:

TRANSFER OF CERTAIN FACILITIES, FORT PECK PROJECT, MONTANA

The Secretary of the Army is hereby authorized to transfer to the Department of the Interior without exchange of funds, all of the right, title, and interest of the Department of the Army in and to the following facilities, including rights-of-way (except that portion of the rights-of-way within the Fort Peck Reservoir area), but there shall be reserved the right to use the power facilities for the purpose of transmitting power to the Fort Peck project during emergency periods when the Fort Peck power plant is not functioning: (a) the Fort Peck-Rainbow (Great Falls) 161-kilovolt transmission line; (b) the Rainbow (Great Falls) terminal facilities; and (c) the Fort Peck-Whatley 50-kilovolt-transmission line and substation.

MR. [MICHAEL J.] KIRWAN [of Ohio]: Mr. Chairman, I submit that the point

9. 97 CONG. REC. 4659, 82d Cong. 1st Sess.

of order made by the gentleman from New York comes too late.

THE CHAIRMAN:⁽¹⁰⁾ The point of order made by the gentleman from New York (Mr. Taber) is timely. Does the gentleman from Ohio desire to be heard on the point of order?

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

THE CHAIRMAN: The point of order is sustained.

District of Columbia, Transfer of Hospitals Between Agencies

§ 31.6 Language in the District of Columbia appropriation bill appropriating for hospitals and sanatoria coupled with language transferring hospitals and sanatoria from the Board of Public Welfare to the Board of Commissioners was held to be legislative in nature and not in order on an appropriation bill.

On Apr. 2, 1937,⁽¹¹⁾ The following proceedings took place:

For the following hospital and sanatoria, which, on and after July 1, 1937, shall be under the direction and control of the health department of the District of Columbia and subject to the supervision of the Board of Commissioners.

MRS. [MARY T.] NORTON [of New Jersey]: Mr. Chairman, I make the point

10. Wilbur D. Mills (Ark.).

11. 81 CONG. REC. 3108, 75th Cong. 1st Sess.

of order against the language on page 46 beginning in line 1, after the word "sanatoria", ending with the word "Commissioners", in line 5 of the same page, that it is clearly legislation on a general appropriation bill, which is contrary to the rules of the House.

THE CHAIRMAN:⁽¹²⁾ Does the gentleman from Mississippi desire to be heard on the point of order?

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

THE CHAIRMAN: The gentlewoman from New Jersey makes a point of order against certain language in the first paragraph on page 46. Under existing law these hospitals and institutions are under the Board of Public Welfare. This provision seeks to transfer these hospitals and institutions to the Department of Health. It is obviously legislation on a general appropriation bill.

The Chair therefore sustains the point of order.

No Property To Be Withheld From Distribution

§ 31.7 Where existing law directed a federal official to provide for the sale of certain government property to private organizations in "necessary" amounts, but did not require that all such property shall be distributed by sale, an amendment to a general appropriation bill providing that no such property shall be withheld from

12. Jere Cooper (Tenn.).

distribution from qualifying purchasers was ruled out as legislation requiring disposal of all property and restricting discretionary authority to determine “necessary” amounts and not constituting (as required by the Holman rule) a certain retrenchment of funds in the bill.

On Aug. 7, 1978,⁽¹³⁾ during consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 13635), a point of order was sustained against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. John T. Myers [of Indiana]: On page 8, after line 10, add the following new section:

None of the funds appropriated or otherwise made available in this Act shall be obligated or expended for salaries or expenses during the current fiscal year in connection with the demilitarization of any arms as advertised by the Department of Defense, Defense Logistics Agency sale number 31-8118 issued January 24, 1978, and listed as “no longer needed by the Federal Government” and that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308. . . .

MR. [ABNER J.] MIKVA [of Illinois]: Mr. Chairman, I make a point of order

13. 124 CONG. REC. 24707, 24708, 95th Cong. 2d Sess.

on the amendment on the ground that I believe that it is legislation within a general appropriation bill and, therefore, violates the rules of the House. . . .

MR. JOHN T. MYERS: Mr. Chairman, this is a simple limitation amendment. It merely limits the Secretary of the Treasury to continue to carry out existing law. It does not provide any new law. It simply says that the Secretary of the Treasury shall carry out the prevailing, existing law. . . .

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Chairman, rule 21, clause 2, of the Rules of the House [House Rules and Manual pages 426-427] specifies that an amendment to an appropriation bill is in order if it meets certain tests, such as:

First. It must be germane;

Second. It must be negative in nature;

Third. It must show retrenchment on its face;

Fourth. It must impose no additional or affirmative duties or amend existing law.

First. [The amendment] is germane. As the amendment applies to the distribution of arms by the Defense Logistics Agency, it is not exclusively an Army of civilian marksmanship amendment, so should not be placed elsewhere in the bill. . . .

Second. It is negative in nature. It limits expenditure of funds by the Defense Department by prohibiting the destruction and scrapping of arms which qualify for sale through the civilian marksmanship program, which is a division of the executive created by statute.

Third. It shows retrenchment on its face. Retrenchment is demonstrated in

that the Department of Defense if prohibited from expending funds to destroy surplus military arms, and that the arms previously earmarked for destruction will be made available in accordance with existing statute. . . . The House, in adding this amendment, will secure additional funds for the Treasury which the General Accounting Office has determined is adequate to pay costs of handling the arms. For example, the M-1 rifles are to be sold at a cost of \$110 each. These are the arms most utilized by the civilian marksmanship program. The Defense Department will not be required to spend additional funds to process the sale of additional arms. . . .

. . . [The amendment] does not impose additional or affirmative duties or amend existing law. . . .

Regulations issued . . . AR 725-1 and AR 920-20 provide for the issuance of arms by application and qualification through the Director of Civilian Marksmanship. The DCM shall then submit sale orders for the Armament Readiness Military Command [ARMCOM] to fill the requests of these qualified civilians. Thus, the amendment simply requires the performance of duties already imposed by the Army's own regulation. . . .

MR. MIKVA: Mr. Chairman, I particularly call attention of the Chair to the second half of the amendment, which imposes an affirmative duty on the Secretary, saying that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308.

Under the general existing law, there are all kinds of discretions that

are allowed to the Secretary to decide whether or not such arms shall be distributed. Under this amendment, the existing law is to be changed and those arms may not be withheld. The practical purpose is to turn loose 400,000 to 500,000 rifles into the body politic.

But the parliamentary effect is clearly to change the existing law under which the Secretary can exercise all kinds of discretion in deciding whether or not those arms will be distributed. Under this amendment it not only limits the fact that the funds may be obligated but it specifically goes on to affirmatively direct the Secretary to distribute such arms under title X, which is an affirmative obligation, which is exactly the kind of obligation the rules prohibit, and I renew my point of order. . . .

THE CHAIRMAN:⁽¹⁴⁾ The Chair is ready to rule.

The Chair has read the section to which the gentleman refers, title 10, United States Code, section 4308, and is of the opinion that it does not require that all firearms be distributed to qualified purchasers. The Chair further feels that while the first part of the amendment is a limitation, the last part of the amendment is a curtailment of Executive discretion, and the Chair sustains the point of order.

§ 32. Appropriations Prior to or Beyond Fiscal Year

Statutes provide that appropriations in annual appropriation acts are not permanent. Thus, no spe-

14. Daniel D. Rostenkowski (Ill.).