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.).

cific or indefinite appropriation made subsequent to Aug. 24, 1912, in any regular annual appropriation act shall be construed to be permanent or available continuously without reference to a fiscal year unless it belongs to one of the following four classes: "Rivers and harbors," "lighthouses," "public buildings," and "pay of the Navy and Marine Corps," or unless it is made in terms expressly providing that it shall continue to be available beyond the fiscal year covered by the appropriation act in which it is contained.[15] Except as otherwise provided by law, all balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year.[16] Thus, provisions in general appropriation bills which make funds available for the payment of obligations chargeable against prior appropriations are legislative in character. But appropriations for public buildings are available until completion of the work. A statute provides:[17]

> All moneys appropriated for the construction of public buildings shall remain available until the completion of the work for which they are, or may be, appropriated; and upon the final completion of each or any of said buildings, and the payment of all outstanding liabilities therefor, the balance or balances remaining shall be immediately covered into the Treasury.

General Rule—Public Building Construction Funds

§ 32.1 Although it is generally not in order in a general appropriation bill to require that funds therein shall be "available until expended" or beyond the fiscal year covered by the bill unless the authorizing law contains that provision, such language may be included where other existing law can be interpreted to permit that availability. Thus, a provision in a general appropriation bill that funds therein for the construction of the west front of the U.S. Capitol shall "remain available until expended" was held not to constitute legislation in violation of Rule XXI clause 2 where an existing law provided that funds for public building construction shall remain available until the completion of the work.

15. 31 USC § 1301.
16. 31 USC § 1502.
17. 31 USC § 1307.

On Apr. 17, 1973,[18] during consideration in the Committee of the Whole of the legislative branch appropriation bill [H.R. 6691], a point of order was raised against a provision as follows:

MR. [J. EDWARD] ROUSH [of Indiana]: Mr. Chairman, I have a point of order against the language found on page 17 of the bill, lines 14 through 22.

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

EXTENSION OF THE CAPITOL

For an amount, additional to amounts heretofore appropriated, for "Extension of the Capitol", in substantial accordance with plans for extension of the West Central front heretofore approved by the Commission for Extension of the United States Capitol, to be expended as authorized by law, by the Architect of the Capitol under the direction of such Commission, $58,000,000, to remain available until expended.

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

THE CHAIRMAN:[19] The Chair will hear the gentleman.

MR. ROUSH: Mr. Chairman, my point of order is based upon these following facts: The appropriation as proposed lacks legislative authority and, secondly, the language "$58,000,000 to remain available until expended" constitutes legislation on a general appropriation bill.

Mr. Chairman, I point to rule XXI [which] prohibits an appropriation in a general appropriation bill unless previously authorized [as well as] provisions changing existing law. I will take my second point first, Mr. Chairman, the prohibition against changing existing law.

I would refer to the appropriation bill last year, which would be Public Law 92–342, under the section "Extension of the Capitol:"

Funds available under this appropriation may be used for the preparation of preliminary plans for the extension of the west central front: *Provided, however,* That no funds may be used for the preparation of the final plans or initiation of construction of said project until specifically approved and appropriated therefor by the Congress.

I point out to the Chairman that the plans have not been specifically approved.

Second, Mr. Chairman, I would point to an old provision of the law which is found in the United States Code, 1970 edition, title 40, section 162 (providing that) no change in the architectural features of the Capitol Building or landscape features of the Capitol Grounds shall be made except on plans to be approved by the Congress.

Now, Mr. Chairman, I am again going back to rule XXI. The question then arises as to whether or not the Congress has passed authorizing legislation. Mr. Chairman, I have searched this matter diligently and the only authority that I can find for the extension of the west front of the Capitol necessarily has to be inferred from the language of a bill which was passed in 1955. I would like to read that section of that bill. Again it is entitled "Extension of the Capitol":

18. 119 CONG. REC. 12781, 12782, 93d Cong. 1st Sess.

19. John M. Murphy [N. Y.].

> The Architect of the Capitol is hereby authorized, under the direction of a Commission for Extension of the United States Capitol . . . to provide for the extension, reconstruction, and replacement of the central portion of the United States Capitol in substantial accordance with scheme B of the architectural plan submitted by a joint commission of Congress and reported to Congress on March 3, 1905 (House Document numbered 385, Fifty-eighth Congress), but with . . . modifications and additions . . .

Mr. Chairman, I submit that this is the authority for the extension of the East Front and Scheme B is the key reference in the 1955 statute, and those words are in substantial accord with Scheme B of the architectural plan, et cetera. Scheme B, as it is referred to, provides that the building—referring to the Capitol Building—should be projected eastward 32 feet, 6 inches from the wall of the Supreme Court and statuary hall—should be projected eastward, Mr. Chairman.

The question then arises can authority be inferred? Certainly there is no specific authority granted by this authority by inferring from that wording, which affects the rest of Scheme B. And I respectfully submit that the answer is "no," that that is not the effect of the statute. It is not another program, it is not another sentence, it is a continuation of the same sentence, and the only possible inference is that the language was inserted to implement Scheme B, which calls for an extension of the East Front.

Finally, Mr. Chairman, the bill provides for the appropriation of $58 million, to remain available until expended. The precedents of the House are explicit that an appropriation made available until expended is in the nature of legislation and not in order on a general appropriations bill, and thus is in violation of rule 21. . . .

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

MR. [BOB] CASEY OF TEXAS: Mr. Chairman, I do.

Mr. Chairman, this project is authorized, and I would point out that the gentleman from Indiana (Mr. Roush) who is making the point of order, failed to read all of Public Law 242 of the 84th Congress.

The law reads:

Extension of the Capitol: The Architect of the Capitol is hereby authorized. . . .

Et cetera.

> In substantial accordance with Scheme B of the architectural plan submitted by a joint commission of Congress and reported to Congress on March 3, 1905 (House Document Numbered 385, Fifty-Eighth Congress), but with such modifications and additions, including provisions for restaurant facilities and such other facilities in the Capitol Grounds, together with utilities. . . .

It does not just refer to one item. I think this gives great latitude.

> Together with utilities, equipment, approaches, and other appurtenant or necessary items . . . there is hereby appropriated $5,000,000, to remain until expended: *Provided*, that the Architect of the Capitol under the direction of said commission and without regard to the provisions of section 3709 of the Revised Statutes, as amended, is authorized to enter into contracts.

Et cetera.

This law was amended February 14, 1956, and there was added this amendment under "Extension of the Capitol." This was Public Law 406, 84th Congress:

> The paragraph entitled "Extension of the Capitol" in the Legislative Appropriation Act, 1956, is hereby amended by inserting after the words "to remain available until expended" and before the colon, a comma and the following: "and there are hereby authorized to be appropriated such additional sums as may be determined by said Commission to be required for the purposes hereof.

Mr. Chairman, I think it is quite clear that the authority is here for any and all changes under plan B as put together in the architectural plan, because there is language in there "with such modifications and additions" as well as "other appurtenant or necessary items, as may be approved by said Commission," and the Capitol building includes not only the East Front, but it includes the West Front. I submit the point of order is not well taken.

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

The Chair has listened carefully to the debate and the laws and precedents cited by the gentlemen from Indiana and Texas; and the Chair has had an opportunity to examine the authorizing legislation for the West Front construction, and would note that in 1956—Public Law 84–406—the basic statute was amended to provide that—

> There are hereby authorized to be appropriated such additional sums as may be determined by said Commission to be required for the purposes hereof.

The Chair would also call the Members' attention to the provisions of 31 U.S. Code 682,[20] which provides that all moneys appropriated for construction of public buildings shall remain available until the completion of the work for which they are, or may be appropriated. Therefore, the inclusion of the language "to remain available until expended" in the appropriation bill, although not contained in the basic authorizing statute for the West Front, cannot be considered a change in existing law since other existing law—31 U.S.C. 682—already permits funds for public building construction to remain available until work is completed.

The gentleman from Indiana also contends that Public Law 92–342 requires "specific" approval by Congress of preparation of final plans or initiation of construction prior to an appropriation therefor. The Chair has examined the legislative history of the provision relied upon by the gentleman from Indiana in support of his argument that the appropriation must be specifically approved by Congress prior to the appropriation, and it is clear from the debate in the Senate on March 28, 1972, that approval in an appropriation bill was all that was required by the provision in Public Law 92–342. The Chair feels that there is sufficient authorization contained in Public Law 92–342 as amended by Public Law 84–406 for the appropriation contained in the pending bill, and that no further specific authorization is required prior to an appropriation for final plans and construction for the West Front.

For these reasons the Chair overrules the point of order.

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20. Now 31 USC § 1307.

Parliamentarian's Note: As noted in the introduction to this section, certain exceptions are made to the general provision of 31 USC § 718 that "no specific or indefinite appropriation . . . in any regular annual appropriation Act shall be construed to be permanent or available continuously without reference to a fiscal year," one of the exceptions being appropriations for "public buildings."

Where Authorization for Continued Availability is Lacking

§ 32.2 An appropriation for railroad research "to remain available until expended" was conceded to be legislation on an appropriation bill where the authorizing statute (Pub. L. No. 91–458) did not make those funds available beyond the fiscal year for which appropriated.

On July 14, 1971,[1] during consideration in the Committee of the Whole of the Department of Transportation appropriation bill (H.R. 9667), the following point of order was raised:

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, I make a point of order as to the language on page 16, lines 1 through 3, as being an unauthorized appropriation and violating rule XXI, clause 2.

The portion of the bill reads as follows:

RAILROAD RESEARCH

For necessary expenses for conducting railroad research activities, $7,000,000, to remain available until expended.

THE CHAIRMAN:[2] Does the gentleman from California desire to be heard on the point of order?

MR. [JOHN J.] MCFALL [of California]: Mr. Chairman, I should like to be heard on the point of order.

The point of order which the gentleman from Missouri makes is with reference to the language that indicates the amount of $7 million for conducting railroad research activities will remain available until expended. The phrase "to remain available until expended" is legislation on an appropriation bill. Just as soon as I can get an amendment ready I will offer an amendment which will preserve the $7 million and leave out the "to remain available until expended."

THE CHAIRMAN: Does the gentleman from California concede the point of order?

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

THE CHAIRMAN: The point of order is sustained.

Characterization of an Appropriation as "Final"

§ 32.3 In an appropriation bill, where an appropriation is

1. 117 CONG. REC. 24913, 92d Cong. 1st Sess.

2. Edmond Edmondson (Okla.).

authorized by a law which would remain effective in the future, words designating an appropriation as "a final appropriation" for "completing" acquisition of certain land under authority of such law were conceded to constitute legislation.

On Mar. 30, 1954,[3] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 8583), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Land acquisition, National Capital park, parkway, and playground system: As a final appropriation under authority of the act of May 29, 1930 (46 Stat. 482), as amended, for necessary expenses for the National Capital Planning Commission for completing acquisition of land for the park, parkway, and playground system of the National Capital, to remain available until expended, $545,000, of which (a) $135,000 shall be available for the purposes of section 1(a) of said act of May 29, 1930, (b) $126,000 shall be available for the purposes of section 1(b) thereof, and (c) $284,000 shall be available for the purposes of section 4 thereof: *Provided*, That not exceeding $26,450 of the funds available for land acquisition purposes shall be used during the current fiscal year for necessary expenses of the Commission (other than payments for land) in connection with land acquisition.

> MR. [HOWARD W.] SMITH of Virginia: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[4] The gentleman will state it.
>
> MR. SMITH of Virginia: Mr. Chairman, I desire to interpose a point of order to the language contained in line 17 on page 35: "as a final appropriation"; and on line 20 against the word "completing.". . .
>
> MR. [JOHN] PHILLIPS [of California]: I will concede the point of order.
>
> THE CHAIRMAN: The Chair sustains the point of order.

Funds "To Be Immediately Available"

§ 32.4 Under the modern practice the provision that an appropriation shall be immediately available is not subject to a point of order: language in the independent offices appropriation bill making the appropriations for administrative expenses for public works advance planning immediately available was held in order.

On Feb. 8, 1945,[5] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 1984), a point of order was raised against the following amendment:

> MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Chairman, I offer an amendment.

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3. 100 CONG. REC. 4128, 83d Cong. 2d Sess.

4. Louis E. Graham (Pa.).

5. 91 CONG. REC. 942, 79th Cong. 1st Sess.

The Clerk read as follows:

Amendment offered by Mr. Woodrum of Virginia: On page 18, line 12, insert:

"Public works advance planning: Toward accomplishing the provisions of title V of the War Mobilization and Reconversion Act of 1944, $5,000,000, of which not to exceed 4 percent shall be available for administrative expenses necessary therefor, to be immediately available and to remain available until June 30, 1946, including salary for not to exceed one position at $10,000 per annum; personal services and rent in the District of Columbia; printing and binding; purchase and exchange of lawbooks and books of reference; purchase (not exceeding 5) and repair, maintenance, and operation of passenger automobiles; and travel expenses (not to exceed $10,000)."

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I make a point of order against certain language in the amendment just offered reading, "to be immediately available," and call the attention of the Chair to the fact that the bill is an appropriation bill for the fiscal year ending June 30, 1946. I direct this point of order merely against the language, "to be immediately available."

THE CHAIRMAN:[6] Does the gentleman from Virginia desire to be heard on the point of order?

MR. WOODRUM of Virginia: Mr. Chairman, the amendment offered conforms to the point of order which the gentleman made to the paragraph originally. The language in line 17, "to be immediately available," had not been complained of by the gentleman from South Dakota.

THE CHAIRMAN: The gentleman from South Dakota [Mr. Case] makes a point of order against the language indicated by the gentleman from Virginia, "to be immediately available." Does the gentleman from Virginia desire to be heard further?

MR. WOODRUM of Virginia: I do not, Mr. Chairman. . . .

THE CHAIRMAN: The Chair is ready to rule. In volume 7, Cannon's Precedents, section 1120, the Chair finds the following language:

> Under the modern practice the provision that an appropriation shall be immediately available is not subject to a point of order.

The Chair overrules the point of order.

Permanent Appropriations

§ 32.5 Language in a general appropriation bill making appropriations available beyond the current fiscal year is legislation and not in order: appropriations for fulfilling treaties with certain Indians on a permanent basis and appropriations from proceeds from power projects on a similar basis have been conceded as legislation and not in order.

On May 3, 1950,[7] during consideration in the Committee of the Whole of the Agriculture Depart-

6. William M. Whittington (Miss.).

7. 96 CONG. REC. 6304, 81st Cong. 2d Sess.

ment appropriation bill (H.R. 7786), the following point of order was raised:

MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, I make a point of order against the language appearing on page 227, lines 13 to 18, inclusive, and on page 227, lines 19 to 25, inclusive, and page 228, lines 1 and 2 on the ground that it is permanent legislation on an appropriation bill.

The language to which the point of order is made is as follows:

CLAIMS AND TREATY OBLIGATIONS

For fulfilling treaties with Senecas and Six Nations of New York, Choctaws and Pawnees of Oklahoma, and payment to Indians of Sioux reservations, to be expended as provided by law, such amounts as may be necessary after June 30, 1950.

PROCEEDS FROM POWER

After June 30, 1950, not to exceed the amount of power revenues covered into the Treasury to the credit of each of the power projects, including revenues credited prior to August 7, 1946, shall be available for the purposes authorized by section 3 of the act of August 7, 1946 (Public Law 647), as amended, including printing and binding, in connection with the respective projects from which such revenues are derived.

THE CHAIRMAN:[8] Does the gentleman from Washington desire to be heard on the point of order?

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

THE CHAIRMAN: The Chair sustains the points of order.

8. Jere Cooper (Tenn.).

Available to End of Next Fiscal Year

§ 32.6 Language in a supplemental appropriation bill providing funds [to collect and publish certain statistics on voting] to be available until the end of the next fiscal year, was conceded to be legislation and ruled out on a point of order.

On Apr. 6, 1965,[9] During consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7091), a point of order was raised against the following provision:

The Clerk read as follows:

DEPARTMENT OF COMMERCE

Bureau of the Census

Registration and Voting Statistics

For expenses necessary for the collection, compilation, and publication of statistics on registration and voting, in such geographic areas as may be recommended by the Commission on Civil Rights, as authorized by section 801 of the Civil Rights Act of 1964 (78 Stat. 266), $7,500,000, to remain available until December 31, 1966.

MR. [ROBERT L. F.] SIKES [of Florida]: Mr. Chairman, I make a point of order against the language on page 21, lines 2 through 9, and ask to be heard on the point of order.

9. 111 CONG. REC. 7131, 7132, 89th Cong. 1st Sess.

THE CHAIRMAN:[10] The Chair recognizes the gentleman from Florida [Mr. Sikes].

MR. SIKES: Mr. Chairman, the language in this section goes beyond the period of time set forth in the bill H.R. 7091. The preamble of this bill states that it is a bill making supplemental appropriations for the fiscal year ending June 30, 1965. The language on lines 2 through 9, page 21, proposes to have the funds, $7.5 million, remain available until December 31, 1966. There is no such authority in the basic law.

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

MR. [JOHN J.] ROONEY of New York: Mr. Chairman, the proposed appropriation of $7.5 million contained in the bill for the Bureau of the Census is for the purpose of a registration and voting statistics survey covering the States of Alabama, Louisiana, and Mississippi, to provide a count of all persons of voting age and a determination of the following information for each such person: "(1) citizenship, (2) residence, (3) years of school completed, (4) race and color, (5) whether registered to vote in Federal elections, (6) whether voted in the most recent statewide primary election and general election in which Members of the U.S. House of Representatives were nominated or elected."

As appears at page 161 of the printed hearings on this pending bill, the following questions were asked and the following answers given concerning this requested $7.5 million appropriation:

> MR. ROONEY: What is the legal authority for this proposed activity of the Department of Commerce?
>
> MR. ECKLER: Title VIII of the Civil Rights Act indicates that the Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights.
>
> I believe we have included a full text of title VIII, section 801, in the material which was put into the record.
>
> MR. ROONEY: Where do you get the authority for the unlimited availability?
>
> MR. IMHOFF: We have no specific authority for that, Mr. Chairman.

In view of this, the gentleman from New York is reluctantly constrained to concede that the gentleman's point of order is well taken.

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

The purpose of the bill is to make supplemental appropriations for the fiscal year ending June 30, 1965. The language on page 21, line 9, is "to remain available until December 31, 1966", which goes beyond the purpose of the bill.

The point of order is sustained.

Available for Next Fiscal Year

§ 32.7 To a supplemental appropriation bill, an amendment to increase a limitation on use of funds for administrative purposes contained in another act and to make such funds available beyond the current fiscal year was conceded to be legislation and therefore was ruled out as not in order.

10. Oren Harris (Ark.).

On May 7, 1957,[11] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7221) for fiscal year 1957, a point of order was raised against the following amendment:

> Amendment offered by Mr. [DeWitt S.] Hyde [of Maryland]: Page 5, after line 10, insert the following item:
>
> "ADMINISTRATION EXPENSES, EMPLOYEES' LIFE INSURANCE FUND
>
> "The limitation under this head in the Independent Offices Appropriation Act, 1957, on the amount made available from the 'Employees' life insurance fund,' for reimbursement to the Civil Service Commission for administrative expenses incurred in the administration of the Federal Employees' Group Life Insurance Act, is increased from '$117,500' to '$194,000.'
>
> "Not to exceed $23,000 of the funds in the 'Employees' life insurance fund' shall be available for reimbursement to the Civil Service Commission during the fiscal year 1958, for administrative expenses incurred by the Commission during that fiscal year in the administration of said act, and such amount shall be in addition to any amounts otherwise made available from the fund for such expenses for the fiscal year 1958.". . .

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, very reluctantly I must state that the committee insists on the point of order. . .

You will recall that the language, Mr. Chairman, does two things that makes the amendment subject to a point of order. It first attempts to increase the limitation, then in the next place it attempts to take part of the funds so limited and transfer them from that fund to the general administrative expense fund of the Civil Service Commission.

No. 2. This is a deficiency appropriation bill for the fiscal year 1957. The language attempts to carry the fund over and beyond and into the fiscal year 1958; therefore it is over and beyond the scope of the bill.

It is subject to a point of order on two counts.

THE CHAIRMAN:[12] Does the gentleman from Maryland wish to be heard on the point of order?

MR. HYDE: Only to the extent of asking the very genial chairman of the committee a question. I understand that the chairman is objecting to this amendment not on its merit but on a technical basis.

MR. THOMAS: Let us take one hurdle at a time. I am objecting now on two scores.

MR. HYDE: Mr. Chairman, I must bow to the wisdom of the chairman. I recognize that the point of order is well taken.

THE CHAIRMAN: The gentleman concedes the point of order?

MR. HYDE: Yes.

THE CHAIRMAN: The Chair sustains the point of order.

Available "Each Fiscal Year Thereafter"; Permanent Appropriation

§ 32.8 Language in an appropriation bill making appro-

11. 103 CONG. REC. 6431, 6432, 85th Cong. 1st Sess.

12. Frank N. Ikard (Tex.).

priations beyond the current fiscal year is legislation: language in the general appropriation bill making appropriations for the Migratory Bird Conservation Fund for the current year "and each fiscal year thereafter" from the sale of stamps was conceded to be legislation and not in order.

On May 4, 1950,[13] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 7786), the following point of order was raised:

MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, I make a point of order, on the ground it is permanent legislation on an appropriation bill and not in accordance with the rules of the House, to the language appearing in lines 18 to 24, page 246, and reading as follows:

MIGRATORY BIRD CONSERVATION FUND

For carrying into effect section 4 of the act of March 16, 1934, as amended (16 U.S.C. 718–718h), amounts equal to the sums received during the current year and each fiscal year thereafter from the proceeds from the sale of stamps, to be warranted monthly and to remain available until expended.

THE CHAIRMAN:[14] 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 and at the proper time will offer an amendment in lieu of the language appearing at that point in the bill.

THE CHAIRMAN: The gentleman from Iowa [Mr. Jensen] makes a point of order against the language mentioned by him, the gentleman from Washington [Mr. Jackson] concedes the point of order, and the Chair sustains the point of order.

Fees and Royalties Hereafter Received; Permanent Appropriation

§ 32.9 Language in a general appropriation bill making fees and royalties collected pursuant to law available beyond the current fiscal year is legislation and not in order.

On May 3, 1950,[15] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 7786), the following points of order were raised:

MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, I make a point of order against the paragraph appearing on page 222, lines 18 through 25, and page 223, lines 1 through 3, which is as follows:

13. 96 CONG. REC. 6400, 81st Cong. 2d Sess.

14. Jere Cooper (Tenn.).

15 96 CONG. REC. 6296, 6297, 81st Cong. 2d Sess.

RANGE IMPROVEMENTS

The aggregate of all moneys received after June 30, 1950, as range-improvement fees under the provisions of section 3 of the Act of June 28, 1934 (43 U.S.C. 315) and 25 per centum of all moneys received after June 30, 1950, under the provisions of section 15 of said Act (in addition to all moneys received during the fiscal year 1950 from either of such sources but not yet appropriated) shall be available until expended for construction, purchase, and maintenance of range improvement pursuant to the provisions of sections 3 and 10 of said Act.

MR. JENSEN: . . . I make a point of order against the language on page 223, lines 13 through 24, which language is as follows:

PAYMENT TO OKLAHOMA

Thirty-seven and one-half percent of the royalties received after June 30, 1950 (in addition to 37½ percent of all royalties received during the fiscal year 1950 but not yet appropriated), from the south half of Red River in Oklahoma under the provisions of the joint resolution of June 12, 1926 (44 Stat. 740), shall be available for payment to the State of Oklahoma in lieu of all State and local taxes upon tribal funds accruing under said act, to be expended by the State in the same manner as if received under section 35 of the act approved February 25, 1920 (30 U.S.C. 191).

I make a point of order against the language on page 224, lines 1 through 8, which language is as follows:

LEASING OF GRAZING LANDS

The aggregate of all moneys received after June 30, 1950 (in addition to all moneys received during the fiscal year 1950 but not yet appropriated), from grazing fees for State, county, or privately owned lands leased in accordance with the provisions of the act of June 23, 1938 (43 U.S.C. 315m–4), shall be available until expended for leasing of such lands.

I make a point of order against the language on page 224, lines 9 through 16, which language is as follows:

PAYMENTS TO STATES (GRAZING FEES)

Thirty-three and one-third percent of all grazing fees received after June 30, 1950, from each grazing district on Indian lands ceded to the United States for disposition under the public-lands laws, shall be available for payment to the State in which said lands are situated, in accordance with the provisions of section 11 of the act of June 28, 1934, as amended (43 U.S.C. 315j).

Mr. Chairman, I make the point of order that the language I have indicated, in each instance, has the effect of making appropriations on a permanent basis, which goes beyond the scope of the bill and also constitutes legislation on an appropriation bill, and, therefore, is not in order under the rules of the House.

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

THE CHAIRMAN:[16] The Chair sustains the points of order made by the gentleman from Iowa [Mr. Jensen].

Appropriation Available Until Expended

§ 32.10 A provision that an appropriation is "to remain

16. Jere Cooper (Tenn.).

available until expended" constitutes legislation on an appropriation bill and is not in order where such availability is not authorized by law.

On Apr. 30, 1952,[17] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 7314), a point of order was raised against the following amendment:

Amendment offered by Mr. [Arthur L.] Miller of Nebraska: Page 9, after line 13 insert the following:

"Research Laboratory: For establishment of a research laboratory, including acquisition of necessary land and the preparation of plans and specifications for, and construction of laboratory buildings and related facilities for research and study of foot-and-mouth disease and other animal diseases, in accordance with the act of April 24, 1948 (Public Law 496, 80th Cong.), $24,500,000, to remain available until expended."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make the point of order that the amendment contains legislation in that the last clause directs that the money "remain available until expended."

THE CHAIRMAN:[18] Does the gentleman from Nebraska desire to be heard on the point of order?

MR. MILLER of Nebraska: I do, Mr. Chairman. The Chairman: The Chair will hear the gentleman briefly. Mr. Miller of Nebraska: Mr. Chairman, I maintain that the amendment is in order because the Eightieth Congress passed Public Law 496 providing for the laboratory. It is not new legislation; it merely implements legislation Congress has already passed. I am merely trying to implement that legislation by an appropriation which was authorized at that time.

THE CHAIRMAN: The Chair has not been able to find in Public Law 496 any authority that the funds shall remain available until expended.

MR. MILLER of Nebraska: If the Chair please, Public Law 496 of the Eightieth Congress is the law that this Congress passed authorizing the construction of this laboratory. I am merely providing funds to implement a law that has already been passed by Congress.

THE CHAIRMAN: The gentleman is within his rights in offering such an amendment with the exception of the fact that the gentleman's amendment contains a clause stating that the funds shall remain available until expended. That is new legislation.

MR. MILLER of Nebraska: I concede the point of order, Mr. Chairman, and submit the amendment minus the last clause.

THE CHAIRMAN: The gentleman concedes the point of order. The point of order is sustained.[19]

§ 32.11 Language in a paragraph of a general appro-

17. 98 CONG. REC. 4620, 82d Cong. 2d Sess.

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

19. See also 96 CONG. REC. 6296, 6297, 81st Cong. 2d Sess., May 3, 1950; and 89 CONG. REC. 3080, 78th Cong. 1st Sess., Apr. 7, 1943.

priation bill providing that funds provided in that paragraph shall remain available until expended is generally conceded to be legislation in violation of Rule XXI clause 2 unless the authorizing legislation permits such availability, since such language extends funds beyond the period permitted by law.

On Aug. 1, 1973,[20] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9590), the following proceedings took place:

NATIONAL ARCHIVES AND RECORDS SERVICE

OPERATING EXPENSES

For necessary expenses in connection with Federal records management and related activities, as provided by law, including reimbursement for security guard services, contractual services incident to movement or disposal of records, and acceptance and utilization of voluntary and uncompensated services, $33,000,000, of which $500,000 for allocations and grants for historical publications as authorized by 44 U.S.C. 2504, as amended, shall remain available until expended.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, a point of order.

THE CHAIRMAN:[(1)] The gentleman will state it.

MR. DINGELL: Mr. Chairman, the point of order is to the language on page 20, line 25, referring specifically to the words in the bill, "shall remain available until expended."

That again, Mr. Chairman, is violative of rule XXI, clause 2, as legislation on an appropriation bill.

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

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

§ 32.12 To a provision in an appropriation bill providing funds for construction and rehabilitation of authorized reclamation projects, an amendment providing funds to "be programed and remain available until spent for the Fort Randall-Grand Island 230-kilovolt transmission line," was held to be legislation and not in order.

On May 22, 1956,[(2)] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 11319), the following transpired:

The Clerk read as follows:

CONSTRUCTION AND REHABILITATION

For construction and rehabilitation of authorized reclamation projects or parts thereof (including power transmission facilities) and for other related activities, as authorized by law,

20. 119 CONG. REC. 27288, 93d Cong. 1st Sess.

1. Richard Bolling (Mo.).

2. 102 CONG. REC. 8728–30, 84th Cong. 2d Sess.

to remain available until expended, $125,900,000, of which $63,083,000 shall be derived from the reclamation fund. . . .

MR. [ARTHUR L.] MILLER of Nebraska: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Miller of Nebraska: On page 7, line 22, after "Congress.", insert "*Provided further*, That $5,500,000 shall be programed and remain available until spent for the Fort Randall-Grand Island 230-kilovolt transmission line."

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

Mr. Chairman, we are constrained to insist upon our point of order.

THE CHAIRMAN:[3] Does the gentleman from Nebraska desire to be heard on the point of order?

MR. MILLER of Nebraska: Mr. Chairman, I concede that it is legislation on an appropriation bill and concede the point order.

THE CHAIRMAN: The gentleman from Missouri [Mr. Cannon] makes a point of order; the gentleman from Nebraska [Mr. Miller] concedes it and the Chair sustains the point of order.

§ 32.13 An amendment to an appropriation bill seeking to appropriate funds for a specific purpose making such appropriation "available until expended" was held to be legislation on an appropriation bill and therefore not in order.

3. Jere Cooper (Tenn.).

On June 16, 1948,[4] during consideration in the Committee of the Whole of a deficiency appropriation bill (H.R. 6935), a point of order was raised against the following amendment:

Amendment offered by Mr. [George H.] Mahon [of Texas]: On page 14, line 19, after the period, add a new section as follows:

"Rural Electrification Administration, salaries and expenses, for an additional amount, fiscal year 1949, for administrative expenses to be available immediately and to remain available until expended, $450,000."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the amendment, that it carries legislation in the words "which will be available until expended."

THE CHAIRMAN:[5] Does the gentleman from Texas desire to be heard on the point of order?

MR. MAHON: Mr. Chairman, the amendment provides additional funds for the administrative expenses for the Rural Electrification Administration. It carries the same wording as was carried in the original act providing the funds. It is in accordance with the budget estimate, and it seems to me it is not subject to a point of order. It is not legislation because it is authorized by law.

MR. TABER: Mr. Chairman, the words "to be available until expended" make it legislation, and therefore the amendment is subject to a point of order.

4. 94 CONG. REC. 8469, 80th Cong. 2d Sess.

5. Clifford R. Hope (Kans.).

THE CHAIRMAN: The Chair is ready to rule. The amendment in its present form with the language "to be available until expended" is clearly legislation. The Chair sustains the point of order.

§ 32.14 A provision in a paragraph of a general appropriation bill authorizing certain funds therein to remain available until expended whenever determined by the recipient to be necessary and without regard to provisions of law was conceded to be legislation in violation of Rule XXI clause 2 and was stricken from the bill.

On Aug. 1, 1973,[6] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9590), a point of order was raised against the following provision:

The Clerk read as follows:

UNITED STATES TAX COURT

SALARIES AND EXPENSES

For necessary expenses, including contract stenographic reporting, and other services as authorized by 5 U.S.C. 3109, $5,760,000: *Provided,* That travel expenses of the judges shall be paid upon the written certificate of the judge: *Provided further,* That $1,280,000 of this appropriation shall remain available until expended for equipment, furniture, furnishings and accessories, required for the new Tax Court building and, whenever determined by the Court to be necessary, without compliance with section 3709 of the Revised Statutes, as amended (41 U.S.C. 5).

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I assert a point of order against the line beginning with "*Provided further*" at page 26, line 21, down through the end of the paragraph at the top of page 27, line 2.

Mr. Chairman, the burden of the point of order is that the language in the bill referred to is violative of rule XXI, clause 2, constituting legislation in an appropriation bill. I refer specifically to the language at line 22 wherein the words are as follows:

> That $1,280,000 of this appropriation shall remain available until expended for equipment, furniture, furnishings, and accessories . . .

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

THE CHAIRMAN:[7] The point of order is conceded, and the point of order is sustained.

Available Until Expended; Bureau of Reclamation Construction Funds

§ 32.15 Language in a supplemental appropriation bill for the Department of the Interior providing that funds for Bureau of Reclamation construction "shall remain available until expended," was

6. 119 CONG. REC. 27289, 93d Cong. 1st Sess.

7 Richard Bolling (Mo.).

held to be legislation where authorizing language was not cited.

On July 24, 1956,[8] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 12350), a point of order was raised against a provision which contained language as described above, and which also prescribed the conditions under which certain contracts could be entered into.

> [For an additional amount for "Construction and rehabilitation", $2,500,000 to remain available until expended: *Provided,* That any contract under the Act of July 4, 1955 (69 Stat. 244), as amended, which calls for the making of loans beyond the fiscal year in which the contract is entered into shall be made only on the same conditions as those prescribed in section 12 of the Act of August 4, 1939 (53 Stat. 1187, 1197).]

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I desire to make a further point of order against the language appearing on page 7, beginning with line 5 "Bureau of Reclamation" down to the bottom of the page and including the remainder of the bill.

THE CHAIRMAN:[9] Does the gentleman from Missouri desire to be heard on his point of order?

MR. CANNON: Mr. Chairman, it is legislation on an appropriation bill.

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, I should like to be heard on the point of order. . . .

Mr. Chairman, in my opinion, this is not subject to a point of order, as it covers a project which has been approved by legislation. It appears in this bill, as a matter of information for the Chairman, only because at the time the regular bill came through the matter of contracts had not been settled between the people involved in the district and the Government. That matter has been settled. That is why this is here. Therefore this is not subject to a point of order, as it has already been authorized.

MR. CANNON: It provides for the negotiation of contracts to be entered into in a particular and specified way.

MR. PHILLIPS: Then I desire to be heard further, Mr. Chairman, before the Chairman rules in reply to the gentleman from Missouri, that his point of order lies against the proviso only and not against lines 7 and 8.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Missouri has made a point of order against the language appearing in the bill on page 7, beginning in line 5, on the ground that it contains legislation on an appropriation bill.

The Chair has examined the language covered in the point of order and invites attention to the fact that there appears in line 8 the words "to remain available until expended," which constitutes legislation on an appropriation bill.

The Chair therefore sustains the point of order.

Available Until Expended for Payment of Prior Obligations

§ 32.16 Language in an appropriation bill providing for

8. 102 CONG. REC. 14289, 84th Cong. 2d Sess.

9. Oren Harris (Ark.).

funds for the Tennessee Valley Authority "to remain available until expended, and to be available for the payment of obligations chargeable against prior appropriations," was conceded to be legislation and not in order.

On May 22, 1956,[10] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 11319), the following point of order was raised:

> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I make a point of order against certain language in the Tennessee Valley Authority paragraph as follows: . . .
>
> . . . In lines 11 through 13 ", to remain available until expended, and to be available for the payment of obligations chargeable against prior appropriations.". . .
>
> MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, the language read by the gentleman is unquestionably legislation on an appropriation bill and I therefore concede the point of order.
>
> THE CHAIRMAN:[11] . . . The gentleman from Missouri, chairman of the Committee on Appropriations, concedes the point of order.
>
> It is clearly legislation on an appropriation bill and the point of order is sustained.

Parliamentarian's Note: 31 USC § 1502 provides:

> Except as otherwise provided by law, all balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year.

Thus, provisions in general appropriation bills which make funds available for the payment of obligations chargeable against prior appropriations are legislative in character.

Office of Telecommunications Policy; Earmarking Certain Funds to Remain Available Until Expended

§ 32.17 To a paragraph in a general appropriation bill containing funds for salaries and expenses of the Office of Telecommunications Policy, an amendment increasing the amount and providing that the additional amount shall be available until expended for telecommunications studies and research was held to constitute legislation in violation of Rule XXI clause 2.

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10. 102 CONG. REC. 8725, 84th Cong. 2d Sess.

11. Jere Cooper (Tenn.).

On Aug. 1, 1973,[12] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9590), a point of order was raised against the following amendment:

MR. [CLARENCE J.] BROWN of Ohio: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Brown of Ohio: Page 10, line 24, after the first comma, strike out the figure $2,070,000 and insert the figure $2,745,000, and add at the end thereof the following: "*Provided,* That not to exceed $675,000 of the foregoing amount shall remain available for telecommunications studies and research until expended."

MR. [TOM] BEVILL [of Alabama]: Mr. Chairman, I should like to make a point of order against the amendment.

THE CHAIRMAN:[13] The gentleman will state his point of order.

MR. BEVILL: The second provision is: *Provided,* That not to exceed $675,000 of the foregoing amount shall remain available for telecommunications studies and research until expended.

There is no authorization for studies and research, and I make a point of order against that portion of the amendment.

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

MR. BROWN of Ohio: Mr. Chairman, the amendment proposes to restore funds which were stricken by the committee in its consideration of the proposals for this particular office as the bill was under consideration in the committee.

The amendment seeks to restore a portion of the funds which were a part of that total budget asked of the committee. The reason for the proviso language is to further clarify for what the additional funds would be used, to go back to the testimony of the office when it appeared before the committee and to restore the specific portion of those funds.

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The Chair will hear the gentleman.

MR. STEED: The language of the original bill was submitted to the experts, and it was held it would be subject to a point of order, because the funds would be available until expended. That is why it was deleted from the bill in the committee. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The Chair will rule narrowly on the point made by the gentleman from Oklahoma. The words "until expended" constitute legislation on an appropriation bill. Therefore, the point of order is sustained on that ground.

Laws Not Permitting Availability Until Expended—Mutual Security Act

§ 32.18 An amendment to the Mutual Security Act appropriation bill to provide for the equivalent of $1.5 million in local currencies for hos-

12. 119 CONG. REC. 27285, 93d Cong. 1st Sess.

13. Richard Bolling (Mo.).

pital construction, to remain available until expended, was ruled out as legislation.

On June 17, 1960,[14] during consideration in the Committee of the Whole of the mutual security appropriation bill (H.R. 12619), a point of order was raised against the following amendment:

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Zablocki: On page 3, line 7, after "$206,000,000," strike out beginning "of which not" and through the colon on line 12 and insert on page 3, after line 19, the following:

"Special assistance, special authorization: For assistance authorized by section 400(c) for hospital construction the equivalent of $1,500,000 in local currencies to remain available until expended."

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

THE CHAIRMAN:[15] The gentleman will state it.

MR. GROSS: Mr. Chairman, I make a point of order against the amendment and against the words "until expended" as not being authorized. I would call the Chair's attention to title 31, United States Code, 718, which provides as follows:

No specific or indefinite appropriation made subsequent to August 24, 1912, in any regular annual appropriation act shall be construed to be permanent or available continuously without reference to a fiscal year unless it belongs to one of the following four classes: "Rivers and harbors," "lighthouses," "public buildings," and "pay of the Navy and Marine Corps,". . . or unless it is made in terms expressly providing that it shall continue available beyond the fiscal year for which the appropriation act in which it is contained makes provision.

Mr. Chairman, I point out that this is an annual appropriation bill and, therefore, this is language on an appropriation bill that is not authorized by law.

MR. ZABLOCKI: I will not argue the point, Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The Chair sustains the point of order.[16]

— *National Academy of Sciences*

§ 32.19 A paragraph in a general appropriation bill containing funds to enable the National Academy of Sciences to conduct an analysis of the Environmental Protection Agency under contract, which funds were to remain available until expended, was conceded to contain an appropriation unauthorized by law and legislation where the only law cited authorized the National Academy to investigate any

14. 106 CONG. REC. 13133, 86th Cong. 2d Sess.

15. Wilbur D. Mills (Ark.).

16. See the present 31 USC § 1301.

subject of science or art when requested by an agency.

On June 15, 1973,[17] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 8619), a point of order was raised against the following provision:

> For an amount to provide for a complete and thorough review, analysis, and evaluation of the Environmental Protection Agency, its programs, its accomplishments and its failures, and to recommend such changes, cancellations, or additions as necessary, to be conducted under contract with the National Academy of Sciences, $5,000,000, to remain available until expended.
>
> MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, at this point I make a point of order against the language appearing at lines 20 through 24 on page 32, and on through the first two lines of page 33.
>
> The reason for my point of order, Mr. Chairman, is twofold. First, this is legislation in an appropriation bill; and it constitutes an appropriation of funds not previously authorized by law.
>
> So that the language referred to is again violative of rule XXI, clause 2, and I would point out again, Mr. Chairman, that the rule should be so interpreted as to require strict compliance.
>
> Mr. Chairman, I am quoting from page 466 of the Manual of the Rules of the House of Representatives, as follows:
>
> > In the administration of the rule, it is the practice that those upholding an item of appropriation should have the burden of showing the law authorizing it.
>
> Mr. Chairman, I would point out that neither the statute setting up the EPA nor the statute setting up the National Academy of Sciences affords the National Academy of Sciences the duty, responsibility, or power to investigate or to study EPA. For that reason, Mr. Chairman, I make this point of order.
>
> MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make the additional point of order that the language in the paragraph appearing at the top of page 33, containing the words, "to remain available until expended," is also subject to a point of order.
>
> THE CHAIRMAN:[18] Does the gentleman from Mississippi (Mr. Whitten) desire to be heard on the point of order?
>
> MR. [JAMIE L.] WHITTEN: Mr. Chairman, I seem to have a little difficulty finding it at the moment, but the language setting up the National Academy of Sciences, after establishing the Academy, provides for making this kind of study when asked by any department or agency of the Government.
>
> While we seem to have difficulty finding it—I do not know whether the Chair has it in his hands or not—it does so provide. Based on that, we have directed this agency to make such a request. That is the situation as we submit it at this time.

17. 119 CONG. REC. 19852, 93d Cong. 1st Sess.

18. James C. Wright, Jr. (Tex.).

MR. DINGELL: Mr. Chairman, I would point out that the committee in its kindness, in the report at page 99 and page 100, under the words "limitations and legislative provisions" has set forth precisely the language which I have alluded to.

I would point out since it is clearly not a limitation and since it does not limit the level of expenditures, then it becomes, in the words of the distinguished committee, then legislation, since to exclude one is necessarily to require the expression of the other alternative. Therefore, it is conceded at page 100 of the report in the second to last paragraph to which I referred the Chair that this does in fact constitute legislation in an appropriation bill.

MR. WHITTEN: Mr. Chairman, I shall not press the matter further. The language on which we rely is to be found—and we have finally found it here—March 3, 1963, and it provides in section 3 of such act:

> Be it further enacted that the National Academy of Sciences shall hold an annual meeting at such place in the United States to be designated and the Academy shall when called upon by any department of the Government investigate, examine, and report any subject of science or art the actual expenses for which are to be paid for in an appropriation which may be made for the purpose. The Academy shall receive no compensation whatever for its services to the Government of the United States.

If I may have a second to write a similar amendment to that which we substituted a while ago in a similar point of order, we will provide the money for such an expense if I might have the cooperation of my friends. I have to acknowledge the point of order at this point.

MR. DINGELL: I thank the gentleman.

MR. WHITTEN: If the Chair will oblige me for a second while I write the amendment, we will provide $5 million for such study by the National Academy of Sciences, and we shall be happy to so amend the legislation.

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

MR. WHITTEN: I do. And I beg the indulgence of the Chair that we may write an amendment to replace the section.

MR. DINGELL: Out of deference to my good friend from Mississippi and in order to have the business on the committee go forward, I will ask unanimous consent that he be permitted to return at a time later—

MR. WHITTEN: I think we have it ready.

MR. DINGELL: Very well.

THE CHAIRMAN: The point of order is sustained, and the language is stricken.

— *Lump-sum Appropriation for Joint Economic Committee*

§ 32.20 Since the law establishing the Joint Economic Committee [15 USC § 1024(e)] authorizes the appropriation of "such sums as may be necessary during each fiscal year," it is not in order in a general appropriation bill to

make funds for that joint committee available beyond the fiscal year covered by the bill.

On May 11, 1971,[19] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 8190), a point of order was raised against the following provision:

The Clerk read as follows:

CONTINGENT EXPENSES OF THE SENATE

JOINT ECONOMIC COMMITTEE

For an amount (to be disbursed by the Secretary of the Senate on vouchers signed by the chairman or vice chairman and the chairman of the subcommittee) necessary to enable the Subcommittee on Fiscal Policy, under authority of the Employment Act of 1946 (60 Stat. 23, sec. 5), to undertake a study to develop reliable, comprehensive, and factual information concerning welfare programs and needs in the United States, $500,000, to remain available until June 30, 1973.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, I make a point of order against this bill, on page 11, the section beginning with line 15 through page 12, line 3.

My point of order is directed, Mr. Chairman, particularly to the last clause which says, "to remain available until June 30, 1973."

The point of order should lie in the fact that this is an appropriation on unauthorized legislation [sic].

THE CHAIRMAN:[20] Does the gentleman from Alabama desire to be heard on the point of order?

MR. [GEORGE W.] ANDREWS [of Alabama]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Federal Building Fund; Limiting Obligational Authority to Current Fiscal Year

§ 32.21 Notwithstanding legislation providing that funds when appropriated shall be available "until expended" or "without regard to fiscal year limitation", the Committee on Appropriations may nevertheless limit the availability of funds to the fiscal year covered by the bill absent a clear showing that the amounts in the general appropriation bill are required by law to remain available without such limitation.

The Chair ruled on June 25, 1974,[1] that, where existing law provided that moneys deposited into the federal buildings fund shall be available for expenditure by GSA "for real property management . . . in such amounts as

19. 117 CONG. REC. 14472, 92d Cong. 1st Sess.

20. Wayne N. Aspinall (Colo.).

1. 120 CONG. REC. 21040, 21041, 93d Cong. 2d Sess.

are specified in annual appropriations acts without regard to fiscal year limitations", a paragraph in a general appropriation bill specifying the amount to be made available from that fund "during the current fiscal year" did not constitute a change in that law. The language of the law was interpreted merely to permit, and not to require, the annual appropriation bill to make those funds available until expended. The proceedings are shown below:

The Clerk read as follows:

The revenues and collections deposited into a fund pursuant to Section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(f)), shall be available during the current fiscal year for necessary expenses of real property management and related activities not otherwise provided for, including operation, maintenance, and protection of federally owned and leased buildings; . . . construction of new buildings (including equipment for such buildings); and payment of principal, interest, taxes, and any other obligations for public buildings acquired by purchase contract; in the aggregate amount of $871,875,000 of which (1) not to exceed $25,000,000 shall be available for construction of buildings as authorized by law including construction projects at locations and at maximum construction improvement costs (including funds for sites and expenses) as follows:

New Construction:

Arizona: Lukeville Border Station, $2,081,000

Texas: Laredo Border Station, $15,462,000. . . .

Provided, That the immediately foregoing limits of costs may be exceeded to the extent that savings are effected in other such projects, but by not to exceed 10 per centum; (2) not to exceed $26,244,000 for purchase contract payments; . . . (6) not to exceed $54,037,000 for program direction and centralized services; and (7) not to exceed $25,000,000 shall be available for obligation in fiscal year 1976. . . .

MR. [WILLIAM H.] HARSHA [of Ohio]: Mr. Chairman, I make a point of order against the language in the bill appearing at page 15, lines 10 and 11, that this is legislation in an appropriation act, and it is, I believe, in violation of rule XXI, clause 2.

Mr. Chairman, two provisions under the appropriation heading, "Federal Buildings Fund—Limitations on Availability of Revenue," are subject to a point of order because they change existing law.

The first such provision is the clause, "during the current fiscal year," at page 15, lines 10–11 of the bill. This language would limit the use of funds made available to GSA from the Federal Building Fund to fiscal year 1975. This is in direct conflict with section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended, which specifically provides that "the fund shall be available for expenditure—without regard to fiscal year limitations." The language in the bill is clearly designed to change the authorizing law and is contrary to rule 21, clause 2 that prohibits legislation in an appropriation bill.

The objectionable language in the bill cannot be supported on any theory of retrenchment of expenditures. The limitation requiring that moneys made

available for real property activities be spent in the fiscal year does not reduce expenditures, but would tend to increase costs and spending by encouraging expenditures over a shorter period of time than good management and planning would otherwise require.

If the language is allowed to remain in the bill, the Congress will, in effect, be substantially modifying the concept of a Federal Building Fund. The Public Works Committee, when it considered the Public Buildings Amendments of 1972, which established the fund, concluded that the Federal Building Fund would have to be available without regard to fiscal year limitations, but with reasonable congressional control, if the purpose of reforming real property management financing was ever going to be achieved. . . .

The fiscal year limitation applies to all construction work performed by GSA including the construction of new buildings and conversion and extensions to older buildings. The restriction is thus directly in conflict with section 682 of title 31 of the United States Code which provides that appropriations for construction of public buildings remain available until completion of the work; that is, without regard to fiscal year limitations. I know of no single instance where the Congress has placed a fiscal year limitation on the construction of new buildings.

Elimination of the objectionable language in the appropriation bill will not in any way interfere with normal congressional controls of appropriations to GSA for its real property activities. The Appropriations Committee in considering the 1976 budget requests can take into account any unobligated balances in the fund in determining the amount to be made available to GSA from the fund in fiscal 1976.

For the above-stated reasons, the phrase "during the current fiscal year" is subject to a point of order and should be deleted. . . .

MR. [TOM] STEED [of Oklahoma] . . . Mr. Chairman, this is a simple, negative limitation, it merely restricts the use of the funds to the fiscal year. The fact that there is no authority to make them available for a longer period of time does not constitute a point of order against the language here. . . .

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

The gentleman from Ohio makes the point of order against the clause on page 15, lines 10 and 11 of H.R. 15544 which limits the availability "during the current fiscal year" of the aggregate amount of $871,875,000 for expenditure by GSA from the Federal Buildings fund. The gentleman from Ohio contends that this language in H.R. 15544 violates clause 2, Rule XXI by constituting a change in existing law [section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (Public Law 92–313)] which provides:

> (2) Moneys deposited into the fund shall be available for expenditure for real property management and related activities in such amounts as are specified in annual appropriations Acts without regard to fiscal year limitations.

The gentleman from Ohio contends that this law requires that amounts in Federal Building Fund must be made available by the Appropriations Committee without a fiscal year restriction,

2. B. F. Sisk (Calif.).

and that the Committee on Appropriations has no authority under clause 2, rule XXI to limit the availability of amounts from that fund for the current fiscal year. The Committee on Appropriations, on the other hand, contends that such a provision of law merely permits, and does not require, the Committee on Appropriations to appropriate funds from the Federal Building Fund without a fiscal year limitation, or to be available until expended, and therefore that the limitation contained in the paragraph for the current fiscal year is within the prerogative of the Committee on Appropriations under Public Law 92–313.

The Chair would point out that while authorizing legislation customarily provides that funds authorized therein shall "remain available until expended", the Committee on Appropriations has never been required, when appropriating for those purposes, to specify that such funds must remain available until expended. The Appropriations Committee often confines the availability of funds to the current fiscal year, regardless of the limit of availability contained in the authorization. Conversely, however, where the authorizing statute does not permit funds to remain available until expended or without regard to fiscal year limitation inclusion of such availability in a general appropriation bill has been held to constitute legislation in violation of clause 2, rule XXI.

The Chair thus is of the opinion that Public Law 92–313 should be construed as has been suggested by the Committee on Appropriations, absent a clear showing that the language in question was intended to require appropriations from the Federal building fund to be made available until expended. In this regard, the Chair has examined the legislative history of Public Law 92–313 in an effort to understand congressional intent on this question. The Chair notes that on June 5, 1972, during debate on the conference report on S. 1736 which became Public Law 92–313, the gentleman from Illinois (Mr. Gray) in response to a question by Mr. Bow of Ohio, stated that:

> Any residue left over from existing appropriations now will go automatically, when this legislation is signed into law into the revolving fund. That residue from previous appropriations plus the amount of rents collected from all Federal agencies will make up the total revolving fund, and the House Committee on Appropriations will have complete control on an annual basis over the revolving fund.

The gentleman from Ohio (Mr. Harsha) then stated during that debate:

> I think there is quite an adequate safeguard in what the Committee on Appropriations can do in controlling the implementation of this measure. All of the money that goes into the revolving fund must be appropriated before it is expended. Therefore, the Committee on Appropriations will have control from that standpoint.

The Chair holds that the Committee on Appropriations has not changed existing law by limiting the availability of a portion of the funds taken from the Federal building fund to the current fiscal year. The Chair therefore overrules the point of order.