

### § 33. Increasing Limits of Authorization Set in Law

#### *Indefinite Appropriation Where Authorization Requires Definite Amount*

**§ 33.1 A provision in a general appropriation bill making available indefinite sums from the Southwest Power Administration revolving fund to insure continued electric service and use of transmission facilities was ruled out as legislation in violation of Rule XXI clause 2 where existing law provided that a definite amount must be specified for that purpose in annual appropriation bills.**

On June 26, 1972,<sup>(3)</sup> during consideration in the Committee of the Whole of a general appropriation bill (H.R. 15586), the following point of order was raised:

MR. [ROBERT H.] MICHEL [of Illinois]:  
Mr. Chairman, I make a point of order against the language appearing on page 20, beginning with line 8, as follows:

*Provided, That, in addition, such sums as may be necessary shall be available from the Continuing Fund,*

3. 118 CONG. REC. 22428, 22429, 92d Cong. 2d Sess.

Southwestern Power Administration (16 U.S.C. 825 S-1) to defray emergency expenses to insure continuity of electric service and continuous operation of Government facilities in the area.

Mr. Chairman, if I might be heard on the point of order, in the Interior Department appropriation bill in 1943, Public Law 216, there was established a \$100,000 continuing fund to insure continuity of power operations for use in emergency.

Then in the Interior Department Appropriation Act of 1950, Public Law 350, this so-called continuing fund was increased to \$300,000 and extended its use to include the purchase of power and rental of transmission lines. Between 1950 and 1952 the Department of the Interior and the Southwest Power Administration interpreted the continuing fund as a revolving fund which replenished itself automatically from the Southwest Power Administration power revenues. Therefore, there was no upper limit on the amount that could be withdrawn from the continuing fund each year except from the Southwest Power Administration gross power receipts in that year.

Congress recognized that the Southwest Power Administration's use of the continuing fund for the purchase of power and the payment of transmission charges gave the Southwest Power Administration unlimited funds through the back door of the Treasury without going through the congressional appropriation procedure. Therefore in 1951 the Congress added to the continuing fund statute the following provision:

*Provided, That expenditures from this fund to cover such costs in con-*

nection with the purchase of electric power and energy, and rentals for the use of facilities are to be made only in such amounts as may be approved annually in appropriation Acts.

Congress itself thus closed the back door to the Treasury to the Southwest Power Administration and recaptured its control of Federal expenditures.

Since 1952 the Southwest Power Administration budgeted the received appropriations for its estimated power purchases and transmission costs which appropriations together with supplemental appropriations as have been required from time to time have permitted SPA to fulfill contract commitments in emergencies.

If I might simply cite that statute back in July 1952, Public Law 470, the proviso here said:

Continuing fund, Southwest Power Administration not to exceed \$1,000,000 shall be available during the current fiscal year from the continuing fund for all costs in connection with the purchase of electric power and energy and rentals for the use of transmission facilities.

Ever since that time we have been using varying appropriation language setting a particular figure.

If I might read from the code, page 4013, title 18, under "Conservation," paragraph 825S-1, the one to which we make reference here and the language to which I object, we read:

All receipts from the transmission and sale of electric power and energy under the provisions of Sec. 825S of this title, generated or purchased in the Southwest Power Area shall be covered into the Treasury of the United States as miscellaneous receipts, except that the Treasury shall

set up and maintain from such receipts a continuing fund of \$300,000, including the sum of \$100,000 in the continuing fund established under the Administrator of the Southwest Power Administration. . . .

And so on and so forth.

Then it goes on and concludes with a proviso:

*Provided*, That expenditures from this fund to cover such costs in connection with the purchase of electric power and energy and rentals for the use of facilities are to be made only in such amounts as may be approved annually in appropriation Acts.

The language on page 20 and beginning on line 8 adds the further proviso to the continuing fund as follows:

*Provided*, That, in addition, such sums as may be necessary shall be available from the continuing fund, Southwest Power Administration, (U.S. Code 825S-1,) to defray emergency expenses to insure continuity of electric service and continuous operation of Government facilities in the area.

In addition to being a double negative or having that effect of double negative, the adoption of this proposed wording would actually be a change in the basic law concerning the use of the continuing fund. It is not merely a change in appropriations, as suggested.

Mr. Chairman, this change is legislation in an appropriation bill, and I request that my point of order be sustained. . . .

THE CHAIRMAN:<sup>(4)</sup> The Chair is ready to rule. The Chair is of the opinion that the language does permit the transfer of an indefinite sum of money from the continuing or revolving fund

4. Wayne N. Aspinall (Colo.).

and, in fact, changes existing law and, therefore, is legislation on an appropriation bill.

The Chair sustains the point of order. Waiving Limitation in Permanent Law

**§ 33.2 Where a limitation on the amount of an appropriation to be annually available for expenditure by an agency has become law, language in a subsequent appropriation bill seeking to change this limitation on such funds was conceded to change existing law and therefore to be legislation on an appropriation bill.**

On Mar. 15, 1945,<sup>(5)</sup> during consideration in the Committee of the Whole of a general appropriation bill (H.R. 2603), a point of order was raised against the following provision:

The Clerk read as follows:

Foreign Service Buildings Fund: For the purpose of carrying into effect the provisions of the act of May 25, 1938, entitled "An act to provide additional funds for buildings for the use of the diplomatic and consular establishments of the United States" (22 U.S.C. 295a), including the ini-

tial alterations, repair, and furnishing of buildings acquired under said act, \$1,466,000, notwithstanding the amount limitation in the act of May 25, 1938 (22 U.S.C. 295a), to remain available until expended: *Provided*, That expenditures for furnishing made from appropriations granted pursuant to the act of May 7, 1926, and subsequent acts providing funds for buildings for the use of diplomatic and consular establishments of the United States shall not be subject to the provisions of section 3709 of the Revised Statutes.

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I make a point of order against the paragraph beginning in line 14, page 16, down to and including line 3, page 17, on the ground it is a violation of the basic law.

Appropriation is asked notwithstanding the amount limitation in the act of May 25, 1938 (22 U.S. Code, sec. 295a), as follows:

Sections 292 et seq. authorized the acquisition of properties abroad for the State Department, and section 295a authorized "to be appropriated, in addition to the amount authorized by such act, an amount not to exceed \$5,000,000, of which not more than \$1,000,000 shall be appropriated for any 1 year," and so forth.

No necessity or reason is shown for the lifting of that \$1,000,000 yearly limitation on these appropriations, and the present proposal amounts to, and is, permanent and repealing legislation on an appropriation act.

THE CHAIRMAN:<sup>(6)</sup> Does the gentleman from Michigan [Mr. Rabaut] desire to be heard?

MR. [LOUIS C.] RABAUT: Mr. Chairman, I think the point of order might

5. 91 CONG. REC. 2305, 79th Cong. 1st Sess.

6. Wilbur D. Mills (Ark.).

apply to the language appearing in lines 20 and 21. That is because of the excesses.

THE CHAIRMAN: Permit the Chair to understand the gentleman. The gentleman concedes that the language in lines 20 and 21 is bad and subject to a point of order?

MR. RABAUT: Yes.

THE CHAIRMAN: Does the gentleman from Kansas [Mr. Rees] insist on his point of order against the entire paragraph?

MR. REES of Kansas: I do.

MR. RABAUT: Mr. Chairman, will the gentleman withhold his point of order for a minute?

MR. REES of Kansas: Yes. I reserve the point of order.

MR. RABAUT: Mr. Chairman, the citation of the law for that appears in line 18 and the reason for the legislative language in this bill is for the purpose of taking advantage of the situation as it exists today in the money and real estate markets of the world.

In this bill we had \$1,466,000 and a part of those funds are necessary for the purpose of taking advantage, for the benefit of the United States in re-establishing where there has been huge destruction of our own diplomatic posts in the form of buildings and necessities, or at least getting hold of the land in many places, so necessary at this time. If it is the gentleman's idea to frustrate this advantage, of course, the point of order should stand, but for the purpose of really being of assistance to the Treasury of the United States it would be very well if this language were left in the bill. It was placed in the bill to enable the agency to move speedily to any place in the

world where it would be to our advantage to reestablish housing for our diplomatic corps.

Mr. Chairman, I concede the point of order, if the gentleman insists on it, beginning with the word "notwithstanding" in line 20.

MR. REES of Kansas: I insist on the point of order to the entire paragraph, Mr. Chairman.

THE CHAIRMAN: In view of the fact that certain language in the paragraph is conceded to be subject to a point of order, the entire paragraph is subject to a point of order.

The Chair sustains the point of order.

### ***Increasing Limitation on Rural Telephone Borrowing Authority***

**§ 33.3 A provision in an appropriation bill increasing the loan authorization for the rural telephone program above the amount authorized for that purpose in a prior appropriation law was held to be legislation and not in order.**

On Apr. 22, 1953,<sup>(7)</sup> during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 4664), a point of order was raised against the following provision:

The Clerk read as follows:

7. 99 CONG. REC. 3613, 83d Cong. 1st Sess.

RURAL ELECTRIFICATION  
ADMINISTRATION

*Loan authorizations*

The basic amount authorized by the Department of Agriculture Appropriation Act, 1953, to be borrowed from the Secretary of the Treasury for the rural-telephone program is increased from "\$25 million" to "\$32,500,000."

MR. [FREDERIC R.] COUDERT [Jr., of New York]: Mr. Chairman, I make a point of order against the language on page 5, from line 7 through line 12. Mr. Chairman, on its face the language is out of order because it clearly amends existing law, and, therefore, is legislation upon an appropriation bill.

MR. H. CARL ANDERSEN [of Minnesota]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN:<sup>(8)</sup> The gentleman may proceed.

MR. H. CARL ANDERSEN: Mr. Chairman, I believe the point of order is clearly out of order. The language which the subcommittee has placed in the bill simply increases the amount of authorization for these particular loans, and in my opinion, it is perfectly in order as we have written it in the bill.

THE CHAIRMAN: Does the gentleman from New York [Mr. Taber] desire to be heard on this point of order?

MR. [JOHN] TABER: I do not, Mr. Chairman.

THE CHAIRMAN: The Chair is ready to rule. The gentleman from New York [Mr. Coudert] makes a point of order that the language of this paragraph is legislation on an appropriation bill. It

is apparent from a reading of the language that a change is made in the basic act of the Department of Agriculture Appropriation Act of 1953. The Chair sustains the point of order.

***Rural Electrification; Distribution of Funds Above Authorized Limit***

**§ 33.4 To an appropriation bill an amendment providing that additional funds for the rural electrification program "may be distributed in any State or Territory in addition to any sum which such State may otherwise receive" was conceded and held to be legislation and not in order.**

On May 20, 1953,<sup>(9)</sup> during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 5227), the following proceedings occurred:

The Clerk read as follows:

*Loan authorizations*

For loans in accordance with said act, and for carrying out the provisions of section 7 thereof, to be borrowed from the Secretary of the Treasury in accordance with the provisions of section 3(a) of said act as follows: Rural electrification program, \$135 million; and rural telephone program, \$50 million; and additional amounts, not to exceed \$30 million for the rural electrification

8. John W. Byrnes (Wis.).

9. 99 CONG. REC. 5270, 5271, 83d Cong. 1st Sess.

program, may be borrowed under the same terms and conditions to the extent that such additional amounts are required during the fiscal year 1954, under the then existing conditions, for the expeditious and orderly development of the program.

MR. [WILLIAM R.] POAGE [of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Poage: On page 38, line 2, after the comma strike out the balance of the line and all of line 3 [deleting "for the . . . development of the program"] and insert "and may be distributed in any State or Territory in addition to any sum which such State may otherwise receive."

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

THE CHAIRMAN:<sup>(10)</sup> The gentleman will state it.

MR. TABER: Mr. Chairman, this is legislation on an appropriation bill and contrary to existing law. . . .

MR. POAGE: Mr. Chairman, I will have to concede the point of order because I know it is legislation on an appropriation bill.

THE CHAIRMAN: The Chair sustains the point of order.

### ***Census Work***

#### **§ 33.5 An appropriation for carrying on authorized census work, including personal services and rentals, in excess of the limit of cost fixed by law is not in order on an appropriation bill.**

10. William M. McCulloch (Ohio).

On Feb. 7, 1940,<sup>(11)</sup> the Committee of the Whole was considering H.R. 8319, the Departments of State, Justice, Commerce, and the Judiciary appropriation bill. At one point the Clerk read as follows:

For continuing the work of taking, compiling, and publishing the Sixteenth Census of the United States, as authorized by the act of June 18, 1929 (13 U.S.C. 201-218), and the national census of housing as authorized by the act of August 11, 1939 (53 Stat. 1406), and for carrying on other authorized census work, *within a limit of cost for the period of July 1, 1939, to December 31, 1942, of \$53,250,000, including personal services and rentals in the District of Columbia and elsewhere; the cost of transcribing State, municipal, and other records; contracts for the preparation or monographs on census subjects and other work of specialized character which cannot be accomplished through ordinary employment; per diem compensation of employees of the Department of Commerce and other departments and independent establishments of the Government who may be detailed for field work; expenses of attendance at meetings concerned with the collection of statistics, when incurred on the written authority of the Secretary of Commerce; purchase of books of reference, periodicals, maps, newspapers, manuscripts, first-aid outfits for use in the buildings occupied by employees of the census, maintenance, operation, and repair of*

11. 86 CONG. REC. 1195, 76th Cong. 3d Sess.

a passenger-carrying automobile to be used on official business; construction, purchase, exchange, or rental of punching, tabulating, sorting, and other labor-saving machines, including technical, mechanical, and other services in connection therewith; printing and binding, traveling expenses, streetcar fares, and all other contingent expenses in the District of Columbia and in the field, \$17,850,000, of which \$2,000,000 shall be available immediately, and the unexpended balance of the appropriation under this title in the Department of Commerce's Appropriation Act, 1940, is hereby continued available until June 30, 1941.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the language on page 37, beginning with the word "within", on line 17, running through the word "elsewhere", in line 20. It is legislation on an appropriation bill, increasing the limitation that now exists against the expenses of the Census Bureau, and it is unauthorized by law.

MR. [MILLARD F.] CALDWELL [of Florida]: Will the gentleman state the particular language to which he makes the point of order?

MR. TABER: I shall read it. It is as follows, beginning on line 17, page 37:

Within a limit of cost for the period of July 1, 1939, to December 31, 1942, of \$53,250,000, including personal services and rentals in the District of Columbia and elsewhere.

MR. CALDWELL: Mr. Chairman, I think the point of order is well taken. It is simply an economy measure that the committee wrote in.

MR. TABER: Mr. Chairman, it is not an economy measure. It raises the au-

thorizations \$150,000 beyond all authorizations now existing.

THE CHAIRMAN:<sup>(12)</sup> The Chair sustains the point of order.

### ***Housing Assistance, Increase in Contract Authority***

**§ 33.6 To a paragraph in an appropriation bill containing funds for liquidation of contract obligations for homeownership and rental housing assistance, an amendment providing that total payments required by such contracts in any fiscal year shall be increased by a certain amount was ruled out as permanent legislation in violation of Rule XXI clause 2.**

On May 11, 1971,<sup>(13)</sup> during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 8190), the following transpired:

#### CHAPTER IV

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MORTGAGE CREDIT

HOMEOWNERSHIP AND RENTAL HOUSING ASSISTANCE

For an additional amount for "Homeownership and rental housing assistance", \$32,900,000.

**12.** Harry P. Beam (Ill.).

**13.** 117 CONG. REC. 14464, 14465, 92d Cong. 1st Sess.

MR. [EDWARD I.] KOCH [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Koch: On page 5, line 9, insert immediately before the period “: *Provided*, That the limitation on total payments that may be required in any fiscal year by all contracts entered into under section 235 of the National Housing Act, as amended, is increased by \$25,000,000, and the limitation on total payments under those entered into under section 236 of such Act, is increased by \$25,000,000”.

MR. [CHARLES R.] JONAS [of North Carolina]: Mr. Chairman, I make a point of order against the amendment on the ground it is legislation on an appropriation bill.

THE CHAIRMAN:<sup>(14)</sup> The gentleman will state his point of order.

MR. JONAS: Mr. Chairman, as I understand the amendment, it seeks to increase contract authority, and the bill under consideration does not contain any contract authority but merely payments that have accrued and have to be paid in order to liquidate contract authority. Therefore, I think the amendment is subject to a point of order and I so make it.

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

THE CHAIRMAN: The gentleman from New York is recognized on the point of order.

MR. KOCH: This chapter relates to sections 235 and 236, but provides no new moneys and does not provide the moneys that heretofore have been authorized. I submit to you, Mr. Chair-

man, that all my amendment will do is to appropriate moneys which heretofore have been authorized for the purpose provided in the amendment.

THE CHAIRMAN: The Chair is ready to rule. The amendment does constitute legislation in an appropriation bill and violates clause 2 of rule XXI. Therefore, the Chair sustains the point of order.

### § 34. Exceptions From Existing Law

#### *Contracts, Competitive Bidding Waived*

#### **§ 34.1 Language in an appropriation bill providing that purchases and contracts for supplies or services may be made by the Tennessee Valley Authority without regard to any law relating to advertising or competitive bidding was conceded to be legislation on an appropriation bill and held not in order.**

On Dec. 15, 1950,<sup>(15)</sup> during consideration in the Committee of the Whole of the second supplemental appropriation bill (H.R. 9920), a point of order was raised against the following provision:

TENNESSEE VALLEY AUTHORITY

For an additional amount, \$64,500,000, to remain available until

15. 96 CONG. REC. 16672, 81st Cong. 2d Sess.

14. Wayne N. Aspinall (Colo.).