order and sustain the point of order of the gentleman from Kentucky.

Health and Safety Information Required

§ 50.8 Where existing law confers discretionary authority upon an executive agency to require submission of health and safety information by applicants for licenses, an amendment to a general appropriation bill restricting that discretion by requiring the submission of certain information as a condition of receiving funds constitutes legislation.

On June 18, 1979,[16] an amendment was offered as follows to H.R. 4399, the energy and water appropriation bill for fiscal 1980:

> The Clerk read as follows:
>
> Amendment offered by Mr. [James] Weaver [of Oregon]: On page 27 after line 23, add:
>
> "No monies appropriated in this paragraph may be expended by the Nuclear Regulatory Commission for the issuance of an operating license for a nuclear powerplant located in a state which does not have an emergency evacuation plan which has been tested, and submitted to the Commission pursuant to law.".

The amendment was ruled out on a point of order. The proceedings are carried in full in § 51.11, infra.

16. 125 CONG. REC. 15286, 15287, 96th Cong. 1st Sess.

E. PROVISIONS AS CHANGING EXISTING LAW: PROVISIONS AFFECTING EXECUTIVE AUTHORITY; IMPOSITION OF NEW DUTIES ON OFFICIALS

§ 51. Restrictions on or Enlargement of Discretion

Propositions in a general appropriation bill that affirmatively take away an authority or discretion conferred by law are subject to a point of order under the rule prohibiting legislation on appropriation bills.

Where the authorizing law has established the degree of discretion officials have in the exercise of their duties, problems may arise when an appropriation measure seems to restrict that discretion. As in other areas, the appropriation measure cannot "change existing law," but can impose limitations by appropriating for only part of an authorized purpose.[17] The question will be, then, does the appropriation measure merely withhold funds that, if appropriated, would be administered by the official, or does it so further and actually change the scope of the official's discretion from that set forth in the authorizing law?

A helpful approach in many cases is to determine whether the

17. See Sec. 64, infra.

appropriation measure mandates criteria that are within the range of choices given to the official by the authorizing law. If the authorizing law permits the official to pursue courses A, B, C, and D, and the appropriation measure provides funds permitting the official to pursue A, B, and C, the measure is a proper limitation because it appropriates for "part of the authorized purpose." But if the appropriation has the effect of permitting or requiring the official to pursue courses A, B, and E, then the measure has changed existing law by mandating criteria that were not within the range of choices given by the authorizing law which established the degree of the official's discretion.

A limitation may in fact amount to a change in policy, but if the limitation is merely a negative restriction on use of funds, it will normally be allowed. For example, in one instance[18] during consideration of the army appropriation bill in 1931, an amendment was allowed which provided that "none of the funds appropriated in this act shall be used for . . . any compulsory military course or military training in any civil school or college or for the pay of any . . . employee at any civil school or college where a military course or military training is compulsory." The Chair noted that the amendment "simply refuses to appropriate for purposes which are authorized by law and for which Congress may or may not appropriate as it sees fit," and said that, while the amendment did change a policy of the War Department, "a change of policy can be made by the failure of Congress to appropriate for an authorized object."

It should be noted that in an earlier ruling (1925)[19] the Chair had said that where the purpose of an amendment appeared to be a restriction of executive discretion to a degree amounting to a change in policy rather than a matter of administrative detail, the amendment would not be allowed. A proposed amendment to the War Department appropriation bill had in that instance provided, "No part of the moneys appropriated in this act shall be used to pay any officer to recruit the Army beyond the limit of 100,000 three-year enlisted strength." The Chair ruled that the purpose rather than the form of a proposed limitation is the criterion by which its admissibility should be judged, and held that the purpose in this instance was legislative, "in that the intent is

18. 7 Cannon's Precedents § 1694.

19. 7 Cannon's Precedents § 1691.

to restrict executive discretion to a degree that may be fairly termed a change in policy." Today this ruling would be followed only where a proposed limitation is accompanied by language explicitly stating a legislative motive or purpose in carrying out the limitation.[20] If such intent were merely one that might be inferred, as in the 1925 ruling, the proposed limitation would not be barred.

In a few cases,[1] the issue has arisen as to the effect of a proposal seemingly having the purpose of enlarging, rather than restricting, an official's discretion. Such proposals, depending on circumstances, may also be viewed as changing existing law.

General Rule

§ 51.1 Language in an appropriation bill making mandatory on the part of an executive officer an action within his discretion under existing law, is legislation and not in order: language in an appropriation bill providing that during fiscal 1958, operation of the Army-Navy Hospital at Hot Springs, Ark., and Murphy General Hospital at Boston, Mass., shall be continued, was held to be legislation and not in order.

On May 28, 1957,[2] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 7665), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> OPERATION AND MAINTENANCE
>
> For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, including administration; medical and dental care of personnel entitled thereto by law or regulation (including charges of private facilities for care of military personnel on duty or leave, except elective private treatment), and other measures . . . conclusive upon the accounting officers of the Government; $3,145,200,000: *Provided*, That during the fiscal year 1958 the maintenance, operation, and availability of the Army-Navy Hospital at Hot Springs National Park, Arkansas, and the Murphy General Hospital in Boston, Mass., to meet requirements of the military and naval forces shall be continued.

MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, I make a point of order against the language on page 8, beginning on line 2 and running through line 6.

THE CHAIRMAN:[3] Will the gentleman state his point of order?

MR. FORD: The point of order, Mr. Chairman, is predicated on the fact

20. See Sec. 66.4, infra.

1. See, for example, Sec. 22.19, supra.

2. 103 CONG. REC. 7901, 7902, 85th Cong. 1st Sess.

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

that this is legislation on an appropriation bill and contrary to existing law. It is my understanding under the rules of the House that the inclusion of any language in an appropriation bill that imposes an additional burden or duty or authority on the executive branch of the Government, not required by law, makes such language subject to a point of order as legislation on an appropriation bill. . . .

THE CHAIRMAN: Does any other gentleman desire to be heard on the point of order? If so, the Chair will be pleased to hear him.

MR. FORD: Mr. Chairman, I think the crux of the matter is that without this language in the appropriation bill the executive branch of the Government, in this case the Department of the Army, would have full authority to close these installations. In my opinion, the inclusion of the language which is currently in the Defense Department appropriation bill for the fiscal year 1957, and the language to which I object is an extention of that language in the fiscal year 1958 Department of Defense appropriation bill. But let me just refer as a practical matter to the language in the current appropriation bill and I will carry on from there to show that if this language is included in the fiscal 1958 bill again, there is no question but what it imposes an additional burden, an additional obligation, on the Department of Defense. Let me read testimony from the Department of the Army, and this is Secretary Brucker testifying on page 479 of the Department of Defense hearings for the fiscal year 1958:

SECRETARY BRUCKER: Mr. Ford, the situation is precisely this: Twice we have recommended to the committees of Congress that both of those hospitals be abandoned and that no money be put in for them. The reason is because we do not have need for them, and while the hospitals, of course, have adequate personnel, both nurses and doctors, there is not sufficient patient load in the area for either one of those two hospitals—

Here is the important language, still quoting Secretary Brucker . . .

> so twice we have recommended against inclusion of those two hospitals, but twice they were placed back into the bill, and we were compelled to retain them.

There is language, Mr. Chairman, which indicates clearly that the Department of the Army by the inclusion of this language in fiscal 1957 and by the possibility of inclusion of the same language in fiscal 1958 is required to do something it does not want to do and it does not have to do unless this language is included. . . .

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

The language of the proviso in effect imposes upon a department of Government an affirmative and mandatory requirement that the two named installations shall be continued. In the opinion of the Chair, the interposition of that affirmative requirement is legislation on an appropriation bill and the Chair, therefore, sustains the point of order.

Mandating One of Several Choices

§ 51.2 To be admissible on an appropriation bill a limitation may not impose addi-

tional duties on executives or limit their discretion: to an appropriation bill an amendment prohibiting use of an appropriation for regulation of rates "upon any basis other than actual legitimate cost, less accrued depreciation" was held to impose additional duties upon officials and to limit their discretion provided in existing law to determine rates.

On Mar. 30, 1954,[4] 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 amendment, offered to the portion of the bill providing funds for salaries and expenses for the Federal Power Commission:

MR. (SIDNEY R.) YATES (of Illinois): Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Yates: On page 18, line 25, strike the period after the word "individuals" and insert "*Provided*, That in order to assure efficient, economic, and expeditious regulation, no part of this appropriation shall be used for the regulation of rates or charges of any company subject to the jurisdiction of the Commission, upon any basis other than actual legitimate cost, less accrued depreciation."

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, a point of order.

THE CHAIRMAN:[5] The gentleman will state it.

MR. PHILLIPS: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation upon an appropriation bill, which I understand we are trying to keep away from.

MR. YATES: Mr. Chairman, it is certainly not legislation on an appropriation bill. It is in fact a limitation of the type that has been recognized as valid many times in the past. I submit that it is perfectly proper, that it is a limitation on the appropriations for a specific purpose and is entirely in order. . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Illinois [Mr. Yates] has offered an amendment as follows:

On page 18, line 25, "provided that in order to assure efficient, economic, and expeditious regulation, no part of this appropriation shall be used for the regulation of rates or charges of any company subject to the jurisdiction of the Commission—

And the Chair notes these words particularly—

upon any basis other than actual legitimate cost less accrued depreciation.

Although presented in the form of a limitation on an appropriation, since it would impose additional duties upon officials and limit the exercise of their discretion, the amendment contains legislation, and the Chair sustains the point of order.

§ 51.3 Although a law may give an executive officer author-

4. 100 CONG. REC. 4101, 4102, 83d Cong. 2d Sess.

5. Louis E. Graham (Pa.).

ity to do a certain thing, a proposition directing him so to do is legislative in nature and not in order on an appropriation bill: language in the District of Columbia appropriation bill providing that the tax in effect in a certain fiscal year on real estate and certain tangible personal property shall not be increased for a subsequent fiscal year was held to be legislation where existing law gave officials authority to fix the tax rate on an annual basis.

On Apr. 2, 1937,[6] during consideration in the Committee of the Whole of the District of Columbia appropriation bill, a point of order was raised against the following provision:

Be it enacted, etc., That in order to defray the expenses of the District of Columbia for the fiscal year ending June 30, 1938, any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and, in addition, $5,000,000 is appropriated, out of any money in the Treasury not otherwise appropriated, to be advanced July 1, 1937, and all of the remainder out of the combined revenues of the District of Columbia, and the tax rate in effect in the fiscal year 1937 on real estate and tangible personal property subject to taxation in the District of Columbia shall not be increased for the fiscal year 1938, namely: . . .

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I rise to a point of order.

THE CHAIRMAN:[7] The gentleman will state it.

MR. NICHOLS: I make a point of order against that portion of the bill on page 2, beginning after the comma, in line 11, which reads as follows:

> And the tax rate in effect in the fiscal year 1937 on real estate and tangible personal property subject to taxation in the District of Columbia shall not be increased for the fiscal year 1938.

In support of my point of order I call the Chair's attention to the fact that this provision is contrary to existing law and is legislation. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair feels it is appropriate to state that in the broad and general application it is well recognized that the Committee on Appropriations has the authority to exercise the function of appropriating for the activities of the Federal Government under existing law. In other words, there must be authority in existing law to support the appropriation provided in a general appropriation bill.

It is also well settled that the Appropriations Committee does not have au-

6. 81 CONG. REC. 3096–98, 75th Cong. 1st Sess.

7. Jere Cooper [Tenn.].

thority to include legislation in a general appropriation bill.

It will be recalled that considerable debate occurred at the time of the creation of the Appropriations Committee. Apprehension was voiced at that time that the Committee on Appropriations might encroach upon the functions of the standing legislative committees of the House. For this reason the rules of the House make it certain and definite that the Appropriations Committee has authority only to appropriate or to provide funds pursuant to the authority of existing law.

The gentleman from Oklahoma [Mr. Nichols] makes a point of order to the following language which appears in the pending bill, found on page 2, line 11:

> And the tax rate in effect in the fiscal year 1937 on real estate and tangible personal property subject to taxation in the District of Columbia shall not be increased for the fiscal year 1938, namely.

The provision of existing law is as follows:

> That for the purpose of defraying such expenses of the District of Columbia as the Congress may from time to time appropriate for, there hereby is levied for each and every fiscal year succeeding that ending June 30, 1937, a tax at such rate on the aforesaid property subject to taxation in the District of Columbia, and the Commissioners of the District of Columbia hereby are empowered and directed to ascertain, determine, and fix annually such rate of taxation, as will when applied as aforesaid produce the money needed to defray the share of the expenses of the District during the year for which the rate is fixed.

A question very similar to the pending question was raised when the District of Columbia appropriation bill was under consideration on February 15, 1933.

The Chair observes that in the course of the argument presented by the gentleman from Mississippi in opposition to the point of order he quoted the identical provision that was involved in the point of order raised at that time. It was on the basis of the language quoted by the gentleman from Mississippi that the ruling of the Chair turned.

On February 15, 1933, as shown in volume 76, part 4, of the Congressional Record, the following occurred:

> The point of order is directed at the language in the bill on line 10, page 2, which reads as follows: "And the tax rate in effect for the fiscal year 1933 on real estate and tangible personal property subject to taxation in the District of Columbia shall not be decreased for the fiscal year 1934."

The point of order was discussed at some length, after which the Chair ruled as follows:

> The gentleman from Virginia makes the point of order against the language appearing on page 2, line 10, which reads as follows—

And again quotes the language that has just been quoted.

> The point of order is that this language is legislation on an appropriation bill. The Chair is of the opinion that it is legislation on an appropriation bill, and therefore sustains the point of order.

The Chair also calls attention to section 3543 of Hinds' Precedents of the House, volume 4, the syllabus of which is as follows:

> Although a law may give an executive officer authority to do a certain

thing, a provision directing him so to do is legislative in nature and not in order on a general appropriation bill.

It is apparent, of course, that if it was not in order in a general appropriation bill to authorize and direct the Commissioners of the District of Columbia to not decrease the tax rate for a certain year, obviously the same logic would require the application of the rule to a proposed increase in the tax rate. In other words, the question here presented is whether or not an executive officer can be directed specifically and definitely not to do a thing he is clearly given discretionary authority to do.

The Chair feels that the language to which the point of order is made is legislation on an appropriation bill, and therefore sustains the point of order.

Imposing Conditions on Exercise of Discretion

§ 51.4 Where existing law authorized the expenditure of funds for the benefit and existence of Indians, under broad supervisory powers given to the Secretary of the Interior, provisions in an appropriation bill which imposed further conditions affecting both the exercise of those powers and the use of funds were ruled out as legislation.

On May 14, 1937,[8] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 6958), a point of order was raised against the following provision:

The Clerk read as follows:

For the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops, $165,000, which sum may be used for the purchase of seeds, animals, machinery, tools, implements, and other equipment necessary, and for advances to Indians having irrigable allotments to assist them in the development and cultivation thereof, in the discretion of the Secretary of the Interior, to enable Indians to become self-supporting: *Provided,* That the expenditures for the purposes above set forth shall be under conditions to be prescribed by the Secretary of the Interior for repayment to the United States on or before June 30, 1943, except in the case of loans on irrigable lands for permanent improvement of said lands, in which the period for repayment may run for not exceeding 20 years, in the discretion of the Secretary of the Interior: *Provided further,* That not to exceed $25,000 of the amount herein appropriated shall be expended on any one reservation or for the benefit of any one tribe of Indians: *Provided further,* That the Secretary of the Interior is hereby authorized, in his discretion and under such rules and regulations as he may prescribe, to make advances from this appropriation to old, disabled, or indigent Indian allottees, for their support, to remain a charge and lien against their lands until paid: *Provided further,* That not to exceed $15,000 may be advanced to worthy Indian youths to enable them to take educational courses, including courses in nursing, home economics, forestry, and other industrial subjects in colleges,

8. 81 CONG. REC. 4598, 4599, 75th Cong. 1st Sess.

> universities, or other institutions, and advances so made shall be reimbursed in not to exceed 8 years, under such rules and regulations as the Secretary of the Interior may prescribe.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph beginning on page 26, line 4. The point of order is that this is legislation on an appropriation bill and it imposes discretionary duties upon the Secretary of the Interior. The language at the bottom of the bill, beginning with "*Provided further*", line 22, and the last proviso are entirely the same. They provide that the Secretary of the Interior shall make rules and regulations and there is no question but what it imposes additional duties upon the Secretary of the Interior all the way through.

In lines 17 and 18 the terms of repayment are made subject to the discretion of the Secretary of the Interior and in lines 9 and 10 it is subject to that same discretion. This is all on page 26. The whole paragraph is subject to discretion and imposes duties upon the Secretary.

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, The Committee Feels That This Provision is in Order. It provides only a method by which the appropriation might be expended. I have no further comment to make.

THE CHAIRMAN:[9] The Chair would like to inquire of the gentleman from Oklahoma as to the authority for the language appearing in lines 1 and 2, page 27, which the Chair will quote:

> To remain a charge and lien against their land until paid—

Is there provision in some existing law creating a lien upon these lands, to which this provision refers?

MR. JOHNSON of Oklahoma: I cannot say there is provision in existing law. The only existing law would be the fact this has been in the bill for several years and, of course, that is not controlling.

THE CHAIRMAN: The Chair would like to inquire further of the gentleman with reference to the language appearing in lines 7 and 8, page 27, reading as follows:

> And advances so made shall be reimbursed in not to exceed 8 years under such rules and regulations as the Secretary of the Interior may prescribe.

Will the gentleman advise the Chair as to any provision of existing law upon which this language is based?

MR. JOHNSON of Oklahoma: Mr. Chairman, this is the exact language that has been used for several years and the gentleman from Oklahoma knows of no specific basis of law for it.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York makes a point of order against the entire paragraph beginning in line 4, page 26, extending down to and including line 9, page 27. The gentleman from New York [Mr. Taber] in making his point of order invited attention to certain language appearing in lines 10 and 11, page 26, with reference to the discretion of the Secretary of the Interior.

The Chair has examined the act commonly referred to and known as the Snyder Act and invites attention to section 13 of that act, in which the following appears:

9. Jere Cooper (Tenn.).

Expenditures of appropriations by Bureau of Indian Affairs: The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate for the benefit, care, and assistance of the Indians throughout the United States for the following purposes: General support and civilization, including education; for industrial assistance and advancement and general administration of Indian problems. Further for general and incidental expenses in connection with the administration of Indian affairs.

It is the opinion of the Chair that the act to which attention has been invited confers upon the Secretary of the Interior rather broad discretionary authority. The Chair is of opinion that the language to which the gentleman invited attention is not subject to a point of order, but that the language to which the Chair invited the attention of the gentleman from Oklahoma with reference to the provisos does constitute legislation on an appropriation bill not authorized by the rules of the House. It naturally follows that as the point of order has to be sustained as to these two provisos, it has to be sustained as to the entire paragraph. The Chair therefore sustains the point of order made by the gentleman from New York.

Specific Appropriation Where General Purpose Authorized

§ 51.5 While the appropriation of a lump sum for a general purpose authorized by law is in order, a specific appropriation for a particular item included in such general purpose is a limitation on the discretion of the executive charged with allotment of the lump sum and is not in order on an appropriation bill; thus a provision of law giving general authorization for wildlife conservation activities was held not to authorize earmarking part of an appropriation to be expressly "for the leasing and management of the lands for the protection of the Florida Key deer."

On Apr. 28, 1953,[10] the Committee of the Whole was considering H.R. 4828, an Interior Department appropriation. A point of order was raised against the following amendment:

Amendment offered by Mr. Lantaff: On page 20, line 6, immediately following the semicolon and preceding the word "and", insert the following: "not to exceed $10,000 for the leasing and management of the lands for the protection of the Florida Key deer, 16 U.S.C. 661."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I hate to do it, but I must make a point of order against this amendment. It is not authorized by law.

THE CHAIRMAN:[11] Does the gentleman from Florida desire to be heard on the point of order?

10. 99 CONG. REC. 4148, 83d Cong. 1st Sess.

11. J. Harry McGregor (Ohio).

MR. [WILLIAM C.] LANTAFF [of Florida]: Yes, Mr. Chairman. The reference to the United States Code authorizes the leasing of lands by the Department of Interior and is so cited for that purpose. This specific authorization is to authorize the leasing of land in this particular area for this particular project and classifies it much the same as the authorization contained in the bill for the Wichita Mountains Wildlife Refuge and for the Crab Orchard National Wildlife Refuge. In the bill you will find the statutory authority cited the same as the statutory authority cited in the amendment which I have offered. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair has inspected section 661 of title 16 of the United States Code, the provision which the gentleman from Florida cites as authorizing the proposal contained in his amendment. That code section gives fairly broad authorization to the Fish and Wildlife Service for wildlife conservation, but it does not authorize leasing of lands or the protection of key deer. The gentleman's amendment would earmark funds for a narrow, specific purpose, a purpose not mentioned in the code section which is general. Reference is made to volume VII, section 1452, of Cannon's Precedents, under which the Chair sustains the point of order.

Limitation on Hiring Discretion

§ 51.6 To an appropriation bill, an amendment providing that the Civil Service Commission shall not impose a maximum age limitation with respect to the appointment of persons to positions in the competitive service who are otherwise qualified, was conceded to be legislation and held not in order.

On Mar. 30, 1955,[12] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 5240), a point of order was raised against the following provision:

The Clerk read as follows:

The Civil Service Commission shall not impose a requirement or limitation of maximum age with respect to the appointment of persons to positions in the competitive service who are otherwise qualified: *Provided*, That no person who has reached his 70th birthday shall be appointed in the competitive civil service on other than a temporary basis.

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I make a point of order to the language on page 4, line 6 to line 12 inclusive, that it is legislation on an appropriation bill. . . .

. . . Mr. Chairman, I have offered this point of order against certain provisions in title 1 relating to the Civil Service Commission because it contains legislation in an appropriation act. Under this legislative directive contained in the appropriation act you would prohibit the Civil Service Commission from imposing any requirement or limitation of maximum age

12. 101 CONG. REC. 4065, 4066, 84th Cong. 1st Sess.

whatsoever with respect to the appointment of persons in competitive Civil Service. . . .

THE CHAIRMAN:[13] Does the gentleman from Texas [Mr. Thomas] desire to be heard on the point of order?

MR. [ALBERT] THOMAS: Mr. Chairman, may I say that our distinguished colleague from Kansas (Mr. Rees) is usually right. This is legislation.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, will the gentleman defer his point of order?

MR. REES of Kansas: No, I shall not.

THE CHAIRMAN: The Chair is ready to rule. In the opinion of the Chair, the language is legislation on an appropriation bill and the point of order is sustained.

Mandating an Investigation Which Agency Has Discretion to Make

§ 51.7 Language in an appropriation bill directing the Public Utilities Commission to make an investigation where existing law authorized it in its discretion to make such investigation was held to be legislation and not in order on an appropriation bill.

On Apr. 2, 1937,[14] during consideration in the Committee of the Whole of the District of Columbia appropriation bill, both Mr. Thomas J. O'Brien, of Illinois, and Mr. Jack Nichols, of Oklahoma, raised a point of order against the following provision as being legislation:

> The Public Utilities Commission is directed to cause an investigation to be made of the Chesapeake & Potomac Telephone Co. with a view to ascertaining the reasonableness of existing rates, tolls, charges, and services. . . .

The manager of the bill (Mr. Ross A. Collins, of Mississippi) declined to argue the point of order and the Chair[15] ruled as follows:

> The gentleman from Illinois and the gentleman from Oklahoma both make a point of order against the language [above].
>
> Existing law provides that—
>
> > Upon its own initiative or upon reasonable complaint made against any public utility that any of the rates, tolls, charges, or schedules or services or time and conditions of payment, or any joint rate or rates, schedules or services are in any respect unreasonable or unjustly discriminatory, or that any time schedule, regulation, or act whatsoever affecting or relating to the conduct of any street railway, etc., . . . the Commission may in its discretion proceed, with or without notice, to make such investigation as it may deem necessary or convenient.
>
> Therefore, it is clearly to be seen that under existing law the Public Utilities Commission has discretionary authority to make the types of investigation that are embraced in the lan-

13. Albert Rains (Ala.).

14. 81 CONG. REC. 3101, 75th Cong. 1st Sess.

15. Jere Cooper (Tenn.).

guage here upon which a point of order is made.

This language in the pending bill seeks to direct the Public Utilities Commissioners to do what they have clearly discretionary authority to do. The effect of this language would be to direct the Commissioners to do what they have authority to do within their discretion. Therefore it is legislation on a general appropriation bill and has the effect of changing existing law.

The Chair would also like to invite attention to the same provision of Hinds' Precedents, section 3853 of volume IV, to which attention was invited in the course of a previous ruling made by the Chair. This provision is as follows:

> Although a law may give an executive officer authority to do a certain thing, a provision directing him so to do is legislative in nature and not in order on a general appropriation bill.

Therefore the Chair sustains the point of order.

Parliamentarian's Note: An apparently contrary ruling was made on May 10, 1946,[16] but would probably not be followed in current practice. On that date, the Chair held in order, as a limitation on an appropriation bill, language providing that no part of an appropriation for Indian reservation roads be available except on the basis of an apportionment among the states made in a specified manner. The Chair rejected the argument of Mr. Francis H. Case, of South Dakota, that, to make mandatory on the part of an executive officer an action within his discretion under existing law, was, in fact, to change existing law by interfering with the officer's discretion.

Mandating Uniformity in Mortgage Commitments

§ 51.8 To an appropriation bill an amendment providing that no funds in the bill be used for expenses of issuing mortgage commitments under the National Housing Act other than on a basis of issuing such commitments to all segments of the population was held to be legislation.

On Mar. 31, 1954,[17] 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 amendment:

> Amendment offered by Mr. [Sidney R.] Yates [of Illinois]: Page 65, line 11, after the colon and the words "(12 U.S.C. 1701)", insert the following: "*Provided*, That no part of any appropriation or fund in this act shall be used for administrative expenses in connection with the issuance of mort-

16. 92 CONG. REC. 4854, 4855, 79th Cong. 2d Sess.

17. 100 CONG. REC. 4267, 83d Cong. 2d Sess.

gage commitments under all titles of the National Housing Act, as amended, other than on the basis of the issuance of such mortgage commitments to all segments of the population, including those segments which are unable to obtain adequate housing under established home-financing programs, as nearly as possible on the basis of effective housing demand as determined by market analyses prepared by the Federal Housing Administration."

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, I make the point of order that the amendment is legislation on an appropriation bill and requires additional duties of an agency.

MR. YATES: Mr. Chairman, I ask for a ruling.

THE CHAIRMAN:[18] It appears on its face it is an interference with executive discretion; therefore the Chair sustains the point of order.

Limiting Funds, Not Discretion

§ 51.9 It is in order on a general appropriation bill to provide that no part, or not more than a specified amount, of an appropriation shall be used in a certain way, even though executive discretion be thereby negatively restricted.

On Sept. 14, 1972,[19] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 16593), a point of order was raised against the following amendment:

MR. [GLENN R.] DAVIS of Wisconsin: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Davis of Wisconsin: Page 51, line 21, insert a new section 743 as follows:

"Of the funds made available by this Act for the alteration, overhaul, and repair of naval vessels, not more than $646,704,000 shall be available for the performance of such works in Navy shipyards."

MR. [LOUIS C.] WYMAN [of New Hampshire]: Mr. Chairman, I reserve the point of order on the language of the proposed amendment offered by the gentleman from Wisconsin.

THE CHAIRMAN:[20] Does the gentleman reserve his point of order?

MR. WYMAN: Mr. Chairman, I am simply trying to protect my rights on grounds the gentleman from Wisconsin——

MR. DAVIS of Wisconsin: Mr. Chairman, if the gentleman wishes to argue, I wish he would argue it and not take up my time.

THE CHAIRMAN: Does the gentleman wish to state his point of order?

MR. WYMAN: I make the point of order that the amendment proposed by the gentleman from Wisconsin in the form in which it is presently worded does not constitute a limitation, but is rather legislation upon an appropriations bill contrary to the rules of the House.

THE CHAIRMAN: Does the gentleman from Wisconsin care to be heard on the point of order?

18. Louis E. Graham (Pa.).

19. 118 CONG. REC. 30749, 30750, 92d Cong. 2d Sess.

20. Daniel D. Rostenkowski (Ill.).

MR. DAVIS of Wisconsin: I do, Mr. Chairman. I submit to the Chair that this is definitely a limitation on the amount of money which may be spent for a specific purpose. I would suggest to the Chair that it is clearly within the rules of the House as a limitation on an appropriations bill.

THE CHAIRMAN: The Chair has examined the amendment and feels that it is a valid limitation on the funds made available in the bill and overrules the point of order.

Parliamentarians Note: The persuasive precedent standing for this proposition is found in 7 Cannon's Precedents § 1694.

§ 51.10 Where, under existing law, federal officials have some discretionary authority to withhold federal funds where the recipients are not in compliance with a federally expressed policy, it is nevertheless in order, by way of a limitation on an appropriation bill, to deny the use of funds for a particular purpose, even though such executive discretion is thereby restricted by implication.

On July 31, 1969,[1] the Committee of the Whole was considering H.R. 13111, a Departments of Labor, and Health, Education, and Welfare appropriation bill. Proceedings were as follows:

Sec. 409. No part of the funds contained in this Act shall be used to force busing of students, the abolishment of any school or the attendance of students at a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district, or school.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I raise the point of order on section 409 on page 56 of the bill that this is legislation on an appropriation bill. It violates section 834 of the House rules. It does not comply with the Holman rule. It is not a retrenchment. In fact, it adds additional burdens and additional duties, just as the Chair ruled against my amendment to section 408 because it would require additional personnel to determine whether busing has been used, one, for the abolishing of any school and, two, to require the attendance of any student at any particular school. . . .

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

Now, the gentleman from Massachusetts (Mr. Conte) has raised a point of order against section 409 on the ground that it constitutes legislation on an appropriation bill. The gentleman from Mississippi (Mr. Whitten) insists that the language is in order as a limitation.

The Chair has reviewed the section in question. It prohibits the use of funds in this bill to force first, the busing of students; second, the abolishment of any school; or third the attendance of students at a particular school.

The clear intent of this section is to impose a negative restriction on the use of the moneys contained in this bill.

1. 115 CONG. REC. 21677, 21678, 91st Cong. 1st Sess.

2. Chet Holifield (Calif.).

The Chair has examined a decision in a situation similar to that presented by the current amendment in the 86th Congress during consideration of the Defense Department appropriation bill, an amendment was offered by Mr. O'Hara, of Michigan, which provided . . . (that) no funds appropriated in that bill should be used to pay on a contract which was awarded to the higher of two bidders because of certain Defense Department policies. The Chairman of the Committee of the Whole, Mr. Keogh, of New York, held the amendment in order as a limitation, even though it touched on the policy of an executive department—86th Congress, May 5, 1960; Congressional Record, volume 106, part 7, page 9641. Chairman Keogh quoted, in his decision, the precedent carried in section 3968 of volume IV, Hinds' Precedents, and the Chair thinks the headnote of that earlier precedent is applicable here:

> The House may provide that no part of an appropriation shall be used in a certain way, even though executive discretion be thereby negatively restricted.

The Chair overrules the point of order.

Requiring Discretionary Action To Be Eligible For Funds

§ 51.11 An amendment to a general appropriation bill, prohibiting the use of funds in the bill for the Nuclear Regulatory Commission to issue nuclear powerplant operating licenses in any state which does not have an emergency evacuation plan which has been tested and submitted to the Commission pursuant to law, was ruled out as legislation since requiring the Commission to make the determination, not required by law, whether the plan had been tested by the state.

On June 18, 1979,[3] during consideration in the Committee of the Whole of the energy and water appropriation bill (H.R. 4399), a point of order against an amendment was sustained as follows:

> The Clerk read as follows:
>
> Amendment offered by Mr. [James] Weaver [of Oregon]: On page 27 after line 23, add:
>
> "No monies appropriated in this paragraph may be expended by the Nuclear Regulatory Commission for the issuance of an operating license for a nuclear powerplant located in a state which does not have an emergency evacuation plan which has been tested, and submitted to the Commission pursuant to law.". . .
>
> MR. [JOHN T.] MYERS of Indiana: Mr. Chairman, the proposed amendment offered by the gentleman from Oregon (Mr. Weaver) is a violation of rule XXI, clause 2. The requirement that a State must adopt and issue an evacuation plan I think is suspect, but the words "which has been tested" clearly make it a violation of rule XXI, clause 2, in that it is clearly legislation on an appropriation bill. It requires a duty not now required by law.

3. 125 CONG. REC. 15286, 15287, 96th Cong. 1st Sess.

I cite the precedents from Deschler's Procedure, chapter 26, 11.3, which reads:

> It is not in order, in an appropriation bill, to impose additional duties on an executive officer or to make the appropriation contingent on the performance of such duties. May 28, 1968 . . . where, to a bill making appropriations for the Department of State, including an item for the U.S. contribution to various international organizations, an amendment providing that none of the funds might be expended until all other members of such organizations have met their financial obligations, was ruled out as legislation which imposed a duty on a Federal official to determine the extent of such obligations.

In the same chapter, paragraph 11.24:

> To a bill making supplemental appropriations to various agencies, including an additional amount for assistance to refugees in the United States, an amendment specifying that no part of this particular appropriation shall be used until adequate screening procedures are established to prohibit the infiltration of communists posing as Cuban refugees, imposed additional duties and was ruled out as legislation.

I think that chapter 18.1 is probably more in point of issue. This was a foreign aid program.

> To a general appropriation bill making appropriations for foreign assistance, an amendment prohibiting the use of any funds carried in the bill for certain capital projects costing in excess of $1 million 'until the head of the agency involved has received and considered a report, prepared by officials within the agency, on the justification and feasibility of such project' was held to impose additional duties and was ruled out as legislation.

Mr. Chairman, it is very clear in the rules where an amendment to language in a general appropriations bill implicitly places new duties on officers of the Government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not required of them by law, such as a judge, was conceded to be legislation and subject to a point of order.

Mr. Chairman, this clearly places some responsibility of testing on someone, rather vague, but not now required by law, who is to conduct the test, how it is to be conducted, and what criterion. There is no evidence of any so-called laws or rules today. It is clearly a violation of rule XXI, clause 2. . . .

MR. WEAVER: . . . The amendment reads very factually, and it reads pursuant to law. It makes no new law, Mr. Chairman.

As a matter of fact, the law is already there in the Atomic Energy Act, chapter 10, atomic energy licenses, and under section 103 (a) and (b), it gives the Nuclear Regulatory Commission complete authority for the public health and safety to do the kind of licensing that is now being done.

What the amendment does is not like the examples shown by the gentleman from Indiana (Mr. Myers), such as screening or imposing new duties on any Government, any Federal Government official at all. It simply says that if a plant has an emergency evacuation plan that has been tested and submitted to the NRC, pursuant to law; it imposes no new duties on the Federal official. It does not require them to go out implicitly or explicitly and make

any investigation of any kind, and just simply go on doing the duties they have been doing under the law that they now act upon. So it is the normal course of duty.

It just simply says that no new operating license will be granted a plant if this factual situation has not been met. . . .

THE CHAIRMAN:[4] . . . The Chair has examined the law with respect to the authority of the NRC to request submission of State emergency evacuation plans, in determining whether to issue an operating license. Under 42 U.S.C. 2133 and 2137, the NRC has virtually total discretionary authority to request or require the submission of any information by a prospective licensee which relates to the public health and safety aspects of the operation of nuclear power plants in any State.

The language of the amendment, however, imposes additional duties on the NRC to determine if a State plan has been tested by the State.

Consequently, the amendment constitutes legislation on an appropriation bill, and the point of order made by the gentleman from Indiana (Mr. Myers) is sustained.

Affirmative Interference With Discretion

§ 51.12 It is not in order in a general appropriation bill under the guise of a limitation to affirmatively interfere with executive discretion by coupling a restriction on the payment of funds for salaries with a positive direction to perform certain duties in a particular manner.

On Oct. 9, 1974,[5] paragraph of a general appropriation bill prohibiting the payment of funds therein for salaries of Federal Trade Commission personnel who use, publish, or permit access to certain information by designated methods—and also requiring the FTC to obtain that information "under existing practices and procedure or as changed by law" was conceded to change existing law by restricting the information-gathering practices of the agency and was ruled out in violation of Rule XXI clause 2. The proceedings were as follows:

THE CHAIRMAN:[6] The Clerk will read.

The Clerk read as follows:

FEDERAL TRADE COMMISSION

No part of these funds may be used to pay the salary of any employee, including Commissioners, of the Federal Trade Commission who—

(1) Uses the information provided in the line-of-business program for any purpose other than statistical purposes. Such information for carrying out specific law enforcement responsibilities of the Federal Trade Commission shall be obtained under

4. Philip R. Sharp (Ind.).

5. 120 CONG. REC. 34712, 34713, 93d Cong. 2d Sess.

6. Sam Gibbons (Fla.).

existing practices and procedures or as changed by law. . . .

MR. [BOB] ECKHARDT [of Texas]: Mr. Chairman, I make a point of order on the paragraph last read, commencing on page 46, line 17, through page 47, line 6. . . .

The specific language that violates [Rule XXI clause 2] is the language contained in the last sentence on page 46, reading as follows:

> Such information for carrying out specific law enforcement responsibilities of the Federal Trade Commission shall be obtained under existing practices and procedures or as changed by law.

Mr. Chairman, rule XXI, under all of the precedents, clearly outlaws a change in substantive law, that is, it clearly outlaws a provision by which an administrator of an agency may after the passage of that clause not do an act which he could have done before.

This clause says that persons in the Federal Trade Commission shall not alter the existing practices with respect to such gathering of information for law enforcement practices.

Today that agency might do anything it wants to do within the balance of law and it is not bound to continue its existing practices. It can obtain information in other ways. If this provision were passed, it would restrict it in that respect.

In this connection, I cite in support of the position I take the provisions of Cannon's Precedents, volume 7, section 1685:

> A limitation to be admissible must be a limitation upon the appropriation and not an affirmative limitation upon official discretion.

Following that, in section 1686, it says:

> A limitation upon an appropriation must not be accompanied by provisions requiring affirmative action by an Executive in order to render the appropriation available.

Therefore, under these provisions, the administrator would be bound and confined to his existing practices, whereas presently he might exercise any rational means of gaining such information that is permitted by law. . . .

MR. [JOHN D.] DINGELL [of Michigan]: Rule XXI, clause 2, is well known, I am sure, to the Chair.

Rule XXI, clause 2, forbids legislation in appropriation bills.

The gentleman from Texas has just cited the specific paragraphs and citations in Cannon's Precedents.

The question is, Is the language referred to by the gentleman from Texas, referring most specifically to page 46, lines 22 and following, reading as follows:

> Such information for carrying out specific law enforcement responsibilities of the Federal Trade Commission shall be obtained under existing practices and procedures or as changed by law—

A limitation? . . .

A clear reading of the language before the committee at this particular time that "Such information for carrying out specific law enforcement responsibilities shall be obtained under existing practices" is not a limitation, but, rather, is an express direction to the Federal Trade Commission as to how that agency shall conduct its affairs. It does not limit discretion, but,

rather, it imposes certain specific duties upon the Federal Trade Commission.

The language further offends against the law, Mr. Chairman, in that it does require certain other affirmative duties and actions by the Federal Trade Commission. Most specifically, Mr. Chairman, it requires that the Federal Trade Commission engage in an ascertainment of what is the existing law and that they then proceed to act in accordance therewith.

This does not constitute a limitation, but, rather, constitutes an affirmative mandate. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I concede the point of order, and I will offer an amendment.

THE CHAIRMAN: The point of order is conceded, and sustained, and the language beginning on line 17, page 46, and continuing through line 6, page 47, is stricken by the point of order.

Limitation of Funds Resulting in Curtailed Discretion

§ 51.13 While it is not in order on a general appropriation bill to directly limit executive discretionary authority or to change entitlement benefits or contractual provisions established pursuant to law, it is permissible by a negative restriction on the use of funds to deny availability of funds although resulting circumstances might suggest a change in applicability of law.

On Aug. 20, 1980,[7] the Chair ruled that an amendment to a general appropriation bill denying the use of funds therein to pay for an abortion, or administrative expenses in connection with any federal employees health benefits plan which provides any benefits or coverage for abortions after the last day of contracts currently in force, did not constitute legislation, since the amendment did not directly interfere with executive discretion in contracting to establish such plans. (It is permissible by limitation to negatively deny the availability of funds although discretionary authority may be indirectly curtailed and contracts may be left unsatisfied.) The proceedings are discussed in Sec. 74.5, infra. For general discussion of permissible limitations, see Sec. 64, infra.

§ 51.14 To language in an appropriation bill containing funds for the Federal Trade Commission for the purpose of collecting line-of-business data, an amendment providing that none of those funds shall be used for collecting such data from more than 250 firms was held to constitute a valid limitation

7. 126 CONG. REC. 22171, 22172, 96th Cong. 2d Sess.

on the availability of funds in the bill, rather than an express restriction on the scope of the FTC investigation.

On June 21, 1974,[8] during consideration in the Committee of the Whole of H.R. 15472 (agriculture, environment, and consumer appropriation bill), an amendment was held in order as follows:

The Clerk read as follows:

Amendment offered by Mr. [Jamie L.] Whitten [of Mississippi]: Page 47, line 6, after the word "data" add the following: "*Provided*, That none of these funds shall be used for collecting line-of-business data from not [sic] more than 250 firms, including data presently made available to the Bureau of the Census, the Securities and Exchange Commission and other government agencies where authorized by law." . . .

MR. [BOB] ECKHARDT [of Texas]: Mr. Chairman, the point of order is under House Rule XXI, Clause 2, second sentence. . . .

Now, under existing law and without the limitations reported to be added in this bill the Federal Trade Commission could and had intended—and, of course, what it actually intended is not material here, because the question is what it could have done—it could have used the funds as appropriated here for either 250 firms or 500 firms or any other number of firms. So what is done by this amendment is to restrict the Federal Trade Commission with respect to powers and duties and authorities which it would have but for this limitation.

The authorities on this point appear in volume VII of Cannon's Precedents, section 1675, which reads:

A proper limitation does not interfere with executive discretion or require affirmative action on the part of the Government officials. . . .

It would also require liaison with the Bureau of Census, the Securities and Exchange Commission, and other Government agencies which are not here designated but which would cover the whole gamut of such agencies.

So it both provides a limitation on executive discretion and affirmative acts on the part of Government officials. . . .

MR. [JOHN] MELCHER [of Montana]: . . . Public Law 93–153 authorizes line-of-business data to be collected by independent regulatory agencies subject to certain procedures. It did not limit or restrict the collection of this data to any specific number of firms, as the gentleman's amendment would; he would change this policy by arbitrarily limiting the collection of the data specifically to 250 firms.

In addition, Mr. Chairman, Public Law 93–153 does not authorize the collection of line-of-business data from the Bureau of the Census of the Security and Exchange Commission. This authority was placed in an "independent regulatory agency.". . .

THE CHAIRMAN:[9] The Chair is ready to rule.

First, let the Chair state that this subject contains a very vexing point,

8. 120 CONG. REC. 20601, 20602, 93d Cong. 2d Sess.

9. Sam Gibbons (Fla.).

and it is one that has required a lot of attention of the Chair, even prior to the arguments here.

The words in contest on this point of order are the following words added by the amendment:

> . . . provided that none of the funds shall be used for collecting line-of-business data from not more than 250 firms, including data presently made available by the Bureau of the Census, the Securities and Exchange Commission, and other government agencies where authorized by law.

It is clear to the Chair that the words "provided that none of these funds shall be used for collecting line of business data of not more than 250 firms" may clearly be added as an amendment to a general appropriation bill, and it is in order. The Committee on Appropriations could have refused to bring in any appropriation at all for this agency, and the committee seeks by this amendment to put a limitation upon the use of funds available to the FTC. The limitation is drafted as a restriction on the use of funds, and not as an affirmative restriction on the scope of the FTC investigation, as was the case in the language stricken from the bill on the preceding point of order.

The remainder of the amendment raises some question, but in the opinion of the Chair, these words are clearly limited by "where authorized by law,' and do not permit the Census Bureau of the SEC to initiate line of business investigations, so the Chair is going to rule that the amendment is in order and that the points of order are overruled.

Limitation on Funds May Change Announced Policy

§ 51.15 While a limitation on a general appropriation bill may not involve changes of existing law or affirmatively restrict executive discretion, it may by a simple denial of the use of funds change administrative policy and be in order; thus, a point of order against a provision prohibiting the use of funds for any reduction in Customs Service regions or for any consolidation of Customs Service offices was overruled.

On June 27, 1984,[10] during consideration in the Committee of the Whole of the Treasury Department and Postal Service appropriation bill (H.R. 5798), a point of order against a provision in the bill was overruled, as follows:

> The Clerk read as follows:
>
> Sec. 617. None of the funds made available in this Act may be used to plan, implement, or administer (1) any reduction in the number of regions, districts or entry processing locations of the United States Customs Service; or (2) any consolidation or centralization of duty assessment or appraisement functions of any offices of the United States Customs Service.
>
> MR. [BILL] FRENZEL [of Minnesota]: Mr. Chairman, I make a point of order

10. 130 CONG. REC. —— , 98th Cong. 2d Sess.

against section 617. . . . Section 617 prohibits the use of funds in this appropriation for a reduction in the number of Customs entry processing points and any consolidation of duty assessment or appraisement functions in any of the offices of the Customs Service.

This negates Public Law 91–271 which gives the President the authority to rearrange or make consolidations at points of entry at the District Offices or at headquarters.

In addition, in my judgment the language is so broad as to interfere with existing administrative authority to carry out its appraisement functions as required by law. Section 617 goes beyond the limitation of funds which are the subject of this appropriation and constitutes an effort to change existing law under the guise of a limitation. There seems to be in section 617 almost a complete prohibition of executive discretion to make any changes to help the Customs Service carry out its duties. . . .

MR. [EDWARD R.] ROYBAL [of California]: Mr. Chairman, section 617 is a simple limitation again on an appropriation bill. It does not change the application of existing law. It merely prohibits the use of funds to pay for any Government employee who tries to prevent the law from being enforced. . . .

THE CHAIRMAN:[11] The Chair is prepared to rule.

It is the opinion of the Chair that the section does not mandate spending but rather limits the use of funds to consolidate Customs regions and is as such a negative limitation on the use of funds. And the Chair would cite Mr. Cannons volume 7 of Precedents, section 1694:

> While a limitation may not involve change of existing law or affirmatively restrict executive discretion, it may properly effect a change of administrative policy and still be in order.[12]

Therefore it is the ruling of the Chair that the gentleman's point of order is overruled.

Parliamentarian's Note: This precedent must be distinguished from cases where an amendment, by double negative or otherwise, can be interpreted to require the spending of more money—for example, an amendment prohibiting the use of funds to keep less than a certain number of people employed. (A "floor" on employment levels would be tantamount to an affirmative direction to hire no fewer than a specified number of employees.)

Limiting Funds to Promulgate Regulations

§ 51.16 While an agency may have authority to promulgate new regulations which would change existing regulations, it is in order in a general appropriation bill to deny the use of funds therein for agency proceedings relating to changes in regulations.

11. Anthony C. Beilenson (Calif.).

12. 7 Cannon's Precedents § 1694 is discussed in the introduction to this section (§ 51), supra.

The ruling of the Chair on June 27, 1984,[13] was that language in a general appropriation bill prohibiting the use of funds therein to eliminate an existing legal requirement for sureties on customs bonds was in order as a valid limitation merely denying funds to change existing law and regulations. The point of order was as follows:

> MR. [BILL] FRENZEL [of Minnesota]: Mr. Chairman, I make a point of order against section 513 on page 38.
>
> The portion of the bill to which the point of order relates is as follows:
>
> > Sec. 513. None of the funds made available by this Act for the Department of Treasury may be used for the purpose of eliminating any existing requirement for sureties on customs bonds. . . .
>
> [This provision] violates rule XXI, clause 2. The section prohibits the use of funds for the continuation of customs rulemaking with respect to existing requirements for sureties on customs bonds.
>
> The Customs Service has broad administrative authority to establish guidelines for posting bonds for the payment of customs duties.
>
> The rulemaking process is now underway to determine whether existing requirements for sureties on customs bonds should be modified or replaced altogether.
>
> Section 513 goes beyond the limitations of funds which are the subject of this appropriation and constitutes an effort to change existing law under the guise of a limitation. . . .
>
> THE CHAIRMAN:[14] The Chair is ready to rule. . . .
>
> The Chair would rule that in fact this section does constitute a proper limitation consistent with the existing law and overrules the gentleman's point of order.

Limiting Funds to Administer Program

§ 51.17 A section in a general appropriation bill prohibiting the use of any funds therein by the Environmental Protection Agency "to administer any program to tax, limit, or otherwise regulate parking facilities" was held in order as a negative limitation on the use of funds in the bill.

The ruling on Oct. 9, 1974,[15] supports the principle that, although language in a general appropriation bill may not by its terms directly curtail a discretionary authority conferred by law, the Committee on Appropriations may, by refusing to recommend funds for all or part of an authorized executive function, thereby effect a change in policy to the extent of its denial of avail-

13. 130 CONG. REC.—— , 98th Cong. 2d Sess.

14. Anthony C. Beilenson (Calif.).

15. 120 CONG. REC. 34716, 34717, 93d Cong. 2d Sess.

ability of funds.[16] The proceedings were as follows:

The Clerk read as follows:

> Sec. 511. No part of any funds appropriated under this Act may be used by the Environmental Protection Agency to administer any program to tax, limit, or otherwise regulate parking facilities. . . .

MR. [FORTNEY H.] STARK [of California]: I make a point of order in opposition to the section the Clerk has just read, section 511, line 17.

The point of order is that under rule XXI, clause 2, it is legislation under an appropriation bill. It changes existing law and is not merely a limitation under the appropriation.

I cite Cannon's Precedents, volume 7, section 1691:[17]

> The purpose rather than the form of a proposed limitation is the proper criterion by which its admissibility should be judged, and if its purpose appears to be a restriction of executive discretion to a degree that may be fairly termed a change in policy rather than a matter of administrative detail it is not in order. . . .

The committee report on H.R. 16901 indicates that the intent of section 511 is to make new law, not to "retrench expenditures.". . .

What is intended is a direct limitation on the exercise of administrative authority, not a limitation on appropriations. The report does not state any intent to save money. It does not state how much money, if any, would be saved. Nor does it explain how this provision would in any way save money. The report's reference to a substantive investigation of the effects of EPA regulations confirms the view that section 511 is purely substantive lawmaking. There is no pretense in the report that this provision is intended to, or actually will have the effect of reducing appropriations or saving any money. Its intent and effect is simply to repeal a portion of the Clean Air Act. . . .

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman . . . the language referred to does constitute legislation in an appropriation bill, and it is not a limitation upon appropriation but an affirmative limitation upon official discretion, as referred to in section 1685 and also in sections 1684 and 1683 of Cannon's Precedents, referred to by me earlier in the discussion as to previous points of order raised by the gentleman from Texas (Mr. Eckhardt) to earlier portions of the bill. . . .

THE CHAIRMAN:[18] The Chair has examined the language on page 51 of the bill, lines 17 through 20. The Chair also has examined the arguments put forth by the gentleman from California (Mr. Stark) who raised the point of order. The Chair has examined the precedents. The Chair finds that this is merely a limitation on an appropriation, and suggests that the Committee on Appropriations could have refused to bring in any appropriation at all for the Environmental Protection Agency. Therefore, negatively denying their making funds available to EPA for

16. See 7 Cannon's Precedents § 1694, discussed in the introduction to this section (§ 51), supra.

17. 7 Cannon's Precedents § 1691 is discussed in the introduction to this section (§ 51), supra.

18. Sam Gibbons (Fla.).

some purposes while availability for other purposes is certainly no more than a limitation on the appropriation bill. This is an old, established precedent of the House of Representatives.

The Chair calls the attention of the Members to the language appearing in Cannon's Precedents on page 686 of volume 7, section 1694, in which Mr. Tilson of Connecticut was in the Chair, and made a very similar ruling "that a change in policy can be made by the failure of Congress to appropriate for an authorized project." Therefore the point of order is overruled.

Restriction Not on Funds But on Discretion

§ 51.18 While it is in order on a general appropriation bill to limit the availability of funds therein for part of an authorized purpose while appropriating for the remainder of it, language which restricts not the funds but the discretionary authority of a federal official administering those funds may be ruled out as legislation (see 7 Cannon's Precedents § 1673).

On June 21, 1974,[19] during consideration of H.R. 15472 (Agriculture Department, environment, and consumer appropriation bill), a point of order was sustained against the following paragraph in the bill:

The Clerk read as follows:

$305,000, the amount of the budget request, is hereby appropriated for the purpose of collecting line-of-business data, as approved by General Accounting Office Opinion B–180229, issued May 13, 1974, from not to exceed 250 firms, including data presently made available to the Bureau of the Census, the Securities and Exchange Commission and other government agencies where authorized by law. . . .

MR. [JOHN] MELCHER [of Montana]: Mr. Chairman, rule 21, clause 2, clearly provides that no appropriation bill shall contain any provision changing existing law. The language on page 47, beginning at the word "data," on lines 8 through 12, clearly violates this rule in that it significantly alters the effective provisions of section 409(a) of Public Law 93–153—an act dealing with the trans-Alaska oil pipeline.

The purpose of section 409(a) of Public Law 93–153 is to preserve the independence of the regulatory agencies to carry out the quasi-judicial functions which have been entrusted to them by the Congress. We did not intend a broad proliferation of detailed questionnaires to industry and businesses which would result in unnecessary and unreasonable expense, but the provisions of H.R. 15472, which are the subject of my point of order, make substantive changes and place arbitrary limitations on the procedures prescribed by Public Law 93–153.

Mr. Chairman, as you know, in construing the provisions of an appropriation bill, if the intent is to restrict executive discretion to a degree that may be fairly termed a change in policy rather than a matter of administrative detail, then the point of order should be sustained. This provision of H.R.

19. 120 CONG. REC. 20600, 93d Cong. 2d Sess.

15472 not only restricts executive discretion by its specific terms, but it has the effect of changing existing law in violation of rule 21, clause 2.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, may I now concede the point of order and offer my amendment?

THE CHAIRMAN:[20] The gentleman concedes the point of order.

The point of order is sustained.

Double Negative Curtailing Discretion Requiring Affirmative Action

§ 51.19 Where existing law directed a federal official to provide for the sale of certain government property to private organizations in "necessary" amounts, but did not require that all such property shall be distributed by sale, an amendment to a general appropriation bill providing that no such property shall be withheld from distribution from qualifying purchasers was ruled out as legislation requiring disposal of all property and restricting discretionary authority to determine "necessary" amounts and not constituting (as required by the Holman rule) a certain retrenchment of funds in the bill.

On Aug. 7, 1978,[1] during consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 13635), a point of order was sustained against the following amendment:

The Clerk read as follows:

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

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

MR. [ABNER J.] MIKVA [of Illinois]: Mr. Chairman, I make a point of order on the amendment on the ground that I believe that it is legislation within a general appropriation bill and, therefore, violates the rules of the House. . . .

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

20. Sam Gibbons (Fla.).

1. 124 CONG. REC. 24707, 24708, 95th Cong. 2d Sess.

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

First. It must be germane;

Second. It must be negative in nature;

Third. It must show retrenchment on its face;

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

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

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

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

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

Regulations issued AR 725–1 and AR 920–20 provide for the issuance of arms by application and qualification through the Director of Civilian Marksmanship. The DCM shall then submit sale orders for the Armament Readiness Military Command (ARCOM) 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 lose 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:[2] 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.

Agency Required to Furnish Information to Subcommittees

§ 51.20 Where existing law (7 USC § 12(e)) requires the Commodities Exchange Commission to furnish to committees of Congress upon request certain information relating to commodities traders, an amendment to a general appropriation bill prohibiting the use of funds therein for denial by that commission of requests by congressional committees and subcommittees of any information (including but not limited to that specifically required to be furnished by law) was held to be legislation, being an interference with the discretion of executive officials with respect to responses to broader categories of requests.

On July 29, 1980,[3] an amendment to a general appropriation bill prohibiting the use of funds for the Commodity Futures Trading Commission to deny to congressional committees and subcommittees, acting within their jurisdiction, any information and data, including that described in section 8 of the Commodity Exchange Act, requested by such committees or subcommittees, was held to be legislation, since section 8 of that act only required certain specified information to be submitted to full committees, and not to subcommittees. The proceedings were as follows:

The Clerk read as follows:

Amendment offered by Mr. [Benjamin S.] Rosenthal [of New York]: On page 49, line 9, after the "period" add the following:

"No part of the funds appropriated herein shall be used by the Commission to deny to committees and subcommittees of the House of Representatives or of the Senate, acting within the scope of their jurisdiction,

2. Daniel D. Rostenkowski (Ill.).

3. 126 CONG. REC. 20098–100, 96th Cong. 2d Sess.

> any information and data in the Commission's possession (including that described in section 8 of the Commodity Exchange Act) requested by such committee or subcommittee."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I reserve a point of order against the amendment. . . .

THE CHAIRMAN:[4] Does the gentleman from Mississippi (Mr. Whitten) insist on his point of order?

MR. WHITTEN: I do insist on my point of order. . . .

Here is what the law says, if I may read it:

> Upon the request of any committee of either House of Congress, acting within the scope of its jurisdiction. . . .

So the law clearly says "any committee."

I turn to Webster's dictionary where it says that a subcommittee is, by definition, "an under committee," "a part or a division of a committee."

So while the subcommittee may have a great desire, a great need, to have the information, the law makes it available to the committee, and a subcommittee frequently is—and even usually is—greatly outnumbered by the full committee.

I respectfully submit that this provision would be subject to a point of order because it gives authority that does not exist in law or prohibits the use of that which is preempted by law. . . .

MR. ROSENTHAL: . . . I think, in practical terms, the position espoused by the distinguished chairman of the committee would make it totally unworkable for any investigative committee albeit any subcommittee here in the Congress, to do its work.

What happens in the beginning in the Committee on Government Operations, the committee meets and assigns general areas and investigative jurisdiction to each of the subcommittees, covering four, five, six or seven various agencies, and in those rules of the Committee on Government Operations it invests the subcommittee with the full authority that the House has given to the full committee. . . .

Now, the statute clearly says, section 11:

> The CFTC shall give to the committee all the information they have.

So the only question, the narrowly defined question, is whether the subcommittee is the repository of any statutory authority that the full committee has.

Let me read to this body, and I really reluctantly burden my colleagues with this, but I think it is relevant and important to read what the court held in *Barenblatt* v. *United States* (240 F.2d 75, 1957): The U.S. Court of Appeals for the District of Columbia decided that a witness' refusal to answer questions before a subcommittee and pertinent to a subcommittee's investigation, violated the title 2, United States Code, section 192, which provides for criminal sanction against persons who, having been summoned, "refuse to answer questions before . . . any committee of either House of Congress."

We have the exact language—"before . . . any committee of either House of Congress."

4. James C. Corman (Calif.).

A unanimous court held as follows:

> It is also contended that the indictment is fatally defective in that it alleges a refusal to answer questions before a subcommittee of a committee, and that Congress did not intend to make it a crime to refuse to answer questions of a subcommittee. . . . We disagree. Nothing has been shown which reflects that Congress has indicated such belief. We only construe the statute in light of the obvious purpose for its enactment. That purpose was to discourage the impairment of the vital investigative function of Congress. The function Congress sought to protect is as often committed to subcommittees as it is to full committees of Congress, as indeed it must be. Construing the statute in a manner consistent with its obvious purpose . . . we hold that Congress intended the word "committee" in its generic sense, which would include subcommittees.

There are dozens of decisions along the very same lines. . . .

THE CHAIRMAN: The Chair believes [that the point of order is correct as to] the use of funds to deny submission of information to the subcommittee, but more importantly that the information to be submitted in the amendment is much broader than the information defined in the statute 7 U.S.C. section 12(e). The point of order is sustained.

§ 51.21 Where existing law (7 USC § 12(e)) requires an agency to furnish certain information to congressional committees upon request, it is not in order on a general appropriation bill to make funds for that agency contingent upon its furnishing information upon request to subcommittees.

On July 30, 1980,[5] an amendment to a general appropriation bill prohibiting the use of funds for the Commodity Futures Trading Commission to deny congressional subcommittees, acting at the direction and as an agent of the full committee, certain information required by the Commodity Exchange Act to be submitted to a congressional committee upon request, was held to be legislation, in the absence of a conclusive showing by the proponent of the amendment that changing the specific language of the Commodity Exchange Act requirement to cover requests by subcommittees as well as committees, did not change existing law. The proceedings were as follows:

> Amendment offered by Mr. [Benjamin S.] Rosenthal [of New York]: On page 49, line 9, after the "period" add the following:
>
> "No part of the funds appropriated herein shall be used by the Commission to deny to subcommittees of the House of Representatives or of the Senate, acting at the direction of and as an agent of a full committee, any information in the possession of the Commission relating to the amount of

5. 126 CONG. REC. 20475, 20476, 96th Cong. 2d Sess.

commodities purchased or sold by such trader as provided by Sec. 8(e) of the Commodity Exchange Act to be made available to any committee of either House of Congress acting within the scope of its jurisdiction.". . .

MR. [THOMAS S.] FOLEY [of Washington]: . . . I make a point of order against the amendment in that it constitutes legislation on an appropriations bill. The amendment of the gentleman from New York does not track the statute which sets out specific conditions under which information may be required of the Commodity Futures Trade Commission.

Mr. Chairman, the Commission is authorized to release information to any judicial body or congressional committee and is required to do so only at the request of a committee of the House of Representatives or the Senate. What the gentleman from New York seeks to do is to substitute an additional requirement that, when acting at the direction and as an agent of the committee, a subcommittee may request such information.

Mr. Chairman, all subcommittees act at the direction of and as agents of full committees or they do not act properly because they are creatures of full committees. This in fact does not change the situation that a subcommittee is a subcommittee and not a full committee. It requires an additional limitation on an appropriation other than a limitation of funds and constitutes a violation of the rule against legislation on appropriation bill. . . .

MR. ROSENTHAL: . . .

Mr. Chairman, I respectfully would like to bring to the attention of the Chair page 342 of Deschler's Procedures, section 10.9:

> While it is not in order in an appropriation bill, under the guise of a limitation, to impose additional burdens and duties on an executive of the federal government, amendments requiring the recipients of funds carried in the bill to be in compliance [with] existing law have been permitted, on the theory that the concerned federal officials are already under an obligation to oversee the enforcement of existing law and are thus burdened by no additional duties by the amendment. . . .

Additionally section 10.13 reads as follows:

> An amendment prohibiting the payment of expenses from funds in an appropriation bill, and containing language descriptive of the persons to whom the restriction applied, was held in order as a limitation on the use of funds in that bill which did not directly impose affirmative duties upon executive officials. 120 Cong. Rec. 21046, 93d Cong., 2d Sess., June 25, 1974 (H.R. 15544, Treasury, Postal Service, and executive office appropriations, fiscal 1975), where an amendment providing that "no funds shall be expended for persons during periods of their refusal to comply with valid congressional subpenas was held in order as a valid limitation which did not directly require executive officials to make determinations as to the validity of those subpenas. . . .

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

The Chair is confronted with the language of a specific statute, and the fact that the amendment deviates from the statute must have some effect, it would be assumed to expand the terms of the law absent a conclusive showing to the contrary and therefore it would be leg-

6. James C. Corman (Calif.).

islation on an appropriation bill, and the point of order is sustained.

Postal Rate Commission's Authority to Establish Rates; Interference With Discretion

§ 51.22 To a general appropriation bill containing funds for the postal service, an amendment to prohibit funds therein from being used to handle parcel post at less than attributable cost was ruled out as in violation of Rule XXI clause 2, when the proponent of the amendment failed to refute the point of order that its effect would directly interfere with the Postal Rate Commission's quasi-discretionary authority (contained in 39 USC § 3622, et seq.) to establish postal rates under guidelines in law.

On July 17, 1975,[7] during consideration in the Committee of the Whole of H.R. 8597 (Treasury Department, Postal Service, and general government appropriation bill), a point of order was sustained against the following amendment:

MRS. [MILLICENT] FENWICK [of New Jersey]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. Fenwick: Add a new section 613 on page 45, line 21: "None of the funds appropriated under this Act shall be available to permit Parcel Post to be handled at less than its attributable cost.". . .

MR. [TOM] STEED [of Oklahoma]: I insist on my point of order, Mr. Chairman. This amendment would have the effect of changing existing law. The Congress enacted the Postal Service Corporation bill and created the Rate Commission and delegated to the Rate Commission the sole and final authority on all postal rates. The impact of this amendment would be to limit and change that postal ratemaking power that is inherent in the law creating the Postal Corporation.

If the amendment here is permitted to prevail then all sorts of amendments affecting the operation of the Postal Service would be applicable and the whole purpose of the Postal Service Corporation law would be destroyed. So I think it is very imperative since this does change the law and the powers invested in the Rate Commission that we hold it is obviously legislation on an appropriation bill. . . .

THE CHAIRMAN:[8] Permit the Chair to direct a question to the gentleman from Oklahoma.

Is the gentleman's position such that in his opinion this amounts to a change in law? Would the gentleman speak to that point?

MR. STEED: Yes. The sole authority to determine what will be charged for parcel post, whether it is more or less than cost, is vested in the Postal Rate

7. 121 CONG. REC. 23239, 94th Cong. 1st Sess.

8. B. F. Sisk (Calif.).

Commission and to accept this amendment here would limit that authority which would change the law which vests that total power in that Commission. So it would require an action on the part not only of the ratemaking Commission but the Postmaster General in that he does not now have to abide by this sort of demand.

The whole purpose of the corporation was to take the power to do that sort of thing out of Congress and leave it in the Postal Corporation for the postal rate commitment.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Oklahoma makes a point of order against the amendment offered by the gentlewoman from New Jersey dealing with the availability of funds in connection with the matter of parcel post where the Postal Service permits parcel post to be handled at less than attributable costs.

The Chair feels that the point of order made by the gentleman from Oklahoma to the effect that, in essence, this changes basic law, must be sustained in light of the fact that the Chair does not feel that the gentlewoman from New Jersey has made a sufficient case that it would be otherwise.

Therefore, the Chair is constrained to sustain the point of order.

Timing of Expenditures

§ 51.23 An amendment to a general appropriation bill, providing that "no amount in excess of 20 percent of any appropriation contained in this Act for any agency for any fiscal year may be obligated by such agency during the last two months of such fiscal year" was ruled out as legislation restricting a discretionary authority conferred by law, since 31 USC § 665(c)(3) specifically confers discretionary authority on the Office of Management and Budget to determine the time frame for distribution of funds within the total period for which appropriated.

On June 25, 1980,[9] the Chair[10] applied the principle that it is not in order on a general appropriation bill, even by language in the form of a limitation, to restrict the discretionary authority conferred by law to adminster expenditures (rather than the use or amount of appropriated funds) including discretion as to the percentage of the funds which may be apportioned for expenditure within a certain period of time. The amendment, against which a point of order was raised, stated:

> Amendment offered by Mr. [Herbert E.] Harris [II, of Virginia]: Page 30, after line 12, insert the following:
>
> Sec. 503. No amount in excess of 20 percent of any appropriation contained in this Act for any agency for any fiscal year may be obligated by such agency during the last two months of such fiscal year. . . .

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9. 126 CONG. REC. 16815–17, 96th Cong. 2d Sess. Under consideration was H.R. 7590, energy and water development appropriations for 1981.

10. Philip R. Sharp (Ind.).

Mr. [JOHN T.] MYERS of Indiana: . . . Mr. Chairman, I make a point of order against the amendment on the grounds that it would be legislation on a general appropriations bill, and therefore violates rule XXI, clause 2.

Although the amendment uses the words "No amount," it is not a limitation in the accepted sense, that is, a refusal by Congress to appropriate for a specified purpose.

The effect of the amendment is a positive direction to the Executive, which is not in order under the precedents.

In addition, Mr. Chairman, the gentleman's amendment is not in order because the amendment proposes to change the application of existing law and is therefore legislation in an appropriation bill and is in violation of clause 2, rule XXI.

The gentleman's amendment provides that not more than 20 percent of the total appropriation made available for any agency for any fiscal year under the act may be obligated during the last 2 months of such fiscal year. Section 665(c)(3) of title 31 of the United States Code states the following:

> (3) Any appropriation subject to apportionment shall be distributed by months, calendar quarters, operating seasons, or other time periods, or by activities, functions, projects, or objects, or by a combination thereof, as may be deemed appropriate by the officers designated in subsection (d) of this section to make apportionments and reapportionments. Except as otherwise specified by the officer making the apportionment, amounts so apportioned shall remain available for obligation, in accordance with the terms of the appropriation, on a cumulative basis unless reapportioned.

The key phrase in this quote is:

> Any appropriation subject to apportionment shall be distributed . . . as may be deemed appropriate by the officers designated in subsection (d) of this section to make apportionments and reapportionments.

This phrase allows the agency budget officers discretionary authority to apportion the appropriations received each year in a manner that he deems appropriate considering the unique financial requirements of his particular agency. The gentleman's amendment deletes this discretionary authority by prohibiting him from obligating more than 20 percent of his appropriations during the last 2 months of the fiscal year. This obviously changes the application of existing law and is in violation of the House rules. Mr. Chairman, in chapter 26, section 1.8 of Deschler's Procedures, the following is stated:

> The provision of the rule forbidding in any general appropriation bill a "provision changing existing law" is construed to mean the enactment of law where none exists, or a proposition for repeal of existing law. Existing law may be repeated verbatim in an appropriation bill, but the slightest change of the text causes it to be ruled out. . . .

MR. HARRIS: . . . It is a fact that this amendment is a limitation amendment. It is clear and it is not confusing. It is like many other amendments that we have looked at before in this House.

> No amount in excess of 20 percent of any appropriation contained in this Act for any agency for any fiscal year may be obligated for such agen-

cy during the last two months of such fiscal year.

Mr. Chairman, what we have to look to on a limitation bill is the rules, and I would refer to chapter 25, section 10.6 of Deschler, which states, with regard to H.R. 11612, in the 91st Congress, 1st session:

> An amendment to a general appropriation bill which is strictly limited to funds appropriated in the bill, and which is negative and restrictive in character and prohibits certain uses of the funds, is in order as a limitation even though its imposition will change the present distribution of funds and require incidental duties on the part of those administering the funds.

Clearly, that is precisely what this language does, and I rely very strongly upon Deschler's, chapter 25, section 10.6. . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Indiana (Mr. Myers) makes the point of order that the amendment offered by the gentleman from Virginia (Mr. Harris) constitutes legislation on an appropriation bill in violation of clause 2, rule XXI, by prohibiting the incurring of obligations of any funds appropriated in the bill in excess of 20 percent of the total amount appropriated in the last 2 months of availability of those funds.

The Chair has examined existing law (31 U.S.C. 665(c)(3)) with respect to distribution of appropriations. The Chair interprets this law to confer discretionary authority upon the Office of Management and Budget, and thereby upon the agency incurring the actual obligation, to determine the most appropriate time frame for the distribution of funds within the period of availability for which appropriated.

Under the precedents of the House cited on page 532 of the House Rules and Manual, it is not in order on a general appropriation bill to affirmatively take away a discretionary authority conferred by law. Because the pending amendment could conceivably restrict the specific authority conferred by existing law upon contracting officers to incur obligations at the time deemed most appropriate by them the Chair must sustain the point of order.

Parliamentarian's Note: On July 28, 1980,[11] the Chair made a comparable ruling on a similar amendment, but based the ruling on a burden of proof test, upon a determination that the June 25, 1980, ruling, in its characterization of the extent of discretionary authority conferred upon recipient agencies by the statute, was unnecessarily broad.

§ 52. Provisions as Imposing New Duties

This section discusses those issues raised when a purported limitation either directly or indirectly requires a federal official to perform duties which are arguably not required of him under the existing laws pertaining to his office.[12]

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11. See § 22.26, supra.

12. As to the effect of provisions imposing additional duties on persons who are not federal officials, see Sec. 53, infra.