Congress, 2d session, insofar as it does specify that the ineligibility would apply to an individual who was the principal wage earner of a household, that it applies to one who is determined to be a member of a labor organization which is on strike, and it further requires, in order to be carried out, a determination whether that individual in the household, or any of its members, is subject to an employer's lockout.

In the opinion of the Chair, the amendment does, therefore, impose additional duties upon a Federal official who is not merely the recipient of information—going beyond language that was held in order in previous Congresses and, therefore, does amount to legislation on an appropriation bill. Therefore, the Chair sustains the point of order.

Parliamentarian's Note: In the 1972 ruling referred to above, an amendment to a general appropriation bill prohibiting the use of funds in the bill for making food stamps available during a strike to a household "which needs assistance solely because any member of such household is a participant in such strike" was held in order as a valid limitation.[19] Although the Chair tried to distinguish the 1972 ruling, the 1977 precedent above should be considered as effectively overruling the earlier decision. The amendment at issue in 1972 would be viewed in the current practice as requiring new determinations by executive officials, such as whether, for example, a household needed assistance "solely" because a member of the household was participating in a strike.

§ 53.—Duties Imposed on Nonfederal Officials or Parties

It has been seen that the inclusion in an appropriation bill of language that imposes new duties, not authorized in law, on federal officials is subject to the point of order that such language is impermissible legislation.[20] A more difficult question arises where language seems to impose new duties on nonfederal officials or on private individuals. Whether the mere imposition of certain duties on such parties, without more, constitutes an impermissible attempt to legislate, does not clearly emerge from the precedents. Many cases which seem to decide the question appear, on closer analysis, to turn on somewhat different issues, express or implied; perhaps such cases can be better understood if they are analyzed in terms of certain issues that were

19. 118 CONG. REC. 23364, 92d Cong. 2d Sess., June 29, 1972 [under consideration was H.R. 15690].

20. See § 52, supra.

implied or assumed in the debate, even if the final ruling was not expressly based thereon. The purpose of this section is to address these implied issues and to address the apparent inconsistencies in the precedents, and to suggest guidelines for future decisions.

It will be noted that, in several precedents that involve local officials and address the issue directly, the assumption is made in the debate and in the ruling that the test of whether the language in question is permissible is whether it seeks to impose duties on officials who are in fact "federal."[1] In some precedents of this kind, an attempt is made to endow a local official or private person with status as a "federal" official by virtue of his role in receiving, disbursing, or administering federal funds or otherwise participating in some manner in the federal program under discussion. If such entity can in fact be seen as having federal status, the resolution of the issues becomes easier because the rulings discussed above[2] are directly applicable.

Attempts to impose duties on local officials not having the status of direct or indirect beneficiaries would in some cases "change existing law" by violating fundamental division between state and federal authority. In most cases, the "local officials" arguably have the status of direct or indirect beneficiaries of federal funding programs. The question then arises of the applicability of the many precedents indicating that "limitations" are allowed which seek only to require such beneficiaries to undertake certain actions or fulfill certain requirements as a condition to receiving the benefits of the federal funds. Such provisions, if they do no more than to describe the qualifications of persons who are to benefit from federal funds, are frequently allowed in appropriation bills.

The fundamental issue to be addressed in many cases is not the status, federal or local, of the official on whom duties are imposed but whether the imposition of the duties violates some substantive legislative intent, already existing, with respect to the division between local or state and federal roles in the administering of federal funds. It should be noted here that in one instance,[3] the argu-

1. See §§ 53.4 and 53.5, infra; and see the ruling of June 23, 1971, discussed in the "Note on Contrary Rulings" which follows § 53.6, infra.

2. § 52, supra.

3. See the comments in the "Note on Contrary Rulings," following § 53.6, infra, with respect to the proceedings of Oct. 14, 1965.

ment was made in support of a point of order, that issues involved in the provisions of the appropriation bill in question had in fact been considered in committee as part of the process of devising the authorizing legislation, and the substance of the language in the appropriation bill had been rejected. In that instance, the Chair overruled the point of order, thereby rejecting the suggestion that the provisons of the appropriation bill were matters of substantive legislation. In the current status of rulings on the subject, however, the Chair would probably be more likely to consider evidence that the subject matter of proposed language either was in fact taken into consideration during the deliberations of a legislative committee, or is the type of substantive issue which should be addressed by such a committee.

In any event, it would appear useful in future rulings on the issues raised in this section, to focus attention less on the fact that officials on whom duties are sought to be imposed are "local" and inquire instead whether such imposition of duties violates the intent of existing law with respect to a substantive plan for a division of state and federal responsibility, taking the purposes of existing legislation into account. If not, the issue would then be whether the language in question constituted a permissible or impermissible attempt to attach conditions to be met by prospective direct or indirect beneficiaries of funds before they become entitled to the benefits of the funds.

Affirmative Directive to Nonfederal Recipient of Funds

§ 53.1 An amendment to an appropriation bill in the form of a limitation, allowing the use of funds only if certain actions are taken by nonfederal institutions, was held to be legislation and not in order.

On Feb. 14, 1936,[4] the Committee of the Whole was considering H.R. 11035, a War Department appropriation bill. At one point the Clerk read as follows:

> For the procurement, maintenance, and issue, under such regulations as may be prescribed by the Secretary of War, to institutions at which one or more units of the Reserve Officers' Training Corps are maintained [of supplies, etc.]. . . .
>
> MR. [FRED] BEIRMANN [of Iowa]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Biermann: On page 59, line 6, after

4. 80 CONG. REC. 2091–94, 74th Cong. 2d Sess.

the words "corps", insert "*Provided further,* That none of the funds appropriated in this act shall be used for or toward the support of military training courses in any civil school or college the authorities of which choose to maintain such courses on a compulsory basis, unless the authorities of such institutions provide, and make known to all prospective students by duly published regulations, arrangements for the unconditional exemption from such military courses, and without penalty, for any and all students who prefer not to participate in such military courses because of convictions conscientiously held, whether religious, ethical, social, or educational, though nothing herein shall be construed as applying to essentially military schools or colleges."

MR. [TILMAN B.] PARKS [of Arkansas]: Mr. Chairman, I make the point of order that the amendment is legislation on an appropriation bill and is in no sense a limitation. . . .

MR. BIERMANN: Mr. Chairman, the purpose of this amendment is to make an exception of the compulsory feature of this military training for those students who have a genuine conscientious scruple against taking military training. The amendment is of the same piece of cloth as the amendment of the gentleman from New York [Mr. Marcantonio], which has been ruled in order many times in this House.

THE CHAIRMAN:[5] The Chair is ready to rule. The first part of the amendment offered by the gentleman from Iowa is very much the same as the amendment offered by the gentleman from New York [Mr. Marcantonio], but there is further language in the amendment offered by the gentleman from Iowa which involves legislation which is as follows:

> That unless the authorities of such institutions provide and make known to all prospective students by duly published regulation—

And so forth. That is an affirmative command and direction to the officers of the institution. The Chair thinks the amendment is not in order because it provides legislation on an appropriation bill, and, therefore, sustains the point of order.

Parliamentarian's Note: The Chair in this instance attached importance to the fact that the amendment gave an "affirmative" directive to school authorities and not on the determinations which would be required on the federal officials allotting the funds to the institutions. This raises a question whether merely negative language, a denial of funds to schools which do not exempt students as described or publish the specified information, would have been permitted. It can be argued even in that case that such exemption of students and publication of information are matters that more properly belong to the substantive legislation. On the other hand, if it can be said that such exemptions from military service or courses are already mandated by law, so that the condition imposed on the schools is merely one of publishing information about students' legal rights, and carrying

5. Claude V. Parsons (Ill.).

out ministerial duties to fulfill the law's requirements, then the case would be similar to that in the ruling of June 24, 1969 (discussed in the "Note on Contrary Rulings," following § 53.6, infra), in which the conditional language permitted by the Chair merely required institutions to be in compliance with law.

Restricting Funds to Farmers Unless They Agree to Use Funds in Certain Way

§ 53.2 To a paragraph of an appropriation bill making appropriations for soil conservation payments, an amendment providing that no payment in excess of $1,000 shall be paid to any one person or corporation unless at least one-half of the amounts so paid shall be paid to sharecroppers or renters of farms for which payments are made was held to be legislation and not in order, in that, under the guise of a limitation it provided affirmative directions that imposed new duties.

On Mar. 28, 1939,[6] the Committee of the Whole was considering H.R. 5269, an Agriculture Department appropriation bill. The Clerk read as follows:

> Amendment offered by Mr. (Francis H.) Case of South Dakota: Page 89, line 9, after the colon, insert "*Provided further,* That of the funds in this paragraph no payment in excess of $1,000 shall be paid for any one farm operated by one person: *Provided further,* That no payment in excess of $1,000 shall be paid to any one person or corporation unless at least one-half of the amounts so paid shall be paid to sharecroppers or renters of farms for which payments are made." . . .
>
> MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make the point of order against the amendment proposed by the gentleman from South Dakota that it is legislation under the guise of a limitation. . . .
>
> MR. CASE of South Dakota: Mr. Chairman, this amendment is a limitation on payments; and in the present instance one would have to turn from the gentleman from Missouri as chairman of the subcommittee to the gentleman from Missouri as parliamentarian.The Chair will find the following on page 62 of Cannon's Procedure:
>
> > As an appropriation bill may deny an appropriation for a purpose authorized by law, so it may by limitation prohibit the use of money for part of the purpose while appropriating for the remainder of it. It may not legislate as to qualifications of recipients, but may specify that no part shall go to recipients lacking certain qualifications.
>
> In this particular instance the qualification is set up for the landlord that he shall give at least half this payment to his sharecropper or renter. Viewed

6. 84 CONG. REC. 3427, 3428, 76th Cong. 1st Sess.

in this light I believe the Chair will find it is a pure limitation.

MR. CANNON of Missouri: Mr. Chairman, the proposed amendment couples with the purported limitation affirmative directions and is legislation in the guise of a limitation.

THE CHAIRMAN:[7] Cannon's Precedents, page 667, volume 7, 1936, section 1672, states:

> An amendment may not under guise of limitation provide affirmative directions which impose new duties.

The last part of the pending amendment states:

> Unless at least one-half of the amount so paid shall be paid to these croppers or renters of farms for which payments are made.

It is the opinion of the Chair that this requires affirmative action; therefore the point of order is sustained.

Restricting Funds for Construction Within a State Unless Governor Approves

§ 53.3 An amendment to the Department of Interior appropriation bill providing that none of the funds therein may be used for the purchase of material for new construction of electrical generating equipment in any state unless approved by the Governor or board having jurisdiction over such matters, was held to be legislation on an appropriation bill and not in order.

On Mar. 30, 1949,[8] during consideration in the Committee of the Whole of the Department of the Interior appropriation bill (H.R. 3838), a point of order was raised against the following amendment:

The Clerk read as follows:

> Amendment offered by Mr. [Ben F.] Jensen [of Iowa]: On page 43, line 3, insert: "None of the funds herein appropriated may be used for the purchase of material for the beginning of any new construction of electrical generating equipment, transmission lines, or related facilities in any State unless approved by the governor, by the board, or commission of the respective States having jurisdiction over such matters."

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I make a point of order against the amendment on the ground that it is clearly legislation on an appropriation bill.

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

MR. JENSEN: IF THE CHAIR PLEASES; YES.

THE CHAIRMAN: The Chair will hear the gentleman, briefly.

MR. JENSEN: Mr. Chairman, again I contend, and I am sure rightly so, that my amendment is purely a limitation of appropriation. In many States there are State authorities which pass on such matters as this. They find it is

7. Wright Patman (Tex.).

8. 95 CONG. REC. 3530, 3531, 81st Cong. 1st Sess.

9. Jere Cooper (Tenn.).

good for the States because of the fact they do not want the Government of the United States to encroach on State rights. So this is in harmony with the programs which are carried on in many of the States at the present time. It is very important and I think for the welfare of this Nation. It is proper and is not legislation on an appropriation bill.

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

The Chair has examined the amendment and especially invites attention to the following language appearing in the amendment: "unless approved by the governor, by the board, or commission of the respective States having jurisdiction over such matters."

There can be no doubt but what that language would impose additional duties on the governor and the commission and would require affirmative action, therefore it constitutes legislation, and the Chair sustains the point of order.

Parliamentarian's Note: The more compelling ground for ruling the amendment above out of order is that the amendment was an improper attempt to interfere with the discretion or authority of federal officials, those actually involved in the decision-making process (such as the Bureau of Reclamation) with regard to projects which are part of a federal program. More precisely, the effect of the amendment was to limit the authority of federal officials, not the use of funds contained in the bill. Moreover, the provisions here in question may be regarded as an attempt to alter fundamental relations, already established in existing law, between state and federal entities. Viewed in this light, the ruling leaves open the question of whether an attempt to impose duties on state officials by establishing conditions to be fulfilled by prospective beneficiaries of federal funds is impermissible in an appropriation bill.

Determination Whether Life of Mother is at Risk as Prelude to Abortion

§ 53.4 A paragraph in a general appropriation bill prohibiting the use of funds in the bill to perform abortions except where the mother's life would be endangered if the fetus were carried to term was ruled out of order as legislation, since requiring federal officials to make new determinations and judgments not required by law as to the danger to the mother in each individual case.

The ruling of the Chair on June 17, 1977,[10] was that a provision in a general appropriation bill requiring new determinations by federal officials is legislation and

10. 123 CONG. REC. 19698, 19699, 95th Cong. 1st Sess.

subject to a point of order, regardless of whether or not private or state officials administering the federal funds in question routinely make such determinations.

THE CHAIRMAN:[11] When the Committee of the Whole rose on Thursday, June 16, 1977, the Clerk had read from section 209, line 2, on page 40.

Are there any amendments?

MR. [CLIFFORD R.] ALLEN [of Tennessee]: Mr. Chairman, I have a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. ALLEN: Mr. Chairman, I make a point of order against section 209 which states:

> None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

My point of order is simply that this is legislation in an appropriation act. Obviously and implicitly in this language is the duty on the part of some administrative agency, or on the part of whoever is going to disburse the funds, to ascertain from some physician that the life of the mother or the pregnant woman would be endangered if the fetus is carried to term. This is imposing an additional burden on whatever administrative agency has to carry out this task. On that basis I make a point of order that this is legislation in an appropriation act. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: . . . Mr. Chairman, I rise in opposition to the point of order.

The provision in question here is identical—I repeat for the purpose of emphasis, the provision in question is identical—to the provisions of Public Law 94–439, that is the Labor-HEW Appropriation Act for fiscal year 1977. It does not impose any additional burdens on any officer of the Federal Government. The determination as to whether the life of the mother is endangered would of course be made by a physician, but not a Federal official, and the physician would have to make that determination anyway whether or not this provision is in the bill, and any physician who is treating a woman seeking an abortion would have to make a judgment as to her state of health. . . .

MR. [ROBERT E.] BAUMAN (of Maryland): Mr. Chairman, in support of the argument presented by the gentleman from Pennsylvania, it should be noted by the Chair that medicaid funds which this section affects are administered by the States and not by the Federal Government.

In addition to that, the judgment required by section 209 would have to be made by private physicians who might be reimbursed, but it would be State officials who would be doing reimbursing with Federal funds, not Federal officials.

As the Chair knows, the imposition of additional duties on Federal officials, is a proper test of whether or not the language goes beyond a limitation. In this case it does not involve a judgment by a Federal official, only by a reimbursing State official on the certification in most cases by a private doctor. Therefore I do not believe it imposes any additional duties. It simply is a limitation on the manner in which the funds may be expended. . . .

11. Richard Bolling (Mo.).

MR. ALLEN:. . . [W]hile it is true that medicaid is generally and in most cases administered by State agencies, there are certain exceptions where the Federal Government actually supports clinics across the Nation. But beyond that, it would certainly be incumbent upon the Treasury Department, the auditors, and maybe the General Accounting Office to see to it that indeed the life of the mother whose abortion is paid for out of Federal funds was endangered, which would require certainly a certification or written opinion or opinion of some kind from some competent physician.

It seems to me clear that it is legislation in an Appropriation Act.

Now, the fact that it was in last year's Appropriation Act does not make it the law of the land. It was stricken down as unconstitutional by a Federal court already, that very language, and we are undertaking to reimpose it into this act after it has been held unconstitutional and the Department of HEW has instructed all of its agencies across the country to abide by the Federal court decision and not to deny any woman an abortion merely on the grounds that she is a welfare patient and unable to pay for the cost.

THE CHAIRMAN: The Chair is prepared to rule.

In the first place the fact that the same language was in an appropriation act last year gives it no immunity to the point of order.

The Chair would like to read the section. It is brief:

> Sec. 209. None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

Now, there is no limitation in that language to state the use of funds, nor is there any limitation in the language to medicaid.

The Chair, therefore, feels that the statement, which the Chair will read, is applicable and sound.

The gentleman from Tennessee has made a point of order against the language in the bill that the Chair has just read on the grounds it is legislation on an appropriation bill.

The language in question, section 209 of the bill, prohibits the use of funds in the act to perform abortions except where the life of the mother would be endangered if the fetus were carried to term. It is well established that a limitation is not in order on an appropriation bill if it requires new duties and determinations on the executive branch and requires investigations. Section 209 by its terms requires the Federal Government to determine, in each and every case where an abortion may be performed with Federal funds, whether the life of the mother was endangered. Whether or not such determinations are routinely made by practicing physicians on a voluntary basis, the language in the bill addresses determinations by the Federal Government and is not limited by its terms to determinations by individual physicians or by the respective States.

For the reasons stated, the Chair sustains the point of order.

§ 53.5 An amendment to a general appropriation bill prohibiting the use of funds in the bill to perform abortions, except where a physician has certified the abortion is nec-

essary to save the life of the mother, was ruled out as legislation since some of the physicians required to make such certification would be federal officials not required under existing law to make such determinations and judgments.

On June 17, 1977,[12] during consideration in the Committee of the Whole of H.R. 7555 (Departments of Labor, and Health, Education, and Welfare, and related agencies appropriation bill), a point of order was sustained against the following amendment:

MR. [HENRY J.] HYDE [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Hyde: On page 39, after line 23, add the following new section:

"Sec. 209. None of the funds appropriated under this Act shall be used to pay for abortions or to promote or encourage abortions, except where a physician has certified the abortion is necessary to save the life of the mother.". . .

MS. [ELIZABETH] HOLTZMAN [of New York]: Mr. Chairman, I make a point of order that the amendment, like the prior one, violates the rules of the House, inasmuch as it contains legislation on an appropriation bill. The duties that are imposed by this amendment on the executive branch would also apply to the care of a physician operating in Federal hospitals directly in the employ of the Federal Government. New duties would be imposed on them to make certifications in order to perform abortions. It seems to me that such duties could not be properly imposed in an appropriations bill. . . .

MR. HYDE: . . . Mr. Chairman, I think the well-settled rule that the limitation, if it does not impose a burden on a Federal official or impose a burden on the executive branch, is in order. I think this version of the amendment clearly says we are talking about a physician certifying the abortion as necessary. There is certainly no implication or hint that a member of the executive branch would have to exercise any judgment. . . .

MR. [CLIFFORD R.] ALLEN [of Tennessee]: . . . Mr. Chairman, the language contained in this substitute amendment is the same, in essence, as the original amendment. It does not state what physician or by whom the physician would be paid, but it does require the disbursing officer or the agency that is going to disburse these funds to first obtain a written certification from a physician before disbursing those funds. Thus, it imposes two additional duties; first, on some physician, perhaps a physician paid out of Federal funds or medicaid funds or medicare funds, or whatever, to make this determination. It is the same determination that the other original language carried. Then, in addition, it would require the disbursing officer to ascertain whether or not such a certification was made by a physician before he would be authorized to disburse any funds under this act. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, the language

12. 123 CONG. REC. 19699, 19700, 95th Cong. 1st Sess.

substantially changes the section previously before us in that it specifically requires determination by a non-Federal official. The argument advanced that someone in the employ of the Federal Government may have to issue a check or not issue a check for a certain amount is not apposite to this case, because it has been ruled many times that the application of any limitation on an appropriation bill requiring some minimal extra duty such as the disbursement of checks does not fall within a definition of a limitation that goes beyond the rules. . . .

I would again call to the attention of the Chair that the programs that this would affect, financed in this bill, are programs in which the Federal payments are disbursed by State agencies and State employees, and so the chain of action involved would be a private physician making a determination as to the physical state of the mother, and then informing a State official as to his right to reimbursement. Only after all of that procedure is gone through would a Federal official issue some sort of funding. So, I would think the amendment would be particularly in order as a proper limitation. . . .

MRS. [YVONNE B.] BURKE [of California]: Mr. Chairman, I would just like to answer the point raised by the gentleman from Maryland, who talked about the financial payments. The point of order was that there were direct agents, employees of the Federal Government, who would have to make this determination.

We have within this bill employees of public health services; we have military hospital personnel; we have particular provisions for many who are health personnel, who are directly paid by the Federal Government, many of whom are in administrative positions who would be required to make a determination; we have St. Elizabeths Hospital within this bill, and there are many provisions for direct Federal action. . . .

THE CHAIRMAN:[13] The Chair is ready to rule.

The gentlewoman from New York makes a point of order against the amendment offered by the gentleman from Illinois on the ground that it constitutes legislation in an appropriations bill. The amendment would prohibit funds in the bill to perform abortions except where the physician involved has certified that the life of the mother was in danger.

For the reasons stated by the Chair in the just previous ruling, and because the Chair is convinced by the argument of the gentlewoman from New York and the gentlewoman from California that some of the physicians affected by the amendment are Federal officials and would be required by the amendment to perform new duties and determinations not required of them by law, therefore the Chair sustains the point of order.

Requiring State Official to Make Determinations Not Required by Law

§ 53.6 An amendment to an appropriation bill prohibiting the use of funds therein for certain stream channelization projects unless the appropriate Governor con-

13. Richard Bolling (Mo.).

siders its environmental effects and certifies to the Secretary of Agriculture that such project is in the public interest was held to impose additional duties on an executive official not already required by existing law and was therefore ruled out in violation of Rule XXI clause 2.

On June 23, 1971,[14] during consideration in the Committee of the Whole of H.R. 9270 (Department of Agriculture and environmental and consumer protection appropriation bill) a point of order against the following amendment was sustained:

The Clerk read as follows:

Amendment offered by Mr. [Henry S.] Reuss [of Wisconsin]: On page 37, immediately after line 25, insert the following:

"No part of the funds appropriated by this Act shall be used for engineering or construction of any stream channelization measure under any program administered by the Secretary of Agriculture unless (1) such channelization is in a project a part of which was in the project construction stage before July 1, 1971; or (2) the Governor of the State in which the channelization is to be located certifies to the Secretary of Agriculture, after consideration of the environmental effects of such channelization, that such channelization is in the public interest."

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

I respectfully suggest, Mr. Chairman, that this language is not a limitation on an appropriation bill, but carries with it the requirements of certain duties by the Governors of the States for certain actions and certain determinations as to whether or not they can be properly made, and therefore brings them within the point of order, which I insist upon. . . .

MR. REUSS: . . . Mr. Chairman, the amendment I have offered is clearly and squarely within the precedents. It constitutes an appropriation limitation on an appropriation. The statement of the Chair reported in volume 7 of Cannon's Precedents at page 704, is squarely in point.

In that matter on May 21, 1918, an amendment was offered to the agriculture appropriation bill saying:

No part of this appropriation shall be available for any purpose unless there shall have been previously issued the proclamation by the President.

It then refers to the kind of proclamation that the President may offer.

Mr. William H. Stafford, of Wisconsin, who, incidentally, was my predecessor in my congressional district, made the point of order that the amendment was legislation, and hence out of order on an appropriation bill.

The Chair held:

A different principle from that of germaneness is involved in the point of order to this amendment. If the Chair understands the amendment it is intended as a limitation on the payment of any money under this

14. 117 CONG. REC. 21647, 21648, 92d Cong. 1st Sess.

> paragraph until the President has issued a certain indicated proclamation which in his discretion he may or may not issue. This amendment does not compel him to issue it, but so long as it is unissued the House does not propose, if the amendment is adopted, to allow the Agricultural Department to have the benefit of the appropriation in this paragraph. . . .
>
> This amendment does not compel the President to issue the proclamation referred to. He may issue it or refuse to issue it in his discretion. But the amendment in substance says to the Department of Agriculture: We propose to withhold from you the benefit of this appropriation during the full period of time during which this proclamation is unissued.

Mr. Chairman, this puts it on all fours with the amendment that I have offered, which leaves it to the Governor of the State to determine whether the channelization project proposed is in the public interest. It does not impose any duty on the Governor. If he acts under this, then the Secretary of Agriculture is governed by it, and there are no additional duties imposed upon the Secretary.

Mr. Chairman, to the same effect there are numerous other precedents cited. February 24, 1916 there is reported at page 651 of 7 Cannon's Precedents a ruling in which the Chair ruled in an almost identical matter that a requirement of a certification by patrons of a rural mail route was not legislation on an appropriation bill, but a permissible limitation. . . .

The Chairman:[15] The Chair is prepared to rule.

The gentleman from Wisconsin has offered an amendment against which the gentleman from Mississippi makes the point of order that it constitutes legislation on an appropriation bill and, therefore, for that reason is in violation of clause 2, rule XXI.

The amendment provides that none of the funds appropriated in the act should be used for stream channelization by the Secretary of Agriculture unless the Governor of the State where the channel is to be located considers its environmental effect and certifies to the Secretary that such channelization is in the public interest.

The question involved is whether or not the amendment seeks to impose additional duties upon an executive or to require from that executive an additional certification not previously authorized in existing law; if it does so, it constitutes legislation under the precedents.

The Chair has examined the precedent cited by the gentleman from Wisconsin which arose on May 12, 1918. There is some similarity except that the amendment offered on that occasion by the gentleman from California (Mr. Randall) would have provided that no part of the appropriation shall be available until a previously issued proclamation had been made, and following the word "proclamation" in the amendment offered on that occasion appear these words: "authorized by Section 15 of the Act of August 10, 1970."

Therefore, it appears to the Chair that the precedent cited by the gentleman from Wisconsin is distinguishable from the present case in that the proclamation required in that amendment was one that was already authorized under existing law.

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

The Chair is not aware that the certification and finding required of a Governor by the amendment offered by the gentleman from Wisconsin is required or authorized by existing law.

The Chair would refer the Committee to the decision by Chairman Jere Cooper, of Tennessee, on March 30, 1949, which the Chair regards to be more in point with the present situation. On that occasion an amendment was offered to the Department of Interior appropriation bill providing that none of the funds might be used for the purchase of certain materials and the beginning of certain new construction unless approved by the Governor or by a board or by a commission of the respective State.

On that occasion, Chairman Cooper held that this was legislation on an appropriation bill in that it required a determination and imposed a burden upon the Governor which did not previously exist.

The Chair feels that that decision would be controlling in this instance and, since the present amendment would impose additional duties not existing in present law, in violation of clause 2, rule XXI sustains the point of order.

Parliamentarian's Note: In several instances, described elsewhere,[16] the Chair and others have assumed that the test for determining whether provisions imposing new duties are legislative in nature, is whether the duties are imposed on federal or nonfederal officials. The view that was at least implied in those instances was that only where federal officials are given new substantial duties to perform does the imposition render the provision improper. In the 1971 ruling above, however, the Chair took the view that the conferral of new authority on a state official makes the provision subject to a point of order. The Chair apparently rejected the view that the state official in the present instance could be considered in some sense as having the standing of a direct or indirect beneficiary, so that the duties to be performed by him were merely those conditions he was required to fulfill to receive the benefit of the funds in question, and accordingly rejected Mr. Reuss' argument that nothing in the provision compelled the official to do anything. It is probably useful to consider this precedent as an example of an improper attempt to grant new authority to state officials, or of an attempt to change a policy affecting fundamental relations, already established in existing law, between state and federal entities. Nothing in the ruling, of course, is inconsistent with the principle that where a contingency is itself au-

16. See §§ 53.4 and 53.5, supra, and the ruling of June 23, 1971, which is discussed in the "Note on Contrary Rulings" below.

thorized, the contingency may be included in an appropriation bill.

Note on Contrary Rulings

As indicated above,[17] the precedents just discussed represent the line of authority that is in consonance with modern precedents. What follows is a discussion of some rulings, particularly earlier rulings, that seem to conflict in some degree with the principles stated in the precedents discussed above.

On June 27, 1952,[18] an amendment to a bill relating to housing projects was introduced for purposes of ensuring that certain types of projects would be approved by local officials. In response to a point of order, the Chair ruled that, to a general appropriation bill, an amendment providing that no part of an appropriation for defense housing could be used for administrative expenses or salaries of the Public Housing Administration, so long as that agency proceeded with certain types of projects not approved by local officials, was a proper limitation and therefore in order. The amendment would now probably be deemed a change in existing law, since the authorizing law relating to defense housing was in the nature of an open-ended directive to the President to build permanent housing around defense installations; no local approval of projects was required. It should also be noted with regard to this ruling that, although the Chair held the amendment to be germane, such ruling would now at least be arguable.

On Oct. 14, 1965,[19] the ruling of the Chair was that language in a supplemental appropriation bill providing funds for the rent-supplement program and specifying that "no part of the . . . appropriation or contract authority shall be used" in any project not part of a "workable program for community improvement" (as defined in the Housing Act of 1949), or which is without local official approval, was held to be a proper limitation and in order. The argument was made by Mr. Thomas L. Ashley, of Ohio, that the issues raised by the language in question "were the subject of discussion and, indeed, proposed amendments at the time the housing bill was debated and considered ear-

17. See the introduction to this section (§ 53), supra.

18. 98 CONG. REC. 8353, 82d Cong. 2d Sess. Under consideration was H.R. 8370, a supplemental appropriation bill.

19. 111 CONG. REC. 26994, 89th Cong. 1st Sess. Under consideration was H.R. 11588.

lier this year. The amendments which sought to accomplish the same objective were rejected." Thus, it would seem that the language in question was an example of an attempt to change the underlying purposes or policy of legislation, such policy having been duly considered. The Chair, however, apparently rejected Mr. Ashley's arguments and, in overruling a point of order against the language, noted that no additional duties were imposed on the administration by the proviso.

On Mar. 29, 1966,[20] the Chair ruled that language in a general appropriation bill providing funds for the National Teacher Corps, specifying that "none of these funds may be spent . . . prior to approval . . . by the state educational agency" was a proper limitation restricting the availability of funds and was therefore in order. Arguments that the Chair found persuasive were to the effect that, because of the conditional nature of the language, no additional duties were affirmatively required. The weight of authority at present, however, seems to be that the conditional nature of such language would not prevent a finding by the Chair that existing law is sought to be changed thereby.[1]

On June 11, 1968,[2] the Chair seemed to indicate that, although it is not in order by way of a limitation to impose new duties on an executive officer, it is permissible to make the payment of funds contingent upon the performance of certain obligations by private citizens or other persons not in the government's employ. For example, to a general appropriation bill, including funds for the Treasury Department, an amendment providing that none of the funds therein shall be used for any expense in connection with customs clearance or import licenses for rifles which are not registered with the Commissioner of Customs, was held to be a proper limitation and in order. In its ruling, the Chair stated, "The Chair . . . would interpret the amendment as not imposing any additional duties of a ministerial sort upon the Commissioner of Customs, but rather upon the importer or holder of the license." The ruling might thus be understood as an

20. 112 CONG. REC. 7118, 7119, 89th Cong. 2d Sess. H.R. 14012, a supplemental appropriation bill, was under consideration.

1. See, for example, §§ 47–50, supra, discussing appropriations subject to conditions.

2. 114 CONG. REC. 16712, 90th Cong. 2d Sess. Under consideration was H.R. 11734, a supplemental appropriation bill. See also § 52.5, supra.

example of the fine distinctions sometimes required between (1) cases in which legitimately imposed qualifications of potential recipients of benefits requiring federal expenditures might include certain initial actions to be taken by the potential recipients as part of the qualifying process, and (2) those cases in which requirements sought to be imposed in appropriation bills amount to legislative changes.

The qualifications of a nonfederal recipient of federal funds were also an issue in the ruling of June 24, 1969.[3] The Chair on that date ruled that, while an amendment under the guise of a limitation may not require affirmative action or additional duties on the part of federal officials, it is in order on a general appropriation to deny funds to a nonfederal recipient of a federal grant program unless the recipient is in compliance with a provision of federal law already applicable to it; for such a requirement places no new duties on a federal official (who is already charged with responsibility for enforcing the law) but only on the nonfederal grantee. The amendment in question stated that "none of the funds appropriated by this act for payments authorized by section 1705 of the Housing and Urban Development Act of 1968, shall be used to formulate or carry out any grant or loan to any institution of higher education unless such institution shall be in full compliance with section 504 of Public Law 90–575."[4]

On June 23, 1971,[5] the Chair indicated the applicable principle to be that, where language on an appropriation bill restricting the availability of funds therein for certain purposes or to certain recipients requires an executive official to determine the applicability of that restriction in a specific case, it must be shown that such official is not being called upon to perform substantial duties in addition to those required by law.

3. 115 CONG. REC. 17085, 91st Cong. 1st Sess. Under consideration was H.R. 12307, a general appropriation bill.

4. Section 504 of Pub. L. No. 90–575, which was concerned with eligibility for student assistance, stated in part that 'if an institution of higher education determines . . . that [an] individual has been convicted (of certain crimes) then the institution . . . shall deny . . . further payment . . . for the direct benefit of [the individual under the programs specified]."

5. 117 CONG. REC. 21671, 21672, 92d Cong. 1st Sess. Under consideration was H.R. 9270, agriculture, environmental, and consumer protection appropriations for fiscal 1972.

The ruling of the Chair in this instance was that an amendment to an appropriation bill prohibiting the use of funds in the bill for making food stamps available during a strike to a household "which needs assistance solely because any member of such household is a participant in such strike" was in order as a valid limitation which did not impose substantial affirmative duties on executive officials. As in the June 17, 1977, precedents,[6] the implied assumption in the discussion of the point of order on June 23, 1971, was that the test for allowing the amendment was whether or not it imposed additional duties on *federal* officials. The ruling supports the view that, where the conditions stated in an appropriation bill can be seen merely as those which prospective recipients or beneficiaries must fulfill in order to qualify as proper beneficiaries, the conditions will be allowed. (The Holman rule, mentioned in debate, is not strictly applicable here, since the question in applying the Holman rule is not whether the provision in question is legislative in nature; the question is whether a provision which is admittedly legislative in nature is to be permitted because it fulfills the precise requirements of the Holman rule exception to the general rule against legislation on appropriation bills.) It should also be noted with regard to this ruling that, during argument on the point of order, Mr. James G. O'Hara, of Michigan, argued that the official administering the program under the proposed amendment would have the additional burden of determining whether a potential recipient needed food stamps solely because a family member was on strike, or whether there were other reasons or motives for such action. The Chair apparently accepted the view of Mr. Robert H. Michel, of Illinois, that such a determination would be made by officials administering the program at the local level, who would certify that finding to the federal administrators. As noted elsewhere, however,[7] terms requiring definition, or terms which relate to motive, intent, and the like, when used in general appropriation bills or amendments thereto, frequently raise the presumption that the language of a proviso is legislative in nature.

In another case of interest on this subject, the Chair ruled on Jan. 31, 1941,[8] that an amend-

6. See §§ 53.4 and 53.5, supra.

7. See, for example, §§ 25.14 and 50, supra.

8. 87 CONG. REC. 448, 449, 77th Cong. 1st Sess. Under consideration was

ment forbidding payments or allowances for an operating differential subsidy as provided in the Merchant Marine Act of 1936, as amended, on any vessel unless the owners or operators of such subsidized vessels shall have filed with the U.S. Maritime Commission a certificate setting forth certain information relative to employees on such vessels, was a proper limitation and in order. The amendment, it should be noted, required extensive certifications by nonfederal recipients, not required by existing law. No argument was advanced that the reporting requirements were tantamount to a change in existing law.

In conclusion, it should be remembered that, while some rulings may suggest that it is permissible to make the payment of funds contingent upon the performance of certain acts or obligations by private citizens or other persons not in the federal government's employ, recent rulings indicate that it is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by a state or local government official or agency which is not otherwise required by existing law.[9]

H.R. 2788, an independent offices appropriation bill.

9. See, for example, the ruling at 131 CONG. REC. ——, 99th Cong. 1st Sess., July 25, 1985, during proceedings relating to H.R. 3038 (HUD, independent agencies appropriations for fiscal 1986).

§ 54. Judging Qualifications of Recipients

Past Employment of Heads of Departments

§ 54.1 An amendment providing that no part of an appropriation shall be paid to the head of any executive department who, within a specified period was a partner in a firm which derived any income from representing a foreign government, was held to be a proper limitation on an appropriation bill and in order.

On July 26, 1951,[10] the Committee of the Whole was considering H.R. 4740, a Departments of State, Justice, Commerce, and the Judiciary appropriation bill. The Clerk read as follows:

> Amendment offered by Mr. (John) Phillips (of California): On page 58, following line 14, add a new section to be numbered section 602:
>
> "None of the money appropriated in this act shall be paid to the head of any executive department who, within a period of 5 years preceding his appointment, was a partner in, or a

10. 97 CONG. REC. 8963, 8965, 82d Cong. 1st Sess.