§ 61. Education, Health, and Labor

Description of Eligibility for Education Funding; Prohibition on Busing in Order to Overcome Racial Imbalance

§ 61.1 An amendment to a general appropriation bill providing that no part of the funds therein may be used to force busing or attendance of students at a particular school in order to overcome racial imbalance as a condition precedent to obtaining federal funds was held to impose additional duties on federal officials and was ruled out as legislation.

On July 31, 1969,[2] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill [H.R. 13111), a point of order was raised against the following amendment:

> Amendments offered by Mr. [Silvio O.] Conte [of Massachusetts]: On page 56, line 11, strike lines 11 through 15 and insert the following:
>
> "Sec. 408. No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parent or parents, in order to overcome racial imbalance."
>
> And on page 56, line 16. Strike lines 16 through 20 and insert the following:
>
> "Sec. 409. No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school or the attendance of students at a particular school in order to overcome racial imbalance as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school."

Note: The provisions sought to be amended were as follows:

> "Sec. 408. No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parents or parent.
>
> "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. [ROBERT L. F.] SIKES [of Florida]: Mr. Chairman, I wish to make a point of order against the amendment.

THE CHAIRMAN:[3] The Chair will hear the gentleman.

MR. SIKES: Mr. Chairman, it appears to me that the rulings of the Chair heretofore on this bill this afternoon show clearly that this is legislation on an appropriation bill and not a simple

2. 115 CONG. REC. 21675, 91st Cong. 1st Sess.

3. Chet Holifield (Calif.).

limitation in that the language of the amendment will require someone in the executive department to determine whether busing is to overcome racial imbalance. Therefore, it imposes additional duties and as such I consider it to be legislation on an appropriation bill. The Chair has so ruled on a number of occasions on this bill to date.

THE CHAIRMAN: Does the gentleman from Massachusetts (Mr. Conte) care to be heard on the point of order?

MR. CONTE: I certainly do.

Mr. Chairman, I do not see where these amendments I have, which only change several words in order to overcome racial imbalance, and these are the words that I add, and that is the crucial term—I do not see where it gives the Department of Health, Education, and Welfare or its head or anyone under the Secretary any additional burdens that the present Jamie Whitten sections 408 or 409 do not. I think it is certainly a limitation on the expenditure of funds, and, therefore, the point of order should be overruled.

Further, I may say, Mr. Chairman, if a point of order would lie on this, it will certainly lie on sections 408 and 409, and I will offer such.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: Certainly.

MR. WHITTEN: Mr. Chairman, I would like to affirm the statement made by the gentleman from Florida (Mr. Sikes), with respect to the earlier ruling by the Chair this afternoon, this being the same factual situation. I submit it is clearly subject to a point of order and clearly in line with the earlier ruling of the Chair this afternoon.

THE CHAIRMAN: The Chair is prepared to rule. The Chair recognizes that this is a very difficult matter. The proposed amendment for section 408 is different from section 408 of the bill in that it has added the words "in order to overcome racial imbalance."

The Chair believes that this would impose duties upon officials which they do not have at the present time and, therefore, it is legislation on an appropriation bill. . . .

The additional words in the amendment to section 409 are "in order to overcome racial imbalance" and this clearly requires additional duties on the part of the officials. Therefore, it is not negative in nature and is legislation on an appropriation bill.

The Chair, therefore, sustains the point of order.

Parliamentarian's Note: See § 68.8, infra, where prohibition against use of funds to "force busing of students" was held in order on the same day as a limitation where new determinations of intent were not required.

Limiting Funds, Not Discretion

§ 61.2 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,[4] a point of order against the following provision was overruled:

> 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.

The proceedings of that date are discussed in § 51.10, supra.

Exception From Busing Limitation

§ 61.3 To provisions prohibiting the use of funds in the bill for purposes, in part, of promoting busing in school districts, amendments limiting the application of such provisions to school districts which are not formed on the basis of race or color were held in order as not imposing additional duties on the federal official administering the fund.

On Feb. 19, 1970,[5] the Committee of the Whole was considering H.R. 15931, a Departments of Labor, and Health, Education, and Welfare appropriation bill. The following proceedings took place:

> Amendments offered by Mr. [James G.] O'Hara [of Michigan]: On page 60, line 20 after the words "school district" insert "in which students are assigned to particular schools on the basis of geographic attendance areas drawn without consideration of the race or color of prospective students and in which personnel are assigned without regard to race or color" and on line 23 after the words "particular school" insert the words "other than his neighborhood school."

Parliamentarian's Note: The provision as sought to be amended is shown below, parentheses indicating the language inserted by the amendment:

> "§ 409. No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school or the attendance of students at a particular school (other than his neighborhood school) in order to overcome racial imbalance as a condition precedent to obtaining Federal funds otherwise available to any State, school district (in which students are assigned to particular schools on the basis of geographic attendance areas drawn without consideration of the race or color of prospective students and in which personnel are assigned without regard to race or color) or school."

MR. GERALD R. FORD [of Michigan]: Mr. Chairman, I reserve a point of order against the amendments as legislation on an appropriation bill. . . .

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4. 115 CONG. REC. 21677, 21678, 91st Cong. 1st Sess.

5. 116 CONG. REC. 4029, 91st Cong. 2d Sess.

But to refer to the point of order, as I read the language proposed in the amendment, it seems crystal clear to me that the language imposes on the executive branch additional burdens and consequently is contrary to the rules of the House as far as legislation on an appropriation bill is concerned. . . .

MR. O'HARA: . . . Mr. Chairman, the limitation is in sections 408 and 409. It is a bona fide limitation. All my amendment seeks to do is to prescribe with particularity the school districts to which the limitation in sections 408 and 409 will apply. . . .

MR. GERALD R. Ford: There is nothing in Federal law today which would authorize such action by the proper officials in the executive branch of the Government. This addition to the limitation in sections 408 and 409 does put additional burdens on the executive branch of the government to determine these kinds of school districts. It is perfectly obvious by the proposed language that it has to be done in each and every case. It is not authorized by law. It is a new burden. It is therefore legislation on an appropriation bill.

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

The Chair has had occasion to study both of the amendments and the language contained therein. It is clear to the Chair that the language relates to the limitations which are already a part of sections 408 and 409. It defines the limitations further by adding an additional definition to the limitations and in the opinion of the Chair is negative insofar as additional action is concerned on the ground that it really is a description of the school district as it exists at the present time. Therefore, the Chair is constrained to overrule the point of order.

6. Chet Holifield (Calif.).

Denying Education Funds Requiring Evaluation of Conduct; Imposing Condition Precedent to Funding

§ 61.4 To a general appropriation bill, an amendment providing that none of the funds therein may be used for financial assistance to students who have engaged in certain types of disruptive conduct, and including as a condition precedent to the termination of such assistance a requirement that the college or university at which such student is enrolled has initiated or completed a hearing procedure which is not dilatory, was held to impose additional duties on executive officers and was ruled out as legislation.

On July 31, 1969,[7] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 13111), the following proceedings took place:

7. 115 CONG. REC. 21631–33, 91st Cong. 1st Sess.

THE CHAIRMAN:[8] The Clerk will read.

The Clerk read as follows:

> Sec. 407. No part of the funds appropriated under this Act shall be used to provide a loan . . . a grant, the salary of or any remuneration whatever to any individual applying for admission, attending, employed by, teaching at, or doing research at an institution of higher education who has engaged in conduct on or after October 12, 1968, which involves the use of (or the assistance to others in the use of) force or the threat of force or the seizure of property under the control of an institution of higher education, to require or prevent the availability of certain curriculum, or to prevent the faculty, administrative officials, or students in such institution from engaging in their duties or pursuing their studies at such institution: *Provided*, That such limitation upon the use of money appropriated in this Act shall not apply to a particular individual until the appropriate institution of higher education at which such conduct occurred shall have had an opportunity to initiate or has completed such proceedings as it deems appropriate but which are not dilatory in order to determine whether such individual was involved in such conduct: *Provided further*, That none of the funds appropriated by this Act shall be used to formulate or carry out any grant or loan or interest subsidy to any institution of higher education other than to such institutions certifying to the Secretary of Health, Education, and Welfare at quarterly or semester intervals that they are in compliance with this provision.

MR. [OGDEN R.] REID of New York: Mr. Chairman, I have a point of order against section 407 of H.R. 13111, as it constitutes legislation on an appropriation bill.

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

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

MR. REID of New York: Mr. Chairman, I will.

Mr. Chairman, section 407 constitutes legislation on an appropriation bill, and, in my judgment, is inconsistent with rule XXI, section 843 of the Rules of the House of Representatives for the 91st Congress. While a straight limitation on an appropriation bill is in order, it is my understanding of rule XXI which I quote that—

> Such limitations must not give affirmative directions, and must not impose new duties upon an executive officer.

Specifically, Mr. Chairman, section 407 of the bill in my judgment imposes permanent new duties on the executive and requires as well a number of judgmental decisions not now required by law, which are complex and far reaching. . . .

Specifically, Mr. Chairman, following this language and keeping in mind rule XXI which prohibits limitations from giving affirmative directions or imposing new duties upon an executive officer, I ask the following questions:

One. Who is to determine whether proceedings are not dilatory?

Two. Who is to determine which institutions did not file certifications?

Three. Who, Mr. Chairman, is to determine and make the judgment as to whether the conduct involved the "threat of force" or the "assistance to others in the threat of force"?

Four. What constitutes "property under the control of an institution of higher education"? Does this involve rent, leasehold, or what?

8. Chet Holifield (Calif.).

Five. What constitutes requiring or preventing "the availability of certain curriculum"?

Put another way, Mr. Chairman, the statute requires that a judgment be made as to time, the character of the action involved, and the intent of those so involved.

Further as to the point of order, Mr. Chairman, under section 1706 of Cannon's Precedents, volume 7, I would quote briefly from the Chairman during the 1923 debate on a D.C. appropriation bill concerning the compensation of jurors. The Chairman asked, and I quote:

> Is (this limitation) accompanied by a phrase which might be construed to impose additional duties or permit an official to assume an intent to change existing law?
>
> Does the limitation curtail or extend, modify, or alter existing powers or duties, or terminate old or confer new ones? If it does, then it must be conceded that legislation is involved, for without legislation these results could not be accomplished.

The point of order in this instance against the provision was sustained. . . .

Likewise, Mr. Chairman, the new duties imposed on an executive officer in section 407 include: First, that he shall receive quarterly or semester certifications from institutions; second, that he shall determine which institutions failed to certify; third, that he shall terminate all aid to those institutions which failed to certify; and, fourth, that student funds are mandatorily to be cut off following the institution of certain proceedings.

These are, in my judgment, rather formidable new and affirmative duties—national in character.

Lastly, Mr. Chairman, the institution must initiate such proceedings as it deems appropriate to determine whether a student is involved in this conduct.

However, such proceedings must not be dilatory. What is not a matter of institutional determination is that which is or is not dilatory. Hence a Federal standard determined by Federal officials will be required.

MR. [ROBERT L. F.] SIKES [of Florida]: Mr. Chairman, I would like to be heard on the point of order. I rise in opposition to the point of order raised by the gentleman from New York.

Section 407 I feel should be held in order. It is a limitation. It is not legislation on an appropriation bill. It relates clearly to funds appropriated under this act and sets and establishes certain criteria to be met before the funds can be used. It does not force any institution to take any action. It simply requires that certain conditions be met if funds are to be obtained for loans and grants to students and teachers. If the institutions do not care to meet the requirements, they are not under any obligation to take the money. . . .

. . . I would call the Chair's attention to section 3942 of volume 4 of Hinds' Precedents, which required certification before money could be paid to the Agricultural College of Utah—the certification to be to the effect that no trustee, officer, instructor, or employee of such college is engaged in the practice of polygamy.

I want to quote, Mr. Chairman, from section 3942:

> While it is not in order to legislate as to qualifications of the recipients

of an appropriation, the House may specify that no part of the appropriation shall go to recipients lacking certain qualifications. . . .

THE CHAIRMAN: Does the gentleman from New York (Mr. Reid) desire to be heard further on the point of order?

MR. REID of New York: Yes, Mr. Chairman, I would add one or two brief words. First, there are specific new affirmative directions in section 407, specifically the determination as to whether the proceedings are or are not dilatory. That is a specific requirement upon the Secretary and clearly a new duty.

In addition, it is very clear that the new duties include determining institutional cutoffs for about 2,300 colleges and universities throughout the United States and the termination of funds to any individual not as a result of conviction or even of completed proceedings. These clearly constitute new duties and affirmative directions.

THE CHAIRMAN: The Chair has listened with great attention to the gentleman from New York who has raised the point of order and also the gentleman from Florida (Mr. Sikes) who has cited a number of precedents.

The Chair has read the precedents cited and is ready to rule.

The gentleman from New York (Mr. Reid) has raised this point of order against section 407 on the ground that it constitutes legislation on an appropriation bill.

The Chair has examined the section referred to and notes while it imposes a restriction on the use of funds now in the bill, it also carries a condition precedent to the imposition of this limitation which would require determinations regarding whether or not the limitation is to apply. Some official or officials would be required to follow the hearing procedures at each institution of higher education in many of several forms, including whether the institution has had an opportunity to initiate hearing procedures; whether such procedures are final, and whether they have been dilatory.

The Chair has examined the ruling made by Chairman Fascell on October 4, 1966, of the 89th Congress, second session, Congressional Record, volume 112, part 18, page 24976, regarding a similar proposition. It was held at that time, that:

> While the House may, by way of a limitation, restrict the use of funds in an appropriation bill, it may not, under the guise of a limitation impose additional new determinations on an Executive.

The Chair, therefore, sustains the point of order.

Parliamentarian's Note: In another ruling, on July 31, 1969,[9] an amendment providing that no part of the funds carried in a pending appropriation bill were to be used for financial assistance for students who had engaged in force or had used the threat of force to prevent faculty or students from carrying out their duties or studies was held in order as a limitation not imposing additional duties. It is unlikely that this ruling would be followed in current prac-

9. 115 CONG. REC. 21636, 21637, 91st Cong. 1st Sess.

tice, since the imposition of duties, not contemplated in existing law, on federal officials, including the determination of intent and other findings to be made with respect to student activities would certainly be viewed as a change in existing law.

4 Hinds' Precedents Sec. 3942, referred to by Mr. Sikes, above, is discussed in Sec. 52.2, supra.

Determinations Requiring Evaluations and Judgments May Disqualify Limitation

§ 61.5 An amendment providing that no part of the funds carried in a pending general appropriation bill may be used for financial assistance for students who have engaged in "conduct of a serious nature" contributing to "a substantial campus disruption" and who have used force or the threat thereof to prevent the pursuit of academic aims, was held to impose new duties of determination and judgment on federal officials and was ruled out as legislation.

On July 31, 1969,[10] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 13111), a point of order was raised against the following amendment:

> MR. [JOHN R.] DELLENBACK [of Oregon]: Mr. Chairman, I offer a substitute amendment to the amendment offered by the gentleman from Florida (Mr. Sikes). . . .
>
> The Clerk read as follows:
>
> Substitute amendment offered by Mr. Dellenback to the amendment offered by Mr. (Robert L. F.) Sikes: On page 55 after line 8 insert the following:
>
> "Sec. 407. None of the funds appropriated by this Act shall be used to formulate or carry out any grant to any institution of higher education that is not in full compliance with Section 504 of the Higher Education Amendments of 1968.[11]
>
> "No part of the funds appropriated under this Act shall be used to provide a loan, guarantee of a loan, a grant, the salary of or any remuneration whatever to any individual applying for admission, attending, employed by, teaching at, or doing research at an institution of higher education who has engaged in conduct on or after August 1, 1969, which was of a serious nature, contributed to a substantial campus disruption, and involved the use of (or the assistance to others in the use of) force or the threat of force or the seizure of property under the control

10. 115 CONG. REC. 21645, 91st Cong. 1st Sess. See § 52.4, supra, for further discussion of the effect of provisions requiring officials to perform certain duties of evaluation, investigation, and discernment of motive or intent.

11. See note in § 63.5, infra, for provisions of Sec. 504.

of an institution of higher education, to require or prevent the availability of certain curriculum, or to prevent the faculty, administrative officials, or students in such institution from engaging in their duties or pursuing their studies at such institution."

MR. [JOHN] BRADEMAS [of Indiana]: Mr. Chairman, a point of order.

THE CHAIRMAN:[12] The gentleman will state it.

MR. BRADEMAS: Mr. Chairman, I must make a point of order against the amendment offered by the gentleman on the ground that it constitutes legislation on an appropriation bill.

I call the attention of the Chair to the fact that the amendment offered by the gentleman from Oregon contains a number of phrases each of which will require a burden on the part of the Department of Health, Education, and Welfare to make certain judgments and determinations.

For example, Mr. Chairman, the gentleman's amendment uses language which refers to conduct that is "of a serious nature." Who is to decide, Mr. Chairman, when conduct is "of a serious nature" or is not "of a serious nature"?

His amendment contains language which says that the conduct must have "contributed to a substantial campus disruption." Who defines "disruption"? Who defines "substantial"? Those determinations will be burdens imposed upon officials of the executive branch of the Government.

The gentleman's amendment has a phrase referring to conduct which "involved the use of force" or "the threat of force." Once again these phrases require determinations which must be made by the executive branch.

Mr. Chairman, the gentleman's amendment contains the phrase, "to require or prevent" certain kinds of action or occurrences. This is language which clearly involves the stipulation of a purpose which must be in the mind of the person complained of, and a determination must thus be made by the executive branch of the Government on the issue of whether such conduct was indeed intended "to require or prevent" the availability of certain curriculums or to prevent the faculty, students, or administrative officials from engaging in their duties, or pursuing their studies.

For all these reasons, Mr. Chairman, I believe it is very clear that the gentleman's amendment constitutes legislation on an appropriation bill, and I believe the amendment should be disallowed. . . .

THE CHAIRMAN: . . . The Chair is ready to rule. It is clear from the language of the gentleman's amendment that it does go beyond a negative type of amendment and it does impose upon officials certain duties of determination and judgment which are legislative and subject to a point of order on an appropriation bill.

The Chair sustains the point of order.

New Determinations Not Required by Law in Making Allocation of Funds

§ 61.6 Where existing law (20 USC Sec. 238) provided, in its allotment formula for determining entitlements of local

12. Chet Holifield (Calif.).

educational agencies to a certain category of assistance in federally affected areas, that the Commissioner shall determine the "number of children who . . . resided with a parent employed on federal property situated in the same State as such agency or situated within reasonable commuting distance from the school district of such agency", an amendment to an appropriation bill containing funds for "impacted school assistance" prohibiting the use of funds in that bill for assistance "for children whose parents are employed on Federal property outside the school district of such agency" was held to impose the additional duty on federal officials of determining whether the parent was employed within the school district and was ruled out as legislation in violation of Rule XXI clause 2.

The proceedings of June 26, 1973,[13] are discussed in § 52.18, supra.

13. 119 CONG. REC. 21393, 21394, 93d Cong. 1st Sess.

New Direction in Fund Distribution Not Required by Law

§ 61.7 A provision in an amendment to a general appropriation bill denying the use of any funds for impacted school aid until the official allocating the funds makes an apportionment thereof contrary to the formula prescribed by existing law was held to impose additional duties upon that official, thus changing existing law and constituting legislation on an appropriation bill.

On Apr. 14, 1970,[14] during consideration in the Committee of the Whole of the Education Department appropriation bill (H.R. 16916), a point of order was raised against the following amendment:

> MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Chairman, I offer an amendment in the nature of a substitute.
>
> The Clerk read as follows:
>
> Amendment in the nature of a substitute offered by Mr. Michel: Strike all after the enacting clause and insert:
>
> TITLE I—OFFICE OF EDUCATION
>
> SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS
>
> For carrying out title I of the Act of September 30, 1950, as amended (20 U.S.C., ch. 13), and the Act of

14. 116 CONG. REC. 11676, 11677, 91st Cong. 2d Sess.

September 23, 1950, as amended (20 U.S.C., ch. 19), $440,000,000 of which $425,000,000 shall be for the maintenance and operation of schools as authorized by said title I of the Act of September 30, 1950, as amended, and $15,000,000 which shall remain available until expended, shall be for providing school facilities as authorized by said Act of September 23, 1950: *Provided,* That this appropriation shall not be available to pay local educational agencies pursuant to the provisions of any other section of said title I until payment has been made of 90 per centum of the amounts to which such agencies are entitled pursuant to section 3(a) of said title and 100 per centum of the amounts payable under section 6 of said title. . . .

MR. [JAMES G.] O'HARA [of Michigan]: Then I make a point of order against the amendment offered by the gentleman from Illinois.

THE CHAIRMAN:[15] The Chair will hear the gentleman on the point of order.

MR. O'HARA: Mr. Chairman, the point of order against the amendment offered by the gentleman from Illinois is that it contains legislation in an appropriation bill, to wit, the language on page 2, lines 6 to 12 is clearly legislation on an appropriation bill providing for different dispositions of funds under those sections than are provided by law. Therefore I make a point of order against the amendment offered by the gentleman from Illinois. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, it is as plain as the nose on my face, and I have got a nose, that this is clearly a limitation upon the expenditure of funds. That is clearly it. I suggest the point must be overruled.

THE CHAIRMAN: Does the gentleman from Michigan desire to be heard further?

MR. O'HARA: Mr. Chairman, I would like to be heard. I would like to say first, Mr. Chairman, if the proviso to which I have referred authorizes the use on a different formula than that provided in the basic authorizing legislation, and I do not believe that the proviso is a limitation or retrenchment of appropriations which would be an expansion, the proviso is neither a limitation nor retrenchment of appropriations, because it permits payment to be made in excess of the payments authorized by the above quoted section of Public Law 81–874.

It may be helpful to the Chairman and to my colleagues in understanding the point that the reference contained in section 5(c) just quoted, that various other sections of entitlements to payments are to the so-called familiar references to categories A and B children under impacted aid.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Michigan (Mr. O'HARA), has raised a point of order against the proviso appearing in the amendment in the nature of a substitute and referred to in the original bill as the proviso on page 2 of the bill on the ground that it constitutes legislation on an appropriation bill in violation of clause 2, rule XXI. That proviso would make appropriations in the bill unavailable for payment to local educational agencies pursuant to the provisions of any other section of title I of the act of September 30, 1950—which authorizes school assistance in federally affected areas—until payment has been made of 90 percent of entitled allotments

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pursuant to section 3(a) of said title I and of 100 percent of amounts payable under section 6 of that title. The gentleman from Michigan contends that such a requirement for payments of funds appropriated in this bill has the effect of changing the allotment formula in the authorizing legislation of funds for "category A students," and is therefore legislation on an appropriation bill prohibited by clause 2, rule XXI.

On June 26, 1968, during consideration of the Department of Labor and Health, Education, and Welfare appropriation bill for fiscal year 1969, the Chair—the gentleman now occupying it—sustained a point of order against an amendment prohibiting the use of funds in the bill for educationally deprived children until there was made available therefrom for certain local educational agencies an amount at least equal to that allotted in the preceding year, since that amendment would have required the Commissioner of Education to make an apportionment of appropriated funds contrary to the formula prescribed by existing law, thus imposing additional duties on that official and changing existing law.

The Chair feels that that decision is controlling in this instance. To make the appropriations authorized under certain sections of the "impacted school aid" legislation contingent upon allotment of certain percentages of entitled funds under other sections of that authorizing legislation is to impose additional duties on the official making the allotment and to change the enforcement formula in the authorizing legislation is in violation of clause 2, rule XXI.

The Chair therefore sustains the point of order.

Affirmative Directive to Nonfederal Recipient of Funds

§ 61.8 An amendment to an appropriation bill, in the form of a limitation providing that none of the funds appropriated would be used for support of military training courses in civil schools unless the authorities of such institutions make certain information known to prospective students, was held to be legislation and not in order.

On Feb. 14, 1936,[16] an amendment to a War Department appropriation bill was ruled out as legislation. The provision sought to be amended was 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.].

The amendment that was ruled against is set out below:

> On page 59, line 6, after 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 au-

16. 80 CONG. REC. 2091–94, 74th Cong. 2d Sess.

thorities 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."

The proceedings that occurred in this connection are discussed in greater detail in Sec. 53.1, supra.

Requiring Judgment Whether Duty Is Incidental to Teaching

§ 61.9 A provision in a District of Columbia appropriation bill that teachers shall not perform any clerical work except that necessary or incidental to their regular classroom teaching assignments was ruled out as legislation.

The proceedings of Apr. 2, 1937,[17] relating to a point of order against a provision as described above, are discussed in Sec. 60.1, supra.

Indian Health Activities; Temporary Services at Per Diem Rates When Authorized by Surgeon General

§ 61.10 Language in a general appropriation bill to provide for Indian health activities "including . . . temporary services at rates not to exceed $100 per diem . . . when authorized by the Surgeon General" was held to be legislation and not in order.

On Mar. 29, 1960,[18] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education and Welfare appropriation bill (H.R. 11390), a point of order was raised against the following provision:

The Clerk read as follows:

INDIAN HEALTH ACTIVITIES

For expenses necessary to enable the Surgeon General to carry out the purposes of the Act of August 5, 1954 (42 U.S.C. 2001) (including not to exceed $10,000 for temporary services at rates not to exceed $100 per diem for individuals, when authorized by the Surgeon General); purchase of not to exceed twenty-seven passenger motor vehicles, of which fourteen shall be for replacement only; hire of passenger motor vehicles and aircraft; purchase of reprints; payment for telephone service in private residences in the field,

17. 81 CONG. REC. 3106, 3107, 75th Cong. 1st Sess.

18. 106 CONG. REC. 6863, 6864, 86th Cong. 2d Sess.

when authorized under regulations approved by the Secretary; and the purposes set forth in sections 321, 322(d), 324, and 509 of the Public Health Service Act, $48,276,000.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 28 beginning in line 4 as follows: "(including not to exceed $10,000 for temporary services at rates not to exceed $100 per diem for individuals, when authorized by the Surgeon General)" on the ground that this is legislation on an appropriation bill.

THE CHAIRMAN:[19] Does the gentleman from Rhode Island desire to be heard?

MR. [JOHN E.] FOGARTY (of Rhode Island): It is my understanding, Mr. Chairman, that this language is needed in order to get some of our best brains to go into remote areas of these Indian reservations. By not allowing the language to remain in the bill is doing a disservice to the Indian population. I do believe in the basic law there is authority permitting such language as this. . . .

THE CHAIRMAN: The Chair sustains the point of order.

Making Lesser Determination Than That Contemplated by Law

§ 61.11 To a section of a general appropriation bill exempting cases where the life of the mother would be endangered if the fetus were carried to term from a denial of funds for abortions, an amendment exempting instead cases where the health of the mother would be endangered if the fetus were carried to term was held not to constitute further legislation, since determinations on the endangerment of life necessarily subsume determinations on the endangerment of health, and the amendment did not therefore require any different or more onerous determinations.

The proceedings of June 27, 1984,[20] are discussed in § 52.30, supra.

Determining That Life of Mother Endangered if Fetus Carried to Term

§ 61.12 A provision in a general appropriation bill requiring new determinations by federal officials is legislation and 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.

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

20. 130 CONG. REC. ——, 98th Cong. 2d Sess.

On June 17, 1977,[1] a point of order was sustained against the following provision in the Departments of Labor, and Health, Education and Welfare and related agencies appropriation bill (H.R. 7555):

> 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.

The proceedings of that date are discussed more fully in § 52.33, supra.

Requiring Determination of Motive or Intent

§ 61.13 An amendment to a general appropriation bill prohibiting the use of funds therein for abortions or abortion-related material and services, and defining "abortion" as the intentional destruction of unborn human life, which life begins at the moment of fertilization was conceded to impose affirmative duties on officials administering the funds (requiring determinations of intent of recipients during abortion process) and was ruled out as legislation in violation of Rule XXI clause 2.

The proceedings of June 27, 1974,[2] relating to a point of order against the amendment described above, are discussed in § 25.14, supra.

Duties Already Being Performed Pursuant to Provisions in Annual Appropriation Acts

§ 61.14 A provision in a general appropriation bill prohibiting the use of funds therein to perform abortions except where the life of the mother would be endangered if the fetus were carried to term, and providing that the several states shall remain free not to fund abortions to the extent they deem appropriate, is legislation requiring federal officials to make determinations and judgments not required by law, notwithstanding the inclusion in prior year appropriation bills of similar legislation applicable to funds in prior years.

On Sept. 22, 1983,[3] a point of order was made and sustained

1. 123 CONG. REC. 19698, 19699, 95th Cong. 1st Sess.
2. 120 CONG. REC. 21687, 93d Cong. 2d Sess.
3. 129 CONG. REC. —— 98th Cong. 1st Sess.

against a provision in a general appropriation bill, as described above. The proceedings of that date are discussed in greater detail in § 52.44, supra.

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

§ 61.15 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 proceedings of June 17, 1977,[4] relating to a point of order against a paragraph as described above, are discussed in § 53.4, supra.

§ 61.16 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 necessary 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.

The proceedings of June 17, 1977,[5] are discussed in § 53.5, supra.

Permitting Transfer of Funds With Approval of Bureau of the Budget

§ 61.17 Language in a general appropriation bill authorizing the Secretary of Labor to allot or transfer, with the approval of the Director of the Budget, funds from a certain appropriation in the bill to any bureau of the Department of Labor, to enable such agency to perform certain services, was held to be legislation and not in order on a general appropriation bill.

On Jan. 20, 1939,[6] the Committee of the Whole was consid-

4. 123 Cong. Rec. 19698, 19699, 95th Cong. 1st Sess.

5. 123 Cong. Rec. 19699, 19700, 95th Cong. 1st Sess.

6. 84 Cong. Rec. 591, 592, 76th Cong. 1st Sess.

ering H.R. 2868, a deficiency appropriation bill. The Clerk read a paragraph providing an appropriation for the Department of Labor, Wage and Hour Division, which contained the following proviso:

> *Provided,* That the Secretary of Labor may allot or transfer, with the approval of the Director of the Bureau of the Budget, funds from this appropriation to any bureau or office of the Department of Labor to enable such agency to perform services for the Wage and Hour Division.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the proviso beginning in line 3, page 5, and including the rest of the section on the ground that it is legislation on an appropriation bill that imposes additional duties upon the Bureau of the Budget.
>
> THE CHAIRMAN:[7] Does the gentleman from Virginia desire to be heard on the point of order?
>
> MR. [CLIFTON A.] WOODRUM of Virginia: No.
>
> THE CHAIRMAN: The Chair sustains the point of order.

Limiting Funds for Certain Ascertainable Class of Employers

§ 61.18 To a paragraph in a general appropriation bill containing funds for the Occupational Safety and Health Administration, an amendment prohibiting the use of those funds for expenses of inspection of employers who have submitted plans for compliance with the Occupational Safety and Health Act where the Secretary of Labor has approved such plans, was allowed, since the language was merely descriptive of certain employers as to whom the limitation on the use of funds was made applicable.

On Sept. 19, 1972,[8] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 16654), a point of order was raised against the following amendment:

> MR. [JAMES A.] MCCLURE [of Idaho]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. McClure: Page 6, line 24, immediately before the period insert the following: "*Provided,* That none of these funds shall be used to pay for expenses of inspection in connection with any employer who has submitted to the Secretary of Labor a plan for compliance with the Occupational Safety and Health Act of 1970 and such plan has been approved by the Secretary.". . .

7. Wall Doxey (Miss.).

8. 118 CONG. REC. 31322, 92d Cong. 2d Sess.

THE CHAIRMAN:[9] Does the gentleman from Massachusetts wish to press the point of order?

MR. [SILVIO O.] CONTE [of Massachusetts]: Yes, Mr. Chairman.

Mr. Chairman, I raise the point of order that this gives the Secretary additional burdens and duties to ascertain whether a plan is acceptable or not. Further, I believe it is nongermane. It is not related to the organic law at all. As I understand the OSHA law, it does not require a plan to be submitted to the Secretary of Labor. Therefore, it is completely nongermane to the legislation. Therefore, I feel a point of order lies against the amendment.

THE CHAIRMAN: Does the gentleman from Idaho wish to respond to the point of order?

MR. MCCLURE: Yes, Mr. Chairman. I thank the Chairman. I recognize the argument that has been made by the gentleman concerning the fact that it imposes a duty, but the duty is already imposed by the OSHA Act to require the Secretary to do certain things with respect to safety regulations. This changes the method by which that action is complied with but does not impose an additional duty.

THE CHAIRMAN: The Chair is ready to rule. The Chair has listened carefully to the arguments for and against the point of order. The Chair believes that this is a limitation of funds and it is restricted to the funds contained in the pending bill. It is a limitation on using those funds for inspection of certain employers who have submitted plans for compliance with the Occupational Safety and Health Act where those plans have been approved. The amendment is negative and imposes no new duties on Federal officials. Therefore the Chair holds the amendment in order and overrules the point of order.

9. Chet Holifield (Calif.).

To the Extent the Secretary Finds Necessary

§ 61.19 In an appropriation bill, providing funds for grants to states for unemployment compensation, language stating "only to the extent that the Secretary finds necessary," was held to impose additional duties and to be legislation on an appropriation bill and not in order.

On Mar. 27, 1957,[10] a point of order was made and sustained against a provision in H.R. 6287 (a Departments of Labor, and Health, Education, and Welfare appropriation bill) as described above. The proceedings of that date are discussed in greater detail in § 52.14, supra.

Requiring Evaluation of "Propriety" and "Effectiveness".

§ 61.20 Language in the guise of a limitation requiring federal officials to make evaluations of propriety and effec-

10. 103 CONG. REC. 4559, 4560, 85th Cong. 1st Sess.

tiveness not required to be made by existing law is legislation; a proviso in a general appropriation bill prohibiting the use of funds therein for grants "not properly reviewed under procedures used in the prior fiscal year" or for grantees not having "an established and effective program in place" was held to require new determinations by federal officials not required by existing law for the fiscal year in question and to be legislation in violation of Rule XXI clause 2.

On Oct. 6, 1981,[11] a point of order was made and sustained against a provision in an appropriation bill (H.R. 4560) as described above. The proceedings of that date are discussed in greater detail in § 52.32, supra.

Denying Fund Availability to Beneficiary Already Receiving Another Entitlement

§ 61.21 An amendment to a general appropriation bill denying availability of funds therein to pay certain benefits to persons simultaneously entitled by law to other benefits, or in amounts in excess of those other entitlement levels, was held in order as a limitation, since existing law already required executive officials to determine whether and to what extent recipients of funds contained in the bill were also receiving those other entitlement benefits.

The determination of the Chair on June 18, 1980,[12] was that, where existing law (19 USC § 2292) established trade readjustment allowances to workers unemployed because of import competition and required the disbursing agency to take into consideration levels of unemployment insurance entitlements under other law in determining payments, an amendment to a general appropriation bill reducing the availability of funds therein for trade adjustment assistance by amounts of unemployment insurance did not impose new duties upon officials, who were already required to make those reductions. The proceedings of that date are discussed in greater detail in § 52.36, supra.

11. 127 CONG. REC. 23361, 97th Cong. 1st Sess.

12. 126 CONG. REC. 15354–56, 96th Cong. 2d Sess.

Limiting Funds to Administer or Enforce Law With Respect to Small Firms

§ 61.22 While an amendment to a general appropriation bill may not directly curtail executive discretion delegated by law, it is in order to limit the use of funds for an activity, or a portion thereof, authorized by law if the limitation does not require new duties or impose new determinations.

Where an amendment to a general appropriation bill prohibited the use of funds therein for the Occupational Safety and Health Administration to administer or enforce regulations with respect to employers of 10 or fewer employees included in a category having an "occupational injury lost work day case rate" less than the national average, except to perform certain enumerated functions and authorities, but exempted from the prohibition farming operations not maintaining a temporary labor camp, the amendment was held not to constitute additional legislation on an appropriation bill.

The proceedings of Aug. 27, 1980,[13] are discussed in § 73.11, infra.

13. 126 CONG. REC. 23519–21, 96th Cong. 2d Sess.

Eligibility for Food Stamps Where Principal Wage Earner is on Strike

§ 61.23 An amendment to a general appropriation bill prohibiting the use of funds therein for food stamps to a household whose *principal* wage earner is on strike on account of a labor dispute to which he or his organization is a party, except where the household was eligible for and participating in the food stamp program immediately prior to the dispute, and except where a member of the household is subject to an employer's lockout, was held to impose new duties and require new investigations by executive branch officials and was ruled out as legislation.

On June 21, 1977,[14] a point of order was sustained against an amendment as described above. The proceedings of that date are discussed in detail in § 52.45, supra.

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14. 123 CONG. REC. 20150–52, 95th Cong. 1st Sess.