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.

§ 62. Interior

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

Appropriation Available Pursuant to Regulations by Secretary

§ 62.1 A paragraph in a general appropriation bill providing that appropriations in the bill available for travel expenses shall be available for expenses of attendance of officers and employees at meetings or conventions "under regulations prescribed by the Secretary," was conceded to be legislation and held not in order.

On May 2, 1951,[15] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3790), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Sec. 104. Appropriations in this act available for travel expenses shall be available, under regulations prescribed by the Secretary, for expenses of attendance of officers and employees at meetings or conventions of members of societies or associations concerned with the work of the bureau or office for which the appropriation concerned is made.
>
> MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make the point of order against section 104 that it is legislation on an appropriation bill and involves additional duties.
>
> THE CHAIRMAN:[16] Does the Chair understand that the gentleman from New York raises objection to the paragraph because of the use of the language "under regulations prescribed by the Secretary" in lines 18 and 19?
>
> MR. KEATING: I do object to those words, and feel that that makes the section out of order as it now stands, but I would still press the point of order even with those words eliminated.
>
> MR. [HENRY M.] JACKSON of Washington: I wonder if the gentleman would accept the section if it remains as is except for the elimination of the words "under regulations prescribed by the Secretary."
>
> MR. KEATING: I feel that even with the elimination of those words it would still involve legislation on an appropriation bill, for exactly the same reasons for which the Chair has held section 102 subject to a point of order.
>
> MR. JACKSON of Washington: Mr. Chairman, I concede the point of order.
>
> THE CHAIRMAN: The point of order is sustained.

Available if Determined to be "Advantageous"

§ 62.2 Language in an appropriation bill making available appropriations for the installation of telephones in government-owned residences occupied by employees of the National Park Service, provided the Secretary of the Interior deter-

15. 97 CONG. REC. 4738, 82d Cong. 1st Sess.

16. Wilbur D. Mills (Ark.).

mines that such services are advantageous in the administration of the park areas, was conceded and held to impose new duties on the Secretary and therefore to be legislation.

On Mar. 16, 1939,[17] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 4852), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Appropriations herein made for the National Park Service shall be available for the installation and operation of telephones in Government-owned residences, apartments, or quarters occupied by employees of the National Park Service, provided the Secretary determines the provision of such services are advantageous in the administration of these areas.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph on the ground it is not authorized by law and also because it imposes additional duties on the Secretary in the putting in of telephones in private houses.
>
> MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, I concede the point of order and offer an amendment.
>
> THE CHAIRMAN:[18] The point of order is sustained.

17. 84 CONG. REC. 2893, 76th Cong. 1st Sess.

18. Frank H. Buck (Calif.).

Determination of Electric Power Needs

§ 62.3 An amendment to an appropriation bill providing that no funds therein shall be used to operate transmission lines to carry power developed at Fort Randall Dam across the boundaries of South Dakota, unless such power exceeds the requests for power in that state, was held to be legislation on an appropriation bill, imposing new duties on officials, and not in order.

On Mar. 30, 1949,[19] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3838), a point of order was raised against the following amendment:

> MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I offer my amendment at this time and ask that it be read.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Case of South Dakota: On page 47, line 7, strike out the period, insert a colon and the following: "*Provided further*, That no part of these funds shall be used to build, operate, or administer transmission lines to carry power developed at Fort Randall Dam across the boundaries of the State of South Dakota in which the power is produced, unless the power so produced

19. 95 CONG. REC. 3520, 81st Cong. 1st Sess.

shall exceed the requests for power in that State.". . .

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I make the point of order that this particular amendment is legislation on an appropriation bill and imposes additional duties on the Bureau of Reclamation. . . .

THE CHAIRMAN:[20] The Chair is prepared to rule. . . .

The Chair has examined the amendment with some degree of care and invites attention especially to the language appearing wherein it is stated, "unless the power so produced shall exceed the requests for power in that State."

The insertion of that language in the amendment would impose additional duties under the amendment, therefore would be legislation on an appropriation bill.

The Chair sustains the point of order.

Requiring Approval by State Officials of Federal Project

§ 62.4 An amendment to the Interior Department 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,[1] during consideration in the Committee of the Whole of the Interior Department 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:[2] 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

20. Jere Cooper (Tenn.).

1. 95 CONG. REC. 3530, 3531, 81st Cong. 1st Sess. For discussion of the effect of duties imposed on state or local officials generally, see § 53, supra.

2. Jere Cooper (Tenn.).

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 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: This precedent best represents current rulings on issues such as those raised here. But see the "Note on Contrary Rulings," which follows § 53.6, supra, especially the ruling of Mar. 29, 1966, wherein prior approval by state officials was held merely descriptive of qualifications of recipients and not to impose new duties on state officials; and the ruling of June 23, 1971.

Granting Discretionary Authority

§ 62.5 Language in a general appropriation bill providing that the Secretary of the Interior may utilize appropriations for encouraging self-support among Indians through several stated means, and requiring the exercise of discretion by the Secretary was held to be legislation on an appropriation bill and not in order.

On Mar. 1, 1938,[3] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation bill. The following proceedings took place:

For the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops, $240,000 . . . *Provided*, That the expenditures for the purposes above set forth shall be under conditions to be prescribed by the Secretary of the Interior for repayment to the United States on or before June 30, 1944, except in the case of loans on irrigable lands for permanent improvement of said lands, in which the period for repayment may run for not exceeding 20 years, in the discretion of the Secretary of the Interior . . . *Provided further*, That the Secretary of the Interior is hereby authorized, in his discretion and under

3. 83 CONG. REC. 2637, 2638, 75th Cong. 3d Sess.

such rules and regulations as he may prescribe, to make advances from this appropriation to old, disabled, or indigent Indian allottees, for their support, to remain a charge and lien against their land until paid: *Provided further*, That not to exceed $15,000 may be advanced to worthy Indian youths to enable them to take educational courses . . . and advances so made shall be reimbursed in not to exceed 8 years, under such rules and regulations as the Secretary of the Interior may prescribe. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph that it is legislation on an appropriation bill and requires additional duties of the Secretary of the Interior. I call the attention of the Chair to the language beginning at the end of line 18 and running through the entire proviso; to the proviso beginning in line 5 on page 29; to the proviso beginning on page 29, line 10; and to the proviso beginning on page 29, line 17. Every one of these is subject to a point of order, because each of them requires additional duties of the Secretary of the Interior and is legislation on an appropriation bill.

I make the point of order against the entire paragraph. . . .

THE CHAIRMAN:[4] Does the gentleman from Oklahoma desire to be heard on the point of order?

MR. [JED] JOHNSON of Oklahoma: I do not care to be heard on it, Mr. Chairman.

THE CHAIRMAN: The Chair is ready to rule.

It seems to the Chair the proviso beginning on page 29, line 5; the second proviso, beginning on line 10; and the third proviso, beginning on line 14, are all subject to a point of order, being legislation on an appropriation bill. The point of order is made to the entire paragraph, and, with these items included, the entire paragraph is subject to the point of order.

The point of order is therefore sustained.

§ 62.6 An appropriation for the giving of educational lectures in national parks to be designated by the Secretary of the Interior in his discretion is legislation.

On May 17, 1937,[5] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 6958), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Appropriations herein made for the national parks, national monuments, and other reservations under the jurisdiction of the National Park Service shall be available for the giving of educational lectures therein and for the services of field employees in cooperation with such nonprofit scientific and historical societies engaged in educational work in the various parks and monuments as the Secretary, in his discretion, may designate.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph on page 109, lines 18 to 25, that it is legislation on an appropriation bill not authorized by law.

4. Marvin Jones (Tex.).

5. 81 CONG. REC. 4713, 4714, 75th Cong. 1st Sess.

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

MR. [JED] JOHNSON of Oklahoma: I do not care to be heard.

THE CHAIRMAN: The Chair sustains the point of order.

§ 62.7 An appropriation for the expenses of organizing Indian chartered corporations or other tribal organizations was held to be authorized by law; but a provision in the same paragraph that "in the discretion of the Secretary of the Interior, not to exceed $3 per diem in lieu of subsistence may be allowed" to Indians traveling on organization work was ruled out as legislation, causing the entire paragraph to be stricken.

On May 14, 1937,[7] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

For expenses of organizing Indian chartered corporations, or other tribal organizations, in accordance with the provisions of the act of June 18, 1934 (48 Stat., p. 986), including personal services, purchase of equipment and supplies, not to exceed $3,000 for printing and binding, and other necessary expenses, $100,000 of which not to exceed $25,000 may be used for personal services in the District of Columbia: *Provided*, That in the discretion of the Secretary of the Interior, not to exceed $3 per diem in lieu of subsistence may be allowed to Indians actually traveling away from their place of residence when assisting in organization work.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph upon the ground that it contains legislation and changes existing law, that the provision appearing on page 16, from lines 16 to 20, is legislation not authorized by law, and I make the point of order against the entire paragraph. . . .

THE CHAIRMAN:[8] The Chair is ready to rule. The Chair thinks that the first part of the paragraph down to the proviso in line 16 on page 16 is authorized under section 9 of the statute approved June 18, 1934, and, therefore, is in order. The Chair thinks, however, so far as the proviso, line 16 down to the word "work" on line 20, is concerned, that it does not appear on the face of this proviso that it necessarily is a saving, and therefore does not come within the Holman rule and appears to be legislation on an appropriation bill. The Chair, therefore, sustains the point of order as to the proviso.

MR. TABER: Mr. Chairman, I make the point of order against the whole paragraph.

THE CHAIRMAN: If the gentleman from New York insists on his point of

6. Jere Cooper (Tenn.).

7. 81 CONG. REC. 4592, 75th Cong. 1st Sess.

8. Lister Hill (Ala.).

order to the entire paragraph, the entire paragraph will go out, and the Chair so rules.

Bestowing New Responsibilities on Secretary

§ 62.8 Language in the Interior Department appropriation bill reserving such part of the storage capacity of the Cascade Reservoir for other projects "as shall be determined by the Secretary of the Interior" was conceded to be legislation and held not in order.

On May 13, 1941,[9] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 4590), the following proceedings took place:

The Clerk read as follows:

Boise project, Idaho, Payette division, $500,000: *Provided*, That such part of the storage capacity of the Cascade Reservoir, and the costs thereof, shall be reserved for other irrigation or power developments in and adjacent to the Boise project, as shall be determined by the Secretary of the Interior.

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make a point of order against the language on page 78, beginning in line 15, reading as follows:

Provided, That such part of the storage capacity of the Cascade Reservoir, and the cost thereof, shall be reserved for other irrigation or power development in and adjacent to the Boise project, as shall be determined by the Secretary of the Interior—

On the ground that this is legislation on an appropriation bill.

MR. [CHARLES H.] LEAVY [of Washington]: Mr. Chairman, does the gentleman make the point of order just against the proviso?

MR. RICH: Yes.

MR. LEAVY: Mr. Chairman, we concede the point of order.

THE CHAIRMAN:[10] The point of order is sustained.

Directions to Secretary; New Reporting Requirement

§ 62.9 A provision in an appropriation bill that the "Secretary of the Interior shall include in his annual report a full statement of all expenditures made under authority of this paragraph" was held to be legislation and not in order on an appropriation bill.

On Mar. 14, 1939,[11] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 4852), a point of order was raised against the following provision:

For investigating official matter under the control of the Department of

9. 87 CONG. REC. 4009, 77th Cong. 1st Sess.

10. Jere Cooper (Tenn.).

11. 84 CONG. REC. 2733, 76th Cong. 1st Sess.

the Interior; for protecting timber on the public lands, and for the more efficient execution of the law and rules relating to the cutting thereof . . . and for traveling and other expenses of persons employed hereunder, $548,000. . . . The Secretary of the Interior shall include in his annual report a full statement of all expenditures made under authority of this paragraph.

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

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

MR. TABER: Mr. Chairman, I make a point of order against the paragraph that it is not authorized by law. There is no authority in the law, as I understand it, for the maintenance of this division. It went out on a point of order last year, and, as I remember the situation, there has been no change in the law since. I believe that is all that needs to be said on the subject at this time. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair believes the last sentence in the paragraph as it now stands, reading, "The Secretary of the Interior shall include in his annual report a full statement of all expenditures made under authority of this paragraph," is clearly legislation and is subject to a point of order. If the gentleman from New York insists upon his point of order going against the entire section, the Chair will necessarily be forced to sustain it. The Chair does sustain the point of order.

Authorizing Advances Under Rules to be Promulgated

§ 62.10 Language in an appropriation bill appropriating money to be advanced for certain purposes coupled with a direction that such advances shall be reimbursable during a fixed period under rules and regulations prescribed by an executive officer was held to be legislation and not in order.

On May 14, 1937,[13] the Committee of the Whole was considering H.R. 6958, an Interior Department appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

For the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruit, grains, and other crops, $165,000 . . . *Provided further,* That not to exceed $15,000 may be advanced to worthy Indian youths to enable them to take educational courses, including courses in nursing home economics, forestry, and other industrial subjects in colleges, universities, or other institutions, and advances so made shall be reimbursed in not to exceed 8 years, under such rules and regulations as the Secretary of the Interior may prescribe.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph beginning on page 26, line 4. The point of order is that this is legislation on an appropriation bill and it imposes discretionary

12. Frank H. Buck (Calif.).

13. 81 CONG. REC. 4598, 4599, 75th Cong. 1st Sess.

duties upon the Secretary of the Interior. The language at the bottom of the bill, beginning with *"Provided further"*, line 22, and the last proviso are entirely the same. They provide that the Secretary of the Interior shall make rules and regulations and there is no question but what it imposes additional duties upon the Secretary of the Interior all the way through.

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

THE CHAIRMAN:[14] The Chair would like to inquire . . . of the gentleman with reference to the language appearing in lines 7 and 8, page 27, reading as follows:

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

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

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

THE CHAIRMAN: The Chair is ready to rule.

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

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

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

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

14. Jere Cooper (Tenn.).

Chair therefore sustains the point of order made by the gentleman from New York.

Historic Preservation; Limiting Legal Authority, Not Funds

§ 62.11 Language in an appropriation bill providing that "hereafter the authority of the Secretary of the Interior . . . to acquire by gift on behalf of the United States any historic site, building, object, and antiquity of national significance, shall not be effective until an appropriation has been made for the operation and maintenance thereof subsequently to such proposed acquisition," was conceded and held to be a change in law and legislation on an appropriation bill.

On Mar. 20, 1939,[15] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 4852), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Historic sites and buildings: For carrying out the provisions of the act entitled "An act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes," approved August 21, 1935 (49 Stat. 666), including personal services in the District of Columbia, $24,000: *Provided*, That hereafter the authority of the Secretary of the Interior contained in such act, to acquire by gift on behalf of the United States any historic site, building, object, and antiquity of national significance, shall not be effective until an appropriation has been made for the operation and maintenance thereof subsequently to such proposed acquisition.

MR. [SCHUYLER OTIS] BLAND [of Virginia]: Mr. Chairman, I desire to make a point of order against the proviso, commencing with the word "*Provided*," line 17, page 119, down to the end of the paragraph, in that it is legislation on an appropriation bill. According to the report, it expressly changes the language of the act.

THE CHAIRMAN:[16] Does the gentleman from Oklahoma [Mr. Johnson] desire to be heard?

MR. [JED] JOHNSON: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

§ 63. Other Agencies and Departments

"No Funds Unless or Until Approved" by

§ 63.1 Language in an appropriation bill providing funds for the Tennessee Valley Authority, stating that no part of the funds shall be used

15. 84 CONG. REC. 3000, 76th Cong. 1st Sess.

16. Frank H. Buck (Calif.).