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.).

"unless and until" approved by the Director of the Bureau of the Budget was conceded to be legislation and held not in order.

On May 22, 1956,[17] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 11319), the following point of order was raised:

> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I make a point of order against certain language in the Tennessee Valley Authority paragraph as follows: . . .
>
> . . . Lines 13 to 22, the proviso reading "That no part of funds available for expenditure by this agency shall be used, directly or indirectly, to acquire a building for use as an administrative office of the Tennessee Valley Authority unless and until the Director of the Bureau of the Budget, following a study of the advisability of the proposed acquisition, shall advise the Committees on Appropriations of the Senate and the House of Representatives and the Tennessee Valley Authority that the acquisition has his approval. . . ."
>
> MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, the language read by the gentleman is unquestionably legislation on an appropriation bill and I therefore concede the point of order.
>
> THE CHAIRMAN:[18] . . . It is clearly legislation on an appropriation bill and the point of order is sustained.

17. 102 CONG. REC. 8725, 84th Cong. 2d Sess.

18. Jere Cooper (Tenn.).

§ 63.2 To a provision in an appropriation bill restricting the use of certain appropriations therein, an amendment limiting such use "unless the Director of the Bureau of the Budget specifically approves" projects to be constructed and submits explanatory reports to designated committees of Congress was conceded and held to impose additional duties upon an official.

On Mar. 20, 1952,[19] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7072), a point of order was raised against an amendment to the following paragraph:

> Plant and equipment: For expenses of the Commission in connection with the construction of plant and the acquisition of equipment and other expenses incidental thereto necessary in carrying out the purposes of the Atomic Energy Act of 1946, including purchase of land and interests in land, $371,741,000: *Provided,* That no part of this appropriation shall be used—
>
> (A) to start any new construction project for which an estimate was not included in the budget for the current fiscal year;
>
> (B) to start any new construction project the currently estimated cost of

19. 98 CONG. REC. 2613–15, 82d Cong. 2d Sess.

which exceeds by 35 percent the estimated cost included therefor in such budget. . . .

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Jackson of Washington: On page 8, lines 10 and 11, after "estimated cost of which exceeds," strike out "35 percent of the estimated cost included therefor in such budget" and insert "the estimated cost included therefor in such budget:

"(C) to continue any community facility construction project whenever the currently estimated cost thereof exceeds the estimated cost included therefor in such budget; unless the Director of the Bureau of the Budget specifically approves the start of such construction project or its continuation and a detailed explanation thereof is submitted forthwith by the Director to the Appropriations Committees of the Senate and the House of Representatives and the Joint Committee on Atomic Energy; the limitations contained in this proviso shall not apply to any construction project the total estimated cost of which does not exceed $500,000: and, as used herein, the term 'construction project' includes the purchase, alteration, or improvement of buildings, and the term "budget" includes the detailed justification supporting the budget estimates: *Provided further,* That whenever the current estimate to complete any construction project (except community facilities) exceeds by 15 percent the estimated cost included therefor in such budget or the estimated cost of a construction project covered by clause (A) of the foregoing proviso which has been approved by the Director, the Commission shall forthwith submit a detailed explanation thereof to the Director of the Bureau of the Budget and the Committees on Appropriations of the Senate and the House of Representatives and the Joint Committee on Atomic Energy: *Provided further,* That the two foregoing provisos shall have no application with respect to technical and production facilities (1) if the Commission certifies to the Director of the Bureau of the Budget that immediate construction or immediate continuation of construction is necessary to the national defense and security, and (2) if the Director agrees that such certification is justified."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, a point of order.

THE CHAIRMAN:[20] The gentleman will state it.

MR. THOMAS: Mr. Chairman, I make the point of order against the amendment on the ground that it places extra duties on the Director of the Bureau of the Budget and that it is legislation on an appropriation bill. . . .

THE CHAIRMAN: Does the gentleman from Washington desire to be heard on the point of order?

MR. JACKSON of Washington: For the sake of time, I will concede the point of order, Mr. Chairman.

THE CHAIRMAN: The point of order is sustained.

Requiring Subjective Determinations by Bureau of Public Roads

§ 63.3 To a general appropriation bill providing funds for federal highways, an amendment specifying that no funds "shall be used for any

20. Wilbur D. Mills (Ark.).

highway program . . . which requires either the unjustified or harmful nonconforming use of . . . land" was held to be legislative in nature since it imposed additional duties on the Director of the Bureau of Public Roads.

On Oct. 4, 1966,[1] the Committee of the Whole was considering H.R. 18119, a State, Justice, Commerce Departments, and related agencies appropriation bill. The following proceedings took place:

FEDERAL-AID HIGHWAYS (TRUST FUND)

For carrying out the provisions of title 23, United States Code, which are attributable to Federal-aid highways, to remain available until expended, $3,968,400,000. . . .

MR. [JAMES C.] CLEVELAND [of New Hampshire]: Mr. Chairman, I offer an amendment:

The Clerk read as follows:

Amendment offered by Mr. Cleveland: On page 41, end of line 2, after the period, add the following: "None of the funds appropriated in this section shall be used for any highway program or project which requires either the unjustified or harmful nonconforming use of any land from a public park, recreation area, wildlife and waterfowl refuge or historic site."

MR. [JOHN J.] ROONEY of New York: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from New Hampshire, but will reserve it at this time. . . .

Mr. Chairman, I must insist on my point of order. . . .

This appropriation item entitled "Federal-Aid highways (trust funds)" contains funds for the payment of contract authorizations, many of which have already been entered into. . .

. . . [I]t would call for additional duties on the part of the Bureau of Public Roads to determine what is unjustified and what is harmful.

So, Mr. Chairman, I must insist on my point of order. . . .

THE CHAIRMAN:[2] The Chair is prepared to rule. The gentleman from New York raises a point of order to the amendment offered by the gentleman from New Hampshire on the ground that, in effect, it is legislation on an appropriation bill, and also it would impose additional duties on the Department. The gentleman from New Hampshire opposes the point of order. He argues that the amendment is in consonance with the precedents of the House.

The Chair is constrained to find from the facts as related by the gentleman from New York, the effect of the amendment would not be a limitation, but would in effect be legislation on an appropriation bill. The amendment does impose additional duties on the Department in that a determination would have to be made as to what is unjustified, harmful, or nonconforming.

In a previous ruling in our precedents, in a matter where there was only one qualifying word—a deter-

1. 112 CONG. REC. 24975, 24976, 89th Cong. 2d Sess.

2. Dante B. Fascell (Fla.).

mination of the word "incapacitated"—the ruling was that this would impose additional duties.

Therefore, the Chair sustains the point of order.

Denying Funds "Unless Subject to Audit by Comptroller General"

§ 63.4 An amendment to a legislative branch appropriation bill denying the obligation or expenditure of certain funds contained therein unless such funds were subject to audit by the Comptroller General was ruled out of order as legislation where it appeared that the amendment was intended by its proponents to extend and strengthen the authority of the Comptroller General under law to audit legislative accounts.

On June 14, 1978,[3] during consideration of H.R. 12935 (legislative branch appropriations for fiscal 1979), proceedings occurred as indicated below:

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: Mr. Chairman, I offer an amendment, my amendment No. 2.

The Clerk read as follows:

Amendment offered by Mr. Coughlin: On page 6, after line 23, insert the following new section:

Sec. 102. (a) None of the funds appropriated by any provision described in subsection (b) shall be expended or obligated for any purpose specified in such provision unless such funds so expended or obligated are subject to audit by the Comptroller General of the United States.

(b) For purposes of subsection (a), any provision in Title I of this Act following the provision relating to "Compensation of Members" and preceding the heading "Joint Items" is a provision described in this subsection. . . .

MR. [GEORGE E.] SHIPLEY [of Illinois]: Mr. Chairman, I reserve a point of order on the amendment. . . .

MRS. [MARGARET M.] HECKLER [of Massachusetts]: Mr. Chairman, the operations of the Comptroller General under this amendment would continue as under existing circumstances in that site at the Capitol where the office is presently located. The authority would provide an audit of Members' accounts and committee accounts. It would provide that authority to be utilized by the GAO.

MR. SHIPLEY: Mr. Chairman, if the gentleman will yield further, does it extend in any way the present audit system that we have now in the House?

MR. COUGHLIN: Mr. Chairman, I yield to the gentlewoman from Massachusetts.

MRS. HECKLER: Mr. Chairman, it extends the authority that now exists in law but is not necessarily a change in existing law. It affirms the authority of the GAO which presently exists in the House; however, I do not believe that the GAO is able to examine Members' accounts and this amendment clarifies that authority. However, it does not

3. 124 CONG. REC. 17650, 17651, 95th Cong. 2d Sess.

mandate audits across the board of every Member at any particular time. . . .

MR. SHIPLEY: Mr. Chairman, I would like to be heard on the point of order.

Mr. Chairman, I insist on my point of order.

Mr. Chairman, I object to the amendment and make a point of order against it on the grounds that it imposes additional duties on the Comptroller General and, as such, is in violation of clause 2, rule XXI of the House. The additional duties implied by the amendment might involve the Comptroller General insisting that time and attendance reporting systems be set up in Members and committee offices and may require setting up annual and sick leave systems and involve examination of Members' personal diaries, perhaps even their personal financial records. These are duties and procedures clearly beyond the offices of the Comptroller General's present audit authority. Under paragraph 842 of clause 2, rule XXI:

> An amendment may not impose additional duties, not required by law, or make the appropriation contingent upon the performance of such duties. . .then it assumes the character of legislation and is subject to a point of order.

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

THE CHAIRMAN PRO TEMPORE:[4] The gentleman from Pennsylvania [Mr. Coughlin] is recognized.

MR. COUGHLIN: Mr. Chairman, let me say that the amendment imposes no additional duties on the General Accounting Office. It proposes that these accounts be subject to audit by the GAO.

Title 31, section 67, of the United States Code annotated says as follows:

> . . . the financial transactions of each executive, legislative, and judicial agency, including but not limited to the accounts of accountable officers, shall be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States. . . .

Mr. Chairman, it is very clear that the General Accounting Office already has the authority and the duty to audit the accounts of the legislative branch, and this amendment in no way expands or extends that authority. The General Accounting Office has taken a position that it is interested in having an expression of the will of the legislative branch as to whether it wishes the General Accounting Office to carry out that function. This amendment would be an expression of that will.

Mr. Chairman, the amendment would in no way expand the authority of the General Accounting Office or impose additional duties on the General Accounting Office; it would only make these accounts subject to audit. . . .

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

The Chair certainly agrees that the language in the amendment is ambiguous. The Chair takes into account, however, the debate, and the debate as observed by the Chair indicates the amendment certainly does extend the authority of the Comptroller General and is subject to a point of order.

4. Daniel D. Rostenkowski (Ill.).

The Chair does recognize that there are conflicting interpretations of the amendment under discussion. However, the Chair has a duty under the precedents to construe the rule against legislation strictly where there is an ambiguity. The Chair feels he must sustain the point of order based on the interpretations given the amendment during the debate.

Parliamentarian's Note: The amendment in this instance was ruled out of order when it appeared that it was intended by its proponents to work a change in the law and to require audits, rather than simply state a condition precedent for obligation and expenditure of the funds. A subsequent amendment which denied the use of funds not subject to audit "as provided by law" was offered and adopted. In a ruling in 1970,[5] now effectively overruled by the precedent above, a provision prohibiting the use of funds in an appropriation bill for programs which are not subject to audit by the Comptroller General had been held in order as a negative restriction on the availability of funds. The language objected to in the proceedings in 1970 was as follows:

None of the funds herein appropriated for "International Financial Institutions" shall be available to assist in the financing of any project or activity the expenditures for which are not subject to audit by the Comptroller General of the United States.

Denying Funds to College Not in Compliance With Existing Law

§ 63.5 To an appropriation bill providing funds for construction of college housing, an amendment specifying that none of the funds may be allocated to an institution unless it is in full compliance with a law requiring the withholding of funds to students who are convicted of engaging in campus disorders was held to be a limitation (not requiring additional duties on the part of any federal official) and in order.

On June 24, 1969,[6] the Committee of the Whole was considering H.R. 12307, an independent offices and Department of Housing and Urban Development appropriation bill. The following proceedings took place:

5. See 116 CONG. REC. 18412, 18413, 91st Cong. 2d Sess., June 4, 1970.

6. 115 CONG. REC. 17085, 91st Cong. 1st Sess. For further discussion of this and related precedents, see Sec. 53, supra, particularly the "Note on Contrary Rulings," which follows Sec. 53.6.

COLLEGE HOUSING

For payments authorized by section 1705 of the Housing and Urban Development Act of 1968, $2,500,000: *Provided,* That the limitation otherwise applicable to the total payments that may be required in any fiscal year by all contracts entered into under such section is increased by $5,500,000.

MR. [WILLIAM J.] SCHERLE [of Iowa]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Scherle: On page 35, at the end of line 24, strike the period and insert the following: "*And provided further,* 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."

MR. [WILLIAM F.] RYAN (of New York): Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[7] The gentleman will state his point of order.

MR. RYAN: I make a point of order on the ground that this amendment is legislation on an appropriation bill. . . .

MR. SCHERLE: Mr. Chairman, the amendment is in order because it is in conformity with rule 21, clause 2, Jefferson's Manual in pages 426–427, specifying that amendments to appropriation bills are in order if they meet the qualifications of the "Holman Rule."

My amendment is germane, negative in nature, and shows retrenchment on its face. It does not either impose any additional or affirmative duties or amend existing law.

Very simply, my amendment states that none of the funds appropriated in this section will be given to institutions of higher education if they do not comply with the present law, section 504—Public Law 90–575—of the Higher Education Amendments of 1968.

In support of my amendment, I cite section 843 of the rules of the House discussing the Holman rule under rule 21. . . .

THE CHAIRMAN: The Chair is prepared to rule and holds that the amendment is a proper limitation. Therefore, the Chair overrules the point of order.

Parliamentarian's Note: Section 504 of Public Law No. 90–575, referred to above, provided in part:

> (a) If an institution of higher education determines, after affording notice and opportunity for hearing to an individual attending, or employed by, such institution, that such individual has been convicted by any court of record of any crime which was committed after the date of enactment of this Act and which involved the use of . . . force, disruption, or the seizure of property under control of any institution of higher education to prevent officials or students in such institution from engaging in their duties or pursuing their studies, and that such crime was of a serious nature and contributed to a substantial disruption of the administration of the institution with respect to which such crime was

7. John S. Monagan (Conn.).

committed, then the institution which such individual attends, or is employed by, shall deny for a period of two years any further payment to, or for the direct benefit of, such individual under [specified] programs. . . .

(b) If an institution of higher education determines, after affording notice and opportunity for hearing to an individual attending, or employed by, such institution, that such individual has willfully refused to obey a lawful regulation or order of such institution after the date of enactment of this Act, and that such refusal was of a serious nature and contributed to a substantial disruption of the administration of such institution, then such institution shall deny, for a period of two years, any further payment to, or for the direct benefit of, such individual under (specified) programs.

Export-Import Bank—Denial of Funding for Certain Countries

§ 63.6 To a supplemental appropriation bill including funds for the Export-Import Bank, an amendment providing that none of the funds made available by the bill shall be used by the bank to guarantee the payment of obligations incurred by Communist countries, or to participate in extension of credit to any such country, was held in order as a proper limitation merely defining non-eligible recipients of those funds.

On Oct. 18, 1966,[8] the Committee of the Whole was considering H.R. 18381. The following proceedings took place:

Amendment offered by Mr. [Paul] Findley [of Illinois]: On page 16, after line 3, add the following:

"Sec. 803. None of the funds made available because of the provisions of this bill shall be used by the Export-Import Bank to either guarantee the payment of any obligation hereafter incurred by any Communist country (as defined in section 620(f) of the Foreign Assistance Act of 1961, as amended) or any agency or national thereof, or in any other way to participate in the extension of credit to any such country, agency, or nation in connection with the purchase of any product by such country, agency or nation."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, it appears, although I have not had an opportunity to examine a copy of the amendment submitted by the gentleman from Illinois, that the amendment is subject to the point of order that it is legislation on an appropriation bill and seemingly requires additional duties. . . .

MR. FINDLEY: Mr. Chairman, this amendment is taken exactly from the language of an amendment which was part of an appropriation bill in 1963. I am sure many of the Members present today will recall the Christmas Eve session which did extend to that late date because of this amendment. The amendment itself does not impose any burdens, duties, or obligations on the President. It is simply an act of re-

8. 112 CONG. REC. 27425, 89th Cong. 2d Sess.

trenchment and withholding and denial of funds for specific purposes. . . .

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

The Chair finds that the amendment offered by the gentleman from Illinois [Mr. Findley] is in the nature of a limitation on an appropriation and does not, in the opinion of the Chair, impose extra burdens or administrative duties upon the administration in a way that would subject it to a point of order. Therefore, the Chair overrules the point of order.

General Services Administration—"Buy-American" Requirements

§ 63.7 A section in a general appropriation bill prohibiting the use of funds in the bill for the purchase of foreign-made tools except to the extent that the Administrator of the General Services Administration determines that domestically produced tools are unavailable for procurement, was held to impose additional duties on that federal official and was ruled out as legislation in violation of Rule XXI clause 2.

On June 22, 1972,[10] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 15585), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 505. No part of any appropriation contained in this Act shall be available for the procurement of or for the payment of the salary of any person engaged in the procurement of any hand or measuring tool(s) not produced in the United States or its possessions except to the extent that the Administrator of General Services or his designee shall determine that a satisfactory quality and sufficient quantity of hand or measuring tools produced in the United States or its possessions cannot be procured as and when needed from sources in the United States and its possessions or except in accordance with procedures prescribed by section 6–104.4(b) of Armed Services Procurement Regulation dated January 1, 1969, as such regulation existed on June 15, 1970. This section shall be applicable to all solicitations for bids opened after its enactment.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order.

THE CHAIRMAN:[11] The gentleman will state it.

MR. GROSS: I make a point of order against the language to be found on page 31, beginning on line 25, section 505, and running to page 32 to and including line 14, as being legislation on an appropriation bill. I specifically refer, Mr. Chairman, to the language found on page 32 which directs "that the Administrator of General Services or his designee shall determine that a satisfactory quality and sufficient quantity of hand or measuring tools

9. James G. O'Hara (Mich.).

10. 118 CONG. REC. 22097, 22098, 92d Cong. 2d Sess.

11. John S. Monagan (Conn.).

produced in the United States" and so on and so forth.

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

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, this proviso has been in the legislation for a great many years. At this date and time it imposes no function on the GSA it is not already doing. So we think it is a very regular part of the bill, and I think by precedent it is entitled to remain.

THE CHAIRMAN: The Chair is ready to rule.

The fact that the provision has been carried in prior appropriation bills is not conclusive in connection with the point of order that is raised at this time. The provision does add additional requirements and duties. In the opinion of the Chair this is legislation on an appropriation bill, and the point of order is sustained.

Parliamentarian's Note: Mr. Steed did make the point that since this provision had been carried for several years, the Administrator of the General Services Administration was in fact already performing the "extra duties" which were required by the amendment.

The extra duties which may invalidate an amendment as being "legislation" are duties not now required by law for the fiscal year in question. The fact that they may be presently in effect, as required for present and prior years in annual appropriation acts would not protect an amendment from a point of order under Rule XXI clause 2.

Denying Housing Funds—Availability Contingent on New Analysis of Need

§ 63.8 To an appropriation bill, an amendment providing that no funds in the bill be used for expenses of preparing housing market analyses which do not include a breakdown of the housing needs of the various segments of the population was held to be legislation imposing new duties to provide information, where no law was cited authorizing the type of analysis required by the amendment.

On Mar. 31, 1954,[12] during consideration in the Committee of the Whole of the independent offices appropriation bill [H.R. 8583], a point of order was raised against the following amendment:

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I offer another amendment.

The Clerk read as follows:

Amendment offered by Mr. Yates: Page 65, line 11, after the colon and

12. 100 CONG. REC. 4267, 4268, 83d Cong. 2d Sess.

following the words "(12 U.S.C. 1701)", insert the following: "That no part of any appropriation or fund in this act shall be used for administrative expenses in connection with the preparation of any housing market analyses which do not include a breakdown of the housing needs of the various segments of the population including those segments which are unable to obtain adequate housing under established home-financing programs."

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, I make the same point of order that I did to the other amendment. It is legislation upon an appropriation bill and requires additional duties and responsibilities of an administrative agency.

MR. YATES: Mr. Chairman, in response to that, let me say this is certainly a proper limitation upon an appropriation. Funds are provided right now for the preparation of such housing market analyses. All this would do would be to limit the funds to certain types of housing market analyses and I submit, therefore, the amendment is proper.

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

Up to the word "analyses," in the opinion of the Chair, the amendment is all right. Following that, the amendment is an infringement upon the duties of an executive and imposes additional duties. In the opinion of the Chair, the point of order should be sustained and is sustained.

13. Louis E. Graham (Pa.).

National Aeronautics and Space Administration; Denial of Funds for U.S.-Soviet Joint Venture

§ 63.9 To a general appropriation bill, including funds for the National Aeronautics and Space Administration, an amendment providing that no part of the funds therein shall be used for expenses of a joint United States-Russian manned lunar landing was held a proper limitation restricting the availability of funds and in order.

On Oct. 10, 1963,[14] the Committee of the Whole was considering H.R. 8747, an independent offices appropriation bill. The following proceedings took place:

Amendment offered by Mr. [Thomas M.] Pelly [of Washington]: Page 37, after line 17, insert the following new paragraph:

"No part of any appropriation made available to the National Aeronautics and Space Administration by this Act shall be used for expenses of participating in a manned lunar landing to be carried out jointly by the United States and any Communist, Communist-controlled, or Communist-dominated country, or for expenses of any aeronautical and space activities [as defined in sec. 103(1) of the National Aeronautics and Space Act of 1958]

14. 109 CONG. REC. 19258–60, 88th Cong. 1st Sess.

which are primarily designed to facilitate or prepare for participation in such a joint manned lunar landing, except pursuant to an agreement hereafter made by the President by and with the advice and consent of the Senate as provided by section 205 of the National Aeronautics and Space Act of 1958."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make a point of order against the amendment. . . .

THE CHAIRMAN:[15] The Chair would like to ask the gentleman from Washington a question. What is the reason for the inclusion of language at the end of the amendment reading:

> Except pursuant to an agreement hereafter made by the President by and with the advice and consent of the Senate as provided by section 205 of the National Aeronautics and Space Act of 1958.

The Chair, to make it clear why he is asking the question, has examined section 205 of that act. That says:

> INTERNATIONAL COOPERATION
>
> Sec. 205. The Administration, under the foreign policy guidance of the President, may engage in a program of international cooperation in work done pursuant to this Act, and in the peaceful application of the results thereof, pursuant to agreements made by the President with the advice and consent of the Senate.

The problem the Chair is considering is why there is any need to include the language at the end of the amendment unless in some way it changes existing law?

MR. PELLY: Mr. Chairman, I would say that it does not change existing law but simply follows it. But, in order to clarify this matter I ask unanimous consent to strike from the amendment the words from "except pursuant to an agreement" to the end.

THE CHAIRMAN: Is there objection to the request of the gentleman from Washington?

There was no objection. . . .

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

MR. THOMAS: Yes, Mr. Chairman. That partially cures it, but it does not cure it by any means. I read:

> Or for expenses of any aeronautical and space activities (as defined in section 103(1) of the National Aeronautics and Space Act of 1958) which are primarily designed to facilitate or prepare for participation in such a joint manned lunar landing.

Somebody is going to have to spend a whole lot of time on this.

You are placing a tremendous burden upon somebody to do what? "To primarily decide or prepare for participation in a joint moon landing."

Mr. Chairman, there are four or five conditions contained in this. It is extra duty. Somebody is going to have to make that decision. It is purely legislation . . . and I said to my distinguished friend from Washington a while ago, we will take it to conference and I know the gentleman will give us the liberty of throwing it out if we get in trouble and get too far into foreign affairs. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The Chair has examined the amendment and the Chair is of the opinion that it is a proper limitation. Therefore, the point of order is overruled.

15. Richard Bolling (Mo.).

Imposing Delay on Expenditure

§ 63.10 To a bill appropriating funds for the National Aeronautics and Space Administration (which had authority by law to use appropriations for capital expenditures providing that the Committee on Science and Astronautics of the House was notified) an amendment specifying that no funds therein appropriated could be used for capital items until 14 days after the notification required by law, was held to be a limitation upon the expenditure of funds, not imposing additional duties and in order.

On June 29, 1959,[16] the Committee of the Whole was considering H.R. 7978, a supplemental appropriation bill. The following proceedings took place:

> Amendment offered by Mr. [Albert] Thomas [of Texas]: On page 4, line 16, after "expended" insert: "*Provided,* That no part of the foregoing appropriation shall be available for other items of a capital nature which exceed $250,000 until 14 days have elapsed after notification as required by law to the Committee on Science and Astronautics of the House of Representatives and the Committee on Aeronautical and Space Sciences of the Senate." . . .
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment on the ground that it changes existing law and requires additional duties on the part of the Space Agency. . . .
>
> THE CHAIRMAN:[17] The Chair is prepared to rule. . . .
>
> The Chair calls attention to that portion of subsection (b) of Public Law 86–45 approved June 15, 1959, with reference to expenditures in excess of $250,000 and notice to the legislative committees. In addition thereto, the amendment contains a period of notice of 14 days. However, this does not impose a new duty, because it is a limitation upon the expenditure of the funds within a period of 14 days.
>
> The Chair therefore overrules the point of order.

Denial of Research and Development Funds Under Certain Types of Contracts

§ 63.11 An amendment providing that none of the funds appropriated in the bill may be used to enter into research or development contracts under which new inventions or patents, conceived in the process of per-

16. 105 CONG. REC. 12125, 12126, 86th Cong. 1st Sess. For another precedent involving the issues raised by an attempt to regulate the rate or timing of expenditures, see § 80.5, infra.

17. Paul J. Kilday (Tex.).

forming the contract, do not become the property of the United States was held to be a limitation merely describing contracts which may not be funded and imposing only incidental additional duties on the executive branch and therefore in order.

On May 5, 1960,[18] the Committee of the Whole was considering H.R. 11998, a Department of Defense appropriation bill. The following proceedings took place:

EMERGENCY FUND, DEPARTMENT OF DEFENSE

For transfer by the Secretary of Defense, with the approval of the Bureau of the Budget, to any appropriation for military functions under the Department of Defense available for research . . . and evaluation, or procurement or production related thereto, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation to which transferred, $150,000,000. . . .

MR. [HARRIS B.] MCDOWELL [Jr., of Delaware]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. McDowell: On page 29, after line 13, insert the following:

"Sec. 501. None of the funds appropriated in this act shall be available for making payments on any research or development contract under which any invention, improvement, or discovery conceived or first actually reduced to practice in the course of performance of such contract or any subcontract thereof, or under which any patent based on such invention, improvement, or discovery, does not become the property of the United States."

And renumber the following sections accordingly.

MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[19] The gentleman will state it. . . .

MR. [GEORGE H.] MAHON [of Texas]: The point of order is that this proposed amendment would imply additional duties beyond the scope of the bill. . . .

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

The Chair has had an opportunity to reread the language of the amendment and to refer to the precedents applicable, in the opinion of the Chair, thereto. It is the opinion of this occupant of the chair that the amendment offered by the gentleman from Delaware is, in fact, a limitation on the appropriations appropriated in this act, and while it may be argued that the limitation imposed causes or results in additional burdens on the executive branch, in the opinion of this occupant of the chair, that is normal and reasonable to

18. 106 CONG. REC. 9624–27, 86th Cong. 2d Sess.

An issue that might be addressed more directly today is whether, under existing law, the Department of Defense is given discretion with regard to entering into contracts of the type described. The effect of provisions which affect the discretionary authority of officials that is conferred by law is discussed in § 51, supra.

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

expect in the carrying out of the limitation.

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

The point of order is overruled.

Setting Affirmative Policy

§ 63.12 Language in an appropriation bill making appropriations for the Patent Office for issuance of certain publications and providing that "such other papers when reproduced for sale to be sold at such prices as determined by the Commissioner" was conceded to be legislation on an appropriation bill and held not in order.

On May 15, 1947,[20] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 3311), a point of order was raised against the following provision:

PATENT OFFICE

Salaries and expenses: For necessary expenses, including personal services in the District of Columbia and the salary of the Commissioner at $10,000 per annum . . . production by photolithographic process of copies of weekly issue of drawings of patents and designs, reproduction of copies and drawings and specifications of exhausted patents, designs, trade-marks, foreign patent drawings, and other papers, such other papers when reproduced for sale to be sold at such prices as determined by the Commissioner; photo prints of pending application drawings; and other contingent and miscellaneous expenses of the Patent Office: *Provided,* That the headings of the drawings for patented cases may be multigraphed in the Patent Office for the purpose of photolithography; $8,000,000.

MR. [RALPH E.] CHURCH [of Illinois]: Mr. Chairman, a point of order.

THE CHAIRMAN:[1] The gentleman will state it.

MR. CHURCH: Mr. Chairman, I make a point of order against the language appearing on page 53, lines 10 and 11, as follows:

> Such other papers when reproduced for sale to be sold at such prices as determined by the Commissioner—

That sentence is legislation on an appropriation bill and unauthorized by law. . . .

I cannot, Mr. Chairman, withdraw my point of order. I insist on my point of order.

MR. [KARL] STEFAN [of Nebraska]: We concede the point of order, Mr. Chairman.

THE CHAIRMAN: The Chair sustains the point of order.

Post Office—Denial of Funds for Seizure of Mail

§ 63.13 An amendment to a Treasury and Post Office De-

20. 93 CONG. REC. 5383, 80th Cong. 1st Sess.

1. Carl T. Curtis (Nebr.).

partments appropriation bill, providing that no funds therein may be used for the seizure of mail (in connection with income tax investigations) without a search warrant authorized by law, was held to be a limitation not imposing additional duties and in order.

On Apr. 5, 1965,[2] the following proceedings took place:

Amendment offered by Mr. [Durward G.] Hall [of Missouri]: On page 8, immediately before the period in line 11, insert the following: ": *Provided,* That no appropriation made by any provision of this Act for the fiscal year ending June 30, 1966, may be used for the seizure of mail without a search warrant authorized by law in carrying out the activities of the United States in connection with the seizure of property for collection of taxes due to the United States."

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, I reserve a point of order on this amendment.

THE CHAIRMAN:[3] The gentleman from Oklahoma reserves a point of order. . . .

MR. STEED: Mr. Chairman, I renew my point of order against the amendment because it is not a limitation on appropriations. It requires actions by the Bureau of Internal Revenue, which can be authorized only by legislation.

THE CHAIRMAN: The language is a limitation here. The Chair overrules the point of order. The point of order is not sustained.

Parliamentarian's Note: But see the proceedings of June 16, 1977 (discussed in the Parliamentarian's Note following § 77.1, infra), where a requirement for a search warrant "based on probable cause as authorized by law" was ruled out as legislation imposing new affirmative duties to make applications to courts, a procedure not uniformly required by the federal courts.

Treasury Department to Determine Rates of Exchange

§ 63.14 Language in an appropriation bill providing for purchase of foreign currencies at rates of exchange determined by the Treasury Department was held to be legislation and not in order.

On Aug. 7, 1957,[4] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9131), a point of order was raised against the following provision:

The Clerk read as follows:

EDUCATIONAL, SCIENTIFIC, AND CULTURAL ACTIVITIES

For expenses to carry out the provisions of section 1011(d) of the

2. 111 CONG. REC. 6869, 6870, 89th Cong. 1st Sess.

3. John A. Blatnik (Minn.).

4. 103 CONG. REC. 13797, 13911, 13912, 85th Cong. 1st Sess.

United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1442(d)), $3,525,000: *Provided,* That this amount shall be used for purchase of foreign currencies from the special account for the informational media guaranty program, at rates of exchange determined by the Treasury Department, and the amounts of any such purchases shall be covered into miscellaneous receipts of the Treasury. . . .

MR. [HOMER H.] BUDGE [of Idaho]: Mr. Chairman, I make a point of order against the language contained in lines 1 through 10, page 18, the point of order being that it is legislation upon an appropriation bill giving affirmative direction and, further, that it imposes new duties on the Treasury Department. I think the language obviously imposes a new duty on the Treasury Department and also there is obviously a proviso which is legislation on an appropriation bill.

THE CHAIRMAN:[5] Does the gentleman from New York [Mr. Rooney] desire to be heard?

MR. [JOHN J.] ROONEY: Yes, Mr. Chairman; but before referring to the basic law I should like to point out that the language presently contained at page 18 of the bill was submitted to the committee by the Department of State, through Deputy Assistant Secretary Wilkinson and Special Assistant to the Assistant Secretary Bernard Katzen. The department drafted it.

Section 1442, subdivision (d), of title 22 of the United States Code is entitled "Sale of Foreign Currencies—Special Account—Availability." This provides that—

Foreign currencies available after June 30, 1955, from conversions made pursuant to the obligation of informational media guarantees may be sold, in accordance with Treasury Department regulations, for dollars which shall be deposited in the special account and shall be available for payments under new guaranties. Such currencies shall be available as may be provided for the Congress in appropriation acts, for use for educational, scientific, and cultural purposes which are in the national interest of the United States, and for such other purposes of mutual interest as may be agreed to by the governments of the United States and the country from which the currencies derive.

Now, the proviso beginning on line 5 of page 18 of the pending bill states:

Provided, That this amount shall be used for purchase of foreign currencies from the special account for the informational media guaranty program, at rates of exchange determined by the Treasury Department, and the amounts of any such purchases shall be covered into miscellaneous receipts of the Treasury.

The purpose of this language is to provide that the appropriation of $3,525,000 referred to in lines 1 to 5 on that page of the bill shall be used to purchase from the United States Treasury Israeli pounds in that amount and with which this appropriation is connected so that they will be covered into miscellaneous receipts of the Treasury.

THE CHAIRMAN: May the Chair inquire of the gentleman from New York if the section of the code from which he read refers to purchases as well as sales?

MR. ROONEY: I assume from the language contained in that section of the

5. Paul J. Kilday (Tex.).

code that it refers to both purchases and sales. This proviso makes it clear and certain that the money appropriated would not come from the general fund.

THE CHAIRMAN: Then, the gentleman from New York states it as a fact that the section of the code from which he read uses only the word "sale" or "sold" rather than "purchase"?

MR. ROONEY: I must concede that only the "sold" is contained in the section, Mr. Chairman.

However, I should like to add that when this section of the code refers to a sale it is certainly implied that it also means a purchase. There cannot be a sale without a purchase.

MR. BUDGE: Mr. Chairman, if the gentleman will yield, the gentleman from New York has not addressed himself to the language "at rates of exchange determined by the Treasury Department," which language obviously gives the Treasury Department additional duties which are not in the original act. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Idaho [Mr. Budge] has made a point of order against that portion of the bill appearing on lines 1 through 10 on page 18 on the ground that it is legislation on an appropriation bill. The gentleman from New York [Mr. Rooney] has cited the language contained in title 22, United States Code, section 1442(d), and that the reference to that section indicates that authority and duty in connection with the sale of foreign currencies is imposed, whereas the language in the bill imposes the duty in connection with purchases of foreign currencies.

The Chair is of the opinion that the language constitutes legislation on an appropriation bill and sustains the point of order.

Indian Affairs; Travel Expenses of Tribal Councils

§ 63.15 Appropriations for expenses of tribal councils for travel, including supplies and equipment, $5 per day in lieu of subsistence, and 5 cents per mile for use of automobiles (including visits to Washington, D.C.) when authorized and approved by the Commissioner of Indian Affairs, was held not authorized by law and to include legislation.

On Mar. 1, 1938,[6] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. When the following amendment was offered, a point of order was raised against certain of its provisions:

Amendment offered by Mr. Johnson of Oklahoma: Page 63, line 8, insert:

"Expenses of tribal councils or committees thereof (tribal funds): For traveling and other expenses of members of tribal councils, business committees, or other tribal organizations, when engaged on business of the tribes, including supplies and equipment, not to exceed $5 per diem in lieu of subsistance,

6. 83 CONG. REC. 2646, 75th Cong. 3d Sess.

and not to exceed 5 cents per mile for use of personally owned automobiles, and including visits to Washington, D.C., when duly authorized or approved in advance by the Commissioner of Indian Affairs, $50,000, payable from funds on deposit to the credit of the particular tribe interested: *Provided,* That except for the Navajo Tribe, not more than $5,000 shall be expended from the funds of any one tribe or band of Indians for the purposes herein specified."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it is not authorized by law and that it creates additional duties for the Commissioner of Indian Affairs and, generally, that the entire matter is unauthorized.

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, this is authorized under the Snyder Act, and I call attention to title 25, section 13, which clearly authorizes this expenditure. . . .

THE CHAIRMAN:[7] The Chair is ready to rule. . . .

The item to which attention has been called in the last paragraph of section 13, title 25, United States Code, includes the following language:

> And for general and incidental expenses in connection with the administration of Indian affairs.

It does not seem to the Chair that this language is sufficient to include the various items that are included in the amendment offered by the gentleman from Oklahoma, and the Chair therefore feels constrained to sustain the point of order.

7. Marvin Jones (Tex.).

Denying Salary to Postal Service Officer Who Undertakes Certain Actions

§ 63.16 Where an amendment to an appropriation bill denied the availability of funds for payment of the salary of any officer of the Postal Service who took certain actions with respect to employees who communicated with Members of Congress concerning the Postal Service, the Chair found that such provision did not impose additional duties on federal officers, but ruled the amendment out of order on other grounds.

On June 28, 1971,[8] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9271), a point of order was raised against the following amendment:

> MR. WILLIAM D. FORD [of Michigan]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. William D. Ford: On page 36, insert "(a)" immediately after "Sec. 508." in line 10; and immediately below line 14 on page 36 insert the following:
>
> "(b) No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee

8. 117 CONG. REC. 22442, 22443, 92d Cong. 1st Sess.

of the United States Postal Service, or any officer or employee of the Government of the United States outside the United States Postal Service, who—

"(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any officer or employee of the United States Postal Service from having any direct oral or written communication or contact with any member or committee of Congress in connection with any matter pertaining to the employment of such officer or employee or pertaining to the United States Postal Service in any way, irrespective of whether such communication or contact is at the initiative of such officer or employee or in response to the request or inquiry of such Member or committee; or

"(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, status, pay, or performance or efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any officer or employee of the United States Postal Service, or attempts or threatens to commit any of the foregoing actions with respect to such officer or employee, by reason of any communication or contact of such officer or employee with any Member or committee of Congress as described in paragraph (1) of this subsection."

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I make a point of order against the amendment, and I should like to be heard on the point of order.

THE CHAIRMAN:[9] At this point?

MR. BOW: Yes, Mr. Chairman.

Mr. Chairman, this, it seems to me, is subject to a point of order in several instances. First of all, there is paragraph (b) of the amendment. There is a provision that no part of any appropriation contained in this or any other act shall be available for the payment of the salary of any officer or employee of the U.S. Postal Service. It is not limited to this act but to any other act, which I think makes it subject to a point of order.

Furthermore, under the next provision, which prohibits or prevents, or attempts or threatens to prohibit or prevent, that puts such additional duties on the director of the Postal Service that it becomes almost impossible for him to administer this, particularly as to further threats in the future.

I believe it is very apparent from reading this that additional duties are placed on the executive branch of the Government, on the Postal Service, and in addition to any objections to part (b) or the rest of the amendment, I believe it is sufficient to sustain the point of order.

THE CHAIRMAN: Does the gentleman from Michigan desire to be heard on the point of order?

MR. WILLIAM D. FORD: Yes, I do, Mr. Chairman.

First of all, it is not necessary to legislate with this amendment, because the law that this amendment attempts to enforce has been on the books and it has been the law of this country since 1912. We now have substantive law which now very substantially says that you shall not do any of the things set forth in this act. What this amendment proposes to do is withhold the expenditure of the supplemental funds being appropriated by this bill to the operation of the Postal Service from anyone

9. John S. Monagan (Conn.).

who violates the law that has been the law since 1912. The only determination that is necessary to be made by anybody is not to violate the law. . . .

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

The Chair finds that this amendment does not impose additional duties to the extent that is objectionable under the precedents relating to limitations on appropriation bills. However, the Chair also finds that the amendment does seek to cover matters beyond those which are in the purview of this bill since it provides that no part of any appropriation contained in this or any other act shall be available for certain purposes with respect to officers or employees of the Government whether inside or outside the U.S. Postal Service or agencies covered by this bill.

Therefore, this constitutes legislation on the pending appropriation bill and the Chair sustains the point of order.

F. PERMISSIBLE LIMITATIONS ON USE OF FUNDS

§ 64. Generally

When points of order are made under the rule prohibiting legislation on appropriation bills, rulings thereon will frequently turn on whether the proposition in question is in fact one of legislation, or whether it is merely a permissible "limitation" on the funds sought to be appropriated. The basic theory of limitations is that, just as the House may decline to appropriate for a purpose authorized by law, it may by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it. The limitation cannot change existing law, but may negatively restrict the use of funds for an authorized purpose or project. A limitation may furthermore serve the purpose of foreclosing possible interpretations of language in an appropriation bill that otherwise might be administratively construed to include matters other than those actually contemplated by the bill.[10]

A useful discussion and a list of tests to be applied in determining whether language in an appropriation bill or amendment thereto constitutes a permissible limitation can be found in a ruling made on Jan. 8, 1923.[11] The Chairman,[12] in the course of rul-

10. See the statement of the Chair at 83 CONG. REC. 2655, 75th Cong. 3d Sess., Mar. 1, 1938, in the course of ruling on a point of order against language contained in H.R. 9621, an Interior Department appropriation bill.

11. 64 CONG. REC. 1422, 67th Cong. 4th Sess.

12. Frederick C. Hicks (N.Y.).