

The Chair would rule that in fact this section does constitute a proper limitation consistent with the existing law and overrules the gentleman's point of order.

***New Duties Required to Invalidate Limitation***

**§ 64.30** While all limitations on funds on appropriation bills require federal officials to construe the language of that law in administering those funds, that duty of statutory construction, absent a further imposition of an affirmative direction not required by law, does not destroy the validity of the limitation.

On June 27, 1974,<sup>(13)</sup> an amendment restricting the use of funds in an appropriation bill for abortions or abortion referral services, abortifacient drugs or devices, and the promotion or encouragement of abortion, was held to be a negative limitation on funds in the bill imposing no new duties on federal officials other than to construe the language of the limitation in administering the funds. The proceedings are discussed in § 73.8, *infra*.

<sup>13.</sup> 120 CONG. REC. 21687, 93d Cong. 2d Sess.

**§ 65. Imposing “Incidental” Duties**

***Duties Already Required by Law***

**§ 65.1** The fact that a limitation on the use of funds in a general appropriation bill will impose certain incidental burdens on executive officials will not destroy the character of the limitation so long as those duties—such as statistical comparisons and findings of residence and employment status—are already mandated by law.

On Aug. 25, 1976,<sup>(14)</sup> the Chair held that, where existing law authorizing public works employment programs required a federal official to consider the severity and duration of unemployment in project areas and to make grants to local governments to be administered for the direct benefit and employment of unemployed residents of the affected community, language in a general appropriation bill prohibiting the use of funds therein where less than a certain percentage of the prospec-

<sup>14.</sup> 122 CONG. REC. 27737–39, 94th Cong. 2d Sess. See also § 52, *supra*, for general discussion of provisions imposing new duties on executive officials. And see § 73.8, *infra*.

tive employees had resided in the area and had been unemployed for a stated length of time was in order as a limitation which did not impose upon federal officials any substantially new duties not already required by existing law. The proceedings were as indicated below:

The Clerk read as follows:

For expenses necessary to carry out title I of the Public Works Employment Act of 1976 (Public Law 94-369), \$2,000,000,000: *Provided*, That not to exceed \$10,000,000 may be used for necessary administrative expenses, including expenses for program evaluation by the Secretary of Commerce: *Provided further*, None of the funds appropriated under this Chapter shall be available for any project where less than ten percent of the personnel to be employed on the project have currently resided for at least thirty days in the area used in determining project eligibility under Section 108(e) of Public Law 94-369 and have been currently unemployed for at least thirty days.

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Chairman, I make a point of order against the language included in the proviso which begins on page 2, line 11, and includes line 17, page 2. . . .

Quite obviously, Mr. Chairman, this language is legislation, in that it imposes requirements not present in the authorizing legislation and not present in existing law. It imposes duties or determinations upon the administrator who would be required to investigate, quite obviously, all of the personnel to be employed on various projects and to make determinations as to where they

reside and how long they have there resided and, in addition, to make determinations as to which of them have been currently unemployed for at least 30 days.

Now, that does indeed impose a new burden and a new determination and a new duty upon the Administrator.

Citing Deschler's Procedures in the U.S. House of Representatives, chapter 26, section 11, I quote the following:

When an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make investigation, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order.

It should not be necessary for me to recite any lengthy number of precedents since they abound. May I offer only two. In the 1st session of the 91st Congress, on July 31, 1969, the Chair ruled that an amendment to an education appropriation bill including the words, "in order to overcome racial imbalance," would be legislation on an appropriation bill because it would impose additional duties and determinations on school officials.

On another occasion, during the second session of the 89th Congress, on October 4, 1966, it was held by the Chair that a general appropriation bill providing funds for Federal highways constituted legislation if it included a provision specifying that "No funds shall be used for any highway . . . which requires either unjustified or harmful nonconforming use of land."

In both of those cases, as well as in numerous other cases, it has been uni-

formly held by the Chair that any provision in an appropriation bill which imposes additional determinations and requirements upon an administrator to make investigations or compile evidence or make judgments and determinations not otherwise required by law is legislation and, therefore, is subject to a point of order. . . .

MR. [ELFORD A.] CEDERBERG [of Michigan]: Mr. Chairman, [the proviso] is a limitation on funds in the bill, and it is restricted only to funds in the bill. It is consistent with but does not change existing law. The application of the limitation requires only information which it is the intention of the Department of Commerce to obtain under the rules and regulations required by existing law.

. . . Public Law 94-369, the Public Works Employment Act of 1976, provides in section 107—and I will read only part of the section—as follows:

The Secretary shall consider among other factors (1) the severity and duration of unemployment in proposed project areas, (2) the income levels and extent of underemployment in proposed project areas. . . .

Then section 108(e) of the act . . . [requires] the Department of Commerce to issue rules and regulations and also [requires] that any grant made to a local government based upon the unemployment rate of a community or neighborhood within its jurisdiction . . . be for a project of direct benefit to, or provide employment for, unemployed persons who are residents of that community or neighborhood.

The law was enacted on July 22, 1976. The Department of Commerce on August 23, 1976, in accordance with

the act, released the required regulations; and I have copies of them here. . . .

The official guidelines provide [in part]:

The applicant's intent to hire the unemployed of a specific area must be considered. . . .

[And]

The project must definitely benefit or provide employment for unemployed persons within that neighborhood or community. . . .

Mr. Chairman, the limitation does not require any significant new duty, but is based on information and findings provided for in the authorization or anticipated in the regulations issued under the authorization. Such limitations have been found in order. . . .

I would also like to point out, Mr. Chairman, that the burden of certification . . . would rest on the contractors. It is the contractors who will certify that they will obtain information from applicants on their residence and employment. . . .

MR. WRIGHT: . . . I want to say two basic things which I think are pertinent to this question.

The first is that it is wholly inappropriate to rely upon so-called official guidelines promulgated by an administrative agency to support a contention that language in an appropriation bill does not place obligations upon the administrator which are not required by law. The question is whether it imposes additional obligations upon that administrator which are not required by existing law.

If this Congress ever should reach the point of declaring that some administrative guideline published in the

Federal Register and lying there for 30 days constitutes law, then we shall have abrogated our most basic responsibilities. . . .

The gentleman from Michigan (Mr. Cederberg) quoted from a portion of section 107 of the act in an effort to demonstrate that the act itself requires these same determinations and findings that the language in the appropriation bill would require. There is a very significant difference between what the act requires and what this proviso included in the appropriation bill would require.

I call the attention of the chairman to the very language which was cited by the gentleman from Michigan:

The Secretary shall consider among other factors (1) the severity and duration of unemployment in proposed project areas, (2) the income levels and extent of underemployment in proposed project areas, and (3) the extent to which proposed projects will contribute to the reduction of unemployment.

In other words, the requirements imposed by the law upon the Secretary are very easily satisfied by statistical data available through the Bureau of Labor Statistics with respect to unemployment in specific areas geographically denominated within the country.

Beyond that, however, the language which was proposed as an exclusion in the appropriation bill would go much further than ask the administrator to determine statistics with respect to general areas. . . .

It would expand the requirement of the determination from a determination with respect to statistics applying to geographical areas, to make this determination include individual employ-

ees proposed to be employed on the project. And that is an enormous expansion. . . .

THE CHAIRMAN:<sup>(15)</sup> The Chair is prepared to rule.

The question, of course, is whether or not this limitation, or so-called limitation, imposes substantial new duties on an official of the executive branch. That question has been the subject of more points of order on appropriation bills than perhaps any other, or at least as many as any other. It is very difficult to make that determination in circumstances like the present one, because, for instance, as the gentleman from Michigan cited in Deschler's Procedure, chapter 25, section 10.7:

It is not in order in an appropriation bill to insert by way of amendment a proposition which places additional duties on an executive officer; but the mere requirement that the executive officer be the recipient of information is not considered as imposing upon him any additional burdens and is in order. . . .

The Chair is also aware of the rulings involving certain limitations on appropriations for food stamps. Those amendments involved the issue of whether or not the household's need for food stamps was a result of the fact that a breadwinner within the household was unemployed because he was engaged in a concerted work stoppage in a strike and imposed certain incidental duties on the executive branch to make the necessary determinations. In those cases the language was held to be a valid limitation upon the appropriation.

In regard to the language now before the chairman for decision, the Sec-

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

retary is required in the administration of the bill to make a determination that not less than 10 percent of the personnel to be employed on the project have been currently for at least 30 days in the area, and have been currently unemployed for at least 30 days.

The Chair notes that the basic law does impose rather substantial requirements in the sense that it requires, first, that the Secretary consider among other matters the three factors listed in section 107 that were mentioned by the gentleman from Texas as statistical factors. The Chair agrees they are statistical factors. He notes as well, though, that the gentleman from Michigan has brought up the provisions of section 108(e) which go somewhat further than that, and they require that any grant made to a local government based upon the unemployment rate of a community or neighborhood within its jurisdiction must be for a project of direct benefit to, or provide employment for, unemployed persons who are residents of that community or neighborhood.

So the law already imposes some substantial duties and determinations similar to those which would be required by the proposed limitation in this proviso. The Chair therefore would hold that the particular proviso under consideration is one that does impose a valid limitation upon the use of an appropriation and that the duties imposed upon the Administrator are purely incidental and do not impose any substantial new duties on the administrator. Therefore the Chair overrules the point of order.

## § 66. Exceptions From Limitations

### *Proviso Construing Terms as "Exception"*

**§ 66.1 Where a limitation in an amendment to an appropriation bill prohibited certain payments to persons in "excess of . . . \$500," a further provision stating that such limitation would not be "construed to deprive any shareholder of payments" to which he might be otherwise entitled was held to be in order as an exception to a limitation.**

On Mar. 24, 1944,<sup>(16)</sup> during consideration of the Department of Agriculture appropriation bill for 1945 (H.R. 4443), the following proceedings occurred:

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Rees of Kansas: On page 62, line 5, after the colon following the word "inclusive", insert the following: "*Provided further, That no payment or payments hereunder to any one person or corporation shall be in excess of the total sum of \$500: And provided further, That this limitation shall not be construed to deprive any shareholder of payments not exceeding the amount to which he would otherwise be entitled.*"

16. 90 CONG. REC. 3095, 78th Cong. 2d Sess.