issue was the amendment offered by Mr. Jed Johnson, of Oklahoma.

§ 77. Treasury and Post Office

Mail Seizure

§ 77.1 An amendment to a Treasury and Post Office Departments 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 was held to be a limitation and in order.

On Apr. 5, 1965,[19] The Committee of the Whole was considering H.R. 7060. The Clerk read as follows, and proceedings ensued as indicated below:

> 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:[20] The gentleman from Oklahoma reserves a point of order. . . .
>
> MR. STEED: 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: Subsequent rulings have cast some doubt on the applicability at present of the above ruling. On June 16, 1977, an amendment which prohibited the use of funds by OSHA for any inspection conducted by that agency without a search warrant based on probable cause as authorized by law was held out of order as legislation since it would impose new affirmative duties to make applications to courts, a procedure not required by statutory law or uniformly required by the federal courts. See 123 CONG. REC. 19373, 95th Cong. 1st Sess. [H.R. 7555]. If a definitive ruling by the Supreme Court had existed which required a probable cause warrant for inspections by OSHA, such ruling might, of course, have constituted a sufficient basis in law for the limitation as proposed to

19. 111 CONG. REC. 6869, 6870, 89th Cong. 1st Sess.

20. John A. Blatnik (Minn.).

be held in order. As it was, the Chair merely took into account (by judicial notice) the fact that federal court rulings had not been uniform or finally dispositive of constitutional requirements as to obtaining search warrants in such cases. The Chair did note in his ruling that the amendment would require such warrants even where inspection was voluntarily submitted to, whereas probable cause warrants are not ordinarily required under the case law when voluntary consent is given to the search.

Again, on June 7, 1978, an amendment to a general appropriation bill denying use of funds for OSHA to conduct inspections of small businesses unless a warrant had been previously obtained was ruled out of order as legislation since existing law as interpreted by the Supreme Court required a warrant for such inspections only where the business under inspection insisted upon such a warrant. See 124 CONG. REC. 16677, 95th Cong. 2d Sess. [H.R. 12929]. It may be noted that the ruling above, on Apr. 5, 1965, is arguably distinguishable from the later rulings, since the amendment held in order on that occasion did not include the term "probable cause" (which is a judicial finding) to define the necessary warrant, which could therefore be an administrative warrant. In the final analysis, however, whether the 1965 amendment was a permissible limitation would depend on whether existing law at the time did require search warrants prior to the seizure of mail in connection with income tax investigations. If so, the amendment would merely be a restatement of existing law and therefore allowable. It would appear, however, that the Internal Revenue Service had a persuasive argument at the time that it had the authority to seize the mail of delinquent taxpayers without a warrant. Section 6331(a) of the Internal Revenue Code provides the Secretary of the Treasury with authority to levy upon all property and upon rights to property of a delinquent taxpayer 10 days after notice and demand. Notwithstanding any other provision of law, the only property which cannot be levied upon is defined in code Sec. 6334(c). In 1965, mail was not enumerated as an exception in code Sec. 6334. The Service relied on several Supreme Court cases to establish that mail was property (*Searight* v *Stokes*, 44 U.S. 151); that judicial seizures of mail did not violate constitutional guarantees (*Ex parte Jackson*, 96 U.S. 721), and that statu-

torily authorized levy procedures do not violate due process guarantees (*Springer* v *U.S.*, 102 U.S. 586). An argument might be made that mail in the hands of the Post Office was not the property of the taxpayer-addressee. But since it had been held that an addressee has a sufficient legal right to the mail to enable him to recover it from third parties (*U.S.* v *Jones*, 31 F2d 755, 3d Cir. 1929), it could be argued that the taxpayer had a sufficient property interest in it upon which the Service could levy.

Distribution of Funds to States

§ 77.2 An amendment to a paragraph of an appropriation bill providing that no part of the funds therein contained shall be distributed to states on a per capita income basis was held to be a proper limitation restricting the use of funds and in order.

On Feb. 7, 1936,[1] the Committee of the Whole was considering H.R. 10919, a Treasury and Post Office Departments appropriation bill. A point of order against an amendment to the bill was overruled as follows:

> Grants to States for public-health work: For the purpose of assisting States, counties, health districts, and other political subdivisions of the States in establishing and maintaining adequate public-health services, including the training of personnel for State and local health work, as authorized in sections 601 and 602, title VI, of the Social Security Act, approved August 14, 1935 (49 Stat. 634), $8,000,000.
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> > Amendment offered by Mr. Taber: Page 36, line 19, after the period, strike out the period, insert a comma and the following: "*Provided*, That no part of the funds appropriated in this paragraph shall be distributed to States on a per-capita income basis.
>
> MR. [CARL] VINSON of Kentucky: Mr. Chairman, I make a point of order. The basis for the point of order is that it is legislation on an appropriation bill.
>
> MR. TABER: Mr. Chairman, it is purely a limitation. It prohibits the expenditure for certain purposes.
>
> THE CHAIRMAN:[2] The Chair is of the opinion that it is a limitation on an appropriation, and, therefore, overrules the point of order.

Parliamentarian's Note: Section 602 of 49 Stat. 634 prescribed a broad allotment formula as follows:

> (a) The Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury, shall, at the beginning of each fiscal year, allot

1. 80 CONG. REC. 1679, 74th Cong. 2d Sess.

2. Arthur H. Greenwood (Ind.).

to the States the total of (1) the amount appropriated for such year pursuant to section 601; and (2) the amounts of the allotments under this section for the preceding fiscal year remaining unpaid to the States at the end of such fiscal year. The amounts of such allotments shall be determined on the basis of (1) the population; (2) the special health problems; and (3) the financial needs; of the respective States.

This limitation did not change any stated element in the formula.

Subversive Activities

§ 77.3 An amendment to an appropriation bill, offered as a separate paragraph, prohibiting appropriations to pay the salary or expenses of any persons against whom charges have been brought under House Resolution 105 (relating to investigation of subversion) and not disposed of, was held a proper limitation upon an appropriation bill and in order.

On Feb. 9, 1943,[3] the Committee of the Whole was considering H.R. 1648, a Treasury and Post Office Departments appropriation. A point of order was made and overruled as indicated below:

Amendment offered by Mr. (Everett M.) Dirksen (of Illinois): On page 52, after line 16, insert a new paragraph as follows:

"Section 303. No part of any appropriation or authorization in this act shall be used to pay the salary or expenses of any persons against whom charges have been brought under the terms of House Resolution 105[4] where such charges have not been disposed of by action of the House exonerating such person or by enactment into law of a bill or resolution making some other disposition thereof."

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I raise a point of order against the amendment. I take it the gentleman from Illinois will concede the point of order?

MR. DIRKSEN: I do not concede it. I think it is a perfectly proper limitation.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Chairman, I rise to call the attention of the Chair on the point of order to the fact that this attempted limitation requires affirmative action, additional duties, on the part of some agency of the House or someone else. . . .

THE CHAIRMAN:[5] The Chair is prepared to rule.

While not identical, of course, with amendments along the same line and of the same general nature offered earlier in the debate, the Chair is of the opinion that this amendment partakes of the nature of those amendments offered earlier.

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3. 89 CONG. REC. 754, 78th Cong. 1st Sess.

4. H. Res. 105 authorized the Committee on Appropriations to examine charges against executive employees based on such employees' membership in subversive organizations.

5. Wirt Courtney (Tenn.).

The Chair is of the opinion that this does not require affirmative action, that it does not get into the realm of affirmative legislation, that it is a limitation, and, as the Chair stated when the other amendments were under consideration, the Congress, having the power to appropriate, would by the same token have the right and the authority to limit the appropriation.

The Chair is constrained to hold that the point is not well taken. It is therefore overruled.

Silver Purchase

§ 77.4 An amendment providing that none of the funds appropriated in a bill shall be used for carrying out the purchase of any silver, except newly mined silver from the United States, was held in order as a limitation on an appropriation bill.

On Feb. 28, 1939,[6] he Committee of the Whole was considering H.R. 4492, a Treasury and Post Office Departments appropriation bill. The Clerk read as follows:

Salaries and expenses, mints and assay offices: For compensation of officers and employees of the mints including necessary personal services for carrying out the provisions of the Gold Reserve Act of 1934 and the Silver Purchase Act of 1934 . . . $2,016,000. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Taber: On page 45, line 5, after the comma, strike out "$2,016,000" and insert "$1,916,000" and the following: "*Provided*, That none of the funds appropriated in this bill shall be used for carrying out the purchase of any silver, except newly mined silver mined in the United States.". . .

[Mr. Louis Ludlow, of Indiana, reserved a point of order, but later withdrew such reservation, whereupon Mr. Abe Murdock, of Utah, made a point of order as shown below. Prior to the point of order, debate took place as follows:]

MR. TABER: Mr. Chairman, I have offered this limitation, and it is a pure limitation and clearly in order, to reduce the amount of the appropriation on page 45 by $100,000. This is probably $25,000 less than the amount that should be saved as a result of the operation of the amendment. I have offered the amendment for the purpose of preventing the purchase of any silver by the United States Government under any of the Silver Purchase Acts, with the exception of newly mined silver mined in the United States. . . .

MR. [JOHN A.] MARTIN of Colorado: Just how does shrinking the appropriation by $100,000 prevent the purchase of the foreign silver?

MR. TABER: It prevents the use of any of the funds appropriated in this act for the purpose of such purchase. Without the expenditures for the personnel involved in such purchase there can be no purchase. Without the expenditures for carting and handling the silver to the storage warehouse at

6. 84 CONG. REC. 2021–23, 76th Cong. 1st Sess.

West Point there can be no purchase of foreign silver.

MR. MARTIN of Colorado: If the gentleman will yield further, the gentleman's amendment does not affect the power of the Secretary of the Treasury to make such purchases inasmuch as the Silver Purchase Act confers the power on him.

MR. TABER: My amendment prohibits the expenditure of any of the funds for that purpose. Under this proviso, a limitation, it would be absolutely impossible for the Secretary of the Treasury to spend any of the funds appropriated in this act for the purpose of carrying out the purchase of any silver, with the exception of newly mined silver mined in the United States. . . .

MR. [CHARLES L.] GIFFORD [of Massachusetts]: Would the gentleman tell the Committee the method of paying for this silver by issuing silver certificates on the basis of $1.29 for 44 cents and 64 cents silver and what this would eventually lead to?

MR. TABER: Well, it simply leads, eventually, to inflation, of course, but what I want to do at this time is to bring the folks from the silver territory to a realization of the fact that if they are going to expect any consideration along the line of a subsidy for silver—and that is what this is—they have got to get rid of the burden of foreign-mined and foreign-stored silver. As a result of this operation of handling this foreign-mined and foreign-stored silver the United States will be paying for the operation of the Chinese-Japanese war, and before we get through we will be paying for the operation of the Spanish civil war that has been going on. There must be some limitation somewhere upon these expenditures. . . .

MR. [FRANCIS H.] CASE of South Dakota: The gentleman has already said that this would prohibit the use of any of this money for foreign-produced silver, and now the gentleman states positively that there is nothing in his amendment that would interfere with the purchase of domestically produced silver under the Silver Purchase Act.

MR. TABER: It will not interfere with newly mined domestically produced silver mined in the United States. It will interfere with the purchase of stored silver in the United States.

MR. [FRED L.] CRAWFORD [of Michigan]: Mr. Chairman, will the gentleman yield?

MR. TABER: I yield to the gentleman from Michigan.

MR. CRAWFORD: And one should also keep in mind that we have the Thomas amendment and also the Silver Purchase Act and this amendment which the gentleman proposes would not, under the Thomas amendment of the Silver Purchase Act, interfere with the purchase of domestically mined silver. . . .

MR. MURDOCK of Utah: Mr. Chairman, I make the point of order that the amendment submitted by the gentleman from New York is in violation of the Holman rule and constitutes legislation on an appropriation bill. . . .

THE CHAIRMAN:[7]. . . The Chair simply desires to call the attention of the Committee to a ruling that has been made in the past on a question very similar to this one, and the Chair

7. John W. Boehne (Ind.).

reads from a decision of the Honorable Nelson Dingley, of Maine, Chairman of the Committee of the Whole, on January 17, 1896, in which he ruled:

> The House in Committee of the Whole has the right to refuse to appropriate for any object, either in whole or in part, even though that object may be authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole.

Because of this decision the Chair overrules the point of order.

Air Carriage of Foreign Mails

§ 77.5 An amendment providing that no part of an appropriation for transportation of foreign mails by aircraft shall be paid to any corporation which shall directly or indirectly purchase insurance from any official or employee of the United States was held in order as a limitation on an appropriation bill.

On Feb. 28, 1939,[8] he Committee of the Whole was considering H.R. 4492, a Treasury and Post Office Departments appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

> Foreign air-mail transportation: For transportation of foreign mails by aircraft, as authorized by law $10,200,000.

MR. [JOHN C.] SCHAFER of Wisconsin: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Schafer of Wisconsin: Page 64, line 14, after the period, insert: "*Provided*, That no part of the funds herein appropriated shall be paid to any corporation which shall directly or indirectly purchase insurance from any official or employee of the United States or any member of their immediate family."

MR. [LOUIS] LUDLOW [of Indiana]: Mr. Chairman, a point of order.

THE CHAIRMAN:[9] The gentleman will state it.

MR. LUDLOW: I make the point of order, Mr. Chairman, that it is legislation on an appropriation bill. . . .

MR. SCHAFER of Wisconsin: I wish to be heard briefly, Mr. Chairman.

This is a limitation. My amendment applies to a paragraph of the bill which makes an appropriation of $10,200,000 as a subsidy to aviation corporations which are engaged in the transportation of foreign air mail. In view of the fact that administrative branches of the Government determine what corporations are to receive these large subsidies, it is necessary to include the language of the amendment in order that private personal interests of Government officials and employees and their families might not conflict with the public interest with a resulting increased cost to the taxpayers' Treasury. This amendment is a limitation with a purpose of reducing the cost of

8. 84 CONG. REC. 2034, 2035, 76th Cong. 1st Sess.

9. John W. Boehne (Ind.).

government, and I submit it is in order. . . .

THE CHAIRMAN: The Chair is ready to rule. The Chair is of the opinion that this is definitely a limitation and, therefore, the point of order is overruled.

Pay for Services Related to Investigations

§ 77.6 A provision that no part of an appropriation shall be used to pay any person detailed or loaned for service in connection with any congressional investigation was held to be in order as a proper limitation.

On Feb. 19, 1937,[10] the Committee of the Whole was considering H.R. 4720, a Treasury and Post Office Departments appropriation bill. The Clerk read the following provision of the bill against which a point of order was raised:

> Sec. 5. No part of the appropriations contained in this act shall be used to pay the compensation of any person detailed or loaned for service in connection with any investigation or inquiry undertaken by any committee of either House of Congress under special resolution thereof.
>
> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, I make a point of order against section 5 on the ground it is legislation on an appropriation bill. . . .
>
> The Chairman:[11] . . . The question raised is whether this is a proper limitation to be placed on an appropriation bill. If it be a proper limitation, then the point of order cannot be sustained. It is a question whether any law is changed by this section. If special committees desire to employ any employee from a department, they can still employ them by making proper arrangements and paying for them out of the appropriations that have been made for the special committees, but this is an appropriation bill for the Treasury and Post Office Departments, and the question arises whether the House in Committee of the Whole can place a limitation not only that will save money, but will direct to whom that money will be paid.

There are many decisions defining limitations on appropriation bills, but one of the best that the Chair has found is one given by Chairman Nelson Dingley, of Maine, on January 13, 1896, which is found on page 47 of Cannon's Procedure of the House of Representatives. The ruling of the Chairman at that time was as follows:

> The House in Committee of the Whole has the right to refuse to appropriate for any object, either in whole or in part, even though that object may be authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole. . . .

Again, on December 8, 1922, the Treasury Department appropriation

10. 81 CONG. REC. 1445, 1446, 75th Cong. 1st Sess.

11. Arthur H. Greenwood (Ind.).

bill was under consideration in the Committee of the Whole House on the state of the Union, when the paragraph providing an appropriation for the enforcement of the National Prohibition Act was reached Mr. Tinkham, of Massachusetts, proposed this amendment:

> Add a new provision, as follows: "*Provided* That no part of this appropriation shall be used for the payment of a salary of any employee who shall not have been appointed after a competitive examination and certification by the Civil Service Commission."

Mr. Madden made a point of order against this amendment and cited the section of the law which permitted the Commissioner of Internal Revenue and the Attorney General to select certain employees to help enforce the law.

The Chairman of the Committee of the Whole at that time was the gentleman from Indiana, Mr. Sanders; and the Chair reads his decision:

> The Committee on Appropriations, of course, have no legislative powers except such as are prescribed by the rules, and an amendment cannot be offered which proposes legislation unless it comes within the rules. However, there is a very long line of decisions which permits limitations upon appropriations. An appropriation shall be paid to any certain class of employees, and the Chair knows of no reason why an amendment which provides that no part of this appropriation shall be paid to employees unless they have certain qualifications is not a proper limitation. The Chair therefore overrules the point of order.

That decision may be found in Cannon's Precedents, volume 7, section 1593.

The Chair thinks that the section of the bill against which the point of order is made is a proper limitation upon the use of the appropriation contained in the bill. It does not necessarily have to reduce the amount that shall be paid. It can direct to whom it shall be paid. The Chair is of the opinion, therefore, that the section is clearly within the power of the Committee of the Whole to place a limitation upon an appropriation; and the Chair, therefore, overrules the point of order.

Compensation of Named Persons

§ 77.7 An amendment to a paragraph of an appropriation bill providing that no part of the money contained in the act shall be paid as compensation to several persons, naming them, was held germane and a proper limitation upon an appropriation bill.

On Feb. 5, 1943,[12] the Committee of the Whole was considering H.R. 1648, a Treasury and Post Office Departments appropriation bill. The Clerk read as follows:

> Expenses of loans: The indefinite appropriation "Expenses of loans, act of September 24, 1917, as amended and extended" (31 U.S.C. 760, 761), shall not be used during the fiscal year 1944 to supplement the appropriations otherwise provided for the current work of the Bureau of the Public Debt. . . .

12. 89 CONG. REC. 645, 646, 78th Cong. 1st Sess.

MR. [JOE] HENDRICKS [of Florida]: Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. Hendricks: Page 12, line 22, after the word "Treasury", strike out the period and insert a colon and the following: "*Provided further,* That no part of any appropriation contained in this act shall be used to pay the compensation of William Pickens, Frederick L. Schuman . . . and Edward Scheunemann."

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, I make the point of order that the amendment provides for the refusal of payment of salaries to individuals whose salaries are not provided for in this appropriation bill and, therefore, that the amendment is not germane. Further, I make the point of order that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:[13] With respect to the point of order made by the gentleman from New York [Mr. Marcantonio], amendments of this character have been inserted in appropriation bills heretofore. The amendment simply limits the appropriation. If Congress has the right to appropriate, Congress, by the same token, has the right to limit the appropriation.

Bulk Rates for Political Committees

§ 77.8 An amendment reducing an amount in a general appropriation bill for the postal service and providing that no funds therein be used to implement special bulk third-class rates for political committees was held in order either as a negative limitation not specifically requiring new determinations or as a retrenchment of expenditures under the Holman rule even assuming its legislative effect, since the reduction of the amount in the bill would directly accomplish the legislative result.

On July 13, 1979,[14] during consideration in the Committee of the Whole of H.R. 4393 (Treasury Department, Postal Service, and general government appropriation bill) a point of order against an amendment was overruled as indicated below:

THE CHAIRMAN:[15] The Clerk will read.

The Clerk read as follows:

For payment to the Postal Service Fund for public service costs and for revenue foregone on free and reduced rate mail, pursuant to 39 U.S.C. 2401 (b) and (c), and for meeting the liabilities of the former Post Office Department to the Employees' Compensation Fund and to postal employees for earned and unused annual leave as of June 30, 1971, pursuant to 39 U.S.C. 2004, $1,697,558,000.

13. Wirt Courtney (Tenn.).

14. 125 CONG. REC. 18453–55, 96th Cong. 1st Sess.

15. Richardson Preyer (N.C.).

MR. [DAN] GLICKMAN [of Kansas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Glickman: On page 9, line 3, delete "$1,697,558,000." and insert in lieu thereof "$1,672,810,000: *Provided* That no funds appropriated herein shall be available for implementing special bulk third-class rates for 'qualified political committees' authorized by Public Law 95–593.". . .

MR. [ROBERT C.] ECKHARDT [of Texas]: My point of order [which had previously been reserved] is that the amendment places a burden on the Postal Department which would not exist but for this amendment. . . . [I]f the amendment is passed, it does not merely withhold funds, but it requires the Postal Department to adjust the rates of the Postal Department in order to comply with the limitation contained in this amendment. Therefore, this is not a mere limitation on an appropriation but it is a limitation which requires the Postal Department, as the gentleman has stated in his letter, to adjust all rates, determine which rates need adjustments, which ones qualify or would not qualify under the provision, and, thus, reduce those rates to the figures that would permit the reduction in revenue. Therefore, it seems clear to me that this affords an extremely heavy burden on the Postal Department which would not otherwise exist but for the passage of the amendment. If this were not true, the situation would create an anomalous condition which I had pointed out in my initial question to the gentleman in the well and the author of the amendment. It would create a situation in which the benefits provided under section 3626 of title 39 would still be enjoyed by qualifying political committees, and yet the Postal Department would not be able to receive the adjustment due to the additional costs. It seems to me that in effect if the gentleman is correct and if adjustments are made in the rate, there is another change in substantive law occasioned by the adjustment in rates. That is, the adjustment in rates substantively changes Public Law 95–593 so as to deprive qualified political committees, including the Democratic Committee and the Republican Committee, and all others that qualify, of the benefits that we have enacted in another piece of legislation, not one that deals with the Postal Department but deals generally with the rates of political parties with respect to the use of the mails.

MR. GLICKMAN: . . . The amendment is strictly one of limitation. It reduces funding by $25 million and limits the use of that funding with respect to the charging of postal rates. I would state for the gentleman and for the Chair that section 3627 of title 39, United States Code is discretionary authority to adjust rates if the appropriation fails and is not mandatory authority and, therefore, I do believe that the amendment is merely a limitation and is germane. . . .

THE CHAIRMAN: The Chair is prepared to rule on the point of order.

In the opinion of the Chair, the amendment constitutes a negative limitation on how funds in the bill are spent rather than being legislation on an appopriations bill. No new determinations are required. Even if the amendment should be considered as constituting legislation, it constitutes a retrenchment because it cuts the

amounts in the bills and the legislative effect directly contributes to that reduction.

The Chair, therefore, overrules the point of order.

No Funds to Administer Customs Service Reductions

§ 77.9 While a limitation on a general appropriation bill may not involve changes of existing law or affirmatively restrict executive discretion, it may by a simple denial of the use of funds change administrative policy and be in order; thus, a point of order against a provision prohibiting the use of funds for any reduction in Customs Service regions or for any consolidation of Customs Service offices was overruled.

On June 27, 1984,[16] during consideration in the Committee of the Whole of the Treasury Department and Postal Service appropriation bill (H.R. 5798), a point of order against a provision in the bill was overruled, as follows:

The Clerk read as follows:

> Sec. 617. None of the funds made available in this Act may be used to plan, implement, or administer (1) any reduction in the number of regions, districts or entry processing locations of the United States Customs Service; or (2) any consolidation or centralization of duty assessment or appraisement functions of any offices of the United States Customs Service.

MR. [BILL] FRENZEL [of Minnesota]: Mr. Chairman, I make a point of order against section 617. . . .

. . . Section 617 prohibits the use of funds in this appropriation for a reduction in the number of Customs entry processing points and any consolidation of duty assessment or appraisement functions in any of the offices of the Customs Service.

This negates Public Law 91–271 which gives the President the authority to rearrange or make consolidations at points of entry at the District Offices or at headquarters.

In addition, in my judgment the language is so broad as to interfere with existing administrative authority to carry out its appraisement functions as required by law. Section 617 goes beyond the limitation of funds which are the subject of this appropriation and constitutes an effort to change existing law under the guise of a limitation. There seems to be in section 617 almost a complete prohibition of executive discretion to make any changes to help the Customs Service carry out its duties. . . .

MR. [EDWARD R.] ROYBAL [of California] Mr. Chairman, section 617 is a simple limitation again on an appropriation bill. It does not change the application of existing law. It merely prohibits the use of funds to pay for any Government employee who tries to prevent the law from being enforced. . . .

THE CHAIRMAN:[17] The Chair is prepared to rule.

16. 130 CONG. REC. ——, 98th Cong. 2d Sess.

17. Anthony C. Beilenson (Calif.).

It is the opinion of the Chair that the section does not mandate spending but rather limits the use of funds to consolidate Customs regions and is as such a negative limitation on the use of funds. And the Chair would cite Mr. Cannons volume 7 of Precedents, section 1694:

> While a limitation may not involve change of existing law or affirmatively restrict executive discretion, it may properly effect a change of administrative policy and still be in order.[18]

Therefore it is the ruling of the Chair that the gentleman's point of order is overruled.

Parliamentarian's Note: This precedent must be distinguished from cases where an amendment, by double negative or otherwise, can be interpreted to require the spending of more money—for example, an amendment prohibiting the use of funds to keep less than a certain number of people employed. (A "floor" on employment levels would be tantamount to an affirmative direction to hire no fewer than a specified number of employees.)

Enforcement of Internal Revenue Service Policies

§ 77.10 An amendment to a general appropriation bill prohibiting the use of funds therein to carry out any ruling of the Internal Revenue Service which rules that taxpayers are not entitled to certain charitable deductions was held in order as a limitation, since the amendment was merely descriptive of an existing ruling already promulgated by that agency and did not require new determinations as to the applicability of the limitation to other categories of taxpayers.

On July 16, 1979,[19] during consideration in the Committee of the Whole of H.R. 4393 (Treasury Department, Postal Service, and general government appropriation bill), a point of order against an amendment was overruled, as follows:

> The Clerk read as follows:
>
> Amendment offered by Mr. [Robert K.] Dornan [of California]: Page 39, after line 18, add the following new section:
>
> Sec. 613. None of the funds available under this Act may be used to carry out any revenue ruling of the Internal Revenue Service which rules that a taxpayer is not entitled to a charitable deduction for general purpose contributions which are used for educational purposes by a religious organization which is an exempt organization as described in section 170(c)(2) of the Internal Revenue Code of 1954. . . .

18. 7 Cannon's Precedents § 1694 is discussed in § 51, supra.

19. 125 CONG. REC. 18808–10, 96th Cong. 1st Sess.

MR. [TOM] STEED [of Oklahoma]: Mr. Chairman, I want to insist upon my point of order.

Regardless of the merit of the subject matter here, this obviously is not a limitation on an appropriation. It is evident by the author's own statement that many things will be involved if this amendment is adopted, that would be forced upon the agency, that are not otherwise involved. It is in direct violation of clause 2, rule XXI, because it does create legislative action.

This is obviously a matter that only the legislative committee can cope with, and so because it is a violation of that rule I insist that the point of order be sustained. . . .

MR. DORNAN: . . . I can assure the gentleman from Oklahoma (Mr. Steed) that I checked out this amendment with the Parliamentarian's Office, and I was told that the amendment was in order as a limitation on an appropriations bill. There is no additional burden imposed on Federal executive offices. IRS officials already perform the simple ministerial requirement of analyzing our tax returns. The amendment is negative in nature. It shows retrenchment on its face. It is germane. Nevertheless, for the benefit of the gentleman, if he desires, I will read some relevant excerpts from Cannon's Precedents which demonstrate that the amendment is in order. . . .

. . . [I]n section 1515:

> An amendment prohibiting payment of fees to officials under certain contingencies was held to retrench expenditures and to come within the exception to the rule against admission of legislation on appropriation bills. . . .

Section 1491:

> If the obvious effect of an amendment is to reduce expenditures, it is not necessary that it provide for such reduction in definite terms and amount in order to come within the exception.

Section 1493, and I will conclude with this one—

> A cessation of Government activities was held to involve a retrenchment of expenditures. . . .

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, this amendment obviously adds a burden to the IRS to establish a different standard from that which would be applicable under existing law. If it did not, the amendment would be of no effect. What is attempted to be done here is to provide a different rule of law and impose that on the IRS by what is called a retrenchment in an appropriations bill. If this may be done in the name of retrenchment of expenditures, then any law of this Nation may be changed. Funds may not be permitted to go to any agency which makes a determination of an administrative sort unless that determination is different from that which the law would permit to apply under the circumstances. . . .

THE CHAIRMAN:[20] The Chair is prepared to rule on the point of order. The Chair is of the opinion that retrenchment precedents under the Holman rule do not apply in this situation since no certain reduction in funds is involved. The Chair is of the opinion that there are no precedents directly in point and the Chair is not aware that the gentleman has sought the advice of the Chair's advisers on this particular amendment but on a somewhat similar amendment.

The Chair is of the opinion that what is involved in the amendment is

20. Richardson Preyer (N.C.).

a particular ruling which applied to a single case and that, therefore, no new determination has to be made by the IRS. It does not require the IRS to make new rulings or determinations. The amendment does not describe a situation where the IRS must look at every religious contribution to determine if it applies. The amendment is somewhat analogous to that in Deschler's (Procedure), chapter 25, section 10.16, which was held in order.

Therefore, the Chair thinks the amendment is in order, and the point of order is overruled.

Parliamentarian's Note: Rulings such as that cited above would now be affected by Rule XXI clause 5(b),[21] which provides:

> No bill or joint resolution carrying a tax or tariff measure shall be reported by any committee not having jurisdiction to report tax and tariff measures, nor shall an amendment in the House or proposed by the Senate carrying a tax or tariff measure be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A question of order on a tax or tariff measure in any such bill, joint resolution, or amendment thereto may be raised at any time.

An otherwise valid limitation on the use of funds contained in a general appropriation bill may be held to violate this clause where it is shown that the imposition of the restriction on Internal Revenue Service funding for the fiscal year would effectively and inevitably preclude the IRS from collecting revenues otherwise due and owing by law or require collection of revenue not legally due or owing. See, for example, the ruling of Aug. 1, 1986, during consideration of H.R. 5294, Treasury Department and Postal Service appropriation bill for fiscal 1987.

§ 77.11 The Chair held that an amendment to a general appropriation bill denying the use of funds therein for the Internal Revenue Service to carry out certain published tax procedures did not impose new duties or determinations on the executive branch and did not constitute legislation.

In a ruling on Aug. 19, 1980,[1] the Chair indicated that it is in order on a general appropriation bill to deny the use of funds to carry out an existing regulation, and the fact that the regulation for which funds are denied may have been promulgated pursuant to court order and pursuant to constitutional provisions is an argument on the merits of the amendment and does not render it legislative in nature. The pro-

21. *House Rules and Manual* § 846b (1985).

1. 126 CONG. REC. 21981, 21983, 21984, 96th Cong. 2d Sess.

ceedings are discussed in Sec. 64.28, supra.

Regulations as to Sureties on Customs Bonds

§ 77.12 Language in a general appropriation bill prohibiting the use of funds therein to eliminate an existing legal requirement for sureties on customs bonds was held in order as a valid limitation merely denying funds to change existing law and regulations.

The Chair held on June 27, 1984,[2] that, while an agency may have authority to promulgate new regulations which would change existing regulations, it is in order in a general appropriation bill to deny the use of funds therein for agency proceedings relating to changes in regulations. The proceedings are discussed in § 51.16, supra.

Excepting Certain Political Committees From Limitation Affecting Mail Rates

§ 77.13 To an amendment to a general appropriation bill limiting the use of funds for the Postal Service to implement special mail rates for qualified political committees as authorized by law, an amendment lessening the amount of the reduction of funds in the original amendment and also excepting from the limitation certain congressional political committees as defined in law was held in order either as an exception from a valid limitation which did not add legislation (since the determinations as to which political committees fit those descriptions were already required by law of the Postal Service) or as perfecting a retrenchment amendment while still reducing funds in the bill.

The ruling of the Chair on July 13, 1979,[3] as that to an amendment retrenching expenditures in a general appropriation bill by reducing amounts therein and prohibiting their availability to particular recipients, an amendment lessening the amount of the reduction and also providing an exception from the limitation may be in order as a perfection of the retrenchment if funds contained in the bill remain reduced thereby. The proceedings are discussed in § 4.8, supra.

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

3. 125 CONG. REC. 18456, 18457, 96th Cong. 1st Sess.