motion offered by the gentleman from Alabama is that it be germane to the Senate amendment. The language is quite clearly germane to the Senate amendment No. 37 and, therefore, the motion is in order and the point of order is overruled.

B. APPROPRIATIONS FOR UNAUTHORIZED PURPOSES

§ 7. In General

The rule[7] prohibiting unauthorized appropriations and legislation on general appropriation bills is applicable only to general appropriation bills. In addition to the precedents in this chapter, extensive discussion of bills considered to be or not to be "general" appropriation bills is found in the preceding chapter on appropriation bills.[8] Further discussion of the general requirement that appropriations be authorized is also to be found in that chapter.

Where the law authorizes appropriations only out of a special fund, appropriations from the general fund are deemed unauthorized.[9]

Contingent Upon Enactment of Authorization

§ 7.1 Language in an appropriation bill providing funds for projects not yet authorized by law is legislation and not in order.

On Sept. 5, 1961,[10] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9033), a point of order was raised against the following provision:

The Clerk read as follows:

TITLE V—PEACE CORPS

Funds appropriated to the President

Peace Corps

For expenses necessary to enable the President to carry out the provisions of the Peace Corps Act, including purchase of not to exceed sixteen passenger motor vehicles for $20,000,000: *Provided*, That this paragraph shall be effective only upon enactment into law of S. 2000 or H.R. 7500, Eighty-seventh Congress, or similar legislation to provide for a Peace Corps.

MR. [EDGAR W.] HIESTAND [of California]: Mr. Chairman, a parliamentary inquiry.

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

MR. HIESTAND: Title V, which has just been read, has not yet been au-

7. Rule XXI clause 2. See § 1, supra, for text and discussion of the rule.
8. Ch. 25, supra.
9. See §§ 35.1, 35.2, infra.
10. 107 CONG. REC. 18179, 87th Cong. 1st Sess.
11. Wilbur D. Mills (Ark.).

thorized and therefore is subject to a point of order.

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

MR. [OTTO E.] PASSMAN [of Louisiana]: We concede the point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman from Louisiana concedes the point of order and the Chair sustains the point of order made by the gentleman from California (Mr. Hiestand).

§ 7.2 In a general appropriation bill, a paragraph making an appropriation contingent upon the subsequent enactment of authorizing language is in violation of Rule XXI clause 2.

On May 3, 1967,[12] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9481), a point of order was raised against the following provision:

The Clerk read as follows:

CHAPTER VIII

MILITARY CONSTRUCTION

FAMILY HOUSING

HOMEOWNERS ASSISTANCE FUND, DEFENSE

For the Homeowners Assistance Fund, established pursuant to section 1013(d) of the Demonstration Cities and Metropolitan Development Act of 1966 (Public Law 89–754, approved November 3, 1966), $5,500,000, to remain available until expended: Provided, That this paragraph shall be effective only upon enactment into law of S. 1216, Ninetieth Congress, or similar legislation.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, a point of order.

THE CHAIRMAN:[13] The gentleman will state his point of order.

MR. HALL: Mr. Chairman, I wish to make a point of order asking the Chair to strike chapter 8 of the second supplemental appropriation bill, to be found on page 17, lines 6 through 16 thereof, for the reason there has been no authorization of this appropriation and that it is contrary to rule XXI (2) of this body. Consideration of S. 1216 is now before this body's Committee on Rules, it is controversial, it has mixed jurisdictional parentage, and it came out of the Committee on Armed Services with eight or more opposing votes. It can be defeated on the floor.

THE CHAIRMAN: Does the gentleman from Florida seek to be heard on this point of order?

MR. [ROBERT L. F.] SIKES [of Florida]: I do, Mr. Chairman.

Mr. Chairman, as the bill states and as the report states, there is a requirement for the enactment of authorizing legislation. The bill which is before the House clearly requires that appropriations for the acquisition of properties must be authorized by a military construction authorization act, and that no moneys in the fund may be used except as may be provided in an appropriation act, and it would clearly protect the Congress and fulfill the requirements of the law.

12. 113 CONG. REC. 11589, 90th Cong. 1st Sess.

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

What we are seeking to do is to put into operation an immediate program. If we do not provide funds now for people who need money for losses in their property as a result of base closures, it is going to be some months before it can be done, probably, in the regular appropriation bill.

Of course, the language is subject to a point of order. We concede that. If the gentleman insists on his point of order, that is the story, but the homeowners will be the ones who suffer unnecessarily.

THE CHAIRMAN: The Chair is prepared to rule. As the gentleman from Florida has conceded, the language objected to by the gentleman from Missouri is subject to a point of order in that no authorization has been enacted into law. The Chair, therefore, sustains the point of order.

§ 7.3 An item of appropriation providing for an expenditure not previously authorized by law is not in order; and delaying the availability of the appropriation pending enactment of an authorization does not protect the item of appropriation against a point of order under Rule XXI clause 2.

On Apr. 26, 1972,[14] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 14582), a point of order was raised against the following provision:

The Clerk read as follows:

FEDERAL RAILROAD ADMINISTRATION

GRANTS TO NATIONAL RAILROAD PASSENGER CORPORATION

To enable the Secretary of Transportation to make grants to the National Railroad Passenger Corporation, as authorized by section 601 of the Rail Passenger Service Act of 1970, as amended, $170,000,000, to remain available until expended: *Provided*, That this appropriation shall be available only upon the enactment into law of authorizing legislation by the Ninety-second Congress. . . .

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I make a point of order against the $170 million appropriation for Amtrak.

THE CHAIRMAN:[15] The gentleman will state his point of order.

MR. VANIK: Mr. Chairman, the authorization has not yet been made. The fact that the authorization passed the House of Representatives would not make the appropriation valid. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the House has passed the authorization bill. It has not been enacted into law. I think the point of order is well taken.

THE CHAIRMAN: Does the gentleman from Texas concede the point of order?

MR. MAHON: I concede the point of order, Mr. Chairman. . . .

THE CHAIRMAN: The Chair understands that the chairman of the committee concedes the point of order. Therefore, the point of order is sustained.

14. 118 CONG. REC. 14455, 92d Cong. 2d Sess.

15. Jack B. Brooks (Tex.).

Authorization Revoked by Law Requiring Subsequent Authorization

§ 7.4 An act providing that, notwithstanding any other law, "no appropriation may be made to the National Aeronautics and Space Administration unless previously authorized by legislation hereafter enacted by the Congress," was construed to have voided all previous authorizations for appropriations to that agency, so that an appropriation for "research and development" was held not authorized by law.

On June 29, 1959,[16] the Committee of the Whole was considering H.R. 7978, a supplemental appropriation bill. During the reading of the bill for amendment, the Clerk read the following paragraph against which a point of order was sustained:

> RESEARCH AND DEVELOPMENT
>
> For an additional amount for "Research and development", fiscal year 1959, $18,675,000, to remain available until expended.
>
> MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[17] The gentleman will state his point of order.
>
> MR. GROSS: Mr. Chairman, I make the point of order against the language on page 4, lines 2, 3, and 4, on the ground that there is no authorization in basic law for this appropriation to be made.
>
> In connection with that, I send a copy of Public Law 86–45 of the 86th Congress to the Chair. I make the point of order on the ground that there is no authorization in basic law for this appropriation to be made. The authorization for this appropriation did exist at one time, but it was repealed by the act of June 15, 1959, Public Law 86–45, section 4. . . .
>
> > Sec. 4. Notwithstanding the provisions of any other law, no appropriation may be made to the National Aeronautics and Space Administration unless previously authorized by legislation hereafter enacted by the Congress.
>
> This law, Mr. Chairman, was approved on June 15, 1959. This language clearly indicates, Mr. Chairman, that appropriations can be made for items authorized by legislation which is hereafter enacted, meaning after June 15, 1959. Section 4 clearly states that appropriations can be made only for items authorized after June 15, 1959, hence all previous authorizations are voided. . . .
>
> THE CHAIRMAN: The gentleman from Iowa has made a point of order against that portion of the bill appearing in lines 2, 3, and 4, page 4, and has called the attention of the Chair to section 4 of Public Law 86–45. In view of the language cited, the Chair sustains the point of order.

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16. 105 CONG. REC. 12125, 86th Cong. 1st Sess.

See also 105 CONG. REC. 12130, 86th Cong. 1st Sess., June 29, 1959.

17. Paul J. Kilday (Tex.).

Waiver of Points of Order Against Items "Not Yet Authorized"

§ 7.5 Where the Committee on Rules had intended to recommend a waiver of points of order against unauthorized items in a general appropriation bill but not against legislative language therein, the Member calling up the resolution offered an amendment to reflect that intention.

On July 21, 1970,[18] the following proceedings took place:

MR. [JOHN A.] YOUNG [of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1151 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1151

Resolved, That during the consideration of the bill (H.R. 18515) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1971, and for other purposes, all points of order against said bill for failure to comply with the provisions of clause 2, rule XXI are hereby waived.

MR. YOUNG: . . . Mr. Speaker, House Resolution 1151 is a resolution waiving points of order against certain provisions of H.R. 18515, the Departments of Labor, Health, Education, and Welfare and related agencies appropriation bill for fiscal year 1971. . . .

Because the authorizations have not been enacted, points of order are waived against the bill for failure to comply with the first provision of clause 2, rule XXI. By mistake, the second provision was covered by the rule—so I have an amendment at the desk to correct the resolution.

Now, Mr. Speaker, as stated there is a clerical error in the rule and at the proper time I shall send to the desk a committee amendment to correct the clerical error. . . .

The Clerk read as follows:

Amendment offered by Mr. Young: Strike out lines 5 through 7 of the resolution and insert in lieu thereof the following: "purposes, all points of order against appropriations carried in the bill which are not yet authorized by law are hereby waived."

The amendment was agreed to. . . .

The resolution was agreed to.

Executive Order Not Sufficient Authorization

§ 7.6 A Presidential order creating a War Relocation Authority was held not an authorization in law for an appropriation for expenses incurred incident to the establishment, maintenance, and operation of the emergency refugee shelter at Fort Ontario, New York.

18. 116 CONG. REC. 25240–42, 91st Cong. 2d Sess.

On Mar. 2, 1945,[19] the Committee of the Whole was considering H.R. 2374, a deficiency appropriation bill. During the reading of the bill for amendment, a point of order was raised against the bracketed language below:

WAR RELOCATION AUTHORITY

Salaries and expenses: The limitation in the appropriation for salaries and expenses, War Relocation Authority, in the National War Agency Appropriation Act, 1945, on the amount which may be expended for travel is hereby increased from $375,000 to $475,000; [and of said appropriation not to exceed $280,477 is made available for expenses incurred during the fiscal year 1945 incident to the establishment, maintenance, and operation of the emergency refugee shelter at Fort Ontario, N.Y., provided for in the President's message of June 12, 1944, to the Congress (H. Doc. 656).]

MR. [HENRY C.] DWORSHAK [of Idaho]: Mr. Chairman, I make the point of order against that part of the section following the semicolon in line 20 and ending on page 14, line 2, that it is legislation on an appropriation bill; furthermore, that there is no specific authority in existing statutes for the operation of this particular program. The Executive order of the President which created the War Relocation Authority does not encompass the activities for which these funds would be used.

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, the item is not subject to a point of order. As the committee will recall, the action of the military authorities in moving from the West Coast for supervised segregation all persons of Japanese ancestry, was one of the most mooted questions in the early days of the war. It was done under Executive authority by virtue of Executive Order No. 9102, establishing the War Relocation Authority in the Executive office of the President and defining its functions and duties. It was financed as many of the early war activities were financed out of the President's special fund. It is therefore authorized by law. This is tantamount to a reappropriation of funds, and is admissible under the rules. There are no grounds upon which a point of order can be sustained.

MR. DWORSHAK: The gentleman has been referring to the Executive order which created the War Relocation Authority; but this refugee activity ostensibly would be conducted under the Executive order which created the War Refugee Board. I submit that there has been no legislation enacted by Congress which authorizes the appropriation of funds for this specific program.

MR. CANNON of Missouri: As I understand, the gentleman's point of order goes to the item in line 21 on page 13 appropriating $280,477. That is in effect a reappropriation for the War Relocation Authority and is therefore in order.

MR. DWORSHAK: No provision has been made for funds for the operation of the War Refugee Board. I am not questioning the Authority for the appropriation for the War Relocation Authority, but there is no existing authority for the other activity.

MR. CANNON of Missouri: This is really a function of the War Relocation

19. 91 CONG. REC. 1682, 1683, 79th Cong. 1st Sess.

Authority, and we are merely making a reappropriation.

MR. DWORSHAK: There has never been any appropriation made, so it cannot be a reappropriation for the War Refugee Board.

MR. CANNON of Missouri: This is a reappropriation of funds formerly supplied by the President's fund.

MR. DWORSHAK: There has never been any appropriation for that activity.

THE CHAIRMAN:[20] May the Chair ask the chairman of the committee, the gentleman from Missouri [Mr. Cannon], if it is his contention that the Executive order by the President would be law within the meaning of the rule requiring appropriations to be authorized by law?

MR. CANNON of Missouri: In the Federal Register of Friday, March 20, 1942, appears a copy of the Executive order. Its functions are fully outlined there. One of its duties would be the establishment of such a refugee shelter as is provided here in the bill. Money has been provided for the support of the activities of this Authority out of the President's fund. This activity was initiated under competent authority and under authority of law and is work in progress. It is therefore in order under the rules of the House.

MR. DWORSHAK: Mr. Chairman, may I add this point: The chairman of the committee persists in referring to Executive Order No. 9102, which created the War Relocation Authority, while I also direct attention to another Executive order which was issued on January 22, 1944, under which the War Refugee Board was created and under which this particular activity has been maintained. There has never been any specific authority in law or any appropriation made heretofore, so it cannot be a reappropriation of funds.

Section 213 of Public Law 358, making appropriations for the executive offices for the fiscal year ending June 30, 1945, requires any agency established by Executive order, having been in existence for more than 1 year, to come to Congress for a regular appropriation. As the War Refugee Board had been created under Executive Order No. 9417 and had utilized money provided by the President from his emergency war fund, it is obvious that no specific authorization has heretofore been considered by Congress for this activity.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Idaho [Mr. Dworshak] makes the point of order against the language beginning in the concluding part of line 20 on page 13 and extending through the balance of the paragraph, that this appropriation is not authorized by law.

Under the rules of the House, no appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law.

It is the opinion of the Chair that an Executive order does not meet the requirement stated in that rule. Therefore, not being authorized by law enacted by Congress, the appropriation would not be in order. The mere fact that it may be a reappropriation would not make it in order if the original appropriation was not authorized by law.

20. John J. Sparkman (Ala.).

Therefore, the Chair sustains the point of order made by the gentleman from Idaho.

§ 7.7 An Executive order does not constitute sufficient authorization "by law" absent proof of its derivation from a statute enacted by Congress authorizing the appropriation; and an appropriation for the Office of Consumer Affairs, established by Executive order, was stricken from a general appropriation bill when the Committee on Appropriations failed to cite statutory authority, other than for funds for personnel, in support of that item.

On June 15, 1973,[1] the following item in the agricultural, environmental and consumer protection appropriations for 1974[2] was under consideration:

For necessary expenses of the Office of Consumer Affairs, established by Executive Order 11583 of February 24, 1971, as amended, $1,140,000, including services authorized by 5 U.S.C. 3109.

A point of order was then raised:

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I rise to make a point of order against the language to be found on page 43, beginning with line 11 and running through line 15.

Mr. Chairman, I make the point of order only because I do not believe the Executive orders should be substituted for authorizations by law.

THE CHAIRMAN [James C. Wright, Jr., of Texas]: Does the gentleman from Mississippi wish to be heard on the point of order?

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, notwithstanding an earlier ruling, I should like to point out something with respect to the Executive order:

Amending Executive Order 11583, establishing Office of Consumer Affairs. By virtue of the authority vested in me as President of the United States, Executive Order 11583, page 24, is amended by substituting for section 1 thereof the following:

If the President of the United States has authority to issue it, the point of order should be overruled. If he does not, it should be sustained.

THE CHAIRMAN: The Chair is prepared to rule.

As cited earlier, it is required that any activity for which an appropriation is contained in a general appropriation bill shall be an activity authorized by law. The Chair observes that in the stated provision two authorities are cited.

One is the Executive Order 11583; the other one is 5 U.S.C. 3109. Apparently the authorization cited, 5 U.S.C. 3109, is only for personnel.

Therefore, the Chair must conclude that the authority cited is Executive Order 11583.

The Chair, of course, is not knowledgeable as to the authority or lack of

1. 119 CONG. REC. 19855, 93d Cong. 1st Sess.
2. H.R. 8619.

authority inherent in the President to issue such an Executive order, but the Chair believes the burden should be upon the committee to cite statutory authorization rather than Executive order, which under the rules does not qualify within the meaning of the word, "law."

MR. WHITTEN: Mr. Chairman, may I ask for my own information and future study, does that mean that the legislature must come before the Congress and it does not have the presumption of right, and only those who attack it can prove otherwise? Now, if the Chair proves to be right, it means that everything has to be proven verse by verse and chapter by chapter. I would presume from my own study of law and my own interpretation that that which comes here in the regular way would be in order unless proven otherwise. I think the Chair has shifted the burden onto the legislative body, as between the three branches of government, as it relates to that branch which claims the right, and I think as long as that is claimed and exercised, the burden would be on the antagonist or the gentleman who raised the point of order.

THE CHAIRMAN: The gentleman from Mississippi [Mr. Whitten] may be entirely right in his assumption that the President, in issuing Executive Order 11583, was doing so pursuant to congressional enactment.

The Chair, lacking knowledge of the source of that authority, believes that the history of rulings from this Chair is that it has been consistently held that law, within the meaning of rule XXI, embraces statutory law enacted by Congress and does not cover Executive orders issued by the executive branch of Government.

For example, the Chair refers to a ruling made by Chairman Sparkman on July 5, 1945, in which the Chair declared:

> An Executive order does not meet the requirement that appropriations must be authorized by law.

MR. WHITTEN: Mr. Chairman, I have gone far afield in my discussion with my friend, the gentleman in the Chair, but do I understand that whatever commission may exist for various other actions taken by the executive branch, this cannot be advanced by the Committee on Appropriations, and is that ruling a complete ruling to exclude from the appropriation process anything that is created by Executive order?

Mr. Chairman, I have some other bills coming up. I have never before heard of such an action.

THE CHAIRMAN: The Chair cannot and would not rule on that question, because it involves a hypothetical situation in the future; nor can the Chair predict with certainty what some future occupant of the Chair might rule.

The Chair simply declares that under precedents heretofore cited, executive orders do not meet the test of law, as required in the rules, for the citation of an authorization for an appropriation, and for that reason the Chair sustains the point of order in the present case.

§ 7.8 Pursuant to Rule XXI clause 2, and 36 USC § 673, commissions and councils must have been established by law—and not merely by Executive order—prior to the

expenditure of federal funds therefor. A lump sum amount for the Civil Service Commission contained in a general appropriation bill was conceded to be in violation of Rule XXI clause 2, where it was shown that a portion of that amount was intended to fund the President's Commission on Personnel Interchange—a commission established solely by Executive order and not created by law.

On June 25, 1974,[3] during consideration of the Departments of the Treasury, Postal Service, and Executive Office appropriations for fiscal 1975,[4] a point of order was made against the following provisions:

> For necessary expenses, including services as authorized by 5 U.S.C. 3109; medical examinations performed for veterans by private physicians on a fee basis; rental of conference rooms in the District of Columbia; hire of passenger motor vehicles; not to exceed $2,500 [for official reception and representation expenses;] and advances or reimbursements to applicable funds of the Commission and the Federal Bureau of Investigation for expenses incurred under Executive Order 10422 of January 9, 1953, as amended; ($90,000,000 together with not to exceed $18,698,000 for current fiscal year administrative expenses for the retirement and insurance programs to be transferred from the appropriate trust funds of the Commission in amounts determined by the Commission without regard to other statutes: *Provided,* That the provisions of this appropriation shall not affect the authority to use applicable trust funds for administrative expenses of effecting statutory annuity adjustments.) No part of the appropriation herein made to the Civil Service Commission shall be available for the salaries and expenses of the Legal Examining Unit of the Commission, established pursuant to Executive Order 9358 of July 1, 1943, or any successor unit of like purpose.

POINT OF ORDER

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I make a point of order on the language beginning at line 12 on page 12 of this bill with the figures "$90,000,000" through line 20 ending in the word "adjustments." . . . Mr. Chairman, the basis for this point of order is the requirement of House rule XXI clause 2, which provides that:

> No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for an expenditure not previously authorized by law.

Mr. Chairman, it is my understanding that there is in fact no authorization for the President's Commission on Personnel Interchange for which $353,000 is herein requested. It was created solely by Executive Order 11451 on January 19, 1969.

This House rule is supported in this regard by title 36 of the United States

3. 120 CONG. REC. 21036, 21037, 93d Cong. 2d Sess.

4. H.R. 15544.

Code, section 673, which also indicates that no funds should be expended by this body without authorization. The full section of the law reads as follows:

TITLE 36, SECTION 673

> No part of the public monies, or of any appropriation made by Congress, shall be used for the payment of compensation or expenses of any commission, council or other similar body, or any members thereof, or for expenses in connection with any work or the results of any work or action of commission, council, board, or similar body, unless the creation of the same shall be or shall have been authorized by law; nor shall there be employed any detail hereafter or heretofore made or otherwise personal services from any Executive Department or other Government establishment in connection with any such commission, council, board, or similar body.

Mr. Chairman, I have a particular concern in regard to a program whose appropriation is contained within the language of lines 12 through 20 of page 12 of this bill. The program is the President's Commission on Personnel Interchange, created solely by Executive Order 11451. There has never been an authorization hearing concerning its operation, since its creation at the beginning of 1969.

A preliminary examination during the past several months by my office and the GAO has revealed a series of potential conflicts of interest. These problems are so serious that the GAO has already referred two cases involving Presidential interchange personnel to the Justice Department for potential criminal conflicts-of-interest violations.

Mr. Chairman, this point of order does not necessarily mean the end of this program. The Congress may and should consider it through the regular authorization process. By following normal procedures, the Congress may be able to write in safeguards preventing future conflict-of-interest problems.

In addition, one must remember that the program's cost of $353,000 as outlined in one brief sentence in the House subcommittee hearing, is only one-tenth of the actual cost of this program since all salaries, travel, moving expenses, and other incidental costs are paid fully by the agency which hires for 1 year an interchange candidate.

I have grave reservations concerning the continuation of this program at all, since I believe that agencies which regulate certain industries will surely have problems with conflict of interest when they hire key industry personnel from the very industries which they are supposed to regulate. I object to personnel from oil companies being hired by FEO and predecessor agencies. I object when a person from the pesticides division from a major company ends up at the pesticide control division of EPA; I object when an auditor from a large accounting firm works for the chief auditor of the SEC—and the SEC has filed allegation of fraud against the firm from which the interchange candidate works for.

The list of obvious potential conflicts of interest is endless. Who among us knows how many real conflicts have existed because of the manner in which this program has proceeded. It seems to me that the Congress must be very alert to prevent potential conflicts of interest. We must not participate in the institutionalization of potential

conflict-of-interest situations because of programs just like the Presidential interchange program.

As the GAO recently said in its report to me on conflicts of interest in this program:

> In our view, the more important question raised by FEO's use of presidential executive interchange program personnel with oil and related industry backgrounds concerns the judgment exercised in placing executives on a year's leave of absence from private industry in positions in an agency exercising a regulatory-type responsibility over the activities of the very company to which the individual involved will return at the completion of his year's assignment. It was this action which created potential conflict of interest situations. At your request, we now are making a broad review of the Presidential Executive Interchange program.

It took us years to begin to root out this very kind of conflict system at the Department of Defense and here we are, a party to its institutionalization.

In any event, I feel strongly that the appropriation of funds for this program would be contrary to both the statute and House rule I have cited.

I ask the Chair to rule.

THE CHAIRMAN [B. F. Sisk, of California]: Does the gentleman from Oklahoma desire to be heard on the point of order?

MR. [THOMAS J.] STEED [of Oklahoma]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The gentleman from Oklahoma (Mr. Steed) concedes the point of order.

The point of order is sustained.

Reorganization Plan as Authorization

§ 7.9 While an Executive order creating a federal office cannot, standing alone, be considered authority in law for appropriations for that office, a reorganization plan from which that office derives may be cited by the Committee on Appropriations to support such an appropriation. A reorganization plan submitted by the President pursuant to 5 USC Sec. 906 has the status of statutory law when it becomes effective and is sufficient authority to support an appropriation under Rule XXI clause 2.

On June 21, 1974,[5] the agricultural, environmental and consumer affairs appropriations for fiscal 1975[6] were under consideration. A point of order was made against an item in the bill, as follows:

> For necessary expenses of the Office of Consumer Affairs, including services authorized by 5 U.S.C. 3109, $1,365,000.

POINT OF ORDER

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I have a point of

5. 120 CONG. REC. 20595, 20596, 93d Cong. 2d Sess.

6. 6. H.R. 15472.

order pertaining to title IV on page 45, lines 9 through 14, under the title "Consumer Programs, Department of Health, Education, and Welfare, Office of Consumer Affairs" on the ground that it violates rule XXI, clause 2, in that there is no existing statutory authority for this office, and I cite as authority the fact that last year this same point of order was made and the Chair ruled that there was no existing authority.

The Subcommittee on Agricultural Appropriations raised this question during their hearing, and a memorandum was submitted from the Department of Health, Education, and Welfare which in effect cited several different statutes, none of which pertained to an Office of Consumer Affairs. I, therefore, insist upon this point of order and ask that this language be stricken.

THE CHAIRMAN [Sam M. Gibbons, of Florida]: Does the gentleman from Mississippi wish to be heard?

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I do wish to be heard. It is pointed out on page 967 of the hearings that we had submitted the report from the Department of HEW, dated March 21, 1974, in which they cite:

> Reorganization Plan No. 1 of 1953 provides in pertinent part: "In the interest of economy and efficiency the Secretary may from time to time establish central . . . services and activities common to the several agencies of the Department . . ." [section 7].

Later this report says:

> The Office of Consumer Affairs, they include policy guidance responsibility respecting the relationship of all of the statutes of the Department to the consumer interest.

So this agency is in line with the Reorganization Plan No. 1 of 1953 which was approved and authorized by the Congress, and for that reason it is within the authorization of the law.

THE CHAIRMAN: Could the gentleman from Mississippi give us the statutory citation for this office?

MR. WHITTEN: It is Reorganization Plan No. 1 of 1953.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, may I be heard in connection with the point of order?

THE CHAIRMAN: The gentleman will proceed.

MR. DINGELL: Mr. Chairman, I would point out that the Appropriations Committee only has authority, and I would say my good friend, the gentleman from Mississippi, is one of the most wise and able Members of this body and he is well aware of the fact that the reorganization plans are not statutory in effect and do not confer the authority on the executive branch to procure and expend appropriated funds. They do not constitute an authorization and, therefore, even though there is a reorganization plan in being it does not constitute the basis upon which the committee may predicate appropriations.

THE CHAIRMAN: Last year when this same point was raised, the authority that was cited was an Executive order. The Chair will state that a reorganization plan–which was not cited as authority on June 15, 1973 - once it has become effective, has the effect of law and of statute and, therefore, the point of order would have to be overruled.

MR. DINGELL: Mr. Chairman, if the Chair will permit me further, the gen-

tleman does not cite the Reorganization Act. He recites a reorganization plan which is very different from a Reorganization Act.

THE CHAIRMAN: The Chair understands that if the reorganization plan has become effective, if it was not rejected by the Congress within the time provided, it has the effect of a statute.

MR. DINGELL: It does not constitute statutory authority.

THE CHAIRMAN: The Chair overrules the point of order. The Chair has examined the law and is citing from title V, United States Code, section 906, which prescribes the procedure by which a reorganization plan does become effective. It is clear to the Chair that Reorganization Plan No. 1 of 1953 has the effect of law, and therefore, the point of order is overruled.

PARLIAMENTARY INQUIRY

MR. BAUMAN: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: The legal position of the Office of Consumer Affairs has not been the subject, as I understand it, or any change in status so far as an Executive order issued in the interim since the last ruling of the Chair in June 1973, and no statutory authority has occurred to authorize its existence; so how can this office now be authorized?

THE CHAIRMAN: The point is that last year the burden was on the Committee on Appropriations. No statutory provision was cited. This year they have cited authority other than an Executive order.

The Chair has examined the pertinent statutes and the Chair overrules the point of order.

The Chair recognizes the gentleman from California.

MR. [CHET] HOLIFIELD [of California]: Mr. Chairman, let me say that I handled the Reorganization Act on the floor that puts the different agencies that were related to environmental duties together into the Environmental Protection Agency. We did not change the statutes that created the different programs, nor did we change committee jurisdictions over the different programs. We left them exactly like they were and are and, therefore, the Chair in my opinion has ruled rightly that the statutes that pertain to the different programs from the Government committees, still exist. Therefore, they have the right to continue to authorize those programs and, of course, the Committee on Appropriations can group their work on appropriations in any way they wish, as was proved by their concentration of authorized energy programs into their centralized consideration. So I think the Chair has ruled rightly.

Parliamentarian's Note: The ruling referred to by Mr. Bauman occurred on June 15, 1973.[7] In that instance, the Chair[8] held that an Executive order does not constitute sufficient authorization "by law" in the absence of proof of its derivation from a statute enacted by Congress authorizing the appropriation. In accordance with the principle that the burden of proving that an item contained in

7. 119 CONG. REC. 19855, 93d Cong. 1st Sess.

8. James C. Wright, Jr. (Tex.).

a general appropriation bill is authorized by law is upon the Committee on Appropriations, which must cite statutory authority for the appropriation, an appropriation for the Office of Consumer Affairs, established by Executive order, was stricken from a general appropriation bill when the Appropriations Committee failed to cite statutory authority, other than for funds for personnel, in support of that item.

Lump-sum Appropriation Only for Authorized Purposes

§ 7.10 To a bill providing a lump-sum appropriation for expenses necessary for collection and study of information pertaining to river and harbor projects, a substitute amendment increasing the lump-sum appropriation in order to provide funds for an additional survey was held to be in order.

On June 18, 1958,[9] the Committee of the Whole was considering H.R. 12858. When the paragraph dealing with "general investigations" was read, an amendment and a substitute therefor were offered.

GENERAL INVESTIGATIONS

For expenses necessary for the collection and study of basic information pertaining to river and harbor, flood control, shore protection, and related projects, and when authorized by law, preliminary examinations, surveys and studies (including cooperative beach erosion studies as authorized in Public Law No. 520, 71st Cong., approved July 3, 1930, as amended and supplemented), of projects prior to authorization for construction, to remain available until expended, $8,473,500: *Provided,* That, no part of the funds herein appropriated shall be used for the survey of Carter Lake, Iowa, until it is authorized.

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Cannon. On page 3, line 19, strike out "$8,473,500" and insert "$8,613,500.". . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN:[10] The gentleman will state his parliamentary inquiry.

MR. TABER: Mr. Chairman, there is nothing in this language which indicates which projects it is for or whether or not they are authorized by law. It seems to me we ought to have that before the item is reached for a vote so a point of order should be made, if they are not authorized.

THE CHAIRMAN: The gentleman from Missouri has been recognized and it is presumed that the gentleman will make his explanation in support of his amendment.

MR. TABER: Mr. Chairman, I reserve a point of order against the amendment. . . .

9. 104 CONG. REC. 11641–43, 85th Cong. 2d Sess.

10. Hale Boggs (La.).

MR. CANNON: Mr. Chairman, as the gentleman is doubtless aware, this is an item from a supplemental budget just received from the Bureau of the Budget. It puts into the bill $140,000 under Public Law 303. That was approved, as you will recall, last September. It gives the title to certain land to the Territory of Alaska, and provides that the Territory may dispose of it; the Territory cannot dispose of the land until certain matters have been established as to the seaward limit of the land. This merely permits the Government engineers to establish the seaward limit of the lands, and thereby makes it possible for the Territory of Alaska to go ahead with the transfer of these tracts.

With respect to the money in this paragraph it is all for authorized surveys with the single exception of this Carter Lake in Iowa. Of course, if the gentleman wants to insist on the point of order, we can let it go out and offer it later without that provision.

MR. TABER: It is subject to a point of order?

MR. CANNON: Only the language, "to remain available until expended." Does the gentleman insist on his point of order?

MR. TABER: No; not for that.

THE CHAIRMAN: Does the gentleman from New York withdraw his point of order?

MR. TABER: Yes, Mr. Chairman. . . .

MR. [ROBERT] HALE [of Maine]: Mr. Chairman, I offer a substitute amendment.

THE CHAIRMAN: The Clerk will read the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Hale as a substitute for the amendment offered by Mr. Cannon: On page 3, line 19, strike out "$8,473,500" and insert in lieu thereof "$8,498,400."

MR. TABER: Mr. Chairman, I reserve a point of order.

THE CHAIRMAN: The gentleman from Maine [Mr. Hale] is recognized on his amendment.

MR. HALE: Mr. Chairman, I offer this amendment for the purpose of including in the bill $25,000 for a study of the situation in Portland Harbor. The purpose of the study would be to determine the advisability of deepening the harbor channel and anchorage to 45 feet to allow the accommodation of deep-draft tankers. The study has been approved by the Chief of Engineers and authorized by the House Public Works Committee. It was authorized too late, however, to be included in the fiscal 1959 budget.

I would like to remind you that the Committee on Appropriations has added 26 similar unbudgeted surveys to the 1959 public works appropriation bill. One of them, I am informed, has not yet been authorized. I do not know the criteria used by the committee in selecting these 26 particular unbudgeted surveys. I am sure the studies are completely justified. But I do not understand why the authorized Portland Harbor study was not also included. . . .

MR. TABER: Mr. Chairman, I make a point of order against the amendment because it provides for items that are not authorized by law. . . .

THE CHAIRMAN: The gentleman from Maine is recognized to respond to the point of order that the gentleman from New York has made.

MR. HALE: My understanding is that the study was approved by the Corps

of Engineers and authorized by the House Committee on Public Works.

THE CHAIRMAN: Will the gentleman cite the statute which authorizes the appropriation?

MR. HALE: I cannot do that at this time.

THE CHAIRMAN: The Chair is prepared to rule.

MR. [ROBERT E.] JONES [Jr.] of Alabama: Mr. Chairman, I would like to argue the point of order, if the Chair would withhold his ruling.

THE CHAIRMAN: The Chair will withhold his ruling.

MR. JONES of Alabama: Mr. Chairman, the general provisions contained in this appropriation bill have to do with projects that are to be surveyed by the Corps of Engineers. Under the Flood Control Acts of 1928 and 1944 there is general authority for the Corps of Engineers to carry out studies of flood control, navigation, and other water related projects for which there is authority under existing law. Now, the gentleman from Maine offers an amendment to the amendment that authorizes the increase of $8,475,000 by some $25,000. The amendment offered by the gentleman from Maine only identifies the project for which there is an increased authorization. Now, I submit to the Chair that there is no need for identity of the project contained in the amendment. Now, of the $8 million already contained in this bill, it authorizes numerous works to be surveyed by the Corps of Engineers, some of which are not authorized by law and the identity of which would have to be brought forward by the Committee on Appropriations. But, that is a principle that we do not recognize nor have we insisted upon in the past.

Mr. Chairman, I submit further, notwithstanding the fact that the amendment goes to the identity of the project already contained in law, as I have pointed out to the Chair, it is an authorized project for survey heretofore enacted by the House Public Works Committee.

THE CHAIRMAN: I wonder if the gentleman from Alabama could cite the specific authorization for the funds that the gentleman from Maine seeks to include?

MR. JONES of Alabama: I will say to the Chair that my chief argument was made under general authorization which empowers the Corps of Engineers to carry out surveys on general appropriations for survey purposes. I did not rest my argument particularly upon the amendment identifying the Portland Harbor project, because that is in the inherent authority contained in existing law for the Corps of Engineers to execute surveys of projects without those projects being identified in an appropriation bill. If the point of order is sustained, then a point of order would lie against the entire amount, because it fails to identify the project to be surveyed, as to whether or not those projects have been authorized by law.

THE CHAIRMAN: Of course, the gentleman from Maine has based his argument, as the Chair understood it, on the bill which passed the House today and which has not been acted upon by the other body or signed by the President. . . .

MR. [FRANK E.] SMITH of Mississippi: Mr. Chairman, the point of order

against the gentleman's amendment should not lie. Apparently the gentleman from New York made his point of order on the basis that his thought was that this survey was authorized in the bill which the House passed an hour or so ago. That survey was not included in that bill. The survey, as pointed out by the gentleman from Iowa [Mr. Jensen] was authorized under a resolution approved by the House Committee on Public Works something over a year ago. Under the law, the approval by the Committee on Public Works of a study previously authorized under the law some years before is fully entitled to appropriation if the Congress decides to appropriate the money.

THE CHAIRMAN: The reasoning of the gentleman from Mississippi [Mr. Smith] impressed the Chair. The Chair was prepared to rule on the basis of the statement made by the gentleman from Maine [Mr. Hale] that he was relying upon the action taken by the House earlier this afternoon, which obviously was not an authorization in light of the fact that that is an action by this body, but the other body has not acted and the President has not signed it. But the argument advanced by the gentleman from Mississippi impresses the Chair and the point of order is overruled.

Parliamentarian's Note: The rulings in this section and the three sections immediately following should be distinguished from rulings, as in § 47.4, infra, to the effect that an appropriation will not be permitted which is conditioned on a future authorization. The rulings in §§ 7.11–7.13, infra, establish that, where lump sums are involved, language which limits use of an appropriation to projects "authorized by law" or which permits expenditures "within the limits of the amount now or hereafter authorized to be appropriated," is proper. The Chair in such cases is guided in his ruling by the express language of the bill, and not, for example, by indications in the committee report that certain unauthorized projects may be contemplated by the bill's provisions. The project, to be within the purview of the language in question, must have been authorized by law already enacted prior to the bill. Once the project itself has been authorized, Congress can change the limits of expenditure, thereby affecting subsequent expenditures pursuant to the provisions of the appropriation. It should be noted that this result is not an extension of the rule permitting appropriations, without authorization, for "works in progress," because the language under consideration in Sec. 7.11–7.13, infra, relates specifically to expenditures "authorized in law."

§ 7.11 A point of order was held not to lie against an amendment proposing to increase a lump-sum appro-

priation for river and harbor projects where language in the bill limited use of the lump-sum appropriation to "projects authorized by law."

On June 19, 1958,[11] the Committee of the Whole was considering H.R. 12858. At one point the Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Frank J.] Becker [of New York]: On page 4, line 8, after "expended", strike out '$577,085,500' and insert "$578,455,500.". . .

MR. (JOHN) TABER [of New York]: Mr. Chairman, I make the point of order against this amendment on the ground that it is legislation on an appropriation bill. It appears to be for three projects which have not been authorized by law although a bill did pass the House. Frankly, I do not like the situation where I am obliged to make this point of order, but I feel that I would not be conscientious in the performance of my duty if I did not do so.

THE CHAIRMAN:[12] Does the gentleman from New York [Mr. Becker] desire to be heard on the point of order?

MR. BECKER: Yes, Mr. Chairman. My understanding in trying to evaluate the various points of order in the last 2 days is that it is possible to increase the sum, that is, it is possible to increase the total sum of the appropriation if I do not include any specific authorization. I have not offered any authorization here or legislation on this bill. I am merely increasing the amount and the total sum of the appropriation in order that there will be a sum of money and in order that these three projects can be initiated. I hope the Chairman will overrule the point of order. . . .

THE CHAIRMAN: The gentleman from New York [Mr. Becker] offers an amendment, on page 4, line 8, to which the gentleman from New York [Mr. Taber] raises a point of order.

The Chair has had an opportunity to examine the amendment and to review the ruling of the Chair on yesterday with respect to the language in the bill to which these figures on line 8, page 4, apply. The Chair will point out, as did the Chair on yesterday, that the language to which these figures apply is very specific in that the moneys are to be spent on projects authorized by law. So it would appear to the Chair that the amendment offered by the gentleman from New York [Mr. Becker] raising the amount of the appropriation would be in order.

The Chair therefore overrules the point of order.

§ 7.12 Language in an appropriation bill providing funds for the construction of public works and specifying that none of the funds appropriated should be used for projects not authorized by

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11. 104 CONG. REC. 11766, 11767, 85th Cong. 2d Sess. See also 105 CONG. REC. 10061, 86th Cong. 1st Sess., June 5, 1959.

See the note in § 7.10, supra, for further discussion.

12. Wilbur D. Mills (Ark.).

law "or which are authorized by a law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated" was held to limit expenditures to authorized projects and a point of order against the language as legislation was overruled.

On May 24, 1960,[13] the Committee of the Whole was considering H.R. 12326. At one point the Clerk read as follows:

CONSTRUCTION, GENERAL

For the prosecution of river and harbor, flood control, shore protection, and related projects *authorized by law;* detailed studies, and plans and specifications, of projects (including those for development with participation or under consideration for participation by States, local governments, or private groups) authorized or made eligible for selection by law (but such studies shall not constitute a commitment of the Government to construction); and not to exceed $1,400,000 for transfer to the Secretary of the Interior for conservation of fish and wildlife as authorized by law; $662,622,300, to remain available until expended: *Provided,* That no part of this appropriation shall be used for projects not authorized by law or which are authorized by a law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated. . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order against the language to be found on page 4, beginning on line 18 and into line 21, "or which are authorized by a law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated."

Mr. Chairman, I make the point of order against that language on the ground that it is legislation on an appropriation bill. I make the further point of order that this is authorizing appropriations for projects not authorized by law. . . .

THE CHAIRMAN:[14] The Chair is prepared to rule.

It so happens that almost an identical point of order to an identical paragraph was raised on June 18, 1958,[15] by the gentleman from New York [Mr. Taber]. It also happens that the present occupant of the chair was in the chair at that time. The Chair ruled then that the language was specific, that there was no question about its referring to the controlling phrase "authorized by law," and none of the appropriation can be expended unless authorized by law.

The Chair overrules the point of order and sustains the ruling made on June 18, 1958.

§ 7.13 Where a lump-sum appropriation is prefaced by

13. 106 CONG. REC. 10979, 10980, 86th Cong. 2d Sess.

14. Hale Boggs (La.).

15. See the ruling at § 7.10, supra. For further discussion, see the Parliamentarian's Note in § 7.10.

language limiting expenditure thereof to projects "authorized by or pursuant to law," a point of order against the total figure, based on a general allegation that a portion thereof may be unauthorized, will not lie.

On May 21, 1969,[16] during consideration in the Committee of the Whole of a supplemental appropriation bill for fiscal 1969 (H.R. 11400), Mr. H. R. Gross, of Iowa, raised a point of order against a provision in the bill:

HOUSE OF REPRESENTATIVES

COMPENSATION OF MEMBERS

Compensation of Members, $1,975,000;

SALARIES, OFFICERS, AND EMPLOYEES

"Office of the Speaker", $4,015; . . .

MR. GROSS: Mr. Chairman, I make a point of order against the language on page 23, lines 12, 13, and 14, on the ground that, as admitted by the committee, this contains moneys to be appropriated that have not been authorized by Congress. . . .

THE CHAIRMAN:[17] Does the gentleman from Texas desire to be heard on the point of order?

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the gentleman, I believe, does not seek to reduce funds for the Office of the Speaker, as shown on line 14. The gentleman is, I believe, only referring to the pay increase for the Speaker and other Members—the item on line 12.

MR. GROSS: Very frankly, I do not know which one of these line items contains all the funds, so I am just trying to take as much as I can to be sure I get the funds covered. If the gentleman will tell me what line they are in I will amend my point of order, with the permission of the Chair.

MR. MAHON: The funds which have not been authorized are included in line 12, in the $1,975,000 figure.

MR. GROSS: Those are the only funds that have not been authorized?

MR. MAHON: Yes; that is the figure involved. A small portion of that has not been authorized.

THE CHAIRMAN: Will the gentleman from Texas yield for a clarifying question on the part of the Chair? As the Chair reads this language it says, "for increased pay costs authorized by or pursuant to law." If the Chair understands language, this refers to a cost already authorized by and pursuant to law that is now in existence. Is that true?

MR. MAHON: The Chair is correct. . . .

The $19,835 included in line 12 has not been authorized. That is correct.

MR. GROSS: You mean the $1,975,000?

MR. MAHON: No; $19,835 has not been authorized. But it cannot be paid unless it is authorized. Otherwise, it would revert unused to the Treasury.

THE CHAIRMAN: The Chair again is confused. The Chair sees no reference

16. 115 CONG. REC. 13267, 13268, 91st Cong. 1st Sess. For further discussion, see the Parliamentarian's Note at § 7.10, supra.

17. Chet Holifield (Calif.).

to a figure of $19,835 in the bill or in the language referred to here.

MR. MAHON: It is part of the figure of $1,975,000.

THE CHAIRMAN: Does the gentleman from Texas state to the Chair that of the amount of $1,975,000 there is $19,835 that is not authorized?

MR. MAHON: $19,835.

THE CHAIRMAN: The Chair is still in a quandary because the language in line 7 says, "for increased pay costs authorized by or pursuant to law."

MR. MAHON: Mr. Chairman, all compensation due by law to Members of Congress is authorized. If it is not authorized, it cannot be paid.

THE CHAIRMAN: Yes. . . .

The Chair is constrained to hold that the gentleman's point of order is not well taken, because the money amount in line 12 cannot be used for any other purpose than increased pay costs authorized by or pursuant to law. Therefore, the gentleman's point of order is overruled.

Appropriations Not Exceeding Authorized Limit

§ 7.14 Where a statute authorizes the acquisition of land and construction of buildings within a lump-sum limitation on cost, subsequent appropriations for the construction of buildings under such authorization may not cumulatively exceed the limit of cost fixed in the authorizing act.

On Jan. 20 and 23, 1939,[18] the Committee of the Whole was considering H.R. 2868, a deficiency appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

TREASURY DEPARTMENT

PROCUREMENT DIVISION, PUBLIC BUILDING BRANCH

Bureau of the Census Building, Department of Commerce, Washington, D.C.: For the acquisition of the necessary land and the construction of a building for the Bureau of the Census of the Department of Commerce under the provisions of the Public Buildings Act approved May 25, 1926 (44 Stat. 630), as amended, including the extension of steam and water mains, removal or diversion of such sewers and utilities as may be necessary, and for administrative expenses in connection therewith, $3,500,000.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph just read on the ground it is not authorized by law.

THE CHAIRMAN:[19] The Chair is ready to rule.

When this point of order was raised on Friday last, the Chair was in some doubt as to whether the appropriation in the pending paragraph was authorized under existing law. The citation to the act of May 25, 1926, contained in the paragraph, seemed to place a limitation upon the amount of money that could be appropriated for the construc-

18. 84 CONG. REC. 592, 592, 641–643, 76th Cong. 1st Sess.

19. Wall Doxey (Miss.).

tion of buildings within the District of Columbia. Since last Friday the Chair has had an opportunity of looking into the laws authorizing construction within the District of Columbia. The Chair has found that the act of May 25, 1926, has been amended on two specific occasions—first by the act of January 13, 1928 (45 Stat. 52), and, second, by the act of March 31, 1930 (46 Stat. 136). These amendatory acts have increased the authorization for the District of Columbia to $150,000,000 for the construction of buildings and $40,000,000 for the acquisition of lands for such buildings.

The gentleman from Virginia [Mr. Woodrum] has submitted for the inspection of the Chair a letter addressed to him over the signature of the Director of Procurement of the Treasury Department. The Chair finds in that communication—and of course, the Chair must rely upon the statement of an officer of the Government over his signature—that of the $150,000,000 authorized by construction in the District of Columbia $142,773,092.08 has already been authorized, thus leaving of the original authorization a sum of $7,226,908 for future appropriations. Of the $40,000,000 authorized for the acquisition of land there remains unallocated and unappropriated the sum of $11,320,000. It is manifest, therefore, that under the acts heretofore referred to by the Chair there is sufficient authorization within the limit of cost set in those acts for an appropriation of $3,500,000 for the construction of a Census Building. The Chair desires also to point out that the Director of Procurement in his letter to Mr. Woodrum specifically states that the erection of the new Census Building is within the area defined in the authorization acts.

The question has also been raised as to whether the construction of public buildings in the District of Columbia under allotments by the Public Works Administration should be chargeable against a limitation of $150,000,000 set by the Public Buildings Act of 1926, as amended. The Chair has examined carefully title 2 of the National Industrial Recovery Act, section 12 of the Emergency Relief Appropriation Act of 1935, and section 201 of the Public Works Administration Extension Act of 1937. These acts contained no reference to the Public Buildings Act of May 25, 1926, as amended, and did not otherwise limit the amount expendable for projects in the District of Columbia as authorized by the Public Buildings Act. It seems to the Chair, therefore, that the moneys used under the Public Works Administration for the construction of buildings in the District of Columbia should not be chargeable to the total amount authorized for projects in the District of Columbia under the Public Buildings Act, as amended. The Chair is fortified in this opinion by the fact that the Director of Procurement of the Treasury Department has placed a like construction upon this proposition.

For these reasons the Chair is of the opinion that the appropriation herein provided is within the authorization set by Congress, and, therefore, conforms with the rules of the House. The Chair, therefore, overrules the point of order.

Incidental Expenses to Authorized Functions of Government

§ 7.15 An amendment proposing appropriations for in-

cidental expenses which contribute to the main purpose of carrying out the functions of the department for which funds are being provided in the bill is generally held to be authorized by law.

On Mar. 1, 1938,[20] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. At one point the Clerk read as follows and proceedings ensued as indicated below:

Amendment offered by Mr. [James G.] Scrugham [of Nevada]: Page 72, beginning with line 12, insert the following:

"Administrative provisions and limitations: For all expenditures authorized by the act of June 17, 1902, and acts amendatory thereof or supplementary thereto, known as the reclamation law, and all other acts under which expenditures from said fund are authorized, including not to exceed $100,000 for personal services and $15,000 for other expenses in the office of the chief engineer, $20,000 for telegraph, telephone, and other communication service, $5,000 for photographing and making photographic prints, $41,250 for personal services, and $7,500 for other expenses in the field legal offices; examination of estimates for appropriations in the field; refunds of overcollections and deposits for other purposes; not to exceed $15,000 for lithographing, engraving, printing, and binding; purchase of ice; purchase of rubber boots for official use by employees; maintenance and operation of horse-drawn and motor-propelled passenger vehicles; not to exceed $20,000 for purchase and exchange of horse-drawn and motor-propelled passenger-carrying vehicles; packing, crating, and transportation (including drayage) of personal effects of employees upon permanent change of station, under regulations to be prescribed by the Secretary of the Interior; payment of damages caused to the owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of irrigation works, payment for officials telephone service in the field hereafter incurred in case of official telephones installed in private houses when authorized under regulations established by the Secretary of the Interior; not to exceed $1,000 for expenses, except membership fees, of attendance, when authorized by the Secretary, upon meetings of technical and professional societies required in connection with official work of the Bureau; payment of rewards, when specifically authorized by the Secretary of the Interior, for information leading to the apprehension and conviction of persons found guilty of the theft, damage, or destruction of public property. . . ."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment upon the ground that it is legislation upon an appropriation bill, that it includes items not authorized by law, as, for instance, $5,000 for making photographic prints, not authorized by law in line 20

20. 83 CONG. REC. 2655, 2656, 75th Cong. 3d Sess.

and in line 22, provision for examination of estimates for appropriations in the field, which is not authorized by law; $15,000 for lithographing and engraving, not authorized by law; the purchase of ice, the purchase of rubber boots for official use by employees, not authorized by law.

THE CHAIRMAN:[1] The Chair is ready to rule. This amendment provides for all expenditures authorized by the act of June 17, 1902, and acts amendatory thereof or supplementary thereto, known as the reclamation law, and all other acts under which expenditures from said fund are authorized, and so forth. The Chair thinks that the items to which the gentleman from New York objects specifically are incidental to the main purpose of carrying out the reclamation law. These incidental items it seems to the Chair are necessary to carry out the major purposes of the reclamation law, and the Chair, therefore, overrules the point of order.

Language of Limitation as Constituting New Authority

§ 7.16 Language in an appropriation bill providing that "not to exceed $2,500 of the funds available . . . for salaries and expenses . . . shall be available for . . . entertainment when authorized by the Secretary," was held to be legislation and not in order.

On Apr. 3, 1957,[2] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 6287), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 208. Not to exceed $2,500 of the funds available to the Department for salaries and expenses and not otherwise available for entertainment of officials of other countries or officials of international organizations shall be available for such entertainment when authorized by the Secretary.

MR. [EDGAR W.] HIESTAND [of California]: Mr. Chairman, I make a point of order against this paragraph, that it is legislation on an appropriation bill.

THE CHAIRMAN:[3] The gentleman makes his point of order against the entire section?

MR. HIESTAND: Section 208, lines 5 to 9, inclusive.

THE CHAIRMAN: Does the gentleman from Rhode Island care to comment on this point of order?

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I must concede the point of order. The purpose of this paragraph is to entertain some of these foreign doctors and scientists who come over here, to reciprocate the entertainment that our people receive when they go over there. If the gentleman wants to strike it out, that is his privilege.

THE CHAIRMAN: Does the gentleman insist on the point of order?

MR. HIESTAND: Mr. Chairman, I do.

THE CHAIRMAN: The Chair sustains the point of order.

1. Marvin Jones (Tex.).
2. 103 CONG. REC. 5040, 85th Cong. 1st Sess.
3. Aime J. Forand (R.I.).