



# University of Cincinnati

Cincinnati, Ohio 45219

DEPARTMENT OF ENVIRONMENTAL HEALTH  
Kettering Laboratory, College of Medicine, Eden & Bethesda Aves.

December 17, 1969

Jerome F. Cole, Sc.D.  
Manager, Environmental Health  
International Lead Zinc Research Organization, Inc.  
292 Madison Avenue  
New York, New York 10017

Dear Jerry:

I have your letter of December 4, with the several copies of an agreement to be executed between the University of Cincinnati and ILZRO. I am highly pleased by the willingness of ILZRO to continue the sponsorship of the experimental work proposed, and I trust that what I must say about certain details of the agreement will not appear to lessen in any way my appreciation of the spirit and intent of the latter document as I interpret them. Nevertheless, I must insist that certain changes in the agreement will be required to make it acceptable to me, to Dr. Suskind, and also to the administrative authorities of the University.

Let me clarify the situation as it now exists, and differentiate it, somewhat, from the early state of our working relationship. To do so, I must bring up matters in which you have not been involved, and of which you are unlikely to be aware.

Years ago our investigative work on lead was sponsored solely by Ethyl Corporation, according to an arrangement entered into in 1926 between Ethyl and myself, which was an outgrowth of an informal understanding arrived at between President Earle Webb of Ethyl Gasoline Corporation (predecessor of Ethyl Corporation) and Hugh Cummings, Surgeon General of the United States Public Health Service. This understanding was to the effect that the questions and issues arising out of the distribution and use of leaded gasoline would be investigated fully at the expense of the Corporation, with the full knowledge of the Service in the matter of procedures, methods and results. This is putting this matter very briefly, but the essential fact, at this time, is that this brought the Kettering Laboratory into existence, a few years later, when the direction and something of the scope of the investigations which we had undertaken became apparent. The cost of the initial wing of the Laboratory, as an acknowledged, wholly owned and directed unit of the University of Cincinnati was covered by outright gifts of funds to the University by Ethyl Corporation, the Frigidaire Corporation of General Motors, and E.I. du Pont de Nemours and Company. Agreements were entered into which established the policies and purposes of the Laboratory, vis a vis the sponsors.

Among the policies, which are an inevitable expression of the posture of a public educational institution, the responsibilities of the University for free, unhampered investigation in its own right, and for the complete dissemination of any and all information so obtained, for the public good, according to its own appraisal of the public good, were fully protected. In addition, the patent policies of the University, especially those in the field of health and hygiene, were held inviolable, as a matter of public trust. All sponsors of the work of the Laboratory were required to accept the inclusion of these policies in the agreements under

which the work of the Laboratory (which grew steadily) was carried out. This created some difficulty in specific instances such as those involving contracts with units of government, especially the United States government (which, admittedly, had to be concerned with the public interest and to such an extent as to out-rank in responsibility any other organization within the country). (There was no difficulty as to the disposition of information itself, but the problem of patent rights always gave trouble. In the main, this was simply sidestepped because of the policy of the University not to permit the securing of patents by University employees in the field of medicine and hygiene. One simply avoided getting into investigations in which patentable products might reasonably be brought into existence.) Similar difficulties arose from time to time in dealing with professional and trade organizations, as, for example, the American Chemical Society, the American Petroleum Institute, and, as in this instance, Lead Industries Association. Such organizations have their own community of interests to pursue, as well as their own policies, which involve the protection of their membership. To some extent, therefore, a clash in formal contractual matters is almost unavoidable. In several instances, the Kettering Laboratory has been unable to find any formula or compromise under which it could conduct certain investigations. These, therefore, were not carried out.

My letter grows lengthy, since I find it necessary to present the issue to you, and since this is perhaps your first encounter with it, and I must not be so brief as to seem either arbitrary or precious. The fact is that this is a principle of University life, specifically in medical matters, to which I adhere as a matter of conviction, while having had to act as the spokesman for the University of Cincinnati in our own concerns, wherein I have no choice but to be guided strictly by the principle.

I can do no better than to enclose herewith a copy of my letter to Don Fowler when the same type of agreement in less objectionable form than that which you send me now, was presented for the first time. At the earlier time, LIA was entering into a project which was being sponsored by Ethyl Corporation and E.I. du Pont, under agreements (with each of them), which were entirely satisfactory to me and the Administration of the University. Don talked with me directly after he received my letter, to the effect that these were the terms of a standard, all purpose contract of his (now your) organization. He pointed out, also, that the work was being done under conditions to which the specifically objectionable provisions of the contract did not apply, and also that LIA, being only a newcomer into the group, could not and would not expect to change the rules. This was so obviously unobjectionable that I did not insist upon the modification of the written terms, but let the matter ride, and on my say-so, the University authorities, reluctantly, acted likewise. Since that time, renewals of the agreement have been simple letter agreements which have not restated the terms and brought them repeatedly to mind and attention. One might take it that this practice could be continued without a new agreement. Why then do I raise the issue now? The reasons for doing so are several in number.

(1) First, I am no longer in charge of the Kettering Laboratory, so that a gentlemanly understanding on my part is irrelevant.

(2) Second, the new Director, Raymond R. Suskind, M.D., should not be expected to accept a situation which simply could not now be approved by the new administration, unless it were to be glossed over out of deference to me.

December 17, 1969

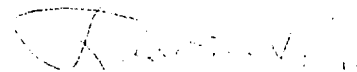
(3) Third, times have changed, and we must recognize the fact that the agreements of the University and of this Laboratory may well come into public scrutiny, where gentleman's agreements and understandings will have no meaning. One such an issue arose a few years ago, and there is no doubt that I, Dr. Suskind and the Board of Directors of the University would be convicted of improper conduct, if we were to regard as acceptable the clear language of the agreement as you have submitted it.

(4) Fourth, other aspects of this matter could be mentioned, but I am sure that the reasons given above are sufficient to justify my present position.

This situation, I'm sure, is no fault of yours or of Dr. Radtke, or of your Board. Nor is it mine. But there must not be even the appearance of evil hereafter in our formal relationships with industrial or other sponsors of the experimental programs of the Laboratory. (I am sure that you are aware that the Laboratory, and I personally, have been accused of being tools of industry. I do not expect to escape this entirely, but we must not ask for it.) The University is, indeed, an independent organization. Accordingly, I am returning to you one copy of the agreement with my comments on specific parts of it. I trust that you and your associates can simply eliminate the objectional parts of this agreement, without attempting to rephrase its terms in legalistic or ambiguous terms. The fact is that neither I, nor Dr. Suskind, nor the top authorities of the University can afford to tolerate any compromise in the position of the University in these matters. Our employees are ours (that is, the University's); our work is our own and we are solely responsible for its type and quality; our data are our own to deal with (responsibly, of course) as we (as a group) may choose. No patents will come out of this work, and we will not sanction any contractual conditions which relate to the remote possibility that such patents might emerge. We will, of course, deal equitably, fairly and ethically with any trade or commercial situation which might arise, and will consider in detail any views expressed by sponsors. The University will, however, be the sole judge of the equities and ethical situations in which it might become involved.

I hope that this is all very clear and necessary and that the issues which I have raised will create no formal, legal or personal problems for any of us.

Sincerely yours,



Robert A. Kehoe, M.D.  
Professor Emeritus of  
Occupational Medicine

RAK:wp

Enclosures

P.S. I am enclosing also our short form of agreement covering the policies of the University which may be helpful.

RAK

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