United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

Director

June 5, 2002

The Honorable Harry Reid
United States Senate
Washington, DC 20510-6225

Dear Senator Reid:

Thank you for your letter dated May 28, 2002, regarding Robert Card, Under Secretary of the Department of Energy (DOE). In your letter, you express concern that Mr. Card may have worked on certain matters involving CH2M Hill Companies, Ltd. (CH2M Hill), his former employer, in violation or appearing to be in violation of the conflict of interest guidelines reflected in President Bush's memorandum dated January 20, 2001, and federal statutes governing conflicts of interest. You also ask that the Office of Government Ethics (OGE) provide various materials to you.

In response to your request for materials, we are pleased to provide the materials that we have. Enclosed are copies of Under Secretary Card's nominee public financial disclosure report (SF 278), Certificate of Divestiture, and notice of compliance, which are responsive to your requests outlined in paragraphs numbered 1 through 3 on page 3 of your letter. In addition to these materials, you have asked in numbered paragraphs 4 and 5 for certain documents and information that would be maintained by DOE. We have forwarded your letter to DOE for their response to your request for these materials.

The matters about which you have written us indeed are important. Therefore, we would like to provide our analysis of the situation based upon information we have obtained from DOE ethics officials. You raise concerns about whether the Under Secretary may have violated 18 U.S.C. § 208. Among other things, section 208 bars an officer or employee from acting in certain Government matters in which he has a personal financial interest. Two personal financial interests that Under Secretary Card presently has are his defined benefit plan sponsored by Kaiser-Hill and his defined benefit plan sponsored by CH2M Hill. Under section 208, an officer or employee's financial interest in a defined benefit pension plan will not ordinarily disqualify the officer or employee from participating personally and substantially in a particular matter, unless the matter would have a direct and predictable effect on the plan sponsor's ability or willingness to pay the officer or employee's pension benefit. As a practical matter, OGE believes that most Government matters in which an officer or employee would participate are unlikely to have a direct and predictable effect on the sponsor's ability or willingness to pay the officer or employee's pension. Moreover, DOE ethics officials have confirmed that there is no reason to believe that any matter in which Mr. Card participated would affect either of his pensions. Likewise, with respect to Under Secretary Card's

other personal financial interests related to CH2M Hill, we note the enclosed notice of compliance confirmed that, in accordance with his ethics agreement, Under Secretary Card received certain payments from CH2M Hill prior to his appointment and that he divested his holdings in CH2M Hill on June 8, 2001.

Even in cases where section 208 would not bar participation in a particular matter, the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards) identifies specific circumstances that typically would raise questions about an officer or employee's impartiality in the performance of official duties. Pursuant to one such provision, 5 C.F.R. § 2635.503, Under Secretary Card agreed in his ethics agreement that, for two years following his receipt of certain payments from CH2M Hill, Kaiser-Hill, and Kaiser Group Holdings, Inc., he will not participate in any particular matter in which CH2M Hill, Kaiser-Hill, or Kaiser Group Holdings, Inc., is a party or represents a party, unless he receives a written waiver pursuant to 5 C.F.R. § 2635.503(c).

With respect to the first activity discussed in your letter, DOE has confirmed to us that Under Secretary Card did participate in the decision to ship plutonium from a waste cleanup project in Rocky Flats, Colorado, to a storage site in Savannah River, South Carolina. However, DOE has explained that Kaiser-Hill is not involved in the shipment of plutonium from the Rocky Flats site to the Savannah River site. In addition, DOE has advised us that Under Secretary Card has not participated in any Government matter at the Rocky Flats project to which Kaiser-Hill is a party.

As to the second activity discussed in your letter, DOE ethics officials have stated that Under Secretary Card has not participated in any decision to disburse or allocate the discretionary environmental cleanup fund in question. DOE has noted that Under Secretary Card participates in the evaluation of the performance of one contractor at the Hanford site. However, he does not participate in the administration or evaluation of CH2M Hill's contract for work at the Hanford site. In addition, DOE has stated that CH2M Hill has not been a party to any other matter at the Hanford project in which Under Secretary Card has participated.

With respect to the third activity discussed in your letter, DOE ethics officials have told us that, while there was some suggestion that CH2M Hill might join the consortium as a party, to date this has not occurred. DOE has stated that members of the consortium are not parties to the negotiations between DOE and USEC and, more importantly, that CH2M Hill is not a party to any of these negotiations. Also, DOE has confirmed that Under Secretary Card voluntarily withdrew for an indefinite period from the negotiations between DOE and USEC. DOE has stated, and we agree, that Under Secretary Card's voluntary withdrawal from the USEC negotiations was not pursuant to any ethics rule.

Based on the information we received from DOE ethics officials, we do not believe that CH2M Hill, Kaiser-Hill, or Kaiser Group Holdings, Inc., was a party or represented a party in any of the matters discussed above in which Under Secretary Card participated. Accordingly, it appears that none of Mr. Card's actions violated any ethics statutes or regulations.

Your letter also raises a general concern as to whether Under Secretary Card has performed his official duties with a lack of impartiality. Another relevant provision in the Standards of Ethical Conduct provides that, in certain circumstances, an officer or employee should consider whether "circumstances would cause a reasonable person with knowledge of the relevant facts [to] question his impartiality in the [Government] matter." 5 C.F.R. § 2635.502(a). The provision is designed to promote public confidence in Government decisionmaking by precluding an officer or employee from participating in Government matters involving someone with whom the officer or employee has a close relationship. However, there is no requirement, nor is it normally desirable, for officers and employees to be recused during their term of Government service from all matters affecting their former employers. Such a severe recusal would impede the recruitment of highly experienced personnel who otherwise would be sought after for their expertise and the government's need for their services.

With appearance questions there is never a simple right or wrong answer. Accordingly, the regulation provides a certain amount of flexibility so that all the factors in a given situation can be balanced. Under the circumstances and with knowledge of the information provided by DOE, I do not question DOE's decisions in this matter.

Please feel free to contact me if you have any additional questions or requests, or a member of your staff can contact Greg Gorham, Attorney-Advisor, at 202-208-8000, ext. 1225.

Sincerely,

Amy L. Comstock

Enclosures