ADVISORY OPINION NO. 2013-33

Issued On July 11, 2013 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

An **Elected State Official** asks whether he may serve as the Secretary of a local Masonic lodge and accept an expense reimbursement stipend of $300 per month.

FACTS RELIED UPON BY THE COMMISSION

The Requester has been asked to serve as Secretary of a local Masonic lodge. If he accepts the position, he is required to use personal office resources for various organizational purposes. In conjunction with these responsibilities, the Masonic lodge would provide him an expense reimbursement stipend of $300 per month.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 68-2-5(b) reads in relevant part:

> A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

W. Va. Code§ 6B-2-5(d)(1) provides in part that ... no elected or appointed public official ... or business with which he ... is associated may be a party to or have an interest in ... a contract which such official or employee may have direct authority to enter into, or over which he ... may have control...

W. Va. Code§ 6B-2-5(h)(6) reads:

> A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

ADVISORY OPINION

The Requester asks whether he may serve as the Secretary of a local Masonic lodge and accept an expense reimbursement stipend of $300 per month. The Requester has no public duty that overlaps with any duty associated with serving as the Secretary of a local Masonic lodge. The Ethics Commission has considered the relevant prohibitions of the Ethics Act. The Commission finds it does not violate the Ethics Act for the Requester to serve as the Secretary of a local Masonic lodge and to accept an expense

reimbursement stipend of $300 per month since:

(1) The position of Secretary of a local Masonic lodge does not constitute a public office;
(2) Requester has stated that the Masonic lodge does not contract with and is not regulated by his State Office;
(3) The Requester will not perform work for the lodge during his public work time or with public resources; and,
(4) The monthly stipend is for expenses incurred in performing the duties of Secretary, not for anything related to his public position.

In closing, there is nothing in the Ethics Act which prohibits the Requester from serving as the Secretary for a local Masonic lodge and accepting an expense reimbursement stipend of $300 per month. While the Requester as an elected official does not have set work hours, he must perform this work on his own time. The Requester may not use agency resources, including staff, to perform private work.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.,* and does not purport to interpret other laws or rules. In accordance with W. Va. Code§ 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other similarly situated public servants unless and until it is amended or revoked, or the law is changed.

/s/ Jonathan E. Turak
Jonathan E. Turak, Acting Chairperson