ADVISORY OPINION NO. 2012-33

Issued On August 2, 2012 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Public University Vice-President** asks if there is a conflict of interest under the Ethics Act between his public duties and his duties as a board member of a non-profit organization.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a Vice-President of Business and Finance of a Public University. He has significant influence in the University's administrative decision-making process. He has signature authority on all checking accounts for the University.

The Requester is the immediate past Chair of the Board of Directors of a large local non-profit organization. He continues to serve on the Board as a member and also serves on the following committees: Information Technology, Programming, Executive, and Finance. He has signature authority on all checking accounts of the non-profit organization. He receives no compensation for his service on the non-profit's Board.

From time to time, the University rents space from the non-profit organization for various functions. The Requester has no involvement in any decisions related thereto. The University pays the same rental rate as other organizations which rent space from the non-profit.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(b)(1) provides:

> (1) 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. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

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The Ethics Act generally prohibits public servants from using their public office for their own private financial gain or that of another. W. Va. Code§ 6B-2-5(b). The Ethics Act further provides, however, that the performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain. W. Va. Code§ 6B-2-5(b)(1)

The Ethics Commission recognizes that many public officials volunteer their service to boards of non-profit organizations. Such volunteer activity is generally consistent with their commitment to public service evidenced by their public office. Indeed, those characteristics which make such individuals attractive candidates for public office also make them popular to private organizations. *See* W. Va. Code§ 6B-2-5(b)(3)[1]

In Advisory Opinion 2011-12, the Commission held that a Town's elected officials may generally advocate on behalf of, and otherwise support, a non-profit organization despite their membership on the board of directors. The Commission found that such activity is consistent with the performance of usual and customary duties associated with their position or the advancement of public policy, which the Ethics Act authorizes.

The Commission hereby finds that nothing in the Ethics Act prohibits the Requester from continuing to serve as a member of the Board of Directors of the non-profit organization, so long as he is able to perform his public duties for which he is compensated. *See* Advisory Opinion 2012-23 (Member of Legislature must perform statutorily mandated recorder duties while serving in the legislature in order to lawfully receive compensation therefor.)

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 public officials and agencies unless and until it is amended or revoked, or the law is changed.

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

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[1] Although related to compensated private activities, the principle is applicable here. It reads:

> The Legislature ... recognizes that there may be certain public officials ... who bring to their respective offices ... their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits... Those persons may, in fact, be sought by the state to serve in their office ... because, through their unusual gifts or traits, they bring stature and recognition to their office ... and to the state itself .... "