

Advisory Opinion 2025-2

Response to a Request for an Advisory Opinion from Senate Legal Counsel Richard J. Lehmann on Behalf of Senator Victoria Sullivan (March 24, 2025)

Senate Legal Counsel Richard J. Lehmann has requested an advisory opinion on behalf of Senator Victoria Sullivan, addressing whether she is required to recuse herself from participation in any official activities involving RSA Chapter 194-F, the statutes entitled “Education Freedom Accounts.”

Attorney Lehmann provided the Committee with the following facts. Senator Sullivan has two children who are a present and a former participant in the Education Freedom Account program. Her youngest child will be graduating in May, and no member of her family will be participating in the program after May 30, 2025. She holds no position of authority in the administration or management of the program itself.

Applying the facts as presented, the relevant statutes are:

I. A legislator shall recuse themselves from participation in any official legislative activity pertaining to legislation when:

(a) The legislator has a conflict of interest with the subject of the legislation as defined in RSA 14-B:1, I; and

(b) The legislator or a member of the legislator's household could reasonably be expected to incur a direct and substantial financial benefit or detriment as a result of the outcome of the legislative activity.

As defined in RSA 14-B:1, I, “Conflict of interest” means the condition in which a legislator has a special interest in any matter which could directly or indirectly affect or influence the performance of the legislator's official activities.

A special interest, in turn, is now defined as: V. “Special interest” means any financial or non-financial personal interest in the outcome of a matter that is the subject of official activity, distinct from and greater than the interests of the public at large.

(a) A financial interest exists where a legislator or household member could stand to gain or lose anything of material value as a result of the official activity.

In applying the statutory authority, it is highly improbable that recusal would be required. If there was current legislation to increase or reduce the financial benefit applicable to existing students, or if there was future legislation that provided a retroactive benefit to former students, Senator Sullivan could incur a direct and substantial financial benefit or detriment, and recusal would be required. But it is more likely that any legislation relating to RSA Chapter 194-F will apply only to students after May 30, 2025, in which case, Senator Sullivan will incur no direct or substantial financial benefit or detriment and recusal will not be required.

Although recusal is unlikely, given her participation in the program, Senator Sullivan may still have a special interest in Education Freedom Accounts, and she may wish to disclose a conflict before participating in legislative activities.

We appreciate the opportunity to be of assistance.

For the Committee,
Edward M. Gordon
Chairman

[Vote: 7-0]