

Kitzhaber, Hayes will not be charged

By Claire Withycombe, Paris Achen and Nick Budnick
Capital Bureau



John Kitzhaber

Former Oregon Gov. John Kitzhaber or his fiancée, Cylvia Hayes, will not face criminal charges following a two-year investigation into allegations they used their positions for profit, federal officials announced Friday.

A statement by the U.S. Attorney's Office in Oregon indicated federal officials would not comment further on reasons for the decision.

"Today, the U.S. attorney concluded the investigation that began shortly after I was elected to a fourth term as Oregon's governor, coming to the same conclusion I started with over two years ago: there was nothing nothing to pursue," Kitzhaber wrote on his Facebook page Friday. "As I have said from the beginning, I did not resign because I was guilty of any wrongdoing but rather be-

cause the media frenzy around these questions kept me from being the effective leader I wanted and needed to be." Hayes did not immediately return messages seeking comment Friday.

Kitzhaber and Hayes had been under investigation for more than two years after Willamette Week reported the first lady may have used her position to win several consulting contracts.

State law prohibits public officials such as the first lady from using their position or public resources for private benefit.

Willamette Week reported that Hayes gave input on shaping policies while accepting payments from private advocacy groups that wanted to influence those policies. She also used her title of first lady

when she appeared as a paid consultant, the alt-weekly newspaper reported.

The scandal eventually prompted Kitzhaber's resignation in February 2015.

Secretary of State Dennis Richardson, who challenged Kitzhaber in 2014, responded Friday that the U.S. Attorney's decision "does not change the fact that the governor and Cylvia Hayes accepted money from those desiring to purchase influence."

"It is unfortunate that the recent U.S. Supreme Court decision regarding influence peddling by former Virginia Governor Robert McDonnell and his wife has set the bar so high that it is now nearly impossible to bring federal charges in political corruption cases," Richardson wrote in a statement. "It is clear that Oregon and the nation still have a long way to go to restore trust in government."

Former Republican Gov. Robert McDonnell and his

wife accepted more than \$175,000 in gifts from a Virginia businessman with political interests. They were found guilty of federal corruption charges and sentenced to prison, but won their appeal to the Supreme Court, which found in September that prosecutors' definition of "official act" was too broad.

Oregon Department of Justice officials announced in mid-February that they had halted their investigation of the allegations because the federal investigation had taken longer than anticipated, and the statute of limitations was expiring.

"Our understanding was that the federal investigation would be concluded in sufficient time to allow our office to review findings from the investigation and determine whether state charges were warranted," Michael Slau-son, chief counsel for the Oregon Department of Justice, wrote in a letter to Billy Williams, U.S. Attorney for

the District of Oregon.

The Oregon Ethics Commission had initiated an investigation into misconduct by Kitzhaber and Hayes, but that investigation was stayed during the state and federal probes, said commission Chairman Dan Golden.

He said the commission would review available information and consider whether there are grounds for further action.

Ronald Bersin, executive director of the Oregon Government Ethics Commission, was unavailable for comment Friday afternoon.

Well-wishers posted Facebook messages on the former governor's public page Friday.

"Congratulations, John and Cylvia! The decision took far too long but happily this unfortunate chapter is finally closed. Best wishes for both of you in the future," wrote Chris Dearth, a former Kitzhaber staffer.

Both Hayes and Kitzhaber

began to re-emerge publicly over the past year.

The former governor spoke mostly on health care topics — a post March 12 touted his invitations to speak at "health care summits" across the West Coast. He was also critical of efforts in Congress to dismantle the Affordable Care Act.

Kitzhaber, in a post on his Facebook page, thanks his supporters for standing by him through the ordeal. He said he would continue to "help Oregon deal with the challenges we face in a way that moves us beyond the current division and polarization and brings us back together as a community."

Hayes recently updated her website, which is focused on public speaking, writing, and a coaching business tailored toward "resiliency."

A spokesman for Gov. Kate Brown, who succeeded Kitzhaber when he resigned in 2015, declined to comment Friday.

Corporate taxation bill could test constitutional case law

By Paris Achen
Capital Bureau

A bill passed in the House of Representatives Monday to change the way corporations are taxed for services could serve as a test for new case law on what constitutes a new tax.

Senate Bill 28 would tax national corporations on the percentage of their services they sell in Oregon instead of the existing "all-or-nothing" system of taxing only national corporations who perform the bulk of their business in the state.

The change would yield about \$5.5 million in the next two years and \$11.1 million the two subsequent years, according to an estimate by the Legislative Revenue Office.

Corporations already are

taxed on the proportion of tangible items they sell in Oregon, but taxes on sales of services or intangibles are only levied on corporations where a majority of their services are performed in Oregon.

"The Senate Bill 28 would move away from that and toward a market-based policy that mirrors that for tangible products and is more in line with the policy intent of a single sales factor," said Chris Allanach, senior economist with the Legislative Revenue Office, during a hearing on the bill last month.

In the past, Legislative Counsel would have considered the bill to be a new tax or a "revenue-raising" proposal. Under the Oregon Constitution, a revenue-raising proposal requires a three-fifths majority vote in both legislative

chambers, and the measure must originate in the House.

An Oregon Supreme Court decision in 2015 changed Legislative Counsel's interpretation of what qualities define a revenue-raising measure.

The court ruled in *City of Seattle v. Department of Revenue* that a bill to remove a tax exemption for out-of-state utility companies did not need a three-fifths majority because it didn't have the "essential features" of levying a tax.

Hence, Legislative Counsel now considers revenue-raising proposals to mean

only measures that would change a tax rate. A change to the tax base alone needs only a simple majority vote, Legislative Counsel Dexter Johnson told lawmakers on the House Interim Committee on Revenue last year.

The Senate Bill 28 passed the House and Senate without a three-fifths majority. The vote in the House Monday was 34-to-23. The bill was approved in the Senate 17-to-13.

If signed by the governor, the bill could face a legal challenge, said House and Senate Republicans Monday.

The bill's passage fails to meet the requirements of the constitution for a measure that raises revenue, said House Minority Leader, Mike McLane, R-Powell Butte.

"I swore an oath to uphold the Oregon Constitution, even when it might be inconvenient. I am not willing to risk violating that oath by supporting this bill," McLane said Monday.

Senate Republican spokesman Jonathan Lockwood accused legislative Democrats of "trampling on the constitution."

"Oregonians can't afford any more tax increases, and a lot of this is hidden," Lockwood said.

"These pile up before they hit the consumer," he added.

House Democrats who passed the bill Monday didn't issue a formal response to Republicans' assertions.

Scott Moore, a spokesman for House Democrats, referred to the Oregon Supreme Court ruling.

"I kind of think the legal argument speaks for itself," Moore said.

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