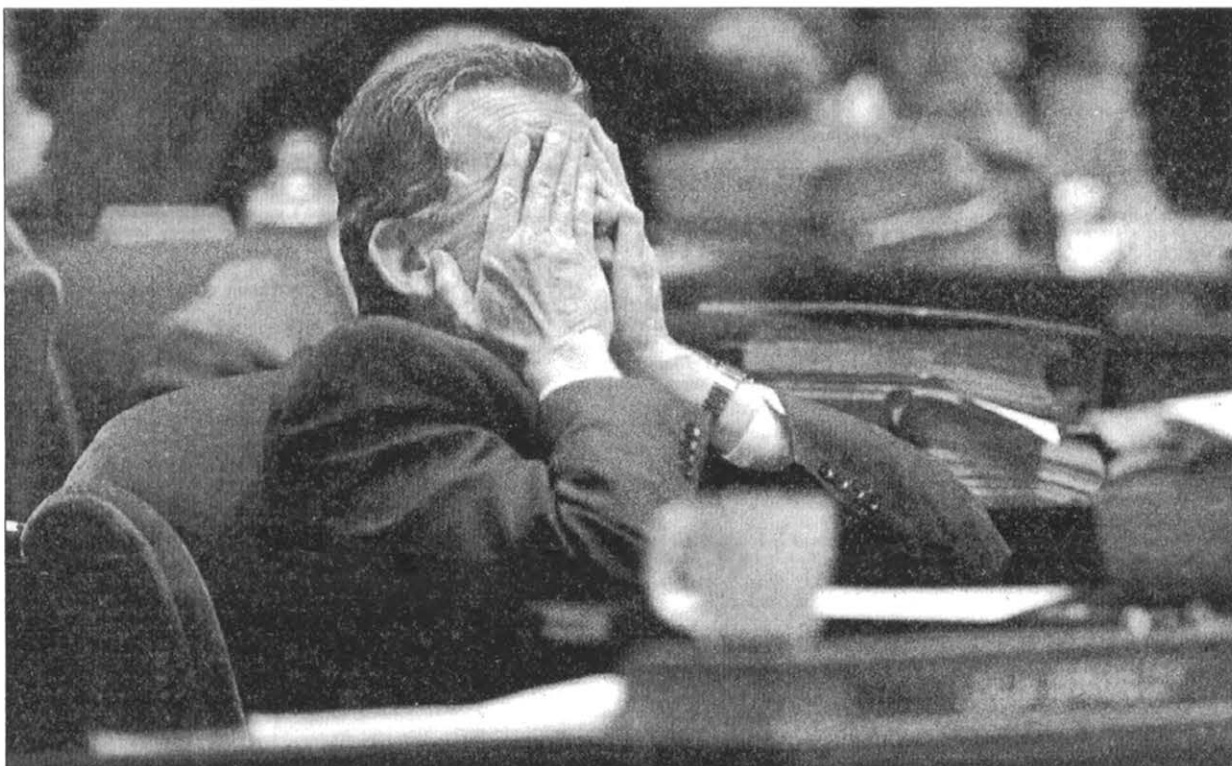


Colorado lawmakers

have not passed a law to give the state Board of Accountancy full subpoena power since the state Supreme Court took it away in 1998. Without such power, says columnist and forensic accountant Gordon Yale, the board cannot compel accountants to turn over audit work papers, seriously hampering the board's efforts to root out corporate fraud in Colorado.

ROCKY MOUNTAIN NEWS
2001



Colorado ignores critical flaw in ability to find corporate fraud

By Gordon Yale

As Congress races toward its summer recess, it is expected to act on a number of wide-ranging proposals to reform the accounting profession, increase jail sentences for white collar criminals, provide for stronger corporate governance and triple the president's proposed budget increase for the much-burdened Securities & Exchange Commission.

Meanwhile, the Colorado legislature has done nothing to redress a Colorado Supreme Court decision that may cripple the state Board of Accountancy's ability to investigate audit negligence cases and discipline certified public accountants.

The Colorado Board of Accountancy lost full subpoena powers when the Colorado Supreme Court ruled against it in 1998. The case — Colorado State Board of Accountancy v. Zavaral Boosalis Raisch — left the board powerless to subpoena accountant work papers without the client's waiver of the accountant-client privilege.

Had Enron been a Colorado-based corporation, for example, the Board of Accountancy would not have been able to subpoena audit work papers without Enron's consent. There have already been several instances where the board has failed to obtain documents from accounting firms because clients have withheld their consent, according to Robert Longway, the administrator of

Legislators must pass law granting accountancy board subpoena powers

the Board of Accountancy.

Because audit work papers constitute the primary evidence that audits are conducted in accordance with generally accepted audit standards, they may be significant investigations that are simply impossible to conduct. As a result, rogue accountants and bad accounting firms may go virtually undisciplined in Colorado.

In its 1998 ruling, the Supreme Court concluded that the Board of Accountancy's subpoena power was not an exception to the accountant-client privilege. The court said the Colorado General Assembly was free to legislate such an exception, but despite the efforts of the board and the Colorado Society of Certified Public Accountants, no such legislation has been passed.

While the accountancy board may obtain documents and information from other government agencies, its enforcement powers clearly have been crippled. In the early 1990s, Resolution Trust Corp. shared substantial information with board investigators in connection with the failures of five of Colorado's 10 largest savings and loan associations.

The board commenced actions against four of the then existing "Big 8" accounting firms and reached settlements in each of those cases. The SEC

also has reported its local actions to the board and has provided documents once it resolved its issues with accounting firms or practitioners, but many government agencies are either precluded from or simply refuse to share important documents.

In those cases, audit negligence or more egregious auditor conduct may well get a free pass from state discipline.

Professional discipline among accountants in Colorado remains somewhat haphazard because of the board's limited resources.

Not only is its budget limited, there is no mechanism that requires accounting firms to notify regulators of complaints or litigation against firms or practitioners.

Since many claims against accountants are asserted by private parties in civil courts, there is no assurance that the board is aware there may be actionable issues. Even large settlements that may be *prima facie* evidence of serious professional misconduct are often the subject of confidentiality agreements.

The board staff does not systematically review court filings to determine the existence of claims against accountants but relies largely upon news coverage or injured parties to report misconduct. Thus, the existence of serious ethi-

cal breaches, professional negligence or outright fraud may simply escape the board's attention.

While serving on the Accountancy Regulation Committee of the Colorado Society of Certified Public Accountants in 1999, I proposed, among other measures, that the board require self-reporting of material litigation by accounting firms.

Such self-reporting is commonly required by both attorneys and physicians in matters that involve potential violations of the law, rules or regulations that govern the professions. The proposals drew a split vote of the committee and were never presented to the society's board. As a result, the proposals were never considered by the legislature in its sunset review of the Board of Accountancy.

Colorado has hardly been immune from audit and accounting scandals. Major cases, including Mini-Scribe, Alert Centre, Boston Chicken, Silverado and now, apparently, Qwest have originated here.

Despite these painful and damaging experiences, we are less prepared to deal with the sophisticated audit scandals of today than we were five years ago.

Gordon Yale is a Denver-based forensic accountant who served as a special investigative consultant to the Colorado Board of Accountancy on many of its savings and loan-related investigations in the 1990s.