

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairman Donald Dahl at 9:00 a.m. on March 11, 2003 in Room 243-N of the Capitol.

All members were present except: Representative Broderick Henderson, Excused  
Representative Dale Swenson, Excused

Committee staff present: Jerry Ann Donaldson, Kansas Legislative Research Department  
Norman Furse, Revisor of Statutes  
Renaë Jefferies, Revisor of Statutes  
June Evans, Secretary

Conferees appearing before the committee: Tim Mitchell, Vice Chair, Board of Accountancy  
Adley Johnson, Chair, Board of Accountancy  
Susan Somers, Executive Director, Board of Accountancy

Others attending: See attached sheet

The Chairman called the meeting to order at 9:05a.m.

The Chairman welcomed Norm Furse, Revisor of Statutes Office, and stated Mr. Furse would be in attendance the rest of the session.

The Chairman stated three related bills, **HBs 2241, 2242 and 2243** were sent to the committee. **HBs 2242 and 2243** had hearings earlier and were passed out of committee and placed on the Consent Calendar. The Chairman was not sure why the bills were pulled off the Calendar. Turn around has passed and since these are non-exempt bills, they were re-referred back to the committee for possible inclusion in an exempt bill. After a meeting with the Speaker it was decided that **HB 2241**, an exempt bill, would be sent to this Committee and **HBs 2242 and 2243** could be incorporated into **HB 2241** if the committee desired. There will be a hearing on **HB 2241** and a review/discussion of **HB 2242 and 2243** today. The bills will be worked sometime next week.

Staff gave a briefing on all three bills and there was discussion (See Attachment 1).

The Chairman opened the hearing on **HB 2241 - Certified Public Accountants, Fees.** (**HB 2241** was introduced in committee by the Kansas Board of Accountancy.)

Tim Mitchell, CPA, Vice-Chair, Kansas Board of Accountancy, stated the Kansas Society of Certified Public Accountants objected to some of the changes to current law proposed in **HB 2241**. Therefore, the Board of Accountancy agreed to withdraw the changes that the Kansas Society of Certified Public Accountants objected to. It was agreed that the fees would not be changed as proposed. It is requested that the changes on page 2, lines 9-12 remain and delete lines 13 and 14 (Attachment 2).

T. C. Anderson, Executive Director, Kansas Society of Certified Public Accountants, expressed concerns members of the Society had with **HB 2241**. Mr. Anderson asked for consideration of a balloon which was the same the Board of Accountancy agreed to (same as previous testimony of Tim Mitchell) (Attachment 3).

The Chairman closed the hearing on **HB 2241**.

The Chairman opened the discussion on **HB 2242 - Accounting firms and persons, investigation of conduct, fees and costs.**

Tim Mitchell, CPA, Vice-Chair, Kansas Board of Accountancy, stated they would like to have **HB 2242** adopted as written. The Board has attempted to contact 49 state Boards of Accountancy to determine their

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on March 11, 2003 in Room 243-N of the Capitol.

subpoena power authority. Of the 49 contacted, either by phone or e-mail, 36 have responded. All 36 have reported that they have subpoena power (Attachment 4).

T. C. Anderson, Executive Director, Kansas Society of Certified Public Accountants, stated since **HB 2242** had passed out of committee, several items had been brought to his attention concerning the investigation subpoena power granted the Accountancy Board. The description of how the Board would use this power was explained. As an example, a client calls the Board office complaining about a CPA because they received a notice of underpayment of federal income tax of \$25,000. The client then called the Board office for a complaint form. Several days later the client called back and indicated he/she had worked things out with the CPA. Under the provisions of the bill, the Board would have the authority to subpoena that person's tax records to determine if the CPA had erred in preparing the return before proceeding to a formal disciplinary hearing. The Society believes the Board should use the services of the Attorney General. He requested the phrase "if the Attorney General refuses to handle the matter" be added at the end of the sentence on line 38.

The Chairman closed the discussion on **HB 2242**.

The Chairman opened the discussion on **HB 2243 - Accountants, education and examination of**.

Tim Mitchell, CPA, Vice-Chair, Kansas Board of Accountancy, recommended passage of **HB 2243**.

T. C. Anderson, Executive Director, Kansas Society of Certified Public Accountants, urged passage of **HB 2243** as it is written.

Adley Johnson, Chair, Kansas Board of Accountancy, stated he supported passage of **HBs 2241, 2242, and HB 2243** with the above suggestions.

There was discussion and the Chairman stated the committee would work the bills next week. Amendments, as proposed, to **HBs 2241 and 2242** will be written up for the next meeting.

The meeting adjourned at 10:45 a.m. and the next meeting will be March 12, 2003.



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MEMORANDUM

TO: Members of the House Committee on Commerce and Labor

FROM: Norm Furse, Revisor of Statutes

DATE: March 11, 2003

RE: HB 2242, p. 1, lines 30-35

Open Records Exception Expiration. Under subsection (b) of K.S.A. 45-229, a “law that enacts a new exception or substantially amends an existing exception shall state that the exception expires at the end of five years and that the exception shall be reviewed by the legislature before the scheduled date.” The term “exception” is defined in subsection (f) of K.S.A. 45-229 to mean “any provision of law which creates an exception to disclosure or limits disclosure under the open records act pursuant to K.S.A. 45-221, and amendments thereto, or pursuant to any other provision of law.” Subsection (g) of K.S.A. 45-229 provides that a “provision of law which creates or amends an exception to disclosure under the open records law shall not be subject to review and expiration under this act if such provision: (1) Is required by federal law; (2) applies solely to the legislature or to the state court system.”

Commerce &  
Labor  
3-11-03  
Atch # 1

# KANSAS

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BOARD OF ACCOUNTANCY  
SUSAN L. SOMERS, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

## HOUSE BILL 2241 Testimony by Tim Mitchell, CPA, Vice-Chair

Although this bill was approved by a majority of the House Appropriations Committee, the Kansas Society of CPAs objected to some of the amendments we made.

Therefore, we will agree, for this legislative session, to withdraw our proposed amendments as follows:

Page 1, lines 30, 32, and 39.

Page 2, we will withdraw our proposed amendments found on lines 6, 7, 8, 13 and 14.

We request that the amendments appearing on lines 9-12 remain.

I will be happy to answer any questions that you may have.

## HOUSE BILL No. 2241

By Committee on Commerce and Labor

2-7

9 AN ACT concerning accountants and accountancy; regarding examina-  
10 tion fees; amending K.S.A. 1-301 and repealing the existing section.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 1-301 is hereby amended to read as follows: 1-301.

14 (a) The board shall charge and collect a fee from each applicant for a  
15 Kansas certificate or notification and shall charge and collect a fee for a  
16 permit to practice as a certified public accountant in this state. ~~Fees for~~  
17 ~~examination and reexamination shall be paid directly to the examination~~  
18 ~~service by the person taking the examination. The board or the board's~~  
19 ~~designated examination service may charge an examination application~~  
20 ~~processing fee. Each fee payable to the board or the examination service~~  
21 ~~shall accompany the appropriate application. No portion of any fee shall~~  
22 ~~be returned to the applicant unless the board determines there is just~~  
23 ~~cause for a refund.~~

24 (b) The board shall adopt rules and regulations fixing the fees pro-  
25 vided to be charged and collected under this section, which shall be as  
26 follows:

27 (1) For issuance of a certificate (initial or duplicate) an amount not  
28 to exceed \$50;

29 (2) for issuance of a reciprocal certificate an amount not to exceed  
30 ~~\$250~~ \$300;

31 (3) for issuance or renewal of a permit to practice for the holder of  
32 a Kansas certificate, an amount not to exceed ~~\$150~~ \$225, subject to par-  
33 agraphs (4) and (6);

34 (4) for issuance or renewal of a permit to practice for the holder of  
35 a Kansas certificate whose permit is issued or renewed for a period of 12  
36 months or less, an amount equal to ½ the amount of the fee fixed under  
37 paragraph (3), subject to paragraph (6);

38 (5) for issuance of a duplicate permit to practice for the holder of a  
39 Kansas certificate, an amount not to exceed ~~\$25~~ \$50;

40 (6) for reinstatement of a permit to practice in the case of the holder  
41 of a Kansas certificate who had in some prior year held a permit to prac-  
42 tice but who did not hold such a permit for the year immediately pre-  
43 ceding the period for which a permit to practice is requested, or who, if

1 holding a permit to practice for such period immediately preceding ap-  
2 plies for renewal subsequent to the expiration date of such permit, an  
3 amount equal to 1½ times the amount of the fee then fixed under par-  
4 agraph ~~(2)~~ (3) or paragraph ~~(3)~~ (4), whichever is applicable;

5 (7) for notification or renewal of notification required pursuant to  
6 K.S.A. 1-322, and amendments thereto, an amount not to exceed ~~\$150~~  
7 \$225; and

8 (8) for annual firm registration, an amount not to exceed ~~\$50~~ \$100;

9 (9) *for renewing a firm registration after the expiration, an amount*  
10 *equal to 1 1/2 times the amount of the fee then fixed under paragraph (8);*

11 (10) *for examination application processing by the board, an amount*  
12 *not to exceed \$150;*

13 (11) *for official verification of information relating to examination,*  
14 *certification, licensure and firms, an amount not to exceed \$25.*

15 (c) On or before May 30 each year, the board shall determine the  
16 amount of funds that will be required during the ensuing year to carry  
17 out and enforce the provisions of law administered by the board and may  
18 adopt rules and regulations to change any fees fixed under this section as  
19 may be necessary, subject to the limitations prescribed by this section.  
20 Upon changing any renewal fees as provided by this section, the board  
21 shall immediately notify all holders of permits to practice of the amount  
22 of such fees. The fees fixed by the board and in effect under this section  
23 immediately prior to the effective date of this act shall continue in effect  
24 until such fees are fixed by the board by rules and regulations as provided  
25 by this section.

26 Sec. 2. K.S.A. 1-301 is hereby repealed.

27 Sec. 3. This act shall take effect and be in force from and after its  
28 publication in the Kansas register.





# Kansas Society of Certified Public Accountants

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March 11, 2003

Chair Dahl and members of the Committee:

Thank you for the opportunity to appear before you today to express some concerns the Board of Directors of the 2,600-member Kansas Society of CPAs have with HB 2241.

I am T.C. Anderson, Executive Director of the organization.

Attached to my testimony is a balloon that details four amendments to this bill the Kansas Society would like to offer for your consideration.

The first amendment occurs on line 32 of page 1. It would keep the permit to practice fee at its current statutory maximum of \$150.

The second amendment occurs on page 2, line 7. This amendment would keep the notification fee to practice in Kansas at its current statutory maximum of \$150.

The third amendment occurs on page 2, line 8. It would keep the annual firm registration fee at its current statutory maximum of \$50.

The final amendment would delete lines 13 and 14 on page 2.

The Board of Accountancy raised its permit fee from \$120 to the statutory maximum of \$150 for permits renewing in 2000.

Since this \$30 increase, the balance in the Board of Accountancy Fee Fund has risen annually by about \$30,000 to an estimated \$292,321 for the end of the current fiscal year. It is obvious the magnitude of that increase was unnecessary.

The Kansas Society is concerned HB 2242, that this committee addressed last month, might be causing some of the Board's desire to increase the statutory maximum in the fees. This legislation, you will recall, would for the first time authorize the Board to employ, appoint, designate or utilize experts to assist with investigations, including providing testimony in the event of a hearing.



The bill also allows the Board to assess the costs of these experts if the Board's order is adverse to the person or entity under investigation. A copy of HB 2242 is attached to my testimony.

In Fiscal Years 1991 and 1992 combined the Board received a total of 38 complaints. Twelve of those complaints resulted in disciplinary actions being taken by the Board. Three dealt with failure to comply with the peer review requirement. Two dealt with failure to comply with continuing education requirements. Three dealt with practicing without a permit to practice. Two of the cases dealt with the same person who failed to register as a firm. One dealt with a licensee who failed to report income on a personal income tax return, and one dealt with a substandard federal governmental audit. The governmental agency did the investigation work prior to bringing the case to the Board's attention. In all these cases, not one expert would have been necessary.

Yet, the Board of Accountancy has included in its budgets for FY '04 and '05 expenditures of over \$40,000 per year to contract with qualified persons or firms to conduct investigations of complaints as permitted in HB 2242.

As a result of these new budgeted expenditures, the Division of the Budget estimates the fee fund balance will drop to \$272,761 at the end of 2004 and to \$254,039 at the end of 2005. This fund balance would still exceed all the expected expenditures of the Board of Accountancy for FY 2005.

Please note no recapture of these costs is reflected in the Board's anticipated income for FY '04 or '05 as indicated on the attached Division of the Budget spreadsheet.

If the Board of Accountancy were able to recapture only half of the estimated expenditures for these experts, the fee fund balance would remain at nearly \$300,000 through 2006.

With this magnitude of reserves, the Kansas Society respectfully submits that no increase in the statutory authority for permit fees is needed at this time or in the foreseeable future. The same applies to notification fees.

There is no reason to increase the statutory authority for the annual firm registration. Today the firm fee is \$40, which is still below the current statutory limit of \$50.

There is no reason for the Board to charge for verification of information relating to examination, certification, licensure and firms. Shouldn't the Board provide some services free of charge when individuals and firms pay a fee to take the examination, pay a fee to receive an initial certificate, pay a fee for a license to practice, and pay a fee to register as a firm? We think so.

Page 3

The Kansas Society supports the Board of Accountancy having the right to engage experts, but not if its going to lead to unnecessary fee increases.

Mr. Chairman, thank you again for allowing me to appear today to offer these amendments to HB 2241. I hope the Committee will react favorably to them. I'll stand for questions.

3-6

### Resource Estimate for Biennial Agencies-DA 404

Division of the Budget  
State of Kansas

Agency Name

Board of Accountancy

Fund/Account Name and Number		FY 2002 Actual	FY 2003 Estimate	FY 2003 DOB Use Only	FY 2004 Allocated Resources	FY 2004 Enhancement Package	FY 2004 DOB Use Only	FY 2005 Allocated Resources	FY 2005 Enhancement Package	FY 2005 DOB Use Only
Board of Accountancy Fee Fund	2701 00									
<b>Add:</b>										
Balance Forward		233,583	264,098	264,098	292,321		292,321	272,761		272,761
Receipts Name and Revenue Object Number:										
Certificate Fees			17,600	17,600	18,700		18,700	18,700		18,700
Permits to Practice		206,982	180,000	180,000	184,320		184,320	188,640		188,640
Practice by Notification			4,800	4,800	5,400		5,400	5,400		5,400
Fines			1,600	1,600	1,700		1,700	1,700		1,700
Firm Registrations			13,760	13,760	13,920		13,920	13,920		13,920
Miscellaneous Fees		(261)	96	96	96		96	96		96
Subtotal -- Receipts		206,721	217,856	217,856	224,136		224,136	228,456		228,456
Equal	Total Available	\$440,304	\$481,954	\$481,954	\$516,457		\$516,457	\$501,217		\$501,217
<b>Subtract:</b>										
Transfer Out *		9,263					14,378			
Balance Forward		264,098	292,321	292,321	272,761		272,761	254,039		254,039
Nonreportable Expenditures										
Total Expenditures		\$166,943	\$189,633	\$189,633	\$243,696		\$229,318	\$247,178		\$247,178
Expenditure Limitation		\$179,693	\$189,633	\$189,633	\$243,696		\$229,318	\$247,178		\$247,178

\* Transfer Out in FY 2004 is Governor's recommendation to reduce fee agency budgets and transfer the amount of the reduction to the State General Fund. For Board of Accountancy, the reduction is \$14,378.

## House Budget Committee Report

Agency: Board of Accountancy

Bill No.

Bill Sec.

Analyst: Buonasera

Analysis Pg. No.

Budget Page No. 473

<u>Expenditure Summary</u>	<u>Agency Request FY 04</u>	<u>Governor's Recommendation FY 04</u>	<u>House Budget Committee Adjustments</u>
Board of Accountancy Fee Fund	\$ 243,696	\$ 229,318	\$ 0
FTE Positions	3.0	3.0	0.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
<b>TOTAL</b>	<b>3.0</b>	<b>3.0</b>	<b>0.0</b>

### Agency Request/Governor's Recommendation

The agency requests for FY 2004 operating expenditures is \$243,696, which is an increase of \$54,033 (28.5 percent) from the FY 2003 estimate. The agency requests \$127,506 for salaries and wages for 3.0 FTE positions. This is an increase of \$2,696 (2.2 percent) from the FY 2003 estimate. The agency requests \$112,860 for contractual services. This is an increase of \$52,912 (88.3 percent) from the FY 2003 estimate. There was a large increase in professional fees so the agency would be able to contract qualified persons or firms to conduct investigations of complaints and pay fees incurred in the disciplinary proceedings. The agency requests \$3,330 for commodities and no capital outlay was requested.

The Governor recommends funding for FY 2004 operating expenditures of \$229,318, which is a decrease of \$39,655 (20.9 percent) from the FY 2003 recommendation.

For FY 2004, the Governor recommends a 5.9 percent reduction in expenditures for all biennial budget agencies and for selected other agencies. The amount reduced from the agency's budget for the 5.9 percent reduction totals \$14,378. The amount will be transferred to the State General Fund.

### House Budget Committee Recommendation

The Budget Committee concurs with the Governor's recommendation.

3-5

## House Budget Committee Report

Agency: Board of Accountancy

Bill No.

Bill Sec.

Analyst: Buonasera

Analysis Pg. No.

Budget Page No. 473

<u>Expenditure Summary</u>	<u>Agency Request FY 05</u>	<u>Governor's Recommendation FY 05</u>	<u>House Budget Committee Adjustments</u>
Board of Accountancy Fee Fund	\$ 247,178	\$ 247,178	\$ 0
FTE Positions	3.0	3.0	0.0
Non FTE Uncl. Perm. Pos.	0.0	0.0	0.0
TOTAL	<u>3.0</u>	<u>3.0</u>	<u>0.0</u>

### Agency's Request/Governor's Recommendation

The agency's request for FY 2005 operating expenditures is \$247,178 which is an increase of \$3,482 (1.4 percent) from the FY 2004 estimate. Salaries and wages total \$130,261 which is an increase of \$2,755 (2.2 percent) from the FY 2004 estimate. The agency estimates \$113,587 for contractual services and \$3,330 for commodities.

The Governor concurs with the agency request.

### House Budget Committee Recommendation

The Budget Committee concurs with the Governor's recommendation.

## HOUSE BILL No. 2242

By Committee on Commerce and Labor

2-7

9 AN ACT concerning accountants and accountancy; relating to  
10 investigations.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) Upon receipt of a complaint or information suggesting  
14 violations of the accountancy statutes or the rules and regulations of the  
15 board of accountancy, the board may conduct investigations to determine  
16 whether there is probable cause to institute proceedings under K.S.A. 1-  
17 311, 1-312, 1-316, 1-322 and amendments thereto. An investigation shall  
18 not be a prerequisite to such proceedings in the event that a determi-  
19 nation of probable cause can be made without an investigation.

20 (b) The board may designate one or more board members to serve  
21 as investigating officers. The investigation officer or officers may employ,  
22 appoint, designate or utilize any other person of appropriate competence  
23 to assist with the investigation, including providing testimony in the event  
24 of a hearing.

25 (c) Upon completion of an investigation, the investigating officer or  
26 officers shall determine whether probable cause exists based upon the  
27 documents gathered, discussions with the person or firm under investi-  
28 gation and reports submitted by any other person assisting with the  
29 investigation.

30 (d) If the investigating officer or officers find no probable cause, the  
31 complaint, if any, the testimony and any documents gathered during the  
32 investigation including any information regarding the pendency of an in-  
33 vestigation shall be confidential and shall not be disclosed to any person,  
34 without the consent of the person or firm under investigation, except to  
35 law enforcement and state or federal agencies.

36 (e) Upon a finding of probable cause, the matter may be referred for  
37 prosecution or disciplinary action to the office of attorney general or to  
38 an attorney retained by the board.

39 (f) No person who provides services to the board in conjunction with  
40 any investigation authorized in subsection (a) shall be liable in a civil  
41 action for damages or other relief arising from any testimony, recom-  
42 mendation, or opinion provided by such person acting in good faith and  
43 without malice.



1 (g) In aid of such investigations, the investigating officer may issue  
2 subpoenas to compel the attendance and testimony of any person or the  
3 production for examination or copying of documents or any other evi-  
4 dence in the possession of any person.

5 Sec. 2. (a) If the board's order is adverse to a firm, an applicant, a  
6 certificate or permit holder or a person practicing pursuant to K.S.A. 1-  
7 322 and amendments thereto, reasonable costs incurred by the board in  
8 conducting any proceeding under the Kansas administrative procedure  
9 act may be assessed against the parties to the proceeding in such pro-  
10 portion as the board may determine upon consideration of all relevant  
11 circumstances including the nature of the proceeding and the level of  
12 participation by the parties. If the board is the unsuccessful party, the  
13 board shall absorb the board's costs.

14 (b) For the purposes of this section, board costs incurred shall mean  
15 the presiding officer fees and expenses, costs of making any transcripts,  
16 statutory witness fees and mileage, and any fees and expenses of persons  
17 identified in subsection (b) of section 1, and amendments thereto. Board  
18 costs incurred shall not include presiding officer fees and expenses or  
19 costs of making transcripts unless the board has designated or retained  
20 the services of independent contractors to perform such functions.

21 (c) In either the order disposing of the case or in a subsequent order,  
22 the board shall make an assessment of reasonable costs incurred in the  
23 proceeding. Such order shall include findings and conclusions in support  
24 of the assessment of costs.

25 Sec. 3. This act shall take effect and be in force from and after its  
26 publication in the Kansas register.

# KANSAS

BOARD OF ACCOUNTANCY  
SUSAN L. SOMERS, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

## House Bill #2242 Testimony by Tim Mitchell, CPA, Vice-Chair

Good morning Mr. Chairman, members of the Committee. I am here today to request that House Bill #2242 be adopted as written.

Some other Kansas agencies that have subpoena power:  
Securities Commission  
Board of Technical Professions  
Behavioral Sciences  
Board of Healing Arts  
Board of Nursing

Further, we have attempted to contact 49 state Boards of Accountancy to determine their subpoena power authority. Of the 49 contacted, either by phone or e-mail, 36 have responded. All 36 have reported that they have subpoena power.

When drafting this legislation, we specifically modified our language to accommodate the suggestions and concerns of the Kansas Society of CPAs to incorporate the language found in the Uniform Accountancy Act. They have gone on record supporting this bill, as is evidenced by the attached article published in the February edition of their Newsletter.

We believe it is vital for the Kansas Board of Accountancy to possess subpoena power, so that we may stand as equals with other state boards of accountancy in regulating the profession, and so that we may not be restricted in our ability to gather necessary information in the investigative process.

Further, as we testified previously, we believe that recoupment of reasonable costs incurred in the investigation process, if a person or firm has been found guilty of violating the accountancy laws and/or regulations, is necessary.

I will be happy to stand for any questions.

**From The President...****Transition At Department Of Revenue Refreshing****Kathy Mitchell**

On January 13 Joan Wagon became Acting Secretary of Revenue. At the request of Governor Sebelius she took a leave of absence from her day job as a bank president in Topeka to head this agency

that is so important to us all.

Joan brings a litany of credentials to the job. She's a former State Representative who served as Chair of the House Assessment and Taxation Committee, she's been elected mayor of Topeka, and she's run for Governor. A few years back, Joan was a frequent speaker at KSCPA sponsored tax seminars.

In her first two weeks on the job she held two meetings with representatives of the KSCPA. The first was with Society staff; the second was with 11 members of our Taxation Cabinet.

The outgrowth of these meetings was a pledge by her administration to implement

provisions of the Taxpayer Fairness Act of 2002 including the issuing of closing letters and the rewriting of collection letters to make them more easily understood.

She wants to work with us in an effort to reduce the volume of unwarranted collection letters that are sent from the Department. She acknowledges this may be a difficult undertaking, but she promises to make it a top priority and she welcomes our help.

She asked for and received KSCPA input on the Governor's proposed Tax Amnesty program. Watch for more details on this in future issues of the Newsletter and on our web site.

She phoned the KDOR pretending to be the taxpayer who had received a collection letter. The collection letter had been supplied by the Society after it had been deemed incorrect by one of our members. Joan indicated the phone call was an "enlightening" experience.

In addition she's appointed some new faces to management posts and they, too, are eager to work with us.

Ten members of the Society held a January 31 telephone conference call with a

member of the staff at the Department to offer suggestions for clarifying and enhancing last year's legislation that requires withholding on distributions made to non-resident partners, members or shareholders of partnerships, S corporations or LLCs formed under Kansas law. Won't it be wonderful if we can get some meaningful legislative changes made to this law and at the same time have the Society, the Department and the Legislature working off the same page?

As a tax practitioner I'm encouraged with the signs that are coming from the Department. I'm also encouraged that the group that Governor Sebelius' transition team has asked to screen candidates for the full-time Secretary of Revenue has sought out the Society as a resource. I'm encouraged that the Top to Bottom Review Team that studied the Department consulted with the Society.

I'm convinced that for at least the next 60 days we have a Secretary of Revenue who wants to work with us and who is willing to listen and act upon our concerns.

*(continued on page 4)*

**KSCPA Directors Vote To Support New Kansas Estate Tax Law, State Board Legislative Proposals**

Kansas Society Directors voted unanimously last month to endorse a new Kansas Estate Tax Act and to support the State Board of Accountancy in its efforts to obtain legislative authority to issue investigation subpoenas and hire experts to assist with investigations.

The Directors also agreed to support legislation that will provide a transition from the paper CPA examination to a new computerized exam that is expected to be operational early in 2004.

These actions took place January 14 dur-

ing a telephone conference call.

KSCPA Directors voted to support enactment of a new Kansas Estate Tax Act that would replace the current succession tax. The Kansas Bar Association is sponsoring the legislation and had asked for the Kansas Society's endorsement.

In explaining the Directors' decision to support the State Board proposals, KSCPA President Kathy Mitchell, Hays, said the Uniform Accountancy Act (UAA) adopted by the AICPA and the National Association of State Boards of Accountancy, contains

language that allows boards of accountancy to issue subpoenas during the course of an investigation if boards have received a complaint or other information suggesting violations of accountancy statutes or rules.

She indicated the UAA also allows boards of accountancy to hire experts to assist with investigations.

"For the past six years we have told the Kansas Legislature that our accountancy laws should closely resemble the UAA," said Mitchell. "These issues were no different.

*(continued on page 4)*



# KSCPA Directors Vote to Support Legislation

(continued from page <None>)

I'm pleased the Board of Accountancy agreed to adopt the UAA approach to their legislative agenda rather than use language from existing Kansas agency statutes."

In addition, Society Directors rejected a request from the Board of Accountancy that the KSCPA support its legislative effort to increase the amount of civil fine that could be imposed on licensees. The Board of Accountancy then voted to drop this legislative proposal.

As of press time, no bill numbers had been assigned to any of the legislation discussed in this article. Members may receive timely updates on these and other legislative matters by accessing the members' section on the KSCPA web site at [www.kscpa.org](http://www.kscpa.org).

Following are the proposed changes to the accountancy statutes dealing with subpoenas:

## SUBPOENAS

**New Section 1.** (a) Upon receipt of a complaint or information suggesting violations of the accountancy statutes or the rules and regulations of the board, the board may conduct investigations to determine whether there is probable cause to institute proceedings under K.S.A. 1-311, 1-312, 1-316, 1-322 and amendments thereto. An investigation shall not be a prerequisite to such proceedings in the event that a determination of probable cause can be made without an investigation.

(b) The board may designate one or more board members to serve as investigating officers. The investigation officer or officers may employ, appoint, designate or utilize any other person of appropriate competence to assist with the investigation, including providing testimony in the event of a hearing.

(c) Upon completion of an investigation, the investigating officer or officers shall determine whether probable cause exists based upon the documents gathered, discussions with the person or firm under investigation and reports submitted by any other person assisting with the investigation.

(d) If the investigating officer or officers find no probable cause, the complaint, if any, the testimony and any documents gathered during the investigation including any information regarding the pendency of an investigation shall be confidential and shall not be disclosed to any person, without the consent of the person or firm under investigation, except to law enforcement and state or federal agencies.

(e) Upon a finding of probable cause, the matter may be referred for prosecution or disciplinary action to the office of attorney general or to an attorney retained by the board.

(f) No person who provides services to the board in conjunction with any investigation authorized in subsection (a) shall be liable in a civil action for damages or other relief arising from any testimony, recommendation, or opinion provided by such person acting in good faith and without malice.

(g) In aid of such investigations, the investigating officer may issue subpoenas to compel the attendance and testimony of any person or the production for examination or copying of documents or any other evidence in the possession of any person.

**New Sec. 2.** (a) If the board's order is adverse to a firm, an applicant, a certificate or permit holder or a person practicing pursuant to K.S.A. 1-322 and amendments thereto, reasonable costs incurred by the

board in conducting any proceeding under the Kansas administrative procedure act may be assessed against the parties to the proceeding in such proportion as the board may determine upon consideration of all relevant circumstances including the nature of the proceeding and the level of participation by the parties. If the board is the unsuccessful party, the board shall absorb the board's costs.

(b) For purposes of this section, board costs incurred shall mean the presiding officer fees and expenses, costs of making any transcripts, statutory witness fees and mileage, and any fees and expenses of persons identified in section 1(b). Board costs incurred shall not include presiding officer fees and expenses or costs of making transcripts unless the board has designated or retained the services of independent contractors to perform such functions.

(c) In either the order disposing of the case or in a subsequent order, the board shall make any assessment of reasonable costs incurred in the proceeding. Such order shall include findings and conclusions in support of the assessment of costs.

## From The President

(continued from page 1)

Please share your concerns with T.C. at the Society office and he'll get them passed on to the Department.

Best wishes for a rapidly approaching April 15.

Kathy Mitchell, CPA  
President

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