

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 12, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 97-3204**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**MARK EDWARDS DIETRICH,**

**PLAINTIFF-APPELLANT,**

**V.**

**CONNIE WILDO, AL BITZ, BERNIE KAHL, JOHN  
SUMMERFELD, MIKE BEYREIS, GARY AMUNDSON,  
TRACY HORN, DAN SIEWERT, JOHN MARCON, JULIE  
WEBER, DEWAYNE REITEN, STEVE FALSTAD, RICK  
KUFFEL, KEN TOMESH, TERREL HOEFT, MIKE NELSON,  
BRAD BEFFA, PHYLLIS CAMPBELL, BRAD KOENIG,  
JASON LEU AND CHAD THOMPSON,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Barron County:  
EDWARD R. BRUNNER, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Mark Edwards Dietrich sought a judgment declaring that because the City of Rice Lake police officers failed to take and file oaths of offices, their offices are deemed vacant and their past actions are null and void. Dietrich appeals the judgment denying his claim and raises the following issues: (1) do the Wisconsin statutes, or federal or state constitutions, require that all police officers or deputy sheriffs file an official oath of office prior to entering their duties; and (2) is the office deemed vacant upon an officer's neglect to take and file the official oath? We conclude that the statutes require only the chief of police to file an oath of office and that any failure of the City of Rice Lake's officers to take and file an oath does not affect an officer's authority to perform his or her duties. We therefore affirm the judgment.

Dietrich claims that he was arrested for disorderly conduct by a Rice Lake police officer and later discovered that the entire Rice Lake police force had not taken an official oath of office to support the United States Constitution and the Wisconsin Constitution. As a result, Dietrich commenced this proceeding to challenge their authority to hold office and arrest people.<sup>1</sup> The police chief testified that although he took and filed an oath of office before assuming his duties, he was unable to locate it. The trial court ruled that (1) police officers, other than the chief, are not required to file oaths of office under § 62.09(4), STATS.; and (2) although the police chief is required to file an oath, and

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<sup>1</sup> The record does not indicate whether Dietrich attempts to attack a conviction for disorderly conduct through this proceeding; there is no indication that he was convicted or directly appealed his conviction. In any event, a defect in the police officers' arresting authority, if any exists, does not constitute a defense to charges brought against a defendant. See *Walberg v. State*, 73 Wis.2d 448, 463-64, 243 N.W.2d 190, 198 (1976), *overruled on other grounds by State v. Smith*, 131 Wis.2d 220, 388 N.W.2d 601 (1986); see also *Pamanet v. State*, 49 Wis.2d 501, 506-08, 182 N.W.2d 459, 463-64 (1971). Because neither party addresses the issue of Dietrich's standing to bring this action, we do not address it on appeal. See § 784.04(2), STATS.

notwithstanding his testimony that he did so, the public cannot contest the acts of a de facto officer.

We conclude that under the plain language of the statutes cited, only Rice Lake's chief of police is required to take an oath of office. This issue is one of statutory interpretation, a question of law we review de novo. *State v. Michels*, 141 Wis.2d 81, 87, 414 N.W.2d 311, 313 (Ct. App. 1987). The primary source of interpretation is the statutory language itself. *Hartlaub v. Coachmen Indus.*, 143 Wis.2d 791, 797, 422 N.W.2d 869, 871 (Ct. App. 1988).

Under § 62.09(1), STATS., the chief of police is an appointed officer.<sup>2</sup> Section 62.09(4), STATS., requires that the chief of police take and file an official oath within ten days of appointment to office.<sup>3</sup> Nothing in the plain language of the statute suggests, however, that this requirement applies to police officers other than the chief.

Nonetheless, Dietrich argues that under §§ 17.03(7), 19.01(1), and 59.21, STATS., every police officer of the City of Rice Lake is required to file an official oath.<sup>4</sup> We disagree. Section 17.03 provides:

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<sup>2</sup> Section 62.09(1), STATS., provides: (1) ENUMERATION AND CHANGE. (a) The officers shall be a mayor, treasurer, clerk, comptroller, attorney, engineer ... chief of police ....

<sup>3</sup> Section 62.09(4)(a), STATS., provides:

(4) QUALIFYING. (a) Every person elected or appointed to any office shall take and file the official oath within 10 days after notice of election or appointment, except that elected assessors shall take and file the official oath within 5 days before June 1.

<sup>4</sup> All statutory references are to 1993-94 statutes, as these are the statutes cited by the parties.

Except as otherwise provided, a public office is vacant when:

....

(7) A person elected or appointed or reelected or reappointed to any office neglects or refuses to take and file the official oath or to execute or renew the official bond if required, or to file the oath or bond as prescribed by law.

Dietrich fails to provide any authority for the proposition that a city police officer, other than the chief of police, is elected or appointed within the meaning of § 17.03(7). *See State v. Shaffer*, 96 Wis.2d 531, 545-46, 292 N.W.2d 370, 378 (Ct. App. 1980). As a result, we are not persuaded that it applies to the city police officers.

Section 19.01(1), STATS., merely provides the form that the oath, if required, should take. Also, § 19.01(7), states:

This section shall not be construed as requiring any particular officer to furnish or file either an official oath or bond. It is applicable to such officers only as are elsewhere in these statutes or by the constitution or by special, private or local law required to furnish such an oath or bond.

Thus, this section does not require an oath. Additionally, because ch. 59, STATS., applies to county officers, not *city* police officers, it does not require the city police officers to take an oath. Dietrich argues that the police chief testified that all his officers have been deputized as deputy sheriffs. However, Dietrich fails to develop any argument that even if a deputy sheriff would be required to take an oath, the failure of police officers to take oaths as deputy sheriffs somehow deprives them of their authority as city police officers. Additionally, Dietrich's constitutional arguments are not sufficiently developed. We therefore decline to address them. *State v. Pettit*, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct.

App. 1992). As a result, we agree with the trial court that only the chief of police is required to take and file an oath.

We further conclude that a police chief's official acts are binding and valid until he is removed from office.

It is generally recognized in this state and elsewhere that the acts of a *de facto* officer are valid as to the public and third parties and cannot be attacked collaterally. The acts are binding and valid until the individual is ousted from his office by the judgment of a court in a direct proceeding to try his title to the office.

Generally, all that is required to make a person an officer *de facto* is that the person claiming office be in possession of it, performing its duties, and claiming to be such an officer under color of election or appointment.

***Walberg v. State***, 73 Wis.2d 448, 463-64, 243 N.W.2d 190, 198 (1976) (footnotes omitted). Therefore, the failure of the police officers to file an oath in the appropriate office does not necessarily render the assumption of office defective.

*By the Court.*—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.

