Circuit Court for Anne Arundel County
Case No. C-02-CR-23-000263

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1063

September Term, 2023

STATE OF MARYLAND

v.

BRIDGET ELIZABETH WEISS

Friedman,
Zic,
Storm, Harry C.**
(Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: May 14, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

**Storm, Harry C., now retired, participated in the hearing of this case while an active member of the Circuit Court for Montgomery County, cross-designated to sit with this Court pursuant to the Constitution, Article IV, Section 18(b) and pursuant to Maryland Rules 16-102(d) and 16-108(b). He also participated in the decision and the preparation of this opinion.

Bridget Elizabeth Weiss, a Firefighter III/Paramedic with the Annapolis Fire Department, was charged by criminal information with one count of the common law misdemeanor of misconduct in office. Weiss filed a demand for a bill of particulars, to which the State responded by alleging that Weiss filed a false special incident report and by pointing out the details in that special incident report which it claimed to be false.[1] Weiss then filed three pretrial motions: (1) a motion to dismiss based on the statute of limitations; (2) a more general motion to dismiss arguing that the State had failed to charge Weiss with a particular crime[2] and would be unable to prove that she holds an "office;"

[1] From the State's answer to the demand for particulars and other pleadings, we understand that the State alleges that Weiss and other paramedics responded to a call for an injured person, found Renardo Green in a disturbed mental state, behaving erratically, and bleeding on the floor. The paramedics bandaged Green's hands and prepared him for transport to the hospital. During transport, Green's condition deteriorated, and paramedics began lifesaving procedures. According to other pleadings in this case, we understand that Green died on the way to the hospital, and the paramedics were ordered to write special incident reports describing what occurred. We may take judicial notice of court dockets pursuant to MD. R. 5-201(b)(2) and observe that Green's survivors instituted a wrongful death action in the United States District Court for the District of Maryland, in which they alleged that the paramedics, including Weiss, restrained Green on the gurney facedown, which they further alleged caused Green's death. *Est. of Green v. City of Annapolis*, 696 F. Supp. 3d 130 (D. Md. 2023).

[2] Weiss additionally insists that the criminal information filed against her was defective because it alleged only that she was a "Firefighter III/Paramedic" and failed to allege that she holds an "office." Weiss is correct that the State failed to mention its belief that she holds an office in its criminal information. Moreover, the State declined to amend the criminal information when it had the opportunity. MD. R. 4-204. We think that this is a pleading defect that would merit dismissal. *See State v. Wheatley*, 192 Md. 44, 49-50 (1949) (case dismissed for failure to properly describe office); *see also Parks v. State*, 259 Md. App. 109, 122-23 (2023) (discussing requirements of criminal indictment or information); *Hall v. State*, 57 Md. App. 1, 7 (1983), *aff'd*, 302 Md. 806 (1985) (stating that all matters material to the crime charged are essential to include in the indictment). This, however, was not the basis of the circuit court's dismissal, and because it is redundant to our conclusion, we decline to address it further.

and (3) a motion to suppress the special incident report as an involuntary statement. The State opposed each motion, and the Circuit Court for Anne Arundel County held a hearing. The circuit court dismissed the case against Weiss because, it found, the case was barred by the statute of limitations. It determined that a two-year statute of limitations applies only to "officers,"[3] and found that Weiss was not an officer. The State of Maryland timely noted an appeal from that decision.[4]

In this Court, as below, the State argues that the circuit court erred in dismissing the case against Weiss. The State argues that whether Weiss held an "office" is an element of

[3] Regrettably, there is not a standard terminology used to designate an officer, and the cases describe an "office," a "public office," or an "office of trust" and an "officer," or a "public officer," interchangeably. *See Kopp v. Schrader*, 459 Md. 494, 507 (2018) (discussing "officers" and "public officer[s]" without defining either); *Employees' Ret. Sys. of Balt. Cnty. v. Bradford*, 227 Md. App. 75 (2016) (interchanging "officer," and "employee"); *Schisler v. State*, 394 Md. 519, 549 (2006) (declining to give the term "civil officer" a specific definition); *Bd. of Supervisors of Elections v. Att'y Gen.*, 246 Md. 417 (1967) (using the terms "office of profit or trust" interchangeably with "constitutional officer"). In general, the key is to distinguish an "officer" from an "employee." *Houghton v. Forrest*, 412 Md. 578, 585 (2010) (distinguishing a "public official" from a "mere employee" in the common law public official immunity context); *Mayor & City Council of Ocean City v. Bunting*, 168 Md. App. 134, 141-49 (2006) (distinguishing "officers" from "employees of the police department" and holding that only those below the rank of lieutenant could be considered employees for collective bargaining purposes).

[4] The State may appeal from the grant of a motion to dismiss an indictment. MD. CODE, COURTS & JUD. PROC. ("CJ") § 12-302(c)(2); *State v. Hallihan*, 224 Md. App. 590, 606-07 (2015).

The State's brief also prominently features the *Hallihan* case and argues that it stands for the additional proposition that a circuit court may not resolve factual disputes on pretrial motions. We agree. We disagree, however, that whether a defendant is an "officer" is a factual question. Rather, as we discuss below, we hold that it is a legal question that the trial court can—and must—resolve before trial in response to a proper motion.

the charged crime, which they claim should be proven to the jury, not decided as a preliminary legal question.

We hold that whether Weiss is an "officer" is both a preliminary legal question and a substantive element of the crime. Moreover, we review the trial court's preliminary determination and hold that, as a matter of law, Weiss, a Firefighter III/Paramedic, is not an "officer." As a result, the State's case against her was barred by the appropriate statute of limitations.

ANALYSIS

"[M]isconduct in office is a common law misdemeanor." *Duncan v. State*, 282 Md. 385, 387 (1978). The crime of misconduct in office can be committed in any or all of three modalities: malfeasance (doing something wrong); misfeasance (doing something in a wrongful manner); or nonfeasance (failing to do something). *Koushall v. State*, 479 Md. 124, 154-55 (2022).

Section 5-106(a) of the Courts and Judicial Proceedings Article ("CJ") provides for a one-year statute of limitations for all misdemeanors except for those that fit within a listed exception. CJ § 5-106(a). The State argues that Weiss's case falls within the exception for misconduct in office, which extends the statute of limitations for misdemeanors to two years. CJ § 5-106(f)(2). Weiss argues that CJ § 5-106(f)(2) cannot apply to her because she is not an "officer" and, as a result, any case against her had to fall within the general one-year statute of limitations and was brought too late.

We begin with the words of the subsection creating the exception:

> A prosecution for the commission of … a misdemeanor constituting … criminal malfeasance, misfeasance, or nonfeasance in office committed by an officer … of a political subdivision of the State … shall be instituted within 2 years after the offense was committed.

CJ § 5-106(f)(2). We read this subsection as having four parts: (1) **the prosecution** ("A prosecution for …"); (2) **the crime** ("… a misdemeanor constituting … [misconduct] in office …");[5] (3) **the defendant** ("… an officer … of a political subdivision of the State

[5] The elements of "misconduct in office" are "(1) corrupt behavior, (2) by a public officer, (3) in the exercise of [their] office or while acting under [the] color of [their] office." *Koushall*, 479 Md. at 154 (citation omitted) (quotation modified to use singular "they"). Had this case proceeded to trial, the State would have been compelled to prove each of these elements of the crime beyond a reasonable doubt. *See id*. at 154 (finding no dispute to the evidence that the police officer charged with misconduct in office was a public officer); *State v. Manion*, 442 Md. 419, 430 (2015) (holding that sufficient circumstantial evidence proving elements of the charge is enough to meet the State's burden); MARYLAND PATTERN JURY INSTRUCTIONS—CRIMINAL ("MPJI-Cr") 2:02 (stating that the State has the burden of proving each element of a crime beyond a reasonable doubt). Nevertheless, we don't think that this understanding is inconsistent with our holding that the circuit court must first determine, as a matter of law, whether the defendant is an "officer … of a political subdivision of the State" to determine the applicability of the extended statute of limitations under CJ § 5-106(f)(2). We note that the Supreme Court of Maryland has often determined whether a position is an "office" as a matter of law. *See, e.g.*, *de la Puente v. Cnty. Comm'rs of Frederick Cnty.*, 386 Md. 505, 510 (2005); *Howard Cnty. Metro. Comm'n v. Westphal*, 232 Md. 334, 339 (1963); *State Tax Comm'n v. Harrington*, 126 Md. 157, 163 (1915). Moreover, if these weren't two separate inquiries, "office" in the second part of the statute and "officer" in the third part of the statute would be essentially redundant. *See* CJ § 5-106(f)(2). Statutory interpretations that render words redundant are always disfavored. *See, e.g.*, *Blondell v. Balt. City Police Dep't*, 341 Md. 680, 691 (1996) ("We interpret statutes to give every word effect, avoiding constructions that render any portion of the language superfluous or redundant."). We can also infer that the General Assembly knew what it was doing when it limited the effect of CJ § 5-106(f)(2) only to misconduct in office committed by officers, because in other places in the Maryland Code, the General Assembly has legislated (in nearly identical language) regarding misconduct in office committed by both officers *and* employees. *See, e.g.*, MD. CODE, CRIMINAL PROC. § 14-107(a)(1)(iv) ("[T]he State Prosecutor may investigate … an offense constituting criminal malfeasance, misfeasance, or nonfeasance in office committed by an officer *or employee* of the State, of a political subdivision of the

…"); and (4) **the limitations period** ("… shall be instituted within two years after the offense was committed."). There was no doubt about the applicability of parts one, two, and four. Thus, it seems plain that the applicability of this subsection to Weiss's case turns entirely on the third part: whether Weiss is an appropriate defendant, that is, whether she was an "officer … of a political subdivision of the State."

Maryland Courts employ a four factor test[6] to determine if a position constitutes an office (and to distinguish between an officer and an employee):

> [1] [t]he position was created by law[7] and involves continuing and not occasional duties[;]
>
> [2] [t]he holder performs an important public duty[;]

State, or of a bicounty or multicounty unit of the State.") (emphasis added); *Bellard v. State*, 452 Md. 467, 481 (2017) ("[T]he General Assembly is presumed to have meant what it said and said what it meant." (citation omitted)). While the State may prosecute a governmental employee (as opposed to "official") for misconduct in office, it must do so within the one-year statute of limitations provided by CJ § 5-106(a). Thus, whether the two-year statute of limitations in CJ § 5-106(f)(2) applies to an individual is a matter of law, determined by the courts, prior to the case proceeding to trial.

[6] Previously, this test had a fifth factor: "the position is one of dignity and importance." *Bd. of Supervisors*, 246 Md. at 439. As this issue kept arising, however, the courts slowly dropped the fifth factor—at first just considering it, later just mentioning it, and now no longer using it in the analysis at all. *Carder v. Steiner*, 225 Md. 271, 275 (1961) ("Immunity from liability rests not on the dignity of the office but rather upon the nature of the function exercised."); *Duncan v. Koustenis*, 260 Md. 98, 105 (1970) ("The dignity of the office test was greatly depreciated if not abandoned in *Carder v. Steiner*."); 99 OP. ATT'Y GEN. 133, 138 (2014) (only considering the four factors, without mentioning the fifth). If the fifth factor were still considered, we would recognize that Firefighter III/Paramedic is a position of "dignity and importance."

[7] The Attorney General of Maryland has convincingly opined that this factor includes positions created by State *or* local law. 99 OP. ATT'Y GEN. 133, 139 (2014) (applying the guidelines used by the appellate courts in sovereign immunity cases to the analysis of what constitutes an office under Article 35 of the Maryland Constitution).

> [3] [t]he position calls for the exercise of some portion of the sovereign power of the State[; and]
>
> [4] [t]he position has a definite term, for which a commission is issued, and a bond[8] and an oath are required.

Muthukumarana v. Montgomery Cnty., 370 Md. 447, 479 (2002) (citation omitted). The same four factor test applies to all determinations of whether a position is an "office," irrespective of context. *See, e.g.*, *id.* at 478-81 (applying this four factor test to determine that 911 operators are not public officials and thus may not assert common law public official immunity); *Conaway v. State*, 108 Md. App. 475, 494 (1996) (noting that the Court has used the same four factor test for both sovereign immunity and Article 35 purposes); 65 OP. ATT'Y GEN. 285, 285-87 (1980) (applying this test to determine that a part-time teaching position at a state university is not an office for the purpose of dual officeholding); 99 OP. ATT'Y GEN. 133, 150 (2014) (applying this four factor test to determine if a member of a public employee relations board and a labor relations administrator are "office[s] of profit"); *Hetrich v. Cnty. Comm'rs of Anne Arundel Cnty.*, 222 Md. 304, 306-07 (1960) (applying the same factors for Article 35 purposes and for offices on the county level); 72 OP. ATT'Y GEN. 286, 289-92 (1987) (using the same factors for determining if two offices are incompatible); *but see Gillespie v. State*, 370 Md. 219, 224-25 (2002) (refusing to import definition of "state official" from one context to another).[9] None of the four

[8] This Court has commented that "There are … far too many [public] offices that require no bond and far too many [p]ublic employees who are required to be bonded for the bond requirement to be considered a valid test" of whether someone is a public official. *Macy v. Heverin*, 44 Md. App. 358, 362 n.3 (1979). Nonetheless, it remains part of the test.

[9] Even if an individual's position does not pass this test, they may still be considered a public official if they meet one of two additional scenarios. *de la Puente*, 386 Md. at 512.

factors are "conclusive," *D'Aoust v. Diamond*, 424 Md. 549, 587 (2012), but courts generally emphasize the third factor, regarding the exercise of sovereignty. *See Koustenis*, 260 Md. at 106 (stating that, although the emphasis may vary in different cases, when the individual exercises a "portion of the sovereign power of government" they may "nonetheless considered to be a public official") (citation omitted). The determination of whether a position constitutes an "office" must be made in light of "the facts and circumstances in each case and the nature and effect of the particular provision of law by which the office was created." *See Moser v. Bd. of Cnty. Comm'rs of Howard Cnty.*, 235 Md. 279, 281 (1964); *see also de la Puente v. Cnty. Comm'rs of Frederick Cnty.*, 386 Md. 505, 512 (2005) (stating that, for purposes of common-law immunity, "[t]hese four guidelines … are employed using the specific facts and circumstances of each individual's position").

We, therefore, apply the four factor test to the facts and circumstances of this case.[10] We conclude, *first*, that the position of Firefighter III/Paramedic is not created by law. We

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First, an individual may be a public official if they exercise a "large portion of the sovereign power of government." *Id*. (citation omitted). Alternatively, an individual may be considered a public official if they "can be called on to exercise police powers as a conservator of the peace." *Id*. (citation omitted). Here, however, neither party argues that Weiss falls within either of these scenarios and we will not address these further.

[10] Here, the parties have not brought to our attention, nor have we found a single case holding that a firefighter or a paramedic holds an "office" for purposes of the common law crime of misconduct in office. Featured prominently in the parties' briefing, however, is *Resetar v. State Bd. of Ed.*, 284 Md. 537 (1979). In *Resetar*, a public school teacher, Resetar, was fired from his job for misconduct in office—he referred to his students by inappropriate, derogatory, and racist names—and his termination was affirmed by the Supreme Court of Maryland. *Id.* at 539, 563. Closer inspection reveals, however, four aspects of this case that limit its precedential value for determining the definition of who

note that there are licensure requirements,[11] but those licensure requirements are not the same thing as an office that is created by law. *See, e.g.*, *Hayden v. Maryland Dep't of Nat.*

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can commit the common law crime of misconduct in office. *First*, Resetar wasn't charged with common law misconduct in office at all. Rather, he was alleged to have violated a human relations policy of his employment, which the county superintendent of schools considered to be "misconduct in office" under what is now section 6-202 of the Maryland Education Code. *Id.* at 539. *Second*, Resetar wasn't charged criminally at all. He was only fired from his job and availed himself of the administrative procedures for review of that job termination (and the Supreme Court applied the deferential standard of review that it uses to review decisions by the State Board of Education). *Id.* at 544-46, 553. *Third*, the Supreme Court wasn't asked and didn't opine on whether Resetar was an "officer." The Court was, in fact, entirely silent on the issue. *Id.* at 560-62. Had the court been considering whether a public school teacher is an "officer," it would have made sense for it to cite its most recent precedent on that topic, which came to the opposite conclusion, *Koustenis*, 260 Md. at 105-07. It didn't. *Resetar*, 284 Md. 537. *Fourth*, in its brief, the State quotes the comment to the second edition of the Maryland Criminal Pattern Jury Instructions as stating that "[a] public officer includes anyone employed by or holding appointment under the government." MPJI-Cr 4:23 (2d ed.). For that proposition, the Criminal Pattern Jury Instructions cited to *Resetar*. But the third, and most current, edition of the Criminal Pattern Jury Instructions no longer cites to *Resetar*, deleting the definition of "public officer" entirely. MPJI-Cr 4:23 (3d ed.). Instead, the third edition of the Criminal Pattern Jury Instructions says only that misconduct in office is corrupt behavior "by a public officer while exercising official duties or while acting under color of law." MPJI-Cr 4:23 (3d ed.) (citing *Koushall*, 479 Md. 124). It seems that the *Koushall* case might have convinced the Pattern Jury Instruction Committee to cease its reliance on *Resetar*. As a result, despite its prominence in the parties' briefing, we think *Resetar* is not a helpful precedent for deciding whether Weiss is an "officer."

[11] The Maryland Institute for Emergency Medical Service Systems (MIEMSS) is the agency responsible for the coordination of all emergency services in the State. MD. CODE, EDUCATION ("ED") §§ 13-503 to -504. MIEMSS, through the EMS Board, supervises the licensure and certification of all people who provide emergency medical service in the State, ED § 13-516(b)(1), including, of course, paramedics. ED § 13-516(a)(12). To be a paramedic, one must (1) complete a paramedic course approved by the EMS Board; (2) be examined and registered by the National Register of Emergency Medical Technicians, Inc. as a paramedic; (3) demonstrate competence in medical protocols; and (4) be licensed as a paramedic by the EMS Board. ED § 13-516(a)(12)(i)-(iv); *see also* COMAR 30.02.02.03.F (describing in greater detail the licensure requirements for initial licensure as a paramedic). The Maryland Fire-Rescue Education and Training Commission (MF-RETC) is a part of the Maryland Higher

Res., 242 Md. App. 505 (2019) (noting that fisherman have licensure requirements but no assertion that fisherman is an office created by law); *Visage Exp. Inc. v. State Bd. of Cosmetologists*, 342 Md. 605 (1996) (describing licensure requirements for cosmetologists but no claim that cosmetologist is an office created by law). We conclude, *second*, without reservation that the position of Firefighter III/Paramedic certainly "performs an important public duty" and thus, satisfies the second factor. We hold, *third*, that the position exercises none of the sovereignty of the State. People who hold the position of Firefighter III/Paramedic do not make the kinds of policy decisions that bind the government. They do not make arrests. They do not detain people. In fact, in many jurisdictions in our State, the firefighting and paramedic rescue functions are performed in whole or in part by non-governmental actors, either volunteers, or private companies.[12] *See, e.g.*, ANNAPOLIS, MD., CODE § 2.32.010 (listing "Independent Fire Company No. 2;" "Eastport Volunteer Fire Company;" and "Rescue Hose Fire Company No. 1" as volunteer fire companies

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Education Commission and is responsible for overseeing training for fire, rescue, and ambulance services throughout the State. ED §§ 11-502 to -503. By regulation, the MF-RETC sets the requirements for emergency service instructors who can instruct at emergency services training (fire, rescue, and ambulance) academies offered by local governments, community colleges, and public and private schools. ED §§ 11-501(d), 11-503; COMAR 13B.03.01.01-13. In this way, the training of firefighters and the training, certification, and licensure of paramedics are important systems and are created by a complex web of statute and regulation. That is, however, a far cry from the idea of an office created by law that the four factor test envisions.

[12] In fact, according to the National Fire Department Registry, 60.5% of Maryland's registered fire departments were staffed by solely volunteer personnel, 28% staffed by mostly volunteers, 5% by mostly career firefighters and only 6.5% with solely career firefighters. *National Fire Department Registry Quick Facts*, U.S. FIRE ADMINISTRATION, https://apps.usfa.fema.gov/registry/summary, https://perma.cc/H2M7-DZXN (last updated Apr. 23, 2025); MD. R. 5-201.

supplementing the Annapolis Fire Department). Although employees of the Annapolis Fire Department may issue municipal civil citations, there is no evidence to suggest, and the State did not assert, that Weiss, as a Firefighter III/Paramedic, issues these kinds of citations.[13] As a result, we do not hold that a Firefighter III/Paramedic exercises any of the sovereign power of the State. *Fourth*, a Firefighter III/Paramedic does not take an oath of office,[14] does not serve a term of office, and is not required to post a performance bond.

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[13] Under the Annapolis City Code, "employees" of the Fire Department may issue civil municipal citations. ANNAPOLIS, MD. CODE § 1.20.040. These citations are relatively minor, are satisfied by payment of a fine, and are not criminal in nature. ANNAPOLIS, MD. CODE § 1.20.050. Employees of the Annapolis Fire Department also have citation powers under State law. MD. CODE, LOCAL GOVERNMENT §§ 6-101 to -115. Reviewing the Annapolis Fire Department website, we see that fire inspections are conducted by the Life Safety Section. *Fire Safety Inspections*, CITY OF ANNAPOLIS, https://www.annapolis.gov/269/Fire-Safety-Inspections, https://perma.cc/VBN6-MM88 (last visited Apr. 28, 2025); MD. R. 5-201. The Life Safety Section is separate from the Emergency Medical Service Section in which Weiss, as a Firefighter III/Paramedic, is employed. In addition, it is unclear whether the EMS section in which Weiss is employed has the authority to issue citations pursuant to § 2.32.040 of the Annapolis City Code. ANNAPOLIS, MD. CODE § 2.32.040 ("Firefighters assigned to fire prevention or investigation activities shall have the powers and authority of a police officer so far as relates to violations of law pertaining to fire and related matters."). It would be nonsensical for us to hold that Weiss is an official (and thus not an employee) by virtue of a municipal ordinance that arguably gives citation powers to her because she is an "*employee*" of the Annapolis Fire Department. ANNAPOLIS, MD. CODE § 1.20.040. All of this is to say, that if Weiss, as a Firefighter III/Paramedic, is exercising a portion of the sovereignty of the State by having the power to issue municipal citations, it is the smallest imaginable fraction and not enough to satisfy the third part of the four factor test.

[14] We have found no evidence to suggest that State, county, or municipal firefighters are required to take an oath of office.

We note that it is not clear whether this requirement may be satisfied only by the oath of office described in Article I, § 9 of the Maryland Constitution, or if another oath can suffice. Despite that Article 37 of the Maryland Declaration of Rights prohibits use of an oath other than the constitutional oath, section 2-101 of the General Provisions Article suggests that there are positions for which another oath may be taken. MD. CODE, GENERAL PROVISIONS § 2-101 ("Unless a State or local law requires a different form of oath, an

Having applied the four factors, we hold that Weiss is not an "officer." As a result, the two-year statute of limitations cannot apply to her. CJ § 5-106(f)(2). Moreover, because CJ § 5-106(f)(2) does not apply to her, the correct statute of limitations for misdemeanor charges against Weiss is one year, as provided by CJ § 5-106(a). Because the charges were brought more than one year after the criminal acts were alleged to have occurred, the criminal information was not timely filed. And, as a result, the circuit court did not err in dismissing the criminal information. We affirm the decision of the circuit court to dismiss the criminal information.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. ALL COSTS ASSESSED AGAINST ANNE ARUNDEL COUNTY.

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individual appointed to a public position that requires the individual to take an oath, but not subject to the oath required by Article I, § 9 of the Maryland Constitution, shall take an oath to perform faithfully the duties of the office to which the individual is appointed."). We also observe that the question of whether a job requires an oath is circular. That is, the determination of whether a person is required to take an oath of office often entails the same analysis as whether a position is an office. Nevertheless, as stated above, we have found no evidence to suggest that Weiss was required to take an oath of office.