

**STATE EX REL. ENVTL. IMP. AGENCY V. ALBUQUERQUE PUBLISHING CO.,  
1977-NMSC-083, 91 N.M. 125, 571 P.2d 117 (S. Ct. 1977)**

**STATE of New Mexico ex rel. ENVIRONMENTAL IMPROVEMENT  
AGENCY, Plaintiff-Appellant,  
vs.  
ALBUQUERQUE PUBLISHING COMPANY, a New Mexico Corporation,  
Defendant-Appellee.**

No. 11344

SUPREME COURT OF NEW MEXICO

1977-NMSC-083, 91 N.M. 125, 571 P.2d 117

October 26, 1977

Motion for Rehearing Denied November 15, 1977

**COUNSEL**

Toney Anaya, Atty. Gen., Bruce S. Garber, Louis W. Rose, Asst. Attys. Gen., Santa Fe,  
for plaintiff-appellant.

Johnson, Paulantis and Lanphere, Eric D. Lanphere, Albuquerque, for defendant-  
appellee.

**JUDGES**

EASLEY, J., wrote the opinion. PAYNE and FEDERICI, JJ., concur.

**AUTHOR:** EASLEY

**OPINION**

EASLEY, Justice.

{1} The issue of whether state and federal agencies are empowered to conduct non-consensual inspections of business premises for health and safety purposes without search warrants has generated a vast amount of recent litigation in state and federal courts. The matter is now before the United States Supreme Court. **Barlow's, Inc. v. Usery**, 424 F. Supp. 437 (D. Idaho 1977) (three judge court), **appeal docketed sub nom. Marshall v. Barlow's, Inc.**, 430 U.S. 964, 97 S. Ct. 1642, 52 L. Ed. 2d 354 (1977).

{2} Another lengthy analysis here of the legislative background and the various conflicting opinions could be of no substantial benefit to the New Mexico bench, bar or the litigants.

{3} This Court chooses to follow the theories advanced in **Dunlop v. Hertzler Enterprises**, 418 F. Supp. 627 (D.N.M.1976), **appeal docketed** No. 76-2020 (10th Cir., November 5, 1976) and **Usery v. Centrif-Air Machine Co.**, 424 F. Supp. 959, 961 (N.D.Ga.1977). In so doing, we hold that a non-consensual, warrantless administrative inspection of business premises can be made only when: (1) the enterprise sought to be inspected is engaged in a business pervasively regulated by state or federal government; (2) the inspection will pose only a minimal threat to justifiable expectations of privacy; (3) the warrantless inspection is a crucial part of a regulatory scheme designed to further an urgent government interest; and (4) the inspection is carefully limited as to time, place and scope.

{4} There was no showing in this case that defendant-appellee, Albuquerque Publishing Company, {126} was or is engaged in a pervasively-regulated business. Thus the plaintiff-appellant, State Environmental Improvement Agency, failed to satisfy the first test, which is fatal to its application for an order compelling inspection. We need not determine whether the other elements of minimal intrusion, urgency and reasonableness have been satisfied.

{5} We therefore conclude that this state agency, in the absence of the consent of the Albuquerque Publishing Company to inspect its premises must obtain a search warrant based upon a preliminary finding of probable cause by a judicial officer before being allowed to inspect the premises involved.

{6} The decision of the trial court is affirmed.

{7} IT IS SO ORDERED.

PAYNE and FEDERICI, JJ., concur.