

**SPRINGER TRANSFER CO. V. BOARD OF COMM'RS, 1940-NMSC-040, 44 N.M.  
413, 103 P.2d 133 (S. Ct. 1940)**

**SPRINGER TRANSFER COMPANY, A Corporation, Plaintiff and  
Appellant,  
vs.  
The BOARD OF COUNTY COMMISSIONERS of the COUNTY OF  
BERNALILLO, New Mexico, Defendant and Appellee**

No. 4446

SUPREME COURT OF NEW MEXICO

1940-NMSC-040, 44 N.M. 413, 103 P.2d 133

May 28, 1940

Appeal from District Court, Bernalillo County; Thomas J. Mabry, Judge.

**COUNSEL**

W. A. Keleher and Theo. E. Jones, both of Albuquerque, for appellant.

Owen B. Marron and Donald B. Moses, both of Albuquerque, for appellee.

**JUDGES**

Bickley, C.J., and Brice, Zinn, and Sadler, JJ., concur. Mabry, J., did not participate.

**OPINION**

{\*413} {1} This is a companion case to Springer Transfer Company v. City of Albuquerque, 44 N.M. 407, 103 P.2d 129, and is an appeal from a judgment of the district court in the same suit.

{2} The liability of the appellee depends upon whether the underpass, which was the subject of the litigation in the case of Springer Transfer Company v. City of Albuquerque, supra, was a part of a state highway. We held under the facts of that case, and likewise hold under the facts of this case, that the underpass was no part of a state highway; therefore, the appellee is not liable to damages resulting from its construction.

{3} It follows that the judgment of the district court in dismissing as to the defendant {\*414} Board of County Commissioners is correct and should be affirmed.

{4} It is so ordered.