

**STATE V. BARBER'S SUPER MKT., INC., 1964-NMSC-049, 74 N.M. 58, 390 P.2d
439 (S. Ct. 1964)**

**STATE of New Mexico, Plaintiff-Appellant,
vs.
BARBER'S SUPER MARKET, INC., Defendant-Appellee**

No. 7420

SUPREME COURT OF NEW MEXICO

1964-NMSC-049, 74 N.M. 58, 390 P.2d 439

March 16, 1964

The District Court, Otero County, David Chavez, Jr., Justice of the Supreme Court, quashed information charging defendant with limiting number of pounds of margarine it would sell to customer at advertised price, and defendant appealed. The Supreme Court, Noble, J., upheld the quashal.

COUNSEL

Earl E. Hartley, Atty. Gen., Norman S. Thayer, Joel M. Carson, Wayne Wolf, Asst. Attys. Gen., Santa Fe, for appellant.

Nordhaus & Moses, Fred Trechel, Albuquerque, for appellee.

JUDGES

Noble, Justice. Compton, C.J., Carmody and Moise, JJ., and J. V. Gallegos, D.J., concur.

AUTHOR: NOBLE

OPINION

{*58} {1} This appeal does not substantially differ from that in State v. Shop Rite Foods, Inc., N.M., 390 P.2d 437.

{2} Defendant was charged with limiting the number of pounds of margarine it would sell to a customer at the advertised price, contrary to 49-1-5, N.M.S.A.1953. At the conclusion of the trial, the parties agreed that the court should treat a motion to dismiss as one to quash the information. So treating it, the information was quashed and this appeal resulted. The parties agree that the defendant advertised margarine at 10 cents for the first three pounds and at a higher price for all additional quantities.

{3} A reviewing court's primary function is to correct an erroneous result rather than to approve or disapprove the grounds upon which it is based, so that where the record, as in this case, is silent as to the reason for a ruling, it will be sustained if it is correct upon any proper theory. *Armijo v. Shambaugh*, 64 N.M. 459, 330 P.2d 546; *Atma v. Munoz*, 48 N.M. 114, 146 P.2d 631; *Alexander Film Co. v. Pierce*, 46 N.M. 110, 121 P.2d 940.

{4} Upon authority of *State v. Shop Rite Foods, Inc.*, *supra*, the order appealed from will be affirmed.

{5} It is so ordered.