

Appeal

Sat. Dec. 19, 1970

Tanks And Ambulances Lir

Griswold Sticks To I-40 Stance

'No Chance' Of Withdrawing Motion On Park Route, He Tells Loeb

Solicitor General Erwin Griswold told Mayor Henry Loeb yesterday there is "no chance" that the government's motion to remand the Overton Park expressway case to lower court will be withdrawn.

The request for a withdrawal of the motion which Memphis attorneys consider damaging to the expressway case came in a telephone conversation. Griswold answered a call from Mayor Loeb to Atty. Gen. John Mitchell.

A group of conservationists is asking the United States Supreme Court to block construction of Interstate 40 through the park. Mr. Griswold's request that the case be remanded to United States District Court for inclusion of the "administrative record" came as a surprise this week. It left city and state officials with the prospect of additional delay in the 15-year-old fight.

The motion was filed Tuesday because "I was convinced that on the record we were going to lose" when the Supreme Court hands down its decision, Mr. Griswold said.

"We are all on the same side. We are working for the same thing. I am just trying to prevent long delays because it will take another two or three years if the case is reversed," he said.

Local attorneys on the case, who were meeting with the mayor when the telephone call took place, told the solicitor general they "respected his position" but disagreed with his assumption that the court would rule against the expressway.

City Atty. James M. Manire said he regretted that the solicitor general's office had not contacted any of the "fine attorneys who have been working on this for many years and who could have been helpful with their experience."

Mr. Griswold said the timing of the case did not allow for a d e q u a t e consultation, although he regretted the resulting controversy.

"Monday will be the court's last session of the year and so time was short" before the scheduled Jan. 11 oral arguments on the case, he said.

The solicitor general told the mayor and attorneys he had no idea how the court would rule on the motion to remand. The court is expected to rule on the motion Monday.

Parties on both sides of the case have filed responses with the court expressing their opposition to the surprise motion.

The government had said in its motion that the Department of Transportation should supply the district court with the administrative record in the case.

"There is nothing and cannot be anything in the administrative record which could be relevant, material or otherwise admissible" since it had been admitted that no "detailed written finding" had been made by the department for the Overton Park route, the state's response said.

A response by the city of Memphis, Memphis Area Chamber of Commerce, Future Memphis, Inc., and the Downtown Association said Griswold's motion would deny the Supreme Court justices the benefit of the Jan. 11 oral arguments.

Citizens to Preserve Overton Park, the organization which has led the fight against the route, said in a response that it opposed the motion to remand "for limited purpose" of introducing the administrative record.