

Freeway Skirts Environmental Laws

By FRED BARNES
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WASHINGTON, Aug. 29. — A 9.6-mile freeway planned for San Antonio, Texas has emerged as the focus of national attention, with environmentalists claiming the effort to build the road could affect other controversial highway projects throughout the country.

The North Expressway had been under construction for less than a year when the United States Court of Appeals in New Orleans in June 1971 halted work indefinitely.

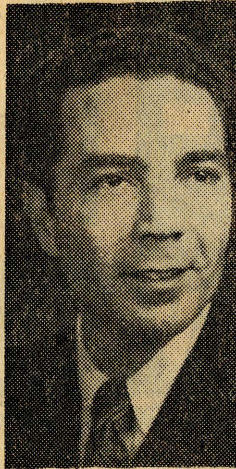
The court said the road builders had to comply with two federal environmental statutes before proceeding with construction. The statutes were applicable because the expressway is a federal-aid highway, with the federal government paying 50 per cent of the cost (estimated at less than a million dollars).

But several weeks ago, Texas Senators Lloyd Bentsen and John Tower won approval by the Senate Public Works Committee for legislation that would nullify the court order blocking the building of the expressway.

The legislation, attached as an amendment to the committee's version of the 1972 Federal-Aid Highway Act, would drop the expressway from the federal-aid system and let the Texas Highway Department foot the full construction bill.

This would free the state highway department from complying with the federal environmental laws, and thus allow construction to begin anew.

(R. C. Odle, Tennessee De-



J. Alan Hanover

partment of Highways development engineer, said he believed it would be impossible for Tennessee to use a similar technique to circumvent court orders halting construction on Interstate 40 in Memphis because of the high cost of construction.

(The Memphis case has been in the courts for more than a decade while officials and residents debated whether to build the highway through Overton Park.

(The interstate system is financed 90 per cent by the federal government and 10 per cent by the state. The full cost of the Overton Park segment of I-40 is estimated at "several million dollars" Much more than that of the San Antonio expressway segment.

(Attorney J. Alan Hanover, who has defended the Memphis park route, said he does not believe the legislation would lead to widespread use of such techniques.

("In most cases it would be

too expensive for states to build the roads without federal assistance. The state of Tennessee has always held that its position in the Overton Park case is legally sound and they were entitled to the money. So I doubt if they have bothered to consider it," Mr. Hanover said.

(Mrs. Henry Witte, formerly of San Antonio and now active in Memphis environmental affairs, said she was not concerned that the San Antonio case would serve as a precedent in the Overton Park controversy, because of technical differences.)

San Antonio environmentalists, whose lawsuit led to the appeal court's order, now are attempting to drum up enough national support to defeat the Bentsen-Tower amendment when it comes up for a vote on the Senate floor.

They also may have to fight a similar amendment in the House Public Works Committee's 1972 highway bill. That committee is expected to report out a bill next month.

The expressway amendment "would establish a national precedent for overturning court decisions blocking freeway construction in every sector of the country," said Henry Graham, a leader of the San Antonio expressway foes.

"If Congress permits Texas

to use state funds to construct the North Expressway in violation of federal law, any time a state wants to construct a portion of a federal route through a park, wilderness or historic site it will simply build that segment with state funds and thereby avoid federal environmental protection," Graham said.

Four senators voted against the amendment in the committee (10 favored it) and one of the opponents, Senator James Buckley (R-N.Y.), explained his stand in the committee's report on the over-all 1972 highway bill.

Buckley said Congress "should not become involved in weighing the pros and cons" of individual highway disputes. "This has occurred once in the past, in the case of the Three Sisters Bridge in Washington, with unfortunate consequences," he said.

In the 1970 highway bill, Congress ordered that construction of the bridge would begin within 30 days. Construction began, but was later halted by a court order. Whether the Three Sisters Bridge will ever be built is unclear today.

"If Congress establishes the precedent of exempting specific projects from federal laws," Buckley said, "the usefulness of those laws will be whittled away."

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