

Brinegar Asks Ruling Stand In I-40 Case

By MICHAEL LOLLAR

United States Transportation Secretary Claude Stout Brinegar filed a brief in federal court here yesterday claiming it would be "entirely inappropriate" for him to make a new decision in the Overton Park expressway case.

The lengthy brief disputed the Tennessee Transportation Department's claim that former Transportation Secretary John Volpe erred in his Jan. 19 ruling on the environmental issue.

Mr. Volpe rejected the state's proposed park route for Interstate 40. He said, "I cannot find . . . that there are no prudent and feasible alternatives to the use of parkland."

J. Alan Hanover, special counsel for the state Transportation Department claimed Mr. Volpe erred "by failing to choose a specific alternative." He asked United States Dist. Judge Bailey Brown to remand the case, requiring Mr. Brinegar (Mr. Volpe's successor) to reconsider the case.

In a special conference with attorneys Saturday, Judge Brown agreed with Mr. Hanover. He did not make a final ruling, but said he felt that Mr. Volpe's decision was "incomplete" and should be reconsidered.

"Mr. Volpe said he felt like there was a feasible and prudent alternative to the park route, but I don't see how I can review his determination . . . unless he says what the feasible and prudent alternative is," the judge said.

He ordered attorneys in the case to file briefs, stating their positions on the possible remand by April 6.

United States Atty. Thomas F. Turley Jr. filed Mr. Brinegar's brief yesterday. Referring to stringent parkland provisions in the National Environmental Policy Act, he said: "The fact that nonpark alternative would cause even substantial community disruption is not sufficient ground to justify the taking of parkland."

Mr. Turley said the act does not require a transportation secretary to choose an alternative route when he rejects a route proposed by the state.

Meanwhile, Charles F. Newman, attorney for the Citizens to Preserve Overton Park, said yesterday he will file the plaintiffs' brief next week "setting forth our position in detail. We are confident that if the case is remanded, the secretary of transportation (Mr. Brinegar) will reaffirm the decision previously announced by Secretary Volpe.

"However, even though we're confident that if it's remanded the decision will be the same, we'll probably oppose the remand."

Mr. Hanover said Judge Brown's tentative position in favor of the remand "is encouraging. It indicates that neither plaintiffs nor the public will be able to use the parklands statutes to shove an environmental issue under the rug."

He claims the Citizens to Preserve Overton Park are attempting "to stall a ruling as long as possible. Congress didn't intend for the parklands statute to be used to prevent a ruling."

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