

12-2-69

Very important re case procedure, etc

# Memphians Sue to Stop Overton X-Way Funds

## Sec. Volpe Is Named Defendant

### Injunction Sought Against I-40 Construction

A new attempt was being made today to block the Overton Park expressway, which only recently got federal approval and is scheduled for construction bids Dec. 19.

A suit seeking to keep Interstate 40 out of the big park was filed in Federal Court in Washington by the Citizens to Preserve Overton Park, a Memphis organization which has led opposition to the route for years, and by two individuals. They are William W. Deupree Sr., 1730 Glenwood Place, and Mrs. Sunshine Snyder, 327 Kenilworth Place.

Named as defendant was John A. Volpe, U. S. Secretary of Transportation, who recently approved the project.

The suit seeks a declaratory judgment and a preliminary injunction to block construction.

The suit seeks to prevent Volpe from making any federal funds available for the project.

Deupree, a well-known cotton man, and Mrs. Snyder, who is wife of a Dupont chemist and is a leading Republican worker in Shelby County, both declined comment on the suit.

Sources in the Citizens to Preserve Overton Park said large national conservation organizations were also expected to join in the suit. Some national conservation and wildlife groups have already gone on record in opposition to the expressway route.

Informed of the suit, Mayor Henry Loeb said: Turn to Page 5—MEMPHIANS



Deupree Mrs. Snyder Bringing Suit

## Memphians Sue To Stop Funds For Expressway

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"If this is an impediment to the construction of this expressway, then we'll fight it, as we have fought every other one. We are going to build this expressway system. Our determination to build this road is a part of our determination to build a better Memphis. Therefore, there will be no deviation from it."

Loeb said he did not know about the suit, but would immediately have James Manire, city attorney, get in contact with Washington to see what needs to be done.

"The Tennessee Highway Department would not proceed with construction of the project if it believed that . . . federal funds could not lawfully be paid to the state of Tennessee," the suit said in part.

"If Volpe is enjoined from taking any further action with respect to the project, or enjoined from obligating the federal government to reimburse . . . the Tennessee Highway Department 90 per cent of its construction cost, the . . . Highway Department will not construct the project through Overton Park."

The suit says construction of the project is in violation of federal laws. These reasons were listed:

Because the transcript of a public hearing held on May 19, which the THD submitted to Volpe, did not contain testimony of at least eight witnesses who appeared there. Six of those witnesses opposed either, or both, the location and design of the project.

(The highway department earlier acknowledged to reporters that at a hearing on the route a tape recorder taking the transcript broke near the end of the hearing.)

The suit claims that witnesses omitted were among the most important to testify. They included the widow of a direct descendant of the man for whom Overton Park was named, two officials of the Department of Interior, a representative of the National Recreation and Park Association, and the chairman of the Citizens to Preserve Overton Park.

The THD has not submitted to Volpe a copy of the verbatim written transcript of the oral proceeding at the public hearing on May 19; their failure to do so is a "plain and flagrant violation," and Volpe's approval of the project without having received such a transcript violated federal law.

Notices of the public hearing scheduled for May 19 in The Commercial Appeal on April 15 and May 12 did not describe the procedure for submission of written statements and other exhibits in place of oral statements at the public hearing; these notices did not comply with federal laws.

Overton Park is a park and recreation area of state and local significance; Volpe has made no finding that the program for the project includes all possible planning to minimize the harm to such park and recreation area.

The plaintiffs claimed in the suit that there are alternative routes to the Overton Park route, as outlined in preliminary studies by the planning firm of Harland Bartholomew & Associates. Some of these would be economically feasible, the suit said.

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The suit asks that Volpe's actions and proposals be declared unlawful, and that he be permanently enjoined from taking any further action relating to the project "unless and until he has complied" with federal law; and that "pending disposition of this action, this court preliminarily enjoin Volpe from taking any further action with respect to the Federal Aid Highway Project and that Volpe not disburse any funds to the Department

of Highways for the project."

The request for a preliminary injunction would normally come up in court in about 10 days, a Washington source said. Plaintiffs said in the suit that they could be ready for a full trial in about two months on the remainder of the suit.

Affidavits were filed by Arlo I. Smith, chairman of Citizens to Preserve Overton Park; and Mrs. Snyder. Mrs. Snyder said property which

The city has committed the money to other park projects, including purchase of Fox Meadows golf course for about \$1 million.

The design approved by Volpe would lower the road to the lowest possible point and still avoid the necessity of expensive pumps to take drain water from Lick Creek under the expressway.

Extensive landscape plans to beautify the Overton Park section of the freeway were

she owns near the expressway, her home, would be adversely affected by the project.

On Nov. 4, Volpe lifted a "hold" on the Overton Project which had been placed by his staff several weeks earlier. He approved the project, "with significant qualifications."

The "qualifications," which were quickly accepted by the Tennessee Highway Department in an effort to

prepared by the Highway Department through a landscape expert.

Scheduled for bidding Dec. 19 is a section of I-40 running from Lick Creek eastward to Bon Air Street near Holmes — a distance of 2.270 miles. This includes the part of the Overton Park route east of Lick Creek.

Covered in the bidding will be grading, drainage, construction of 10 bridges and two retaining walls. Total cost is about \$4,687,000.

get construction under way after years of delay, involved an additional lowering of the roadway in sections, and construction of two additional pedestrian overpasses and one combination pedestrian-vehicular overpass across the expressway.

After this approval, the state paid the city about \$2.2 million which had been negotiated as the purchase price for property needed in the park for the expressway.

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