

New I-40 Hearing Order Restarts 'Overton Park's Merry-Go-Round'

By JEFFERSON RIKER

The federal government has ordered a new round of public hearings on design and location of the Overton Park leg of Interstate 40.

State officials said yesterday they are "very upset."

Secretary of Transportation John A. Volpe, carrying his review of the case beyond the scope ordered by United States Dist. Judge Bailey Brown, told the Tennessee Highway Department the route and design must comply with the National Environmental Policy Act (NEPA).

'We're throwing 10 years of litigation out the window,' said state Atty. Gen. David M. Pack, who as Tennessee's commissioner of highways was intimately connected with the nearly 17-year fight to complete the expressway.

But federal officials disagreed with the state's contention that planning would have to start from scratch.

'What the secretary has done is ask

for an environmental statement on the Tennessee Highway Department proposal," said Jeffrey Shane, a special assistant for environmental affairs to John Barnum, general counsel to the Department of Transportation.

"I think there is no doubt we are going farther than the court ordered," Mr. Shane said. "As a lawyer on the secretary's staff, I happen to think that that's the wise and prudent approach."

NEPA was passed by Congress in 1969 and became effective early in 1970. That was after Mr. Volpe's original go-ahead on the park leg of the expressway.

Sources involved in the case said yesterday there is a sharp disagreement between state and federal officials over whether further hearings should be held. The original hearings were held about six years ago.

Judge Brown did not order the government to apply the standards set out

in NEPA, but Mr. Volpe has elected to do so.

Federal highway officials feel new hearings would not damage their position, said one source. But the state contends the hearings have already been held and there is nothing new to learn aside from what has already been explored in court.

"I don't share Mr. Pack's view (that the state would have to start all over again)," Mr. Shane said. "We're not talking about starting from scratch or throwing out years of planning."

"I think it is probably a mischaracterization to say that the secretary has told the state to start over again." Much of the previous planning can probably still be used, he indicated.

Mr. Pack, meanwhile, said he feels the only realistic alternatives at this point are to either hold the hearings or forego the 90 per cent federal funding and build the park segment of I-40 with state money.

Of the second alternative he said,

"I've about arrived at the conclusion that's the proper thing to do."

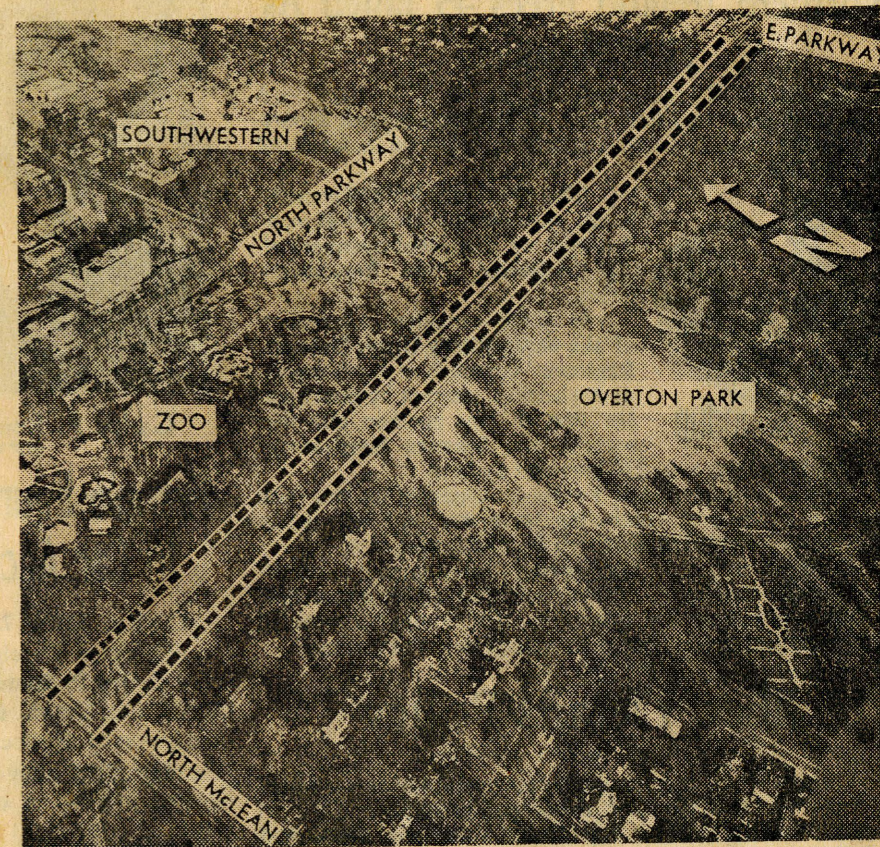
However, the Fifth United States Circuit Court of Appeals ruled recently in a similar case in San Antonio that the state could not build a disputed interstate segment because it was designated as part of the federal interstate and defense highway system.

"Secretary of Transportation Volpe has issued no new statements," said David Wells, chief counsel for the Federal Highway Administration. "Our position remains the same except that we do want to hold public hearings in Memphis." Mr. Wells said NEPA does not specifically require that the hearings be held here.

Attorneys here for both sides in the case said yesterday they preferred not to comment in the latest developments in the controversy.

In a letter to state Highway Commissioner Robert Smith, Mr. Wells

(Continued On Page 6)



Proposed I-40 Route Shown By Dotted Lines

—Staff Artwork

Hearing Will Consider Location, New Look At Design Of Park Route

(Continued From Page 1)

said he recognizes "the sensitive nature of any decision made regarding the project.

"Despite the legal questions as to precisely what the district court is searching for and the evaluation of such search by a court on the inevitable appeal, the decision to request the State of Tennessee to comply with NEPA is based on the determination of the secretary of transportation," Mr. Wells said.

"We realize that the people of Memphis are especially eager to see some finality on this entire matter, and we have conscientiously attempted to find other means of resolving the question. However, the decision of the secretary of transportation clearly states the position of the Department of Transportation."

Commissioner Smith was out of his Nashville office yesterday and a highway department spokesman said there would be no comment on the expressway case until officials have had a chance to analyze the situation.

Mr. Pack said a final decision by the state on whether to try to build the expressway on its own would have to be made by Mr. Smith and Gov. Winfield Dunn, as well as others in the state administration.

Dr. Arlo I. Smith, president of Citizens to Preserve Overton Park, said the government should complete its re-examination of the case under NEPA before holding public hearings.

"Holding public hearings is no way to find out the scientific evidence. Just having a lot of people going down to create a lot of blyhoo isn't going to accomplish anything. And, if they are just going to rehash what they had during the hearing, it is not going to be very meaningful."

Dates have not been set for the new hearings and it was unclear yesterday just how long the hearings and subsequent decision-making will take. The state has already bought and cleared right-of-way up to the east and west

edges of the park and has paid the city more than two million dollars for the park right-of-way.

Mayor Wyeth Chandler was en route back to Memphis from Washington yesterday afternoon and was not available for comment on latest events in the case.

The project received a severe setback in March, 1971, when the United States Supreme Court ordered Judge Brown to undertake a thorough administrative review of the proceedings.

On Jan. 5 of this year, Judge Brown sent the entire project back to Mr. Volpe for a new decision on location of the highway. But he did not specify a new look at the design. The hearings ordered by the government will cover both.

Judge Brown said the secretary could not have based his 1969 decision to OK the project on the standards spelled out by the Supreme Court.

As originally proposed, the 1.8-million-dollar project would have required use of a 29-acre strip of the park, three-quarters of a mile long.

At issue currently is a section of the Department of Transportation Act of 1966 that permits the use of public parkland for highway purposes

only when the secretary finds there is "no feasible and prudent alternative" and that the project includes "all possible planning to minimize harm" to the parkland.

Dozens of other routings were considered over the years as the expressway was debated by environmentalists and public officials. Routes immediately north and south of the park were rejected because of expense and disruption to existing facilities.

At one point in the long tangle over location, former Mayor Henry Loeb threatened privately to install a traffic light at each end of the park and route the expressway traffic over the existing bus lane which knifes through the northern sector of the park past the Overton Park Zoo.