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San Antonio Expressway Rebuff May Foretell Outcome In Memphis

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WASHINGTON, Jan. 25. — A move by the city and state to build the Overton Park expressway project in Memphis without federal aid would raise substantial legal questions, a knowledgeable government attorney said Thursday.

The attorney, who agreed to discuss the problem with the understanding he would not be identified, cited the difficulties the state of Texas has encountered in trying to convert an interstate expressway project in San Antonio to a state-financed project.

"While the facts in the Memphis and San Antonio

cases differ in many respects, there also are some similarities," the attorney said.

When the San Antonio expressway ran into the same environmental obstacles that have blocked the Overton Park expressway as an interstate project, the state undertook to return all federal aid funds and to convert the project into one financed entirely by the state.

Environmentalists promptly appealed to the courts. The Fifth United States Court of Appeals in New Orleans sustained their objections and the Supreme Court refused to review and

allowed the decision to stand.

"The appellate court held, in effect," the attorney said, "that the interstate system in San Antonio was indivisible. It held the state couldn't accept federal aid for all

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other parts of the system and then evade federal law by building one small segment with only state money."

The law in question, also involved in the Memphis

case, is one that prohibits the use of parkland for a federal highway except in the most extraordinary circumstances.

As in Memphis, the San Antonio expressway would

connect already completed portions of the interstate system.

"The San Antonio case doesn't present a clear principle applicable to the Memphis case, but it is clear

enough to warn of the probability of trouble," the attorney said.

He added that laws to protect the environment are so new that an easily interpreted "body of law," based on clear-cut court decision, has not yet been compiled.

"I would say it is quite obvious the state of Tennessee can't build the Overton Park expressway as a state project without risking a very serious lawsuit," he said.

The San Antonio case is now back in federal district court in Texas. The attorney for environmentalists in the case, John Vardaman of Washington, also is representing Citizens to Preserve

Overton Park in the Memphis case.

Last year supporters of the San Antonio expressway managed to have language inserted in congressional legislation to overrule the appellate court decision and validate state-financed construction of the project.

The bill, the Federal Aid Highway Act of 1972, cleared both houses of Congress at one point but failed at the last minute when the House refused to approve a conference report in a dispute over using federal aid highway funds for mass transit systems.

Senator John Tower (R-Texas) and other Texas

backers of the San Antonio project are expected to try again this year.