

Volpe Erred, State Contends In I-40 Suit

By MICHAEL LOLLAR

Claiming former Transportation Secretary John A. Volpe erred in his Overton Park expressway decision, the State of Tennessee yesterday asked that the case be remanded for a new determination.

In a petition filed in federal court, J. Alan Hanover, special counsel for the state Transportation Department, said Mr. Volpe misconstrued the original remand order by failing to select an alternate route for Interstate 40.

He also argued that Mr. Volpe overstepped the court's directives in the remand order by making a new determination on the design of the I-40 park segment. Mr. Volpe rejected the partially depressed roadway design, even though it already had been approved by United States Dist. Judge Bailey Brown.

In his petition, Mr. Hanover asked Judge Brown to order current Transportation Secretary Claude Stout Brinegar to make a new route decision within 30 days, without consideration of the highway's design.

As an alternative, Mr. Hanover asked the judge to dissolve the injunction which now forbids completion of the 3.5-mile Overton Park stretch of I-40. He said Mr. Volpe "obviously ignored the court's remand order," and that, in effect, his decision simply denies the use of federal-aid funds to build the highway.

Without the injunction, he argued, the state would be free to build the highway "using any state or local funds which may be available."

Judge Brown remanded the case to Mr. Volpe Jan. 5, 1972, after hearing 27 days of testimony revolving around the possible environmental impact of a six-lane interstate highway on the park. Mr. Volpe rejected the route and design of the highway last Jan. 19, but indicated he might have approved a tunnel design for the park route.

In support of his petition yesterday, Mr. Hanover quoted a portion of Judge Brown's 1972 remand order. In his summary, the judge said: "We con-

clude then that this case must be remanded to the secretary of transportation, but only for the purpose of making a route determination . . ."

In an attached memorandum of law, Mr. Hanover said Mr. Volpe apparently confused the relationship between location and design of the highway. Mr. Hanover said the two are separate, and that the location of a highway cannot be made more "feasible or prudent" by altering its design.

Asking for a speedy hearing to decide the issue, he said: "This defendant believes that this court can compel a decision under specific directives to the secretary (of transportation) and require that the decision be made in a reasonable length of time so that the state will be least know where it stands.

"This community can then be put at rest, not to mention all of the persons who are personally affected by the fact that they may live directly in the path of one of the alternatives or whose property or lives may be vitally

affected by the use of one route or the other, or no route at all."

Finally, he said a San Antonio, Texas, expressway case is entirely different from the Overton Park case. The United States Fifth Circuit Court of Appeals refused to allow Texas to use its own funds to connect a federal-state highway through a park.

Charles F. Newman, attorney for the Citizens to Preserve Overton Park, said he will object to Mr. Hanover's arguments.

In other developments yesterday, Gov. Winfield Dunn discussed the park route with Mr. Brinegar in Washington and the Memphis Park Commission turned down a request that it go on record opposing the park route.

"I told him the public interest would not be served by further delays," Governor Dunn said after meeting with the new secretary of transportation. "I said we were interested in seeing the project completed with all possible speed, either as proposed or possibly as a tunnel."

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