

OPE 22-06

Further Action Is Left To State In Park Fight

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approaches to the problem may be finished.

Pack may not be involved in the continuing battle. He has announced he will resign April 30 and probably will seek the Democratic nomination for governor.

Charles Newman, attorney for Citizens to Preserve Overton Park, Inc., a small group of Memphians who have led the fight to block the highway through the park, said he was "delighted" with the decision. "It upholds our contention on every point. We couldn't ask for a better decision."

Dr. Arlo Smith, president of the citizens group and a professor at Southwestern, suggested efforts to build through the park be dropped. "I think we should turn our attention to completing the perimeter expressway system and give strong emphasis to the development of mass transit."

The question before the appeals court was whether Volpe should have provided a specific alternative route when he ruled against going through Overton Park in January, 1973. The state said he should have. Citizens to Preserve Overton Park and the U.S. Department

of Transportation said such determination was the responsibility of the state.

U.S. District Judge Bailey Brown of Memphis agreed that Volpe should have specified an alternative route. He made his ruling after the case was remanded to him by the Supreme Court.

The Sixth Circuit Court reversed Brown.

"The burden of choosing the route does not, as the District Court held, lie with the secretary," Celebrezze wrote. "The secretary only approves or disapproves a particular route."

He said that when a route is disapproved "the burden is on the state to submit another proposal to the secretary and at that time the secretary would be required to approve or disapprove the new proposal."

The case was before the appeals court once before and in a decision on Feb. 20, 1970, Celebrezze dissented from a majority opinion which upheld Brown in granting a summary judgment allowing the highway to be built through the park. In his conclusion to the dissent he noted that "public parklands are the only remaining sanctuaries for the vast numbers of city

dweller from the polluted urban sprawl . . ."

Parties on both sides agree that the next move is up to the state.

"The ball is lying dead in the court on the state's side," said Rep. Dan Kuykendall of Memphis. "It is up to the state to pick it up and start the game again. I have every reason to believe the state will."

Kuykendall said he sees no alternative for completing the highway other than by going through the park. The only alternative he said he sees is a cut-and-cover tunnel. He also said he would expect environmentalists to fight such a suggestion in the courts.

The main issue throughout the law-

suit has not been the matter of the design of the proposed road, but whether it should go through the park.

"It is route, not design that must be settled first," Pack said.

The controversy over building an expressway through the park has been raging in Memphis since it was first proposed in 1955 in a Harland Bartholomew & Associates study.

Volpe approved the route in November, 1969, and his action prompted the lawsuit. Judge Brown approved his decision and the judge's ruling was upheld in the appeals court. It then went to the Supreme Court, which ruled the administrative record — the memoranda, engineering reports and other supporting data — which resulted in the

decision should have been reviewed.

Brown then sent the case back to Volpe for a new determination. During the interim, the National Environmental Policy Act had been passed.

The second time around, Volpe said that "on the basis of the record before me and in light of guidance provided by the Supreme Court, I find that an interstate highway as proposed by the state through Overton Park cannot be approved."

While he did not specify an alternative, he did make the following observation:

"Among the possible alternatives which the State of Tennessee may wish to consider are the use of the I-240

circumferential combined with improvements to arterial streets, alternative routes such as the L & N Railroad corridor and a broadened use of public transportation facilities and services combinations of the above to meet the transportation needs in and around Memphis.

"Apart from alternative locations, I am also convinced that a tunnel design would be less harmful to the park than the present design. Listing these possible alternatives should not, of course, be construed either as an endorsement of any of them or as an exclusion of any other alternative that I have not mentioned. Likewise it should not be construed as a finding that the 'no-build' alternative has been rejected."



Dotted Line Traces Uncompleted Portion Of Interstate 40

*A serious error - was reported by many persons to C.A. - correction demanded! Map below is also inaccurate - re completed X. way to west of park. ******

C.A. April 4, 1974