

Kuykendall Asks Transportation Agency For Expressway Route-Design Ruling

From The Commercial Appeal Washington Bureau

WASHINGTON, April 17.—Rep. Dan Kuykendall of Memphis asked the Department of Transportation for a legal ruling Wednesday that could expedite a decision on a new plan for completing Interstate 40 through Memphis.

Kuykendall asked whether the state could submit a proposal covering both route and design, with Transportation Secretary Claude Brinegar then ruling

separately on the two-part package.

The inquiry, addressed to DOT general counsel Rodney E. Eyster sought to find a way around a knotty legal problem that some lawyers fear could block further consideration of routing I-40 through Overton Park.

In a letter to Eyster, Kuykendall said his purpose was "to clarify one detail of the Overton Park case in Memphis."

"The decision made by the (Sixth) Circuit Court of Appeals upholding the

secretary of transportation," he continued, "indicates in substance that the designation of the route is the duty of the state of Tennessee and that the next action in this case must be taken by the state.

When (former transportation) Secretary (John A.) Volpe rejected the surface route through Overton Park he listed alternatives, one of which specifically suggested a cut-and-cover tunnel through the park. This means, of

course, that he had rejected the design through the park but had not finally rejected the route itself.

"Since it is essential that the route must be accompanied by a design in order to be acceptable, I feel the whole project must be presented simultaneously even though under the law the route proposal and the design must be considered separately."

Kuykendall then posed his question:

"Can you (the department of transportation) under the law accept one package which includes both the route and the design even though you must consider them separately?"

He said he would like to have an answer as soon as possible.

An affirmative response presumably would encourage the Tennessee Highway Department to prepare and submit for Brinegar's consideration a plan for

a cut-and-cover route through Overton Park.

Kuykendall favors this procedure and has discussed it with Gov. Winfield Dunn. He said he will talk to the governor again early next week after Dunn's return from Japan.

Kuykendall anticipates conservationists will oppose a cut-and-cover tunnel through the park but believes their opposition can be overcome in the courts.