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"Park Expressway Gets Green Light - Appeal Mulled"

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ms. Stoner says case was dismissed on Feb 26! Check this date

Highways - streets - xways
**Park Expressway
Gets Green Light
- Appeal Mulled**

Plaintiffs seeking to block construction of Interstate 40 through Overton Park said yesterday they aren't sure whether a federal court's dismissal of their case will be appealed.

William Deupree, one of the plaintiffs, said an appeal hasn't been discussed. A decision would be made only after a review of the decision of federal district Judge Bailey Brown to dismiss the case, he said.

But those fighting the building of the east-west expressway through the park had frequently indicated earlier that they would appeal.

"We've left that in an unsettled position at the moment. My own personal opinion is that we should appeal," said Mr. Deupree.

"I'm glad to get it over for now, anyway, which probably won't be for long," said United States Atty. Thomas F. Turley Jr., who represented the federal government. The fight over the park route has raged since the 1950s.

Mayor Henry Loeb was so elated by the decision that he called Tennessee Highway Commissioner Charles W. Speight in Nashville and asked when work would resume.

"We have the money ready," Mr. Speight told the mayor. "We'll move as soon as our legal department gets the ruling in writing."

Mr. Loeb said he hoped the decision means that "we can now proceed with the road and alleviate some of the city's traffic problem."

Judge Brown didn't try to decide whether the interstate should go through the park. His examination sought only to disclose whether state and federal officials followed the law and had been reasonable in picking the route and deciding to build above ground.

Sierra Club of San Francisco; and the National Audubon Society, Inc., of New York.

In a hearing Feb. 20, they argued that federal and state highway planners had considered only "engineering and cost" in deciding to run the highway through the park above ground.

The plaintiffs also cited what they claimed were errors in previous hearings on the project.

They asked the court to issue an injunction against the work on the highway until a new design could be drawn or until a new route could be found.

Federal and state officials argued that they tried hard to find a different route. A tunnel would involve "difficult and risky construction problems" and cost 107 million dollars, they said.

Attorneys for the federal and state governments asked the court to dismiss the motion for an injunction and let them get to work.

In doing so yesterday, Judge Brown said, "It is absolutely clear that . . . those who made the decisions did not confine their considerations to cost and engineering problems but rather considered all factors, including the intangible values in a park and zoo."

He said some errors in procedure made in the previous hearings were "harmless errors." The final decision on where to build the interstate highway was in the hands of Secretary of Transportation John A. Volpe, he said.

The city has already sold the right-of-way through the park and some areas on each side of it have already been cleared for the highway.

In an opinion accompanying his ruling, he said the decisions were not — as claimed by the plaintiffs — "arbitrary and capricious."

Highway Commissioner Speight said a date has not been set for bids. He said money for the project is in reserve, but a decision to go ahead won't be made until the state attorney general says to proceed.

Charles F. Newman, a Memphis attorney who represented the plaintiffs, said the decision would be reviewed by the group's Washington attorney before a decision to appeal is made.

Plaintiffs included Citizens to Preserve Overton Park, Inc.; William W. Deupree and Mrs. Sunshine K. Snyder; the

*on microfilm:
CA should perhaps be "2/27?"*

CA 2/21/70

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