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## "Brinegar Wins Right To Appeal In I-40 Case"

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# Brinegar Wins Right To Appeal In I-40 Dispute

From The Commercial Appeal-Nashville Bureau

NASHVILLE, Sept. 27.—The Overton Park expressway case is headed for yet another round in court.

The Sixth Circuit Court of Appeals has ruled that the federal transportation secretary may appeal a district court order that requires him to say there is no feasible and prudent alternative to the park route, or to designate the alternative.

Tennessee Atty. Gen. David Pack said Thursday he had received word from the sixth circuit in Cincinnati that transportation Secretary Claude Brinegar has won the right to appeal the ruling of Dist. Judge Bailey Brown of Memphis.

Pack said it had been his position that Brown's order to Brinegar could not be appealed but added he was "not surprised" that the circuit court held otherwise.

**The state legal officer emphasized** that the court of appeals in no way decided the case on its merits but merely said it will consider the Brinegar appeal.

Brinegar's predecessor, John Volpe, last January rejected a proposed partially depressed design of Interstate 40 through Overton Park.

However, Volpe did not present any alternative and Brown subsequently directed Brinegar either to do so, or to say there is no reasonable alternative to the park routing.

State officials are preparing to resubmit to Brinegar a plan whereby he would designate the park route as a voluntary administrative matter or face further legal action.

There have been suggestions that the state should give federal officials an entirely new plan for a cut-and-cover design that would take the park link underground.

**However, that evidently has been** abandoned on the theory that the state cannot legally submit a design for the 3.7-mile segment of I-40 until a route is formally designated.

Pack said he has no idea when the court will hear Brinegar's appeal.

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