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"Judge OK's Completion Of I-40 Segment"

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*(NEPA is not relevant to
Bailey plan, but Parkland Statute is.)*

*Effective date of 1966 Federal-Aid Highway Act and its
Parkland Statute is Aug. 23, 1968*

MERCIAL APPEAL

PAGES 23 TO 30

IS, TENN., FRIDAY MORNING, JUNE 25, 1971

*(Cases can be cited, however, in which if one foot of
a project remains, NEPA applies retroactively!)*

Judge OK's Completion Of I-40 Segment

A federal judge cleared the way yesterday for completing a segment of Interstate 40 and denied a motion by conservationists to amend their suit challenging the expressway's route through Overton Park.

Chief Judge Bailey Brown of United States District Court denied an application for an injunction to halt work on a four-mile stretch of I-40 from Bon Air to White Station Road.

The state will be allowed to go ahead with the leg at its own risk, recognizing that it could lose the lawsuit, said Judge Brown.

He also denied for a second time an application to allow the complaints to be amended so that the government could be charged with violating the National Environmental Policy Act (NEPA) in addition to other ecology-oriented laws cited earlier.

Citizens to Preserve Overton Park and other plaintiffs claimed the highway depart-

ment was attempting to complete Interstate 40 to a point so close to the park that it would be infeasible to alter the highway's path.

United States Atty. Thomas Turley charged conservationists "come here on their white horses with their white hats and say they're in favor of God, motherhood and sunshine."

The full hearing in the case is tentatively set for Sept. 27 before Judge Brown. It was remanded to the judge for the hearing as a result of an appeal that went to the United States Supreme Court.

The environmental policy act sets out more specific requirements on highways and their impact on the environment than other laws cited by the plaintiffs. Parties to the case agree the government has not complied with NEPA as far as the Overton Park expressway is concerned.

But defendants in the case, including the state Highway

Department and federal officials, maintain the final decision on the plans for building the road through the park were made in November, 1969, — well before the Jan. 1, 1970, date the act went into effect.

Judge Brown agreed. "... By the time NEPA became effective ... this project had proceeded too far for NEPA to be applicable to it or to contracts contemplated by the project and let after the effective date of NEPA," he said in his order yesterday.

The key question was over contracts. Conservationists admitted NEPA couldn't be applied retroactively. But they said contracts issued after Jan. 1, 1970 should be in compliance with NEPA standards. Defendants argued contracts simply are results of the key decisions made in 1969 and therefore are not subject to NEPA rules.

The Supreme Court has en-

joined work on the I-40 leg in Overton Park from Lick Creek to Bon Air.

The state has agreed not to work on the other portion in the park, from Lick Creek to Claybrook, without permission of Judge Brown.

J. Alan Hanover, special counsel for the state Highway Department, said work on the Bon Air to White Station Road stretch involves work on paving, fencing and signs.

"That corridor from White Station to Bon Air is absolutely useless except for right-of-way," said Mr. Hanover.

Judge Brown said he didn't think completion of the work on the four-mile leg would affect his decision in the case "one iota."

Mr. Turley said an 8,000-page administrative record in the case is expected to be filed in Memphis in a week or two.

Judge Brown indicated he will schedule some pretrial conferences with lawyers on the case in late July.