

ILLINOIS POLLUTION CONTROL BOARD
February 17, 1972

FARMERS OPPOSED TO EXTENSION OF)
THE ILLINOIS TOLLWAY, et al.)
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 v.) ## 71-306, 71-32#
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 ILLINOIS STATE TOLL HIGHWAY AUTHORITY)
 et al.)

Opinion and Order of the Board (by Mr. Currie):

The initial complaint in this litigation we dismissed for failure to state a claim that would justify relief against the construction of an extension of the Tollway to the Rock River, with leave to amend (#71-159, Aug. 13, 1972). A motion for the filing of the environmental statement required by section of the Environmental Protection Act we construed as a complaint and authorized for hearing (#71-306, Sept. 30, 1971). The amended complaint against the extension itself was assigned a new number and also authorized for a hearing on certain narrowly defined issues after a full opinion (Nov. 11, 1971).

The complainants now move that the complaints be dismissed, essentially on two grounds: that our new proposed rule #R72-1, which would require parties to pay the cost of transcripts because of the Board's lack of funds, imposes unforeseen litigation costs; and that during the pendency of these cases before the Board construction has progressed and will further progress "so far as to eliminate any possibility of meaningful relief."

If the sole issue were the ability of the complainants to bear a portion of the transcript costs, we might urge them to apply for special relief as is expressly provided in the proposed regulation. Presumably the petitioners are aware of that provision and chose not to invoke it. We may also be able to employ our own court reporters and to assume more of the cost of transcripts. But from the fact that the motion to dismiss came at a time when the transcript rule had been merely proposed and not adopted, we take it that the motion would have been made without regard to the financial question simply because relief at this point would come too late.

We regret the delay in litigation. But our concern in scrutinizing the complaints carefully was to avoid the waste of unnecessary hearings which the complainants would have had no chance of winning. As our last opinion pointed out, the only possibility of success for the complainants was in the nature of minor construction details to minimize pollution, not an interdiction of the highway itself as was the goal of the complaint. The principal issue in fact was one of land use planning, over which this Board has no authority. Any relief we could have granted would have been too little from the complainants' point of view even if it had not been too late.

The motion to dismiss is hereby granted and the complaints are hereby dismissed.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 17th day of February, 1972 by a vote of 5-0.

Christan Moffett