In short, the employment of a child between the ages of fourteen (14) and sixteen (16) years until 7 o'clock P. M., United States Central Standard Time, does not violate Section 28-521, supra.

OFFICIAL OPINION NO. 47

July 22, 1954

Hon. James L. Dunn
State Representative
Nowlin Road
Lawrenceburg, Indiana

Dear Mr. Dunn:

This is in reply to your letter of June 18, 1954, in which you inquire as to the following:

Does a mausoleum as described in the brochure of the Individual Mausoleum Company of Aurora, Indiana, comply and come within the word "mausoleum" as contained in the Acts of 1939, Ch. 142, Section 19, as amended, as found in Burns' Indiana Statutes (1950 Repl., 1953 Supp.), Section 21-1019.

Section 21-1019, supra, provides:

"Subject to the rights of transportation and removal of dead human bodies, or other disposition of such bodies, as provided by law, the remains of all deceased persons dying in the state of Indiana, or shipped into the state of Indiana, shall be deposited in the earth, in an established cemetery, in a mausoleum or in a columbarium, within a reasonable time after death, except as may be otherwise ordered by the state board of health. All dead human bodies interred in the earth shall have a cover of not less than two and one-half \([2\frac{1}{2}]\) feet of earth over the receptacle in which such body is placed. All private or family mausoleums shall be constructed in such manner as to admit proper ventilation. The remains of such bodies that shall have been cremated may be deposited in mausoleums or columbariums or
deposited in the earth. Any person, firm or corporation, their agents, employees or servants, who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars [$100] nor more than five hundred dollars [$500] or shall be imprisoned not less than thirty [30] days nor more than six [6] months, or both, in the discretion of the court.”

The Acts of 1939, Ch. 142, Sec. 1, as amended, as found in Burns’ Indiana Statutes (1950 Repl., 1953 Supp.), Section 21-1001 (b) defines mausoleum as follows:

“(b) ‘Mausoleum’ means a structure used, or intended to be used, for the entombment in a crypt or crypts therein, of the remains of deceased persons.”

Facts derived from the reading of your enclosed brochure disclose the following:

The “Individual Mausoleum” is placed in the ground in such a way that the top of the vault is nearly level with the top of the ground, with a reinforced concrete ledger over the entire top;

There is no earth over the top of the receptacle containing the body and there is no ventilation permitted whatsoever;

The total depth of the grave is about four feet;

The “Individual Mausoleum” is placed in this grave, then the casket is lowered; and the top of the “Individual Mausoleum” is placed over the opening so as to make a sealed enclosure for the casket;

The construction is of reinforced concrete, with a granite terrazzo ledger top.

What the “Individual Mausoleum” amounts to is a vault and marker combined as set forth in the brochure furnished.

Mausoleum is defined in the New International Encyclopedia (2d Ed.), Volume XV, page 267, as:

“A sepulchral monument of large size, containing a chamber in which urns or coffins are deposited. The
name is derived from the tomb erected at Halicarnassus to Mausolus, King of Caria. * * * By extension the term is used to designate any monumental sepulchral edifice, whether ancient or modern."

Century Dictionary & Cyclopedia, Volume VI, page 3665, describes a mausoleum as follows:

"Any splendid tomb; a grand or stately sepulchral monument or edifice, now officially designated to contain a number of tombs; as, the mausoleum of a royal family."

The case of Anshe Sephard Congregation v. Annie Weisblatt (1936), 170 Md. 390, 392, 185 A. 107, defines a mausoleum as a tomb of more than ordinary size or architectural pretentions, especially a grand monumental structure; and defines a tombstone as a stone marking a place of burial, and usually inscribed with a memorial of the deceased.

As a general rule of law, a particular name being given to an item does not ipso facto control as to what the particular item is. Therefore, the fact that the item here involved is called an "Individual Mausoleum" does not necessarily mean that it is in fact a "mausoleum" as contemplated under Sections 1 and 19, supra.

Consideration must also be given to the intention of the Legislature, and it must be pointed out that the basis for the exercise of the police power with regard to cemeteries is for the protection of the life, health, comfort and well-being of the community.

Park Hill Development Co. v. City of Evansville et al. (1921), 190 Ind. 432, 130 N. E. 645.

Keeping in mind the above, it is evident that a structure, as contemplated in Section 1 (b), supra, of the Act defining a mausoleum, is a structure of large size, which may contain one or more crypts, and is in the nature of a sepulchral monument or edifice; and not a vault and tombstone combined as outlined in your brochure.

Another pertinent feature in this respect is that in my opinion a body placed in the individual mausoleum as de-
scribed in your brochure is interred in the earth and as such is required to have a cover of not less than two and one-half feet of earth over the receptacle in which such body is placed.

It is, therefore, my opinion that the individual mausoleum as described in your brochure is not within the meaning of the word “mausoleum” as set out in the Acts of 1939, Ch. 142, Sections 1 and 19, as amended, and, therefore, is prohibited by Section 19 of said Act.

OFFICIAL OPINION NO. 48

July 26, 1954

Mr. Cecil Bolinger
Executive Secretary
Public Employes' Retirement Fund
707 Board of Trade Building
Indianapolis, Indiana

Dear Sir:

Your letter of June 28, 1954, has been received and reads as follows:

"We respectfully request that an Official Opinion be rendered, covering the questions as cited below:

"By way of explanation, I would advise that the governing body of the political subdivision of the Churubusco Civil Town—Whitley County—Churubusco, Indiana, adopted a resolution asking that Social Security coverage be extended to the following employees.

"'All positions not covered by an existing Retirement or Pension plan, including utility employees, and except elected legislative officials and part-time employees.' Effective January 1st, 1954.

"This resolution was incorporated in Modification No. 39 and was processed in compliance with an agreement dated September 12, 1951 and heretofore approved by the Federal Security Administrator and the State of Indiana, and was hereby submitted to Albert A. Kuhle,