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 Employees’ 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,
Regional Representative, Bureau of Old-Age and Survivors Insurance, Chicago, Illinois.

"I am now informed that before the above named will approve coverage for the political subdivision herebefore mentioned, it will be necessary for your office to rule on the two (2) questions listed as follows:

"1. May a political subdivision of the State of Indiana exercise any or all of the optional exclusions from Social Security coverage permitted by Section 218 (C) (5) of the Social Security law, under the State of Indiana enabling act, Acts of 1951, Chapter 313, approved March 8, 1951?

"2. If the answer to question No. 1 is ‘NO,’ then does the Federal-State agreement, approved and becoming effective April 1, 1951, permit a political subdivision to exercise the optional exclusions from Social Security coverage as provided for under the Federal Social Security Law, and if not, then may such agreement be amended, authorizing the political subdivision to exercise such option?

"Listed below are six (6) types of work which may be excluded.

"1. Work of emergency nature;

"2. All work in any class or classes of elective positions;

"3. All work in any class or classes of part-time positions;

"4. All work in any class or classes of positions the compensation for which is on a fee basis;

"5. Agricultural labor if the work would be excluded if done for a private employer;

"6. Work done by a student if the work would be excluded if done for a private employer."

Section 210 (k) of the Social Security Law, as found in 42 U. S. C. A., Section 410 (k), contains certain classes of employees who are required to be exempt from coverage under
the Social Security Law. These are exempted under the specific provisions of the agreement of September 12, 1951, between the Federal Security Administrator and the State of Indiana, above referred to.

Under Section 218 (c) (5) of Social Security Law as found in 42 U. S. C. A., Section 418 (c) (5), provision is made for the optional exclusion by the State of the six (6) types of work above referred to in your letter. No provision is made in said agreement of September 12, 1951, for the permissive exclusion of such types of employees. Therefore such permissive exclusion of such types of work is not authorized or contemplated by such agreement. This answers your second question.

The enabling Indiana Statute, Acts of 1951, Ch. 313, above referred to, is Burns' Indiana Statutes (1951 Repl.), Section 60-1901 et seq. Section 2 of said statute, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1902, among other things makes the following definitions:

* * *

"(b) The term 'employment' means any service performed by an employee in the employ of the state and of any political subdivision of the state for such employer, except (1) service which in the absence of an agreement entered into under this act would constitute 'employment' as defined in the Social Security Act; or (2) service which under the Social Security Act (9A, F. C. A., tit. 42, §§ 301-1305) may not be included in an agreement between the State and the Federal Security Administrator entered into under this act;

"(c) The term 'employee' includes an officer of the state and of a political subdivision of the state";

* * *

Section 5 of said Indiana enabling act as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1905, in part provides:

"(a) Each political sub-division of the state is hereby authorized to submit for approval by the State Agency a plan for extending the benefits of title II of the Social Security Act (9A, F. C. A., tit. 42, §§ 401-
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410), in conformity with applicable provisions of such act, to employees of such political sub-division. Each such plan and any amendment thereof shall be approved by the State Agency if it finds that such plan, or such plan as amended, is in conformity with such require-
ments as are provided in regulations of the State Agency, except that no such plan shall be approved unless * * *.

"(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under section 3 (§ 60-1903);

"(2) it provides that all services which constitute employment as defined in section 2 (§ 60-1902) and are performed in the employ of the political sub-division by employees thereof, shall be covered by the plan * * *." (Our emphasis)

From the provision of the last-referred to statute, it is clear that "all services" which constitute employment as defined under Section 2 of said Act "shall be covered by the plan." This requires all employees and officers of the political sub-
division to be included in the plan except those who would be members of Social Security irrespective of any such agree-
ment, and those who cannot be members of Social Security under the provisions of the Federal statute. This does not leave any discretion in the local political subdivision to choose to exclude any of those classes of employees which choice is made permissible by the Federal Act under Section 218 (c) (5) supra. This answers your first question.

From the foregoing, it is clear since the Indiana enabling act does not give the political subdivision of the state the right to exercise the optional exclusions permitted by the Social Security coverage, that the agreement between the state and the Federal Security Administrator, above referred to, could not legally be amended to give such right. The only amend-
ment that could give such right would be the amendment of the Indiana statute.