I do not find any section of the statute requiring funeral directors to reside in the same city or town in which they operate their funeral establishment, however the foregoing quoted section of the statute requires such establishment to be at all times in the personal charge and custody and under the supervision of such licensed funeral director. It is therefore a question of fact rather than one of law as to what distance a funeral director may reside from his place of business and still be able to comply with the foregoing section of the statute. Such question of fact would therefore be one for your board to determine in the particular instance, your action of course would be subject to review on appeal.

OFFICIAL OPINION NO. 85  
September 5, 1946.

Hon. Otto F. Walls, Administrator,  
Department of Public Welfare,  
141 South Meridian Street,  
Indianapolis 14, Indiana.

Dear Sir:

Your letter requesting an official opinion concerning out of state paroles for feeble-minded patients requires a construction of the following part of Section 22-1743 Burns' 1945 Supplement, (Section 4, Chapter 119, Acts 1939):

"* * * Furloughs and discharges may be given to the patients as provided by such regulations."

You specifically desire to know if the Superintendent of the Fort Wayne State School under the above statute approves a boy's furlough to the State of Illinois, must the State Department of Public Welfare also approve and effectively carry out such furlough under agreements entered into with such other states in conformity with other referred to statutes.

Section 22-1743 Burns' 1945 Supplement, supra, refers to feeble-minded persons placed in the custody of the Fort Wayne State School or the Muscatatuck State School, and that part of said statute pertinent to the question presented is as follows:
"The respective board of trustees of each of said institutions is empowered to make such rules and regulations respecting the care, custody, training, education and discipline of patients, and the management of such institution and its affairs, as it may deem best for the interest of the patients and the state. * * * All persons admitted to such institutions shall, until properly discharged from the same, be under the custody and control of the superintendent thereof, * * * Furloughs and discharges may be given to the patients as provided by such regulations." (Our emphasis.)

A number of other statutes must be considered in arriving at a true construction of the foregoing statute when applied to a furlough of a patient from one of such institutions to another state.

Sections 22-2506 to 22-2509 Burns' 1933 (Section 1 to 4 inclusive of Chapter 29, Acts 1899), empowered the Board of State Charities to resist bringing into this state persons who may become dependents, public charges or criminals, requiring a suitable bond in the penal sum of $10,000.00 and provide that said State Board is given authority to adopt regulations for the proper placement, adoption, removal and supervision of such children and also for the rejection of incorrigible and unsound children and for the removal of children convicted of crimes or misdemeanors or who may become public charges.

Under Section 22-1505 Burns' 1933 (Section 5, Chapter 56, Acts 1917), it is provided in substance that when an insane or feeble-minded person is at large in Indiana and is found to have a legal settlement in another state, the Board of State Charities may return such person to the other state.

Under Section 22-1501 Burns' 1933 (Section 1, Chapter 56, Acts 1917, as amended by Section 1, Chapter 55, Acts 1923), it is provided in substance that the Board of State Charities is given the power to consent to the return to Indiana of insane, feeble-minded or epileptic persons, who have a legal settlement therein, and authorizes non-residents to be received into our state institutions if their legal settlement could not be ascertained or in such cases where the peculiar circumstances of the case constitute a sufficient reason to
do so. It further provided if an escaped inmate from another state is brought to the attention of said Board, said Board may deport such person to the place of his or her legal settlement.

Under Section 7, Chapter 156 of the Acts of 1917 (Section 22-1507 Burns’ 1933), it is provided the Board of State Charities was empowered to make agreements with other states respecting the residence of insane, feeble-minded or epileptic persons and other dependents and for the return of such patients to their former residence.

All the rights, power and duties conferred by law on the Board of State Charities were continued in full force and effect and were transferred to and conferred upon the State Department of Public Welfare, under the provisions of Section 52-1110 Burns’ 1945 Supplement, (Section 11, Chapter 3, Acts 1936 (Spec. Sess.), as amended by Section 5, Chapter 179, Acts 1941.)

Your letter states that pursuant to the provisions of the foregoing statutes the State Department of Public Welfare and its predecessor, the Board of State Charities, have entered into agreements with other states and have worked with the proper authorities in other states in accepting or rejecting persons sought to be sent into this state or in sending to other states persons found in Indiana who have a legal settlement in such other states; that you have had a number of requests from other states asking permission for feeble-minded persons to come to Indiana to visit or live with relatives or friends for a definite or indefinite period; that you have also, in collaboration with some of our Indiana State institutions, secured permission from other states to let Indiana patients visit with relatives in such foreign states for a definite period, and arranged for a conditional return to Indiana if it should become necessary.

The foregoing statutes are subject to the rule of construction that in ascertaining the legislative intent as to a statute, the courts may take into consideration other Acts in pari materia whether passed before or after the Act in question.

Sherfey v. City of Brazil (1937), 213 Ind. 493, 497, 498.
In the case of State ex rel. v. International Harvester Co. (1939), 216 Ind. 463, the court in deciding whether a statute imposing certain additional duties and burdens on foreign finance companies was repealed by implication by a subsequent statute, said on page 467 of the opinion:

"Repeals by implication are disfavored. Where two acts are seemingly repugnant, they should be construed, if possible, so that the latter will not operate as a repeal or modification of the former. If, by the application of every reasonable rule of construction, substantial harmony is found possible, then there is no irreconcilable conflict. * * *"

When the referred to part of Section 22-1743 Burns' 1945 Supplement, regarding furloughs by the Superintendent of the feeble-minded institutions, is considered in pari materia with the other sections of the statutes authorizing agreements to be entered into by the State Department of Public Welfare with other states for the importation or deportation of insane or feeble-minded persons, it is clear that full effect can be given to all of said statutes without affecting the others. When so construed I am of the opinion that the authority for furloughs to be given solely by the Superintendent applies only to furloughs in the State of Indiana; that when such furlough is granted for the purpose of such person being deported to some other state for a definite period of time, or to be returned to Indiana by the sister state under certain conditions, that in such event such furlough must also have the approval of the State Department of Public Welfare and the details of such deportation carried out by the State Department of Public Welfare in conformity and in harmony with such agreements made with such other states.