practical for one to hold these positions, I do not say, but from a legal standpoint, I can see no objections to one man holding all of the positions, providing he has all of the legal qualifications provided by statute.

EMBALMERS, STATE BOARD OF: Construction of Indiana statute in view of NRA Code of fair practice; who may conduct funerals; hours.

November 20, 1933.

John Paul Ragsdale, President,
State Board of Embalmers and Funeral Directors,
1219 North Alabama Street,
Indianapolis, Indiana.

Dear Sir:

I have before me your request that an official opinion issue in response to the inquiry concerning the effect of the limited working week for employees, contemplated by the proposed code for fair dealing for the funeral service industry under the National Recovery Administration, in view of the exemptions granted by and contained in such proposed code.

The pertinent sections of the proposed code for fair competition for the funeral service industry are as follows:

"Article III, Hours: No employee shall be permitted to work in excess of forty (40) hours in any one week, except those engaged personally and lawfully in conducting funerals and those lawfully engaged in embalming.

"Article V, Section 5: Within each state this code shall not supersede any laws of such state imposing more stringent requirements on employer regulating the age of employees, wages, hours of work, health or general working conditions than under this code."

The general assembly of the State of Indiana has regulated the embalming profession in both the Acts of 1923 and 1931, and in the latter, which is chapter 92, Acts of 1931, page 261 et sequi, it regulates the practice of funeral directing. The most pertinent provision insofar as a consideration of the question presented is concerned, is section 10-A, which is as follows:
“Section 10-A. Every person over twenty-one years of age, and every firm or corporation, who or which wishes to practice or engage in the business or profession of funeral directing in the State of Indiana shall appeal at a duly organized meeting of said board, and shall file an application with said board showing that such applicant has been associated with some duly licensed funeral director in the business of funeral directing for at least six months, or, in lieu thereof, said applicant shall be vouched for and recommended by at least two duly licensed funeral directors, resident in the same county as said applicant, and after the payment of a fee of ten dollars to cover the expense of his or its examination, be there examined by said board, either orally or in writing, as to his or its qualifications for a funeral director’s license, as set forth in this section. Any duly elected officer of any corporation applying for a license under this section may take said examination for and on behalf of said corporation and any one member of a partnership applying for a license under this section may take such examination for and on behalf of said partnership, and one license to any corporation granted under this section shall be sufficient to authorize any officer, agent, or employee of said corporation to engage in said business of funeral directing in connection with said corporation’s business, and any license granted under this section to a partnership shall authorize all members of said partnership to engage in the business of funeral directing in connection with said partnership’s business.”

From this it would appear that any employee of a corporation holding a license to engage in business might lawfully conduct funerals. While such employee was actually actively engaged personally in such lawful conducting of funerals, he would be exempted from the terms of the proposed code for fair competition by the terms of Article III, supra. However, such exemption would only be applicable when the employee was personally, actively and actually engaged in conducting funerals and would not apply at any other time.