

November 17, 1999
L-99-16

TO: Martha M. Barringer
Acting Director of Field Service

FROM: Steven A. Bartholow
General Counsel

SUBJECT: Use of RRB Seal

This is in reply to your memorandum of November 5, 1999, regarding the use of the RRB seal on shirts worn by RRB employees.

As you point out, use of agency seals is governed by 18 U.S.C. § 701 which provides that:

Whoever manufactures, sells, or possesses any badge, identification card, or other insignia, of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia, or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined under this title or imprisoned not more than six months, or both.

You inquire whether the Board could authorize the purchase by RRB employees of polo shirts with the RRB seal. You point out that employees of the following offices may purchase different items with the seal of the office: Department of Justice, Environmental Protection Agency, Social Security Administration, General Services Administration, Department of Defense, Federal Bureau of Investigation, and the Central Intelligence Agency.

The proscription contained in section 701 is intended to protect the public against the use of a recognizable assertion of authority with intent to deceive (U.S. v. Goeltz, 513 F.2d 193 (C.A. Utah 1975), cert. den. 423 U.S. 830). The statute prohibits any private manufacture, sale, or possession of an agency seal except where use of the seal is authorized under regulations. Various agencies have such regulations, such as the Veterans Administration (title 38 of the Code

of Federal Regulations), the Library of Congress (title 36), the Army (title 32),

and NASA (title 14). The RRB's regulations do not contain any provision regarding the RRB seal. Nor have we located any government-wide regulation regarding the use of agency seals. We have also not been able to locate any regulations providing authority for private use of an agency seal for most of the organizations you list, although the Army and the Marine Corps have regulations governing the authority for private use of medals, etc.: 32 CFR 507.12(c) and 32 CFR 765.14, respectively. The Department of Justice, which includes the Federal Bureau of Investigation, has the following regulation:

(a) Requests for permission to reproduce the Departmental seal for commercial, educational, ornamental or other purposes by other government agencies or private entities shall be referred to the Assistant Attorney General for Administration for decision.

(b) Requests for permission to reproduce the seal of the Federal Bureau of Investigation, the Bureau of Prisons, the Federal Prison Industries, the Immigration and Naturalization Service, the Board of Parole, the Drug Enforcement Administration, and the United States Marshals Service for such purposes by other government agencies or private entities shall be referred to the head of the respective Departmental organization for decision.

(c) The decision whether to grant such a request shall be made on a case-by-case basis, with consideration of any relevant factors, which may include the benefit or cost to the government of granting the request; the unintended appearance of endorsement or authentication by the Department; the potential for misuse; the effect upon Departmental security; the reputability of the use; the extent of control by the Department over the ultimate use; and the extent of control by the Department over distribution of any products or publications bearing a Departmental seal. 28 CFR 128-1.5007.

NASA's regulation regarding use of the NASA seal lists a series of authorized uses and then provides that:

Use of the NASA Seal for any purpose other than as prescribed in this section is prohibited, except that the Associate Deputy Administrator may authorize, on a case-by-case basis, the use of the NASA Seal for purposes other than those prescribed when the Associate Deputy Administrator deems such use to be appropriate. 14 CFR 1221.109(b).

The existence of such regulations as those of NASA and the Department of Justice supports the conclusion that there is no government-wide authorization. It is our opinion, in light of the statutory and regulatory provisions discussed above, that the Board could authorize the use of the RRB seal in the way you describe, but, in order to comply with 18 U.S.C. § 701, such authorization would have to be by a delegation of authority through a regulation adopted by the Board. In the absence of such a regulation and approval pursuant thereto, in our opinion, the use of the agency seal as contemplated in your request would violate 18 U.S.C. § 701.