

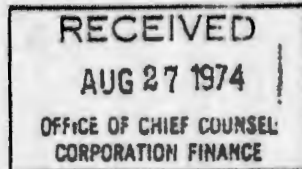
1933 ACT/RULE 145 (a)(2)

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PLEASE DIRECT REPLY TO THE  
WASHINGTON OFFICE

RE \_\_\_\_\_  
August 27, 1974

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
500 North Capitol Street, N.W.  
Washington, D.C. 20549

Re: Request for Interpretive Advice

Gentlemen:

The undersigned, counsel for General Research Corporation, requests your interpretive advice as to whether or not the submission to the shareholders of General Research Corporation of a proposal to change the Company's domicile is a transaction within Rule 145 of the General Rules and Regulations under the Securities Act of 1933, or is excepted therefrom under paragraph (a)(2) of the Rule.

FACTUAL BACKGROUND

General Research Corporation ("the Company") is at present a California corporation and its shares of \$.10 par value common stock are registered under Section 12(b) of the Securities Exchange Act of 1934 and are listed on the American and Pacific Stock Exchanges. The Board of Directors of the Company is desirous of presenting to the shareholders at its next annual meeting a proposal for reincorporation of the Company in the State of Delaware. This proposal will be presented to the shareholders in a Proxy Statement prepared in compliance with Regulation 14A issued under the Securities Exchange Act of 1934 and the mailing of the Proxy Statement will be accompanied by the Company's Annual Report to Shareholders.

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The reincorporation will be effected pursuant to a Plan of Reorganization by the terms of which the Company will transfer all of its business assets and goodwill, subject to liabilities, to a wholly-owned subsidiary of the Company that has been organized for this purpose under Delaware law (the "Delaware corporation") in exchange for one (1) share of the Delaware corporation's common stock, ten cent (\$.10) par value, for each share of common stock, ten cent (\$.10) par value, of the Company which is issued and outstanding on the date of the exchange. The Closing Date is to be as soon as practicable after the Plan is approved by the shareholders of the Company. Immediately thereafter, the Company will wind up and dissolve, distributing its assets, consisting solely of shares of the common stock of the Delaware corporation, to its shareholders on the basis of one (1) share of common stock of the Delaware corporation for each outstanding share of common stock of the Company.

The Delaware corporation will recognize each holder of common stock of the Company as of the Closing Date as a shareholder of record holding the same number of shares of common stock of the Delaware corporation, and each outstanding certificate representing shares of the Company's common stock will be deemed to represent the same number of shares of the common stock of the Delaware corporation. The common stock of the Delaware corporation will be listed on the same stock exchanges as the shares of common stock of the Company.

The Delaware corporation will have the same name, officers, and directors as the Company presently has. The reincorporation will not effect any change in the business which the Company now carries on or in the organization thereof.

Consummation of the reorganization will be contingent upon, or there will previously have been secured prior to submission of the proposal to the shareholders, a tax ruling from the Internal Revenue Service stating that the reincorporation will constitute a "tax free" reorganization under §368(a)(1)(F) of the Internal Revenue Code and that the Delaware corporation will succeed, without adjustment, to the tax attributes of the Company.

The Company's certified public accountants have advised the Company that the Delaware corporation, for financial statement purposes, will succeed, without adjustment, to each and every of the financial attributes of the Company.

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At the time of the closing, the surviving Delaware corporation will have the same capital structure as the disappearing California corporation, consisting of three million (3,000,000) shares of common stock, ten cent (\$.10) par value, and three hundred thousand (300,000) shares of preferred stock, one dollar (\$1.00) par value. The Company now has outstanding approximately one million one hundred thousand (1,100,000) shares of its common stock. No shares of the authorized preferred stock have been issued. Except for common stock reserved for issuance pursuant to the Company's existing stock option plans, the Company has no plans to issue any additional shares, either common or preferred, in the immediate future.

The Certificate of Incorporation of the surviving Delaware corporation will differ from the Articles of Incorporation of the Company in various matters of style and format not affecting substance.

As proposed, the Delaware corporation, under its Certificate of Incorporation and By-Laws, will differ from the Company in the following substantive respects:

1. The By-Laws of the Delaware corporation will provide that the directors of the Delaware corporation will be divided into three (3) classes and, at each annual meeting of shareholders, only one of these classes will be subject to election. The existing Board of Directors of eleven (11) members will be so classified that four (4) directors will be elected at the annual meeting in 1975, four (4) more directors at the annual meeting in 1976, and three (3) more at the annual meeting in 1977. Such a classified board is not available under California law.
2. The Certificate of Incorporation of the Delaware corporation will provide for cumulative voting in the election of directors, and that this provision can only be amended with the approval of the holders of eighty percent (80%) of the total voting power of the outstanding shares. Under California law, cumulative voting is mandatory, although not mentioned in the Articles of Incorporation of the Company.
3. The Certificate of Incorporation of the Delaware corporation will provide that its By-Laws may be adopted, amended or repealed by the Board of Directors or by the action of holders of eighty percent (80%) of the voting power of the outstanding shares. The By-Laws of the Company provide, in accordance with California law, that the By-Laws may be amended or repealed by a majority vote of the shareholders.

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4. The Delaware corporation's Certificate of Incorporation and By-Laws will provide that shareholder action may be taken at regular or special meetings of shareholders and that such meetings may be called by the Board of Directors or by a majority of its members. The By-Laws of the Company provide that special meetings of shareholders can be called by the president, two or more directors, or, as required by California law, the holders of one-fifth (1/5th) or more of the voting power of the outstanding shares.

Under California law, adoption of the foregoing Plan of Reorganization will require the affirmative vote of the holders of a majority of the outstanding shares of the Company. The Board of Directors desires to present this Plan of Reorganization to the shareholders for a vote at the next annual meeting of shareholders which is presently scheduled for November 14, 1974.

QUESTIONS PRESENTED

A) The initial question of interpretation is whether a stock-for-assets transaction as described in Rule 145 (a)(3)(A), which is effected solely to change the domicile of the issuer, is excepted from the registration requirements of Rule 145? Alternatively, will such a transaction be excepted from the registration requirements of Rule 145 by virtue of the express exception set forth in Rule 145 (a)(2) for a "similar plan of acquisition"? It is our opinion that an affirmative response to either of the foregoing questions would be entirely consistent with the purpose and intent of Rule 145 as expressed by the Commission in Release No. 5316 under the Securities Act of 1933.

There does not appear in Release No. 5316 or Rule 145 any apparent rationale or policy reason to support a distinction in the registration requirements for a change in domicile transaction where such distinction is dependent upon the form of the transaction.

The ultimate result of a statutory merger and a stock-for-assets transaction as contemplated by the subject proposal are identical. However, there can be many good business reasons for the Company selecting one or the other of the two forms of transaction. For example, in

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the subject stock-for-assets transaction, statutory appraisal rights for dissenting shareholders are not available. We would urge upon you that selection of the form of a change of domicile transaction should not be complicated by the application of different securities law requirements to the two transactions. It should be noted that the application of the former Rule 133 was not dependent upon whether the form of the transaction was a statutory merger or a stock-for-assets transaction.

The second question will be framed on the basis that the subject transaction is determined to be a "similar plan of acquisition" and subject to Rule 145 (a)(2) and the exception therein. However, the analysis would be identical if it is determined that the change of domicile exception is applicable to a transaction described in 145 (a)(3)(A).

B) The second question of interpretation, assuming an affirmative answer to the preceding, is whether the subject proposal falls within the exception for change of domicile transactions contained in Rule 145 (a)(2).

In our opinion, the submission to the shareholders of the Company of a Plan of Reorganization for the purpose of changing the corporate domicile of the Company and the subsequent issuance of the substitute securities of the surviving corporation pursuant thereto, all as outlined above, is not a transaction within Rule 145 and, instead, is excepted therefrom under paragraph (a)(2) of the Rule. The sole purpose for the issuance of the securities of the Delaware corporation is to accomplish the change of the state of incorporation to Delaware. This conclusion should not be altered by the differences in the provisions of the Certificate of Incorporation and By-Laws of the surviving Delaware corporation which we have described since these changes do not, in the aggregate, constitute a material alteration in the outstanding security or the rights of the investor.

A change of domicile usually involves numerous changes in the rights of investors as a consequence of the differences in the laws of the different states. The exception of Rule 145 (a)(2) would be without practical utility, if this normal consequence of a change of domicile would be regarded as defeating the exception.



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As a corollary matter, a change in the state of incorporation or domicile of a corporation will make available to that corporation different options in corporate structure, or may require different provisions in its charter documents.

It appears clear that a change in the domicile of a corporation, without more, does not require registration under Rule 145 by reason of the exception in Rule 145 (a)(2). In addition, a change in the Articles or By-Laws of a corporation accomplished in the usual manner and not accompanied by a corporate reorganization changing domicile, or as a fundamental recapitalization or reclassification, would not come within the registration requirements of Rule 145. All that is required in such a situation is the appropriate shareholder vote in accordance with the laws of the state of domicile and compliance with the applicable proxy rules and regulations. It is our opinion that the changes in the charter documents contemplated in this transaction would not constitute a recapitalization or reclassification of the type requiring registration.

This result should not be changed when, as here, the two steps are combined and the change in domicile is accompanied by changes in the charter documents with respect to internal corporate management and such changes are not of such a fundamental character as to constitute changes in the investment character of the security involved or significant changes in the issuer's basic organization structure.

The foregoing conclusions and our opinions with respect to the applicability of the exception in Rule 145 (a)(2) to this transaction appears to be buttressed by and consistent with the position of the Commission's Division of Corporation Finance as set forth in Illustration B of Section II in Securities Act Release No. 5463 (February 28, 1974). In that Release, it was concluded that the exception provided by Rule 145 (a)(2) would be applicable to a change of domicile reorganization notwithstanding the following:

- a) The inclusion of a broader corporate purpose provision to the charter of the surviving corporation;
- b) The authorization of another class of securities in the charter of the surviving corporation;

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- c) The elimination of the pre-emptive rights and cumulative voting rights of the shareholders would be eliminated as a result of the transaction.

No distinction was made in the Release concerning whether the pre-emptive and cumulative voting rights of the shareholders could have otherwise been eliminated except by means of the change of domicile.

As stated previously, the date for the Company's annual meeting of shareholders is presently scheduled for November 14, 1974, and the Company hopes to present the described proposal for change of domicile to the shareholders for action at that meeting.

If you do not concur with our opinions herein, we would anticipate the need for filing the Registration Statement on Form S-14 with the Commission on or before September 15, 1974, if the Company is to have adequate time for processing and subsequent distribution of the Prospectus. Accordingly, we would appreciate your prompt consideration of these matters and advice as to whether or not you concur with our conclusion.

Please do not hesitate to contact the undersigned by collect telephone at 805-963-2044 should you have any questions or desire any additional information.

Sincerely yours,

SCHRAMM, RADDUE & SEED

By

Douglas E. Fell

DEF:pcc