

Opinion of
HON. REVERDY JOHNSON,
ABOUT PROCLAIMING THE MEMBERS OF CONGRESS.

Washington, 23d November, 1863.

MY DEAR GOVERNOR :

In compliance with your request, made at our last interview, I have examined the question you stated: "What is your duty in regard to the recent election? Are you vested with discretion, as matters now are, or is not your function purely ministerial?" The enquiry depends on the meaning of the 29th Sect. of the 4th Art. of the Code.

The first embraces only officers constituted by the Constitution. It provides that the election of such officers "*shall* be certified, and the returns made by the Clerks of the respective counties to the Governor, who *shall* issue commissions to the different persons for the offices to which they shall have been respectively elected; and in all such elections the persons having the greatest number of votes shall be declared to be elected."

The person to be declared elected, therefore, is he who has "the greatest number of votes," and, as the only Constitutional evidence of that fact is the certificate and returns of the Clerks of the respective Counties, such evidence is conclusive on the Governor. His power, with these returns before him, is merely to count the votes given, as proved by the returns; and on ascertaining in that way, and that way only, who has